

JOSÉ MAURÍCIO DOMINGUES

POLITICAL MODERNITY AND SOCIAL THEORY

Origins, Development and Alternatives



UNTERSTÜTZT VON / SUPPORTED BY

Alexander von
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STIFTUNG



ROUTLEDGE

POLITICAL MODERNITY AND SOCIAL THEORY

Modern liberal democracy and authoritarian collectivism have known diverse political regimes; autocratic, oligarchic or democratic, they each consist of a mixed, partly oligarchic regime in which plebeian politics are subordinated. With authoritarian collectivism's defeat, a return to modernity has produced one more hybrid configuration.

An in-depth investigation of political modernity and how it is differentiated from other forms of society, this book researches its origins and trajectory as a specific dimension of modern civilisation – articulating a renewed critical theory through an analysis of rights and law, politics, state and autonomy, social reproduction, crisis and political change.

Examining these diverse aspects, *Political Modernity and Social Theory* proposes an encompassing and far-reaching approach spanning past and present – stressing radical plebeian democracy and maintaining a strong opening to the future and to possible alternatives to modernity.

José Maurício Domingues is Professor of Social and Political Sciences at the State of Rio de Janeiro University in Brazil. He is the recipient of the Anneliese Maier Forschungspreis from the Alexander von Humboldt Stiftung and the author of numerous books in English, Spanish, and Portuguese, including *Authoritarian Collectivism and 'Real Socialism'* (2021), *Emancipation and History: The Return of Social Theory* (2018) and *Latin American and Contemporary Modernity: A Sociological Interpretation* (Routledge, 2008).



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and Alternatives

José Maurício Domingues



Designed cover image: Bogdan Karlenko, Unsplash

First published 2024

by Routledge

605 Third Avenue, New York, NY 10158

and by Routledge

4 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

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Library of Congress Cataloging-in-Publication Data

Names: Domingues, José Maurício, author.

Title: Political modernity and social theory: origins, development and alternatives / José Maurício Domingues.

Description: New York, NY: Routledge, 2024.

Identifiers: LCCN 2023055739 | ISBN 9781032726786 (hardback) |

ISBN 9781032676531 (paperback) | ISBN 9781032726830 (ebook)

Subjects: LCSH: Civilization, Modern--Philosophy. | State, The. | Power (Social sciences) | Social rights. | Critical theory. | Populism. |

Authoritarianism. | Social change.

Classification: LCC CB358 .D65 2024 |

DDC 320.01/1--dc23/eng/20240325

LC record available at <https://lcn.loc.gov/2023055739>

ISBN: 978-1-032-72678-6 (hbk)

ISBN: 978-1-032-67653-1 (pbk)

ISBN: 978-1-032-72683-0 (ebk)

DOI: 10.4324/9781032726830

Typeset in Sabon

by Deanta Global Publishing Services, Chennai, India

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INTRODUCTION

0.1 Theory and diagnosis of the times

For decades now politics has been in a deep crisis. It has been either unable to confront the many issues that worry citizens of contemporary societies, or has coped with them in ways that have dissatisfied these citizens – with the lack of renewal of democracy they demand, to begin with. This book is an effort to understand what has been happening with politics, beyond more immediate issues, yet without losing them from sight. Its encompassing object is political modernity, which it aims to grasp in its autonomous dynamic. Critical theory, since Marx and in all its variants, still lacks a systematic theory of politics, or, more precisely, of the political dimension of modernity. This book aims at contributing to overcome this shortcoming, which afflicts other strands of social theory, such as those started by Weber, despite his interest in the state.

In order to achieve this goal, I endeavour to go beyond more circumspect analyses, advancing a very general theoretical approach to political modernity. To start with, a brief definition of political modernity may help the reader in what follows. Modernity is, generally speaking, a civilisation that emerged in what was becoming Europe around the seventeenth and eighteenth century. One of its crucial features was a separation of the political dimension, giving rise to political modernity, along with economic modernity, that is, capitalism. An imaginary in which freedom and equality, the objectification of nature and specific ways of weaving the social realm loom large is complemented by a set of institutions in which rights formally shun any form of domination, unacceptable in the modern imaginary, even if the state and the political system reproduce themselves relentlessly. A specific

way of exercising power with regard to decision-making processes that could affect the whole of social life arose at this point. The political system exists in both society and state, yet its core lies in the latter, which is more formally separated from society but can penetrate it more deeply.

This is indeed a vast subject. Political modernity is a partial component of modern civilisation but is still very encompassing. This book is therefore unusual, compared to what is more common today, in scope and reach. This is due exactly to the nature of its object. Besides, it is not only political modernity that, despite its centrality in the exposition, features in its pages, including its crucial juridical aspects. The attempt to surpass modernity through what was once known as ‘real socialism’, which I prefer to call authoritarian collectivism, occupies much space. In addition, the processes that engendered political modernity are analysed here, with a long view of the historical and evolutionary development of power, state and rule. More empirically-oriented issues, directly connected to more general ones, are also present throughout. In such encompassing studies, there is always the risk of overstretching the approach, of saying trivialities, of getting lost in the forest and not seeing the trees. Aware of such challenges and dangers, I think this is a fully justified endeavour. The yearning to reach out to totality may provide a cohesive picture of the past and the present, opening itself to the future. This is also a critical theory book in which both totality and emancipation have pride of place, underpinning the future-oriented perspective it embraces. In this respect it actually demands such an encompassing perspective.

In this book I bring together ideas I have been developing for some ten years now, a period of intense research, though previous strands of investigation also converge here. A book on political modernity, another on authoritarian collectivism, several articles, chapters and essays have produced a close-knit web of concepts. To be entirely understandable and achieve their goals, they must be further articulated in a complex theoretical framework, capable of lending sense and proper weight to each of its aspects, including causal relations. I lay down the origins and developmental trajectory of political modernity, as well as the tried alternative paths away from it, without forgetting to enquire into its present inevitably open horizon, irrespective of how close it may seem.

As social scientists and political thinkers, we witness a situation of extreme dissatisfaction across the world. All aspects of social life are interwoven in this predicament. Modernity is the dominant civilisation across the planet – actually the only one today. It modernised the remnants of other civilisations, integrating alterity, which is now internal to it. Where are the problems and shortcomings, blockages and possibilities of modernity, particularly political modernity, located? While they are many, and I have tried to make sense of them in this book, I am concerned with a specific type

of process, political as such. I believe these are awfully important insofar as the answers to our predicament lie foremost in the political dimension today, though capitalism is undoubtedly a crucial issue as well, to say the least. Furthermore, which horizons can be discerned from within modernity, including its hybridisations with other civilisations? With heightened awareness of the world – to which this book hopes to be a small contribution, despite its scope and reach –, we may look for change, knowing precisely that reason is limited and that nothing is for sure. Change will inexorably come about in other ways too, yet only if we are able to steer the process of change, with modesty but resoluteness, will we be able to impact the future in an emancipatory way. Enquiring into possible horizons is therefore of utmost importance.

Differently from other contemporary approaches, instead of once again directly taking up democracy – which plays here a crucial role, in any case –, or some other master-concept which I could dwell upon and thereby put forward a specific perspective, I believe that grappling with and grasping political modernity as a partial totality can help us better make sense of our world. We can then gaze into the future, with its horizons of hopefully unprecedented possibilities. This move should avoid arrogance since there is no key to unlock history, as critical thought has – or should have – painfully learnt. Reason has internal limits, let alone its complicated relations with the world, social and ‘natural’ alike. On the other hand, reason, or rationality, is also a necessary presuppositional idea regarding what the human species can accomplish once it is collectively and interactively exercised. This is also true if we are to endorse a more modest and situated assessment of its potential, often exercised mostly as ‘practical reflexivity’, without overlooking creativity or subtracting the capacity of reason of universalisation, intrinsic to the modern imaginary and its theoretical rationalisation (an issue I return to below). Contemporary critical theory, in an *ecumenical* fashion, must, in any case, necessarily be attentive to different contributions, holding on tight to this specific impulse, as well as to other universal acquisitions of modernity. As ecumenical critical theory it must remain both capable of systematic and theoretical critique. Although I surely rely on Marx and Marxism, the Frankfurt School and similar approaches, let me stress that I do not remain within the bounds of only this tradition. I rather adopt contributions from different critical approaches with a strategy that, as such, is directly influenced by the aforementioned idea of ecumenical critical theory.¹ In addition, I must therefore clearly state that, while we do often find interesting insights in individual contributions in what has been called post- or decolonial theory, I steer clear of what has to some extent become a discursive cliché, rather than theory proper, often tinged with exoticism, as it would seemingly be appropriate for people from the ill-defined, albeit sometimes metaphorically sound, ‘Global South’. What some of these authors have dealt

with as ‘coloniality’, which would have outlived colonialism, has strange ways to manifest itself.

More substantively, we will see how power became separated from its underpinnings and links with social life more generally in hierarchical state domination. It was again much later differentiated out into the modern political system.² A combination of liberalism and republicanism underlain the process, under the dominance of the former. Democracy was not so bitingly relevant at this stage; when people dared to propel it, more restrictive projects pushed back. Eventually, the socio-political dynamics forced the democratisation of republican liberalism (or quasi-republican, i.e. monarchical liberalism) in terms of rights and democracy. This was the expansive moment of liberalism. This process came to a halt in the 1970s; in its place, a new, once again restrictive development set on, entailing constrained rights and less democracy. Neoliberalism (with its bedfellows, i.e., ‘public choice’, partly ‘rational choice’, libertarianism) was vital in the process, which cannot, contrary to what has often been suggested, be reduced to it. In the meantime, an alternative to political modernity emerged, aiming at overcoming the limitations of liberalism. Unintended consequences of ill-fated thinking and choices led not, as intended, to socialism but instead to a very authoritarian state and a closed political system, ruling over the whole of social life. This alternative path away from modernity has disappeared, with the survival of its political structure – postmodern though largely parasitical of modernity – depending on its embrace of capitalism. Other attempts to twist liberalism, namely, fascism and, in a more circumscribed way, corporatism, could not live up to the challenge. Within this tight universe, we will see how *equal freedom* is of extreme importance as a value and telos. At the same time, *state expediency*, mediated by the state political system and sometimes affirmed by deeper state layers, ascertains itself.

What will happen in the future is uncertain – this is, after all, what the future as such always is. The exhaustion of neoliberalism, discredited since at least the 2008 financial crisis, and the coronavirus/COVID-19 pandemic have elicited or accelerated new responses from the state that are leading us into new configurations – perhaps a new phase of modernity. Yet, without the push of sustained popular mobilisation that was so significant during the nineteenth and the twentieth centuries, something that is hard to fathom consistently in the near future, it is arguable whether liberalism can resume its expansive trajectory beyond heightened social liberalism, whatever else may happen in its forthcoming development, in which the state will feature much more prominently. Even more worrisome is the looming threat of a major war since the recent escalation of geopolitical tensions and open conflict in Europe.

Liberals, pure republicans and historical materialists will surely be disappointed with the results achieved by this research, but, as far as I can see,

they are inevitable once we look closely and comprehensively at the structure and development of political modernity, its origins and the alternative historically tried and those that may still be pursued. My tone is not particularly optimistic but leaves no room for desperation or discouragement.

Much of what may be of value in this book is made possible by the methodological approach adopted. All of its parts are strongly articulated, in terms of a categorial analysis, without losing sight of their dynamic aspects. Having provided a detailed and compact analysis of the main categories of political modernity and its developmental features, I thus advance a diagnosis of our times internal to the theoretical movement thereby produced rather than superimposing it on the material analysed.

The two main books I have published in the course of the research I now conclude with the present one will not be directly referenced in the course of the analysis.³ They are taken for granted, whether I stick to their arguments or modify them in one way or another. But a significant part of what I organise argumentatively in these pages also stems from articles, chapters and essays I have published more or less simultaneously. I refer to them in the corresponding passages. But much is simply entirely new and had never acquired form in print. The book includes moreover, at different stages, the analysis of more empirical issues which its categories and trend-concepts may shed light upon. I thus tackle citizenship in Brazil and the political crisis in this country, the conflicts in the Weimar Republic and in twentieth-century France, *Alternativ für Deutschland's* (AfD – the extreme-right German party) nationalism and the Russian war in Ukraine, the coronavirus/COVID-19 pandemic and climate change, Peronist plebeianism and political turmoil in Chile from 2019 to 2021, among other historical and contemporary social processes. Some are treated in greater depth, whereas others are part of more general examples.

Before presenting the specific contents of the book, it is worth briefly addressing two issues. First, the very idea of modernity. Some might look at the world today and argue that we are past modernity, having moved into 'postmodernity' (Lyotard, Jameson and many others) or the like. Others might adopt a view of modernity according to which we would be now within 'reflexive modernity' (Beck, Giddens, Lash). While I shall in due course introduce a periodisation of modernity that divides it into three or four phases, I find the idea of 'reflexive modernity' as a novelty rather misleading, though it is true that reflexivity, including rationalised (systematic) reflexivity, has been indeed lately intensified in order that individual and collectivities cope with the principles that organise our world. On the other hand, what was intensively discussed as postmodernity some decades ago is for me the further development of modernity into a third phase, more fluid, of which the main institutions have somewhat changed without losing, let me stress, their main modern characteristics. The rational-legal nation-state,

capitalism, individualism and other, connected imaginary, institutional and practical features have held their ground against an attempt to definitely move into a true postmodern social formation – ideally socialism, eventually authoritarian collectivism, which, basically defeated, returned to modernity with an, again original, mix of party-state and capitalism. Yet the global expansion of modernity – since the seventeenth/eighteenth centuries – has implied much variation, countertrends, hybridisations, contradictions and clashes, with different modernising moves by a large array of collectivities, even though the main trends of development of the imaginary, institutions and practices of modernity have prevailed.⁴

Second, it may be worth avoiding from the very start some possible misunderstanding about the role of capitalism in this book as well as concerning its relation to political modernity. As already stressed, ‘capitalism’ – as generalised commodification but strictly considering generalised wage labour of formally free workers – is a crucial feature of modernity, as we have known at least since Marx and Engels’s early work.⁵ Concretely, political and socio-economic processes are entangled, with their own logic, though, requiring a necessary and adequate conceptual separation. Capitalists (the owners of the ‘means of production’, a definition which today is very complex due to the emergence of gigantic transnational firms, different forms – ‘bundles’ – of property rights and a countless number of managerial layers, let alone the astonishing booming of finance capital) and proletarians (all wage labourers, even when in a disguised manner, but very differentiated internally, far from the rather homogeneous *industrial* working class imagined by Marx), along with multiple ‘middle classes’ (which he was unable to theorise), are at the core of this sort of ‘society’ or, more broadly, civilisation. Like all dimensions of modernity, capitalism has historically evolved. Class conflict and struggle, despite changes, permanently lie at its core, but other sorts of identities and contradictions have developed as modernity unfolds: it has not dislocated class relations but has made global modernity more complex. Without disregarding its factual importance and centrality for emancipatory politics, capitalism or ‘capital’ will not, nevertheless, be the focus of the analytical approach here proposed. It is on the also decisive political dimension that this book will concentrate. Note that authoritarian collectivism, in contradistinction, had – and what remains of it still does – a type of social stratification based on a division stemming directly from politics and the state.

0.2 Outline of parts and chapters

This book is divided into five parts. The first tackles what may be called the liberal infrastructure of political modernity and its derivation in authoritarian collectivism. Rights and citizenship, law and state feature therein,

along with the dialectic of the abstract and the concrete. All modern political forms hinge upon this liberal infrastructure, the basic framework of political modernity (and also partly of the other dimensions of modernity, such as capitalism in the ‘economy’, a likewise exclusively modern differentiated social system, and kinship, with its peculiar characteristics and loss of centrality in modernity). Authoritarian collectivism had to find an answer to similar problems, as a rupture, despite its to a large extent parasitical links to political modernity. The second part of the book focuses on the fundamental dynamic aspect of this juridical-political dimension, with the political system and the developmental processes related to the state and individuals gaining centre-stage. Also featured are the diverse phases modernity has traversed.

In order to deal with these core elements of political, also juridical, modernity, Chapter 1 will analyse the liberal infrastructure of rights and the law, the role of the state therein, its connection to civil and political citizenship, with recourse to the concept of ‘real abstractions’. Chapter 2 will, in contradistinction, analytically focus on the state, with its legal and abstract character, as well as the basic features of public policy. Chapter 3 pauses the discussion of rights and tackles the concept of power, analytically furthering the discussion of sovereignty and constituent power, which after all underpin the ideas of rights and citizenship. These return to the limelight in Chapter 4, leading from abstract civil and political rights to social rights, as well as from the limited rational-legal state to a configuration in which the latter takes up more concrete and much broader socio-economic tasks. The nation, also a more concrete collective entity, opens the chapter, since it has been present from the very beginning of modernity, along also tendentially more concrete notions of the ‘people’. Chapter 5 wraps up Part I. It resumes the concept of developmental trends that I put forward below, which accounts for the dynamic processes that underlie the whole trajectory studied in this initial and fundamental part of the book, specifically regarding the relations between abstractness and concreteness. Note that the first chapter in Part I, which also opens the book, is indeed demanding. A lighter way to read this part, hence the whole book, may include beginning with Chapter 5, which sums up Part I, and then moving back to the order of chapters originally planned with analytical rigour.

The second part of the book focuses on the fundamental dynamic aspect of this juridical-political dimension. Chapter 6 analytically tackles the political system, bringing out its elements. The relation between the state and the societal political system is particularly important in its articulation. The concepts of republic and democracy are also central for the chapter. The political collectivities that weave and move within it are also of great relevance therein, with a discussion of how they condition the state, starting with traditional theories about the state-classes nexus. In Chapters 7 and 8

the developmental processes related to the state, with its capabilities, and individuals, increasingly autonomous, gain centre-stage with their long-term directional developments. In Chapter 9 the concept of developmental trends returns in order to account for the directionality of both those fundamental processes, regarding origins, reiteration and change, as well as possible overcoming. These processes are moreover entwined. Finally the diverse phases modernity has traversed since the nineteenth century close the chapter. Note, again, that it is possible to start reading Chapter 6 in this part too, up to Chapter 9, and then eventually taking up Chapter 1. Whatever the choice, let me stress that the analytical strategy followed in the exposition really implies the order of chapters that I have myself laid down, which must always be born in mind. Difficulties resulting from the method of exposition are never foreign to analytical strategies.

The book's third part deals with the international level of political modernity, in its multiple aspects. To be sure, it is not a derivative level. Nevertheless, insofar as modernity has been organised – and thought of itself as organised – according to the nation-state first of all, this scalar configuration places the international imaginary, institutional and practical elements of modernity in a posterior position. Realism and international liberalism, customs and mores, trade, law, regimes and the international political system, peace and war, as well as developmental trends at the global/international level, furnish the analytical focuses of the chapter. Closing it, the concept of modernity returns to centre-stage (with a clear, albeit indirect, discussion with postcolonial and decolonial approaches) and I clarify it regarding the global character of modern civilisation.

In Part IV, I deal with some more specific political issues, at a lower level of generality and concerned with pressing challenges of the contemporary world. These chapters may be individually of interest. Political regimes in modernity and authoritarian collectivism, including their relation to capitalism and corresponding social agents, followed by political processes, such as cycles, coups, revolts and revolutions, are tackled in Chapters 11 and 12. Finally, in Chapter 13, an analytical perusal of radical democracy and plebeianism is carried out.

A brief epilogue, in which emancipation stands out, closes the book. It reflects on the trajectory of political modernity, its origins and alternatives, trying to devise what may lie in store for the future and the role of an ecumenical critical theory in this respect.

At this point readers may already be curious about the absence of any mention to 'populism' thus far in this book. In fact, I avoid this today almost ubiquitous notion here.⁶ More generally, I would deal with 'populism' as basically a 'native category' describing phenomena in which authoritarianism is always a lurking menace, participation of citizens is truncated, demagoguery and negative affects reign, and there is the personification of power often

(but not always, let alone ‘charismatic’ leadership), at different moments, in different political regimes and in different degrees. This notion has by now been regularly taken up by social scientists and returned to political agents, including common citizens, creating a swirling polysemic discourse. The explicative and interpretive power of such a rather fuzzy perspective is, in my view, very restricted, hence I will not return to it in the following pages. Those are indeed internal features of liberal republicanism pushed to its limits, with its tensions, contradictions and shortcomings. Practical and theoretical nineteenth-century critiques knew this just too well, with clearly executive power, authoritarian exclusionary constitutionalism and skewed judiciaries predominating, while mass politics was severely repressed, though personification was only more occasionally relevant. Similar phenomena evince different expressions today yet do not depart from this original kernel. Fascism radicalised those features, with a much greater role for personification, repression and other elements of authoritarianism, legally engineered or not, in tandem with top-down mass mobilisation, implying an already different organisation of political modernity. In this, they are not necessarily followed by contemporary extreme-right movements, unless traditionally fascist proper. Left authoritarianism, on the other end of the spectrum, owes a lot, perhaps more, to so-called ‘real socialism’ and specific understandings of Marxism, including a consequentialist ethics.

Of course, extreme-right forces must be pushed back, with democracy shored up and extended, even against resurrected authoritarian tendencies within the left. Dwelling upon ‘populism’ does not help us on this urgent task. Problems arise from within a regressive sort of authoritarian liberalism, including neoliberalism, which came to predominate and will be present at different stages in this book. Solutions call for more democracy, more rights and changes that should go, eventually, beyond modernity.

0.3 Three methodological strategies

If there may be indeed method in madness, I am inclined, at least in this book, to refrain from such a bolder strategy. The ‘method of exposition’ mobilised here thus rests on analytical reason, as applied by authors as different as Marx (inspired by Hegel) and Parsons (inspired by Kant). It depends on and produces a mental reconstruction of reality through analytical categories whose end result is a theoretical view of the totality. I also articulate relations of causality, complementarity and contradiction between the categories. ‘Analytical realism’ and the ‘concrete universal’ lie at the book’s core.⁷ They allow for a systematic grasp of the main features of the imaginary, institutions and practices. What does it mean, however, that the categories displayed here mentally reproduce reality? Firstly, it means that, although the world – political modernity in the case in point – is decomposed into

categories and recomposed in their theoretical articulation, there is a correspondence (the classical *adequatio*) between concepts, of which analytical categories are a particular instance, and reality. Only insofar as categories correspond to the social world does it make sense to yield them, otherwise we enter a fictitious universe that is, in my opinion, of limited or of no use to the social sciences (at best it can be sheer ‘discourse’). In this regard, we must keep categories simple, though they must also follow the complexity of the social world. Moreover, we must start with the most elementary categories and then move in piecemeal fashion towards ever greater complexity, that is to say, towards the concreteness that stems from the articulation of multiple aspects that reproduce reality conceptually. The analysis of this book thus begins with the elementary juridical relation and eventually reaches the international level, stretching out to more specific political phenomena. On the other hand, though Marx and, more secondarily, Parsons underpin this book from the methodological perspective, in terms of content it more closely connects to Hegel’s *Lessons on the Philosophy of Right*.⁸ Of course, Hegel’s substantive theses are in one way or another appreciated here but seldom do I adopt them.

This book also insists on the dynamic aspect of political modernity. It is concerned with developmental trends that necessitate trend-concepts for proper clarification. Trend-concepts refer to the directionality of social processes, which repeatedly turn up in the book. Are social processes random? Does contingency absolutely dominate them? I think not. Social processes may be primarily random, especially regarding the direction of development, but many of them are premised upon strong directionalities. The analysis must specifically elaborate on the mechanisms that produce this directionality with a kind of inner logic. They consist of processes pushed forward by individual and collective agents and the mechanisms at stake here are steadfastly woven by them.

On the whole, we must reckon with three types of social processes. The first one is more contingent and open to initiatives and moves coming from several directions and engendering equally variable outcomes. The other two are directional. The second one assumes a specific direction – a developmental trend thus affirming itself –, stemming from what individuals and collectivities teleologically set as ends for themselves and which, depending on the configuration of a given civilisation and a specific social formation, appear to them as the main and sometimes inevitable or exclusive possibilities of attaining their goals. This directionality may have to do with how people map out the world: their values, the norms they follow, how they see reality, and their expressive attitude towards it. They would then move, individually and collectively, according to this imaginary configuration. In the third sort of process, the institutional and practical arrangements of social reality push them in this direction whenever they intervene in the world, making it

very difficult for agents to do things differently. In particular in processes in which antagonism – in its two possible definitions: conflict, with struggle, and competition, with emulation – occupies centre-stage, agents cannot do otherwise, lowering their weapons and freely taking up different practices, except if they simply decide to give up their fight. In all these variations, in different degrees, social processes are locked in and, much as changing course is always possible for specific agents, this becomes effectively unlikely.

All these processes are certainly *context-dependent*. We must however think of a *context of contexts*, that is to say, a more encompassing and fundamentally recurrent general context, presenting strong commonalities across space-time, whose underlying mechanisms we must thus unearth. That is when we can truly speak of developmental processes epistemically in demand of trend-concepts. They must include the reproduction of such directional processes, which is inseparable from the reproduction of the agents that drive them forward. I must add to this general understanding the three sorts of mechanisms that underlie directional social processes. These are the *generative*, the *reiterative* and the *transformative* mechanisms that produce and may (blindly) steer social life. They all depend on individual action and collective movement. Nothing is automatic in them; there are no ‘self-producing’ processes as such. Going beyond the description and narrative of social life, by and large, crucial elements of what we do in the social sciences and the humanities, *explanation* is premised exactly upon the operation of mechanisms within social processes, themselves social processes as well. These are mainly political, and juridical, in what regards the subject of this book.⁹

What allows for a proper diagnosis of the times that I have been focusing on is the conjunction of analytical categories that produce a systematic perspective on political modernity, its origins and alternatives, with developmental trends and trend-concepts. It is only this broad picture that may, I believe, avoid reductionist diagnoses. Moreover, it is the only one that propels an immanent critique of political modernity and its (up to the present) failed alternatives, regarding both their unfulfilled promises and the knowledge produced about them. The values modernity embodies and how they are configured suggest a deep chasm, which only the overcoming of modernity – particularly in an immanent direction – can overcome insofar as we spot in reality impulses and movements that steer in this direction with some level of consistency and strength, though this may change over time. Equal freedom as equal power stands at its core and offers a criterion of demarcation which immanently distinguishes critical theory, however ecumenical, from other often reactionary approaches. Critique of knowledge is also part of this endeavour insofar as it tries to go beyond theories that are committed to the reproduction of political modernity, such commitment blocking a deeper understanding of its fundamentals and shortcomings, regardless of

how relevant their insights may be. In addition to these two main methodological strategies, I also reach out to genealogy – certainly not to a narrative in the history of ideas – to pinpoint when an author and text originally introduced a specific concept or idea in the history of political thought, with further impact in the political dimension more generally, usually giving rational form to ideas and feelings already found in social life.

0.4 Collective subjectivities and other concepts

Unlike social constraints (via structures or functions), social action is usually considered individual action. In this regard, either there is a more truly individualist (a priori, atomist) perspective, which is the more common one, or a more interactive view (which I regard as closer to the truth), that underpins this individualist perspective. Structures, functions, and the like hence condition action. These can become exclusive, with a pure structuralist, post-structuralist or functionalist approach completely taking over.

In this book, the general perspective will be at variance with these hegemonic approaches. I insist on the interactive relations between individuals (including the methodologically-defined elementary level of legal relations, configuring a dyad), but I more deeply draw upon my formerly established theoretical standpoints: *collective subjectivity* is therefore central, if not always spelt out, throughout the book.¹⁰ Individuals and collective subjectivities are agents with causal impact. In the latter case, a collective causality is yielded only through interaction and gives rise to processes of diverse magnitude. Collective subjectivities (or collectivities, for short) are made up of the interactions between individuals and between sub-collectivities, themselves criss-crossed by many others. Their inner developments do not reproduce the relative characteristic of individual ‘actors’, which are more or less aware of their goals and get organised to try to achieve them in an internally concerted way (though psychoanalysis long ago made this view more problematic). Collective subjectivities are variably (de)centred, that is, their level of identity (self-awareness), intentionality and organisation, which allows for pursuing goals, is not the same as that of individual agents. Indeed, some are more centred, but this does not entail a direct connection with their collective causal impact, which is not necessarily stronger, whereas a lower level of centring does not entail a weaker causal impact. Individuals and collectivities mobilise diverse types of reflexivity – non-identitary, practical and rationalised, the latter two based on identity logic –, in different degrees, in their interactions. Finally, collective subjectivities display four dimensions – symbolic-hermeneutic, of power, material and social space-time. This is thus a very specific conceptualisation of social systems.

At this point, it is worth expanding on the use of the concept of *civilisation*, upon which I have drawn more than once above. It stands for the

complex web of imaginary, institutional and practical elements that more or less tightly coalesce and endure in large-scale and long-run social life. There have been innumerable exemplars of them. No value-judgement, it should go without saying, is implied with the use of this expression. A brief definition of the also already mobilised concepts of imaginary, institutions and practices is also in order. *Imaginary* refers to rather unstable and heterogeneous symbolic webs that comprise values, normative standards, cognitive frames and expressive repertoires that cut across and consist in a key dimension of social interactions. The institutionalisation of the imaginary may reduce its instability and heterogeneity. *Institutions*, in turn, thus refer to the patterned and repetitive (reiterated) behaviour of individuals and collectivities, whether formally defined or not. Finally, *practice* refers to how individuals and collectivities go about daily, dealing with, reproducing and changing the imaginary and institutions (we could also call it ‘praxis’ insofar as it is always to some extent creative and transformative). Creativity is individual but also, bearing in mind the arguments of the preceding paragraph, collective, in all dimensions presented above, which are all in flux and should not ever be seen as static, thing-like entities, since they are processes, despite the stabilised elements of the imaginary, institutions and practices.

0.5 Sources and references

This is a theoretical book, and as such is not based on primary research. Yet it is informed by the middle-range literature on every issue dealt in each chapter, whether regarding sociology, political theory, international relations or history. Two issues beyond this straightforward statement are worth of further mention with reference to how I deal with this literature.

First, my quotation from and support in the interpretation of classical authors. I always try to refer to and rely upon the best editions, usually mentioning only chapters since there are so many editions in circulation, in diverse languages, so this more simple way of quoting should make the identification and access to the passages referred to generally easier. The secondary sources are legion too, and sometimes contradictory. There are so many layers of interpretation of these authors that I am always struck by how different perspectives can be opened up once we resort to a previously overlooked standpoint. I quote those that were important for me, although I have tried to cover what is more relevant in the literature. This happens basically in the notes to the text, since I have striven to make the main body of the book as clean as possible, displaying, apart from a few passages, mostly my own arguments and analyses. Second, a comment about the differentiated nature of the literature available for political modernity and for authoritarian collectivism. The former is by far broader, more empirically sustained, and more theoretical, with the many aspects of the subject usually covered in

great detail. Authoritarian collectivism is not so well served theoretically and most studies of ‘real socialism’ derive from Sovietology, since, unfortunately, Marxists have not so often engaged with such empirical issues. General, historically-oriented interpretations have been more central to the analysis of authoritarian collectivism, with a new historiography now emerging as Soviet archives have become available. Methodologically, the rich, albeit often confusing Marxist or Hegelian literature on analytical categories and the curiously not-so-common studies on developmental processes have been essential to structure my approach to political modernity, previous civilisations and beyond.¹¹ As to the editions of classical authors, notably Marx’s and Weber’s posthumous editions, I have preferred to use the standard ones since nothing very relevant seemed to derive, in this book, from an examination of the new, philologically more precise editions.

0.6 Acknowledgements

This book is partly the result of an Anneliese Maier Forschungspreis of the Alexander von Humboldt Stiftung. The Foundation granted me the extremely generous possibility of working on a long-range project, allowing me to organise several activities and write down their intellectual outcome. Besides, it has supported the publication of this book in open access The National Research Council (CNPq) of the Brazilian Ministry for Science, Technology and Innovation, and the Carlos Chagas Foundation (FAPERJ) of the state of Rio de Janeiro, have also supported my research for many years.

The proponents of my name for the Humboldt Award, Wolfgang Knöbl and Sérgio Costa, are the first to be individually and heartily thanked. In different ways, intellectually and practically, they have recently been not only the good friends they had already been for some decades: they have also been central for whatever I have been able to achieve here. Especially the periods I stayed at the Hamburger Institut für Sozialforschung, and in constant contact with the Freie Universität Berlin, were crucial for the writing of this book. I would also like to thank all the support received from people at HIS and at the FU, Leander Badura’s research assistance in the latter as well as Marcela Osses’ unremitting attention and kindness during all the duration of my Humboldt award. As this book has been in the making for at least ten years, I have incurred many more debts, which are too numerous to be listed here. Along with Wolf and Sérgio, some have undoubtedly been particularly important. Andreas Kalyvas has been a good partner and interlocutor, vigorously challenging my views about political theory. Paula Diehl has travelled the same lane, with of course a more German approach. Both of them also have been great friends. Unforgettable Latin American companions, Kathya Araujo, Breno Bringel

and Alice Guimarães will find their direct or indirect marks throughout the text. A six month period at the New York University, where Jeff Manza kindly secured my stay as a visiting scholar with moreover the support of CAPES, from the Brazilian Ministry for Education, was crucial in the intermediate phases of the research. More recently, Cicero Araujo pushed me to delve deeper into the republican tradition and Monica Herz helped with international relations. Towards the completion of the book, I had productive discussions with Daniel Capecchi about the law and Cristina Marins about digitalisation. In 2023, I taught two courses at IESP-UERJ, in Brazil, in which the commitment of MA and PhD students was very important for a revision of one of the last successive versions of the text. The same goes for anonymous reviewers of the original manuscript. Thiago Nasser corrected my English, and, in Routledge, Michael Gibson was enthusiastic and supportive of the project from beginning to end, backed up by Lewis Rodder, with the copyediting process led by Daniel Andrew. I thank them all.

Last but not least, María Elena Rodríguez shared the different emotions and concerns with the several themes and issues this project aroused. María Elena, Adriana Herz Domingues, who also helped draw tables and figures, and Alice Maciel Domingues, in many occasions discussed politics and law with me in illuminating ways. It is more than thanks that owe them.

Notes

- 1 José Maurício Domingues, 'Ecumenical critical theory, pluralism and developmental trends', *Thesis Eleven* vol. 181 (2024): 1–17.
- 2 I do not mean that differentiation is absolute or irreversible. While *complexity* has definitely been incessantly growing, we must not conflate it with differentiation since the former includes processes of dedifferentiation and redifferentiation. This goes against, for instance, in what concerns us more closely in this book, the ideas put forward even in the sophisticated perspective of Niklas Luhmann, *Politische Soziologie* (Frankfurt am Main: Suhrkamp, 2010). Besides, there is nothing autopoietic or self-referential in the political dimension, although it does develop an inner logic (*Eigendynamik*), characterising a developmental process, moreover rather autonomous vis-à-vis the rest of social life. Nor do I accept reifications such as those that, ontologically or not, define something like 'the political', as has become a fad in philosophy and political theory across different conceptual approaches and political positions – always, even if indirectly, bafflingly with reference to Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker & Humblot, [1932] 2009).
- 3 J. M. Domingues, *Critical Theory and Political Modernity* (New York: Palgrave Macmillan, 2019); Idem, *Authoritarian Collectivism and 'Real Socialism': Twentieth-century Trajectory, Twenty-first Century Issues* (London: Anthem, 2022).
- 4 I have discussed some of these issues in J. M. Domingues, *Social Creativity, Collective Subjectivity and Contemporary Modernity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 2000); Idem, *Modernity Reconstructed* (Cardiff: University of Wales Press, [2002] 2006).

- 5 Karl Marx and Friedrich Engels, *Manifest der kommunistischen Partei* (1848), in *Werke*, vol. 4 (Berlin: Dietz, 1978).
- 6 See, for a few of the best discussions of ‘populism’, within a huge but problematic literature, almost impossible to survey, positively, above all Ernesto Laclau, *On Populist Reason* (London and New York: Verso, 2005); critically, Gino Germani, *Política y sociedad en una época de transición. De la sociedad tradicional a la sociedad de masas* (Buenos Aires: Paidós, 1965); Paula Diehl, ‘For a complex concept of populism’, *Polity*, vol. 54 ([2011] 2022): 509–518; Andrew Arato and Jean L. Cohen, *Populism and Civil Society: The Challenge to Constitutional Democracy* (New York: Oxford University Press, 2021). Whereas Laclau’s practical politics showed the really serious limitations of democracy in his conception, more than how he explicitly theoretically formulated it, the latter’s somewhat elastic definition, which tries to do justice to the ‘fluidity’ of the beast (Diehl), and the use of ideal-typical concepts, despite the identification of liberal blockages, allows for the usual extension to, as well as justification of omissions of, chosen definition traits in phenomena that do not fit them (Arato and Cohen), while a simple theory of modernisation, though properly identifying the political nature of the phenomenon (Germani), is no longer tenable.
- 7 Talcott Parsons, *The Structure of Social Action* (New York: The Free Press, [1937] 1966); Idem, *The Social System* (New York: The Free Press, 1951); Karl Marx, *Das Kapital. Kritik der politischen Ökonomie*, especially vol. 1 (1867, 1873), in K. Marx and Friedrich Engels, *Werke*, vol. 23 (Berlin: Dietz 1962). Analytical decomposition of the social world as the starting point was his strategy. Idem, ‘Randglossen zur Adolph Wagners “Lehrbuch der politischen ökonomie”’ (1880), in K. Marx and F. Engels, *Werke*, vol. 19 (Berlin: Dietz, 1987), pp. 368–67. But that is what Marx did in *Capital*, not what he still held in his unpublished famous methodological text, where he seemingly started from general abstract concepts. Idem, ‘Einleitung zu den *Grundrisse der Kritik der politischen Ökonomie*’ (*Ökonomische Manuskripte 1857/1858*), in K. Marx and F. Engels, *Werke*, vol. 42 (Berlin: Dietz, 1983).
- 8 Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts* (1820), in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, 1986).
- 9 See Wolfgang Knöbl, *Die Soziologie vor der Geschichte. Zur Kritik der Sozialtheorie* (Frankfurt am Main: Suhrkamp, 2022); Thomas Hoebel and W. Knöbl, *Gewalt Erklären! Plädoyer für eine entdeckende Prozesssoziologie* (Hamburg: Hamburger Edition, 2019). Theory must be seen, in any case, as *more* – especially if we speak of categorial constructions and long-term processes – than ‘generalised narrative’, contrary to what is suggested, regarding psychoanalysis, by Jürgen Habermas, *Erkenntnis und Interest* (Frankfurt am Main: Suhrkamp, [1968] 1991), pp. 318–32. It is however remarkable that, beyond his strict separation between objective-instrumental, on the one hand, and (inter)subjective-hermeneutical processes and science, on the other, with a further reflexive claim, he accepts ‘deep hermeneutic’ as explanation, not far from Marx’s view of theory such as appropriated by the agent (the class conscious-become proletariat). A strong and refined, albeit not explicitly theorised, view of developmental processes – beyond generalised narrative – is found in Marx, *Das Kapital*, vol. 1, book 2; though he in fact rhetorically confuses trends with general ‘laws’, as was typical of the nineteenth century positivist leanings. This would be exactly the opposite, for me, of what is proposed with the total rejection of explanation – and has had a general deleterious influence – in Ludwig Wittgenstein, *Philosophische Untersuchungen/Philosophical Investigations* (Malden, MA and Oxford: Wiley Blackwell, [1953] 2009). For a Weberian perspective, see Reinhart Bendix, ‘Tradition and modernity reconsidered’ (1967), in

- Nation-Building and Citizenship: Studies of our Changing Social Order* (New Brunswick, NJ: Transaction, [1977] 2007), pp. 390–92. Empiricism mars the otherwise perceptive approach to trend-concepts of Raymond Boudon, *La Place du désordre* (Paris: Presses Universitaires de France, [1984] 2004). The ‘path dependency’ approach is also relevant to this discussion, with its ‘self-reinforcing sequences’ (implying ‘critical events’ and trends) and ‘reactive sequences’ (generating new paths), undergirded by different mechanisms focusing on historical processes, although they are more limited in scope than developmental trends proper. Their explicative mechanisms are more concrete too and, more negatively, this vast literature usually presents itself as unidimensional, with rationality regarding transaction-costs, power and values being treated discretely – a move which we must resist, embracing instead multidimensionality. For a concise and consistent theoretical approach, see James Mahoney, *The Logic of Social Science* (Princeton, NJ: Princeton University Press, 2021), chap. 11.
- 10 J. M. Domingues, *Sociological Theory and Collective Subjectivity* (Basingstoke: Macmillan and New York: Saint Martin’s Press, 1995); *Social Creativity, Collective Subjectivity and Contemporary Modernity*.
 - 11 For the most relevant pieces regarding the analytical strategy, see Hans-Jürgen Krahl, ‘Bemerkungen zum Verhältnis von Kapital und Hegelschen Wesenlogik’, in Oskar Negt (ed.), *Aktualität und Folgen der Philosophie Hegels* (Frankfurt am Main: Suhrkamp, 1970); Norman Geras, ‘Essence and appearance: Aspects of fetishism in Marx’s Capital’, *New Left Review*, no. 1/65 (1971): 69–85; Hans Friedrich Fulda, ‘Hegels Dialektik als Begriffsbewegung und Darstellungsweise’, in Rolf-Peter Horstmann (ed.), *Seminar. Dialektik in der Philosophie Hegels* (Frankfurt am Main: Suhrkamp, 1978); Idem, ‘Dialektik als Darstellungsmethode im “Kapital” von Marx’, *Ajatus. Suomen Filosofisen Yhdistyksen vuosikirja*, vol. 37 (1978): 180–216; Idem, ‘Zu Theoritypus der Hegelschen Rechtsphilosophie’, in Dieter Heinrich and R.-P. Horstmann (eds), *Hegels Philosophie des Rechts. Die Theorie der Rechtsformen und ihre Logik* (Stuttgart: Klett-Cotta, 1982); Idem, ‘Die Entwicklung des Begriffs in Hegels Philosophie’, in Emil Angehrn, Heinrich Fink-Eitel, Christian Iber and Georg Lohmann (eds), *Dialektischer Negativismus* (Frankfurt am Main: Suhrkamp, 1992); Igor Hanzel, ‘The circular course of our categories: “Grund” and “Erscheinung” in Marx’s economic works’, in Fred Mosley and Tony Smith (eds), *Marx’s Capital and Hegel’s Logic: A Reexamination* (Leiden: Brill, 2014); Frederick Neuhauser, ‘The method of the Philosophy of Right’, in David James (ed.), *Hegel’s Elements of the Philosophy of Right: A Critical Guide* (Cambridge: Cambridge University Press, 2017).



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PART I

The liberal infrastructure



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1

RIGHTS AND CITIZENSHIP

1.1 Rights, rights-holders and the law

Political modernity is, at the most basic level, juridical. We are all, first and foremost, individuals endowed with rights in this juridical realm. Regardless of our particular attributes, we mutually define ourselves primarily as rights-holders. The whole imaginary and institutional edifice of political modernity – and, as a matter of fact, of modernity itself – rests on this elementary reality. In a sense, this juridical aspect of political modernity neutralises politics as such; that is, power relations are sublated within the rights these imaginary and institutional arrangements establish, connected, as they are, to social practices. In the first move to constitute itself, weaving its imaginary and institutions, political modernity evinces a foremost juridical character, surprisingly veiling its political features. Rights are pivotal for this operation.

Freedom, in turn, lies at the core of rights such as defined according to this basic juridical articulation, meaning, above all, what we may do, unimpeded.¹ Since rights are given, politics would have nothing to do with them, at least once modernity had constituted itself. Once this juridical architecture is established, whether rights truly achieve this status depends on many factors, yet, in principle, we are prone to believe that we are – or ought to be – in possession of fundamental rights that guarantee our freedom, regardless of anything else. At the most fundamental level, rights regulate – or should regulate – our relations to one another, regardless of who we are. As individuals, we all partake in the *rights-form*, which implies a reiterated relationship between us all and the non-accidentality of such social elementary imaginary, institutional and practical reality. These rights pertain to all

individuals, but they are not without limits. We find these limits, first of all, in the rights of other individuals with whom we share social life.

At the most basic level, rights may be studied analytically with recourse to the *dyad*: it offers the most elementary and disaggregated social relation we can establish. Beyond that, we shall disaggregate rights as such.² Rights are quasi-apodictic in modernity, that is, they feature as a civilisational axiom (neither in the mathematical nor in the metaphysical sense). They must as such be respected. This is the case at least normatively and once modernity has fully developed, account taken of historical variations and blockages.

1.2 Rights

1.2.1 Elements of rights

What rights mean may vary much in their symbolic articulation since a more or less free-floating character is inherent to all imaginaries, including the rights-saturated symbolic tissue of modernity. Institutionalisation, in turn, usually restricts and stabilises to a varying extent the free-floating character of imaginaries, a reduction and stabilisation that also specifically affects rights. This conjunction of imaginary and institutionalised symbolic meaning is precisely what we will examine now, at the most general analytical level, including but superseding their historical development. The first step to carry this task out is to elaborate on the internal logic of rights, breaking them down into their basic elements. Through their disaggregation into more elementary components, formally defined and as the analytical building blocks of political – and in this case explicitly juridical – modernity, rights will pave the way for our steps further into its inner universe. Note that I do not aim at ‘deontology’ or ‘jural’ definitions here, only looking for a general analytical framework with which to grasp the essential features of modern rights. I resume in what follows a line of reasoning often present in jurisprudence. Sociological inspiration and translation, rather than a mimetic attitude to juridical approaches, guides my *démarche*. I shall in particular freely draw upon the analytical distinctions crafted by Hohfeld and the extension of analytical jurisprudence carried out by Alexy, among other authors. This social form retains a dynamic character in its fundamental ontology, which is neither structural nor static. Our analysis frames social processes, not an ontologically existing ‘structure’, despite their objectification and institutionalisation. We are dealing with interactions and must avoid any reification of rights. A relational and dynamic approach is here at stake. Freedom and equality, at a general level and with an abstract countenance, take centre-stage in the following analytical exercise which will

provide us with elements of what became the core liberal juridical infrastructure of political modernity.³

Hohfeld proposed a charter with four pairs to organise ‘jural’ relations: *right-duty*, *no-right-privilege*, *power-liability* and *disability-immunity*. His arguments are not devoid of ambiguity, nor is the dimension in which they operate clearly defined (as some commentators have observed, practicing lawyers could immediately grasp the concepts he worked with, which does not directly hint at a higher order of juridical relations).⁴ Whatever its shortcomings, Hohfeld’s charter provides us with an excellent starting point for the present analytical elaboration, considering its dislocation to the highest juridical level. It will furnish the elementary analytical framework for establishing the free-position, a category we originally find in Alexy’s work.

Take someone who is an agent, whom we shall call A, vis-à-vis someone else, B. In order to reach his or her goal, in a more or less consciously devised fashion, A has to carry out some sort of action. That is, it must exert some causal impact in the world – either to change it or to make sure it does not change. Actually, this is why we may call A an agent. The individual with whom A interacts, B, is passive in this situation, since for A it is his or her action and goal that matters and the expectation is in this regard that B behaves or abstains from behaving in a way that does not impair A’s action and the causal impact he or she envisions. Thereby B does not – or ought not to – interfere with A’s goals and actions. Of course, B has her or his goals too and acts in order to achieve them, that is, has a causal impact upon the world in mind, to change it or prevent it from changing. An agent too, B therefore expects from A that A behaves without interfering with B’s own goals or abstains from behaving in a way such that this might be the result of his or her action. That says nothing about how A conceives of B and vice versa – in mere instrumental terms or as someone who must be considered of the same personal worth.

To say that A has a right means that A has a right *to* something, encompassed in a goal, which his or her action aims to achieve, with that causal impact. It is at the same time a right *not* to something, which contradicts that ‘to’. In this case, merely a negative behaviour, a non-action, is at stake, which also implies a causal impact, even if of a negative kind.⁵ Two alternatives present themselves here. First, A has within her or his reach a permission to do – or not to do – something to accomplish that goal. This permission may imply an action to change things in the world or to keep them as they are, including a non-action. In other words, causal impact is authorised. A may thereby expect that B will not prevent A from acting – or not acting – to further this goal and impact the world. Permission to act in this case does not need to be mentioned; it is enough that such courses of action are not prohibited. Second, A may claim something from B and may expect from B a commitment to answer positively to this claim, which may simply be that

B does not interfere with A's action – or non-action. There are nevertheless limits to A's expectations in relation to B. While A has its goals, it is within the bounds of his or her rights that he or she may act, without impinging on B's rights. B ought to move precisely in the same way, gauging his or her rights and the limits of his or her actions, without trespassing on A's rights. Within these bounds, freedom of action is warranted, configuring a perimeter of permissibility or a rights-protection circumference, which applies to both agents. *Privileges* and *immunities* configure that perimeter or circumference, underlying the *powers* and *claims* individuals may wield and raise in relation to one another, in tandem with the *duty* they are expected to fulfil in their relations, including refraining from interfering with other agents' rights, that is, freedom of action as well the perimeter of permissibility or rights-protection circumference. Nothing of this could be even contemplated were it not for the *responsibility* that can be and is attributed to A and B as agents. This is what makes their action (and non-actions) legitimate, otherwise it would be beside the point to speak of rights at all. Causality and individual causal impact underpin the whole set of legal relations depicted above. Although I shall not return to this, we must bear in mind that this is always the case. That is also why we must behave responsibly.

Privilege refers to actions A is allowed to perform – affecting herself or himself and other objects in the world, whichever they may be. Immunity denotes the limits that, from A's position, apply in relation to B doing the same thing, pursuing goals and acting in order to reach them. B therefore exercises its privileges but is not allowed to disrespect A's privileges, due to the rights-protection circumference, with bounded permissibility. Power here is A's agency capacity, defined by the privileges and immunities she or he enjoys, with which B is not allowed to interfere. In their articulation, these elements configure a *free-position*.⁶ Once occupying this position, A is free to do what and as she or he pleases, but this 'what' or 'as' is not mandatory: A is not forced to do it since a zone of immunity or circumference corresponds to his or her position as also a rights-holder. This 'what' or 'as' does not imply a duty. Claim is a demand A may raise to B because A is entitled to something in the social world over which B has influence. This claim includes A's immunity vis-à-vis B's interference, which then guarantees A's privilege. We can thus assert that a claim underlies A's power within the bounds of his or her rights in the free-position, insofar as he or she upholds A's privileges by means of guaranteeing A's immunities. The same is true if we invert the relationship, with B in the first, active position and A occupying the passive position in the extension of the basic formula. A must respect B's privileges and immunities and respond to B's claim, meaning that A has a duty towards B as an agent in the free-position and as a rights-holder. Finally, in order to be entitled to rights, indeed to the free-position, A must be responsible for her or his deeds: that is to say, A is capable of

defining ends and means to achieve them, but is also liable to negative sanctions if she or he trespasses the bounds of B's privileges and immunities, in other words, if A unwarrantedly interferes with B's free-position. In modern thought, rationality – in whichever sense and within whichever bounds – is a presupposition of A's capacity to behave responsibly in relation to B and B's behaviour in relation to A.⁷ It underpins the very free-position as such.

Is factual possession or formal property, defined as the possibility to act freely concerning objects in the world, integral to the free-position, whereby A and B may make claims in relation to objects in the world? Or should we consider possession or property an independent right? Does the free-position include A's and B's right to security, especially preserving their life and integrity? Or does this represent a different claim A and B may raise to one another regarding immunities and privileges? In the realm of deontology or of some similar logical operation, different exercises can be made, which would perhaps yield different outcomes. This is not what we are looking for here, though. Empirically, answers are variable, depending on how the definition of rights is phrased in each concrete instance. Diverse conceptual lineages and different social struggles came together, with variations, to produce this amalgam of property, life and freedom, which is not an innocent one, particularly because the first element has often had precedence in modernity. In any case, we shall overlook such variations and the concrete historical developments this amalgam underwent. At this stage, our purpose is to reconstruct the configuration of modern rights analytically, not to write their history.

Free individuals do not exist as if prior to their rights, as if these were merely elements added to them (regardless of what a radical libertarian or neoliberal conception may suggest). This would be a traditional individualist perspective and, even within that, a rather harsh and antisocial one. It goes without saying that, at this stage in history, this view is theoretically implausible, and its application is fraught with problematic consequences, notwithstanding the attempts of a few authors to reproduce it. This view is likely, moreover, to turn rights, in their complexity, into a mere derivation of individual freedom.⁸ It may be argued, conversely, that individuals as rights-holders derive from this free-position and its elements. This last perspective would come close to a structuralist view, which would deem the agent and its predicates a derivation, an emanation from something prior. Instead, we must push further the analytical *démarche* to adequately understand modern legal subjectivity, leaving behind both flawed approaches. It is not because A and B are individuals that they hold rights. The opposite is true: A and B are defined as individual agents because they are rights-holders, and the free-position implies an interactive process in which individuals and their rights are co-constituted. It is their mutual conditioning that matters ontologically. Epistemologically, therefore, neither individualism (even if methodologically

defined, inevitably implying on the other hand some ontological outlook so as to make sense) nor reified collectivism (structuralism, let alone functionalism) should be accepted.

Furthermore, *symmetry* and *horizontality*, implying *convertibility* concerning rights, that is, that A and B and all other agents share the same positionality, are key properties of rights at the general and fundamental level we are grappling with here. This means that all agents, in this formal domain, enjoy the same possibilities and limitations, with an absolute and a priori equivalence between individuals. A's positions in terms of privileges and immunities, which can then underpin his or her powers and claims, are duties for B; conversely, A's duties are, accordingly, privileges and immunities to B, hence implying B's potential powers and claims. Individuals may claim the same rights and expect the same behaviour from other individuals insofar as they enjoy the free-position in relation to each other. This is part and parcel of the imaginary and institutional establishment in modernity of the idea of *equal freedom*, according to which all individuals, despite their concrete qualities, formally possess the same privileges, immunities and powers, with a symmetric distribution. The free-position is an analytical expression of a more general notion of equal freedom regarding its articulation in the universe of rights. A's free-position offers B a mirror-position in which B identifies herself or himself as a rights-holder. B likewise furnishes A with a complementary mirror on which B identifies himself or herself as a rights-holder. For this to be possible, A and B must be responsible agents, capable of answering for their deeds to the extent they affect one another. Individual rationality, underpinning responsibility, is thus a stark presupposition of the whole construction.

Figure 1.1 synthesises all these distinctions. Equal freedom lies at the core of the free-position depicted in it, which must always be understood in dyadic terms.

We also need to consider that the privileges associated with the agent's freedom – say, A's freedom – cease as soon as another agent's – say, B's – immunity is compromised – or when there is a threat it could really be compromised. The problem is true particularly regarding his or her life and overall personal integrity, physical and spiritual (or psychological, mental, emotional, however this might be phrased). These are both a presupposition of freedom as such, since an agent that has his or her life stolen or his or her integrity damaged cannot be an agent or has his or her agency potentially diminished, not to mention how this impairs the pursuit of other goals. No action is authorised such that, in crossing the threshold of this absolutely basic right of B, may interfere in such a basic sense with the protection and preservation of his or her immunity. This limitation of action is implicit in the definitions introduced above, insofar as the free-position is symmetric, and an agent may not hamper the integrity of another agent. Only A – and in

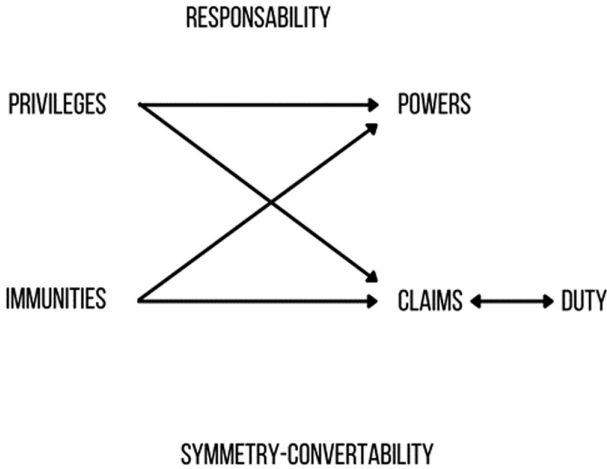


FIGURE 1.1 The free-position

most societies, not even A, not entirely – is allowed to act against her or his integrity. The agent's freedom is, of course, dependent upon the guarantee of her or his life and integrity, which in this respect basically defines what it means to be an agent and a rights-holder.⁹ Many consequences derive from this basic presupposition, primarily which claims individuals may raise to one another regarding the right to preserve their lives and overall integrity as a crucial aspect of their agency and mutual rights. Any encroachment in someone's immunity zone implies a sort of violence, which may be mild or harsh, entail physical force or call upon other leverages. The threat to life as well as to physical and in some measure psychological (or mental) integrity summons the necessary rights framework as a means to prevent it from prevailing, driving home the point I have just made.

A further issue, central to the modern tradition, harking back to Roman jurisprudence and resumed by Hohfeld, among many others, must be critically addressed now. I refer to the distinction between 'real rights' (*rights in rem*) and 'personal rights' (*rights in personam*).¹⁰ The former relates to property and, concerning an agent, say A, is taken as absolute. Every other agent, say B, has a duty not to interfere with A's right over any object it owns and the total freedom of action it enjoys over it. In their absoluteness, just the owner is enough to affirm real rights. Personal rights, on the contrary, are established – the reasoning goes – between people, that is, A and B. Such rights imply obligations, for instance, in cases of debt or marriage; they are multiple. In addition, 'contracts' are necessary to work them out. The concept of property as a 'bundle of rights' (or 'sticks'), with some

degree of heterogeneity, offers a further elaboration of this sort of reasoning vis-à-vis property. Social changes also lie behind its emergence due to a significant complexification of property relations and the objects which they have in mind. The older, absolute and things-related notion of private property referred predominantly to physical objects, actually principally real state. Industrial and intangible things have become far more critical during the last century.¹¹

In view of that, the argument articulated above must be restated: rights are always formalised relations between agents, not what they can do about things. The usual distinction between real and personal rights, which doubtlessly plays an essential role in modern juridical life, is therefore conceptually lacking and misleading if taken at face value. ‘Real rights’ are also ‘personal rights’. They rest, first of all, on relations between agents as well as between agents and objects, including and excluding the former in and from relations of property over the latter. There are no owners of anything except insofar as rights encompass different relations with other agents.¹² Moreover, this is a right which may be relative, hence the idea of a ‘bundle of rights’ that may undergo disaggregation.

We must stress that rights, if we properly consider Hohfeld’s scheme, which tacitly resumes and synthesises much of what has been implicit or explicit in modern juridical reasoning, are – out of necessity – limited. Immunities correspond to power and privileges; no one is allowed to rip what I have above called the rights-holders’ rights-protection circumference. It is as if we are secluded from others, and there are always limits to what they, as agents, may do in relation to us as rights-holders. Only A may allow B to trespass this circumference, which we, in principle, retain wherever we are and go. In this respect, rights are never absolute since they always have a perimeter of permissibility, whereas on the other hand they evince strong protective and empowering attributes. Since freedom and life, though not *a priori* opposed, do not dissolve into each other, the claims B may raise as to his or her life and integrity may limit A’s freedom – and vice versa. While we do not need to establish a radical and necessary opposition between them, nor between freedom and other rights, above all in what refers to life and integrity, in practice there may be, and often there are, clashes and incongruences. Whether analytical or normative, no general scheme of rights can solve all the conceivable contradictions that social processes incessantly beget. Note, finally, that at this point the originally broad and unlimited sort of property rights no longer needs to appear in the catalogue of fundamental rights as they once did: property rights may be themselves limited as fundamental rights or lawfully restricted insofar as they may clash, perhaps sharply, with other rights whose effectiveness may be regarded as more relevant, beyond the potential fragmentation of the bundle of rights perspective.¹³

1.2.2 *Rights and the law*

With its complex web of relations, openings and limits, the free-position is a mutually constitutive element in casting individuals as rights-holders. These are not, however, discrete and contingent relations. A broader and encompassing system of social relations stabilises this mutually constitutive relation between individual agents. These relations are institutionalised in great detail and imbued with a legal character and thus being called law. Its importance can hardly be underestimated.

Not only are rights immediately juridically defined: they are also part and parcel, as its core element, of a more general legal system. What we may and may not do, our powers and claims, freedom and limits, are framed by this system – that is, law – without considering the characteristics of individual agents. Law institutes patterns of behaviour and a set of rules that must be followed, by everyone, without exception. It is supposed to be absolutely impersonal, implying in principle and formally a horizontal (symmetrical and convertible) relationship between rights-holders. Universal equivalence, securing rights, with their privileges and immunities, powers and claims, is achieved in and through law as a neutral medium. The free-position is thus legally defined and law appears as an objectification of rights (and duties, to a lesser extent). Law creates basic identities for A and B, the same for them and all other agents comprised therein: they are all rights-holders. This identity may be more or less apparent to the agents. It may be more systematically articulated or remain at a more practical level, hence being less ambiguously formulated. Nevertheless, it is always there. As a medium, on the other hand, law allows for the coordination of interactions – the way relationships unfold as process –, informing people about what to expect from each other and offering a specific language whereby the communication between agents can happen. In other words, the legal system fully mediates between agents.

Rights are, in turn, always ‘reflex’ rights, with law as a medium. Rights-holders find in each other a universal mirror in which they recognise each other as rights-holders. This reflexivity does not mean that rights derive from anything else – particularly from law. On the contrary, law weaves a web of relations between those who enjoy the free-position and are rights-holders. Rights do not stem from obligation or duty either.¹⁴ The mirror establishes that rights-holders may behave in this or that way and may expect from he or she who stands before him or her as another rights-holder the obligation or duty to respect his or her rights, with such expectations running both ways. Law objectifies this mutual relationship, formally establishing – institutionalising, in this case crystallising and imposing – the free-position, with its powers and privileges, immunities and claims, together with responsibility and duties, as discussed above. It has imaginary, institutional

and practical aspects. It is symbolically constituted and implies a conception of what social life is and ought to be as well as corresponding regularised practices. Thereby we cognitively situate ourselves in the world in relation to ourselves and others, individually and collectively, including our understanding of the law as a link between us all. The same applies normatively insofar as law tells us how we ought to define ourselves, individually and collectively, as rights-holders and should, responsibly, behave in relation to one another, according to the specific set of rules it establishes. Expressively, law is also pivotal, insofar as A and B must appear to each other as people who are reciprocally aware of themselves as rights-holders and responsibly respect – or refuse to respect – a common belonging in this legally structured universe. Nothing else should matter in this elementary definition, with its mutual identitary core.

Corresponding negative sanctions are integral to law when we do not behave accordingly or falsify expectations as to what we ought to do, disrespecting other agents' rights-protection circumference, which we, as responsible agents, have a duty to uphold. Positive sanctions simply imply the maintenance of A's rights in the free-position, while negative sanctions must be applied when someone does not follow the rules and harms someone else's rights.

For law, therefore, it does not matter who we are, what we look like, taste or smell: universality, symmetry and horizontality are intrinsic to the definition of rights and of the rights-holder as an agent. Rights and rights-holders stand in this connection as people without specific qualities, that is to say, as abstract human agents, bereft of concrete attributes, which are irrelevant to the definition of their legally defined personhood. They are *depersonalised* and in addition *desubstantialised*, in terms of content; hence pure form is all that is left. The universality of the rights-holders definition and identity is pristinely connected to its abstract, depersonalised and desubstantialised character. This abstractness crystallises in law. It also displays a depersonalised and general idea of rationality – lucidity and self-transparency as to what an agent desires and wants – and may entail the capacity to pass judgement on social matters adequately. Agents may be thereby considered responsible only if they see the world and themselves correctly, unencumbered by cognitive shortcomings and normative falsehoods. They must be aware of their aims and means, powers, privileges, immunities and claims, as well as those of others, whose legitimate symmetrical and convertible rights are thus taken into account.

Law offers the most abstract element of what may be called, following Mead's seminal concept, the 'generalised other' in interactive processes,¹⁵ comprising the total sum and integrated whole of our relationships according to a mutual free-positioning. This relationship allows for all other relationships. In the interactive processes and in the framework of our mutual

recognition as rights-holders, law receives pride of place, with mutual acceptance implying a basic formal equality of rights and duties. Acceptance also entails that we cognitively, normatively and expressively, at least in principle fully, understand each other as rights-holders and behave responsibly towards our fellow rights-holders. It is this mutual recognition that allows agents to raise validity claims vis-à-vis one another regarding their rights and particularly other agents' duties to respect them and their behaviour, that is, raise claims relating to whether agent B has abided by the limits of his or her freedom and respected A's rights, according to the law and corresponding legal obligations.¹⁶ Consequently, A has a right derived from B's recognition of A's free-position, whereas B has a duty to respect A's position for the same reason and must uphold A's right. According to the symmetric characteristic of the free-position, if we invert locations and B is taken as the active agent while A is displaced to the passive pole, which now provides a mirror-position for B, formerly occupied by A, we find exactly the same sort of openings and closures: B is free as far as she or he does not trespass A's zone of immunity, while A has a duty to uphold B's right. There is a reflex right, which is not simply derived from a universal characteristic of these individual exemplars of the human species. Instead, it originates in their mutual relations, legally mediated and intersubjectively recognised, though certainly not from the duty which the law – simply a mediator between agents – generates.

Let us further consider the following situation, which may apparently contradict what I have argued above: A may have a claim in relation to B, which B would not possibly have in relation to A. This imbalance may stem from different positions people concretely enjoy or from the legal agreements they entered. In some measure, it would be correct to state that A has a right because B has a duty, and it seemingly makes sense to abandon universality and symmetry. That is, nevertheless, arguable. While at this level we have individuals who enjoy and have to face legal situations in which they do not stand in the same – privileged – position, contrary to those interactively placed before them, this presupposes a more basic symmetry: in order to have whatever legal relation, including entering a legal agreement or enacting a juridical act, we must all occupy the free-position in equal terms and, likewise, must all enjoy equal freedom. We are also equally free before the law, so these more specific and less fundamental exchanges may be legally enacted. We may all enter such more circumscribed relations in the course of our lives. Here we also find a symmetry between freedom and equality which underpins whatever juridically defined relation we may establish with one another in modernity. Specific qualifications accrue to agents a posteriori vis-à-vis this horizontal, abstract and, in this respect, depersonalised relation.

If the interaction between individuals as rights-holders lies at the core of what rights are, beyond an individualist conception, this interaction is, in

fact, beyond that elementary dyadic relation, always mediated by a third party. To be sure, the interaction-chain comprises A and B and a myriad of other agents. There is something else, more specific, at stake here, though. While the law is the medium that allows for the ordered interaction of agents, it does not, by itself, simply ‘act’. An external juridical-political agent, namely the state – which we may call S –, charged with upholding the law from without those individual relationships, stands in a symmetrical position vis-à-vis A and B. It must play the active role of mediator between them, lending a more substantive aspect to the law as a medium, without sharing in the free-position. It is also the, so to speak, fiduciary authority of the system, a guarantor of last resort. We still need to properly investigate it, but, in the framework of rights as originally pertaining to individuals, its ‘rights’ are rights only in a derived and inferior sense. S’s duty is simply to uphold the law, if necessary against A or B, protecting the freedom of both. It ought to refrain from preventing or obstructing an individual, A or B, from enjoying its rights according to its privileges and immunities. That is, it must allow them to act as they desire and decide as well as protect A or B when they raise claims to other individuals concerning their recognised free-position and rights. S also has a duty not to prevent or obstruct A’s or B’s actions regarding their control over things. A and B may have *claims* vis-à-vis S so that it actively supports the position of A and B as rights-holders, whether we think of this as simply preventing careless and malfeasant actions or as a more active intervention in social life and the relation between agents.¹⁷ This mediation counts, to be effective and guarantee the free-position of all agents, on the authorisation to negatively sanction these agents if they do not responsibly abide by the law. These sanctions may feature the foreclosing of the agent’s freedom as such, with her or his rights-protection circumference being lifted somehow and for a variable length, with their rationality also brought into question, even if temporarily.

1.3 Rights and citizenship

Citizenship – as *citizenship-form* – consists in a further aspect of the imaginary, institutional and practical framework of the rights-form, with its cognitive, normative and expressive aspects. Furthermore, citizenship is crucial for how we situate ourselves in the world as a condensation of our relationship with rights. It synthetically defines our identity and relationship with other right-holders, at first expelling whatever was not abstract and might be polluted by the concreteness of the other side of the modern divide, just like the free-position. Citizenship as a social form brings people together, mediating between them as individuals, thus seen as citizens, with the possibilities opened and the limits set by the fact that they are all rights-holders. To be sure, much escapes its spell: cognition, normativity and expressivity,

more recurrently or more contingently, span a far wider spectre, in which the concrete side of social life is decisively important, beyond this legally mediated identity and relationship.

Identities, bonds and endeavours are multiple in social life, engaging people in different identities, generating distinct lifestyles, behaviours, tastes and the full spectre of human *lived experience*. We should actually speak of *Erlebnis* as well as *vivencia* or *vivência*, with the deeper resonances these words evince in German as well as in Spanish and Portuguese, including but going beyond cognition (that is, more restrictively, *Erfahrung*, in German). The citizenship-form offers a phenomenological background, symbolically organised, with a structured system of ‘relevance’ that directs our attention and a specific ‘stock of knowledge’. We also thereby homogeneously typify each other as rights-holders and citizens within the more encompassing abstract generalised other.¹⁸ Nevertheless, the abstract juridical side of these forms, more fully framed and institutionalised by the citizenship-form, has in a sense priority over all else inasmuch as what thrives beyond it exhibits as a precondition the basic imaginary and institutional features furnished by rights and citizenship.

Fundamental rights are the rights that as such define citizenship, which, conversely, defines them as fundamental rights.¹⁹ They are precisely those rights that are straightforwardly associated with the free-position and equal freedom. Citizenship is the form through which fundamental rights, hence all other rights, find legal expression, going far beyond law as a medium, that is to say, furnishing a more distinct sense of belonging together than the mere recognition of individuals as rights-holders, though it essentially rests on it. Citizenship furnishes the principal, the most encompassing and underlying legal definition of the free-position, of the rights and duties attached to it, upon which all other relations are premised, with the equality attached to symmetry and horizontality playing a pivotal role in its definition.

A citizen is someone who has rights; she or he is a rights-holder, in a very general sense. Legally institutionalised, citizenship has different components, which characterise it in modernity. Citizenship is, first of all, defined through civil rights, which are a clear embodiment of the free-position and equal freedom. All the analytical elements we have laid out regarding the free-position are found, at the most fundamental level, in connection to citizenship. Citizenship involves powers and privileges, immunities and claims, responsibility and duties. It is also premised upon the mutual recognition of citizens qua citizens, universally, symmetrically and horizontally; it opens room for validity claims in connection with such fundamental rights. It furnishes a mirror in which all individuals, in spite of whatever particular personal attributes, can – or should be able to – mutually recognise one another as citizens. It does not consist in a mere institutional form, legally framed; it

is instead a relation between agents, with all the imaginary and institutional elements we have discussed above concerning the free-position and law.

As classically argued by Marshall in his at the time almost solitary assessment of the subject, civil rights as citizenship rights guarantee a basic status, the most fundamental, in fact, doubtlessly still restricted, which is shared on the other hand by all individuals, at least ideally: they evince in modernity, as I have surmised, a quasi-apodictic universality (i.e., either they are universal or do not qualify as – civil – rights).²⁰ We shall examine further developments of rights later. Yet, let me stress at this stage that nothing else is possible without civil rights. If they are not at least formally universalised, a deep contradiction and tension arises, with dynamic, teleological aspects, since they loom large as a minimum goal to be achieved (although, of course, not of a pristine Aristotelian kind or of a Hegelian directional nature, rather as something the imaginary sets as a horizon in terms of lived experience and expectations). While their formal and teleological aspects are important, if they fall short of living up to their meaning and the expectations of rights-holding citizens, serious problems surface.

Civil citizenship consists of the combination of the absence of concrete qualities of its individual bearers and effective causal structuring power in social reality, precisely in what we can, following a long tradition in critical theory from Marx to Lukács to Habermas, call a *real abstraction*, with Lukács stressing its connection to law and Habermas warning us about this link.²¹ It is an *abstraction* that does not stem from the mere workings of the human mind, even less so from a sheer metaphysical perspective. It appears as an abstraction due to distinctive socio-historical developments, leading to the specific forms abstract universals assume in modernity, which are neither the only way universality develops, nor necessarily irreversible. As something *real*, this abstractness operates as a foundational element in shaping social processes in modernity, regarding both the imaginary and institutionally. We are dealing here with a social construction that no one intended. It developed from contingent historical and reiterated social processes that led to the emergence of modern civilisation, with all social interaction eventually being to a large extent carried out within its framework (including the exchange of commodities, among them labour power).

A *dual individual*, simultaneously abstract and concrete, stands therefore at the centre of the social structuration of modernity, that is, political and juridical modernity (and also more generally).²² It is its definition as the rights-holding and law-abiding citizen that draws its basic features, whoever he or she is, hence abstractly defined, as well as symmetrically and horizontally disposed vis-à-vis other rights-holding citizens who enjoy the free-position and also abide, or should abide, by the law. This definition entails a split order configuration, imaginarily and institutionally. It exhibits this individual as an abstract rights-holder first and foremost, devoid of

personal qualities. At the same time, it also features a more concrete agent beyond this depersonalised and desubstantialised universe. The rights-holding citizen leads a split existence, dependent upon the rights-form and its crystallisation in citizenship, as opposed to its concrete social life. This split directly engenders the dialectical unit of opposites upon which the totality of modern social life hinges. Yet neither does this imply that we can deduce all the elements of modernity, even in this sole dimension, therefrom, nor does it suggest a straightforward and exclusive genetic process commanded by the emergence of citizenship.

In political modernity, with its overwhelming juridical infrastructure, individuals connect and influence one another as in principle beings whose specific attributes do not matter and ought to be overlooked insofar as we look at this sphere, where real abstraction reigns. This clearly emerges in Hohfeld, Alexy and many other authors who deal with analytical jurisprudence, which to a large extent corresponds, more or less directly and fully, to juridical practice. On the other hand, as agents whose existence goes beyond this abstract realm, the specific interests of these dual individuals come to the fore. Insofar as they do not harm other rights-holders and their rights, they may do whatever pleases them. Therefore, abstract and concrete individuals respectively weave social life on each side of the divide, that complementary and tense unit of contraries, with its imaginary and institutional reality and related practices. As a *social form*, dual individuality underpins and largely shapes personal and collective experience – or, rather, *Erlebnis* and *vivencia* or *vivência* – in modernity. It furnishes people with the lenses through which they see themselves and frame their environment, shaping, as a consequence, their identity and sense of belonging. While framing our lived experience, dual individuality mediates between ourselves as individuals and the encompassing world in its manifold structuration.

There is one element which does not in contrast appear divided, furnishing a foundation for the individual as a whole, although it is first of all connected to the rights-holder abstract universality. This element is the absolute *dignity* of all human beings – all citizens –, which is a crucial acquisition of modern civilisation. The physical and spiritual (psychological, mental, emotional) integrity of each one stands at the core of modern individuality, irrespective of who she or he is, of her or his singular and concrete qualities. The defence of life and the assurance against torture, among other perhaps less permanent elements, such as health and bodily integrity, lie at its core.²³ The idea of universal human dignity also forbids turning rights-holders into subjected persons: they must remain free even if they wish to relinquish their freedom. There are indeed variations surrounding the meaning of dignity for this is an idea and a value that evinces the inevitable free-floating character of concepts in the imaginary, irrespective of how systematised and institutionalised it may be. Its explicit place in different legal orders varies too, but

it is a presupposition of the idea of rights as such. No greater good is allowed to interfere with this value and presupposition, with the inconvenience that time and again, argumentatively and in practice, it is disrespected, permanently or at some particular moments, with tacit silence or a loud outcry. It is no less relevant and central because of that.

1.4 Characteristics and reach of rights

In principle absolutely universal and with a tendency to encompass all individuals belonging to a specific ‘society’, citizenship rights have been, in fact, historically unevenly distributed. Their meaning can also vary according to concrete situations, despite yet also sometimes because of their abstract character. It is true that citizenship rights decisively contributed to ‘possessive individualism’, the establishment of capitalism and the subordination of the working classes to capital (workers had, according to this harsh perspective, basically the alternative of changing ‘masters’, entering into simply another sort of slavery disguised by market relations, with slaves necessarily subordinated directly to one of them).²⁴ Rights have, however, allowed for a greater or lesser degree of personal autonomy and independence, away from forms of personal domination (domestic servants remaining in a more ambiguous situation), in this regard at the antipodes of slavery, as liberals have indeed argued. Just the same, they have remained to a large extent, when not realised, an aspiration of individuals and collectivities wherever modernity has set in, which today means the whole world, their absence mourned and denounced when they fall short of full implementation.²⁵ Their teleological force comes from this reach, the horizon they allow people to sustain with reference to the future.

France, with the 1791 Constitution, defined the civil rights of all individuals explicitly in relation to the ‘Declaration of the Rights of Men and of the Citizen’. For the French people, it had formal universal reach and application. Nevertheless, the limitations they evinced from the very start must be identified. First, while it is true that the Declaration should encompass all ‘men’ and all ‘citizens’ (that is, men as citizens), women were in an at least subordinate position in its fold. In practice, women were only partly recognised as citizens. In contrast, some proposed a broader version, explicitly related to the natural rights of Women and Men (while law ought to derive from the ‘will’ of female and male citizens – *citoyennes* and *citoyens* – not only the latter’s).²⁶ To no avail. Constitutions and especially civil codes crystallised this subordination, starting with the paradigmatic 1804 Napoleonic Code. While women were indeed second-class citizens and children had a somewhat precarious status insofar as they were both deemed not fully rational, with both therefore usually subordinated in civil codes to the male head of the family, this situation has henceforth changed piecemeal and is,

for women and partly at least for children, today almost unimaginable in many countries and regions.²⁷

Even more problematic was the position of people who inhabited the French domains overseas, particularly if they did not have the same skin colour as citizens in the metropolis. Colonial possessions were incorporated at best unevenly and belatedly into the rights-mould. Racially distinct, 'backward' peoples, putatively not prepared for their enjoyment, were excluded from citizenship rights. The brutal suppression of Saint-Domingue's Jacobin-inspired revolution showed how the ideals of freedom and equality could be thrashed if powerful interests were placed against them, even though the mostly black and in considerable measure enslaved population of the island was keen on embracing the revolutionary imaginary, which the emancipatory horizon modernity offered at the exact moment of its constitution on both sides of the Atlantic. This overseas part of France, eventually forced to become Haiti, creatively took up the emancipatory horizon of the Enlightenment, in a hybrid and peripheral modernising move, against staggering odds.²⁸ This Caribbean showdown was exceptionally complicated since France, of all countries, had produced that declaration of universal rights, a landmark in the history of modernity; in turn, in Britain, on the other side of the channel, political processes had already gone a long way in the actual recognition of civil rights. These could be trampled upon, at variance with other considerations, when ruling collectivities deemed it necessary, as Napoleon was intent on doing, against the rebellious Caribbean ex-slaves. Demanding rights was then a sure path, fraught, inescapably, with danger and difficulties. This strategy resurfaced, in also daring conditions, later in the colonies and has ever since been resumed, beyond colonial domination.²⁹

Before the French Revolution, the 1776 Declaration of Independence and the Constitution of the United States established civil citizenship for 'all' Americans. Revealingly, it did not contain a single word about slavery, trying instead to make it invisible: the contradiction between the formality and universality of the Declaration and the Constitution, on the one hand, and social reality, on the other, was acute and might have become unmanageable if openly admitted.³⁰ Slavery was only mentioned in and formally prohibited with the Thirteenth Amendment of 1865. In turn, the Brazilian 1824 Constitution was very candid in defining its citizens: among them were the *ingenuos* and *libertos* (i.e., those either born free or freed). Slaves were thereby almost explicitly excluded from citizenship. Increasingly, in any event, as an imposition of the times and the institutional consolidation of the modern imaginary, also if practice was not faithful to the letter of the law, no country integrated any provision in its legal texts that recognised any form of bondage or exclusion from fundamental civil rights (remembering that, astonishingly, Ethiopia did not fully abolish slavery until very recently, formally by any means, in the mid-twentieth century).

Critically assessing Marshall's aforementioned contribution to the analysis of modern citizenship – which he himself never generalised, especially theoretically, from the British case, even with respect to other European countries –, some have been prone to speak of an inversion in the sequence of emergence of rights (whose full spectrum we shall discuss later, in Chapter 3).³¹ At a closer glance, that seems to be definitely beside the point. We must be clear that civil rights are not necessarily so nicely established, as some of these authors seem to imply, stressing equality before the law and the control of violence. While property has been usually fiercely defended, personal security and liberty have fallen short of receiving the same amount of attention. Possessive individualism has been much more concerned with protecting private property than with the proper support for all individuals, their freedom and security. Personal rights mattered primarily in that they allowed for the commercialisation of labour power in capitalism by legally free citizens, very obviously in the aftermath of the abolition of slavery and other forms of personal subordination. This does not per se usually detract from the *formal* existence of those rights, regardless of how limited they may formally be, as the Brazilian example above makes clear.

The context in which civil rights appear can also alter their meaning. In a situation in which individualisation, whether due to capitalist development or other propellers, had already advanced to a certain extent, civil rights meant, first of all, the formation of a wage-earning proletariat that could enter peculiar agreements and sell its labour power: Britain consisted of the prime example of these changes in the eighteenth and nineteenth centuries. Civil rights might, alternatively, provide for the formation of an independent small-landholding peasantry: this was the outcome of the French Revolution. In other contexts, civil rights might work differently. This is what happened in Peru, where the attack on colonial institutions after independence from Spain contributed to the destruction of the indigenous agrarian community, particularly its common property of land. This destruction did not really entail the individualisation of 'indians', let alone their freedom. They were expropriated by already big landowners, slipping into a sort of personalised and servile form of domination in conditions of even greater deprivation.³² There may be paradoxical aspects in the historically specific development of citizenship – at least for a while. As social life develops in the direction of modernisation and people fight such unfavourable outcomes, civil rights become more entrenched and respected or loom on the horizon of the imagination as a *telos* to be reached, partly dissolving seeming paradoxes.

Outside Europe and the Americas, there is a lot of variation in the introduction of civil rights and how this played out. One characteristic is shared to a large extent by many new countries. Where modernity was embraced more autonomously, civil rights were established in more universal terms, while where colonialism was the vehicle for their introduction, dualistic systems

usually came into being. Japan epitomises the first path. In that Asian island, constitutional provisions and a civil code promoted, already in the nineteenth century, the formal development of citizenship – or at least of an Imperial subject upon which uniform law was imposed, with hints at modern citizenship. The Indic subcontinent and Africa include many instances of the second path. In several areas, the British and the French introduced a dual legal system, separating ‘natives’ from Europeans, respectively supposedly ‘traditional’ and rational-modern, the latter responsible and entitled to citizenship. Although this was formally superseded after independence, intricate problems sometimes remained in these countries, notably concerning Muslim populations, problematically entitled to their particular legal codes.³³

The most directly related and arguably most interesting case to consider regarding the analytical line of reasoning adopted in this chapter is perhaps Brazil from the 1970s to 1990s but also onwards. Holston proposed to discuss, in a more anthropological vein, the struggle for citizenship in the country, drawing upon Hohfeld’s categories. He argued that, in a situation of such extreme inequality (that is, in concrete Brazilian social life), some groups were positively targeted for rights. Consequently, they enjoyed ‘privileges’ – that is, ‘freedom’ from ‘claims’ from other groups – and were shielded from ‘duties’. Formal citizenship in Brazil was a ‘mechanism to distribute inequality’. Holston did recognise that there is evidently a distinction between the ‘formal’ and the ‘substantive’ aspects of citizenship and that all countries somehow evince this legal separation. Yet, at a closer glance, Holston’s formulation is ambiguous about whether this is typical of Brazil or more globally generalised in modernity. And indeed, he is, in a sense, right.³⁴ Putting to use Hohfeld’s categories the way Holston’s does nevertheless pushes the argument too far and, at the same time, misses the point: Hohfeld’s categories relate to that formal universe alone, not to the concrete side of social life in modernity, which is placed at another level, with the abstractness of civil rights secluded from it. In this sense, speaking of privileges and freedom, claims and duties the way Holston does conflates two universes which, analytically as well as to a large extent in empirical observation, must be kept separated, regardless of how much we would like to see those inequalities overcome and even a different sort of interpenetration between those two sides of political modernity emerge. I shall in fact later develop my argument in a different direction in order to tackle this same sort of issue.

I have focused up to this point on how rights work in modernity, principally under the influence of liberalism. Fascism as well, both formally and regarding daily life, as a very modern phenomenon, has remained at a basic level formally anchored to this sort of rights infrastructure, irrespective of how many restrictions it could impose on the reach of rights according to its

power imperatives. After all, the countries fascists took over remained mercantile and capitalist, with all sorts of standard legal agreements applying.³⁵ If we look at so-called ‘real socialism’ or, more precisely, authoritarian collectivism, a postmodern attempt to leave modernity behind, we can observe that it also retained the formal framework of rights, especially once the heroic socialist revolutionary phase was left behind. Initially, as implicitly shown in the 1924 Soviet Constitution due to their absence, the Bolshevik revolution would have no role for individual rights. However, since the 1936 so-called Stalin Constitution, the rights of the Soviet citizen became enshrined in this text – excluding the right to private property, obviously, insofar as property was now supposedly collectively appropriated by the working class, except personal objects with little material value. This was the ‘socialist’ framework of rights exported and adopted by all authoritarian collectivist countries, fashioning a formally acknowledged civil citizenship, even though the defence of life and personal integrity was much more limited. Also regarding human rights, during the self-confident Khrushchev years, certainly neither before nor afterwards, the United Nations 1948 Declaration was taken up and pushed forward, albeit with critiques about its unilateral and limited character.³⁶ In the countries that returned to modernity, and in which part of the authoritarian collectivist structure survived, like China, Vietnam and Cuba, the situation has not essentially changed: rights remain constitutionally enshrined, without corresponding to rights the individual apodictically holds. They may be tampered with if need be. The attitude towards human rights is moreover quite shocking and dealt with through a global alliance of authoritarian and conservative forces.³⁷ This path implies a stronger variation in how rights may be thought of, in practice neutralising them, not only in authoritarian collectivism, without the capacity and assurance to completely discard them.

Finally, let us return to property rights, which have been crucial for the development of the modern economic dimension, dominated by capitalism. Property rights originally embodied clear individualist inclinations and emergent liberalism cast them in the natural rights mould.³⁸ Two changes came about in this framework in the twentieth century. First, if firms were from the very beginning central for capitalism, the role of property rights was intellectually strengthened and expanded in a world of increasingly larger corporations. This strengthening and extension was carried out to a good extent in an analogical mould vis-à-vis individual rights-holders (with firms and corporations conceptually emerging as an association between them in order to lower ‘transaction costs’ and raise capital).³⁹ The broader mould of property rights was absent already in the proto-utilitarianism of emerging Political Economy according to which individuals could simply exercise their natural inclination to trade (or ‘barter’) in ‘perfect’ or ‘natural liberty’, with property, and the rights to it, defined as ‘sacred and inviolable’.

Obscurely suggested, spontaneous mechanisms would harmoniously and complementarily connect agents that pursued their own interest, thereby generating wealth.⁴⁰ The neoclassical and neoliberal Chicago School of economics and its derivation in the economic analysis of law then dealt with rights solely in terms of property rights over ‘objects’ upon which owners are authorised to carry out specific actions (even if in an interactive setting including A and B), with other rights barely deserving attention. Property as exclusive access was cast in terms of ‘utility’, ‘choice’ or ‘efficiency’ and the diminution of ‘transaction costs’ due to the guarantee owners have that their investment will not be wasted or taken away.⁴¹ Citizenship of course vanished from the picture.

Beyond the capitalist economic crises that challenge such a rosy view, in particular how a specific commodity known as ‘labour’ fits in this framework is at least ambiguous. Workers sell a commodity – their ‘labour power’, however it is called – that cannot be taken as merely a thing – a passive ‘object’ – over which the buyer will exercise absolute control. A conflict is inevitably generated thereby.⁴²

1.5 Absolute or limited: rights and the coronavirus/COVID-19 pandemic

The pandemic that struck humankind in the 2020s brought about heightened tensions in all spheres of life. It also made explicit issues and problems that had either been repressed or were simply more or less dormant. One of the issues that stirred much controversy was the set of restrictions raised due to the swift spread of the coronavirus, with its attendant disease, COVID-19 and a very high percentage of deaths in its wake. Action was therefore hastily demanded. In circumstances that some defined as a ‘state of emergency’, measures across the globe included, sometimes with centrality, restrictions on the right to liberty. Lockdowns and similar initiatives placed restrictions on the freedom to move, even to gather, and in extreme cases took the form of ‘detention’, given that, conversely, being dead cannot be seen as the best situation for someone who is eager to enjoy freedom or is close to someone who can perish as a result, regardless of one’s own lesser vulnerability due to being younger or enjoying better health. Property rights themselves were affected, with the temporary, total or partial, shutting down of business, freeze of evictions and the like. Yet, all things considered, the right to life was the most affected, since the coronavirus had a high rate of lethality, a concrete outcome that those restrictions, when adopted, could not totally avoid. Even if we accept that this was formally and previously the way law was crafted to face up to extreme circumstances, the questions initially are: were the measures taken during the coronavirus/COVID-19 pandemic a deviation in what refers to fundamental rights or did they conform to deep and dense presuppositions

of what rights are or should be?⁴³ Were security and rights, solidarity and rights properly balanced?

We tread here on a tightrope. Simply suggesting that everything flowed like business as usual will not do. Locking people at home does not conform to modern ordinary life and the expectations associated with it. Individual civil freedom is obviously harmed by such decisions. On the other hand, as argued above, it seems clear that rights are never absolute, as exceedingly important authors and collective judicial bodies, such as the European Court of Human Rights in interpreting its Human Rights Charter, have affirmed.⁴⁴ While expectations as to the limits to rights are not a stranger to the rights-frame we have examined in this chapter, they occur mainly in discrete relations between agents, at most also discretely involving a superimposed agent, actually the state – or S –, the external agent already pointed out, which will be later investigated in detail. The sort of limitation we have focused on here has a different nature. It relates to the collision between different types of rights and what they are supposed to protect and guarantee. Sometimes rights exist harmoniously, but it may be that genuine respect for one of them may limit – albeit without entirely excluding – other rights, not least when S is called upon to help solve the complication. It is clear that rights would clash from the very beginning of the pandemic. This was especially true *vis-à-vis* the right to life and personal integrity – which, as we have seen above, is crucial for the very definition of who we are as rights-holders and the respect which we expect from other individual right-holders – as opposed to the right to move freely, meet other people, demonstrate and all the full range of privileges connected to the equal freedom set of free-position and citizenship entitlements. In the next chapter I shall dwell upon the state as such. For now, let us stick to the issue of rights.

One solution to the tension depicted above is to recognise that rights may be limited, or are intrinsically limited, for two reasons. The first is that individual agents, A and B, to recall our analytical line of reasoning, set limits for one another concerning the rights they enjoy. This occurs simply because A and B also enjoy a zone of immunity, whose circumference must never be trespassed. These rights are not because of that less absolute. The second solution is more complex due to the collision of different rights without any possibility that they will be all fully observed, at least at the same time, hence demanding an active limitation that ought to optimise the respect due to each of them. A so-called ‘balancing’ between rights consequently ensues. Germany has been decidedly at the forefront of this sort of juridical reasoning.⁴⁵ Be that as it may, rights can never be totally dismissed, as stressed above, insofar as we remain in the framework of universal citizenship and equal freedom, whatever variations we encounter in their definition and the specific relations that they assume in particular situations. Moreover, we must not postulate a necessary zero-sum result regarding this tension, which

may be productive for the respect of different rights, in an admittedly fallible equation.

Some statutes also provide for the ‘derogation’ of rights in the event of such emergencies (terrorism, war and health crises, to name the most common). This never includes, since it would simply emasculate the principles of the legal system, the right to life, absence of torture and degrading treatment, with freedom of conscience and even of movement possibly considered as amenable to temporary restraints. Derogation must, in principle, be strongly justified as necessary to protect the security of citizens, including their health. Sometimes derogation is not easily distinguishable from limitation in a more general way (beyond everyday issues), notably in situations of more significant impact. It should moreover be reserved for severe emergencies and be only temporary. Overall, in the sudden flare-up of the pandemic, this is what occurred to a good extent in countries in which rights are seen as a property of the free-position legislation and measures tried to comply with these provisions; in countries where rights did not enjoy the same status, at least from a formal viewpoint, or did so more ambiguously, the situation was much less rosy, also when formally measures seemed sound and legal, often assuming, in fact an *ad hoc*, character.⁴⁶ While derogation *per se* has a much greater impact than mere limitations, that is to say, the mere restrictions of rights, especially in an *ad hoc* manner, where the free-position is absent or ambiguous, the pandemic has implied deeper harm to rights.

Overlooking the massive restrictions that the free-position suffered during the pandemic would be silly, if not outrageous – though it is also true that legal procedures were followed in a considerable number of cases and to a reasonable extent where the rights-frame is at least in some measure properly institutionalised, flagrant deviations notwithstanding. Do such deviations warrant sweeping and simplistic views in which the real issues, namely, how to protect the right to life in the face of freedom rights that may not be discarded, are dismissed offhandedly with an absolutisation of individual freedom, despite the real problems the limitation of rights, as a concept and practice, entails and which must not be lightly discounted?⁴⁷ This does not seem to be the case, but, as already mentioned, there were indeed cases in which no emergency was declared, and situations and outcomes of the state of emergency which almost resulted in the abrogation of rights in practice, in a very *ad hoc* manner. Some questions, beyond deviation and balancing, as posed above, therefore linger on: will derogation be extended into the future? Will *ad hoc* measures become an essential part of normality?

In the course of the coronavirus/COVID-19 pandemic, it became evident that either following rights-based legal provisions or through more arbitrary procedures (an issue we shall soon discuss with greater detail), the aforementioned juridical-political agent S is endowed, in order to ensure that law is applied and rights secured, with faculties and legal

instruments that buttress its authorisation and in a sense mandate to actively do something in the face of risks and threats to the security of citizens. This protective role stood clearly as a difference vis-à-vis libertarian movements – notwithstanding how they defined themselves in different countries – that is, making freedom supposedly absolute, thereby discarding other rights and inevitably drawing close to extreme-right and neoliberal perspectives, although sometimes their arguments are in this regard not necessarily absurd and unfounded. Problems were real and their solution was not straightforward. In the end, it also became evident that there are no rights that are the exclusive responsibility of individual agents to certify, especially when it comes to their practical enactment.⁴⁸ Whose responsibility is it also, then?

1.6 Rights from above

We have thus far dealt chiefly with individual rights as they relate in an immediate way to individuals, with citizenship directly connected to this priority of rights and their holders. I have just briefly mentioned another possibility, which now requires analytical elaboration. Remember that A and B, as rights-holders, could see, according to the free-position, each other as the immediate bearers of rights, however mediated by law and having the state – S – as an external, superimposed agent to uphold equal freedom, even and particularly if A or B, or both, run or attempt to run afoul of the law. As I have already argued, this agent is the so to speak fiduciary authority of the whole legal system. This subordinate positioning may be indeed inverted. Rights may be dispensed from above, with S coming to the fore and being granted precedence over individuals.

Once the system has its internal logic inverted, rights are no longer the original property of individuals. Rights are seen as granted by S or as directly dependent upon how S provides meaning to these individual rights as part of a greater whole.⁴⁹ It certainly retains the task of upholding the law and sanctioning those who do not abide by it. It is nevertheless understood that law emanates directly from it, hence it does not consist of the crucial element in the mediation between A and B; it simply extends the mediating role of law as a medium. Instead, A and B are defined as rights-holders and citizens because that agent – now no longer external to A and B's relationship – has decided thus. To a large extent A and B have the duty to follow S's laid-down rules, also because they have been crystallised in the form of the law. This legal framework may preclude arbitrary behaviour on the part of S, but this may not necessarily be, and often is not, the case. In principle, insofar as we remain within the framework of rights, S stands in a symmetrical and neutral position vis-à-vis both A and B. They do not really enjoy a free-position, though, or do so in a more limited or even minimal

way, which intrinsically falsifies that positioning. What was granted may, of course, be withdrawn. The sphere of responsibility also changes. A and B remain responsible for their actions and must answer for them if they disrespect the zone of immunity of another individual agent, trespassing his or her perimeter of permissibility or rights-protection circumference, according to the law laid down by S. In this framework, S is, as a matter of fact, the overall responsible agent, the source of rights and citizenship as well as law, and in the end perhaps the truly rational agent. In this inverted framework, A and B still can and in some measure should direct claims regarding rights (and other measures not really connected to rights) to S as a political-juridical agent.

There is for sure neither horizontality nor convertibility in this relation between S and rights-holding citizens, irrespective of the fact that A and B, in this granted position, are formally placed in a horizontal relation between themselves. It is verticality that characterises that original relation, even if to a variable extent A and B and their rights may not emanate nor be totally subordinated to S. The same accrues to equal freedom: under the law, A and B may be said to enjoy it, but this is restricted insofar as S may decide that there are more strict limits than a more consistent free-position was supposed to display or even, once again, withdraw it. We move thereby beyond the limitation of rights discussed in the previous section, between individuals who ought not to trespass the bounds of their powers and privileges as well as due to possible collisions between different sorts of rights. Instead of the free-position, what appears here is thus the top-down rights position. Figure 1.2 synthesises this relationship.

In this strand of modernity, the dignity of agents is somehow diminished since it has been transferred over to S. Dignity may also be seen as something that is rather partly or perhaps absolutely a value that pertains, first of all, to the juridical-political agent S. Yet this top-down version of the structure and source of rights has lost much ground, at least explicitly, in the last decades in traditional modern societies. The bottom-up version previously discussed has, in different versions, become dominant in liberal modernity, although we may doubt whether this is really so, overall and particularly in some more challenging juridical-political configurations, while the staying power of the top-down version has been more open to questioning. Whether this prevails or not, we need to go beyond so-called 'methodological nationalism', that is, analyses that concentrate on a single country alone. Rights imply an imaginary that is globally spread and tensions therefore arise in situations in which they are not institutionalised but are somehow rooted in individual and collective expectations, while they may, at the same time, be instrumental for the development of full market relations in the form of capitalism, without further commitment to a broader conception and institutionalisation of equal freedom.

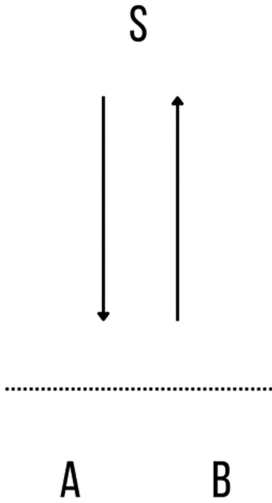


FIGURE 1.2 The top-down rights position

Notes

- 1 The path-breaking, momentous inception of this idea, which became the dominant, albeit by no means exclusive, understanding of freedom henceforth, pace the author’s modernised commitment to Absolutism, was put forward by Thomas Hobbes, *Leviathan [or the Matter, Forme, and Power of Commonwealth Ecclesiastical and Civill]*. (Cambridge: Cambridge University Press, [1651] 1996), chap. 14. ‘Rights’ would thus be ‘the liberty to do, or to forbear’. See Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008).
- 2 Beyond the individualist and atomist view introduced by Hobbes, see Georg Simmel, ‘Das Probleme der Soziologie’, in *Soziologie. Untersuchungen über die Formen der Vergesellschaftung* (Frankfurt am Main: Suhrkamp, [1908] 1992). This is what, in a reified form, characterised the commodity, according to Marx, *Das Kapital. Kritik der politischen Ökonomie*, vol. 1 (1867, 1873), in K. Marx and Friedrich Engels, *Werke*, vol. 23 (Berlin: Dietz, 1962), Erster Abschnitt. Money would allow for the full scope of commodified, and reified, relations.
- 3 Liberalism has since then followed the path opened by Hobbes, foremost and more loosely in John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988), chap. 1. It then became hegemonic in modernity.
- 4 Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (New Haven, CT: Yale University Press, 1919), pp. 35ff. The inconsistencies and methodological ambiguities of the theory have already been discussed in Albert Kocourek, ‘The Hohfeld system of fundamental legal concepts’, *Illinois Law Review*, vol. 24 (1920–21): 24–39. Hohfeld’s four pairs could arguably be reduced to the first and third since the second and fourth merely invert them. See Lon L. Fuller, *The Morality of Law: Revised Edition* (New Haven, CT: Yale University Press, 1969), p. 134.

- 5 Judith J. Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), p. 37.
- 6 Robert Alexy, *Theorie der Grundrechte* (Frankfurt am Main: Suhrkamp, 1985), especially chap. 4. Alexy himself introduced the concept of a 'free-position', but was unclear with respect to the position-structure issue. In contrast, I treat it here within an interactive-relational framework. I also avoid his 'beneficiary/right-holder-addressee-object' terminology for those I shall treat as A and B. Jellinek's and Hohfeld's influence is directly acknowledged by Alexy. Hohfeld's background was Anglo-Saxon 'common law'; Alexy, like Jellinek, wrote with reference to the 'civil law' continental tradition, but freely drew upon Hohfeld.
- 7 See, for instance, Hans Kelsen, *Reine Rechtslehre. Einführung in der rechtswissenschaftliche Problematik* (Vienna: Verlag Österreich, [1934, 1960] 2000, 2nd edition), § 4.28.c, p. 125.
- 8 Cf. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. ix, passim. Vaguely defined rights play a key, seemingly instrumental role in his text, buttressing radical ('libertarian') individualism.
- 9 Hohfeld is silent on this, probably because his analytical model stems from other sorts of, less fundamental, juridical relations. Yet it is important to stress these very elementary issues in connection with his categories and the concept of a free-position.
- 10 Hohfeld (*op. cit.*) also resumes this discussion and this classical division of rights.
- 11 Denise R. Johnson, 'Reflections on the bundle of rights', *Vermont Law Review*, vol. 32 (2007): 247–272. This view – partly derived from Hohfeld's analytical theorisation – has developed basically in the United States and, up until now, has predominantly meant the restatement of former notions of private property, though it certainly allows for other openings. Multiple 'incidents' can also be seen as constituting ownership, eleven in A. M. Honore, 'Ownership', in Anthony Gordon Guest (ed.), *Oxford Essays in Jurisprudence: A Collaborative Work* (Oxford: Oxford University Press, 1968). Such suppler views, emerging from the common law tradition, oppose stricter civil law concepts of 'sole and despotic dominion' over 'external things' to the 'exclusion' of whoever else, as stated by the English jurist William Blackstone, *Commentaries on the Laws of England*, Book II (Oxford: Oxford University Press, [1766] 2016), chap. 1. Curiously, he then goes on to discuss the common law ownership concept of 'states'.
- 12 Within the framework of the intersubjective recognition between individuals who contract as property owners, this was correctly and decisively grasped by Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts* (1820), in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, 1986), §§ 41–64.
- 13 Luigi Ferrajoli, 'Diritti fondamentali', in Ermanno Vitali (ed.), *Diritti fondamentali* (Rome: Laterza, 2001). Note that, more circumspectly, 'public interest' might warrant the limitation of right to property already in the 'Declaration of the Rights of Men and of the Citizen', though it deemed it 'sacred'.
- 14 In a different direction from the one taken here, the idea of 'reflex rights' was crucial for Kelsen, *op. cit.*, § 1.4.d, pp. 15ff, §§ 4.28–30, pp. 120ff (especially p. 159), § 4.7.a, pp. 172–176, § 5.34.c, pp. 200–204, §§ 6.40–41, pp. 288–293. He was concerned with the 'legal obligation' or 'duty' (*Pflicht*) from which 'subjective' rights, as 'reflex rights', supposedly stem. But ordinary legal rights derived from contracts and penal law were his real issues, not the higher order of rights we have been dealing with here. Sanctions and obligation always furnish his starting point, not rights, in sometimes rather convoluted reasonings. Fundamental rights were seen as contingent and consistently underplayed in his proudly positivist writings. 'Reflex rights', in this case defined as such because their source would be the state, appeared formerly in Georg Jellinek, *System des*

- subjektiven öffentlichen Rechte* (Tübingen: Mohr Siebeck, [1892, 1905] 2011), pp. 15ff.
- 15 George H. Mead, *Mind, Self, and Society* (Chicago: The University of Chicago Press, 1934). He was influenced by Hegel – and the idea of the Spirit as the interactively constituted human collective conscience – and, more immediately, Charles Cooley’s concept of the ‘looking-glass’ self.
 - 16 Axel Honneth, *Kampf um Anerkennung. Zur moralische Grammatik sozialer Konflikte* (Frankfurt am Main: Suhrkamp, 1992); Jürgen Habermas, *Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp, [1981] 1988), vol. 1, pp. 45–71.
 - 17 According to Alexy (*op. cit.*, chap. 3), these claims are, in principle, related to ‘negative acts’ but ‘positive acts’, which shall furnish the core of Chapter 3 of this book, by the end of the present chapter shall already feature in the analysis.
 - 18 See Alfred Schutz, ‘Common-sense and scientific interpretation of experience and thought objects’, in *Collected papers*, vol. 1 (The Hague: Martinus Nijhoff, 1962); Idem, ‘Some structures of the life-world’, in *Collected Papers*, vol. 3 (The Hague: Martinus Nijhoff, 1975).
 - 19 Fundamental rights are, we may say, the ‘juridical expression of values’. Dieter Grimm, ‘Verfassungsgerichtsbarkeit im demokratischen System’ (1976), in *Verfassungsgerichtsbarkeit* (Frankfurt am Main: Suhrkamp, 2021), p. 22.
 - 20 T. H. Marshall, ‘Citizenship and social class’, in *Class, Citizenship and Social Development* (Garden City, NY: Double Day, 1964). See also Norberto Bobbio, *Letà dei diritti* (Turin: Einaudi, [1990] 1997).
 - 21 José Mauricio Domingues, *Modernity Reconstructed* (Cardiff: University of Wales Press, [2002] 2006), pp. 489ff. This is one of the most cardinal concepts of critical theory, from its inception to contemporary approaches. See, to restrict ourselves to law and politics, but also recognising the prominent role of Political Economy (regarding the commodity, money and social classes, as well as law) in its original definition and specific phrasing as ‘real abstraction’, K. Marx, *Zur Juden Frage* (1843), in K. Marx and F. Engels, *Werke*, vol. 1 (Berlin: Dietz, 1981), and *Das Kapital*; also G. Simmel, *Philosophie des Geldes* (Frankfurt am Main: Suhrkamp, [1901] 1996), pp. 609ff. It appears more systematically in Gyorg Lukács, *Geschichte und Klassenbewußtsein. Studien über Marxistische Dialektik*, in *Werke*, vol. 2 (Darmstadt: Luchterhand, [1923] 1977), pp. 271–285, and Alfred Sohn-Rethel, *Geistige und körperliche Arbeit. Zur Epistemologie der abländschen Geschichte* (Weiheim: VHC and Acta humaniora, [1970] 1989). See also, with a direct relation to law, Eugeny B. Pashukanis, *La Théorie generale du droit et le marxisme* (Paris: EDI, [1924] 1969); Nicos Poulantzas, *L’Etat, le pouvoir, le socialisme* (Paris: Presses Universitaires de France, 1978), pp. 54–55, 94–99; Habermas, *op. cit.*, vol. 2, pp. 489ff – where law as real abstraction becomes a systemic steering medium, an argument he gives up in Idem, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992). Interesting discussions with reference to law and Marxism also appear in Galvano della Volpe, *Rousseau e Marx e altri saggi di critica materialista* (Rome: Editori Riuniti, 1957); Umberto Cerroni, *Marx e il diritto moderno* (Rome: Editori Riuniti, 1962). See further Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B Mohr [Paul Siebeck], [1921–22] 1980), pp. 387–513. Western law, in civil law countries, as an abstract and rationalised system, despite his uneasiness concerning British common law, also lies at the kernel of Weber’s explanation for the origins of modernity.
 - 22 K. Marx, *Zur Juden Frage* and also, with a primacy for civil society, Idem, *Zur Kritik der Hegelschen Rechtsphilosophie. Kritik des Hegelschen Staatsrechts*

- (1843), in K. Marx and F. Engels, *Werke*, vol. 1 (Berlin: Dietz, 1981). Marx developed his views critically regarding this division and against what he saw as an artificial attempt to reconcile those two sides of social life by Hegel.
- 23 Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Cambridge University Press, 1989), pp. 15ff, 23, 94, 152, 383; Jan Philipp Reemtsma, *Folter im Rechtsstaat?* (Hamburg: Hamburger Edition, 2005), especially chaps 5–6.
 - 24 C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, [1962] 2011); K. Marx, ‘Sechstes Kapitel. Resultate des unmittelbaren Produktionsprozesses’, in *Mega II/4.1: Ökonomische Manuskripte 1863–67*, Teil 1 (Berlin: Akademie, 1988), pp. 95ff.
 - 25 See Juan E. Mendez, Guillermo O’Donnell and Paulo Sérgio Pinheiro (eds), *The (Un)Rule of Law and the Underprivileged in Latin America* (Notre Dame, IN: Notre Dame University Press, 1997).
 - 26 Olympe de Gouges, *Declaration des droits de la femme et de la citoyenne* (Paris: Fayard, [1791] 2020). See also Linda Garbaye, ‘Female and male activism for women’s rights in eighteenth-century America and France’, *Revue de la société d’études anglo-américaines des XVIIe et XVIIIe siècles*, no. 72 (2015): 213–230.
 - 27 Carole Pateman, *The Sexual Contract* (Cambridge: Polity, 1988); Göran Therborn, *Between Sex and Power: Family in the World (1900–2000)* (London and New York: Routledge, 2004), pp. 20ff.
 - 28 C. R. L. James, *The Black Jacobins: Toussaint L’Ouverture and the San Domingue Revolution* (New York: Vintage Books, [1943/1963] 1989). See also J. M. Domingues, ‘Jacobinism, political modernity and global sociology’, *Social Epistemology*, vol. 33 (2019): 422–432. We can add all sorts of sophisticated arguments and look for the island’s inhabitants specific hybridised perspectives, but must not overlook the revolt’s commitment to the emancipatory aspects of modernity. Black people were – and have remained to a variable extent – excluded from or subordinated within a ‘racial contract’, which they constant strive to broaden. See Charles W. Mills, *The Racial Contract* (Ithaca, NY and London: Cornell University Press, 1997).
 - 29 Edward P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Penguin, [1975] 1990), chap. 10.
 - 30 Also ‘Indians’ fell outside the constitutional framework. This harshness challenged unilineal sociological interpretations of modernity. See Wolfgang Knöbl, *Die Kontingenz der Moderne. Wege in Europe, Asien und Amerika* (Frankfurt am Main: Campus, 2007), pp. 27ff.
 - 31 The problem was originally raised in Michael Mann, ‘Ruling class strategies and citizenship’, *Sociology*, vol. 21 (1987): 339–354.
 - 32 José Carlos Mariátegui, *7 ensayos de interpretación de la realidad peruana* (Caracas: Fundación Biblioteca Ayacucho, [1928] 2007), pp. 59–63.
 - 33 Ming-Cheng M. Lo and Christopher P. Bettinger, ‘The historical emergence of “familial society” in Japan’, *Theory and Society*, vol. 30 (2001): 237–279; Dan F. Henderson, ‘Law and political modernization in Japan’, in Robert E. Ward (ed.), *Political Development in Modern Japan* (Princeton, NJ: Princeton University Press, 1968); Lauren Benton, ‘Colonial law and cultural difference: Jurisdictional politics and the formation of the colonial state’, *Comparative Studies in Society and History*, vol. 41 (1999): 563–588; Bertrand Badie, *L’Etat importé. Essai sur la occidentalisation de l’ordre politique* (Paris: Fayard, 1992); Mahmood Mandani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996).

- 34 James Holston, *Insurgent Citizenship: Dysfunctions of Democracy and Modernity in Brazil* (Princeton, NJ: Princeton University Press, 2008), especially pp. 3–8, 14, 19–26.
- 35 Franz Neumann, *Behemoth: The Structure and Practice of National Socialism* (Chicago: Ivan R. Dee, [1942, 1944] 2009), pp. 533ff; Robert O. Paxton, *The Anatomy of Fascism* (New York: Alfred A. Knopf, 2004), chap. 5. The latter is markedly less radical regarding the supposed total demise of the ‘normative state’. The distinction was introduced, leaning more on the ‘prerogative state’, by Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York: Oxford University Press, 1941).
- 36 See, for the Soviet argument, Andrei Y. Vyshinsky, *The Law of the Soviet State* (New York: Macmillan, 1948). For further analysis and historical background, see Georg Brunner, ‘Naturrechte und Sowjetideologie’, *Berichte des Bundesinstituts für Ostwissenschaftliche und Internationalen Studien*, vol. 38 (1966): 1–19; Benjamin Nathans, ‘Soviet rights-talk in the post-Stalin era’ and Jennifer Amos, ‘Embracing and contesting: The Soviet Union and the Universal Declaration of Human Rights, 1948–1958’, both in Stefan-Ludwig Hoffmann (ed.), *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2011).
- 37 Yu-Jie Chen, ‘China’s challenge to the International Human Rights Regime’, *NYU Journal of International Law and Politics*, vol. 51 (2019): 1179–1222.
- 38 Notably Locke, *op. cit.*, chap. 5.
- 39 A radical sort of juridical individualism precluded a proper understanding of the issue, in confront with Hohfeld’s categories, by Arthur Corbin, ‘Jural relations and their classification’, *Yale Law Journal*, vol. 30 (1921): 226–238.
- 40 Adam Smith, *An Inquiry into the Nature of the Wealth of Nations* (Oxford: Oxford University Press, [1776] 1976), pp. 104, 138, 188, *passim*. Strongly influencing Smith, the separation between an objective ‘natural law’ that implies the spontaneous coordination of individuals through the market and the government, with the necessity of law to punish the evil ones who went against it, along with a stress on private property, appeared in François Quesnay, *Despotisme de la Chine* (1767), in *Œuvres économiques et philosophiques* (Paris: Peelman, 1888), pp. 637–45.
- 41 R. H. Coase, ‘The problem of social cost’, *The Journal of Law and Economics*, vol. 3 (1960): 1–44. He speaks about ‘factors of production’ being a ‘right to perform (physical) actions’ upon an object. See also, with a more direct but also more confusing formulation, Armen Alchian and Harold Demsetz, ‘The property rights paradigm’, *Journal of Economic History*, vol. 33 (1973): 16–27. The paradigm was systematised by Richard A. Posner, *Economic Analysis of Law* (New York: Aspen, [1986] 1911), pp. 39–49. Private property as a relation between agents allows for the efficient allocation of resources (explicitly versus the irrationality of the commons). Though Posner qualifies his definition in terms of common law, its reach is obviously more general. Only towards the end of the book (pp. 867ff) did he cursorily and conventionally refer to constitutional and civil rights.
- 42 Marx, *Das Kapital*, vol. 1.
- 43 Alan Greene, *Emergency Power in a Time of Pandemic* (Bristol: Bristol University Press, 2020), especially pp. 62ff, 72ff, 87–88. See also Martin Florack, Karl-Rudolf Korte and Julia Schwanholz (eds), *Coronakratie. Demokratisches Regieren in Ausnahmezeit* (Frankfurt am Main: Campus, 2021).
- 44 Perhaps most explicitly and precisely in Immanuel Kant, *Metaphysik der Sitten*, in *Werke*, vol. 8 (Frankfurt am Main: Suhrkamp, [1797] 1977), ‘Einleitung in die Rechtslehre’, §§ A–E, pp. 336ff, ‘Einteilung der Rechtslehre’, §§ A–B, pp.

- 344–345, § 45, pp. 430–431, Part II, ‘Eileitung zur Tugendlehre’, II, pp. 511–512. But also, formerly, in Locke, *op. cit.*, chap. 2; J. A. Andrews, ‘The European jurisprudence of Human Rights’, *Maryland Law Review*, vol. 43 (1984): 463–517.
- 45 Alexy, *op. cit.*, chap. 9; Grimm, *op. cit.*, pp. 23–24. See further Roza Pati, ‘Rights and their limits: The Constitution for Europe in international and comparative law’, *Berkeley Journal of International Law*, vol. 23 (2005): 223–280; Alec Stone Sweet and Jud Mathews, ‘Proportionality balancing and global constitutionalism’, *Columbia Journal of Transnational Law*, vol. 47 (2008/2009): 72–174. Note that the idea of a limitation of rights is not universally acknowledged, although in practice it may happen. See Stephen Gardbaum, ‘Limiting constitutional rights’, *UCLA Law Review*, vol. 54 (2007): 789–854; Natasa Mavronicola, “What is an absolute right?” Deciphering absoluteness’, *Human Rights Law Review*, vol. 12 (2012): 723–758.
- 46 Audrey Lebre, ‘COVID-19 pandemic and derogation to human rights’, *Journal of Law and Biosciences*, vol. 7 (2020): 1–15; Lawrence R. Helfer, ‘Rethinking derogation from human rights treaties’, *The American Society of International Law*, vol. 115 (2022): 20–40. Even when the framework was supposedly legally based. Cf. Lenaris Harisovich Mingazov and Alexey Alexeyevich Sinyavskiy, ‘The restrictions of Human Rights during COVID-19 pandemic’, *Utopía y praxis latinoamericana*, vol. 25 (2020): 150–156.
- 47 Such as in Giorgio Agamben, *A che punto siamo. L'epidemia come politica. Nuova edizione accresciuta* (Macerata: Quodilibet, 2021 – articles published in 2020–2021), in which his thesis about the ‘state of exception’ was radicalised. But also J. Habermas, *Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik* (Frankfurt am Main: Suhrkamp, 2022), pp. 93–95.
- 48 Green, *op. cit.*, pp. 39, 126.
- 49 The outstanding traditional reference here is indisputably Hegel, *op. cit.* Whereas we may say that in his view the state was simply the incarnation of human advanced collective consciousness (including the institutional support of freedom), he was often certainly not read this way. A radicalised argument is found in Giovanni Gentile, ‘Che cosa è il fascismo’ (1925), in *Che cosa è il fascismo. Discorsi e polemiche* (Florence: Vallecchi, 1924 – sic.), pp. 26–29, 33–37. For a sharp critique, Luigi Ferrajoli, *Diritto e ragione. Teoria del garantismo penale* (Bari and Rome: Laterza, 1989), pp. 923–924. Contemporary Russia, with the same sort of humbug doctrine, has been going down the same road. Ulrich Schmid, *Technologien der Seele. Von Verfertigen der Wahrheit in der russischen Gegenwartkultur* (Frankfurt am Main: Suhrkamp, 2015), pp. 29–36.

2

THE STATE AND THE LAW

2.1 From law to state

As seen in the first chapter, a specific agent is charged with upholding the law. It must guarantee that when individuals act according to their privileges, they do not trespass the immunity zone, the rights-protection circumference of other agents, who, as rights-holders and citizens, enjoy the free-position. If someone goes too far, this juridical-political agent, the state – S, as defined in that same chapter – must enter the fray and do something to stop that inappropriate behaviour, whether violent or not, and the legal breach A or B perpetrated. The state must therefore protect A and B against each other due to their possible lack of care or truly evil behaviour. It must, as such, always remain within the bounds of the law. As we have also seen, this relation may be inverted, with the state granting rights to A and B, with more or less relevant changes in how rights and citizenship are designed. To be sure, who assures that the state abides by its duties is of course an open question: are citizens themselves to make sure the state is under control or would it be split in such a way that tendencies to stray from those duties could be neutralised?

In any case, charged with upholding the law either from the outside or as the origin of the legal relations between individuals, as an external agent or an original source, this juridical-political agent is – or should be inasmuch as we stay in the framework of modern rights – in a neutral position vis-à-vis A and B. Since law is simply a medium that allows for the coordination of interactions, it is not capable, as such, of doing anything. As an agent endowed with causal powers, the state should make sure the law is respected. It ought not be on anybody's side, a priori – certainly not on its

own side either. It should take decisions and come down in favour of A or B only when necessary and in accordance with the legal rules, with the second way of structuring rights being more open to deviations from this basic rule, insofar as the dignity of the state has priority over that of citizens. The state has a duty to uphold the law, if needed against A or B, protecting the freedom, the immunity and the privileges of both, even if this may be limited due to its own decisions. A and B, as individual rights-holders and citizens, may thus raise claims vis-à-vis this juridical-political agent, demanding it to stop a careless or mischievous agent, A or B, in her or his tracks; that is, A or B may raise a claim to the state so that it should actively defend A's or B's immunity – life, integrity and freedom, even though this vertical configuration may downplay equal freedom and individual dignity at least in some measure. If necessary, negative sanctions should follow so that legal rules are upheld and nobody is allowed to disrespect them, even though, again, it is easier to see this disrespect stemming from above when the state has priority within the juridical infrastructure of modernity than when it is secondary within it.

It has been only since the seventeenth century that this juridical-political agent has been called the *state* in the region that was becoming the West, in a protracted process of constitution.¹ We now need to explore it analytically in its full configuration. As all states, which existed prior to modernity, and in fact, all collective subjectivities qua social systems, the modern state displays four dimensions: material, underpinning its effective functioning (what some would call 'objects' or 'sociotechnical networks'), of power (organising and steering it in particular ways in modernity), space-time (with its implantation in history and geography) and hermeneutic-symbolic (imaginary). Otherwise, the role the state plays as an agency of mediation and still other performances would not be possible. If the state was not such an invention of modernity, not all forms of institutional power established across history should be seen as a state either. When that is the case, its characteristics also vary. Separation from the rest of social life has been a key feature of all states. This separation also takes place in modernity, but it has produced a particular form of state, moreover interwoven with modern law, which lies at its very core.

Law is a medium in the interaction between individuals themselves and between them and the state, also setting up rules for the latter's internal structuration. In the liberal tradition and its institutionalisation, this state comprises different power branches: an executive, a legislative and a judiciary. They have the incumbency of, respectively, making things happen, producing the law and sanctioning agents when they disrespect it or guiding them in order that this does not occur. Decision-making in what regards law-making was trusted to the legislative, while the executive was in charge of decision-making so as to apply those laws and implement measures – that is,

policies – that were initially very restricted. These branches would balance each other. The socialist tradition and especially the misguided attempts to bring it about fused the executive and legislative powers. Since the putative background problem was simply class domination, which would disappear, that tradition regarded the division as unnecessary, and indeed an incumbrance.

Defending citizens' rights is just fine, nice and beautiful. Yet a cruder world looms large beyond the mild and friendly countenance of rights and citizenship. Freedom and power, let alone the preservation of life and personal integrity – which implies to some extent security –, are not totally independent from each other; actually, they are closely connected in modern states. Coercion, therefore, becomes a crucial issue and it is the state, brushing aside the right of individuals to employ it themselves, that must apply force or threaten to apply it to whoever affronts the rights of the citizen. It is not only authorised to do so; it has the mandate to follow this course. The state is also allowed to apply force to defend itself if an agent moves against it, although, at least according to the framework in which they and individuals have priority, rights would never be relinquished and the state would not be allowed to move as it may see fit, short of legal considerations. The state must uphold the law and confine itself to respect the full range of fundamental rights to which citizens, as rights-holders, are entitled. In the case that rights are granted or depend more directly on the state, it must play a similar role as well as abide by the law, but, being prior to individual citizens, it may decisively (and in the limit permanently) abrogate rights and move beyond what is enshrined in law. Stronger or weaker at distinct moments, an undercurrent whose main concern is individual – and state – security has never really gone away.²

The workings of the state and the law may thus be premised upon a more benign conception of social life, collaborative, closer to a classical view of rights, in which individuals contribute to a peaceful and agreeable common project. The state and the law may be, however, premised upon a more defensive perspective, in which violence lurks, whether real or imagined, and individuals perceive each other as competitors, adversaries and even potential enemies, or at least as selfish people who do not care about others and may easily invade the rights-protection circumference of other citizens.

We have thus far treated law generically, in its role of mediation and as a set of rules, without additional specification. We must now make the analysis more complex, since the split-up nature of modernity, characterised in Chapter 1 as one of its most crucial features, cuts across its definition as well, with the division between private and public law. Private law is directly connected to the rights of individuals as members of a legal community. Its rules cover the actions of and interactions between individual citizens on the concrete side of the modern divide, where they are free to do whatever they

want, insofar as they do not disrespect the rights of other agents. In turn, public law suffers a further bifurcation: on the one hand, it is law such as it operates internally to the state, with rules that regulate its internal functioning; on the other, it includes the rules that legally regulate the relations between the individual citizen and the state.³ *Contracts* (that is, legal agreements) regulate between individual agents are at the core of private law. In contrast, public law refers, with respect to contracts, to those enacted by the state and the legal agents that exist and operate both as citizens – that is to say, as public agents – and in that private dimension. The state plays, in the latter case, a role similar to a private agent regarding private law, yet with certain specifications that turn it into public law. Only in this sense can we properly speak of the rights of the state, unless it is granted priority over individuals and even some kind of moral or ethical worth that underpins that primacy.

Kelsen's 'pure theory of law', with its close connection between state and legality, may summarise, in a specific way, what has been said thus far and furnish some signposts for the extension of the analysis. It crowned a long and analytically-oriented development of German jurisprudence, in which the modern state and modern law have an intrinsic relationship. According to Kelsen, the 'basic norm' (*Grundnorm*) provides the foundation of the whole legal system, hence of the state, establishing the procedures whereby all other laws come into being. Coercion makes sure that they are applied and their application makes them 'efficacious'. His positivism, which eschewed an a priori or even historically foundational role for subjective rights, implied, however, that rights consist in a merely derivative element. Interestingly, at the same time, Kelsen's theory also stressed abstraction and 'generality'.⁴ Moreover, it implicitly resumed Jellinek's view of the 'domestication' of the state by law as well as Weber's thesis about the former's concentrated and unified power in modernity.⁵

2.2 The law and the state

While the modern state and the modern juridical infrastructure are tightly entwined, in this intimate relationship the state is, first of all, entrusted with a double task: it must guarantee the homogeneous application of law across the territory over which it exercises jurisdiction, while at the same time taking rights into account and endeavouring to protect them. This double task constitutes a core element of the characterisation of the modern state at both the imaginary and the institutional levels. Establishing the fundamental space-time configuration of political modernity, regarding the imaginary and institutions, borders play a central role in both the legal and the coercive monopoly the state enjoys territorially, whereby its space-time configuration is defined. Connected to that, the state must also guarantee 'peace, security and order'. Order may indeed become paramount when social life

is understood as a potentially violent process that opposes competitors, adversaries or enemies rather than fellow citizens. The state depends, for the effective fulfilment of its tasks, on those imaginary and institutional underpinnings but also on a material structure, with all the devices necessary for its administrative interventions, not least, of course, those that hinge on the use of force.

2.2.1 *Rule of law and socialist legality*

The paramount and most general component in the system of mediation between citizens and the state, the juridical-political agent putatively created to ensure the former's rights, is what has conventionally, since the nineteenth century, been called 'the rule of law', at least in the Anglo-American tradition, with similar ideas taking hold in other countries. The *État de droit* is one of them, in a liberal mould, the *Rechtsstaat*, another, within an originally more top-down perspective (without a 'free-position') on the relationship between citizen and state.⁶ The abstract, depersonalised character of law, as examined in Chapter 1, stands out in this connection. It implies 'neutrality', 'uniformity' and 'predictability', 'generality' and 'autonomy' from other societal and state elements, as well as the treatment of all citizens (and even foreigners within the territory under the state's jurisdiction) according to legal rules that apply indistinctly and evenly to everyone. Content is eschewed in favour of form and the homogeneous and universal reach of the law, irrespective of whom it is applied to, with no one above or below its purview and application. Institutionally, the rule of law is also dependent upon some level of division of legislative, executive and juridical 'powers', since they should limit one another and avoid that any of them could escape the rules and dictates of the law (the state, as defined above, ought to confine itself to what law dictates). In particular the judiciary – a neutral power, defined by its in principle total detachment from any specific interest – should be independent of other state agencies. This mutual neutralisation should also avoid the risk of the imposition of the particularised views of any of these powers upon citizens, since, once again, this would detract from the rule of law or similar conceptualisations of the relationship between the state and the law.⁷ In practice, when the state is given normative or even ontological priority in social relations, usually the executive has the upper hand, certainly when decisive issues are at stake.

We may add that modern law has created a specific sort of legal system, which is above all regulative rather than prescriptive for action, and only once the agent does not abide by it should repression ensue (sometimes brutally); it also became characterised by the subsumption of the particular under the general, as already mentioned, often deductively or almost deductively. This approach largely stems from the late Roman heritage, whatever

Germanic influences one may find in its development, something open to debate.⁸

The rule of law and similar constructs also depend on proceduralism. This includes the universal rules whereby the universal application of law is carried out, without attention to the concrete aspects of the specific cases at hand. The public character of law, absolutely detached from private interest, and publicity, that is, overall diffusion of information about its existence and operation, is another crucial aspect of modern juridical institutions. In addition, it rests on rules (or 'norms', if you will) that define the production of more specific legislation.⁸ The rule of law is also seen as rational in that it provides predictability in the application of law, with the stabilisation of expectations due to the consistent replication of behaviour on the part of state agents and of how private individuals go about with their powers and privileges.⁹ An increase in the calculability of action – of one's own and of others – facilitates the development of legally structured interactions.⁹ Some would see in the 'common law' system, with the British attachment to customary rules, in contrast to 'civil law', in continental Europe and across Latin America, a limitation of rationality; looking at the issue more closely, this description seems not to be really that accurate. Note that, besides, statutory (parliamentary) law in Britain has cut this customary element to size, while the United States also mixes both approaches.¹⁰

One proviso must be introduced at this stage concerning the abstract character of the rule of law. Law may be absolutely general but may also classify citizens, which hence also become, to some extent, differentiated from others.¹¹ Either way, it must eschew any concrete qualification. Therefore, it only partially admits of some substance, which is subordinated to form. Even in these more restricted circumstances, 'like rules for like cases' must be envisioned, in spite of some restrictions of the law's absolute and undifferentiated coverage. We remain, in this sense, at a high level of abstractness. Fundamental equality before the law in terms of basic rights is supposed in order that the rule of law makes sense in modernity, whatever the limits of its reach at specific moments, with dramatic tensions arising from this, as we have, from another angle, seen in Chapter 1. If there may be variations in a number of lesser laws, with a more restrictive characterisation regarding specific collectivities of citizens, they must all be seen as rights-holders in what refers to fundamental rights; they must be citizens first of all. Short of that, speaking about the rule of law is pointless.¹² This unevenness has become more important as modernity advances, leading some to speak of a loss of substance in the rule of law. However, this seems to have been a far-fetched – and often self-serving – understanding, which has basically waned as the twentieth century progressed, although a real problem is present in this respect concerning the interpretation and application of law.¹³

The rule of law – as opposed to ‘the rule of man’ or ‘the rule of the government’, made up of people – has been crucial for defining the modern juridical order. This is true to some extent, insofar as whatever anyone does must be done in modernity according to the law. It does restrict the power of agents, within or without the state. Regarding the latter, it implies a legal delimitation of power and its domestication, even if it may remain the implicit or explicit source of rights and citizenship.¹⁴ While ‘domesticated’ by law, power is power all the same, therefore partly authorising Weber’s inescapable concept of ‘rational-legal domination’ insofar as it concerns the bureaucracy and the functioning of the state according to legal dispositions, also, in principle if not always necessarily true, when violence lies at the core of its intervention in social life at large.¹⁵ The law does not rule. As we have seen, the law is a medium that allows for the coordination of the interaction between agents, namely, the state and the people that are its actual substance. The depersonalisation of law thus skips over the power of those who apply it and over those to whom it is applied, let alone the actual relations between agents beyond the legal register, which often leads to a skewed application. But these abstract features of law and the rule of law also correspond, to a variable extent, to reality, which in its turn rests on an idealisation, without which the regular reproduction of modern institutions could not be achieved. The law lays down the basic rules for social behaviour and interaction in modernity, with citizens appearing as legally abstract, depersonalised and desubstantialised rights-holders as well as compelled to take up general duties, which the state is responsible for enforcing as much as it is its task to sanction those who dare to disregard them. Besides, as the juridical-political agent we had formerly identified, if the state is crucial for the preservation of one’s rights vis-à-vis other individual agents, the law and its rule are crucial for the defence of the individual against the state itself, limiting domination and making it less arbitrary (ideally simply not arbitrary). This has been a consistent liberal preoccupation ever since the modern state emerged.¹⁶

In its most immediate aspect, the entwinement of law and state, of which the rule of law is a crucial expression, is rooted in and follows the abstractness of the system of rights analytically presented in the previous chapter. It also further delineates the abstract countenance of the modern juridical-political imaginary, institutionally restricting and stabilising its meaning. It is in and through the state, with its abstract legal attributes, that citizenship and civic rights achieve the status of a real abstraction, with the rule of law turning what would be mere general rules into actual or expected behaviour. These real abstract imaginary and institutional configurations shape social behaviour, yet without ever exhausting it, to be sure. But this does not mean that individual agents necessarily or strongly internalise legal rules, a result of which would be a necessary and robust internal sense of obligation. If only external duty should be, however, expected, social life might easily

approach a chaotic situation once institutional problems and eventually crises develop. Therefore, some level of internalisation of law, the principle of the rule of law, and abiding behaviour according to it is to be expected. In this regard, law is evidently a steady means of integration as well as social ‘control’ and repression, including the threat or the direct use of violence by the state, the ultimate guarantor of the rule of law.¹⁷ In contrast, the degree of internal commitment of each citizen to specific laws and the general idea of social life ordered according to the rule of law, beyond cognitive recognition and exhibiting normative internal engagement, with emotional investment (cathexis) and corresponding internal sanctions (emotional discomfort or guilty), are highly variable.

Is the rule of law always respected in modernity? Let us return to the coronavirus/COVID-19 pandemic, which we have dealt with, in Chapter 1, in relation to the limitation of rights. The extent of restrictions of freedom, with the limitation of rights that are part of the free-position examined in the former chapter, was massive during the pandemic, overwhelmingly surpassing anything we might expect in ordinary situations (though not everywhere). Fellow citizens, who ought to be protected, appeared also as an immediate threat, in a curious mutation of the figure of the enemy once their bodies had been colonised by the virus. This of course included everyone, reciprocally. Does it mean that rights fell under the state’s power, which then trumped them? Was the rule of law discarded in the name of citizens’ health and integrity, which would stand therefore not exactly as a right, with rights displaced by the securitisation of social and political life, whether by executive, legislative or judiciary decision?¹⁸ Do extraordinary individual and collective threats – hence the defence of life and individual and collective security – authorise and legitimise measures that, implemented by the state, go against fundamental rights and even the value of human dignity, including, for instance, in extreme situations, torture,¹⁹ against once again the rule of law? Are rights such as articulated in the former chapter just a sham, over which the state lords, merely assigning them an apparent substantiality, which can be squeezed out in the name of security, from the top down? Or is, all things considered, a more complex articulation at stake?

We have seen that, at least during the coronavirus/COVID-19 pandemic, the state moved principally within the bounds of law, especially in countries where the rule of law is well established. But even in that context the frontier between legally authorised behaviour and arbitrary measures has always been tricky to define, despite the fact that courts sometimes decided favourably to governments and parliaments, let alone when courts themselves were the main agents in the definition of such measures. Ad hoc measures were often taken against the background of the threat posed by the pandemic, which in principle justified them. Sometimes some collectivities were targeted for specific measures too, although they were taken in abstract terms

(with substance subordinated to form: older citizens, medical personnel, frontline workers in ‘essential’ services or in production and distribution in general). Where does this leave the rule of law?

Likewise, we must not neglect the possibilities and actual extent of behaviour that circumvents the rule of law. This usually goes without acknowledgement, but one must not turn a blind eye to it. Problematic behaviour refers directly to a sort of institutionalised ‘illegalism’ of which the upper social classes are especially fond, encompassing tax evasion, privileges, frauds, political corruption, racketeering, as well as severe offences and felonies related to a great many issues, which are very often disregarded or condoned by the judiciary. Disadvantaged citizens are usually punished for much less, as sociology pointed out decades ago when it overcame its biased concern with the popular classes’ unlawful behaviour until the 1940s and directed its gaze to white-collar and upper-class criminality.²⁰ On the other hand, the domain of ‘civil society’ and the law – here too implying the rule of law – is distant from the reality of most of the popular classes around the world. Since, in practice, citizenship rights are often not open to these popular classes, they primarily relate to the state via what Chatterjee has called ‘political society’ (which seems to configure a preference underlying his normative perspective).²¹ His assessment may be empirically correct to a large extent, with the proviso that there is doubtless more global variation than he suggests. Can we say, in contradistinction, that the rule of law and the possibility of making claims vis-à-vis the state do not constitute for these populations a normative horizon, as, for instance, Thompson did?²²

Even more serious is the violation of law due to the supposed necessity to protect the state itself, regardless of how it is conceived, whether it has priority or this pertains to the individual, of why it should be defended and the justifications buttressing this defence. That is what lies behind the theories of the so-called ‘reason of state’. Along with big standing armies and security, strong taxation and economic promotion, citizens’ relevance as a collective and virtuous body and their rights are downplayed, the same fate befalling morals and the rule law. The state will run over citizens, morals and the law if necessary to preserve its safety and integrity. This outlook is rooted in and promotes rational expediency in the face of threats. Although the idea appeared during the Renaissance, embraced by ‘civic humanism’, liberalism, especially in practice, has not evinced major problems with its rationale. Revolutionary forces that strove to overcome modernity, especially communists, but also socialists, eventually embraced it, while fascism has been happy to make it a cornerstone of its system of rule. Protecting the state has then taken precedence over safeguarding rights. This remains of the essence at present, a thorn in the side for liberals, who are not prone to recognise the practices of really existing liberal states and avoid speaking about the reason of state, while communist ruling cadres would have no

issue in admitting their own practice, since the defence of socialism as such would supposedly be at stake.²³ If rights are at the core of the modern state and this is as such legally constituted and should absolutely abide by the rule of law, above all in its interventions in social life and regarding other agents, we see with the idea of reason of state that this is only very partially the case. It has never been totally domesticated. The collectivities at its core just too often opt for breaking the law and deceiving the citizenry. Along with a commitment to a defence of the state as the organiser of society, they might fear for their power, connected to state's power, diminish otherwise or even die away, hence rejecting this outcome. Secrecy and denial are plainly essential for the reason of state to work, enduring long after such breaches of the law take place.²⁴

In its extreme, and in view of the establishment of the liberal infrastructure that became central to political modernity, there is always the possibility that the rule of law may be suspended. We would then have the 'state of exception', which, though regulated somehow by law, would suspend rights and guarantees. In principle it does not permanently do away with the rule of law, since it is supposedly temporary, but it has in many cases opened room for rather stable forms of rule that are by no means exceptional. Nazism is the foremost example of this superposition of state of exception and underlying *Rechtsstaat*. The executive gains, in principle, prominence or total power with the state of exception, but the judiciary can spearhead it.²⁵

By themselves, phenomena such as illegalisms, minor ad hoc measures and the reason of state do not do away with the law, at least normatively (though states of exception formally break with it even if cynically recognising its normative superiority). They circumvent its rule, to be sure, in its actual application, which certainly means much. 'Illegalisms' and unevenness, ad hoc measures and even undercover state initiatives, which go hand in hand with those intentional infringements of legality, stay somewhat paradoxically within the bounds of the rule of law, for they do not grant different formal status to individuals, though they harm it to a lesser or larger extent. For the sake of appearances and in order to ensure that things stay plausible, dissonances and tensions between formality and reality must no be pushed too far. On the other hand, the defence of law and its rule by those who break it looks very much like the tribute vice pays to virtue, while the application of naked state and private power often contributes to cooling down the dissatisfaction of disadvantaged people, short of greater turmoil and rebelliousness.

In any event, this potential conundrum differs from the 'rule by law'. Much as this is a concept whose core content and use may not be entirely clear, we may define it with the idea that the uniformity of law allows it to consistently mediate social interactions without properly and in a strong sense recognising rights and rights-holders as well as allowing, when necessary,

for the more arbitrary conduct of the executive and legislative powers. The older German *Rechtsstaat* could partly be seen an expression of this sort of legal system, but it eschewed arbitrariness and political manipulation: its administration ought to treat every imperial subject with neutrality and the evenness of law.²⁶ Rule by law as such has been discussed mainly regarding modern Japan and China, especially the latter, with authoritarian collectivism, implicitly and perhaps incognizant, committed to draw a lot upon it in its heyday. This configuration rests on formal legislation, according to which the state should operate uniformly. Yet law is used discretionarily against specific state targets, possibly implying ‘lawfare’, the ‘abuse of law’ or perhaps its use in favour of something state officials want to promote. It constitutes an instrument of state power – and sometimes, in collusion with it, private power – rather than a means to domesticate and limit it, as the rule of law is supposed to do.²⁷ Frequently, what appears as the rule of law is simply a disguised form of rule by law – in the West sometimes too, when law is abused, though not so repeatedly or comprehensively. Can contemporary Russia be integrated into the rule of law framework, with most citizens and ordinary cases following almost within the normality of the rule of law and a plain definition of rights and rights-holders, while arbitrariness is rampant and usually found when cases become more critical and involve strong interests connected to the state (in collusion with private agents)? Whatever the additional conceptual subtleties required, the rule of law is here merely a semblance, with a lot of disguised or open violence.²⁸

At least explicitly, liberalism, with the priority it attributed to rights-holders and citizens, has prevailed over a view of the state which projects it as prior and of greater dignity, which was at the core of Absolutism, even in its ‘enlightened’ forms. Beyond that, a more instrumental view was and remains very prominent, with the traditional state-centred understanding flaring up here and there. We will have the opportunity to discuss this later.

In the history of authoritarian collectivism, the rule of law found a different name, used to delimit its ‘revolutionary’ identity vis-à-vis liberal states: ‘socialist legality’. It rested on similar principles. After the upheavals of the revolutionary processes were left behind, the uniform application of the law was a goal of many of the states that emerged in its aftermath as a foremost expression of its juridical infrastructure. Repression of ‘counterrevolutionary’ elements was not to be hindered, but for most of the population, most of the time, law should have the same qualities that ‘bourgeois’ law displayed: predictability, impersonality, universality – as well as, though this was neither intentional nor explicitly formulated, an abstract character, to start with regarding civil rights. No division of functions, of course, appeared concerning the executive and the legislative, which would be united in the ‘working-committees’ set by soviets and other councils or, showing a more hybrid countenance, by parliaments in so-called ‘popular republics’. The

judiciary was supposed to be, nevertheless, independent. The role of the communist party or similar organisations in a party-state in which it had centrality not only affected the functioning of the executive and the legislative. More threateningly, it also implied the possibility of – more informally and against the letter of the law – the party interfering in the judiciary if its interests were at stake.

The 1936 Stalin Constitution set the framework for this perspective, just when the most heinous crimes of Stalinism were being committed. Subsequent charters across the world and ‘socialist’ legal practices furthered to a greater or lesser extent the application of ‘socialist legality’ and the respect for the civil rights of most of the population, with great emphasis on duties to support the socialist state. In addition, the official communist doctrine always saw the law as a means to further state goals, directing and educating people and facilitating state and society joint action in a very instrumental way.²⁹

2.2.2 *The judiciary*

Jurists of different sorts and hues have been at the core of developing juridical thought and juridical systems in modernity. The view of an abstract entity, based on abstract law, stemming from abstract reason, has always been very important for them. This role was especially important in ‘civil law’ areas, although in ‘common law’ countries things were somewhat different and a more historical approach was adopted. Jurists were, in any case, in considerable measure the administrators of the ‘universal’, of which the state claimed a monopoly.³⁰ Law was its primary expression. France excelled in the universalising rationalisation of law, Germany started the process through a universalising rationalisation of the administration, while common law Britain privileged the systematisation of existing customary law and the stabilisation of expectations rather than formalisation, at a lower level of abstractness. Concrete issues should continue foreign to modern abstract law, even when judges and other legal operators invoke precedent in common law, at least to some extent (or at least one can argue this way).³¹

First of all, law operators constitute a particular collectivity which has its roots in Roman paradigms, where it developed over many centuries. Such development started with the oligarchical religious *pontifiqui*, who initially systematised the traditions of the Roman *paters* and the city’s *ius*, extending through a long line of oligarchical development in which plebeian-oriented *lex* and then once again an oligarchical, yet more broadly and increasingly abstract *ius* returned, up to the collaboration with the emperors, the consolidation of law given from above, along with an abstract, specialised and detached conception of *justizia*.³² During the Middle Ages, this group of legally oriented agents was reduced and existed principally within the

Church, occupied with canon law, and regarding trade relations.³³ With modernity, it resumed and deepened its specialised character, which has come to encompass all law operators and, once again, the whole of state units and beyond.

Law operators thus came to comprise in modernity a professionally specialised group. Some might be inclined to see it as connected to an 'autopoietic' system, the law, if this sort of system theorist did not frown upon references to social agents. Others might speak of a specific social 'field', with its *habitus*, that is, shared mores, behaviours, expectations, strategies and the like.³⁴ Complex careers are articulated within and without the state. Enhanced specialisation developed within this category of agents, with roles varying from country to country: jurists, prosecutors, lawyers, barristers and judges of various instances and ranks. Some of them are part of the state apparatus, as a particular, specialised part of it, while others move from outside the state into it when they are professionally dealing with the law. They are not, however, the only ones within the state intensely entangled with the law. All state officials cannot but deal with it on a daily basis, especially as to administrative law (namely, the part of public law that regulates the state internally and in its relations with the outside world of citizens and societal processes).³⁵ This goes beyond what people do in daily life, though everyone is a 'lay' legal agent in modernity.

Prosecutors and judges, and sometimes public lawyers, work mainly within the state apparatus; lawyers mostly outside. Jurists, including jurisprudence theorists, are those who systematically think about the law, regardless of the career-path taken. Abstractness, depersonalisation and desubstantialisation were and to a large extent persist as characteristic for their behaviour, decisions and identity, in that the characteristics of modern law – impersonality, universality, neutrality – must also be expressed in the decisions and thoughts of this large groups of professionals. This is especially true for those operating from within the state, influencing their demeanour and general conduct. In any event, there is no reason to deny their connections to the societal side of social life (to classes, genders, races, ethnic groups). It is true that in the US, by and large, and in other countries, popular juries have a role to play in the decision of judicial cases involving serious crimes. They are nevertheless subordinated to specialists. On the other hand, all juridical systems are open to external influences, some more, others less, direct as well as by the atmosphere of the times, the more so the higher we go in the ladder of judicial systems, even though this does not necessarily mean subordination to other state branches. Moreover, we must bear in mind that, as in all aspects of juridical-political life in modernity, the citizen is supposed to be the basis of the judiciary system, despite specialisation, the relative closure of the system and how real this is. Rights-holders and their rights play, regardless, a crucial role in whatever happens inside,

which is often overlooked.³⁶ To be sure, what was identified as a limitation of ‘access to justice’ by the end of the twentieth century, through the possibility of having recourse to the system and genuinely enjoying rights, remains a notorious drawback.³⁷

Once again, we see several similarities as well as differences when we focus on the judicial apparatus of authoritarian collectivism. Much confusion was inevitable initially, as in all revolutionary processes. Once stabilised, two elements often coalesce. On the one hand, the judiciary becomes increasingly developed, with judges and lawyers playing a key-role, and, drawing upon the Soviet example, public prosecutors enjoying far greater latitude, charged with the supervision of cases and the task of keeping the consistency of the system. On the other hand, popular participation in the work of courts and the election of judges were recurring features of ‘real socialism’, as proof of its popular and working-class character. Overall, law was public law, with all its branches supposedly more or less well-developed.³⁸ In China, in particular, this was partly taken in an innovative direction, with judges exploring alternatives in a moment of intense revolutionary activity, known as the Yan’an Way. A judge commanded the procedures, while keeping the informality that fundamentally characterised processes and the subdued popular participation that ought to take place. These popular-geared judiciary proceedings, never achieving dominance, remained significant. In fact, formalisation and professionalisation are becoming stronger to deal with civil cases, often through business litigation, as China has steered a new course since the late 1970s. Consequently, lawyers, who had been disbanded as a professional category, were reinstated.³⁹

2.2.3 *The police*

The observance of internal security and civil peace in an ordered society is a task trusted upon the state – which is supposed to have the ‘monopoly of legitimate violence’ (or ‘force’), in principle as a ubiquitous threat and, if necessary, with its practical application. That is how it should safeguard law and its rule, as we have already seen, applying coercion, when necessary, although all individuals should be, as abstract and depersonalised rights-holders and citizens, treated alike. Within the state’s territory, there should be no competition in this regard.⁴⁰ Applying coercion has been the prominent role of the police, an invention of modernity that took some time to be fully institutionalised, leaving behind the multitask configuration of armed forces, which became, in turn, agents that should deal with external defence (or aggression). As petty crime had become rife, light weaponry had been entrusted to the police, which have been receiving much heavier weapons and other rough repressive instruments in the context of their growing militarisation. Besides, the capacity of the state to watch over its citizens has

consistently increased, that is, its capacity to implement vigilance upon society. The police are thus becoming thicker and more capillary.⁴¹

As modernity progressed, a more encompassing and multi-layered system took up the task of applying sanctions, of which the police and prison systems became the direct executors. It is – in Anglo-American terminology – the *criminal justice system*. Law-making bodies and the judiciary, backed by the police, are its principal elements, based on penal law, its production, adjudication and application, and its eminently coercive character, based on the definition of ‘crime’, ‘criminality’ and ‘criminals’. Victims are seen as deserving the defence of their rights by the state. Depending on how it is conceived of and the specific criminal act committed, misdeeds may be perceived as damaging the state as such. Legally administered *pain* underpins the logic of the system, but there is a balance between crimes and the penalties that must follow. The punishment system is rationalised so that justice is supposedly done according to a universal yardstick. More recently, the swelling of the criminal justice system and mass incarceration have ensued, as a means of mass disciplining but largely as a deposit of the unwanted people, while neoliberal rationality has fundamentally discarded the rights frame in favour of efficiency, in the context of a clear division between the spheres of the state and the economy.⁴² The derivation is not direct, but it is difficult to reach a different endpoint when the state is seen as a minimalist ‘protective association’, technocratically run, whose exclusive aim is to shield individuals ‘against force, theft, fraud’ and guarantee the ‘enforcement of contracts’, thus exerting ‘retaliation, punishment, and exaction of compensation’ against those who do not comply. Inevitably, in such social climate, public life takes on a defensive quality due the fact that those individuals – and the state itself – reckon with each other basically as potential enemies.⁴³

If the abstract and depersonalised individual citizen was at first and remains the prime object of this criminal justice system, he or she, when committing some legally deviant act, should, as a responsible agent, be penalised. In this sense, it is inevitable that it is more concretely individualised. This individual is then fully or partly stripped of its rights and only eventually are these returned to this citizen once he or she has been brought back to socially acceptable behaviour, that is, as someone who accepts the free-position of its fellow citizens and the juridical-political apparatus that mediates between them and guarantees the integrity of the legal system. While reason was universal and rational individuals were in this regard interchangeable, unreasonable behaviour was not, with individuals evincing some deviant or evil substantive qualities. Mere punishment and incapacitation have increasingly become the rationale for imprisonment rather than the readjustment of the individual.⁴⁴ Besides, the police and also several other instances of the criminal justice system, to start with the courts of justice, do not necessarily

or even often follow the basic legal rules and the rule of law, or, for that matter, ‘socialist’ legality. They create norms that often contradict these legal niceties, especially when fragile citizens (the poor and workers, discriminated racial, ethnic and other marginalised groups, often women as victims of men, let alone ‘deviant’ sexualities) are the object of its intervention. To be sure, what may be called the ‘prerogative state’ in fascism, of which Nazism was an extreme instance, superposed the exceptionally violent party apparatus, genocidal in that case, to the former criminal justice system, though at least for a good while the judiciary functioned without great alterations insofar as political issues did not cross its path.⁴⁵ At present we see further developments of the criminal law and the police, with the strengthening of the former and mass incarceration as well as the (re)militarisation of the latter.⁴⁶

Authoritarian collectivism did not formally deviate from liberal criminal systems of justice in this respect, including their police forces. If anything, it was often more brutal – at times almost genocidal, too; or, when things settled down, its police forces had a broader area of intervention, since the free-position in which the citizen should enjoy privileges and immunities was not really at stake in its juridical infrastructure. Citizenship rights were, in practice, more conditional, placed below the prerogatives of the proletarian revolutionary state but, in fact, of the party-state. In addition, ‘administrative justice’ was kept for a long time in criminal law and seen as rationally expedient to tackle ‘counterrevolutionary’ activity (whatever the act so defined), running counter to the 1936 Soviet Constitution and those moulded after it. Law reproduced the standard catalogue of crimes against the person, with the primary concern and the definition of unacceptable infractions centring on theft and the destruction of state property. These were deemed counter-revolutionary actions against which very harsh punishments were meted out. Yet, in what is formally crucial, there was no real break in the functioning of the criminal justice system in so-called ‘real socialism’ vis-à-vis the imaginary and institutions of modernity, with the appendage of an ‘educational element’ (especially in China) aimed at creating a new type of cooperative and disciplined citizen. Like the 1936 Constitution, the Soviet penal code was an export product to other authoritarian collectivist countries.⁴⁷ What remains of that old party-state, already in a different social configuration, has taken these aspects of surveillance and repression even further.⁴⁸

2.3 The bureaucracy

The judiciary, strictly considered, and the police are bodies comprised of professional officials in modernity. That is to say, they are part of the state apparatus and a vital component of its bureaucracy, partaking, as a consequence, in the formalities and controls of this sort of administrative organisation, with the peculiarities that accrue to their specialised roles.

The bureaucracy is however much larger. Curiously, given the crucial role it plays in modern life, and despite considerably more empirically-oriented research, Weber's ideal-typical account of bureaucracy – though not necessarily his view of it as lying at the core of 'rational-legal domination' – is still the standard reference for its analysis. I resume it here with some additions and a more supple approach. At the core of bureaucracy we find instrumental rationality, that is, efficiency, the capacity to adjust means to ends increasingly better; formalism, the impersonal selection of officials and the impersonal, neutral relation they entertain with the public (and between themselves); orientation according to abstract law and specific training of officials to accomplish their tasks rationally; internal hierarchy (also impersonal), division of labour, competence and qualification. To be adequately carried out, administrative tasks must count on a stable environment and well-trained officials, separated from the 'means of administration', hence hired according to a free formal contract, and liable to punishment. They are not allowed to entertain a prebendal approach to the state, that is, to use it as their patrimony in order to extract resources from it. Probity is the expectation, otherwise they are committing a criminal offence. Patronage was initially constitutive of modern bureaucracy, which was piecemeal shed as it developed. Reducing uncertainty in the state administration contributed to the drive towards professionalisation, which was indeed a long process.⁴⁹

This model remains the framework for the functioning of bureaucratic bodies and their understanding, but, beyond these primarily institutional elements, more dynamic aspects must also be grasped. First of all, informal ties and courses of action are crucial for the practices and efficiency of bureaucratic organisations. They do not surpass the formal organisational structure, instead complementing it.⁵⁰ On the other hand, rationality is in reality bound, since agents move in a more or less opaque environment, regardless of the effort to be rational-instrumental in their behaviour. Consequently, administration involves a sort of 'muddling through', in which means and ends sometimes turn into another.⁵¹ This process follows, notwithstanding this somewhat chaotic aspect, some stages. They form an irregular cycle, which we may, luckily, analytically decompose. We may thereby arrive at a model that features: agenda-setting, elaboration of policies, decision-making, implementation and evaluation. Issues come to the attention of officials and flow into the agenda depending on how they are framed, coming up on processual streams, the content of which changes over time. But experience tells us that, state officials do not necessarily make an effort to carry out their duties to the end, nor do they always play by the book; the law has loopholes (on purpose or not) and oversight is often not on offer. We should remember that Weber's concept is an ideal-typical one. If I draw upon it to craft analytical categories here, account for these other aspects that go

beyond his ideal-type and are crucial for the actual workings of bureaucracy buttress my analytical exposition.⁵²

All in all, the state and its bureaucracy appear as *abstract, neutral and universally oriented*, therefore reproducing the abstract definition of individual rights-holders and citizens, as well as law, such as analysed in Chapter 1. We are therefore within a configuration in which everything is in this respect similar. Everything should be, on the state side of the modern divide, which we established in the last chapter, tasteless, odourless or colourless. As a *social form*, the state, with its legal character and bureaucratic scaffolding, also initially expelled to the other side of the divide that which consists in the societal process more generally, that is, anything that could pollute its emptied abstract substance.⁵³ The concrete was both short of and beyond it. We had seen this as to the judiciary and the police, with now the whole bureaucratic apparatus and its functioning completing the picture. This was the perspective of liberalism but also of other currents that lent more centrality to the state. Whether reality corresponded to this formal conception in any setting is certainly arguable; in particular historical settings, it is unlikely that it did. Still, as rights and citizenship, as we have seen in the former chapter, this does not detract from a general (self-)understanding of what states and their bureaucracy should be in modernity, nor, very often, from how it has in considerable measure developed. We encounter here the same continuity between fascism and liberal ideas, since formality and abstraction were not discarded in routine administration when fascists, not least Nazis, came to power, with of course a superposition, once again, of the prerogative state over this plainer and in principle neutral state. The state remained a modern state under these political alternatives to liberalism.⁵⁴

More recent state adjustments have stuck to these abstract arrangements, admittedly with a twist. So-called ‘New Public Management’ (NPM) was pushed forward by neoliberal market-inspired ‘public choice’ approaches. They took much from ideas that can be found in more radical anti-statist (and anti-tax) libertarian (or anarcho-capitalist as well as anti-utilitarian) positions (which, in some cases, would privatise even the police and the courts, transferred to competitive markets, while their present state monopoly would be abolished).⁵⁵ Post-Fordist reforms were then applied to the state, although without entirely dismantling it.

The NPM’s perspective reiterated a host of negative views: distrust of public officials, understood as self-interested individuals who permanently try to maximise their power, gains and career goals instead of being concerned with values, honour and mission (thus at best on the limits of the neutral relation with the state and the public they should serve); the use of quantitatively based evaluations of results according to ‘economy, efficiency, efficacy’ (eee) criteria (a perspective in which the market mechanism plays a central role); the transformation of citizens into clients and consumers (reproducing

once again the market outlook); the goal to shrink the state and concentrate its activities in what they defined as core areas, possibly through outsourcing (giving other activities over to the market). Administrative flexibility and responsiveness should ensue. These reforms swept the world, primarily in Anglophone countries, from the 1980s onwards. Yet over-centralisation and heightened control, despite desire or rhetoric, have often resulted from such reforms, instead of leading to more flexibility, with sometimes unintended and unwanted outcomes. These show a lack of efficiency, partly due to staff shortage. While these reforms partly challenged bureaucratic abstractness, market abstractions associated with the 'eee' criteria, along with cost-effectiveness and quantitative results, superimposed new abstract market-oriented criteria upon those formerly in place. Competition between different service offers within the state was tried out too.⁵⁶

Moreover, there is a generalised process of formalisation and rationalisation of social life by and large, via abstractions and the dissemination of rules, norms and procedures, with a strong bureaucratic imprint. Driven by the state and partly by societal demands, they seem to unfold almost independently on the other side of the modern divide, without its direct subordination to the state. Whether this can still be called bureaucracy is open to question, but it may be that, even if indirectly, it has a strong colonising potential over whole areas of social life.⁵⁷

Much previous to that, in a rather different universe of worldviews and social realities, authoritarian collectivism underwent an intense process of bureaucratisation as well, with most of social life absorbed by the state (bear in mind the caveat that, as is well known, social life as a whole has been constantly bureaucratised, including its 'private' economic and social dimensions, in modernity too). To some extent there is a replication of what the foregoing and competing modern civilisation had forged, that is, the development of a 'rational-legal' bureaucracy that follows universal rules, which should be neutral and whose behaviour was to be formally defined. It could not legally appropriate state resources – a major, formally the worst, crime in the world of 'real socialism'. It was keen on instrumental rationality, that is, on efficiency, the increasing capacity to adjust means to ends, internal hierarchy, division of labour, capacitation, competence and qualification. Unfortunately, a blunder seems to have been the upshot of its actual operations in all these aspects.⁵⁸ All outstanding socialist political leaders – above all Mao⁵⁹ – complained about bureaucracy and its counterrevolutionary attitudes. But there is still another issue to be considered.

First of all, instrumental rationality, especially connected to formalism and abstractness, was only part of the story in authoritarian collectivism. The state was supposedly the state of the proletariat, seconded perhaps by other revolutionary classes – mostly the peasantry. It was supposed to have eventually mellowed in the 'all-people' state or the like once conflicts calmed

down and capitalism was left behind. There was therefore always an element of substantive rationality linked to the set of values intrinsic to the socialist revolution as it was then perceived. But again, this was not the only difficulty. Apart from the problems that the very functioning of bureaucracy may evince in modern and also in more backward societies (where by and large ‘real socialism’ took root), the party-state raised its head. The prerogative state was thereby back on the scene. Bureaucrats had to accept that there were forces which hovered above them and to which they must in the end bow. Even though the socio-economic basis has changed radically, bureaucratic mechanisms and the prospect of tampering with them by the party-state’s deepest layers remain crucial in the countries where the latter’s dominance lingers, despite the development of the market in the economic domain.⁶⁰

Weber was one of the first to point to the likelihood of this coming about in socialism, with, he also imagined, the means-ends chain and mere instrumental rationality predominating.⁶¹ Engels had exactly the opposite understanding of the matter, sharing on the other hand this administrative outlook of social life, since he too banked on Saint-Simon’s belief that the ‘administration of things’ rather than of ‘men’ would take over as socialism matured, with the state ‘withering away’ (it *stirbt ab*, as he says in the original text).⁶² Revealingly, both Weber and Engels were wrong. That bureaucratisation grew to new and absurd heights under authoritarian collectivism, whereas the state grew rather than shrank, is unobjectionable. Stalin celebrated these developments, which constituted the basis of his power.⁶³ However, by no means was the upshot of the process merely bureaucratic routine and domination, nor did the mere administration of things result. Instead, a different way of organising power emerged, which radicalised and intensified some essential aspects it had acquired in modernity, far beyond bureaucratic domination, legal and rational or not, engendering a riddle that has often puzzled liberalism and Marxism alike.

I must finally bring up some sombre developments in the conjunction of law and bureaucracy. I had the opportunity, in Chapter 1 and above, to point to the lurking shifts in the law and regulations during the coronavirus/COVID-19 pandemic, carried out (implicitly in my argument at that point) by all branches of the state – the executive, the legislative and the judiciary. This sometimes entailed the implementation of ad hoc measures. Such shifts had already somehow emerged in the face of broadly defined ‘terrorism’ and immigration, with individuals and collectivities profiled and targeted by the state.⁶⁴ Again we must ask: is there a discernible trend in these shifts? Do they announce a new sinister legal-bureaucratic regime or are they no more than ripples on the surface of the rule of law whereby the traditional reason of state is, perhaps more explicitly, manifest? Are they an omen of a juridical tissue marked by heterogeneity and targeted individuals and groups

(terrorists, ‘enemy combatants’ and the like), hence seriously damaging the rule of law, whether because those shifts clash with it or because the rule of law and the so-called ‘state of exception’ are speciously merged? Or will these moves remain inconsequential or at least of moderate relevance only, simply reinforcing denegated elements of liberalism?

2.4 Centring and decentering

A final analytical reasoning is in order about the essential inner workings of the modern state. As a collective subjectivity, the state has different specialised bureaucratic and political departments with varied levels of external integration. What the right hand is doing may contradict what the left hand does. For instance, what the judiciary decides is not necessarily what the police carry out, nor economic or finance ministries are necessarily in complete agreement with the desires of parliament. There is no necessary common direction for the inner organs and officials of the state. All of them should simply stick to the basic parameters of formality, universality and impersonality, in sum, abide by the rule of law, with its abstract countenance. State agencies and officials also share in principle the imperative of state reproduction. The state may indeed have recourse to a powerful decision-making centre at the heights of the executive, but this has to be won with stringent everyday efforts, legal considerations and often amid exacting conflicts.

In other words, the level of centring of a state is not always very high. Though it is an agent, the state is no individual, and its level of centring varies, implying either compact or looser intentionality and causality. It produces change or stability within its territory regarding the societal side of the modern divide and, last but not least, its own apparatus. If, in the short run, greater potency is commonly associated with higher levels of centring, we are bound to find more inconsistency in the long run, since the state is inevitably cut across by contradictory forces. They push in different directions, centrifugally, while its decision-making centres, mainly inside the executive, push in a centripetal direction, that is, towards its decentering. The resultant, more or less compact in terms of intentionality, is its multifaceted impact on social life, mediated by the bureaucracy and the law.

Notes

- 1 Quentin Skinner, ‘A genealogy of the modern state’, *Proceedings of the British Academy*, vol. 162 (2009): 325–370. Machiavelli seems to have been the first to set this in ink. Niccolò Machiavelli, *Il principe* (1532), in *Edizione nazionale delle opera di Niccolò Machiavelli* (Rome: Salerno, 1997). For the Florentine author, see Claude Lefort, *Le Travail de l'œuvre Machiavel* (Paris: Gallimard, 1972).

- 2 John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988), chap. 5, spoke of the ‘power of punishment’ given to one agent alone, the ‘executive’, whether one person or a collective entity, once a civil and political compact was constituted. Immanuel Kant, *Metaphysik der Sitten*, in *Werke*, vol. 8 (Frankfurt am Main: Suhrkamp, [1797] 1977), pp. § 45, pp. 430, §§ 47–49, pp. 433–436, was, as usual, very systematic: he depicted the state as the ‘association of a number of people under the law’ (*Vereinigung einer Menge von Menschen unter Rechtsgesetzen*), as an ‘idea’ and a *civitas*, a legal entity based on ‘public law’. To be effective, it had to be backed by ‘force’ (*Gewalt*). For the harsher, security-privileging view, see Thomas Hobbes, *Leviathan [or the Matter, Forme, and Power of Commonwealth Ecclesiastical and Civill]* (Cambridge: Cambridge University Press, [1651] 1996).
- 3 Georg Jellinek, *System des subjektiven öffentlichen Rechte* (Tübingen: Mohr Siebeck, [1892, 1905] 2011), chaps 1, 5–7; Idem, *Allgemeine Staatslehre* (Berlin: O. Häring, [1900] 1914), pp. 283ff. Over and above a ‘public sphere’ of opinion, this public constitution of law, in its manifold aspects, has underwritten the opposition between public and private, that is to say, the dual character of modernity. It is also relevant to note that, whereas for the Romans the ‘public’ referred to collective life, modernity basically connected it to the state – despite the subordinate relevance of the societal aspect of the public sphere.
- 4 Hans Kelsen, *Reine Rechtslehre. Einführung in der rechtswissenschaftliche Problematik* (Vienna: Verlag Österreich, [1934, 1960] 2000, 2nd edition); Idem, *General Theory of Law and State* (Cambridge, MA: Harvard University Press, [1945] 1949); Idem, ‘On the basic norm’, *California Law Review*, vol. 47 (1959): 107–110. For abstraction and ‘generality’, especially in earlier works, see Idem, *Hauptprobleme der Staatsrechtslehre entwickelt vom Rechtssatze* (Tübingen: J. C. B. Mohr [Paul Siebeck], [1911] 1923), p. xiii. Intricacies and apparent inconsistencies, in Kelsen’s different writings and successive editions, beset the concept of ‘basic norm’, whether as a pristine authorisation to produce general, constitutional, norms; as having a transcendental or ‘hypothetical’ status; or even as general norms themselves, for instance. See Joseph Raz, ‘Kelsen’s theory of the basic norm’ (1974), in *The Authority of Law* (Oxford: Oxford University Press, 2009). Other authors, battling Kelsen’s positivism, stress different sources of law, distinct from written norms, with a greater role for judges, justice – including natural rights as a historical construction – and rhetoric, for instance Chaim Perelman, *Ethique et droit* (Brussels: Editions de l’Université de Bruxelles, 2008), pp. 569–576; or emphasise the hidden strength of concrete elements in Kelsen’s theory – including bourgeois society, a lurking natural rights conception and an immediate connection to the state, such as Umberto Cerroni, *Marx e il diritto moderno* (Rome: Editori Riuniti, 1962), pp. 37–40, 119–154; or, still, criticise the lack of an immanently democratic connection in his definition, such as Andreas Kalyvas, ‘The basic norm and democracy in Hans Kelsen’s legal and political theory’, *Philosophy and Social Criticism*, vol. 5 (2006): 573–599. Kelsen’s theory shows however great ambiguity insofar as law configures rights, with the former and the state tightly entwined prior to the definition of rights, though. The vague characterisation of the ‘basic norm’ allows him to skip the issue, but this does not make the problem less acute, with a sort of creeping hierarchical authoritarianism penetrating his positivist reasoning.
- 5 Jellinek, *Allgemeine Staatslehre*, especially pp. 386–387; Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B. Mohr [Paul Siebeck], [1921–22] 1980), Part I, chap. 3, Part II, chaps 7–9.

- 6 Roberto Mangabeira Unger, *Law in Modern Society* (New York: Free Press, 1976), pp. 52–54, 176ff; Idem, *Knowledge and Politics* (New York: Free Press, [1975] 1984), pp. 72–76; William E. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge, MA: The MIT Press, 1994), pp. 68–75; Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004); Dieter Grimm, *Die Bedeutung der Weimarer Verfassung in der deutschen Verfassungsgeschichte* (Heidelberg: Stiftung Reichspräsident-Friedrich-Ebert-Gedenkstätte, [1990] 1992), pp. 8–9.
- 7 The rule of law made its debut in the crucial document drafted by the Levellers, ‘Agreement of the People’ (1647), in *The Putney Debates* (London: Verso, 2007) and in Locke, *op. cit.*, chaps 10–12. For the separation of powers, see Charles de Secondat de Montesquieu, *De l’Esprit des lois* (Paris: Gallimard, [1758] 1995), Book 11, chaps 4, 6; Alexander Hamilton, ‘Federalist no. 9’ (1788), in Terence Ball (ed.), *Hamilton, Madison, and Jay: The Federalist, with Letters of Brutus* (Cambridge: Cambridge University Press, [1788] 2003). A high degree of monarchical-feudal archaism, still distant from the constitutive principles of the modern liberal republics, is detectable in Montesquieu, although he stressed the necessary stability of law, against despotism as well as probably ordinary people. While in many classical authors the judiciary was conceived as part of executive power, he proposed a path-breaking conceptualisation by lending it greater autonomy. See Louis Althusser, *Montesquieu, la politique, l’histoire* (Paris: Presses Universitaires de France, 1974).
- 8 Aldo Schiavone, *Ius. L’invenzione del diritto in Occidente* (Turin: Einaudi, [2005] 2017), pp. 277, 326–77ff. Contrast this with the general prescriptiveness of the Sharia and Chinese ancient legalism. Cf. Patricia Crone, *Medieval Islamic Thought* (Edinburgh: Edinburgh University Press, [2004] 2005), pp. 8–9; pp. 25–32; Dingxin Zhao, *The Confucian Legalist State: A New Theory of Chinese History* (Oxford: Oxford University Press, 2015).
- 9 Niklas Luhmann, *Das Recht der Gesellschaft* (Frankfurt am Main: Suhrkamp, 1993), p. 125.
- 10 Weber, *op. cit.*, pp. 387–513; John H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1969); Herbert L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, [1961] 1994), p. 98.
- 11 This issue already comes up in Jean-Jacques Rousseau, *Du Contrat social, ou principes du droit politique* (1762), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971), chap. 2.6; See also Scheuerman, *op. cit.*, pp. 68ff, 74–75.
- 12 This is what makes Raz’s (*op. cit.*) views preposterous when he admits the rule of law to the exclusion of slaves. Only with a developmental, not a permanent and static view, towards universal inclusion, can this be acceptable, if only very partially.
- 13 Unger, *op. cit.*, pp. 52–54, 176ff; Tamanaha, *op. cit.*; Scheuerman, *op. cit.*; Idem, *The End of Law: Carl Schmitt in the Twentieth-first Century* (New York and London: Rowman & Littlefield, 2020, 2nd edition). If this issue, Scheuerman argues, worried Schmitt in terms of what he defines as the ‘indeterminacy of law’, what was resolved through the sheer will to power, it dramatically lingers on today.
- 14 Jellinek, *Allgemeine Staatslehre*, pp. 386–387; *System des subjektiven öffentlichen Rechte*, chaps 12–13.
- 15 Weber, *op. cit.*, Part II, chap. 6.
- 16 For instance, Locke, *op. cit.*, chap. 11. The idea of penal ‘guarantism’ and the preservation of individual rights against the state finds its roots therein. See

- Luigi Ferrajoli, *Diritto e ragione. Teoria del garantismo penale* (Rome and Bari: Laterza, 1989).
- 17 Talcott Parsons, *The System of Modern Societies* (Englewood Cliffs, NJ: Prentice Hall, 1971), pp. 18–20; Idem, ‘Some reflections on the place of force in social process’ (1964), in *Sociological Theory and Modern Society* (New York: Free Press, 1967); Jürgen Habermas, *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992), pp. 168–170, 361–366.
 - 18 Matthias Lemke, *Deutschland im Notstand? Politik und Recht während der Corona-Krise* (Frankfurt am Main: Campus, 2020). He stresses the Hobbesian state moment – generating security and the defence of life from the top down. This seems far-fetched, though, since the framework of rights was kept despite the executive’s augmented role in Germany and many other places.
 - 19 Jan Philipp Reemtsma, *Folter im Rechtsstaat?* (Hamburg: Hamburger Edition, 2005), pp. 117, 125.
 - 20 Edwin H. Sutherland, ‘White-collar criminality’, *American Sociological Review*, vol. 5 (1940): 1–12; Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris: Gallimard, 1975), pp. 98–106; Alessandro Baratta, *Criminologia critica e critica del diritto penale. Introduzione alla sociologia giuridico-penale* (Bologna: Il Mulino, 1982).
 - 21 Partha Chatterjee, *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (New York: Columbia University Press, 2004).
 - 22 Edward P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Penguin, [1975] 1990), chap. 10; Bob Fine, *Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques* (London and Sidney: Pluto, 1984).
 - 23 Friedrich Meinecke, *Machiavellism: The Idea of Raison d’État and its Place in Modern History* (New York: Transaction, 1957); Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge: Cambridge University Press, 1992); Maurizio Viroli, *From Politics to Reason of State: The Acquisition and Transformation of the Language of Politics, 1250–1600* (Princeton, NJ: Princeton University Press, 1992); Mark Neocleous, *Imagining the State* (Maidenhead: Open University Press, 2013), pp. 40–46. At that initial stage, Tacitus was pitted against Cicerone, in a line of descent that started with Machiavelli and Guicciardini (still a traditional humanist), but restructured by many after him and culminating in a renewed version in Hobbes’ (*op. cit.*) disciplining and self-defensive sovereign, according to natural law, which radicalised Grotius’ view. Locke’s (*op. cit.*, chap. 14) ‘prerogatives’ of the executive were strategic in the transition to liberalism, though the executive should be concerned with the ‘good’ of society. A more explicit consequentialist ethics was important for communism, accompanied by a similar, long-term view. The most explicit version is found however in Giovanni Botero, *Della Ragion di Stato* (Venice: A Presso I Gioliti, 1589, facsimile edition). See further Viroli, *op. cit.*
 - 24 As classically argued in Gabriel Naudé, *Considérations politiques sur les coups d’État* (Paris: Gallimard, [1667] 2004), chap. 2.
 - 25 Actually sympathetic to it, see Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker & Humblot [1932] 2009). Very critical of it and rather anguished, see Giorgio Agamben, *Stato di eccezione* (Turin: Bollati Boringhieri, 2003).
 - 26 Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism* (Durham, NC and London: Duke University Press, 1997), p. 31.
 - 27 Dan F. Henderson, ‘Law and political modernization in Japan’, in Robert E. Ward (ed.), *Political Development in Modern Japan* (Princeton, NJ: Princeton University Press, 1968); Randall Peerenboom (ed.), *Asian Conceptions of the*

- Rule of Law: Theories and Implementation of Rule of Law in Twelve Countries, France and the US* (New York and London: Routledge, 2004).
- 28 Maria Popova, 'Putin-style "rule of law" & the prospects for change', *Daedalus*, vol. 146 (2017): 64–75.
- 29 The idea started with K. Marx, 'The Civil War in France' (1871), in K. Marx and Friedrich Engels, *Collected Works*, 1870–1871 (London: Lawrence & Wishart, 1986); V. I. Lenin, *The State and Revolution: A Marxist Theory of the State and the Tasks of the Proletariat in the Revolution* (1918), in *Collected Works*, vol. 25 (Moscow: Progress, 1964). What really happened is described and discussed in John N. Hazard, *The Soviet Political System* (Chicago: The University of Chicago Press, 1980); Kazimierz Grzybowski, *Soviet Legal Institutions: Doctrines and Social Functions* (Michigan, MI: Michigan University Press, 1962); Rudolf Bahro, *Die Alternative. Zur Kritik des real existierenden Sozialismus* (Frankfurt am Main: Europäische Verlaganstalt, 1977), chaps 4–9.
- 30 Pierre Bourdieu, 'La force du droit. Éléments pour une sociologie du champ juridique', *Actes de la recherche en sciences sociales*, vol. 64 (1986): 3–19; Idem, *Sur l'Etat. Cours au Collège de France, 1989–1992* (Paris: Seuil, 2012), pp. 162–166, 587; Weber, *op. cit.*, pp. 504–506ff.
- 31 Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), chap. 1 and pp. 86–90. He wants thereby to eschew a strong idea of judge-made law.
- 32 Schiavone, *op. cit.*
- 33 Weber, *op. cit.*, pp. 387–513.
- 34 Bourdieu, 'La force du droit'.
- 35 Nicos Poulantzas, *L'Etat, le pouvoir, le socialisme* (Paris: Presses Universitaires de France, 1978), pp. 94–99.
- 36 Bourdieu, *ops. cit.*; Luhmann, *op. cit.* See, against that, Dworkin, *op. cit.*
- 37 Mauro Cappelletti and Bryant Garth, 'Access to justice and the Welfare State: An introduction', in M. Cappelletti and B. Garth (eds), *Access to Justice and the Welfare State* (Florence: Le Monnier, 1981).
- 38 Andrei Y. Vyshinsky, *The Law of the Soviet State* (New York: Macmillan, 1948); J. N. Hazard, *Communists and Their Law: A Search for the Common Core of Marxian Socialist States* (Chicago: The University of Chicago Press, 1969); Georg Brunner, 'Zur Wirksamkeit der Grundrechte in Osteuropa', *Der Staat*, vol. 9 (1970): 187–222; Jorge Tapia-Valdés, 'Cuba constitucional', *Nueva Sociedad*, no. 28 (1977): 87–101.
- 39 Yu Xingzhong. 'Legal pragmatism in the People's Republic of China', *Journal of Chinese Law*, vol. 3 (1989): 29–51; R. Peerenboom, *China's Long March towards the Rule of Law* (Cambridge: Cambridge University Press, 2002); Xiapong Cong, "'Ma Xiwu's way of judging": Villages, the masses and legal construction in revolutionary China in the 1940s', *The China Journal*, vol. 72 (2014): 29–52. See also Hualing Fu, John Gillespie, Pip Nicholson and William E. Parlett (eds), *Socialist Law in East Asia* (Cambridge: Cambridge University Press, 2018).
- 40 Weber, *op. cit.*, p. 29; Idem, 'Politik als Beruf' (1919), in *Gesammelte politische Schriften* (Tübingen: J. C. B Mohr [Paul Siebeck], 1988), pp. 505–506; Kelsen, *Reine Rechtslehre*, § 1.6, pp. 8ff.
- 41 M. Foucault, *Sécurité, territoire, population. Cours au Collège de France, 1977–1978* (Paris: Gallimard/Seuil, 2009), p. 361; Michael Mann, *The Sources of Social Power*, vol. 2. The Rise of Classes and Nation-States, 1760–1914 (Cambridge: Cambridge University Press, 1993), pp. 403–412; Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985), p. 276, *passim*; Wolfgang Knöbl, *Polizei und Herrschaft im Modernisierungsprozess. Staatsbildung und*

- innere Sicherheit in Preußen, England und Amerika 1700–1914* (Frankfurt and New York: Campus, 1997); Bernard E. Harcourt, *The Counterrevolution: How Our Government Went to War Against Its Own Citizens* (New York: Basic Books, 2018).
- 42 Baratta, *op. cit.*; Nils Christie, *Limits to Pain: The Role of Punishment in Penal Policy* (Eugene, OR: Wipf and Stock, [1981] 2007); Thomas Mathiesen, *Prison on Trial* (Winchester: Waterside, [1990] 2006); Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice* (New York: Macmillan, 1990). Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003). The paradigmatic view of retributive penal justice is Kant's (*op. cit.*, E.1, pp. 451ff); the most significant influence on the structuration of criminal justice was, within the utilitarian mindset and the pleasure/pain gauge, Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: The Collected Works of Jeremy Bentham* (Oxford: Oxford University Press, [1789] 1996), chaps 12–17. See also Karl Olivecrona, 'The will of the sovereign: Some reflections on Bentham's concept of "A law"' (1975), in Bikhu Parek (ed.), *Jeremy Bentham: Critical Assessments* (London and New York: Routledge, 1993); Herbert L. A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon, 1982). In Bentham's work, law would be a means of directing people from the top down, conforming their subjectivity and behaviour, thus begetting an 'artificial identity of interests', beyond the spontaneous one the market furnished. The direct inspiration for Bentham's utilitarianism and in fact modern criminal law in general, in the context of Enlightened despotism and a defence of 'human rights', as well as introducing a benevolent rationalisation of punishment, was Cesare Beccaria, *Dei delitti e delle pene* (Milan: Einaudi, [1764] 1973). Baratta, Christie, Mathiesen and Davis, cited above, are crucial authors who have pleaded for the abolition of the prison, often with a moderate reform model as a first step. For a general view of the evolution of these systems of thought, with an eye to their neoliberal extension, see B. E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge, MA: Harvard University Press, 2011); Scheuerman, *The End of Law*.
- 43 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. ix, 26, 55. A strong line of continuity between Hobbes and Locke seems to be inadvertently brought out here.
- 44 Foucault, *Surveiller et punir*, pp. 20, 88, 98, 106, 152, 227, 259; David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: The University of Chicago Press, 2001).
- 45 Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York: Oxford University Press, 1941) 9ff, 65ff, 71ff; Robert O. Paxton, *The Anatomy of Fascism* (New York: Alfred A. Knopf, 2004), chap. 5. Fraenkel was also clear about the 'normative state', which, since Locke and the state's special prerogatives, may function *outside* the framework of law, although in the latter's case not against it.
- 46 Harcourt, *The Counterrevolution*.
- 47 Hazard, *Communists and Their Law*; George V. Starosolsky, 'Basic principles of Soviet criminal law', *North Carolina Law Review*, vol. 28 (1950): 359–374; Harold J. Berman, Susan Cohen and Malcom Russell, 'A comparison of the Chinese and Soviet codes of criminal law and procedure', *The Journal of Criminal Law and Criminology*, vol. 73 (1982): 238–258. The 'social danger' of a given act was also a factor to be taken into account. While the original theoreticians of communism and the proletarian state envisioned the disappearance after a variable period of state revolutionary violence against

- counterrevolutionary acts (Marx, *op. cit.*; Lenin, *op. cit.*), practice went however against their expectations (to some extent the latter's actions too). Overall, class enemies eternally lurked everywhere, justifying constant surveillance and repression.
- 48 Elizabeth C. Economy, *The Third Revolution: Xi Jinping and the New Chinese State* (Oxford: Oxford University Press, 2019).
- 49 The first real discussion of bureaucracy was Hegel's, who cast it in a very positive light: within the bounds of the legal state, it formed a 'universal stand' (*allgemeine Stand*), detached from particular points of view and having society's general good as its 'business'. Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts*, in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, [1820] 1986), §§ 202, 206. For a harsh critique, K. Marx, *Zur Kritik der Hegelschen Rechtsphilosophie. Kritik des Hegelschen Staatsrechts*, in K. Marx and Friedrich Engels, *Werke*, vol. 1 (Berlin: Dietz, [1843] 1981), pp. 246ff. Mill made an argument similar to Hegel's shortly afterwards, but a more liberal one, stressing the means-ends chain and the rationality of the bureaucracy in articulating it (though, with too much autonomy, it could become a 'pedantocracy'). John Stuart Mill, *Considerations on Representative Government* (Cambridge: Cambridge University Press, [1861] 2010), chaps 3–4, 6, 14. Weber's account of the origins of formal-abstract bureaucratic rationality is intricate and does not harmoniously fit with his key ideas about his ideal-typical explanations of the surge of new systems of domination, in this case, 'rational-legal domination'. Shorn of a conceptual explanation, he described it, without differentiating the less-than-modern Prussian system of administration, albeit based on equality of treatment of imperial subjects, and states where citizenship really progressed. Weber, *Wirtschaft und Gesellschaft*, Part I, chap. 3, Part II, chap. 7. For a connection between the role of *formal* and *formalised* bureaucratic domains for the instrumentality of action and the development of self-steered systems, see J. Habermas, *Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp, [1981] 1988), vol. 2, chap. 2 and pp. 447ff. See also Mann, *op. cit.*, pp. 57, 79, 444–445 and chaps 11–14; Bernard S. Silberman, *Cages of Reason: The Rise of the Rational State in France, Japan, the United States, and Great Britain* (Chicago: The University of Chicago Press, 1993), especially pp. 414ff.
- 50 Peter M. Blau and W. Richard Scott, *Formal Organizations: A Comparative Approach* (Stanford, CA: Stanford University Press, [1962] 2003), p. 6 and chaps 1–2. See also, in a more pessimistic vein, Michel Crozier, *Le Phénomène bureaucratique: essais sur les tendances bureaucratiques des systèmes d'organisations modernes et sur leurs relations en France avec le système social et culturel* (Paris: Seuil, 1963).
- 51 Herbert A. Simon, *Models of Man* (New York: Wiley & Sons, 1957); Idem, *Models of Bounded Rationality*, vol. 2 (Cambridge, MA: The MIT Press, 1982), especially pp. 401–449; Charles E. Lindblom, 'The science of "muddling through"', *Public Administration Review*, vol. 19 (1959): 79–88. This pragmatist idea of 'muddling through' is correct, but should be modulated according to context since goals and means may be much more systematically pursued and applied.
- 52 Harold D. Lasswell, *The Decision Process: Seven Categories of Functional Analysis* (College Park, MD: Bureau of Governmental Research, 1956); Michael D. Cohen, James March and Johan Olsen, 'A garbage can model of organizational choice', *Administrative Science Quarterly*, vol. 17 (1972): 1–25; Werner Jann and Kai Wegrich, 'Theories of the policy cycle', in Frank Fischer, Gerald J. Miller and Mara S. Sidney (eds), *Handbook of Public Policy Analysis: Theories, Politics and Methods* (London and New York: Routledge, 2007); Michael Howlett, M. Ramesh and Anthony Perl, *Studying Public Policy: Policy Cycles & Policy Subsystems* (Ontario: Open University Press, 2009); John W. Kingdon,

- Agendas, Alternatives, and Public Policies* (Harlow: Pearson Education [2014] 2019); Lars Döpking, *Fiskalische Herrschaft. Steuern, Staat und Politik in Italien seit 1945* (Hamburg: Hamburger Edition, 2023), pp. 81–90; Tobias Eule, ‘Wiederbegegnung mit einer aussortierten Kategorie’, *Mittelweg* 36, Jahrgang 31, Heft 3 (2022): 27–40.
- 53 Marx, *Zur Kritik der Hegelschen Rechtsphilosophie*, pp. 233, 238–239, 250.
- 54 Paxton, *op. cit.*, chap. 5; Fraenkel, *op. cit.*
- 55 Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (Albrun, AL: Ludwig von Mises Institute, [1973] 2006, 2nd edition). Contrast this with the ‘dominant association’ or ‘a state’ – not absolutely monopolistic, in Nozick, *op. cit.*, chaps 3, 5–6.
- 56 Gordon Tullock, *The Economics of Politics* (Indianapolis, IN: Liberty Fund, 2005). ‘Public choice’ was innovative in its inception, yet theoretically skewed and politically reactionary. For NPM, see Christopher Hood, ‘A public management for all seasons?’, *Public Administration*, vol. 69 (1991): 3–19; David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (New York: Plume [1992] 1993); B. Guy Peters, *The Politics of Bureaucracy* (White Plains, NY: Longman, 1995, 4th edition); Pierre Dardot and Christian Laval, *La Nouvelle raison du monde* (Paris: La Découvert, [2009] 2010), pp. 171ff, 288, 377ff. Although he was critical of bureaucratism and keen on limiting bureaucracy, the difference between private business and public administration was stressed by one of the founders of neo-liberalism: Ludwig von Mises, *Bureaucracy* (New Haven, CT: Yale University Press, 1944), chap. 2.
- 57 Béatrice Hibou, *La Bureaucratisation du monde à l’ère néolibérale* (Paris: La Découverte, 2012).
- 58 Andras Hegedus, *Socialism and Bureaucracy* (London: Allison and Busby, 1976); Bahro, *op. cit.*; Cornelius Castoriadis, *La Société bureaucratique* (Paris: Christian Bourgeois, [1940s–1980s] 1990), 315ff, 371ff; Ferenc Fehér, Agnes Heller and Györg Márkus, *Dictatorship over Needs: An Analysis of Soviet Societies* (New York: Saint Martin’s Press, 1983). These last two books propose an excessively negative diagnosis of the effectiveness and rationality of the party-state.
- 59 Cf. Mao Tse-Tung ‘Directives regarding the Cultural Revolution’, in *Selected Works of Mao Tse-Tung*, vol. 9 (Peking: Foreign Language Press, [1966–1969] w/d).
- 60 Jude Howell, ‘Reflections on the Chinese state’, *Development and Change*, vol. 37 (2006): 273–297.
- 61 M. Weber, ‘Der Sozialismus’ (1918), in *Gesammelte Aufsätze zur Soziologie und Sozialpolitik* (Tübingen: J. C. B. Mohr [Paul Siebeck], 1988).
- 62 Friedrich Engels, *Herrn Eugen Dührings Umwälzung der Wissenschaft* (‘Anti-Dühring’), in K. Marx and F. Engels, *Werke*, vol. 20 (Berlin: Dietz, [1878] 1975), p. 262; Claude-Henri de Saint-Simon, *L’Organisateur*, Deuxième livraison, in *Œuvres complètes de Saint-Simon*, vol. 2 (Paris: Anthropos, [1820] 1967), p. 181. Marx, in ‘The Civil War in France’, also draws upon this idea.
- 63 Joseph V. Stalin, *Political Report of the Central Committee to the Sixteenth Congress of the C. P. S. U. (B.)*, in *Works*, vol. 12 (Moscow: Foreign Language Publishing House, [1930] 1955).
- 64 Nasser Hussain, ‘Hyperlegality’, *New Criminal Law Review: An International and Interdisciplinary Journal*, vol. 4 (2007): 514–531. That this represents a ‘new system’, beyond the state of exception was argued, regarding the September 11, 2001, and France 2015 terrorist attacks’ aftermath but beyond it, by Harcourt, *op. cit.* Counterinsurgency and counterrevolution, without insurgency or revolution, lie at its core. In contrast, except during – and against – the demonstrations against the assassination of Georg Floyd, the state in the US adopted a very traditional liberal posture during the recent pandemic.

3

POWER, AGENCY AND LAW

3.1 Power

All social action depends on an agent's ability to influence other agents, or the passive elements of the material world, somehow and thereby cause permanence and change in the world. Causality is here of the essence. A and B may have clear goals, may be concerned with all sorts of values, may be instrumentally oriented, with the means-ends chain at the core of their action, evincing all sorts of physical, mental and emotional qualities. This capacity to exert influence, as a stability-seeking or searching for transformation, is what may be precisely called *power*, not necessarily as an imposition from A that B cannot but accept, though this is a possible and recurrent occurrence (coercion consisting in only one means to perform that). Individuals, as well as collective subjectivities, have power, though instead of acting the latter produce movement, whatever their level of centring and intentionality, as a general condition of social life. Human agents exert power upon each other and other beings that interact with the human species in what modernity has defined as 'nature'. Nevertheless, power is exerted in the context of social relations with a greater or lesser degree of institutionalisation within an imaginary universe, both framing the action and the movement of individuals and collectivities. The interactions, institutions and practices in which the imaginary is often stabilised are thus characterised by the distribution of power therein, entailing a particular manner of coordinating these relationships, whether more fleeting or recurrent.¹

Power distribution may be horizontal or vertical, collaborative or conflictive, based on top-down impositions, or undergirded by some mutually advantageous exchange. Power within these relations must also be justified

regarding meaning in imaginary terms – normatively, that is to say. When power is unequally – or equally – present in social relations and so institutionalised, that is, when relations are organised in a way such that they are regularly reproduced, it is *domination* that obtains – or relations of *non-domination*, that is, of equal power.

There are only three ways in which power may be exercised and social relations coordinated within interactions, institutions and practices. They are presented here in analytical terms, whereas they may concretely combine in different ways. They are, namely: *hierarchy*, *network* and *market principles of organisation*. They also possess mechanisms of coordination, respectively: *command*, *voluntary collaboration* and *voluntary exchange*, accompanied by interactive inclinations geared to *rule* (or *be ruled*, perhaps grudgingly), *cooperate* and *trade*. *Authority*, *project* and *mutual interest* may be understood as the justifications for each of these mechanisms of coordination. In contrast to these principles of organisation, we find *principles of antagonism*, which include *conflict* and *competition*, whose mechanisms of coordination are *struggle* and *emulation*, with interactive inclinations featuring *opposition* and *fighting* as well as *outdoing*, with *self-interest* and the *common good* working as the justification for antagonism. If these mechanisms, in whatever combination, properly work, relations of power and the authority they constitute and on which they rest for their reproduction are legitimate. *Systems of rule*, implying stable and reiterated relations, as well as vertical relations and hierarchy, that is, domination, but also horizontal self-rule, are the specific forms through which power assumes a more historical and concrete embodiment.²

There has usually been an assumption in the more recent social sciences that systems of self-rule have been the most common form of organisation of power in history, spanning millennia indeed, most of human history, while some have tried to offer a more complex picture of this original situation.³ Despite this assumption, perhaps horizontality and network predominated, with voluntary collaboration coordinating social relations as well as, within collectivities, restricting conflict and emulation, even if externally these were often fierce, with violence and war regularly ensuing. From this original situation, many developments led to different forms of hierarchical rule, in which command prevailed, while internally antagonism was kept within manageable limits, although these hierarchical forms could hardly control their territory and did not therefore monopolise violence within them. Again, many controversies have stirred the social sciences, usually counting on fragmentary archaeological evidence, about these hierarchical forms of rule, these being chieftainships and the like.⁴

We know for sure, however, that the state emerged in several places, implying rather vertical structures based on command. Again, they could not very efficiently control their territory, whose frontiers tended to be loose

too, with conflict always looming large. Of course, resistance against domination was widespread and variably successful. These pristine state forms waxed and waned, with not only evolution but also devolution, that is, the return to more horizontal forms, time and again. Justifications for rule were substantively different in each of these civilisations, whether they were horizontal and implied a common relation to some principle, were vertical and counted on some similar sort of collectively shared imaginary or simply implied the entitlement of the most powerful, usually self-defined as superior, to rule and exploit – and indeed also abuse and kill. In the first condition, common belonging entailed a justification to rule that had to be based to a large extent on some idea of justice and often the functionality of the hierarchy and command for the whole collectivity, with a more moderate system of rules – or, in a broad and variable sense, law – regulating the relations between rulers and the ruled.⁵

We would be hard-pressed to find a social scientist that still supports a unilinear view of evolution. The last big name, despite caveats and provisos, was probably Habermas.⁶ Except for the almost consensual idea that complexity, all things considered, that is, including devolution, has characterised social evolution in the long run, a multi-linear view of the development of the species seems to be far more adequate according to the knowledge of history we possess today.⁷ Some are also prone to jettison any idea about social evolution since contingency would be so tremendous and paths so varied that it would be useless to systematise the history of the species according to some theoretical pattern, sometimes according to a discontinuous view of history.⁸ Nevertheless, along with the idea of complexity, some other ideas, loosely taken from biology, can go some way towards framing social evolution more adequately, combining history with a more flexible view of evolution. From the same position in a civilisational area, the development of social life – in which power relations stand out – may follow homologous developments in different civilisations and collectivities of diverse sizes. ‘Homoplasy’ is the technical term for these processes.

In addition, starting from different civilisational areas, similar developments may also occur since there are not so many ways to structure social life. Along with proper socio-evolutionary ‘homologies’, stemming from common origins, different sociogeneses, ‘homoplasy’ (false homology) and ‘parallel’ developments take place, even though the human species may travel down very different evolutionary paths. ‘Convergence’ of developments can also come about in the latter case, whereas learning from different homologous forms is, on the other hand, a repeated and noticeable occurrence in the former since humans are always attentive to what others like them have successfully (or not) created. In social evolution, ‘divergence’ is also crucially relevant and fully compatible with a discontinuist view of history that does not detract from evolutionary theory. It happens when, starting from a

common origin, social forms develop with characteristics that push them far apart from one another, while also less connected civilisations may undergo a similar sort of evolutionary bifurcation.⁹

Modernity is just one instance of divergence in social evolution, but a crucial one in world history. It introduced something really new evolutionarily. Once social life included hierarchies and command, with network and voluntary collaboration between agents subordinated to them, forms of domination counted on a clear differentiation between rulers and ruled. This vertical institutionalisation was configured in the form of either the 'rule of the one' or the 'rule of the few', as this was theorised in philosophy from the Persians and particularly the Greeks onwards, through the state or looser power arrangements ('state analogues', as some would say). Kings, Czars, rexs or rajs, as they appear in Indo-European languages, epitomise the rule of the one (though he or she does not ever rule really totally alone), other expressions being used in other civilisational areas (such as the Son of Heaven in the Sinic civilisation), while oligarchies have been found in several other settings (for instance fighting the Aztec in Mesoamerica or Rome). The long history of self-rule and voluntary collaboration – in which the many or all are in charge of their collective affairs – was increasingly subdued by the expansion of systems of vertical rule across the globe, in Eurasia, Africa, Oceania and the Americas.

As a divergence in the face of these hierarchical developments, and a way to reduce internal conflict, albeit certainly not external ones, concerning the global landscape and in particular that of the little part of Eurasia further west, a new sort of civilisation emerged. Full of practical contradictions and often imaginary ambivalences, it reaffirmed the superior justice of forms of horizontal self-rule based on the equal standing of all members of the states that existed and should evolve in order that this could come true. But authority and to a large extent top-down rule remained a thinly disguised feature of this civilisation. It expanded worldwide as it matured in its area of emergence. I refer, evidently, to modernity.

Power is a constituting component of all sorts of social life. It has come in different forms and with different vocabularies. It has been imagined, institutionalised and practised according to different logics, with the cooperation and conflict it has always implied between individuals and collectivities. It was, however, either mixed with other or nested within, as one of them, *existential questions*, with their unavoidable imaginary and institutional answers, which are actually not so varied. These are questions which individuals and collectivities inevitably have to answer in order to survive and replicate themselves, involving material and sexual reproduction, production of language and symbolic meaning – as well as the social distribution of power.¹⁰ Except perhaps for a singular treatise written c. 300 B.C. in the Indic civilisational area, by Kautilya, an aid to the ruler who thought

of power in its specificity and validity,¹¹ it was nowhere openly recognised, usually appearing enmeshed with moral-ethical issues. In the world of Christianity, the open recognition and praise of power is a late insight, usually attributed to Machiavelli.¹² Nevertheless, as soon as power appeared in its nakedness, it exited the historical scenario. With a specific dimension of power differentiated out in the inception of modernity and constituting one of its defining characteristics, justice was closely bound to law and individuals' rights, with hierarchies receiving a very subdued semblance. Conflict was thereby supposedly curbed.

There was nevertheless a crucial intermediate stage in this process. Despite the access it already had to Aristotle's *Politics* in the thirteenth century, the Christian Middle Ages did not speak of 'politics' at all (as in fact that book did not do either).¹³ Human beings were *social* animals (they lived in a *civitas* under rulers of diverse sorts who had to uphold justice). Only a peculiar mutation, which could count on a new reading of the tradition, led to a creative surge and the imaginary invention of modern politics.

In medieval feudalism, there was a high dispersion of power, while Church and secular feudal rulers disputed primacy, arriving at a truce with diverse spheres of authority divided between them (the investiture struggle was decisive in this regard).¹⁴ What was defined as 'religious' wars and the development of feudal forms of power led from decentralisation to what would eventually become the Absolutist state, amid brutal conflicts between kings and emperors (rarely queens or empresses) and other powerful feudal lords, as well as cities. Absolutism had partly pacified the continent for a while, trying to rule over different groups, in spite of war among those monarchies as well as republics. Though in principle aloof to them, Absolutism took sides in the 'religious' wars of the period (actually simply ways to organise the imaginary with reference to some transcendental element, in the case in point). The 'divine right' to rule as a cornerstone of the legitimacy of rulers – as 'ministers of God', with the personification of power in one singular individual – was the means whereby the then most powerful agents achieved neutralisation of societal and state particularities. The subordination of the churches, whether Catholic or Protestant, strengthened their power. However, old parliaments, cities and nobles were resistant, new social forces surged, while some monarchs adopted some form of reformist rationalism (especially under so-called 'enlightened despotism', with the support of Enlightenment thinkers and already influenced by a new imaginary).¹⁵

The emerging 'state' (also a new denomination for the system of rule) and Absolutist rulers could relish on the idea of power serving their self-interest, in a veiled manner indeed in a scenario in which Christian thought predominated and power was to be exercised as justice and for the common good. Keeping the safety and integrity of the state was justified in that this was important for the observance of the public good. This was the context

in which the ‘reason of state’ emerged. Tensions however brewed, heightened by the state’s monopoly of power, the decreasing legitimacy of rulers and fast transformations in society at large. Absolutism’s potentials were eventually exhausted and power increasingly became a problem – particularly its ‘misuse’, but not only since henceforth it would, as such, be perceived as opposed to society, unfair and unworthy of its ever more rebellious agents, as well as excessively personalised.

The solution for this conundrum and impasse was the imagination of the *political dimension*. It was then institutionalised, often piecemeal, but sometimes in a more sudden and insurrectionary (‘revolutionary’) way, which was however also part of more long-term and subdued transitions to political modernity, with institutions enjoying their own creative momentum.¹⁶ Political modernity is consequently one of the fundamental innovations of this new sort of civilisation. Power was then exercised as *politics* for the first time in known history. Yet modernity made power disappear and delegitimised it once again, once its institutions were established, and even before, since individual reason and freedom were its main concerns, with the restriction and depersonalisation of the power of rulers and, once the state was (re)constituted, the purported elimination of conflict. To be sure, power remains a problem to be tackled, since it has to be controlled and is often frowned upon, and, more limitedly and neutrally, is conceived as something individuals and the state, among other collectivities, must have in order that they achieve their aims. However, since rights and their observance were what mattered within the state, not much more should be done. Politics had, therefore, no purpose, at least regarding the relations internal to each state. In practice, to rule implied more than that, either in agreement with the law or according to the prerogatives attributed to the state.

We saw in a systematic and analytical way in the former two chapters precisely how this has been organised imaginarily and institutionally, with the practices connected to them. Universal rights of citizenship allow for a flat, formal and abstract equality between the members of some collectivity in modernity, with a transformation of the state that renders it a domesticated animal. The market form of coordination and its attendant voluntary exchange as a form of coordination gained ground too, with individuals free to hold property and go about with their own private business, whereby conflict and struggle would leave room for peaceful competition and emulation. A problem remained or emerged anew: how would that equality be guaranteed and not substituted by another form of domination, introduced as a form of hierarchical state rule, despite the latter’s legal form and restraints? *Equal freedom*, which interactively characterises the free-position, actually also means *equal power*, which must be guaranteed between these equally free individuals without allowing the state to usurp power from them. In this configuration, network and voluntary collaboration would be crucial

for the self-rule political modernity brought about, in contrast to the hierarchical relations and command mechanisms that underpin state domination. Its justification remains, apparently inevitably, *justice* – the protection of the rights of each and every one, principally man for a long time – as well as the common good, whether understood as a derivation of the individual rights-holders or as the means through which they find their meaning and identity steered from the top down by the state (with those rights sometimes supposedly laid down by it). Yet hierarchy and command kept their outstanding position in this new civilisation. That is what we shall examine now.

3.2 Sovereignty

As we have seen in Chapter 1, the individual rights-holder and citizen was at the basis of an interactive web of relations in the most relevant version of what the present chapter has characterised as political modernity. We can say that, in its abstraction, depersonalisation and desubstantialisation, the individual rights-holder and citizen was, in its multiplicity, the constitutive element of a social network which, through voluntary collaboration, engendered the law and created the state. We have seen in addition that law is an element of mediation through which, as in a mirror, individuals recognise each other as rights-holders and citizens. Mostly in modernity, this source of law – which is fundamentally a source of power that has staying as well as transformative properties – consists of the individuals that, as a whole, are at the core of social life, in its split constitution, and provide, as citizens, the basis of the state. They collectively possess all the power that we may find in a political configuration in modernity, insofar as we stick to the idea that the free-position is the starting point of this juridical-political edifice. Whatever other powers might appear in modernity in the state-public dimension would be derived from this collectivity: its potency would be their potency. Or at least this is what lies or lay at the core of the political theories of modernity. To be sure, as we have also seen in Chapter 2, this is not the whole truth. The state as such is an entity that has power, even prior to this individual qua rights-holder, which has been, in variable measure, domesticated by law. A second political current in modernity has emphasised the state's prominence, whose power should be unmatched.

This power, which lies at the basis of the units that organise political modernity – the state –, is what has for centuries been called sovereignty. Therefore, individuals are sovereign in their collective capacity, and this sovereignty stems from them and their power. Simultaneously, but only then, do they become citizens of this state, with citizenship and stateness defined by law. As sovereign, they stand collectively vis-à-vis each other as an abstract body, without concrete qualities; that is, sovereignty too undergoes a process of depersonalisation and desubstantialisation. This development was

interesting and very original. It stressed the equal freedom of these peculiar individual rights-holders, their dignity and voluntary collaboration in the horizontal organisation of social and particularly political life. Needless to say, some level of hierarchy has always lurked around in the form of the state, with its bureaucratic apparatus, and with domination seeping through the understanding agents have of how the political dimension is constituted. However, whatever the multiplication of collective agents that took place as modernity developed has further yielded, this basic reasoning continues with us; if state interventions deviate from expectations that lead in the direction of collaboration and horizontality, a problem arises. Nevertheless, lived experience – that is, *Erlebnis*, to resume a point made in Chapter 1 – tells us that hierarchy and vertical relations, domination, and even oppression, are indelible aspects of the relationship between citizen and state, which is detrimental to the dignity of right-holding citizens. Those who would instead underlie the state's dignity may recognise this last sort of issue, yet are prone to lend it a benign interpretation, in which their cherished agent plays an integrative role above all, whereby citizens dignity appears as a derivative result. To a large extent sovereignty equals state domination, within limits given by the law and the putative sovereignty of citizens (as individuals and in their collective subjectivity).¹⁷

In different civilisational areas, the relationship between individuals and collectivities, whether more horizontal or vertical, has been thought of differently. In Greece and Rome, what predominated was a theory according to which what resembled and were often interpreted as modern political institutions were directly connected to social life and different groups. It has been known as the theory of the 'mixed constitution', with sometimes, as we encounter among the Greeks, an ideal of autarky completing this general perspective. The three forms of rule or government that had such a great fortune in political thought are a constitutive component of the mixed constitution – including the rule of the one (monarchy/tyranny), of the few (aristocracy/oligarchy), and of the many (isonomy/democracy), to take one approximate phrasing among the several ones it historically received. During the so-called Middle Ages, what became dominant was an idea of *supremacy*, since feudal powers were multiple, overlapping, contradictory and directly based on arms and religion, as well as the decentralised application of the law, also straightforwardly and concretely; no *superanus* or supreme power existed. With the rise of the Absolutist state, with the intellectual mediation of the idea of a supreme Papal power, the possibility of thinking of power as absolute offered itself and was finally laid on the emerging state. It was elaborated as a means to understand and justify the enormous power it, as seen then, displayed. At the same time, in some regions, the intellectual movement known as 'civic humanism' rediscovered and resumed the theory of the forms of rule or government, with some modifications. These, yielding

the ‘plebeian mixed constitution’, tended to be more open to the participation of citizens, taking it beyond the traditional Aristotelian integrative teachings. The conflict between citizens and the powerful, the rulers of the city, was recognised and even conferred positive value.¹⁸

It was in the eighteenth century that a colossal breakthrough occurred, with the abandonment of the idea of the mixed constitution, along with the increasingly fierce contestation of the idea that sovereignty pertained directly to the state. Then, the thesis according to which it rested on the many that constituted the basis of all social life emerged and eventually became dominant. Political power rested now – absolutely – in the hands of these individuals, in their political association and collective existence. The state apparatus remained in place, however, and rights were, as civil rights, guaranteed by law and overseen exactly by the state.¹⁹ In any case, beyond Absolutism, a limited and always provisional transference of sovereignty to that apparatus was envisaged. A relation between what can be deemed an ‘agent’ – the abstract individual – and a ‘principal’ – the state – came about, whereby causal power is also displaced towards the latter. This connection may be entirely skipped, with sovereignty attributed directly to the state apparatus and those in charge of its management, whereby that agent-principal relation is inverted or simply vanishes, with a certain role for abstraction, whether this is explicitly formulated or not, as part of the top-down definition of political modernity to which I have at different stages referred.²⁰

Some arrangements are peculiar in that they resort neither to this universal abstract individual nor directly to the state. The ‘sovereignty of Parliament’ in Britain is a curious and somewhat aberrant case if we take into account that this country was a forerunner in the development of rights, which end up on an at least awkward position in this sort of political reasoning. On the other hand – curiously once again with the British case not by chance deviating from what is more typical, since Parliament really concentrates power, culminating in the Prime Minister’s cabinet –, sovereignty is often limited by a general and more fundamental law those individuals give themselves and is usually very difficult to change.²¹ Authoritarian conceptions have further tried to dislocate sovereignty upwards, transferring it to the state, similarly to what we have observed regarding rights. Implying concentrated hierarchical power and command, with top-down control of the state, the formula according to which he who decides on the ‘state of emergency’ is the sovereign is an unambiguous indication of this manoeuvre, which has in fascism its more radical expression.²²

In a lateral attack against the concept, as part of his criticism of the split nature of modernity, Marx pointed to sovereignty as an ‘illusory’ and ‘imaginary’ (*engebildet* and *imaginäre*), alienating expression of a ‘community’ of men, which, contrary to what might be expected, did organise social life.²³

It consists precisely in a *real abstraction*, a concept which, with modifications concomitant to the development of the critical tradition, has already played a crucial role in this book and must be reiterated. No illusory character should be attributed to this imaginary construction, which is moreover institutionalised, with its corresponding practices. With this proviso, Marx's argument about abstraction may be applied to the bottom-up and the top-down visions of sovereignty.

Authoritarian collectivism picks its argument partly from there, or more precisely from other of Marx's ideas about class domination – which would underpin sovereignty. With this backdrop, it tried to solve that historical shortcoming, until someday the problem as such would disappear: now the true sovereign was no longer the – 'bourgeois' – individual, but the working-class as a class, collectively. With the 'dictatorship of the proletariat', the toilers and the oppressed would have come to power and ruled those revolutionised societies. The principle of sovereignty did not nevertheless change much in comparison to the former conception. A more concrete element (the social classes, disposing of the illusory character of an abstract and reified community and modern popular sovereignty denounced by Marx) was brought into the fold, without totally refashioning it.²⁴ The state purportedly belonged to workers and their allies (especially peasants), frequently not least where they were a (tiny) minority, and eventually to all the people. It is obvious that the party's prerogatives could be superimposed on workers' sovereignty in practice, although discursively it was merely the vanguard of the proletariat or the people, hence an agent vis-à-vis a principal whose identity was as positive as given and inalterable. The praise of the 1871 Paris Commune, organised fundamentally by and according to anarchists' principles, degenerated into a mere footnote in Marxism and eventually in what it would deem 'false consciousness'.

3.3 Constituent power and the Constitution

Modernity has been consistently regarded as plastic, especially concerning the political dimension. It seems open and the political dimension is the nodal focus of the possibility of transformation. It lacks fixity: created by human beings, rather than something that naturally conditions them, it is amenable to new creative interventions as they, collectively, see fit, with the proviso that this opening to innovation was never seen as absolute (rights and traditions, potentials and constraints are inevitable questions to be considered intellectually and practically).²⁵ While sovereignty has been a means to politically conceptualise the absolute power of modern individuals once they come together and constitute themselves as a political collectivity, constituent power has consisted in the aspect of the same absoluteness that corresponds to the idea that modernity is plastic and that social life may be

refashioned according to human design. Sovereignty and constituent power have gone hand in hand, both depending on the power of the networked and collaborative individual and then the citizen once the law institutionalises its relationship with others. We can spot constituent power in the piecemeal production of law, on a routine basis, with sovereignty transferred to the state. But we may go further and understand constituent power as something much broader, which is reinstated when individuals resume their role as the true sovereign, that is, when they wake up and enact changes that impact social life far more deeply and usually with long-lasting consequences. Constituent power is concentrated agency, potentially transformative power. Two opposite elements harmonise and clash in this connection in different moments – the will and the Constitution.

All the structure on which political modernity rests presupposes the idea that human beings have a *will*, an element of volition that involves preferences and rationality. Others may stress irrational elements and bank on some strand of political Romanticism, or in some radical cases radical irrationalism. Above all, the modern state has been conceived according to the will of a rational and cooperative abstract individual – or, in statist versions, an even more rational state.²⁶ Much has mutated after modern thought and practices produced this founding perspective, yet it remains a cornerstone of the political dimension. Law as such is understood as stemming from the will of individuals, who, directly or indirectly, when they momentarily cede their sovereignty to a single political agent, craft it according to what they see fit and want to see formally enshrined in a text. The state is – or should be – merely the result of the interaction of different wills. In principle, the expression of these wills in law – as well as state policies, an issue which shall be further elaborated in the next chapter – can be modified every single day, although in the modern state, if we stay within stable institutionalised forms, procedures are required to effect change.²⁷ The will can be, and sometimes is, whimsical.

Conversely, others have attributed will to the state alone or as a superior entity, rational and responsible in a more profound way for the collectivity of citizens under its purview. This statism has, as already argued, become a less disseminated standpoint in the last decades, on the other hand tenaciously resisting in some quarters. In any case, the idea of a will of the state, emergent from the will of individuals or existing adjacent to it, persists, being effaced in discussions prone to eschew the idea of will as such.²⁸ An alternative to the will theory – particularly concerning the law – was the theory based on *interest – utility* –, which would be the substance of law. It has acquired some influence here and there, including originally Soviet jurisprudence, but seems to have lost the battle against the will theory, which in both legal theory and practical legal life remains simply dominant, with, concomitantly, positivism and formalism having made deep inroads in legal

thought, hence weakening it in systematic approaches. That said, in principle all seems to be up for grabs regarding the law, since will and interest vary over time in their goals, while formalism as such implies mere conventionality, suggesting also openness to change. In addition, at least some versions of Marxism incorporated, explicitly or implicitly, a theory of the will – class will indeed, particularly with respect to the dictatorship of the proletariat.²⁹

Yet the idea of a permanent Constitution, which would offer superior parameters for political and social life – sometimes with rigid rules that make alterations difficult or in the limit impossible – has been by and large a factor limiting both sovereignty and constituent power, the former transferred to that fundamental text, the latter paralysed or restricted in its movement. The same rationalism that underpins them both also underpins constitutionalism. After all, a Constitution stems from the will of individuals in the process of becoming citizens or from their decision to renew their basic agreement, the mainstream version of the doctrine since the beginnings of modernity. The state may be seen more clearly and even truthfully as the will that commands the production of a Constitution, working as a means to stabilise and regulate power relations between them, which then would denote its prominence *vis-à-vis* citizens.³⁰ Originally the idea of the Constitution – basically in its ‘mixed’ or ‘plebeian’ forms – referred to the general ordering of social life, especially between classes.³¹ Power relations stood out in this conception, popping up here and there even after its heyday.³² With modernity and the expulsion of concreteness to the societal side of the modern divide, the Constitution was detached from such substantive aspects: its abstractness was of the essence so that it could formally rule social life – as if the rule of law that responds to this fundamental text substituted for the rule of men, what involves depersonalisation, also if we recognise that the law does not move by itself (it has to be enacted and applied by human agents). This seems to be true even when a fundamental legal body contains some programmatic element and a denser view of history and social life inspires it, in a more forward-looking way or predominantly as a reflection of what social life to a large extent already is, without detriment to its abstract ordering and fixed core (or the ‘will to Constitution’).³³

Again, in authoritarian collectivism, the same order of problems was present in juridical debates, especially in Soviet jurisprudence. Some took the will theory, while others tried to substitute for it a version of the interests-based theory, now related to the social classes, above all the revolutionary proletariat, and others still searched for a more objectivist outlook. Initially, the Constitution should be a fleeting moment in Soviet and socialist history in general. Soon, as communism dwindled as the immediate horizon of the countries in which ‘socialism’ was purportedly being built, the need for a consistent and more permanent legal order entailed the adoption of a constitution enshrining rules and rights. Needless to say, the party always enjoyed

prerogative powers and could impose solutions which lacked constitutional force. These were also in principle more malleable and plastic constitutions, which have a more explicit instrumental and conventional character rather than consisting in a chart that should establish the foundations of the juridical-political order. Rationalism was also present in them, yet now it is reason as it objectively develops in history – propped by the development of the productive forces – and allows for the transition to communism, of which constitutionalised socialism is merely an intermediate station.³⁴

Constitutions change or are substituted, their interpretation allowing for subtler shifts that are not necessarily understood as such. They contain another aspect too, a socially dynamic component insofar as they furnish parameters for the reproduction, more or less invariable, or according to its programmatic and normative character, of the totality of social life within the confines of a particular state. Even if its provisional character is recognised, it is always a form of frozen will.³⁵ Beyond constitutions proper, quasi-constitutional, ‘statutory’ laws, more supple but also deeply sedimented, play a paramount role. Their impact on much of juridical-political life must be recognised as a feature especially of advanced modernity.³⁶

3.4 Political rights and representation

Mediation, a category as important in real life as it is in theory, appeared first in this book with reference to the relations between citizens as engendered by law. Concerning relations between citizens and the state, we have already moved towards a sort of external mediation within the universe of formality and abstractness, depersonalisation and desubstantialisation, besides depoliticisation. Henceforth the external character of mediation will be reinforced. We will start to leave the realm of formality and abstractness, depersonalisation and desubstantialisation, although our immediate move will consist of an extension of the idea of citizenship as for individual citizens. Politics will finally hold centre-stage.

Take the legislative and the judiciary. In the case of the latter, mediation has concreteness appearing at the final phases of the process, while in the former it appears, to a good extent, at the beginning. In the functioning of the judiciary, individual sentences, in their particular concreteness, are passed by specific judges. General abstract law must rule, inevitably entailing, in partial contrast but complementarily, some level of law creation at the end of the legal chain (*Rechtserfindung*, as revealingly expressed in Kelsen’s German original), bearing in mind that the individualisation that someone criminally charged undergoes cuts across that general abstractness already at the very beginning. It is true in a sense therefore that law is what courts do with them, as the reasoning about law creation above already suggests. However, the leeway judges have to interpret and create law varies in

space-time, that is to say, in different countries and periods.³⁷ The possibility of more extended interpretation makes this creative element even more intense. In legislative activity, the agents of the principals, representatives representing the represented citizen, linked to specific constituencies with particular characteristics, tackle issues with the concrete ingredients they ideally sublimate. These are then transposed onto a legally general and abstract level through a putative dialogic, rational debate, consisting almost in an act of prestidigitation, insofar as the fracture between representatives and the represented is hard to close and, besides, very often to heal. If we can assert that representation is a means to make 'present' what is 'absent',³⁸ this must be taken with some reserve since many mediations, implying refraction, and a lot of dissonance always consist, sometimes brutally, in an element of the relation and process of representation.³⁹ In any case, this was a far-reaching invention of modernity, although more or less similar to elective processes that occurred in other civilisational settings.⁴⁰

Add to that how mediation and concreteness perform regarding executive power, for concrete issues and incumbents are inexorably of paramount importance; denying these features has been harder vis-à-vis the executive than in relation to the legislative and the judiciary, occupied with law-making and its application. This refers more mildly to the bureaucracy as a whole. First, to the police, since it must in some measure grapple with specific, hence concrete cases, but affects all the state's apparatus, since policies are directed to citizens in their abstraction qua citizens but also towards concrete questions and sections of the population. Yet above all, it is the politicians who stand out here: their personal and collective belongings and attributes cannot be wished away, irrespective of modernity, particularly in its political dimension, having banked on abstraction, depersonalisation and desubstantialisation of its imaginary and institutional scaffolding. All the other issues listed above concerning the judiciary, legislative and executive powers create tensions for this threefold definition. Regarding politicians, especially those that strive to arrive to and eventually occupy executive power, this is taken to new heights.

Implying a dialectical and developmental tension between abstract and concrete, this tension is *internal*, not external, to political modernity, contrary to what some are prone to believe, even though they do not phrase the problem as I do here. It pervades the principal liberal expressions of political modernity but does not exhaust itself in its imaginary and institutional bounds, besetting more republican perspectives and practices as well as authoritarian collectivism. It bursts into the open at the point where society breaks into politics, with impulses and outcomes rulers and thinkers initially tried hard to deny and brush aside, actually to the chagrin of many who would prefer not to deal with concreteness, the messy issues of the societal side of the modern divide. Not by chance has politics barely figured in

our discussion about political modernity thus far, with the juridical aspect gaining centre-stage in the analysis. Paradoxically, political modernity was keen to subdue or efface its political character since what mattered most was making sure that those abstract rights were respected. Political modernity strived to *depoliticise* itself at the very moment of its creation and affirmation. In principle political rights do not, by any means, eschew that abstractness, depersonalisation and desubstantialisation in which rights and law, citizens and the modern state partake. In contrast, representation almost immediately explodes the depoliticisation that political modernity carefully endeavoured to yield. Substantive concreteness, often with personalised elements, comes to the fore.

In the well-known and already mentioned, in Chapter 1, Marshallian description of the evolution of citizenship in Britain, political rights feature as if they naturally followed the establishment of civil rights.⁴¹ Historically, many more variations did occur, of course. The meaning of political rights implied further complications too, especially due to curbs on the electoral franchise for a long time everywhere. This restriction entailed a difference between ‘active’ and ‘passive’ citizens, the vocabulary with which, in France and elsewhere, political thinkers attempted – without real success, which did not prevent its institutional adoption – to justify it. The ‘passive’ citizen (male only at this stage, since the franchise simply excluded women) had his political rights to a large extent denied – denied in particular the right to vote and be voted due to a putative dearth of time to cultivate his rationality (for which free time was necessary) and a supposed lack of personal ‘independence’. Such restrictions were evidently contradictory to the very idea of citizenship in its civil aspect.⁴² Political rights were considered by liberals originally merely as a means to control the modern state, impeding its transformation once again into an oppressive force similar to the Absolutist state. This did not entail that the rule of the one was widely accepted in what refers to constitutionalised monarchies, which were becoming the norm and in which the prince became subordinated to law and parliament ruled. The same happened to the rule of the few, consubstantiated in this very parliament, with the Americas preferring to elect presidents or even the retention of a monarchical form of rule in Brazil, let alone the more convoluted evolution of several countries in Europe and elsewhere across the globe. Freedom of thought and speech, as well as enlightened debate within and without parliament, classically underpinned, with a more direct connection to civil rights, the political rights of the citizen in the free-position we have formerly analysed. Yet as such they do not allow for access to the core of state power.

These limitations should not be a serious problem since the functions of this state were essentially *apolitical*, consisting of keeping internal peace, order and security, along with the observance of contracts. Civil rights – especially in connection with trade and the family, in which the civil rights

of women and children were limited – should be respected, especially for men. Likewise, externally the state was supposed to mediate the relation of the territory and people over which it ruled with other states and peoples. A modicum of taxes should support its law-and-order activities and military prowess. Law-enactment and implementation were what mattered, followed by sanctions against those who disrespected them. Liberals also dreaded the so-called ‘tyranny of the majority’, which it was feared universal suffrage would cause, while backward peoples – due to a lack of proper rationality – should not, that goes without saying, be entitled to political rights.⁴³ Women were basically excluded from political citizenship – their status already diminished due to civil subordination –, especially from the electoral franchise. Only fierce struggles could overcome this exclusion, initially not completely, with the acknowledgement of what was obvious: they were as rational and responsible as men.⁴⁴

Even before this expansion of citizenship towards political citizenship, the legal state remained shot through by political elements since the production of law somehow depended on it. Bureaucracy and, more generally, the executive had to handle concrete issues, which implied political decisions regarding substantive questions. Personalised relations of representation seeped through the state, involving identity issues. With the expansion of political rights, such substantive issues unavoidably became glaring features of political modernity. Intense politicisation was affirmed in the same move, against the original liberal attempt to put a tamper on politics. Representatives have had to answer the concrete issues that interest those they represent, including when franchise was restricted, although the rationality of representatives was often seen as superior and capable of superseding the immediacy of those interests, now taken to a more abstract and universal level.⁴⁵ This last element of faith did not go away, but those concrete interests moved to the frontline as representation became more inclusive.

Representation has been considered and conceptualised from different standpoints.⁴⁶ Its meaning and form have mutated. Nevertheless, content – concreteness and substance – concerns us at this stage. Broad forms of representation intensify the tension between the formal elements of citizenship and the state on the one hand, and the concrete elements of societal life on the other, evincing the split nature of modern civilisation and pitting one side against the other. It fuels politics and infuses it with a problematic dynamic for the liberal state, which should be tasteless, odourless or colourless, like all the other elements thus far discussed in this book. It pushes the concrete, substantive and personalised elements of social life into the explicitly political dimension of the state – namely, the legislative and the executive. They must be answered somehow.

Representatives were initially seen as independent of the commands of their electorate, with no proper network between them either, with no

assumption of power hierarchy, apart from the prestige that being a representative lent to a citizen, in principle as ordinary as any other. The represented had to *authorise* the representative, with the ‘principal-agent’ relationship resurfacing in this connection, therefore lending representation a contractual countenance, involving some degree of accountability.⁴⁷ However, the degree of latitude of the ‘agent’ to operate varied significantly. It was very high in relation to the ‘principal’, that is, voters, in the case of freely acting representatives, whereas increasingly parliament and similar bodies were supposed to more or less thoroughly mirror the population they represented. They were free to take rational, even more disembodied decisions about issues concerning the collectivity. Enthralled by that disembodied perspective, representatives were elected and had, contrary to its lofty requirements, somehow to take into account the wishes and interests of their electorate. A tension has ever since lingered between one’s own ‘interest’ and those more general that could find a solution in a further, higher rational agreement – without detriment to conflict as to how this generality should be understood and effectively solved.⁴⁸ To this we must add that how representation has been conceived is dependent upon how sovereignty has been defined. The stronger the role of the citizenry as the collective repository of sovereignty, the more the represented is conceived as an agent. The more sovereignty is seen as directly linked to the state, the less the principal has power over the agent. Curious combinations may ensue as well, as in the British case mentioned above, in which parliament is considered the sovereign, whereby claims about its representative character inevitably become dubious.

Once elections were held and representatives elected, the represented had in one or another way given their *consent* to be represented but also to be ruled. Initially, the sovereign would have agency and could exercise power; once it had transferred this power to its representatives, it would be fitting that it exited the political scene and was put to sleep – for some, truly a soporific slumber.⁴⁹ The elected representatives would hold power over their electors, and a hierarchical structure was produced, whatever justification was formulated to cloud this new situation, in liberalism as well as republicanism and communism, with these last two currents adamant, at least in principle or rhetorically, about permanent participation. A particular body of citizens was now trusted with the exercise of law-making and actual political power, slowly giving rise to a new aristocracy or, conversely, what must be more adequately considered, a new oligarchy, notwithstanding if it may be someday duly democratised or not. Representation entails, though not absolutely insofar as public debate and citizen mobilisation carry on, a sort of elective rule of the few.⁵⁰

In contrast to the ‘law-making power’, executive power was and maybe has not been phrased yet so frequently as a significant concern of modern political thought. The singular reference to the importance of executive

power at the French revolutionary moment was, tellingly, that of a ministry to the deposed king, even if many, from the American revolutionists to the Jacobins, were wary of the concentration of power in one organ and, above all, in one person. Anonymous committees and the division of power were their solutions to this lurking problem. In particular, the near-Absolutist British experience under Cromwell did not bode well for forms of rule. If in Europe this appeared problematic and in the United States it was seemingly controlled, Latin American independence movements often demanded a strong presidency, let alone the Brazilian monarchy.⁵¹ However, neither did it become a usual topic of reflection, nor could the Jacobins in particular escape from intense personalisation, indeed the personification of power – as the name Robespierre most evidently demonstrates. This curious oblivion to executive power stems partly from a diffuse, tacit expectation that it would simply implement the legislative policies if only it was kept within its proper, limited bounds, that is, constitutionally domesticated and practically controlled. As time went by, the issue became inexorably more pressing, since the state explicitly came to the fore of social life, but there remained a lack of proper theorisation about the executive. A sort of self-denial about the actual exercise of power – of the modern state as domination and a system of rule – probably sneaked into liberalism as well, with several and severe obfuscating effects, partly as a heritage of that former effacement of modernity's political dimension proper, in favour of its mere juridical aspect.

As political modernity progressed, pluralism in representation became increasingly important, whereby the concreteness of the represented was accentuated. The societal side of the modern divide should occupy its due place in the state; representation would allow for this transposition.⁵² Even forms called corporatist became relevant and at certain moments were crucial for the representation of diverse collectivities directly within the state, with their substantive issues, particularly in Italian Fascism but beyond it too (the cases of Brazil, Argentina, México). Under post-war liberalism, a looser sort of neocorporatism brought states, business associations and unions to the negotiation table. Nevertheless, whereas assemblies represented the manifold and fragmented 'spirit' of the country, let alone corporatist intermediation, elected presidents may appear as the individual 'incarnation' of the collectivity of citizens, standing in immediate and personal relation to them; anointed by the people through election, they have enjoyed enormous political and administrative power, as soon critics realised.⁵³ A direct, *organicist* identification between the 'leader' and the citizenry sneaked into political life, ultimately incorporating the state in the equation and challenging the normative framework at the core of representative politics, linked to abstract, depersonalised and desubstantialised as well as, finally, depoliticised law-making. In this organicist universe of politics, a particular agent

would hover above social and political life, almost becoming a principal – in some cases definitely so.⁵⁴ The representative of legislative power and their electors already inevitably embodied concrete (personalised and substantialised elements) elements, with greater politicisation. Eventually, executive power took this further, although, with the inroads of concreteness into the state, the legislative and even the judiciary absorbed them.

Liberalism and republicanism had no sympathy for this radical personalisation of power, including when they accepted a more concrete and substantialised political dynamic without grudge. Also socialist and communist movements initially rejected personalisation, i.e., personification in strong leaders, but welcomed concreteness and socially substantive issues. It was fascism that banked on this personalisation, revelling in the personification of power, and in a direct, plebiscitary relation between the ‘leader’ and citizens – taken as ‘masses’. Initially resistant to the personalisation of politics, socialists and especially communists gave in to this strategy, whether in or out of power, implying an institutionalisation in which the ‘general secretary’ was turned into a figure of much greater stature and amassed immense power.⁵⁵ This concentration achieved extreme levels in societies in which ‘real socialism’ triumphed, and the prerogative state had the hidden, or not so hidden, upper hand. However, representation – or rather supposedly tightly controlled and revocable ‘delegation’ – of the working class in soviets, councils, popular assemblies and the like carried on, in the same way parliaments, in general, did in liberalism, at the core of the political theory of ‘real socialism’ despite that supposedly momentous change, which in practice came to mean nothing. Recourse to ideas exposed by Marx, Engels and Lenin buttressed this move, which was after all inconsequential.⁵⁶

In feudal Christendom, representation was essentially a symbolic process in which society found its embodiment and identity in some noble or kingly figure; power was based on relations of loyalty to persons.⁵⁷ Nor was this hierarchical personalisation and personification of power confined to the Middle Ages – in Rome and historical Islam, this was, for instance, also a reality, while in other civilisational areas and eras it occurred in conjunction with very different imaginaries and sharp hierarchisation, even the divinisation of rulers.⁵⁸ Modern thought strove to alter this radically, despite the staying power of monarchy, which has lasted much longer, particularly in Europe, than many initially expected, regardless of its now basically symbolic character, which has little to do, other than as a distant memory, with the rule of the one (but not so in Thailand, for instance).⁵⁹ Representation should consist of the political representation of the individual citizen, keeping the horizontal tissue of equal freedom, although collective agents should also eventually find their principals, whether or not it truly preserved that free equality. Furthermore, modern representation has a symbolic aspect, with performative components in which a sort of imperfect mirror reflects

representatives and the represented, with some keen on perfecting it through a 'politics of presence' in which the identity between them is absolute and straightforward.⁶⁰ Monarchies have precisely the opposite meaning, today too, since hierarchy is strongly justified and legitimated by this sort of arrangement.

In all those cases of intense personalisation in modernity, enormous power was conferred, institutionally, practically and symbolically, upon the ruler – sometimes a group of rulers – especially concerning executive power. This is confirmed especially when one person alone fills the supposed empty place of power through a symbolic process of *condensation* (with *displacement* of meaning usually being at play too).⁶¹ This personal figure becomes the representation of society, bringing together meanings, pushing out and substituting others and transforming them all. Concrete elements, as well as even abstract ones, thus contribute to a *substantialisation* and *personalisation/personification* of power. Nothing is left empty there.⁶² Contemporary monarchies still bank on the concreteness of representation, mostly bereft of actual power more broadly.

So-called 'populism' is precisely a resumption of this sort of phenomenon – as in this regard Stalinism, fascism and similar phenomena were in the past and are today. 'Populism' looks very much like the 'charismatic' leadership Weber yearned for (with characteristics he could not anticipate and taking power within little more than a decade afterwards).⁶³ It is simply the condensation of concrete elements, with some displacements and the effacement of others, that evince historic or contemporary symbology, in which one person embodies the representation, in a rather direct manner, of those he or she represents, personifying it. Demagoguery may accompany it – as it accompanies so many political manifestations – but this is not compulsory. Electoral processes and the affirmation of citizens' sovereignty may underpin this symbolic and practical process, with at least part of that network and voluntary collaboration that modernity envisaged preserved; or it may develop in a more authoritarian way and hierarchically when that supposed horizontality is discarded. This presence of substantive concreteness is not a phenomenon external to liberalism or, for that matter, republicanism and historical communism. It is part and parcel of the political dynamic of modernity – especially when other forms of representation cannot properly represent.⁶⁴ It is also a key element of fascism, wherein it is radicalised, as it often was in authoritarian collectivism and communist movements. A separate concept of 'populism', which conflates too many disparate things and stresses both personalisation and a desire for power, offers too much and too little simultaneously.

Presidents and parliamentarians, judges or whoever else, may, consequently, embody desires, memories, demands, solutions and identities for individual citizens and collectivities. Yet individual rulers, or aspiring ones,

have an advantage in this regard since there is a far more direct, sometimes obvious indeed, reflection of the supposedly represented principal in his or her larger-than-life agent or, more simply, explicitly top-down ruler. This means that the place of power is always at least half-full, even if to strive for the stability of former times is not more than a vain goal that several politicians are nonetheless adamant about pursuing. Modernity exhibits a system of rule, not merely an agreeable networked process of free cooperation: it is to a large extent a top-down political process and involves crucial vertical authority relations between those who rule – representatives or self-indicated rulers when formal representation is trampled, hence the many or the one, mostly a combination between them – and those who are ruled – the many, who only in a very faint sense really rule. Hierarchy and command, expressed in authority relations between political agents and citizens (supposedly their principals), are crucial features of political modernity.

3.5 Authoritarian collectivism and the political dimension

In most of what we have examined above, we have dealt with many continuities between modernity and authoritarian collectivism, the unfortunate and unintended outcome of efforts to build socialism and communism in several countries across the world. That is understandable: no civilisation is born which does not carry with it its heritage, developing from the ‘womb’ of those that precede it. Moreover, authoritarian collectivism, at least during the period it developed, was highly parasitical of political modernity, much as it lent a strong twist to the imaginary and institutional elements of this civilisation, let alone practices. In any case, it was not very long before a process of ‘devolution’ sent all those countries, in different ways, back to modernity, demanding subtle or not so subtle adaptations. This process took place above all in the political dimension. We have seen that re-politicisation developed as modernity evolved. Nevertheless, what happened in authoritarian collectivism took the process considerably further and led to a passage from quantity to quality.

In modernity, the political dimension is one among several; the economic dimension in particular has great weight, without consisting in an ‘economic basis’, as Marx once stated. In authoritarian collectivism, the political dimension clearly became dominant. It has been a strong argument among many analysts in the general debates that spanned the twentieth century about the nature of ‘real socialism’, starting with Weber’s reflections and then Trotsky’s, that the domination of bureaucracy characterised authoritarian collectivism.⁶⁵ While Trotsky was concerned with the political character of this bureaucracy, Weber followed the line of interpretation according to which ‘rational-legal’ domination was depoliticised and merely bureaucratic. He put this thesis forward in his whole work and

it has been repeated by those who have followed him regarding the role of bureaucracy. It is, however, false. The bureaucracy did not control the Soviet state after the 1920s and especially the 1930s, nor was this true where revolutionary processes erupted or military occupation took root. It was the *political bureaucracy* that ruled, with the party at its core, which then banked on the ruling circles of the party-state. It was from the heights of the state apparatus, centred around the party, which was centred around its central committee and thus all the way down, that the decision-making process unfolded, with a clear and open political character, never simply the adaptation of means to ends. At the core of this system of rule we find a very steep vertical institutionalisation of power, based on hierarchy and command, with interactive inclinations according to which the party rules in the name of the working class and the whole society obeys. The party and its top committees are the indisputable authority in these countries (at a certain point in the Soviet Union but also in other countries, the general-secretary was a foremost player in this). ‘Socialist legality’ was introduced to mitigate arbitrariness, yet the party’s prerogatives were never discarded, in that it was a self-appointed leading political force in the struggle for socialism.⁶⁶ Around elections, important dates and once specific courses of action were decided, in many instances a process of ‘mobilisation’ was engineered. Thereby the voluntary and enthusiastic assent of the population as a political body was publicly displayed as a supposedly wideawake sovereign.⁶⁷

Democracy will be more thoroughly treated later in this book. What was announced here as democratic must be mentioned insofar as it served precisely the opposite purpose. The only relevant political concept invented in the twentieth century, ‘democratic centralism’ was introduced initially in the middle of the Russian 1918–1921 civil war. It initially referred to the party (Bolshevik), being, regrettably, soon implemented in the state as well. It meant, in principle and formally, that issues were discussed and settled – with the agreement of those whose positions had been defeated. All party members and state officials ought then to be committed to implementing the policies that followed this decision-making process. What occurred was the contrary: top party and state political bodies decided and, through *political command*, such decisions should be implemented, hierarchically, whatever the place of the decision-making instance in the vertical structure and according to the reach of the issue at stake, all the way down to the last bureaucrat and indeed the citizen. Such a vertical and authoritarian system of rule was exported to all countries where ‘real socialism’ was built and enshrined in their constitutions.⁶⁸ It is alive and kicking, surviving the death of authoritarian collectivism and adapted to its return to capitalism. Democratic centralism – with its heightened political dimension – remains at the core of political rule in China and other neocapitalist countries.⁶⁹

Notes

- 1 José Maurício Domingues, *Sociological Theory and Collective Subjectivity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 1995); Idem, *Social Creativity, Collective Subjectivity and Contemporary Modernity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 2000).
- 2 Idem, 'The basic forms of social interaction' (2017), in *Emancipation and History: The Return of Social Theory* (Leiden: Brill, 2017 and Chicago: Haymarket, 2018).
- 3 See, for the first angle, Pierre Clastres, *La Société contre l'Etat. Recherches d'anthropologie politique* (Paris: Minuit, 1974); Klaus Eder, *Die Entstehung staatlich organisierter Gesellschaften. Ein Beitrag zu einer Theorie sozialer Evolution* (Frankfurt am Main: Suhrkamp, 1976); Michael Mann, *The Sources of Social Power*, vol. 1. A History of Power from the Beginning to A.D. 1760 (Cambridge: Cambridge University Press, 1986), chaps 3–5; David Graeber, *Fragments of an Anarchist Anthropology* (Chicago: Paradigm, 2004). More sceptical and, in the case of the second book, daring to raise greater problematics, with one of the authors changing his former position, Emmanuel Terray, 'Une nouvelle anthropologie politique?', *L'Homme*, vol. 29 (1989): 5–29; D. Graeber and David Wengrow, *The Dawn of Everything: A New History of Humanity* (New York: Farrar, Straus and Giroux, 2021).
- 4 For an overview of the debate, see Norman Yoffee, *Myths of the Archaic State: Evolution of Earliest Cities, States, and Civilizations* (Cambridge: Cambridge University Press, 2004), pp. 22–29.
- 5 J. M. Domingues, 'Power and rule, civilizations and the modern political dimension: Parallelism, convergence and divergence in social evolution', *International Review of Sociology*, vol. 32 (2022): 174–199. I discuss the examples mentioned in this section in greater detail therein.
- 6 Jürgen Habermas, *Zur Rekonstruktion des historischen Materialismus* (Frankfurt am Main: Suhrkamp, 1976); Idem, *Theorie des kommunikativen Handelns*, vols 1–2 (Frankfurt am Main: Suhrkamp, [1981] 1988).
- 7 Marshall D. Sahlins, 'Evolution: Specific and general', in M. D. Sahlins and Elman V. Service (eds), *Evolution and Culture* (Ann Arbor, MI: University of Michigan Press, 1960); Domingues, *Social Creativity, Collective Subjectivity and Contemporary Modernity*, chap. 4.
- 8 Ernest Gellner, *Plough, Sword and Book* (Chicago: The University of Chicago Press, 1988); Anthony Giddens, *The Constitution of Society: Outline of a Theory of Structuration* (Cambridge: Polity, 1984), chap. 5. Also Mann, *op. cit.*, and Graeber and Wengrow, *op. cit.*
- 9 Domingues, 'Power and rule, civilizations and the modern political dimension: parallelism, convergence and divergence in social evolution'. For biology, see David B. Wake, 'Homoplasy: The result of natural selection, or evidence of design limitations?', *American Naturalist*, vol. 138 (1991): 543–567; Brian K. Hall, 'Descent with modification: The unit underlying homology and homoplasy as seen through an analysis of development and evolution', *Biological Review of the Cambridge Philosophical Society*, vol. 87 (2003): 409–433.
- 10 J. M. Domingues, 'Existential social questions, developmental trends and conceptual strategies' (2015), in *Emancipation and History*.
- 11 Jan Heersterman, *The Inner Conflict of Tradition: Essays in Indian Ritual, Kingship and Society* (Chicago: The University of Chicago Press, 1985), chap. 9; Ram Sharansharma, *Aspects of Political Ideas and Institutions in Ancient India* (Delhi: Motilal Banarsidass, [1959] 2005), pp. 21–23.
- 12 Niccolò Machiavelli, *Il principe* (1532), in *Edizione nazionale delle opera di Niccolò Machiavelli* (Rome: Salerno, 1997).

- 13 Politics was a term hardly known in history before, its meaning in Greece totally at variance with what has, in an anachronic perspective, been made of it in modernity. While lending great importance to the forms of rule, Aristotle thought of the *polis* as a totality, also involving the *oikos*. This conceptualisation was much closer to what Hegel would later define as the modern ethical totality. See Aristotle, *Politics and The Constitution of Athens* (Cambridge: Cambridge University Press, 1996); Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts*, in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, [1820] 1986). Nor do we find a view of ‘politics’ – but rather of traditional forms of rule, especially monarchy, and law, in St Thomas Aquinas, *Political Writings* (Cambridge: Cambridge University Press, 2022). Especially translations from Latin to modern languages often incur anachronisms – for instance, *civitas* translated as ‘political body’ and the like. The use of *politicum* and related declinations in the medieval translation of Aristotle and subsequent European languages referred rather to the *polis*, not to the modern conception. The seventeenth century saw the emergence of the modern, albeit still unspecified, concept of politics.
- 14 Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton, NJ: Princeton University Press, [1970] 2016); Joseph Canning, *A History of Medieval Thought (300–1450)* (London and New York: Routledge, 1996).
- 15 Reinhart Koselleck, *Kritik und Krise* (Frankfurt am Main: Suhrkamp, [1959] 1997), chap. 1; Perry Anderson, *Lineages of the Absolutist State* (London: Verso, [1974] 1979); Leonard Krieger, *An Essay on the Theory of Enlightened Despotism* (Chicago: The University of Chicago Press, 1975); Derek Beales, *Enlightenment and Reform in Eighteenth Century Europe* (London: I. B. Tauris, 2005); Günter Birtsch, ‘Aufgeklärter Absolutismus oder Reformabsolutismus’, *Aufklärung*, vol. 9 (1996): 101–109. The theoretician of the late Absolutist state, with its ‘divine right’ doctrine and, in this case, intransigent anti-Protestantism, was, rather than the far more modern Hobbes, although ‘politics’ is already in his vocabulary, Jacques-Bénigne Bossuet, *Politique tirée des propres paroles de l’Ecriture sainte à Monseigneur le dauphin* (Paris: Pierre Cot, 1709).
- 16 Once again, the fundamental turn is to be found in Thomas Hobbes, *Leviathan [or the Matter, Forme, and Power of Common-Wealth Ecclesiastical and Civil]* (Cambridge: Cambridge University Press, [1651] 1996), *passim*. But he was no theoretician of Absolutism as it really existed. His solution was, in all aspects, too modern for this form of rule. He actually laid down a programme for the future.
- 17 Here lies the reach and the limitation of the very important contribution of Pierre Dardot and Christian Laval, *Dominer. Enquête sur la souveraineté de l’Etat en Occident* (Paris: La Découverte, 2020), especially pp. 25–26.
- 18 J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, [1975] 2016); Cicero Romão Resende de Araujo, *A forma da república. Da constituição mista ao Estado* (São Paulo: Martins Fontes, 2013). See also Charles H. McIlwain, ‘A fragment on sovereignty’, *Political Science Quarterly*, vol. 48 (1933): 94–106; Dardot and Laval, *op. cit.*, p. 22 and chaps 4–5. The main classical argument about the three forms of rule is found in Aristotle, *op. cit.* For the utmost expression of the ‘plebeian mixed constitution’, featuring the struggle between aristocracy and plebeians, a counterpoint but not opposed to his work on the prince and power, see N. Machiavelli, *Discorsi sopra la prima deca di Tito Livio* (1531), in *Edizione nazionale delle opere di Niccolò Machiavelli* (Rome: Salerno, 1997). See the ground-breaking work of Gabriele Pedullà, *Machiavelli in Tumult: The Discourses on Livy and the Origins of Modern Contractualism* (Cambridge: Cambridge University Press, 2018).

- 19 The foremost theoretical landmarks in the development of the concept of sovereignty are found in Jean Bodin, *Les Six livres de la République* (Paris: Librairie Générale Française [1576, 1594] 1993), Book I, chap. 8 (power to command – an important issue for modernity being central in Book II, chap. 5 –, with overall the sovereign standing above the law); and Hugo Grotius, *The Rights of War and Peace* (Indianapolis, IN: Liberty Fund, [1625, 1646] 2005), Book I, chap. 2.1-2; as well as Hobbes, *op. cit.*, chaps 17–18; Idem, *On the Citizen* (Cambridge: Cambridge University Press, [1642, 1651] 1998), especially pp. 75–77. Hobbes stressed that sovereignty could not be regained once surrendered to a superior, though men did not give up their right to self-preservation (as Grotius had already stated). Hobbes also elaborated on a two-step constitution of a community: first, it came together and constituted a political body, then followed the choice of a form of rule. The solution was formerly broached by Samuel Pufendorf, *On the Duty of Man and Citizen* (Cambridge: Cambridge University Press, [1673] 1991), chaps 5–11 (as well as partly already in Grotius). For the trajectory of the idea, see further Jean-Jacques Rousseau, *Du Contrat social, ou principes du droit politique* (1762), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971), Book 1, chap. 1.6-7. Sovereignty is therein always retained by citizens and characterises them when they are ‘active’, that is, perform as ‘citizens’, although they are strongly submitted to the law as ‘subjects’, hence ‘passive’. The ‘general will’, indivisible, would be sovereign. Stressing the multitude as the source of potency and sovereignty, another answer to Hobbes is found in Baruch Spinoza, *Theological-Political Treatise* (1670); Idem, *Political Treatise* (1677); Idem, *Ethics* (1677), especially Part IV, all in *Complete Works* (Indiana, IN: Hackett, 2002). He was definitely more sanguine on the positive side of the ‘multitude’ in the first book. The neo-Thomists of the ‘second scholastic’ held a far less individualistic view, stressing that individuals are naturally social beings, while unfolding a subjectivist standpoint on natural law. See Francisco Suárez, *Defense of the Catholic and Apostolic Faith against the Errors of Anglicanism* (New York: Lucario’s Ocasio, [1613] 2012/2013), Book 3, chaps 1–3. Grotius’ ‘Preliminary discourse’ (in *op. cit.*, §§ VI–IX) made the same point. For the trajectory of the concept, see Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 1, The Renaissance; vol. 2, The Age of Reformation (Cambridge: Cambridge University Press, 1978); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); linking sovereignty and constituent power, and dating it back to Marsilius de Padua, see Andreas Kalyvas, ‘Popular sovereignty, democracy and the constituent power’, *Constellation*, vol. 12 (2005): 223–244.
- 20 Timothy J. Colton, ‘Paradoxes of Putinism’, *Daedalus* – Russia beyond Putin, vol. 146 (2017): 8–18.
- 21 Benedict Douglas, ‘Too attentive to our duty: The fundamental conflict underlying human rights protection in the UK’, *Legal Studies*, vol. 38 (2017): 360–378. The ways of thinking and practices of what Bagehot called the ‘deferential nation’, whose members were until 1949 referred to as ‘subjects’, not citizens, implying that these had duties (to obey parliament and the rule of law) instead of rights, underpins this standpoint; sovereignty was not theirs. This vision lays roots in the thinking of John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, [1832, 1861, 1885] 1995), Lecture I, pp. 18ff. He accepted only a lesser level of sovereignty vested in the (very restricted at the time) ‘electoral body’ represented in the commons, alongside king and peers in Lecture VI, pp. 192ff. The same view is present in Jeremy Bentham, *Non-sense upon Stilts, or Pandora’s Box Opened, or the French Declaration of Rights Prefixed to the Constitution of 1791 Laid Open and Exposed* (1843), in

- Rights, Representation, and Reform: The Collected Works of Jeremy Bentham* (Oxford: Oxford University Press, 2002). He absolutely despised ideas of rights and was concerned only with how to use parliament to operate his utilitarian reforms.
- 22 Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* (Berlin: Duncker & Humblot [1922] 2009).
 - 23 Karl Marx, *Zur Juden Frage* (1843), in K. Marx and Friedrich Engels, *Werke*, vol. 1 (Berlin: Dietz, 1981), p. 355. For a correct inversion of the equation, using Castoriadis in ways similar to what I have done here, also tackling concepts such as ‘people’ and ‘nation’, to be examined in the next chapter, see Kevin Olson, *Imagined Sovereignities: The Power of the People and Other Myths of the Modern Age* (Cambridge: Cambridge University Press, 2016). Though rejecting a hard Foucauldian reading of sovereignty in the revolutionary Caribbean in the late 1700s, he apparently fails to grasp the emancipatory role of the modern imaginary outside Europe and to some extent inside it.
 - 24 V. I. Lenin, *The State and Revolution: A Marxist Theory of the State and the Tasks of the Proletariat in the Revolution* (1918), in *Collected Works*, vol. 25 (Moscow: Progress, 1964); P. J. Stuchka, ‘State and law in the period of socialist construction’ (1927), in *Selected Writings on Soviet Law and Marxism* (New York and London: M. E. Sharpe, 1988), pp. 119–121; Andrei Y. Vyshinsky, *The Law of the Soviet State* (New York: Macmillan, 1948) especially p. 318. Lenin did not explicitly work with the concept of sovereignty, except once as the ‘sovereign soviets’ (chap. 3), but was throughout clear concerning the absolute power of the working class.
 - 25 Roberto Mangabeira Unger, *Politics: The Central Texts* (London and New York: Verso, [1987] 1997), pp. 3ff.
 - 26 The causality of the will – God’s will above all – harks back to early and middle-ages’ Christianity, theorised in particular by Saint Augustine and Saint Thomas Aquinas. See Otto [von] Gierke, *Political Theories of the Middle Ages* (Cambridge: Cambridge University Press, [1881] 1900), p. 9. Primarily individualistic and mundane theories of the will developed in modern thought and have been crucial from its inception up to our days. See, for classical versions, Hobbes, *Leviathan*, chap. 5–11, 14; Spinoza, *Political Treatise*, chaps 1–3; John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988), passim; Rousseau, *op. cit.*, chaps 3.4–5; Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, [1785] 1977), Zweiter Abschnitt; Idem, *Metaphysik der Sitten*, especially ‘Einleitung in die Rechtslehre’, §§ A–B, pp. 344–346; Emmanuel Joseph Sieyès, *Qu’est-ce que le Tiers état?* (Paris: Presses Universitaires de France, [1789] 2001), chap. 5. This last author substituted a more plural and liberal ‘common will’ for the Rousseauian and absolute ‘general will’. This view underpins most modern practical endeavours since it leaves individual private matters for the individual alone, which is not really true, or is not clear enough, in Rousseau’s perspective. A state-centred view, as an objective expression of the Absolute Spirit, which had many, more or less strict followers afterwards, including beyond his statism, is found in Hegel, *op. cit.*, §§ 33, 257–258. The state was rational substance, though individuals possessed their will too (§§ 4–29, 33). More generally, see Patrick Riley, *Will and Political Legitimacy: A Critical Exposition of Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge, MA: Harvard University Press, 1982).
 - 27 Antonio Negri, *Il Potere Costituente. Saggio sulle alternative del moderno* (Rome: Manifestolibri, 2002); J. Habermas, ‘Volkssouveränität als Verfahren’

- (1988), in *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992).
- 28 For Hobbes, in *Leviathan* (Introduction and chaps 10, 17, 19), the emergent being, as a composite body, was a matter of aggregation. Hegel (*op. cit.*, §§ 275–280) took it as absolute and centred on the sovereign prince, though the bureaucracy translated it through its rationality. A separate and substantialised conception of state will, which is parallel to that of individuals, appears, in the context of discussions about the juridical personality of the state, in Georg Jellinek, *System des subjektiven öffentlichen Rechte* (Tübingen: Mohr Siebeck, [1892, 1905] 2011), chap. 3. Implicitly against Jellinek, methodologically and perhaps substantively, always a muted issue in his work, the reduction of the state to the ‘meaning’ active individual agents attributed to it is found in Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B Mohr [Paul Siebeck], [1921–22] 1980), pp. 6–7.
- 29 Lenin, *op. cit.*, though, again, he does not explicitly use the concept, which underlies, perhaps unconsciously, his ideas, even if, perhaps, a theory partly based on interest eventually got hold of his mind, under Stuchka’s influence. The will, connected to the social classes, is explicit in Evgeny Pashukanis, ‘The Marxist theory of state and law’ (1932), in *Selected Writings on Marxism and Law* (London and New York: Academic Press, 1980).
- 30 Thomas Paine, *The Rights of Man* (1791), in *Paine: Political Writings* (Cambridge: Cambridge University Press, 2000), p. 184.
- 31 Araujo, *op. cit.*, Part I.
- 32 For instance most conspicuously in Ferdinand Lassalle, *Über Verfassungswesen* (Hamburg: Europäische Verlagsanstalt, [1862] 1993).
- 33 C. Schmitt, *Verfassungslehre* (Berlin: Duncker & Humblot, [1928] 1993), pp. 4–21, 44; Charles Howard McIlwain, *Constitutionalism: Ancient and Modern* (Indianapolis, IN: Liberty Fund, [1940] 1947); Eberhard Schmidt-Aßmann, *Der Verfassungsbegriff der Aufklärung und des Historismus. Untersuchungen zu den Vorstufen eines hermeneutischen Verfassungsdenkens* (Berlin: Duncker & Humblot, 1967); Joaquim Gomes Canotilho, *Direito constitucional e teoria da Constituição* (Coimbra: Almedina, 1993, 6th edition), pp. 72–74, 183, 252; Konrad Hesse, ‘Die normative Kraft der Verfassung’ (1958), in Julian Krüper, Mehrdad Payandeh and Heiko Sauer (eds), *Konrad Hesses normative Kraft der Verfassung* (Tübingen: Mohr Siebeck, 2019).
- 34 Vyshinsky, *op. cit.*, p. 57; Georg Brunner, ‘Zur Wirksamkeit der Grundrechte in Osteuropa’, *Der Staat*, vol. 9 (1970): 187–222. Albeit veiled, the influence of positivism is strong in this outlook.
- 35 If Constitutions are seen as an issue exclusively *internal* to the state, they can be totally severed from constituent power, as in Hegel, *op. cit.*, §§ 257–320. This is evidently an extreme position.
- 36 William Eskridge, Jr. and John Ferejohn, ‘Super-statutes’, *Duke Law Review*, vol. 50 (2001): 1215–1276.
- 37 The say stems from Oliver Wendell Holmes, Jr, ‘The path of the law’, *10 Harvard Law Review* (1897): 1–20.
- 38 Charles de Secondat de Montesquieu, *De l’Esprit des lois* (Paris: Gallimard, [1758] 1995), Book 11, chaps 4, 6. He spoke of the representation of the ‘nation’. See further Schmitt, *Verfassungslehre*, pp. 205–209, 218, for ‘presentification’ (*Vergegenwärtigung*); actually, once again, also aiming at a direct identity, shorn of procedures, between representatives and the represented. Modern plebiscites embodied public opinion, whereas the people should remain disorganised.
- 39 K. Marx, *Der achtzehnte Brumaire des Louis Bonaparte*, in K. Marx and F. Engels, *Werke*, vol. 8 (Berlin: Dietz, [1852] 1960). The fracture leads to the

- representation in one singular person – Bonapartism – with radical personification, which we will discuss in another key below.
- 40 Choice of rulers – even if not by the citizens – happened in medieval elective monarchies, in Antiquity (with the Greeks preferring the lot) and in many other settings, though assemblies were how decision-making usually took place among the Mesopotamians and Greeks, Saxons and Germanic peoples, as well as many others. Voting and majority rule appeared when people settled down; before that consensus-building was crucial: those who strongly disagreed could simply move away.
- 41 Marshall, ‘Citizenship and social class’.
- 42 Kant (*Metaphysik der Sitten*, § 45, pp. 431–32) was in agreement with this division, which was later made famous by Benjamin Constant, *Principes de politiques* (1815), chap. 6; Idem, ‘La liberté des anciens comparée à celle des modernes’ (1819), both in *Écrits politiques* (Paris: Le Livre de Poche, 1980). He was especially keen on landed property. The issue was highly contentious, coming up already in the course of the English Glorious Revolution, though subdued by the Grandees of the army, with the demand of universal manhood suffrage in the 1647 documents ‘The case of the army truly stated’, ‘Agreement of the People’ and ‘The Putney debates’, in Levellers, *The Putney Debates* (London: Verso, 2007). Supposedly consuetudinary rights (of the ‘freeborn Englishman’), with Roman republican rings, were the platform from which they mainly argued. Later republican writings had it already much more clearly phrased. Cf. Algernon Sidney, *Discourses concerning Government* (Indianapolis, IN: Liberty Fund, [1698] 1996).
- 43 Edmund Burke, ‘Speech to the electors of Bristol’ (1774), in *Selected Works*, vol. 4 (Miscellaneous Writings) (Indianapolis, IN: Liberty Fund, 1999); Alexis de Tocqueville, *De la Democratie en Amérique*, vols 1–2 (Paris: Gallimard [1835 and 1840] 1951), vol. 2, Part II, chap. 2; John Stuart Mill, *Considerations on Representative Government* (Cambridge: Cambridge University Press, [1861] 2010), especially chaps 1, 3, 5; Idem, *On Liberty* (1859), in *On Liberty and Other Writings* (Cambridge: Cambridge University Press, 1989), especially chaps 1–2.
- 44 The classic political reflection in this regard was Mary Wollstonecraft, *A Vindication of the Rights of Woman* (Cambridge: Cambridge University Press, [1792] 2010).
- 45 Burke, *op. cit.*
- 46 Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: The University of Chicago Press, 2006); Monica Brito Vieira and David Runciman, *Representation* (Cambridge: Polity, 2008).
- 47 Hanna Pitkin, *The Concept of Representation* (Berkeley and Los Angeles, CA: University of California Press, 1967), pp. 2, 92–93, 102–103, 166. Once again, it is to Hobbes (*Leviathan*, chaps 16, 18–19) that we owe this concept of authorisation.
- 48 J. Habermas, *Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik* (Frankfurt am Main: Suhrkamp, 2022), p. 90. He is correct to point out this deliberative aspect of the modern political dimension and the harder interests that only through negotiation and compromise may be tackled, but still, including his late work, strangely overlooks conflict altogether.
- 49 John Dunn, *The History of Political Theory and Other Essays* (Cambridge: Cambridge University Press, 1996), chap. 4; Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy (The Seeley Lectures)* (Cambridge: Cambridge University Press, 2016). Not surprisingly, in *Leviathan* (chaps 14, 21), Hobbes was once again at the roots of this idea in modernity. See

- also Locke, *op. cit.*, chaps 26–27. In turn, consent was very limited for Rousseau – with executive power playing a minimal role. His argument is well-known: the English accepted representation, with its degraded feudal origins, and therefore were free only at the moment of the vote. See Rousseau, *op. cit.*, chap. 3.1–2, 15. He seems to have eventually accepted as inevitable, and even containing positive aspects, representation in ‘large states’, according to Idem, ‘Considérations sur le gouvernement de Pologne et sur sa réformation projetée’ (1771–72), in *Œuvres complètes*, vol. III (Paris: Seuil, 1971), chap. 7.
- 50 Bernard Manin, *Principes du gouvernement représentatif* (Paris: Flammarion, [1995] 1996), chaps 3–4. Fundamentally agreeing with the classical tradition and then Schmitt, he deems elections an aristocratic political process, according to a ‘principle of distinction’ of the elected. For a critique, Urbinati, *op. cit.*, pp. 8–10. The different power directly exercised by the people and a state ruled by representatives are the theme of Burke, *op. cit.*; James Madison, ‘The Federalist no. 10’ and Idem, ‘The Federalist no. 57’, in Terence Ball (ed.), *Hamilton, Madison, and Jay: The Federalist, with Letters of Brutus* (Cambridge: Cambridge University Press, [1788] 2003). Representatives would behave in harmony with the pondered interests of those who elect them, without submitting to their immediate desires, instead opinion passing through a filter of the most capable men, who are *not* like their electors, but the selection of the best. The idea of a ‘natural aristocracy’, elective and rotative, was vented by James Harrington, *The Commonwealth of Oceana* (1656), in *The Common Wealth of Oceana and A System of Politics* (Cambridge: Cambridge University Press, 1992), p. 23. In contrast, this issue constituted a great worry for Thomas Paine, *Common Sense* (1776), in *op. cit.*, p. 5. He reckoned that the ‘elected’ should always become again ‘elected’ in order that representatives remain faithful to the public rather than forming a corporative interest.
- 51 For the United States, see Madison, *op. cit.*, and, on the contrary, keener on a stronger presidency, A. Hamilton, ‘Federalist no. 68’ and Idem, ‘Federalist no. 77’, in Ball, *op. cit.*; for the Jacobins, see Ferenc Fehér, *The Frozen Revolution: An Essay on Jacobinism* (Cambridge: Cambridge University Press and Paris: Maison des Sciences de l’Homme, 1987), pp. 58–60, 67. For that singular reflection on the executive, see Jacques Necker, *Du Pouvoir exécutif dans les grands états* (1792), in *Œuvres complètes*, vol. 8 (Paris: Treuttel & Würtz, 1821). While monarchy was clearly based on concrete personal traits, regarding an imaginable republic he was in his late years concerned with a collective government of ‘consuls’, which could impose itself through ‘abstraction’ rather than incarnated in a single man, although the consul elected for a year among them would bear political responsibility. Idem, *Dernières vues de politique et de finance*, in *Œuvres complètes*, vol. 11 (Paris: Treuttel & Würtz, 1821), pp. 140ff. See also Pierre Rosanvallon, *Le Bon gouvernement* (Paris: Seuil, 2015), especially chap. 1. In contradistinction, a very limited role was demanded by J.-J. Rousseau ‘Economie politique’ (1755), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971); *Du Contrat social*, chaps 2.6, 3.1–2ff, 3.16; Idem, *Lettres écrites de la montagne* (1764), in *Œuvres complètes*, vol. III (Paris: Seuil, 1971), especially letter 7. More technically, according to the discourse on the social contract, ‘government’ was supposed to facilitate the ‘mutual correspondence’ between the ‘sovereign’ and its ‘subjects’. In Latin America in particular, the anxiety was directed to the fragmented and supposedly chaotic situation of the new republics, which supposedly required a solid executive power. See Simón Bolívar, ‘Discurso pronunciado ante el Congreso, en Angostura, el 15 de febrero de 1819’, in *Discursos y proclamas* (Caracas: Fundación Biblioteca Ayacucho, 2007); Juan Bautista Alberdi, ‘Bases y puntos de partida para la

- organización de la República Argentina, derivados de la ley que preside al desarrollo de la civilización en la América del Sur' (1852), in *Política y sociedad en Argentina* (Caracas: Fundación Biblioteca Ayacucho, 2005), chap. 23; Justo Sierra, *Evolución política del pueblo mexicano* (Caracas: Fundación Biblioteca Ayacucho, [1990–1902] 1990), pp. 327–328. See also Roberto Gargarella, *La sala de máquinas de la constitución. Dos siglos de constitucionalismo en América latina (1810–2010)* (Buenos Aires: Katz, 2014); and, for the peculiar Brazilian, rather centralised, monarchical arrangement, Sérgio Buarque de Hollanda, *História geral da civilização brasileira*, T. II, vol. 3 (São Paulo: Difel, 1972), chap. 1.
- 52 Mill, *Considerations on Representative Government*. Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971); Idem, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989).
- 53 Marx, *Der achtzehnte Brumaire des Louis Bonaparte*, p. 128.
- 54 Especially C. Schmitt, 'Vorbemerkung (Über den Gegensatz von Parlamentarismus und Demokratie)' (1926), in *Die geistgeschichtliche Lage des heutigen Parlamentarismus* (Berlin: Duncker & Humblot, [1923, 1926] 2010); *Verfassungslehre*, pp. 204–20; Idem, *Der Hüter der Verfassung* (Berlin: Duncker & Humblot, [1931] 1969), pp. 158–59, 246–247. He was keen on a plebiscitary president.
- 55 Maurice Duverger, *Les Parties politiques* (Paris: Armand Collin, [1951, 1957] 1976), p. 260.
- 56 Claude Lefort, 'Staline et le stalinisme', in *L'Invention démocratique* (Paris: Fayard, 1980), pp. 121–25. We do not, as a matter of fact, need the theories of totalitarianism for this argument. See A. Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985), pp. 295ff. Direct elections for central representative bodies characterised the Soviet Union since the 1936 Constitution, albeit not in all authoritarian collectivist countries. Curiously, Trotsky sustained a collective view of representation of the Soviets, accusing Stalin of introducing universal suffrage and atomising workers, hence destroying that proletarian innovation. He seemed not to realise how the collective arrangement and the indirect elections of rulers could make the Soviets in practice more vertical. Leon Trotsky, *The Revolution Betrayed* (New York: Path Finder, [1937] 2004), pp. 190ff.
- 57 Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1957); Strayer, *op. cit.*, pp. 13–14.
- 58 Melissa Lane, *The Birth of Politics: Eight Greek and Roman Political Ideas and Why They Matter* (Princeton, NJ: Princeton University Press, 2015), p. 7; Patricia Crone, *Medieval Islamic Thought* (Edinburgh: Edinburgh University Press, [2004] 2005), p. 3; Nicole Brisch (ed.), *Religion and Power: Divine Kingship in the Ancient World and Beyond* (Chicago: The Oriental Institute of the University of Chicago, [2008] 2012).
- 59 This has not received much attention in the scientific literature. But see Robert Hazell and Bob Morris, *The Role of Monarchy in Modern Democracy: European Monarchies Compared* (London: Bloomsbury, 2020). Besides some power, symbolic and otherwise, monarchs and nobles are rich – sometimes very rich – indeed.
- 60 Pitkin, *op. cit.*; Paula Diehl, *Das Symbolische, das Imaginäre und die Demokratie. Eine Theorie politischer Representation* (Baden-Baden: Nomos, 2015), especially pp. 70–73, chaps 3–6; Jeffrey C. Alexander, *The Performance of Politics: Obamas' Victory and the Democratic Struggle for Power* (Oxford:

- Oxford University Press, 2010); Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995).
- 61 A systematic presentation of these concepts is found in Sigmund Freud, 'Das Unbewusste' (1915), in *Studienausgabe*, vol. 3 (Frankfurt am Main: Fischer, 1975).
 - 62 In the same line of argument, the problem of emptiness appears as both institutional and symbolic in C. Lefort, 'La logique totalitaire', in *op. cit.*; and Ernesto Laclau, *On Populist Reason* (London: Verso, 2005). But the place of power is in fact always occupied – even if temporarily (an issue on which Lefort is less precise than is often believed), while at least in social life there are no 'empty signifiers', for they are always saturated. See further, Juan Carlos Portantiero and Emilio de Ípola, 'Lo nacional popular y los populismos realmente existentes', *Nueva sociedad*, no. 54 (1981): 7–18.
 - 63 M. Weber, 'Der Reichspräsident' (1919), p. 501; Idem, 'Parlament und Regierung in neugeordneten Deutschland' (1918), both in *Gesammelte politische Schriften* (Tübingen: J. C. B Mohr [Paul Siebeck], 1988).
 - 64 That was the original hypothesis about populism proposed by Gino Germani, *Política y sociedad en una época de transición* (Buenos Aires: Paidós, 1965).
 - 65 M. Weber, 'Der Sozialismus', in *Gesammelte Aufsätze zur Soziologie und Sozialpolitik* (Tübingen: J. C. B. Mohr [Paul Siebeck], 1988); Trotsky, *op. cit.*, 80, 180–88, among many other places where he wrote about this.
 - 66 Bruno Rizzi, *Le Collectivisme bureaucratique* (Paris: Champ Livre, [1939] 1976); Milovan Djilas, *The New Class: An Analysis of the Communist System* (London: Thames and Hudson, 1957), pp. 38–39; Paul Sweezy, *Post-Revolutionary Society* (New York: Monthly Review, 1980), chap. 9; Ferenc Fehér, Agnes Heller and György Márkus, *Dictatorship Over Needs: An Analysis of Soviet Societies* (New York: Saint Martin's Press, 1983), chap. 1, 56–57, 60, 70, 139ff; János Kornai, *The Socialist System: The Political Economy of Socialism* (Oxford: Clarendon, 1992), pp. 34–41.
 - 67 David Beetham, *The Legitimation of Power* (Basingstoke: Palgrave Macmillan [1991] 2013), pp. 94–95.
 - 68 V. I. Lenin, 'Preliminary draft resolution of the Tenth Congress of the R.C.P. on party unity' (1921), in *Collected Works*, vol. 32 (Moscow: International Publishers, 1973); Michael Walles, *Democratic Centralism: An Historical Commentary* (Manchester: Manchester University Press, 1981).
 - 69 John Garrick and Yan Chang Bennett, "'Xi Jinping Thought': realisation of the Chinese dream of national rejuvenation?", *China Perspectives*, nos. 1–2 (2018): 99–105. It is usual to say that the Chinese do not like to speak of power as such, coupling it always with moral issues. Lucian W. Pye, *The Spirit of Chinese Politics* (Cambridge, MA and London: Harvard University Press, [1968] 1992). While this is likely to be true, the level of power concentration in the general-secretary's hands today can hardly cloud what it really is, Confucian sloganeering notwithstanding.

4

FROM ABSTRACT TO CONCRETE

4.1 Nation and people

We have seen in the previous chapters that abstractness pervades juridical-political modernity. This was true of the individual rights-holder and citizen, law and the state, the sovereign and even constituent power. Much as sovereignty and constituent power have been thought of in modernity mostly from an individualist standpoint, in which they appear as the upshot of the aggregation of individual wills, they are both collective phenomena. Increasingly directly linked to political rights, representation has already partly led us beyond the absolute abstractness, desubstantialisation, depersonalisation and, evidently, depoliticisation of civil rights. Beyond their juridical-political definition, they imply concrete people, with concrete issues and concrete representatives, despite the latter's resistance to accept substantive predicates, a development they could not block in the long run. We remain, notwithstanding, in principle within an individualistic outlook since political rights are rights of individuals that form a collective political body, regardless of the time spanning between their emergence in political thought and eventually their full institutionalisation, as well as of the further developments the idea of rights underwent. However, in modernity, from its inception, in thinking and practice, several entities have demonstrated a collective character, which is also concrete, with explicit substantive traits. Some were almost personalised and perceived as capable of behaving as an agent, a concrete collective subjectivity. These entities could be seen as the true – collective – bearers of sovereignty, whereby a tension between individualism and collectivism was definitely forced into the heart of modernity.¹ These collective bodies were the nation and the people, whose predicates were unavoidably particularised.

The abstract individual citizen has existed first of all only within the borders of specific nation-states, as part of a collectivity, although at this abstract level it could still be contemplated according to individualism. Nevertheless, as the expression explicitly reveals, this is not simply a state; it is a *nation-state*, where certain people live, comprising the totality of rights-holders that make up such a nation. The positive formalisation of rights has therefore taken place within a 'nation' and in relation to a 'people'. Nation and people imply citizens with these very general belongings. They have concrete specificities that differentiate a particular group of citizens from all others. Nation and people are both very distinctive and permanent imaginary elements of modern civilisation. They are also institutionalised realities in all the nation-states spread out worldwide. I shall frame them as analytical categories.

In the imaginary of modernity, the ideas of nation and people are supple and floating, 'magmatic' symbolic elements. Scientifically, they are also somewhat elusive and contested concepts partly due to this magmatic character. They offer, despite or perhaps because of their suppleness and floating quality, a crucial focus for social creativity and emotional attachment (cathexis). They entail a strong sense of belonging and identity, with different emphases and even selections of elements, for different individuals and sub-collectivities, within their encompassing heterogeneous unity (in some cases homogenisation appearing as a value to retain or achieve). The nation has been, above all, closely connected to the notion of 'culture', which is a very fluid and multifaceted idea. The people, as it is closely linked to the nation and even to some extent interchangeable with it, shares its link to 'culture'. Conceptually, 'culture' is a residual and reified category, in contradistinction to be found everywhere with different meanings and applications, in the sense that it takes over what other concepts have left out. It frames the symbolic universe especially in contradistinction to the economic and political dimensions, often assuming more circumscribed phrasings, which make its definition even more confusing (e.g., in the notion of 'political culture'). I eschew such a vague notion and make use instead of the concept of the imaginary, which is more specific and cuts across all dimensions of social life, even though, within the bounds of the reality we must analyse, 'culture' consists in an inescapable 'native' category.

Civil and political rights have in common a sort of radical 'logocentrism' that erases differences and aims at homogenising social life, partly through its conceptual subordination. This drive is associated with the real abstractions I have introduced in Chapter 1. National socialism and its final solution to the Jewish question, a particular, very concrete people it was wont to annihilate, showed how tortuous homogenisation can be. Homogenisation may also mobilise the bureaucracy for either harsh or more benign endeavours.² The two possibilities must not be conflated. Moreover, there seems to be no general and perfect solution to deal with these magmatic notions.

Nation and state have usually been connected. For Weber, this connection distinguished nation from ethnicity, which lacks it.³ This seems to be correct, but further subtleties must be adduced. The non-absolute coincidence of nation and state has led some authors to speak of a *national* state rather than of the 'nation-state' since it could contain more than one culturally bound group, in spite of the hegemony of one of them that might also be one of its characteristic features.⁴ If they often overlap, we can identify two principal models of the nation: the civic and the ethnic. The former has been more concerned with citizenship and more open to pluralism and difference, contrary to the latter, which has ethnicity at its core. This second version was until very recently familiar to Germany and much of Eastern Europe, as well as, until today, Israel. Nazism obviously adopted it in a radical way, but milder forms have developed in other places and periods.⁵ Even civic nationalism, which initially appeared in Britain, France, the United States and Latin America, was cut across by an element of concrete national, albeit not ethnic, 'culture' as the substantive element that allows for the identification of the population, whether shaped by religion, language (which would be more general and perhaps more systematic than a 'dialect'), revolutionary traditions, racial heritages or whatever else. Actually, most civic nations have arisen through the command of some ethnic group over the state or which pushed for the construction of a state it could control. In the process, it generalised and widened its imaginary universe and institutions to bring other groups into its fold and consolidate its power.⁵

Some express strong misgivings concerning the idea of the nation. This malaise looms especially in Germany, where the memories and crimes of the National Socialist period, with its aggressive and exclusivist nationalism, still trouble the national imaginary and collective feeling. Many would therefore prefer to think of the nation and particularly the people in terms of that abstract definition of citizenship, a 'patriotism of the Constitution', discarding the concreteness of its would-be ethnic traits.⁶ We also see this in the reactions against the nationalism of the country's main extreme-right party at present – the Alternative für Deutschland (AfD) –, with its anti-immigration national exclusivism and demand to ethnicise the nation and the people, steeped in a firm idea of homogeneity or in fact (by now less and less possible) re-homogenisation (including mass expulsion through the euphemistic idea of 'remigration'). This perspective includes their use of vocabulary that, even if not always exclusive to the National Socialist movement, was extensively and to heinous effects used by Nazis. Its almost naïf phrasing should not deceive us: *volkisch*, a word of difficult translation and an especially charged adjective, refers to the 'people'; *Volksgemeinschaft*, an equally charged substantive, refers to the community of the people. Against such narrow perspectives, a concretely plural and rights-based alternative, grounded in abstract citizenship, has been offered. A universalism that leaves

no room for ethnicity would thus characterise a form of patriotism directed exclusively to general and inclusive juridical-political principles.⁷ Yet, notwithstanding the sensible concerns of those who want to see the heirs of Nazism out of the national political fold, it is unlikely that the nation can be reduced to this more abstract feature. Nevertheless, it is also more than what that exclusivist and aggressive perspective and construction aims at, arguably capable of accommodating a concrete-saturated plurality.

Michelet, the French Romantic historian, characterised the nation as a wholesome spiritual element linked to the emergence of the 'people'. It was the 'historical actor' that represented continuity and change in the behaviour of a 'race' (what we would define as an ethnic group now), becoming milder in modernity in contradistinction to former barbaric times. A 'national soul', labouring over itself, would lead to this development, with particular, differential characteristics. France, for one, was associated with the 'right of freedom', directly connected to the French Revolution. This was a very flattering self-depiction, which would later prove doubtful with the ascension of a national, antisemitic and eventually fascist extreme-right. Memories and the desire to live together as a 'daily plebiscite' underpinned the nation's construction for his countryman Renan. He was more sober, stressing that people need to forget a lot, especially their mutual violence in the past, in order to sustain this communal feeling.⁸ This is precisely the line of reasoning that German post-National Socialist conscience adamantly refuses since forgetfulness of the country's traumatic past could be dangerous. It must never return. On the other hand, the problem of concreteness in this regard lingers on, perhaps negatively, to be purified through remembrance and avoidance of how barbaric the nation can be in modernity, especially if it embraces ethnic visions and a strive for homogeneity, in which the integration, along with and despite its according to Renan historical brutality, of what after all corresponds to French, civic nationalism does not obtain. Historically the nation has been a construction cut across by violence, whether mild or fierce.

Postcolonial states did not have the time Europe had to amalgamate and integrate so many ethnic groups in a single nation and were usually not intensely interested in that. Either homogenisation developed fast, with doubtful results, or more usually heterogeneity and also fractures lingered on, especially overall in Africa and India, but also in other parts of Asia and the Americas, and even Europe. Similar homogenising and frequently problematic developments took place elsewhere in the world. However, they were not thought of according to the idea of a plurality of nations distinct from each other, although some were more ethnically closed and homogeneous, at least according to their imaginary. They could draw upon this to build new nation-states. China stands conspicuously in the first coordinates, while Japan and Vietnam in the second, for instance. Pluralisation makes a more abstract definition of the citizen sometimes more difficult, as well as

more necessary and surely not impossible. In several instances, this abstract homogenisation contrasts with the plural, concrete ethnic and 'racial' make-up of the population, with peaceful or strife-laden consequences. On the other hand, the state may remain the preserve of a dominant ethnic or 'racial' group and at the same time recognise other ethnic or national groups within its borders, granting them citizenship rights, which are more or less fully effective. India, in particular, offers the spectacle of a 'nation of nations', with, regrettably, 'religious' intolerance on the part of the Hindu majority against Muslims, a problem that spans decades and has recently worsened.⁹

There are more neutral forms of the nation-state, whereas aggressive ones have linked up with chauvinistic, territorially expansionist or otherwise very competitive nationalism. Conversely, defensive forms of nationalism, usually of weaker nation-states or groups without state, were at least initially orientated towards equality and emancipation from powerful states. Anticolonial movements, including national liberation struggles, mostly enlisted projects of economic development. Authoritarian collectivism did not change this array of possibilities, with the persistence of internal chauvinism in the Soviet Union and China, though it was overall primarily defensive regarding war and competition and often coupled with anticolonial movements.¹⁰

The notions of 'fatherland', 'motherland' or *patrie*, and the notion of some kind of *love* for this land, so crucial for the French revolutionary imaginary, partake in the magmatic character and complex trajectory of the idea of the nation. Infused with concreteness, its ancient political perspective was largely nationalised. It refers today primarily to one's place as such, with its territoriality and a tinge of nostalgia, often to be defended against other nations. It is not so central for the modern imaginary.¹¹ These ideas were associated with republicanism and declined with it as political modernity fell under the dominance of liberalism or authoritarian collectivism, which did not change their core connotations, staying relevant merely as part of expressions of nationalism.

Like the idea of the nation, the notion of the people has a very long, convoluted, and politically charged history. It has been crucial for modernity and shares the former's uncertain multifaceted character.¹² Referring also to a specific population, it usually has a very direct political meaning. It can appear, in liberal perspectives, as the sum of individual sovereigns assembled together. In a more republican tradition, it may stem from an individualistic standpoint but also imply a more collective sort of sovereignty.¹³ Romanticism introduced a collective, not reductive view in which, alongside the nation, the 'people' (*Volk*) finds what would be a 'holistic' characterisation (which makes sense only against the foil of a dated polarisation with individualism). A more or less homogeneous compound of 'culture' and language is central for the last perspective, which is not necessarily waterproof; that is, it may be open to external influences yet may have the state as its bearer. In this version, the 'people' is hardly distinguishable from

the 'nation'.¹⁴ Of course, extreme-right nationalism banked on this outlook, which should not be reduced to such radically intolerant, frequently ethically or religiously oriented currents. It has been very difficult to define the 'people'. This does not happen by chance: this elusiveness reveals that the 'people' really is, as Rosanvallon put it, 'not to be found' (*introuvable*).¹⁵ This sundry and elusive characterisation of the 'people' has become more pronounced with the global expansion of modernity.

In a political tone that harks back, negatively, to Ancient Roman perspectives, conservative thinkers often linked the people to the 'rabble' (plebeians in opposition to the aristocracy or, as some now fancy it, the 'elite'). Also they eventually had to come to grips with the political power of the 'people', which can then be used to justify authoritarian perspectives.¹⁶ More positively, democratic-republican views are prone to oppose the homogenous and humble 'people' to the rich and the bourgeois as well as to oligarchical powers.¹⁷ The left, in turn, ultimately made the straightforward connection of the 'people' to politics and could summon it as a collective subject capable of mobilisation.¹⁸ In fact, for Marxism and after that in 'real socialism', the people is equivalent to the workers, the peasants and the toiling masses, without necessarily encompassing every single person. Despite the appeal to the 'people' by socialist and communist movements, and the fact that in several instances authoritarian collectivist states used this notion in their self-definition, it remained a non-elaborate, rather residual category, without a characterisation beyond its liberal modern version or as the whole of the oppressed, or yet, as often used from Lenin to Mao, as a term corresponding to the 'masses'. In different moments, 'ruling classes' have been excluded from this characterisation in a movement contrary and almost symmetrical to the push made by conservatives (those who supported the construction of socialism were the people, while the reactionaries who opposed it were its 'enemies'). Anarchism seems to have shared this regular use of the notion of the 'people' as well as conceptual aloofness.¹⁹ As was the case with the nation, pluralism slowly sneaked into the configuration of the idea of people, without getting into the discussion of whether or not this heterogeneity detracts from a yearn for its final political-teleological unification, or whether it means a rupture with the modern nation-state.²⁰

Representation has been on the one hand the representation of the individual citizen, with its political rights, but has on the other evinced a more collective character. In this case, it features as the representation of the nation and people. In their role as sovereigns – entwined with one another or discretely – they must then be collectively represented, which is somehow present in the old idea that the representative represents the nation, not those individuals who elected him (or her, hypothetically only at this stage, given the delayed inclusion of women in the franchise).²¹ The same could be said of constituent power, although, from the beginning, the nation as a whole was the constituent power as such, indistinct from the people.²² Therefore, if the nation and

the people are elusive and the latter in particular, as a collective subject, always appears fragmentarily in its various expressions and in this respect is never to be found, those who supposedly represent them are always very visible. This fuzziness ensues regardless of how well they represent the represented and of which is the specific phrasing of the relation between the individual and these two collective entities. Besides, in tandem with its institutional aspects, representation has crucial symbolic attributes, implying an exchange between the represented and the representative around different facets of the imaginary as it appears in different countries.²³ Abstraction is undoubtedly present, yet concreteness is unavoidable, at least as to the definition of the nation, with identification and rejection alternating in what regards the views and feelings of the principals – the represented – about their representative agents.

For the purposes of this analytical approach to political modernity, without overlooking its reach more generally in sociological terms, nation and people must be understood ontologically in a way similar to the idea of sovereign and constituent power I developed in the previous chapter. Let us remember that I have argued that the rights-holding citizen weaves sovereignty together with other rights-holding citizens who recognise each other and themselves in a mirror-like relationship mediated by law, rather abstract, depersonalised and desubstantialised. Nation and people are also imaginary relations, both partly institutionalised. Now, however, it is concreteness, homogenised, that reigns supreme, beyond sheer abstractness. The mirror-like interactive recognition that they offer citizens (or even individuals who partly remain subjects) is more personalised and substantive, ontologically delineated according to the different types of imaginaries examined above. The imaginary was, as already argued, internally pluralised piecemeal, with more particularised substances piling up, harmoniously or in opposition and conflict, as modernity progressed, completing the work each nation, with its particularity, interactively offers other nations as a differential mirror.

4.2 Social rights, citizenship, social policy

If the nation and the people were imaginary constructions liberalism could accommodate, other issues emerged which were much more intractable. This configured a true return of the repressed, in some cases a gruesome nightmare and inevitably a complex issue for different sorts of liberals. Social policy and economic development, as well as the necessary bureaucracy to tackle them, have stood at the centre of the problem.

4.2.1 Homogeneity and heterogeneity

In the former chapters and to some extent the former section, a more homogeneous and formal social reality was systematically and analytically

depicted. It mainly moved within the state level of split political modernity, save for the last section of the former chapter and the first of this one, which already took us partly onto its societal side. Concreteness is critical therein; consequently, a far more varied and messier reality has seeped into our discussion and will now flood it, with the open-ended character of the societal dynamic coming to the fore. We will have to grapple with its more complex imaginary, institutional and practical features.²⁴

Apart from the problem of poverty, a politically explosive question, social policy originally chiefly comprised education. Very basic elements of subsistence and survival – such as preventing starvation, vagrancy and social unrest – figured in the concerns and regulations related to social welfare. Urban infrastructural improvements, skewed in favour of the rich and the powerful, i.e., sanitation (fresh water and sewage systems), and transportation featuring as goods the state should publicly supply. After education, social policy also gradually comprised labour accidents, retirement, housing and eventually health care beyond private charity.

The civil rights institutionalised in the modern state, with their liberal provenance, were supposed to guarantee that everyone could lead life as they saw fit. All could follow their plans and succeed. Poverty would be eliminated and desires fulfilled. Those who failed were responsible for such fortune, whatever the specific reasons that had caused such a personal defeat. Nevertheless, things did not develop so smoothly. There was what we may call excess failure. The so-called social question thus came to the fore and ‘pauperism’ became a prominent issue for which liberalism had no answer. Already during the Jacobin phase of the French Revolution, the ‘right’ to ‘subsistence’ emerged in the face of a famine that threatened the inhabitants of Paris. British Poor Laws began before modernity but continued as an extremely authoritarian and patronising response to these liberal tribulations.²⁵ With these impulses, social policies with different characteristics piecemeal developed. Public education had already been implemented by liberal forces, for instance in the aftermath of the French Revolution and, before that too, by authoritarian ‘enlightened’ modernising states, such as the Prussian monarchy, often connected to projects of homogenising the national language and some universalising tendency. While civil and political rights, even if restricted for some time or sharply biased in their practical observance, had a formal quasi-apodictical universalist definition, such social policies were far more complicated, with much more particularised objectives and reach the further they developed. The formal homogeneity of civil and political rights gave way in great measure to the substantive heterogeneity of situations and solutions of social policy, although very often they were also projected with a universalistic thrust. Often, however, restricted entitlements prevailed, falling short of the universal citizenship status. They hinge upon means-tested schemes. Poverty has usually been

their target, heterogeneity, not least that brought about by state intervention, their upshot.

In his well-known contribution, Esping-Andersen proposed to characterise social policy in Europe and the United States according to three categories: the first would properly mark out social citizenship, with its universalist character; the second was based on a corporatist orientation; the third was liberal and residual.²⁶ Corporatist models once strongly influenced particularly Latin America.²⁷ While this classification is sound regarding how such policies are articulated, especially the first one must be understood sociologically, not juridically;²⁸ besides, this must be seen merely as a typology since mixes of principles are widespread in practice. If we can overall talk of a social democratic and socialist moment in global history, with a universalist tendency, despite many residual and corporatist alternatives, since the 1980s new social liberal solutions have prevailed, which are closer to the residual sort of policy mentioned above.²⁹ If variety is the spice of life, there are some tastes that are more appetising than others for citizens in general – the former represented here by today restricted universalising schemes. Alternative paths will possibly be toyed with in the next decades due to the blockage of radical universal social rights in the political agenda and the exhaustion of these residual, poverty-targeted schemes, though a greater transformative push must still gain traction if this is to happen more decisively. Universalism in social policy, in its diverse forms and reaches, can be premised upon constitutional or, more modest but not for that less effective, quasi-constitutional (super-statutory) rules, a distinction pointed out in the former chapter and which may once again facilitate the implementation of far-reaching policy choices.

4.2.2 *Social rights and social citizenship, universalist and universalising social policy*

Across the world, different combinations of rights, entitlements and policies have tackled the social question and poverty, as a social demand and as a matter of *social security* and *social risk* (its avoidance or remedying), in conjunction with the emerging field of statistics.³⁰ We can speak, all things considered, of a general movement towards *social constitutionalism*, which is a process that also expresses the centrality of social citizenship. As already argued, looser and more empirical social policy frequently has had the upper hand in this move, without enfeebling it. Social constitutionalism also contains limitations to private property – of land or anything else (the ‘social function’ of property was part of these innovations, establishing some limitations to absolute ownership rights). This constitutional movement took off with the post-revolutionary Mexican 1917 Constitution, with special reference to the agrarian question and reform, which thereafter bloomed in

several places; it remains crucial worldwide.³¹ Curiously, whereas the Soviet 1924 Constitution dismissed the idea of individual rights as such – following with inordinate haste Marx’s advice on the abolition of rights in socialism and especially communism –, the 1936 Stalin Constitution had far-reaching social rights at its core (the ‘working class’, in contradistinction to peasants, was in particular entitled to such rights, while the bureaucracy, especially that with a political character and eventually top-level technocrats, needless to say, enjoyed privileges). It was imitated by all the ‘socialist’ world afterwards. In some places, the party-state implemented such rights and social policy rather paternalistically.³² The primary influence in the phrasing of the 1936 Constitution was that of Weimar, whose trajectory the Soviet revolutionaries closely followed. In an interesting interplay between authoritarian collectivism and the liberal part of the world, the strong idea of social rights was effectively one of the most promising aspects of that breakaway civilisation and returned to Europe in the aftermath of the Second World War, for instance through the Italian Communist Party’s influence on this country’s 1947 Constitution, although not entirely as they intended, or Portugal even more strongly, in 1976.³³

The countries where social citizenship and social rights were more consistently fostered did not recognise them as citizenship rights juridically, let alone constitutionally. Scandinavian social laws and policies were not *formally* based on universalist social *rights*. They were premised upon more empirical and simultaneously encompassing social policies. A sort of legal realism prevails in this relatively homogenous area where constitutional texts are very distinct from those of the more traditional civil law countries of Europe, with pragmatism and social engineering enjoying prominence. We can, when rights are not explicitly formulated, speak of an *analogy to rights* that can be applied not only to Scandinavia but more generally, in conjunction with some sort of merely practical, statutory, *substantive universalism*. On the other hand, a sort of more empirical, also statutory, ‘solidarism’ became dominant in France. At the same time, a strong critique of subjective rights took place, including the idea of social rights, with ‘objective law’ gaining prominence and the ‘public interest’ leading to ‘public service’ (against also the idea of state agency as such), yet with an at least robust universalising built-in tendency.³⁴ Even in Germany, where the Weimar 1919 Constitution pioneeringly established fundamental social rights, the post-war Constitution eliminated them from its catalogue: ordinary legislation would henceforth define social policy – with a system of social security which was fundamentally corporatist, that is, functioned according to contributions especially in what regards health care, a characteristic it maintains, albeit highly privatised now.³⁵ Conversely, Britain had a more rights-oriented and statutory approach since the Beveridge report (which included contributions), which sits more comfortably with Marshall’s

characterisation of social rights and social citizenship following its civil and political predecessors.³⁶ We therefore need to point to *universalist* social policies, as well as thick *universalising* social policies, which *aspire to universalism* yet are more fragmented, pragmatically fashioned and may lack such an explicit categorisation as rights, as has been the case in Scandinavia.

When this comes about, a universal *status* offers a partial, if incomplete, telos. A process of decommodification also sets in with the provision of extra-monetary and non-market-oriented services linked to use-value, with concrete features, contrary to the abstractness of market mechanisms, a move that strongly affected labour. This change and the broadening of state services entail a growing number of state employees, whose work rests on use-value-based services. In this respect, social citizenship profoundly differs from civil and political citizenship. The latter aim at upholding the past, while the second already implies the action of the citizen in order to further issues that are not necessarily given. Social citizenship, on the contrary, aims at the future. Citizens thus become more equal and free; that is, they all enjoy more equal freedom, even if some may lose their individual power in a situation that must not be gauged according to a zero-sum game perspective. Social citizenship alters the status of individuals. The future is its space-time horizon, not the past, contrary to civil and political citizenship, geared to maintaining a pristine situation, a static free-position. Interestingly enough, while universalist and means-tested schemes grew together, in the countries where, either formally or per analogy, we can speak of social citizenship and citizenship rights, the former prevails. This more universal outlook predominates in these situations, although the heterogeneity of the social fabric and different needs have prevented a more radical homogenisation of their recipients. Education and health, cultural facilities and the like, are easier to treat in a universalist framework, housing less so, with a multiplication of other issues and policies complicating state responses as modernity advances. ‘Redistribution’ and ‘recognition of dependencies’ (concrete needs of different citizens), which both technically frame the issues the state must address, lie at the heart of social policy. Universalist policies have attended to them better, despite the many problems and blind spots of those ‘dependencies’.³⁷

Labour law offers a particular dimension of social policy and state intervention since it implies regulation and responds to citizens’ potentially universalising claims. It was crucial already in nineteenth-century Britain, with the famous factory inspectors, but has been envisioned in the framework of market contracts in continental Europe and beyond, even if, starting in Italy in 1942, statutes limited the voluntary exchange aspect of the relationship and regulated it, with common law and parliament in Britain allowing for juridical interventions (besides, the risks of labour accidents were already crucial for the calculations about social policy such as it appeared in

nineteenth-century France). These contracts refer to the strange object called ‘labour’ (not Marx’s ‘labour power’, a point not really relevant here), which the worker can sell. Both seller and buyer, agents with powers and privileges, maintain therefore duties towards each other. Labour always remains between ‘personal’ and ‘real’ rights (the latter concerning things, as seen in Chapter 1), with labour law consisting, in considerable measure, in a sort of patrimonial law. However, its history is that of the transformation of the worker into a rights-holder as such.³⁸ Thereby, like other relevant social policies, some level of universal decommodification is achieved, admittedly within rather strict limits.

For Marxism, needless to say, labour is, especially when freed from exchange-value, with its abstractness, the epitome of concreteness, with its capacity to produce use-value. Labour, of course, also had a particular place in ‘real socialism’, where the worker was supposed to be the owner of the ‘means of production’, without on the other hand directly exercising the ‘dictatorship of the proletariat’. There were extremely tough periods in Soviet history, from the civil war to the Second World War, when pressure on workers was tremendous; originally, the idea of the role of a ‘transmission belt’ for the unions implied, once again, the dominance of the party but, at least in principle, also a collaborative and educational relation between mass and vanguard, mediated by those organisations. Labour law was eventually reformed and expanded under the party’s aegis, with the reform going through a lengthy and rather open consultation process.³⁹ The rights-form reigned supreme in this attribution of entitlements to ‘socialist’ working citizens, beyond a mere analogical register, notwithstanding its top-down enactment. It also evinced a highly substantive and politicised content, whereas its concrete situation has considerably varied under authoritarian collectivism, from freedom and power to strict submission to state dictates.

Drawing upon analytical jurisprudence, I have proposed, in Chapter 1, an analytical scheme to frame the free-position of a rights-holder who is also a citizen once her or his rights are institutionalised. We must apply this scheme to the conceptualisation of social rights. In that opening chapter, I also noted that there are claims citizens may raise to the state. This is the case with social rights and partly with social policy (except if we think of it, as has time and again occurred, as dispensed from above by the state).

We may therefore say, resuming that path, that A has a right vis-à-vis B, in which B stands for all individuals – hence B, C, D, among others – that share citizenship with A in a social setting encompassed by a juridical-political power – the state: S – that is responsible for the production and application of law. According to a more individualistic or collectivist understanding, this state represents them all, while S universally mediates the relations between them. This state gives a legal form to their connection, including social rights. A is thus placed in a position such that B, C, D,

among others, via S, appear as the mirror where A finds its rights reflected. In fact, as argued before, A's rights – as well as B's, C's and D's, among the rights of other individuals – consist of an additional attribute of the abstract 'generalised other' we have already encountered in Chapter 1, in which all individuals furnish mirrors of recognition to one another as rights-holders and citizens. More concrete features now enrich this generalised other based on substantive claims and politicised content, which generally find their way into social rights and policies. As S responds to these claims, once individuals put them forward, citizen rights-holders become passive, placed in an inert and submissive position. It is S, with its juridical-political personality, that is active henceforth in the relationship, while individuals appear as 'beneficiaries' of social rights (or more empirical entitlements framed in the analogical mould). It goes without saying that, if from the beginning S is seen as the entity that grants rights from above, whether or not its sovereignty stems from within itself (as representing the nation or a loftier principle) or from the 'working class', the situation is even more polarised and hierarchically laden.⁴⁰

Rights, among which social rights, need institutional anchors to become effective, having encountered in the state the vehicle for their legal existence. But it would be incorrect to confine the dynamic around their expansion to nation (or national, if you will) states. These are processes of global import and impact that unfold amid and through sometimes ruthless power clashes. The dialectic of the abstract and the concrete is no pure conceptual occurrence, nor are rights and citizenship a placid outcome of modernity. Conflict, as a principle of antagonism and based on social struggles, has been pivotal in this sort of long-term development. Without its spark, this sort of progress, according to the modern imaginary and horizon, would not have happened.

4.2.3 Sectorialised policies

Sectorialised policies are, in turn, related to specific collectivities due to what the latter are as such, although this is always crisscrossed by elements of social construction. Particular demands are at stake here, whether the entitlements are phrased in individualist or collectivist terms. They stand between rights and entitlements, with a universal attachment to certain categories of persons, and tend to be ambiguous. They are *unconditional* like rights and designed to apply to a segment of the population only, egalitarian within the group and permanently aiming at *equality* in social life. At the same time, they rest on *equity*: they treat different collectivities differently, redressing social inequalities or affirming collective particularities (often ethnic, racial, 'cultural'-linguistic or gender-based).⁴¹ In the latter case, they may include elements of juridical pluralism, which would draw

upon non-modern, yet already modernised, sources of law, without leaving the bounds of the modern state. India, with its 1950 pluralist Constitution, and Canada, with its minority of French speakers, are examples that easily come up in the discussion and have been the source of several theoretical approaches; but actually the Soviet Union came first in this regard, as early as in the 1920s–1930s.⁴² This is, however, a widespread phenomenon worldwide and this type of social policy has been found, at least formally, in conjunction with both liberal and authoritarian socialist persuasions (with republican Jacobin imaginaries having more trouble to accommodate it). Moreover, gender issues, especially as pertaining to same-sex-oriented as well as transgender citizens, have come to the fore in this connection.

Social citizenship aims at a permanent situation. Its goal is to modify the foundations of societal life to a certain extent and of citizenship in its specific traits, broadening it. The state offers services that run counter to the unequal positioning of concrete individuals in social life and commodification, thereby heightening social equality and equal freedom. Sectorialised policies can play the same role, either aspiring to redress past injustices, which would disappear in the future, or aiming to preserve what seemingly consists in the characteristics and perennial demands of specific collectivities. They may have a decisive role in equalising social status, but this is carried out in terms of differentiation, evincing a tension with the universalist frame of social citizenship without opposing it (however much its promoters possibly hold an anti-universalist attitude); they are indeed to be reckoned with basically as a supplement to the universalist mould of citizenship. Sectorialised policies are besides distinct and conceptually opposed to the sort of policies we shall examine below, which merely seek to redress social imbalances for a certain period yet linger on, locking people into a category of collectivities, with what happens when they eventually leave them, if they ever do, being their own responsibility. Conflict plays a crucial role here too, pushing law forward according to modernity's claims.

4.2.4 Entitlements and targeting, citizenship and market-oriented reforms

Regarding the citizenship typology I have introduced above, there is a spectrum that goes from universal through corporatist to residual schemes in terms of generality and homogeneity. In the first case, there is a rather homogeneous social cover, which should be the same for every citizen. As a matter of fact, in practice the implementation of social policy is always more complicated. In the second, particularities abound, with contributions defining social groups as beneficiaries and establishing the services they may expect. In the third, the scope of social policy is far more limited, sometimes being almost conspicuously absent. It is based on *simple and restricted entitlements*, which we must not see as rights, shorn as they are of universalist

aspirations. If social rights, even in the analogic register, do not have the quasi-apodictical disposition of civil and political rights, they project themselves somehow towards universality, whereas this sort of restricted entitlement clings to its limited framework.⁴³ They are usually targeted to specific collectivities within a given population and are supposed to stop right there.

This limited, targeted form has been expanded and become the global core of anti-poverty schemes, admired by neoclassical-cum-neoliberal economists. At this stage, it is no longer merely 'residual' since it affects the wretched of the earth across the globe. According to the United Nations, it is also indispensable to avoid social risk (similar to pandemics, earthquakes and climate change). It has been flaunted and implemented as the prodigious means – apart from economic growth – to face turn-of-the-century 'pauperism' given that the adjustment reforms of the 1990s did not work well in this respect (and they actually could not). This sort of policy should lend the poor some minimal dignity – though, all things considered, nothing beyond that.⁴⁴

Conditional cash transfers are their favourite recipes, overall performing better than the banks for the poor, with their meagre loans destined for 'entrepreneurship', focused on female recipients and managed by large bureaucracies with discretionary power. Extremely large, passive and reified, collectivities – closed serialities of the dispossessed and downtrodden – are formed by targeted policies. They are mere objects of what amounts to state philanthropic intervention and suffer from (self-)stigmatisation, not least in countries where millions of people are their beneficiaries insofar as they are applied only to 'the poor', or even the extremely poor, partly out of compassion, partly as a means to administer the dangerous political problem they constitute. An unequal situation in which some have power over others, who are treated as lesser members of society, substitutes for the mediation between citizens as citizens, as the state should carry it out. These objects of social policy are thus in need of specific attention, supervision and control, with state tutelage hovering over them. This does not mean that such restricted entitlements do not sometimes meet badly felt needs since people often live in dire situations of destitution, but by no means can this be classified in terms of citizenship, legally or constitutionally defined or even by analogy. While Latin America pioneered such entitlements and transfers in a massive scale, they are today the predominant mechanism of social policy across the world, even in China, for instance, if there are social policies at all in countries where 'informality' dominates the labour market and social services are precarious or limited, sometimes going backwards (Cuba being maybe the only – former or still – 'real socialist' country where universal policies formally still exist, emptied out by its harsh reality).⁴⁵

Citizenship rights imply *equality*, starting from an abstract perspective, with concreteness and differences emerging the stronger and broader the

wider the range of claims and services expected from the state, seen as a mediation between individuals or standing above them. These are often discretely, and at times discretionarily, dispensed by the state, according to several merely administrative regulations, without legislative initiative and free from parliamentary oversight. Entitlements, in turn, are usually associated with *equity* – that is, the differential treatment of individuals or collectivities according to their supposedly particular attributes and needs. Social liberalism, as a metamorphosis of neoliberalism, lending it a ‘human face’, consists in its most general expression.⁴⁶ They cannot be abstractly conceived, regardless of how large the targeted groups are, which may give the impression that entitlements are rights, which they are not, since they do not imply equality and universality. Numbers as such are not relevant. The principles underlying social policies and how the state implements them are. Targeted policies are usually tied to means-tested schemes, being conditional on the continuity of the unfavourable social position of their recipients, frequently of severe hardship. They also entail tasks to be fulfilled by their beneficiaries, especially with reference to their children, under the state’s purview, although this is frequently loosely carried out (which some suggested would be ‘republican’ commitments, a rather bizarre and deceptive way of framing the issue). Being available on demand might make them a bit less discretionary and closer to citizenship rights. Be that as it may, as mentioned previously, targeted policies are different from sectoralised policies insofar as the latter may complement rather than oppose citizenship-based initiatives.

Due to their passive position in these circumstances, individuals and collectivities have become clients of the state, which is responsible for providing them benefits. This passivity is a salient characteristic of reification – they are no longer agents but objects of other people’s actions.⁴⁷ A new form of depoliticisation, with the creation of clienteles via bureaucracy, and the concealment of conflict, connects now to concreteness rather than to an utterly abstract form, in association with targeted social policies. Instead of formal abstraction, technical control takes over, related to the means-end chain and efficiency, such as the state autonomously defines it.

To make things worse, targeting is now sometimes already based on Artificial Intelligence. It sorts people out and builds passive and reified collectivities of the more or less deserving or not deserving poor according to their life trajectories, tracking down their behaviour (through controlling their consumption, dislocation and other devices). Not pleased enough with the former targeting tactic, liberal welfare policies have started to shift the decisions about the fate of human beings towards machines and programmes, with algorithms that would be auxiliary to decision-making but tend to take over (although as such digitalisation and automation can be positively used in this domain). In the US, in particular, the criminal justice system has also been heavily impacted by AI machines and programmes to

mete out sentences, complementing the repression that the poor and especially blacks face in this country. This can undoubtedly be found in China as well, with its social credit system, under a more positive, if that is conceivable, (des)guise.⁴⁸

At the same time, an attempt to curb the reach and consistency of the Welfare State and cut back on spending has been going on where it was formerly strong. Once again, neoliberalism, in milder forms, has driven discourse and practice, seeping into the 1990s so-called Third Way, which had a central role in this transformation and harmed the universalist elements of social citizenship and, formally or analogically, social rights, in the search for market-oriented reforms.

Labour market issues have been at the centre of these moves. They do not necessarily imply a decrease in expenditure: the direction of changes in social policy has also been crucial, leading from a proper Welfare State to what may be called the ‘workfare state’.⁴⁹

In this regard, citizenship has been displaced through a concentration on the push to force people to work. Several means are used to achieve this, with limitations in the value and duration of benefits, and the obligation to search for and accept whatever job comes up. It also secondarily includes training and what has been called the ‘activation’ of the labour market. They simultaneously constrain and supposedly stimulate people to work. They affect other areas too, such as health care, vacations and retirement pensions. There is a recommodification of non-market-based social policy provisions and a decline in their density. Commodification and fragmentation have also been penetrating health care systems, with worldwide primary health care somehow still being the focus. In the several countries of Latin America, for instance, corporatism has moved towards privatisation, more or less radically (Brazil for one keeps a universal, public health system, certainly underfunded and strongly complemented by private insurance, whereas Colombia has always had a societal sort of corporatism).⁵⁰

The Welfare State in European countries still offers a much higher level of protection than the state does in other countries, without detriment to an obvious mutation in how this protection is organised, with a substantial loss of citizens’ common status such as envisaged by Marshall. The reintroduction of insecurity and to some extent risk in the lives of individual workers, in addition to affecting more qualified professionals, cannot be discounted, notwithstanding expenditure having not declined. Signs for the better, emergent during the coronavirus/COVID-19 pandemic, which made social inequality so visible while also increasing during the crisis, would point in a more positive direction. In the face of recent moves, it is at best uncertain whether they will materialise. We may have to wait until the landscape clears up, considering both new issues and the general trends of the last decades, with the heterogeneity of social policies and mixed situations.

It is not the case that concreteness recedes; instead, it appears to be handled through an array of techniques that leads us to a decidedly different configuration. More recently, what has been called the ‘social investment’ perspective regarding policies and even the architecture of the Welfare State has gained ground. It is, in fact, compatible with what may be called ‘social liberalism’, that is, a way of keeping some pillars of neoliberalism, while seeking to fight (or manage) poverty and social cohesion. It cannot, and intends not to, what is perhaps more serious, tackle a scandalous underlying problem: sky-rocketing inequality worldwide, which no social policy or Welfare State can per se control if other stark restrictive policies are not implemented, to say the least.

As such, social expenditure does not necessarily go against key neoliberal dogmas, which are not always consistently sustained and implemented, setting limits, by default, all things considered, for budget commitments and, at a certain point, ‘structural adjustment’ or, in Europe, ‘fiscal consolidation’. Economic growth, technological modernisation and global competition appear among the objectives of the ‘social investment’ perspective, with a focus also on children in what regards the future. Social protection is only an element thereof. It may not be inimical to social citizenship and universalising policies, but more often than not it has been pitted against them, possibly coming close to ‘workfare’ schemes in which the poor and the unemployed are forced to work (whether there are jobs or not), though now in general including minimum wage policies. Different sorts of cash transfers complement them.⁵¹ A specific problem is an alteration in the role of women since they have intensely entered the labour market. This requires shifting social policies and adapting them to the reality of this heightened presence, particularly regarding children’s care. If the state does not provide more support, further inequalities are bound to develop. The mounting number of older adults and intergenerational issues pose yet another challenge, while market schemes have largely taken over retirement pensions.⁵²

We can conclude that there was since the nineteenth century a trend towards a *thickening of citizenship*, conceptually and especially concerning individual and collective lived experience as well as our horizon of expectations, that is, how we look into the future. Marshall’s three-stage model was an attempt to fathom this development, which was as such writ large, in more convoluted ways than he seemingly imagined. Concreteness intensified and traversed it entirely, with substantive issues becoming central to the definition of rights. Recent developments have taken distance from and undermined this citizenship model since the 1980s, save to some extent at least the development of policies that try to decrease the inequality between men and women.

Perhaps new shifts will come about. In any case, the former model is unquestionably, if not dead, under lots of pressure. It is even likely that

social policy will be strengthened through a post-coronavirus/COVID-19 sort of new social democracy, with its liberal bearings but also preoccupied with social cohesion, which will go beyond Third Way reforms. ‘Social investment’ may be strengthened, with no perspective of universalisation. If anything positive may still emerge, it may combine aspects of the past that hark back to citizenship and universalism with innovative practices, institutions and, at least partly, imaginary shifts. It is not in principle excluded that a more generous model might emerge, but this does not look likely at present.⁵³ In health care, for instance, despite some governments having pumped some more money into its provision, no significant change has ensued.⁵⁴ What appears to be clear is that cash transfer schemes are probably going to prevail.

Globally, if the model and operation of cash transfers may proceed according to Latin American minimal grants (of which the Brazilian Bolsa Família was definitely not the first but was surely the largest), in order to combat poverty, and also politically and bureaucratically manage it, similar strategies may follow similar but somewhat more robust models. In Europe, it has often followed the extremely harsh German Arbeitslosengeld II (an advanced version of the infamously mean one known as Hartz IV). The much-discussed Italian *Reddito di cittadinanza*, even in its original, less restrictive mould, was inspired by the German scheme. Like other European schemes, actually promoted by the UE commissariat and by now implemented in all its countries, they minimally cover the needs of the poorest among the poor and evince a workfare rationale, underpinned by a large bureaucracy and stringent control too (even if for instance in France the *Revenue de solidarité active* is somewhat less restrictive). As elsewhere, they have been designed as non-contributory and means-tested policies (despite being part of the so-called ‘European Pillar of Social Rights’). In Germany, a new, slightly improved *Bürgergeld* was a Social-Democratic/Green Party effort (watered down in the course of negotiations with the Christian Democracy centre-right) that might indicate new pathways, between small money for the deserving unemployed and more generous universal provisions, as planned by the governmental coalition. The putative valorisation of those workers willing to work is the argument against a less harsh policy. In any case, this new policy has fallen short of a truly universal basic income – to be examined below –, remaining encapsulated in the traditional German corporatist mould, as if to prove that social policy will not become stronger and more encompassing.⁵⁵ It is moreover clear that technocracy and meanness can easily go together, as the extreme-right government of Italy proved by the end of 2022, enacting legislation that made the *Reddito* even more restrictive. Families, especially with children, are to a large extent the focus of these schemes rather the individual rights-holder.⁵⁶

Such schemes are a sham in an increasingly wealthy and unequal world, especially but not only in Europe. What is more, the problem cannot be

reduced to more social investment and to how much individuals receive from the state, let alone exclusively combat poverty, including child poverty, as such consisting in measures that are of course legitimate and necessary. The gist of the issue is rather whether such policies are geared towards a universalisation of rights as rights as well as being politicised and assuming an emancipatory character rather than being technocratically articulated and standing as a way to manage poverty and discipline the poor.

4.2.5 *Universal basic income and minimum income*

Automation will not kill all jobs, in that technological advances create new ones. All the same, labour markets have been shrinking in most capitalist countries, while precarious labour relations have been advancing everywhere. This will certainly develop further. As a consequence – or actually because the social policies connected to traditional male-dominated, breadwinner labour markets in advanced capitalism, or informal, inescapably always limited labour markets in peripheral or semiperipheral countries, are not able to properly incorporate large swathes of the population –, a specific sort of social policy has gained theoretical and programmatic support in the last decades, under slightly different names.⁵⁷ While conditioned and targeted cash transfers or limited minimum income show stark particularistic features, like the Bürgergeld discussed above, there is an alternative that is strikingly universalist. It can be seen as a means to expand the Welfare State, with a rights-based claim and architecture, or, paradoxically, as a way to abolish it. It can thus be seen as a radical means to decommodify social life, in that it frees citizens from the obligation to work relentlessly and in whatever condition or with whatever wages, yet may have the opposite effect if we contemplate it as a mere cash transfer – on a regular basis or at certain periods of life (coming of age, specific life crises, old age, you name it). It may comprise grants, tax credits if people fall below a minimum income, monthly payments, or other forms of transfer of income to citizens. It may seem like a citizenship right, broadening individual and collective freedom (again, in a non-zero-sum game). It may instead seem like a simple entitlement capable of turning the citizen into a consumer who may contribute to the circulation of commodities.⁵⁸ We need, however and specifically, to differentiate this basic income policy as a citizenship right from minimum income.

Only limited experiments have been hitherto carried out with basic citizen income, which may become more common in the future. Perhaps it is indeed an instrument to augment equality, especially freedom, demanding stronger income tax schemes to pay for it. Whether it will fulfil such a promise and not sink into something more akin to the neoliberal standpoint – which would use it as an assistant to curb the Welfare State further – is still to be seen. Just the same, basic income contains a strong universalist

potential, which may be explored in diverse combinations with social policies when its day eventually comes. Can universal basic income take over from conditioned cash transfers and microcredit where they are operative, extending their scope and changing their logic? In principle, this is indeed feasible. Nevertheless, the political decision underlying this choice is not obvious or easy since they possess extremely different logics, at least if we consider the universal and citizen-oriented version of basic income, while, in contrast, the neoliberal version may blend, perhaps at a higher level, perhaps not, with this sort of more limited and targeted sort of conditioned cash transfer. Which intermediate policies we can expect is a particularly relevant question to observe in the near future. The putative defence of the willingness to work underpins resistance to such universal basic income schemes.

What we have actually seen in Europe, as a counterpoint, is in fact not so much opposed to Latin American, US and African or Asian simple cash transfer systems, with the slow spread of minimum income protection. It exhibits other components such as the subsidy of services and facilities (housing, transportation and the like), but falls short of a basic citizen and rights-based income. To start with, it is mainly premised upon means-tested schemes, often combined with labour market activation measures. The above-mentioned Harz IV in Germany is the most notorious of these schemes, replaced by the so-called Bürgergeld, according to the social democratic-led coalition. Yet, rather than linked to social citizenship proper, it has been thus far a form of thicker social liberalism usually insufficient for a decent standard of life. It shields against extreme poverty, at best. In the future minimum income policies look likely to be expanded and strengthened, perhaps even beyond Europe.⁵⁹ If it can really become more generous and especially develop into basic income in a more specific sense – universal and unconditioned – is another matter. A distinction must, regardless, be made between different schemes, since minimum income remains at the core of social liberalism – a more soft and politically expedient continuation of neoliberalism. That said, universal citizen income schemes have been everywhere difficult to implement and gain consistent traction, among policymakers and the population, even in places where massive unemployment seems impossible to overcome and even under the full impact of the pandemic.⁶⁰

4.3 The state and concreteness

4.3.1 *Law, complexity and particularism*

Much as the very complexity of modernity in the course of its development has to a large extent displaced this sort of discussion, some authors argued in the past, embracing a radical liberal (indeed already neoliberal or what

Germans call ordoliberalism) standpoint or a more traditional rule of law perspective, that the unevenness of the intervention of the state in social life tended to erode the latter. To start with, the establishment of social rights would weaken freedom. This line of reasoning was pursued early in modernity; neoliberalism then resumed the issue with radicality, taking freedom in a formal and abstract, privatised and market-oriented way, especially regarding the economy, opposing it to the state, which should moreover not try to regulate social conflict. Also to be avoided was a supposedly problematic superimposition of substantive issues on universal and abstract legal principles, essentially regarding workers' demand for social rights, which would tear the rule of law apart, implying its colonisation by particularities. The idea of law as dependent upon its generality, durability and publicity would decay, with the enlargement and legitimation of executive power in its production, whereby state power would become excessive.⁶¹ For others, the danger lurked in the loss of generality, autonomy, predictability and publicity of law, which threatened freedom.⁶² For others still, this was fine in that social experimentalism would then be warranted, allowing for an expansion of law beyond formalism and the potential pursuit of politicised social reformism.⁶³

After much ado, the rule of law became no dead letter insofar as it is indeed the rule of law (which is not of course, as we have seen, always the case). It became more complex, with elements of concreteness and particularism; it has required more intense interpretation too, with an increasing array of issues and rules. Nevertheless, its most general aspects and applications have held out. In fact, we have witnessed a renewal of constitutional thought worldwide, through what has become known as 'neo-constitutionalism', with significant and explicit impact, especially in Germany, Southern Europe and Brazil. Without detriment to the guarantee of rights, 'weighing' and 'proportionality', when they collide, as well as balancing different legal statutes and social demands, should open up law and judicial decisions, as we saw in Chapter 1 regarding the coronavirus/COVID-19 pandemic. The hermeneutics of law and even law creation through judicial decisions – often via analogy – play a crucial role in this perspective, as to rights and several other issues.⁶⁴

Beyond that, or before it, we can speak of pluralism in the demarcation of law and the workings of modernity. Many associations have their norms, with customs regulating large areas of societal life and with firms having internal rules, whereas sources of law, entitlements and sanctions are multiple. As a current of thought, legal pluralism has always proposed a heterodox view of law.⁶⁵ With the growth of pluralism in social life, this has become more plausible; on the other hand, the state has become more intrusive and multiplied the number, intensity and reach of the rules it enforces across the societal fabric in a capillary way.⁶⁶ Whether it is adequate to speak of societal rules and regulations as 'law' in modernity,

since it has become closely connected to the state, is to some extent a matter of definition. We can say that while state law furnishes the core of legal life, other ‘legal’ principles and practices regulate much of social life. Abstractness is not a standard attribute of this sort of rule external to the modern state.

In turn, legal pluralism survived in the interstices of authoritarian collectivism, met with inevitable hostility by the party-state, whose view of legality should prevail above and against anything else – especially so-called ‘bourgeois’ left-overs and counterrevolutionary perspectives. Primarily in rural areas customary law was bound to play a role, in an ambiguous sort of development, which, as we have seen with the Yan’an Way in Chapter 2, the party-state canalised and subordinated. On the other hand, for socialist legality, the substantive elements it incorporated in its core were not a challenge, not even provoking debate. As we have seen in the previous chapter, substantive issues were not strange to law in authoritarian collectivism since its inception, on the contrary. They remain so in the countries where it survived in conjunction with the adaptation of the party-state to modernity and most usually in conjunction with what was called rule by law, rather than rule of law proper.

In the opposite direction, administrative law became increasingly constitutionalised during this period in modern civil law countries, reversing its traditional independence from constitutional law and ordinary courts, as it was formerly under Absolutism, even if in common law this division was unknown. The ‘public interest’ or the ‘collective interest’, outlined as preceding and superior to the interests of the individual and his or her rights, underpinned this move in terms of institutionality. This shielded officials against charges from outside the state, and in this respect the idea of the rule of law was not really operative in public administration. Now, however, the most abstract element of them all, fundamental rights and not simply equality vis-à-vis the administration as particularly the imperial German *Rechtsstaat* had established, is taken as prior to the consideration of that putative general public interest by the bureaucracy. Abstract homogeneity and formality seep into bureaucratic routines and prerequisites. At the same time, concreteness becomes overwhelming in the definition of its specific and, as we will see in what follows, multiplying goals.⁶⁷

4.3.2 *The thickening of bureaucracy*

Thus far, we have discussed mainly rights and law. They are crucial for the structuration of the modern state indeed. They have undergone significant changes as modernity developed, including in their state-based definition, and shaped the concreteness of the societal side of the modern divide, with further derivations in authoritarian collectivism. Nevertheless, the role and

structure of the state vis-à-vis the ‘society’ it rules and helps organise is much broader. We shall examine it now, with the same issue in mind. These changes must be seen not only in bureaucratic terms since state intervention in the societal side of social life is essentially political. Sometimes and at lower levels, the bureaucracy and more specialised professionals and experts can make their choices, fashion policies and apply them as though they had a neutral character. The crucial directions of such interventions evidently depend on decision-making processes in the legislative and executive powers, despite a possible aloofness regarding specific issues.

As we have seen in Chapter 2, modern bureaucracy has been conceived according to the abstractness of the modern state, such as it was initially constituted. It comprises professionalised and specialised personnel, hierarchically related, who should have no interests other than those general ones emanating from the state and favourable to society, shielded from particularisms. In addition, they are separated from the means of administration and prohibited from using state resources for personal goals. Rationality and means-ends adaptation has underpinned the fulfilment of its tasks. The expansion of rights we have observed above hinged on this bureaucratic edifice, which was previous to it, employing different officials and professionals as well as being responsible for other chores, which also had to expand. The result was the *bureaucratic thickening of the state*.

The police, the army, the tax collection apparatuses and the courts were where bureaucracy could initially be found in modernity. Social issues became nevertheless central to the development of the modern state. Originally, they had nothing to do with social rights, concerning directly the basic material infrastructure that allowed for a safer and more comfortable life for everyone, also because the rich and powerful were affected by their inevitably close relationship with ordinary and poor citizens. Sanitation and urban infrastructure, allowing for private profit too, then education, health care and labour protection, retirement and housing, provisions for and regulation of childhood and old age yielded a bourgeoning arena of bureaucratic and professional activity. While an administrative body, more restrictively demarcated, was at the core of state bureaucracy, professionals and experts from several fields became ever more critical, including judges and lawyers, doctors and teachers, economists, social scientists and psychologists.⁶⁸

Endemic diseases and pandemics in particular showed how this was crucial, demanding state intervention. The cholera outbreaks across the world in the 1870s–1880s required control. With evolving scientific knowledge, a firm intervention of the state bureaucracy in order to implement basic sanitation measures was thus carried out. Where this did not happen, for instance in the autonomous city of Hamburg, Germany, hell broke loose, in contrast to the far better performance of neighbouring Altona. The Prussian state

ruled the latter at that stage and pushed through sanitary reforms. As with former pandemics, the coronavirus 2019–2022 outbreak and its aftermath drove this home again – state bureaucratic bodies were crucial from beginning to end.⁶⁹

This bureaucratic role did not remain restricted to modern liberal states. In its original incarnation, authoritarian collectivism displayed a huge bureaucratic layer, which many even saw as a ‘ruling class’. It was often called the ‘nomenklatura’, after the Soviet usage of lists of possible occupants of positions in the state and their hierarchical distribution. Initially, very basic and poorly educated, this bureaucratic body eventually grew to include highly qualified technocrats. Once devolution occurred, that is to say, a transition back to modernity, with capitalism at its kernel, came about, China belatedly underwent a similar process. The party-state has as its cadres often very qualified professionals who occupy all leading positions available. Besides, specialised professionals and experts play crucial roles in the state, alongside a more properly called bureaucratic body of officials.⁷⁰

We can see this benignly as a process that is part of the state’s answer to claims society presents to the state. These claims may be directed to the executive and its spiralling bureaucratic body but may have the judiciary as its focus;⁷¹ as already observed, the latter has intervened so as to balance principles, rights and laws. Conversely, in this growth of the state, we can see a problematic progression of its domination over societal life, in which case it was for instance called ‘juridification’, with the ‘colonisation’ of all social domains by administrative machines, bringing about more oppression, especially of course over those who in particular need social policies. However, this is inevitably a more double-sided process insofar as it also provides a common status to citizens, often decommodifying and partly lifting the coercion of the market over their life-course, hence increasing freedom in society at large. Moreover, such processes of intervention in societal spheres are politically oriented according to substantive criteria and carried out by collective subjectivities, rather than possessing a straightforward bureaucratic-administrative character or stemming from the reproductive imperatives of so-called ‘self-steered systems’ (contrary to Habermas’ views, tributary as they are of Weber’s depoliticised understanding of domination and Luhmann’s radical overall depersonalisation of social life).⁷² This is not, all things considered, an entirely novel sort of development. The shaping of individuals and populations is an old aspect of state intervention via its bureaucracy, with concreteness inevitably coming to the fore, although abstractness regarding rights, citizenship and the law has prevailed in the definition of the state.⁷³

At this point, we must introduce another element of the workings of state bureaucracies and intervention in society, completing, now that we are in a less rarefied atmosphere, the analysis of public policies laid out in

Chapter 2: their rhythms of stability and change must be borne in mind, in all domains. Policies of all kinds may carry on without major modifications for long periods, but this stasis is often punctuated by sudden changes that take them in different directions, according to shifting agendas and interests.⁷⁴ This is often related to momentous events that yield critical junctures and allow, also if divergent ideas are available, for innovations. But change may also be gradual, including slow (rather than punctuated) displacement, layering (with new elements being added on top of older ones), drift (with changes in contexts spurring changes in policies) and conversion (when strategic deployment of formally unchanged rules actually engender policy shifts).⁷⁵

In the late twentieth century, there was a surge of what was then seen as a fourth generation of rights, namely, ‘diffuse rights’.⁷⁶ It has brought into the state one more element of concreteness (abstractness remaining in that it has an underlying abstract character vis-à-vis their unidentifiable subjects). This more recent type of rights comprises many issues. Environmental ones stand out among them, with climate change assuming increasing relevance as it becomes a frightening reality. Diffuse rights have expanded the reach of law and the area of activity of the judiciary, providing those bureaucratic and expert bodies with another field of activity. Nevertheless, the political intervention of the state must be stressed in this connection. Affected is in particular *nature*, a peculiar element of modern civilisation, absolutely not a universal phenomenon in what regards its characterisation (beyond its multiple materiality). It consists of an increasingly important object of state intervention, based sometimes on extremely complex political choices. Animals’ rights, as sentient beings, especially of those which present a subjective constitution apparently more similar to humans, are part of this move towards a broader picture of ‘nature’, yet stop very short of changing it since it is humans as such that serve as a yardstick for this somewhat coy change. Nature’s rights – as a principal of which humans are the legal agents – take this sort of expansionist proposal further but remain likewise attached to the definition of rights-holder introduced by juridical-political modernity. To be sure, many would like to alter this relationship from now on. However, whatever the concrete measures the state may take concerning the environment and the mounting climate crisis, surpassing the categorisation of ‘nature’ as an external object amenable to human social intervention in another civilisational direction is tremendously difficult and unlikely to take place, save in the very long run.⁷⁷

Different civilisations, large and small, have known many ways of being in the world. Modernity has called this ‘religion’ when speaking of putative premodern ‘traditions’, which are, in this specific sense, also an invention of modernity. ‘Religion’ exists and makes sense only with ‘secularism’ as its foil, which, along with rationalism, still furnish the hard kernel of

the imaginary of modernity, where it has bet all its cards, except for stubborn and at times strong irrationalist movements that spook it. Religion has been expelled to the societal side of the modern divide as one more concrete issue, although its connections with the state side are frequently denser than usually assumed. At most 'religion' would retreat to 'private' quarters, dislocated from the 'public' sphere where it had, according to this new characterisation, formerly been dominant, leading to all sorts of distortions. Social and political developments would inevitably bring about this 'secularisation', once institutions were built which did not impair the flourishing of reason, with the Church, sects and whatever other religious bodies in particular having their power limited. Social and political developments did not agree with this normative projection. 'Religion' remained – was in fact established – as an element that variably cuts across, in its concreteness, the modern imaginary and institutions, persisting, what is more, variably, indeed mostly highly relevant in public life.⁷⁸

Finally, note that the level of centring and intentionality of the state, as discussed at the end of Chapter 2, is affected by this bureaucratic thickening, which also impinges on the issues tackled below. The more the state grows and the greater the number of tasks it takes up, the tenser its inner workings grow regarding common goals since states organs and officials are not of one mind. Those goals do not ever entirely coalesce, depending on more robust decision-making centres, predominantly localised at the executive, to prevail. Achieving this intentional directionality, that is, high level of centring, demands daily efforts and the capacity to succeed over decentring pushes, which are often unintended in their more general consequences. With the development towards concreteness, the difficulty tends to escalate; in any case, the balance between centrifugal and centripetal forces varies in space-time.

4.3.3 *Economic development*

Apart from property relations and the freedom to enterprise, such as guaranteed by law, I have hardly spoken about economic issues in the former chapters. In that rarefied universe, they are basically absent since the modern state was supposed to establish the framework for free economic action on the concrete side of social life and nothing else. Neoclassical economists like to tell a simplified and skewed tale of how liberal institutions have been crucial for liberty and wealth creation.⁷⁹ This was, of course, more complicated. While it is true that free-market liberalism set in as modernity emerged – in that specific account, finally letting human beings follow their commercial instincts and erecting the free institutions that correspond to these instincts and the efficiency one could derive from their unfettered play –, state intervention in what regards economic development has in practice been a crucial and permanent feature of modernity ever since it has existed, beyond that

abstract legal framework. Regulation is an expression of this sort of liberal state intervention, but in its most robust configuration it has been based on stronger and permanent instruments, implying a more direct interference, under distinct guises, with more ad hoc or limited measures taken in a wide range of circumstances and with respect to different issues.

Of course, authoritarian collectivism, starting with the Soviet Union, produced a sort of centralised plan – whose balance was initially highly positive, miserably eventually giving rise to an economy of scarcity once heavy industrialisation was completed and consumption as well as high technology became more significant. Capitalist economies also resorted to planning – more forcefully during wartime, but mostly ‘indicatively’ in other periods. Hand in hand with the inducement via the proverbial carrots to be offered to economic agents (enterprises), states have also used sticks (such as legal coercion or exclusion) to accomplish the objectives of state planners.⁸⁰ Meanwhile, neoliberals denounce the putatively unavoidable lack of collective rationality materialised in the state and the planned economy. They pitted them against the rational capacity of individuals that could also practically deal with the low-intensity information provided by market relations.⁸¹

State intervention in the economy – of whatever kind and scale – has implied very concrete involvement in economic processes aimed at augmenting the state’s power, internally but especially *vis-à-vis* external competitors, namely, other states. The achievement of economic sovereignty stands explicitly at the core of planning. In liberal countries, an even playing field for economic agents, the proper satisfaction of consumer needs, technological catch-up or upgrade, wealth accumulation, satisfactory employment, production of ‘aggregate demand’ and the correction of so-called ‘market failures’, military prowess and competitiveness more generally as well as competences and resources geared to intrusion into societal life: these have been the topmost goals of economic state intervention. They are all very concrete. Several measures have lent substance to this intervention, ranging from regulation and industrial policy to taxation and protectionism, through financing, other forms of support and the direct or indirect punishment of firms that do not conform to the objective of the states, entwined with strategic planning. Moreover, economic interventions often pair up with social policy, in a two-way relationship. As modernity unfolds, doctrines and instruments change. Keynesians and developmentalists of various ilk have consistently moved against more *laissez-faire* views. Both central and peripheral countries took this path, looking for modernisation or development. Initially, the internal liberal market was more or less preserved, with differences from country to country. A more regulatory and productive state subsequently made its appearance, just to be rolled back in the 1980s–1990s. Note nevertheless that, despite the present dominance of neoliberalism and

finance capital in many areas, focus on these topics overlooks how advanced economies have coupled private business and the state, which has been a key funder of science, technology and innovation.⁸²

In authoritarian collectivism, economic state intervention was absolute. Actually, as such it disappeared. The party-state abolished private property, which then the ‘working class’ supposedly owned through the state. In reality, the political bureaucracy collectively appropriated it in quite an anonymous and abstract way. The centralised plan, bringing concreteness massively into the workings of the state – actually becoming indistinguishable from it –, lent, conversely, substance and a highly politicised character to whatever decision cadres and technicians took, what did not happen or happened on a much smaller scale in market-oriented arrangements, even when the state intervened strongly in the economy (through command, voluntary exchange and voluntary collaboration).⁸³ Sovereignty also furnished an outstanding goal for planning, seeking quick industrialisation, in a developmentalist perspective; what is more, this was crucial to foster military prowess. Once this model failed in the longer run and the persevering countries of ‘real socialism’ embraced capitalism, it has been a different model of state intervention, massive in fact, that has been chiefly orienting their politico-economic choices. As the foremost example of this, China today moves between indicative and centralised planning, rather decentralised and in specific domains, in a peculiar sort of capitalist development in which state property (via state enterprises and particularly finance) remains very important and political control is paramount. Vietnam in particular has followed a similar, if far more modest, path. If in China since 1978 markets became extremely relevant, seconded by partnerships (networks) between private firms and the state, since the mid-2000s and especially 2020, the state regained control over private business, aiming at scientific-technological prowess.⁸⁴

The bureaucracy has been overall crucial for the intervention of the state in the economy and for economic development.⁸⁵ Of course, this was of the essence in authoritarian collectivism, but in traditional capitalist countries, as well as in the new ones stemming from that vanished system of rule, this has also been the case. Sometimes a ‘rational-legal’, very efficacious bureaucracy has been at the forefront of these economic-social policies, in Europe and also in East Asia. Alternatively, such as usually and overall in Asia, Latin America and Africa, a putatively developmental – or not developmental – bureaucracy has exploited the state, frequently in collusion with powerful private agents. In any case, bureaucracy has been crucial for the shaping of the political and economic dimensions of modernity. Whether and to which extent it was efficacious in authoritarian collectivism is open to debate. However, no one can deny that, based on political decisions and direction by the party-state, at least in China it has lived up to the challenge.

Today we seem to be witnessing a new shift in the connections between the state and the economy in liberal capitalist countries, a move foreshadowed by China. Like the trajectory of rights analysed above, it is still challenging to fathom its precise direction. All the same, it is in motion. We shall discuss it in later chapters.

4.3.4 *Neopatrimonialism and corruption*

The modern state formally removed all patrimonial features that were crucial for former states and other forms of domination. Its definition excludes them. Officials, elected and unelected, may not use state resources as if these belonged to them nor allow others to profit from their use. A strict separation, legally guaranteed by public and administrative law, between state coffers and private purses undergirds this prohibition. This is to some extent more an imaginary – also in terms of a delusion – than an institutional and practice-oriented element, but it really predominates, or tends to, otherwise we would not be speaking of the modern state. Some of them evince strong patrimonial traits, while in others these are milder, whereas private agents have many possibilities to exploit opportunities related to its more restricted or broader operations. In modernity, there are indeed exceedingly important *shadow institutions*, which we outline in terms of neopatrimonialism.⁸⁶ Concreteness, rather than the cold letter of abstract law and its rule, cuts across these practices, with their discrete imaginary justification, whereby people achieve particular and substantive goals on the sly.

We must not by any means oppose neopatrimonialism to modernity as if the ideal type of ‘rational-legal’ domination ever materialised. Law and citizenship are certainly harmed by that unkept secret (since everybody knows that it subsists everywhere), a situation difficult to alter. According to the law established in rule of law-based states, neopatrimonialism is straightforward corruption, a crime against the public patrimony (with corruption assuming a much narrower delimitation than it formerly did in republican versions, when it pointed to the decline of mores and institutions). It may be seen as inevitable in that nothing works if not through bribery and embezzlement. It characterises modern and authoritarian collectivist states, suffusing the leftovers of the party-state system. The state is not an official mafia intent on the patrimonial exploitation of society, as a somewhat cynical reasoning has suggested, regardless of how patrimonial extraction of resources can proceed ruthlessly in modernity. That said, patrimonialism may be so deeply entrenched that it seems like a natural phenomenon, harmful but simply an unavoidable aspect of social life.

Neopatrimonialism is not a practice internal to the state only, though. The collusion between state officials and societal (‘private’) agents may comprise petty corruption by ordinary citizens and low-ranking officials; it may

implicate powerful private agents who draw upon their connections with higher echelons of the state, whereby both profit from this spuriously particularistic relation, which is the case with capitalist agents, of all sizes and importance. While the former may be very generalised in several countries, the latter involves vast resources and the distortion of the use of public assets according to the decisions that correspond only to those narrow interests. Corrupt practices may be carried out on the sly and be upfront illegal, with rent-seeking playing a paramount role. More dubiously, other arrangements may be perfectly legal, with perhaps the most notorious example consisting of the ‘revolving-door’ practices, which allow for shady transactions, implying a dubious and concrete flow of information and mutual favours, between state and business-related agents.⁸⁷

In authoritarian collectivism, neopatrimonialism qua corruption, as practised by state officials, was widespread, supposedly a crime against the socialist state. It was, rhetoric aside, punished very unevenly, to the benefit of course of the party’s higher echelons, well-placed bureaucrats and enterprise managers. However, a far more extensive network of favours ran across society, linked to the generalised scarcity typical of ‘real socialism’. Patrimonial deals were at the core of such voluntary collaboration.⁸⁸ In the states that converted to capitalism, this was compounded by a huge circulation of money and the ‘traditional’ presence of big and small capitalist agents. Whether in China so-called *guanxi* – the exchange of favours in the process of making business deals – ought to be deemed ‘corruption’ shall remain a moot point here, though orientalism, in whatever register, is never a good answer to conceptual dilemmas. Beyond this specific Sinic civilisational trait known in all modern states, corruption is possibly ingrained in the new form of party-state system. Whatever the impact it has had on economic development, it has implied serious political dangers for its rulers.⁸⁹

Notes

- 1 While individualistic rationalism was the strand that initially hegemonised modernity, Romanticism, developing from within the opposition against the French Revolution and blooming in the German linguistic common space, produced this path-breaking notion of plural collective entities which are more than the sum of their elements. Nevertheless, it remained based mainly on the idea of ‘emergent properties’, still supposing a subjacent atomism rather than ontologically irreducible *properties*. See Ernst Cassirer, *Philosophy of the Enlightenment* (Princeton: Princeton University Press, [1932] 2009), chap. 6; José Maurício Domingues, *Sociological Theory and Collective Subjectivity* (Basingstoke: Macmillan and New York: Saint Martin’s Press [Palgrave], 1995), chap. 1.
- 2 Theodor W. Adorno and Max Horkheimer, *Dialektik der Aufklärung* (Frankfurt am Main: Suhrkamp, [1944, 1947] 1984); James Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University, 1998). He calls this ‘high modernism’.

- 3 Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B Mohr [Paul Siebeck], [1921–22] 1980), pp. 234–44.
- 4 Charles Tilly, *Coercion, Capital, and State, AD 990–1992* (Oxford: Blackwell, 1992, revised edition), pp. 2–3. This is an insightful concern but his solution is mostly linguistic-formal.
- 5 The literature on nationalism is vast, on the nation less so. See Otto Bauer, *Die Nationalitätenfrage und die Sozialdemokratie* (1907, 1924), in *Werkausgabe*, vol. 1 (Vienna: Europaverlag, 1975); Ernest Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell, [1983] 2006); Anthony Smith, *National Identity* (London: Penguin, 1991); Benedict Anderson, *Imagined Communities: Reflections on the Original Spread of Nationalism* (London and New York: Verso, 1991); Idem, *The Spectre of Comparisons: Nationalism, Southeast Asia, and the World* (London and New York: Verso, 1998); Eric Hobsbawm, *Nations and Nationalism Since 1780* (Cambridge: Cambridge University Press, 1992).
- 6 Jürgen Habermas, ‘Volkssouveränität als Verfahren’ (1988) and ‘Staatsbürgerschaft und nationale Identität’ (1990), in *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992).
- 7 Michael Wildt, *Volk, Volksgemeinschaft, AfD* (Hamburg: Hamburger Edition, 2017).
- 8 Jules Michelet, ‘Preface de 1869’, in *Histoire de France*, vol. 1 (Paris: A. Lacroix & Ce. Éditeurs, 1880); Ernest Renan, ‘Qu’est-ce qu’une nation?’ (1882), in *Qu’est qu’une nation? et autres écrits politiques* (Paris: Imprimerie Nationale, 1996). See also Michel Winock, *Nationalisme, antisemitisme et fascisme en France* (Paris: Seuil, 1990).
- 9 See Gerard Delanty (ed.), *The Sage Handbook of Nations and Nationalism* (London and New York: Routledge, 2006).
- 10 Idem, *Ibid.* Remember that China’s claims regarding Taiwan are based on its definition as a former part of the country.
- 11 See Maurizio Viroli, *Love of Country: An Essay on Patriotism and Nationalism* (Oxford: Clarendon, 1995). See first and foremost Jean-Jacques Rousseau, *Discours sur l’origine et les fondements de l’inégalité parmi les hommes* (1754), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971), ‘Dédicace’.
- 12 Jochen Schlobach, ‘People’, in Michel Delon (ed.), *Encyclopedia of the Enlightenment*, vol. 1 (London and New York: Routledge, [1997] 2002); Margaret Canovan, *The People* (Cambridge: Polity, 2005).
- 13 John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988), chap. 7; J.-J. Rousseau, *Du Contrat social, ou principes du droit politique* (1762), in *op. cit.* See also Carl Schmitt, *Verfassungslehre* (Berlin: Duncker & Humblot, [1928] 1993), pp. 148–50.
- 14 Johann Gottfried Herder, *Abhandlung über den Ursprung der Sprache* (Hamburg: Reclam, [1770] 1986); Idem, *Auch ein Philosophie der Geschichte zur Bildung der Menschheit* (Hamburg: Reclam, [1774] 1990). Michelet (*op. cit.*) also stressed the organic nature of nations. Rousseau was a major influence here.
- 15 Pierre Rosanvallon, *Le Peuple introuvable. Histoire de la représentation démocratique en France* (Paris: Gallimard, 1998), pp. 15–23.
- 16 C. Schmitt, *Der Begriff des Politischen* (Berlin: Duncker & Humblot [1932] 2009).
- 17 Cf. J. Michelet, *Le Peuple* (Paris: Flammarion, [1846] 1992).
- 18 Ernesto Laclau, *On Populist Reason* (London: Verso, 2005).

- 19 Karl Marx, *Der achtzehnte Brumaire des Louis Bonaparte*, in K. Marx and Friedrich Engels, *Werke*, vol. 8 (Berlin: Dietz, [1852] 1960); V. I. Lenin, *The State and Revolution: A Marxist Theory of the State and the Tasks of the Proletariat in the Revolution* (1918), in *Collected Works*, vol. 25 (Moscow: International Publishers, 1964); Mao Tse-Tung, 'Be concerned with the well-being of the masses. Attention must be paid to methods of work' (1934) and 'On the correct handling of contradictions among the people', (1957), in *Selected Works of Mao Tse-Tung*, respectively vols 1 and 5 (Peking: Foreign Languages Press, w/d). See also Mikail Bakunin, *Statism and Anarchy* (Cambridge: Cambridge University Press, [1873] 1990). Never conceptualised (save to some extent in one of Mao's texts), the 'people' permeates all these writings.
- 20 Boaventura de Sousa Santos, *Refundación del Estado en América Latina* (Lima: Instituto Internacional de Derecho y Sociedad, 2010). His postmodernism and postcolonialism overlook how bi/plurinational states are common in modernity, though often seen as problematic, for instance Belgium, Canada, India – but above all great European kingdoms, especially Spain and the United Kingdom of the British Isles.
- 21 Edmund Burke, 'Speech to the electors of Bristol' (1774), in *Selected Works*, vol. 4 (Miscellaneous Writings) (Indianapolis, IN: Liberty Fund, 1999); Charles de Secondat de Montesquieu, *De l'Esprit des lois* (Paris: Gallimard, [1758] 1995), Book 11, chaps 4, 6, stressed the representation of the 'nation' – which cannot be 'present' – and free debate, an issue already broached in Chapter 3.
- 22 Emmanuel Joseph Sieyès, *Qu'est-ce que le Tiers état?* (Paris: Presses Universitaires de France, [1789] 2001), chap. 5.
- 23 Paula Diehl, *Das Symbolische, das Imaginäre und die Demokratie. Eine Theorie politischer Representation* (Baden-Baden: Nomos, 2015).
- 24 It is only once citizenship has developed infused then with concreteness that we can think of it as really thick. In any case, it must be kept analytically distinct from national 'membership' whereas centrally including civil and political rights, alongside social ones, contrary to what is in an anachronic way, though politically well-meant, suggested by Margaret R. Sommers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to have Rights* (Cambridge: Cambridge University Press, 2008). Of course, neoliberalism endeavours to make it thin again.
- 25 Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon, [1944] 2002); Robert Castel, *Les Métamorphoses de la question sociale. Une chronique du salariat* (Paris: Fayard, 1995); Ferenc Fehér, *The Frozen Revolution: An Essay on Jacobinism* (Cambridge: Cambridge University Press and Paris: Maison des Sciences de l'Homme, 1987), pp. 129ff.
- 26 Gøsta Esping-Andersen, *Politics Against Markets: The Social-Democratic Road to Power* (Princeton: Princeton University Press, 1988); Idem, *The Three Worlds of Welfare Capitalism* (Princeton: Princeton University Press, 1990). See also Claus Offe, *Strukturprobleme des kapitalistischen Staates* (Frankfurt am Main: Suhrkamp, 1973), pp. 30–31, 38–40ff. A liberal social democratic philosophical perspective, despite his later uneasiness with this characterisation, was provided by John Rawls, *A Theory of Justice* (Cambridge: Belknap, [1971] 1999). Abstract 'logocentrism' is its hallmark, including the thought experiment and regulative idea of the 'veil of ignorance' under which individuals with no qualities might collectively decide about the distribution of 'primary social goods'.
- 27 Hobart Spalding Jr., *Organized Labor in Latin America* (New York: Harper & Row, 1977); Wanderley Guilherme dos Santos, *Cidadania e justiça: a política social na ordem brasileira* (Rio de Janeiro: Campus, 1979).

- 28 Carlos Miguel Herrera, 'Estado, Constitución y derechos sociales', *Revista Derecho del Estado*, no. 15 (2003): 75–92, note in p. 92.
- 29 J. M. Domingues, 'From citizenship to social liberalism or beyond? Some theoretical and historical landmarks', *Citizenship Studies*, vol. 21 (2017): 1–15.
- 30 Franz-Xaver Kaufmann, *Sicherheit als soziologisches und sozialpolitisches Problem. Untersuchungen zu einer Wertidee hochdifferenzierter Gesellschaften* (Berlin: LIT, [1973] 202), chap. 3; François Ewald, *L'Etat providence* (Paris: Grasset, 1986).
- 31 Léon Duguit, *Le Droit social, le droit individuel et la transformation de l'Etat* (Paris: Felix Alcan, [1908] 1911, 2nd edition), p. 155; Jorge Sayeg Helú, *El constitucionalismo social mexicano. La integración constitucional de México (1808–1988)* (Mexico: Fondo de Cultura Económica, 1991).
- 32 K. Marx, 'Kritik des Gothaer Programs' (1875), in K. Marx and F. Engels, *Werke*, vol. 19 (Berlin: Dietz, 1987), pp. 20–21; Andrei Y. Vyshinsky, *The Law of the Soviet State* (New York: Macmillan, 1948), *passim*, p. 89; Georg Brunner, 'Zur Wirksamkeit der Grundrechte in Osteuropa', *Der Staat*, vol. 9 (1970): 187–222; Konrad H. Jarausch, 'Realer Sozialismus als Fürsorgediktatur: Zur begrifflichen Einordnung der DDR' (1988), *Historical Social Research*, Supplement no. 24 (2012): 249–272; Thomas E. Towe, 'Fundamental rights in the Soviet Union: A comparative approach', *University of Pennsylvania Law Review*, vol. 115 (1967): 1251–1274.
- 33 Nadia Urbinati, *Costituzione italiana – Art. 1* (Rome: Carocci, 2017); Massimo Luciani, 'Radici e conseguenze della scelta di fondare la repubblica democratica sul lavoro', *ADL*, vol. 3 (2010): 628–652; Mónica Brito Vieira and Filipe Carreira da Silva, 'Getting rights right: Explaining social rights constitutionalization in revolutionary Portugal', *International Journal of Constitutional Law*, vol. 11 (2013): 898–922.
- 34 J. E. S. Hayward, 'The official social philosophy of the French Third Republic: Léon Bourgeois and solidarism', *International Review of Social History*, vol. 6 (1961): 19–48; Duguit, *op. cit.*, *passim*.
- 35 Franz Neumann, 'Die soziale Bedeutung der Grundrechte in der Weimarer Verfassung' (1930), in *Wirtschaft, Staat, Demokratie. Aufsätze 1930–1954* (Frankfurt am Main: Suhrkamp, 1978); Dieter Grimm, *Die Bedeutung der Weimarer Verfassung in der deutschen Verfassungsgeschichte* (Heidelberg: Stiftung Reichspräsident-Friedrich-Ebert-Gedenkstätte, [1990] 1992), pp. 171–78; Idem, *Constitutionalism: Past, Present and Future* (Oxford: Oxford University Press, 2016), p. 25.
- 36 Sir William Beveridge, *Social Insurance and Allied Services* (London: His Majesty Stationery Office, 1942), p. 7; T. H. Marshall, 'Citizenship and social class' (1950), in *Class, Citizenship and Social Development* (Garden City: Double Day, 1964).
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- 40 See Robert Alexy, *Theorie der Grundrechte* (Frankfurt am Main: Suhrkamp, 1985), chaps 4, 9.
- 41 Iris M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, [1990] 2011); J. Habermas, 'Kampf um Anerkennung in demokratischen Rechtsstaat' (1993), in *Die Einbeziehung des Anderen* (Frankfurt am Main: Suhrkamp, 1996).
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- 45 Bruno Lautier, 'Les politiques sociales au Mexique et au Brésil: l'assurance, l'assistance, l'absence', in B. Lautier and Jaime Marques Pereira (eds), *Brésil, Mexique: Deux trajectoires dans la mondialisation* (Paris: Karthala, 2004); María Elena Rodríguez Ortiz, 'O enfrentamento da pobreza numa era global: o Banco Mundial, Brasil, Índia e outros casos', Unpublished PhD Thesis, IESP-UERJ (2014); Mahabub Houssain, *Credit for Alleviation of Rural Poverty: The Grameen Bank in Bangladesh* (Washington: International Food Policy Research Institute, 1988); Lamia Karim, 'Demystifying micro-credit: The Grameen Bank, NGOs, and neoliberalism in Bangladesh', *Cultural Dynamics*, vol. 20 (2008): 5–29; Qin Gao, *Welfare, Work, and Poverty: Social Assistance in China* (Oxford: Oxford University Press, 2017). The Dibaio is the biggest cash transfer programme in the world. Mexico has recently changed its policies in a dubious direction.
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- and *Transnationalism between Latin America and Europe* (London and New York: Routledge, 2019).
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- 49 Bob Jessop, *The Future of the Capitalist State* (Cambridge: Polity, 2002); Idem, *The State: Past, Present, Future* (Cambridge: Polity, 2015); Christopher Pierson, *Beyond the Welfare State: The New Political Economy of Welfare* (Cambridge: Polity, 2006, 3rd edition). See also Irene Dingeldey, 'Between workfare and enablement – The different paths to transformation of the welfare state: A comparative analysis of activating labour market policies', *European Journal of Political Research*, vol. 46 (2007): 823–851.
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- 53 F. Carreira da Silva, 'Welfare State', in William Outhwaite and Stephen Turner (eds), *The SAGE Handbook of Political Sociology*, vol. 2 (London: Sage, 2017).
- 54 Azad Singh Bali, Alex Jingwei He and M. Ramesh. 'Health policy and COVID-19: Path dependency and trajectory', *Policy and Society*, vol. 41 (2022): 83–95.

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- 56 For the history, as well as an analytical and positive assessment, problematically arguing that this system might lead to a real citizen income, see Michael Opielka and Wolfgang Strengmann-Kuhn, 'Bürgergeld und die Zukunft des Sozialstaats', *Wirtschaftsdienst. Zeitschrift für Wirtschaftspolitik*, vol. 102 (2022): 95–99. For France, see Clément Bourgeois and Chloé Tavan, 'Le revenue de solidarité active: Principes de constructions et effets attendues', *Économie & Prévision*, no. 192 (2010/1): 123–130. For Italy and other European countries, see Elena Anna Grasso, 'Le "Reddito di cittadinanza" italien en recherche d'identité: Approche européenne et comparative', *Revue de droit comparé du travail et de la sécurité sociale* (2020.1): 66–79; for recent changes, see Paolo Baroni, 'Meloni smonta il Reddito di cittadinanza', *La Stampa*, 22/12/2022 (https://www.lastampa.it/politica/2022/12/22/news/meloni_smonta_il_reddito_di_cittadinanza-12426664/). Retrieved 22/12/2022.
- 57 Aaron Benanav, *Automation and the Future of Work* (London and New York: Verso, 2021).
- 58 For a neoliberal original perspective, see Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, [1962] 2002), pp. 192–194. More left-inclined, pro-citizenship views, of a huge and spiralling literature, are found in Ruben Lo Vuolo, 'El ingreso ciudadano', *Nueva Sociedad*, no. 264 (2016): 50–62; Guy Standing, *Basic Income: A Guide for the Open-Minded* (New Haven: Yale University Press, 2017); Philippe Van Parijs and Yannick Vanderborght, *Basic Income: A Radical Proposal for a Free-Society and a Sane Economy* (Cambridge: Harvard University Press, 2017). A classical reference is Robert van der Veer and P. Van Parijs, 'A capitalist road to communism' (1986), *Basic Income Studies: An International Journal of Basic Income Research*, vol. 1 (2006): 1–23. The pioneer in this direction has been unanimously pointed out as having been Thomas Paine, *Agrarian Justice* (1797), in *Paine: Political Writings* (Cambridge: Cambridge University Press, 2000). For a recent critique, with labour deemed an integrative democratic force, see Axel Honneth, *Der arbeitenden Souverän* (Berlin: Suhrkamp, 2023).
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- 66 Béatrice Hibou, *La Bureaucratisation du monde à l’ère néolibérale* (Paris: La Découverte, 2012).
- 67 Gustavo Binenbojm, *Uma teoria do direito administrativo. Direitos fundamentais, democracia e constitucionalização* (Rio de Janeiro: Renovar, 2008). For long the principal treatise on the topic was Maurice Hauriou, *Droit administratif et droit public* (Paris: Recueil Sirey, [1882] 1927). He was realistic about the imbalance between state and citizens due to its power of ‘direct action’ and the system of ‘domination’ this implied, but mistakenly interpreted the French development of administration, based on centralisation and the subordination of the judiciary, as a general trend.
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- 69 Mitchell L. Hammond, *Epidemics and the Modern World* (Toronto, Buffalo and London: University of Toronto Press, 2020), pp. 213–214; J. M. Domingues, ‘From global risk to global threat: State capabilities and modernity in times of coronavirus’, *Current Sociology*, vol. 70 ([2020] 2022): 6–23.
- 70 Milovan Djilas, *The New Class: An Analysis of the Communist System* (London: Thames and Hudson, 1957), pp. 35–38; Rudolf Bahro, *Die Alternative. Zur Kritik des real existierenden Sozialismus* (Frankfurt am Main: Europäische Verlaganstalt, 1977), chaps 5, 9; Ronald Hill, ‘The “All-people’s State” and “Developed socialism”’, in Neil Harding (ed.), *The State in Socialist Society* (Albany: State University of New York Press, 1984), p. 118; Bruce J. Dickson, *Red Capitalists in China: The Party, Private Entrepreneurs, and Prospects for*

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- 71 Antoine Garapon, *Le Gardien des promesses. Justice et démocratie* (Paris: Odile Jacob, 1996).
- 72 J. Habermas, *Theorie des kommunikativen Handelns*, vol. 2 (Frankfurt am Main: Suhrkamp, [1981] 1988), pp. 489ff; J. M. Domingues, *Sociological Theory and Collective Subjectivity*; Idem, *Social Creativity, Collective Subjectivity and Contemporary Modernity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 2000), chap. 7.
- 73 Michel Foucault, *Surveiller et punir: naissance de la prison* (Paris: Gallimard, 1975); Idem, *Histoire de la sexualité*, vol. 1. La volonté de savoir (Paris: Gallimard, 1984); Idem, *Naissance de la biopolitique. Cours au Collège de France, 1977–1978* (Paris: Gallimard and Seuil, 2004); Idem, *Il faut défendre la société. Cours au Collège de France, 1976* (Paris: Gallimard and Seuil, 1997); Idem, *Sécurité, territoire, population. Cours au Collège de France, 1977–1978* (Paris: Gallimard/Seuil, 2009).
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- 75 James Mahoney and Kathleen Thelen, 'A theory of gradual institutional change', in J. Mahoney and K. Thelen (eds), *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010).
- 76 Norberto Bobbio, *L'età dei diritti* (Turin: Einaudi, [1990] 1997).
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- 80 Jacques Sapir, *Le Grand retour de la planification?* (Paris: Jean-Cyrille Godefroy, 2022), especially chap. 5.
- 81 Hayek, *The Road to Serfdom*, chaps 1–7.
- 82 See, for a summation of state economic intervention in modernity, Ha-Joon Chang, *Kicking away the Ladder: Development Strategy in Historical Perspective* (London: Anthem, 2003). For the pioneering arguments for this sort of intervention, going far beyond Smith's 'invisible hand' of the market, see Alexander

- Hamilton, *Report on Manufactures Made to Congress* (Boston: The Home Market Club, [1791] 1892); Friedrich List, *Das nationale System der politischen Ökonomie* (Jena: G. Fischer, [1841] 1910). See also, obviously, John Maynard Keynes, *The General Theory of Employment, Interest, and Money* (Cham, Switzerland: Palgrave Macmillan, [1936] 2018), in which the ‘common will’, embodied in state policy, should (very concretely) work to stimulate consumption. For state support of research and complex networks, see Manuel Castells, *The Rise of the Network Society: The Information Age: Economy, Society, and Culture*, vol. 1 (Oxford: Blackwell, [1996, 2000] 2010, 2nd edition). For developmentalism, see the ground-breaking text, published as a formal – bureaucratic – document, by Raúl Prebisch, *The Economic Development of Latin America and its Principal Problems* (New York: United Nations Department of Economic Affairs, [1949] 1950).
- 83 Ferenc Fehér, Agnes Heller and Györg Márkus, *Dictatorship over Needs: An Analysis of Soviet Societies* (New York: Saint Martin’s Press, 1983), pp. 60, 71–72; Alec Nove, *The Economics of Feasible Socialism* (London: Harper Collins, 1991), Part 2; János Kornai, *The Socialist System: The Political Economy of Socialism* (Oxford: Clarendon, 1992), pp. 71–75, 98.
- 84 Barry Naughton, *Growing Out of Plan: Chinese Economic Reform, 1978–1993* (Cambridge: Cambridge University Press, 1995); Idem, *The Rise of China’s Industrial Policy, 1978 to 2020* (Mexico: Universidad Nacional Autónoma de México, 2021); Doug Guthrie, *China and Globalization: The Social, Economic, and Political Transformation of Chinese Society* (London and New York: Routledge, 2006); J. M. Domingues, *Global Modernity, Development, and Contemporary Civilization: Towards a Renewal of Critical Theory* (New York and London: Routledge, 2012), chap. 4; Nathan Sperber, ‘La planification chinoise à l’ombre du capitalisme d’état’, *Actuel Marx*, no. 65 (2019): 35–53.
- 85 Sapir, *op. cit.*; Chalmers Johnson, *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925–1975* (Stanford: Stanford University Press, 1982); Peter Evans, *Embedded Autonomy: States and Industrial Transformation* (Princeton: Princeton University Press, 1995); Domingues, *Global Modernity, Development, and Contemporary Civilization*, Part II.
- 86 Shmuel N. Eisenstadt, *Traditional Patrimonialism and Modern Neopatrimonialism* (Beverly Hills and London: Sage, 1973); Gero Erdmann and Ulf Engel, ‘Neopatrimonialism reconsidered: Critical review and elaboration of an elusive concept’, *Commonwealth & Comparative Studies*, vol. 45 (2007): 95–119; Domingues, *Global Modernity, Development, and Contemporary Civilization*, pp. 51, 85, 214, 222. Although clientelism and patronage are particularistic practices, they are not necessarily related to patrimonialism and shadow institutions. See Chapter 6 of this book.
- 87 The liberal literature is in this regard plainly homogeneous. Cf. Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York: Academic Press, 1978); Ray Fisman and Miriam A. Golden, *Corruption: What Everyone Needs to Know* (Oxford: Oxford University Press, 2017). Critical views accentuate that second possibility. Cf. David White, *How Corrupt Is Britain?* (London: Pluto, 2015).
- 88 Fehér, Heller and Márkus, *op. cit.*, pp. 60, 79; Nove, *op. cit.*, pp. 84–85; Kornai, *op. cit.*, p. 86.
- 89 Mei-hui Yang Mayfair, ‘The resilience of *Guanxi* and its deployments: A critique of some *Guanxi* scholarship’, *China Quarterly*, vol. 170 (2002): 459–476; Guthrie, *op. cit.*, pp. 103–110.

5

RIGHTS, STATE AND THE MODERN IMAGINARY

5.1 From abstract to concrete: a developmental trend

In the previous chapters, I have systematically examined crucial aspects of the multifaceted evolution of modernity. I have analysed its main imaginary elements and core institutions and practices, regarding its political dimension, with its core juridical features, and how they have developed. It was a long way from what was once modernity's pure, almost ethereal character – desubstantialised, depersonalised and depoliticised – to the full-blown civilisation it has ultimately become. Concreteness invaded it from several fronts. Whereas the two sides of the modern divide, the state and the societal, initially appeared as separated by a formally impermeable divide, they have become deeply interpenetrated, without collapsing into each other. As the first step in our effort to analytically sum up this movement, in Figure 5.1 I bring together all those factors. However, we must conceptually resume and further elaborate on some aspects of our exposition.

Furthermore, the dialectic of the abstract and of the concrete implies a directional development that is intrinsic to the way the imaginary and the institutions of modernity have been organised. Since it was originally structured with such abstractions at its core, political-juridical modernity brushed aside concreteness from its state side. That is to say, it eschewed away a legion of fundamental problems for individuals and collectivities on its societal side. Once they raised claims for social and economic issues, there was a demand for the intervention of the state and, responding to this call, it inevitably had to grapple with concreteness. Its abstract scaffolding was then transformed. Although agents were, of course, unaware of the conceptual rendering of such a dialectic and they did not bet on such

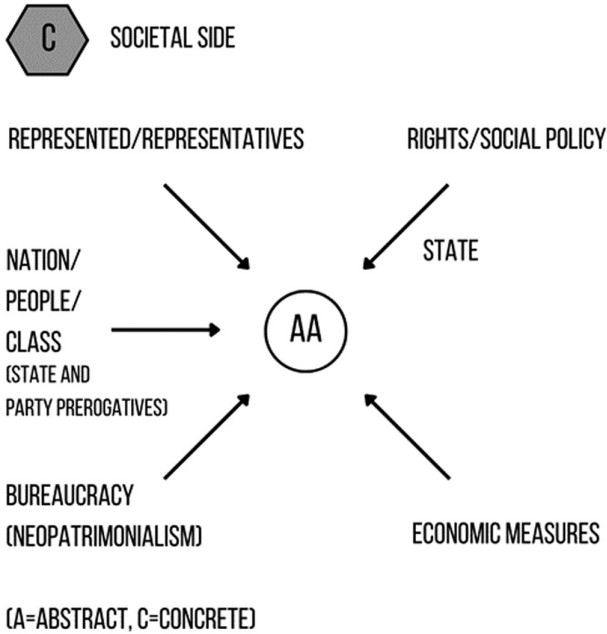


FIGURE 5.1 From abstract to concrete

a dialectical-developmental process, they knew that their claims and that economic imperatives pushed against the original conformation of liberal modernity, with its abstract and largely market-oriented character, towards an expansion of rights and the heightened role of the state, without detriment to the horizon of the rule of law. The increasing presence and pressure of concreteness is more often than not connected to social conflicts. They propel the penetration of the abstract side of the modern political dimension by concreteness, these being poverty and inequality, class, women and gender, race and ethnic issues, among others. Further concrete questions concern more general needs such as the state intervention in the economy and the relative saturation of law by conceptions of justice. These as such have often been linked to social conflict.¹ Both elements are important for the moment of expansion of liberalism since its emergence.

This whole process constitutes a clear developmental trend. Remember that I stated in the introduction of this book that there are two types of processes with directionality and a developmental logic: (1) teleologically steered processes stemming from the pursuit by agents of elements of the imaginary through which they orient themselves in the world, whether intentionally or not, mobilising learning and creativity (and also when agents endeavour to escape from the world); (2) locked-in processes underpinned by unintended reproduction, regardless of the agents' awareness of general outcomes and

underlying causes, usually due to a conflictual logic. In the case, we have a locked-in process with a logic that depends on intended and unintended consequences of individual action and collective movement that result from social conflict, oriented on the other hand by equal freedom, rights and citizenship expansion as crucial elements of the imaginary. In particular, political agents aimed at a (limited) transformation of modernity, at the same time holding fast to the core elements of its imaginary in terms of values, norms and expressive identity.

To be sure, those who fought for rights could have stayed put and done nothing, accepting their conditions of existence. The various economic agents, that is, those within the state and those who contemplated the situation from an intellectual standpoint, could have abided by the plain and simple market principle. All things considered, they had two options if they decided to change and find a different way to go about. They could either embrace the lexicon, the imaginary and partly the institutions they found available and were shaped by the relation between state and society, regarding equal freedom, rights and citizenship, as well as state intervention in the interchange between 'society' and 'nature'; or they could take the high road of revolutionary praxis. As social complexity increased, this dialectic was heightened, with different solutions and answers, strategies and balances being pursued, against the foil of an already too strong penetration of the concrete into the state and of the state into societal life, the economy, in particular. It seems rather clear that, within modernity, it is improbable, not to say impossible, as long as modernity remains modernity, that this dialectic can be superseded. Socialist revolutionary attempts were moreover defeated as socialist experiments: authoritarian collectivism was the unintended effect of those thwarted efforts. Unaware of its fate, to a large extent it resumed that dialectic between state and society, with very different strategies, admittedly, since 'socialist rights' and 'socialist legality' had meanings that set them apart from what similar concepts were supposed to mean in modernity.

The imaginary horizon of possibilities of modernity and the desire to make them effective in real life together pushed agents to intervene transformatively in the world, creatively and exploring alternatives in different contexts, which were however encompassed by the same or similar institutions. In this sense, their leeway was limited; this interwoven imaginary and institutional universe conditioned their volition and its translation into practice, although they could indeed go further and more or less radically break with it.

5.2 The trajectory of rights and the state

In the political-juridical dimension, modernity announced itself with the rise of the idea of subjective natural rights. Mainly in Mediterranean Antiquity and during the Middle Ages, a conception of objective natural rights prevailed

in which every category of being found its proper place in a complex divine teleology. Moreover, drawing upon the Greeks and stoic philosophers, late Roman jurists had already suggested the rudiments of a more subjectivist perspective. Later it evinced a revolutionary character, serving the purposes of an ascending bourgeoisie and the lived experience of individualisation then developing. In what became Europe as modernity emerged, a more universalist theory of rights was eventually articulated, based on a more metaphysical view of human beings, whose rights moreover pre-existed them. Christianity played a role in this, but very earthly issues grappling with the matter of how to organise the state and law acutely contributed to this development since the late Middle Ages. In Britain, a more empirical view of rights – as ‘the rights of the Englishman’ – was more typical. It was backed by the recourse to common law, although natural rights also sneaked in, in a more limited way, through the importation of ideas of Italian humanism or just as a means to strengthen freedom claims – certainly present in authors such as Locke, with Hobbes providing an initial, non-liberal account of a priori rights. All the structure of the rights-holder’s free-position and citizenship was initially based on this novel idea of subjective rights, with the English counterpoint. The same is true of post-Absolutist ideas of sovereignty and revolutionary notions of constituent power.²

This articulation of rights led to a series of related perspectives about how aggregation formed society. At this point, even pro-Absolutist writers – such as the very pioneering Hobbes – might be social atomists who thought of the social compact as stemming from the aggregation of individuals. These would be as such endowed with social causality, otherwise unable to create this new entity. The result were several theories of the ‘social pact’ or ‘covenant’ that explained and laid down how this process should unfold, starting from individual actors. Thereby humankind left behind its original ‘state of nature’ or ‘natural condition’. A number of possibilities ensued.

Hobbes, first of all, considered that we thereby avoided the ‘state of war’, in which aggression could happen at any moment, with a covenant narrowing but securing original (brutish) freedom. Alternatively, we had decided to leave a pristine state of relative harmony, but perilously fraught with risks, to organise a more secure dwelling, in which freedom would be kept, as argued by Locke. Others regretted lost innocence when humans entered social life, the only remedy being, politically, the establishment of a ‘social contract’ in order to preserve liberty, as Rousseau demanded (though explicitly agnostic about the historical character of a state of nature). The last option might also consist of the conservation of the state of nature within politically constituted social life and pacts, as Spinoza, for one, put forward, which meant that for him the ‘multitude’ could begin everything anew at any moment. For Kant, finally, this was clearly nothing but a regulatory idea. Utilitarian elements also appeared in these formulations, stressing the role of interests

in individual decisions and the creation of law. In this regard, the basis, the fundament and original element of the state would be no other than the individual citizen (with his subjectivity and body). A more conservative interpretation clung to state-rooted views of sovereignty and rights, primarily with Hegel. It has left its marks, and even if somewhat in decline more recently, it was able to invert the direction of the argument in some areas momentarily. The state – a teleological, causally endowed agent – would therefore be the origin of individual subjective rights, irrespective of where the impulse or necessity for that ensued.³

Today we may look at such constructions and wonder how such arguments might have prospered.⁴ After all, they offered a type of fable in which rational talking animals could get together and create a social compact – or, which is by no means better, believed that the state as such was interested in the well-being of citizens (or subjects). On closer inspection, despite the glaring fanciful component ingrained in it, the idea of a social pact contains more than a grain of truth, though; this is different, however, from what stood in philosophical treatises and the political imaginary and practices at that time. To be sure, neither individuals nor covenants create ‘society’, which pre-exists them. The idea that rights derive from the state or something similar seems more plausible, yet it has declined as modernity moved forward, having the rights-holder individual citizen at its core. For us today, neither of these two poles, tributary of a strong metaphysical or historicist baggage, theoretically make sense. What really matters is the mutual ontological constitution of individuals and the state as well as the whole of social life. This is the entanglement I have elaborated on in Chapters 1 and 2 when the analytical framework of rights and the state was initially proposed as the abstract aspect of the stateside of the modern divide, expanding afterwards towards its concrete societal side. Yet the issue remained unsettled in the way we practically reason in daily life.

The upsurge of political modernity took place with individual rights as its vehicle and teleologically bound goal. Natural rights were recognised in their historical and logical truth and ‘positivised’ in legislation, within a specific state and concerning the citizens of one nation. The constitutions that the turn of the eighteenth to the nineteenth century multiplied enshrined this juridical-political solution, starting with the United States and France. The state was therefore supposedly based on a network of rights-holders and sovereign agents who, through their voluntary collaboration, created a social compact in which their rights acquired legal form. However, already in the heyday of natural rights theories, an uncompromising utilitarian view launched its programme. But the state and its agents now replaced the individual and that network, with hierarchy and command becoming the means through which law is fashioned and applied. ‘Political superiors’ command ‘politically inferiors’, who must comply. That is how Austin, following

Bentham, put it, consolidating the latter's opinion that human rights were pure 'non-sense upon stilts', with, incidentally, the 'rights of the Englishmen' frequently used as a trope to limit the reach of those 'metaphysical' rights as well as demands at home.⁵ Even Hobbes, with all his Absolutist commitment and a stress on the idea that law is command, thought that rights belong to individuals. Law thus derived from their original decision to enter a social contract, with law-making thereafter subtracted from the 'multitude' that had come together to bring about that compact, an argument that was in some measure a sleight of hand.

Positivism therefore emerged, to a considerable extent, as an understanding of law as a means of framing social life from the top down, a perspective congenial to the authoritarian reformism of Benthamite utilitarianism, in tandem with the British sovereign parliament and the Prussian reformist *Rechtsstaat*. Even Kelsen's more liberal and even social democratic positivism to a large extent resumed this sort of perspective. For him, the juridical order (law) creates the 'legal subject' and ('subjective') rights, starting with the 'basic norm'. In the constituted legal order, law would operate through 'commanding' (*gebieten*), 'authorising/empowering' (*ermächtigen*) and 'permitting' (*erlauben*), all of them related to what 'ought' to be (*sollen*). He was keen on 'legal obligation' or 'duty' (*Pflicht*) (from which reflex rights' derive).⁶ Weber was more direct, referring to 'command' (*Befehl*) to speak of law, with others, more or less authoritarian views also sticking to this principle of organisation as its core attribute.⁷ Only later did positivism, maintaining, all the same, 'duties' in pride of place, point to other 'rules' that 'confer legal powers' and 'facilitates' action (rather than hindering it).⁸

The universe of rights would soon return, and with a vengeance. The Weimar Republic in terms of civil, political and social rights introduced the crucial idea of *fundamental* rights. Social mobilisation and struggle socially and politically yielded them. They were ascribed universality, yet no longer explicitly clung to subjective natural law, with sharp symbolic shifts, although such fundamental rights belonged to the individual citizen. This is how the concept of rights has been usually phrased, implicitly referring to a historically and politically saturated sociability; social constitutionalism found its main imaginary and institutional anchor in this outlook. Network and voluntary collaboration play a crucial role in this version, but, in at least its left-leaning versions, also conflict (a principle of antagonism) and struggle (its coordinating mechanism) stand out.⁹ Not all constitutions contain a catalogue of rights, much less a catalogue of social rights; that notwithstanding, somehow or another fundamental rights furnish the horizon of expectations that orients citizens in contemporary modernity. Neither individuals nor the state: in what regards fundamental rights, both more abstract and more concrete, what impels the legislative process is a large array of possible individual and collective interactions. What is more, that is how the agents

involved comprehend it, even if analysts might indicate their political character (even if underplaying their importance) or stress what would be a more benign dialogic interchange between politically motivated rational citizens. At the core of these interactions, conflict is a potent driver, unleashed by people who want rights and those who resist them. Rights do not evolve by themselves. They are moreover never really granted, an idea that those in power often try to sell to those below when forced to legislate in their favour.

Is it really true that we have totally left behind the idea of natural rights? Here we must consider the issue according to how two collectivities see it, the more intellectualised understanding of theoreticians and that of the lay agents, regardless of the more politically conventional character of the expression ‘fundamental’ rights in legal texts. Explicitly and for such intellectually minded agents, it is self-evident that a priori and pre-social natural rights are simply an outdated imaginary construction. Nevertheless, there is more to the discussion.

I shall not unnecessarily dwell upon the centrality of ‘dignity’ in the 1950s post-War traumatised and universalist German Constitution (wherein *Würde* glows), a theme I have more generally stressed in Chapter 1. It seems obvious that it must be inevitably connected to some a priori species-bound evaluation in order to make sense and work as a directive idea.¹⁰ Overall, however, lay agents in particular also have a fuzzy yet sound idea that rights are something that naturally belongs to all human beings, who, if bereft of them, are deeply harmed in their most basic definition. The idea of human rights as such has the same staying power and still underpins legally positive rights. To be sure, as we are evidently aware, this is also a social construction, the result of a long historical process (a ‘learning process’, some would suggest, but I would rather argue that it stems from a creative process since there is nothing given in advance to be learnt). It is as though there are two or more layers superposed in our imaginary. First, at the bottom and solidly, the natural rights stratum lingers on and deep-down influences how we, specialists and ordinary citizens, think, intuit and above all feel about these issues, operating at the level of practical, routine-oriented reflexivity.¹¹ On top of it, we may find the command perspective, which is what we most experience on a daily basis, with an always fraught relationship with the state. Finally, the last layer, superior yet for many superficial and for all ambiguous, embodies a more politically and antimetaphysically oriented perspective about the nature of rights. Even in this respect the situation is not entirely translucent since the force assumed by and required of the idea of fundamental rights seems to demand a lot more than such a pragmatically steeped political one.

This whole process and its manifold outcome also apply to what I have called neoconstitutionalism in Chapter 4. Values, which they see as embodied in rights, are vital for them. Interpretation is also crucial, the unwillingness

of at least some to see it extended notwithstanding. Values, turned into rights, with all their complexity, are thus premised upon ‘principles’, which must orient judicial decisions. Alternatively, they may manifest themselves as ‘optimisation mandates’.¹² Once again, if speaking about values in relation to rights does not per se entail a return to a theory of natural rights, the force of this formulation in our imaginary is overwhelming.¹³

As already seen, authoritarian collectivist states also adopted, from 1936 onwards, constitutions with consistent catalogues of fundamental rights, which then also influenced Western European constitutions, having been initially, as noted, themselves inspired by the later discarded Weimar Constitution. In ‘real socialism’, such rights were radically political and instrumental in their concrete-substantiality. Officially they partake, however, not the outlook of other, liberal constitutions, nor by any means, save very indirectly, the idea of network and voluntary collaboration. The ‘socialist’ state – the embodiment of the ‘dictatorship of the proletariat’ – graciously ‘granted’ such rights to individuals – via hierarchy and command, therefore.¹⁴ To be sure, rights were not a priori and doubtlessly in the majority of these countries they shed their ‘metaphysical’ character, although later on Soviet leaders flirted with the idea of human rights. Command is what mattered here. Indeed, Pashukanis’ idea that law was based on the private contract-form was, considering what we have seen hitherto, an equivocation. But Stuchka’s perspective, more concerned with the whole of politics and social life, the state as such and with its conceptual priority vis-à-vis the logic of exchange, insofar as it had always guaranteed the power of the ruling classes, did not have a future either.¹⁵ The Stalin-Vyshinsky unlawful association buried it. When the party-state has been capable of an adaptive move back into modernity, its conventional definition of rights has remained the prevailing logic. Not by chance, today the surviving exemplars of authoritarian collectivism are either explicitly against the idea of human rights (of course oblivious to the communist overcoming of law) or try to revive the idea of Asian values in an attempt to sell their damaged goods, among which we encounter the notion of ‘human rights with Chinese characteristics’.

The literature on compared law usually adopts as its cornerstone the divide between ‘civil law’ (typical of continental Europe) and ‘common law’ (Britain and the United States), despite the latter’s greater formalisation today. They also usually argue that ‘socialist’ law has greater similarities with civil law, developing, that notwithstanding, as a specific ‘family’. It lives on in the surviving states of authoritarian collectivism, along with adaptations in commercial law to open doors to generalised capitalist exchange.¹⁶ Other traditions introduce more variation in global law. However, we must stress that, as much as this classification may be sound, it may also be problematic regarding the more profound similarities between currents and institutionalisations within them, as we have just seen. Command is ubiquitous in more

authoritarian systems, while, at least formally and discursively, we find commonalities between civil and common law currents, as well as vanquished currents in the Soviet Union.

In the course of all this evolution, the conception of subjectivity has undergone alterations but remained the same in its kernel. Modern subjectivity was originally thought of according to what may be called the Hobbesian-Cartesian model. This model suggests an agent with a high level of *centring* and *intentionality* in its action, with solid *self-identity*, including bodily differentiation from other individuals.¹⁷ As modernity developed, this model was partly taken to task and a process of theoretical *decentring* gained momentum. Two major shifts have produced this change. First, its decentring through the idea of interactively, mutually constituted subjectivity. Second, an internal decentring denied its transparency and the capacity to lucidly and unproblematically assess what goes on with its desires and decisions and their attainment when the agent passes from thought to action (they themselves no longer clear-cut).¹⁸ In some versions, this may involve the understanding of compelling social conditions underlying interactive processes and social relations which bring out the concrete belongings impinging on the features of the abstract individual and making it more complex.

In fact, much of the pristine model still accompanies us, particularly concerning individual rights-holding citizens, who may enjoy the free-position only insofar as they evince rationality and can be responsible for their 'will' and actions vis-à-vis each other, the state and increasingly 'nature'. That more complex subjectivity is reserved above all for the societal side of the modern divide, although there are political forces that bank on irrationalism (such as varied assortments of fascists and *Querdenkers*). What is more, an array of issues in the juridical sphere makes this more problematic, especially as to criminal law (wherein who may be deemed rational and responsible, hence liable to punishment once offences against the law are committed, is a key issue). This also occurs in regard to social policies and their recipients, which and who are directly impacted by problems related to a deviant or more sophisticated conception of rationality and the rational subject. It remains, after all, the basis for the individual rights-holder and citizen, and the very ideas of rights and citizenship, that is, the pristine liberal infrastructure formerly examined.

5.3 State centring and rationality

If rights underwent an evolution, which heightened their socio-historical character and moved from abstract to concrete, a similar process also marks the evolution of the modern state, the particular system of rule at the heart of political modernity. Initially conceived as a law-based system of law-creation and application, with a lean bureaucracy, the state spiralled into

a very complex, concrete-laden body, despite the central role abstract elements retained, with superposed layers of imaginary meaning, institutions and practices. Two elements in particular demand attention here, the state as a collective subjectivity and its rationality, included in it what may be called expediency.

Collective subjectivity was not an idea favoured by modernity in its beginnings, save in one specific aspect: it should be reserved for the state, whether it was conceived as an aggregation that started with the individual and his 'will' or as an already existing or prior-to-the-individual entity, which exhibited a 'will' of its own. Like the individual agent, this collective one was supposed to be clear-minded and rational, capable of keeping order and applying the law, as well as securing sovereignty. In other words, the state as collective subjectivity was seen as an agent with a high level of *centring*. Representation already complicates this idea since we have different representatives as different agents of different principals, whereby concreteness seeps in and a potential disturbance of that centring sneaks into its pure and transparent body. What forestalled in principle more significant complications was that state activity, apart from law-making and law-application, was trusted to the undertheorised executive power. It should be the actual site of action, substituting for the executive power of the individual before stateness was constituted. It was trusted with rational expediency to achieve its aims, either as defined by law or due to its less than well-defined prerogatives, let alone the imperatives derived from the reason of state.

So far, so good. The problem was compounded as the state developed and a thickened executive emerged, with a vast bureaucracy, multiple goals and tasks, conflicting internal perspectives and projects. That centred collective subjectivity was always a mirage: individuals and collectivities, internal to the state and in relation to the societal side of the divide, often pushed the process in a centrifugal direction. State 'will' was therefore never so simple as regards its intentionality: there have always been too many 'wills', but the head of the state was able to establish priorities and move most of the state body (which is not continuous like the body of individuals) in the intended direction, frictions and recalcitrance notwithstanding. This relatively high level of centring is extant to some extent today, with the further complication that, as the complexity of the state grew and different instances search for the implementation of different formal and substantive goals, including a clash of rights sometimes, a process of decentring has come about in what refers to state collective subjectivity. No one may actually pretend to control what goes on within it, with infinite connections between the state and the societal side of the divide and much opacity. To some extent, the state has become an arena of conflict where different state and societal agents dispute their perspectives and interests.¹⁹ However, we should not take this too far since the divide remains and, with respect to critical issues, state agencies

may be unified and serve the dominant forces from within. A singular will cut across by hierarchical relations premised upon command and the purposes of intentional intervention thus takes hold. The idea of a heterogenous state ‘will’ nonetheless captures much of the complexified dynamic of advanced modernity, with the proviso that citizenship perspectives have actually been dislocated by neoliberal policies with a strong pro-market slant.

While there is an array of legal norms the observance of which is or ought to be at the core of the state in terms of goals to be achieved (formal goals, in this case, that is to say), the state pursues other objectives more or predominantly instrumentally. It is an agent – regarding sovereignty in fact standing for citizens, in contrast considered a principal by state-centred conceptions – that is supposed to move rationally in order to take decisions and implement its goals. That formal structuration would in principle demand no intervention, much as the police and the judiciary have to care for its maintenance, through repression and negative sanctions if necessary. Other objectives, whether they are connected to the observance of rights (derived from diverse citizens’ claims, even with reference to that formal dimension) or aim at other spheres, such as economic development, demand the deployment of *instrumental rationality*, which has, not by chance, been at the core of the definition of bureaucracy.²⁰ It therefore proceeds, in the first place, the *objectification* of ‘nature’ and ‘society’, which become domains for its intervention. Second, once their goals are set, state agencies must be concerned with articulating the means-ends chain as well as they can, adapting the former to the latter in the search for efficiency and efficacy. This objectification and the means-ends articulation serve legally authorised and publicly justifiable purposes. It further serves those that should not come out into the open, especially connected to the reason of state and its often-cherished secrecy, or do so justified by a supposedly greater good. Once again, we face state expediency here. It is characteristic of all modern states but was especially true, out of a conscious and explicit choice, in the trajectory of authoritarian collectivism.

Bureaucratic rationalisation is part and parcel of this development. Market-oriented reforms produce just one more layer of, frequently private, bureaucratic structure. However, the unintended consequences of the moves of the state and its several agencies must not be overlooked. They are as important in this connection as they are in terms of individual actions, irrespective of the level of centring individual and collective subjectivities may evince. No one can absolutely control the future, as politically dominant agents had the displeasure of learning on many occasions.

5.4 Legitimation and legitimacy

These two alternative directions regarding rights – societal or state-based – connect to the legitimation and the legitimacy of the modern state, first of all

to where they originate from, also associated with different ways of conceiving of sovereignty. Legitimacy is a crucial component of what I have called, in Chapter 3, stabilised systems of rule, vertical and more horizontal power systems, which evince a political character in modernity. They are essential for what Weber called ‘domination’, as well as ‘non-domination’ (which he, curiously, due to a lack of conceptual resources, outlined as ‘non-legitimate domination’, that is, when there is a horizontal relationship between agents and nobody above them, despite his coyness in this endeavour).²¹ We must also be aware of the fact that legitimacy is not static or forever a given, hence the need to speak of processes of legitimation. State expediency may contribute or be detrimental to all of them, depending on how it works, especially concerning substantive goals. In addition, we can introduce four variables, displayed in two pairs, that should account for all processes of political legitimation and their end result.²²

We can speak of the support underpinning the whole organisation of the relation between state and society. We may define support as either ‘diffuse’ (D) or ‘specific’ (S), that is, either respectively general or dependent upon particular advantages and benefits. We may also refer to formal rules (Fr), mostly rather abstract, which delimit how power is acquired and exercised, implying, on the one hand, rights, mostly in the abstract realm, and the rule of law; on the other, we find concrete, substantive goals (Sg): rights which, generated either from the bottom up or from the top down, have as criteria of validity successful performance, although upholding formality may also be seen as a sort of goal, not merely a means.²³ Add to this that performance may be much broader, including further intervention by the state on the societal side of the modern divide regarding economic growth and development and climate change, and not least war, among other issues and goals. This large gamut of possibilities applies to all sorts of modern states and postmodern states of authoritarian collectivism (and indeed to all sorts of state and institutionalised hierarchies). As forms of rule, they need people’s consent and a certain level of general social consensus. Table 5.1 schematically displays these four variables.

We may have diffuse goals, among which the maintenance of the formal rules in general in the juridical-political dimension, without detriment to more specific goals regarding the acquisition and operation of political power and its relation with society. Formal procedures are paramount here. We may have diffuse goals with respect to substantive goals, with similar diffuse performance, and specific goals which imply

TABLE 5.1 Power relations and political support

| | |
|-----------|-----------|
| <i>D</i> | <i>S</i> |
| <i>Fr</i> | <i>Sg</i> |

more focused performance. The more undeveloped sorts of modern and postmodern states would be interested only in the first category since they operate in a merely reproductive mode, although we have seen in Chapter 1, particularly concerning the coronavirus pandemic, that even fundamental rights put the state (the juridical-political power *S* as I had already referred to it there) in a position of actively having to guarantee them. Representation is, of course, in modernity, an area in which the acquisition of power comes upfront, since it is when and according to which rules that the principal authorises the agent that represents her or him to work. General well-being with growth and social welfare due to policies of whatever type may be seen as an aspect of the diffuse substantive mode of operation of the modern and the postmodern state, with corresponding performances. In contrast, specific substantive goals apply to what policies and expectations societal agents demand and expect from the state, definite social welfare policies or measures against climate change. In both cases, substantive social rights stand out. In addition, we need to emphasise economic growth, namely, development, which we formerly identified as an area of concreteness that emerges as modernity progresses. Thus far, I have spoken basically from a bottom-up perspective. The other way around may be feasible if we switch to the top-down mode, whereby it can brush aside formality if state agents find this issue irrelevant or cumbersome and such course of action convenient. At the same time, while the state may implement substantive goals directly in search of legitimacy, more convoluted paths to legitimation (for instance, the party-state representing the proletariat) usually come forward.

Liberal states are particularly vulnerable to citizens' perception that formalities are not respected and that the rule of law is not operative. Elected and non-elected officials are prime targets for criticism and rejection when this happens. This should, after all, be a diffuse concern, while, more specifically acquiring and operating power should follow basic rules. Upholding rights and allowing for fair representation are thus at stake for the sovereign, whether or not mediated by a collectivity like the proletariat. Substantive general or specific goals are important for states entangled in the general move towards concreteness. The performances geared to achieving them are crucial. Should they perform poorly, the legitimacy of the state decreases. This was true of the Keynesian-Welfare State and, above all, of authoritarian collectivism states; today, their surviving heirs have to cope with similar problems, with economic growth as the centre-piece of their expected performance (which hardly passes the test of formality, since the party is constantly interfering and trumping it), but all current states face challenges of legitimation in terms of concreteness insofar as they all have to tackle a multiplicity of issues. Formal issues are not to be discounted, especially in the contemporary situation.

If the state is incapable of performing in order to answer to those mechanisms of legitimation, we bump into ‘crisis tendencies’. Defined here as the situation in which there is either an impossibility that usual patterns are reproduced or the threat that this may occur, or if reproduction keeps going disruptive side effects, with attendant further disruptions, come about, crises may lead to a veritable upheaval if new resources and policies are not forthcoming. Threats may become real if not adequately understood and managed.²⁴ But, as a matter of fact, a break of the overall juridical-political order is a very rare situation. Consent to rule and the decrease of that basic level of consensus usually do not wreak havoc in the liberal system of rule. More often than not, when greater trouble shakes foundations, this stems from the incapacity of the semi-colonial state to support the nation or due to complicated decolonisation processes. Otherwise disruption is unlikely. Many other possibilities and options are usually rehearsed, partly based on the strategies of powerful agents, which stabilise the state much before anything like deep ruptures happen. They must lack almost absolute legitimacy in order that this come about, even if a lot, at a more prosaic level, escapes their control. Its reiteration with some level of variation is more likely. Accordingly, reproduction prevails over change, although both depend on dynamic processes in which individuals and collectivities, abstract and concrete, play a crucial role. In the end, coercion, which operates relentlessly even when things run smoothly, is heightened as the last recourse against legitimation crisis, when what Gramsci called ‘hegemony’, within the bounds of an ‘extended state’, has become difficult to maintain.²⁵ Nevertheless, if we look at authoritarian collectivism, its termination, in the confluence of two crises – a long-standing one due to the lack of respect for freedom and law and a further acute economic underperformance near the end –, tells a different tale. Internal contradictions are at least in considerable measure what spins the wheel of history (with the proviso that the excessive simplicity of Hegelian dialectic does not recommend its adoption). In any case, to whatever extent, the imaginary and institutions are shaken by legitimation crises, the former in particular becoming more open, with practices impacted too.

Much as other concrete elements certainly contribute to legitimation and legitimacy, the latter count fundamentally on rationality in modernity. Rights hinge on reason, first of all, even if they become increasingly historically embedded as modernity advances. Bureaucratic intervention in social life as well, as its steadfast ideal-typical description tells us.²⁶ But if rights are as such legitimate since they lie at the core of the modern imaginary, the state seems to suffer from a chronic lack of legitimacy. Once the state is not the highest entity to be cherished nor is its role that of the staunchest defender of revolution, through the dictatorship of the proletariat, that is, once it becomes merely a mediator and a promoter of citizens’ well-being

(whether this is openly affirmed or not does not necessarily matter much), it must prove it is efficient and efficacious. We have seen this with a discussion, in Chapter 1, about the responses to the coronavirus pandemic that states worldwide had to carry out and how rights had to be actively protected by it, including at the cost of limiting some other rights for a certain period. Performance in favour of citizens, according to specific goals, was required. At the same time, the formality of the rule of law and the preservation of the rights general framework also remained at the forefront. Economic performance as a problem appears in this connection, overshadowed by that more vital imperative. China faced similar issues that became more complicated as the pandemic progressed and its zero-corona strategy faltered, with a considerably heavier legitimisation imperative hinging on economic growth. Therefore, China had to try a balancing act, not at all easy to perform.

5.5 Political modernity and the imaginary

Rights, rights-holders, citizenship, law, state, sovereignty, Constitution, the bureaucracy, and even in principle constituent power and representation are central and perennial components of the modern imaginary, institutions and practices. They all depend on abstract rationality, a property of individuals who transfer part of their crucially modern features to the institutions stemming from the rational networked cooperation. The state may be seen as the site of this abstract rationality, although then other, more concrete elements – the nation, the ‘Spirit’ in its apotheosis, the ‘working class’ – tend to be present too, without totally or even slightly jettisoning those core components, based on the individual. Modernity is not an old civilisation; it is no longer so young either. It has changed. Some changes have been brought about by its inner logic; others have arisen due to its phagocytosis of other civilisations. In particular, that core abstract rationality has never given in to any change. Accommodations in the face of mounting complexity have marked the trajectory of modern civilisation. Layers pile on top of others, and they mix, complement and contradict each other; tension rises and individual and collectivities work them out: the drive is unrelenting. The split-up nature of the modern individual and the dialectic between abstract and concrete, combined with the issues and conflicts thrown up by societal and state dynamics, keep modernity on the move.

The rationality that is shot through modernity is supposed to be no mundane clear-headedness, but rather the strong, pure, superior, at times almost supernatural or at least abstractly universal rationality of rationalism. It did not much tolerate competitors and was prone to increasingly demand its own sphere of validity, in the end, in more radical formulations, trying to get rid of what it had recently invented as ‘religion’, that is, everything that clashed with its own principles, including abstraction and calculability, in the

manifold ways it was formulated. Both the individual and the state should adopt this pure rational outlook, purifying themselves in order to found social life anew, within an enlightened imaginary. This lofty and cherished reason or rationality is, genealogically, initially linked to objective natural law, according to whose principles we must follow. Our intellect, received from God, furnishes us clarity about the world He made and how to behave in it, according to His justice. This reason or rationality was in modernity coupled to subjective rights and taken to further heights. Descartes, Hobbes, Locke, Rousseau and Kant have given us the most radical normative depiction of it in an already partially 'secularised' age, with a more empirically based and practical view, not for that less abstract-universal, cropping up especially in Britain. Besides, many variations about how such reason should operate were to be found within such broad currents.²⁷

Such reason or rationality, which was not necessarily sharply defined – often meaning an anti-dogmatic attitude, hence often anti-religious – belongs first to abstractly conceived individuals, and is as such devoid of and detached from concrete social features and connections. That is to say, it belongs to those agents who were the promoters – whether we understand the fable as having historically happened or just as an intellectual device – of some social pact and were henceforth legally responsible for their own behaviour, but all other components of modernity analysed thus far partake in it. In this respect, as already seen above, its view of the individual subject has become far more complex, with the recognition that we are internally populated by other fabulous, non-rational beings. Thus plans are bound to deviate from what our rationality dictates. Even at the onset of the Enlightenment we could find distinct views. While up to the mid-nineteenth century a Cartesianism-geometrical thought dominated, from then onwards and especially in the eighteenth-century reason as a faculty to be applied onto the world became prevalent in rationalism. It included in a sense more empiricist accounts, in which it derived its material from observed reality rather than from a priori principles and absolute certainty, counting, all in all, on that rational faculty to achieve its objectives, with sometimes radical reductions to basic, universal abstract principles, which in turn should underpin politics. A sharp distinction between rationalism and empiricism – also in political theory – seems not to be at all warranted, therefore.²⁸

As also mentioned above, the evolution towards increasing complexity in fact results in an accumulation of layers. They mix, clash, generate and overcome tensions in their developmental process, without ever shedding the initial ones. We thus know much about rationality, namely, its lack of transparency, distorted mechanisms, boundedness, entanglement with concreteness, unintended consequences and, beyond that, sheer perversion, just to quote some complicating issues. Nevertheless, in our practical life, including the notions with which we operate, our imaginary is still suffused with that

loftier pattern of subjectively conceived of rationality. Always rigorous and rather radical, Kant would call it ‘transcendental’ and ‘intelligible’, though post-metaphysical, out of this empirical world which we ordinarily inhabit, especially strong in the practical realm, to be connected to our experience, even if others such as Locke had a more empirical view of the matter, stated modestly not detracting from his robust confidence in the human faculties.²⁹ Our institutions and also practices derive, what is more, from it. Conceived of originally as an individual faculty in political theory, at different levels, and in the historically-effective constitutionalism of the ‘age of reason’, other agents – the state and later on the proletarian party or the party-state – added one more element to the idea of rationality, including the realisation of reason in the objective unfolding of history, in the Prussian state and in Soviet socialism, respectively as ‘thought’ (*Denken*) as such or according to invariable and knowable developmental laws³⁰ (with meritocracy, resuming Confucian imperial bureaucracy, turning up as a curious putative alternative³¹).

Living up to those expectations is not easy to start with because this is essentially a fetishised view of rationality, which we should view instead as part of a process in which individuals and collectivities, with doubtlessly their rational potentiality, interact and produce themselves and also the world they inhabit, as well as their actual, potentially rich but more modest rationality. In such processes, we encounter it in varying degrees, with people inventing routines and rules to make its production and exercise easier, and often failing at that. Rationality depends on how we, as members of intermediary collectivities of all types and as a species, never in ‘ideal conditions of speech’ and, if not rarely, not always in horizontal relations of power, bring it to our common endeavours, also when we believe in our radical individuality. Moreover, practical rationality and a-rational psychic processes ensure that that putative superior and detached reason is always humbled. This is what we are, practical agents who can try their best to systematise their reasoning, individually and collectively, as well as always interactively, and more or less frequently manage to achieve such systematisation, yet are bound to inevitably get limited and mixed results, though many shy away from accepting this, especially concerning themselves, while others have become adept at throwing out the baby of reason together with the quasi-metaphysical waters in which it had been bathed.³²

The enchantment of the idea of rationality does not need to be absolute to be dominant. From the very beginning, there were Enlightenment philosophers who were perhaps ambiguous – like Rousseau – or more sceptic – like Hume – as to the consistency of reason, such as possessed or deployed by most citizens and even humans more generally. It is not nevertheless to thinkers only or predominantly that we must refer. The imaginary has in intellectuals only a restricted, albeit crucial, collectivity for its constitution and unfolding.³³ It is in the daily life of ordinary society members in what

regards intellectual creation, their views and behaviours, as well as embodied in institutions and conditioning practices, that it pervades social life. Modern enchanted reason partakes in this quotidian imaginary fabrication, which is present in constitutional texts, penal law, marriage contracts, citizens' self-conceptions and many other expressions and processes. It also combines with elements with a romantic origin or stemming from other civilisations, which have been added to that pristine core, making the imaginary more complex and heterogeneous, but always, somehow, rationalist.

In contrast even to classical liberalism, in its coupling with republicanism, but especially to socialist, anarchist and communist perspectives, which were all concerned with public life, neoliberalism makes individual freedom ('liberty') and self-interest absolute. It often considers rights as merely instrumental for prosperity or the like as well as privileges private life (sometimes, according to Hayek, better protected by autocracies). Extremely prominent in the late twentieth and early twenty-first centuries, neoliberalism, far beyond economic policies and conceptions about the state, is a crucial ingredient of our predicament in contemporary modernity and decisively contributes to the current social and political malaise. Whether more sympathetic to empiricism and experience (but always stressing the role of reason) or more explicitly and strongly rationalist, neoliberals mostly focus on purified and abstract individual instrumental-utilitarian rationality. They have further demanded that it systematically orients individuals, as a calculative homo *oeconomicus* and as if they exhibited a fundamental sameness to a business firm.³⁴

As a fetish, individual (or collective) rationality shares with the 'fetishism of the commodity', such as theorised by Marx, a (quasi) supernatural sort of 'magic' or 'enchantment' (*Zauber*), or 'spook' (*Spuk*). Marx, as a stout rationalist, despite the expressivist mode in which his worldview was steeped and his concern with praxis, hoped this hieroglyphic mystery would give way to the direct, *transparent* and *sound* relation between agents.³⁵ Marx developed a sort of symbolic-communicative theory in *Capital*, both in its footnotes and in the critique of the Political Economy reified collective categories (capital, labour and ground rent – which are, he showed, foremost social relations between collective subjectivities as well as with 'nature'). This inevitably became dubious insofar as he derived reason or rationality directly from the development of the productive forces, therefore as a historical and evolutionary phenomenon, even if he and Engels saw language – hence indirectly meaning – as an existential question in the constitution of the human species. Moreover, as we saw in this book at several stages, since his earliest work Marx included in that almost supernatural world sovereignty, citizenship, bureaucracy, rights, state and law, all of which he wanted to get rid, along with 'ideologies' as systems of ideas (*Ideen, Vorstellungen*). As Marx and Engels' theory became their own, material life got an unspecified upper

hand and the reason or rationality of social life would be seen as developing according to the development of the productive forces. To arrive to communism, it would have to be translated first into the transparency of the consciousness of the revolutionary class for itself and ultimately of humanity as a whole. While it is difficult to see how in particular Marx could so directly derive reason or rationality from labour (certainly never having reduced it to 'instrumental' rationality, whatever else may be said), it is even more difficult to find a proper articulation between the rational factor on the one hand and language and, more consistently, the symbolic imaginary on the other, except negatively. To be sure, Marx did not specifically argue about how reason or rationality would work in communism, yet the notion of a spontaneous and transparent social life with far-reaching and smooth coordination and calculability in socialism was strong in his work. It went a long way towards underpinning planning in authoritarian collectivism and the putative control of the future, since humanity now knew the laws of social development.

More flexibly, we can think of reason developing from within social interaction, 'communicatively', combining experience and human rational faculties, with the mediation between subject and object, in a more modest but also more innovative way, as a collective phenomenon (what has been often called 'praxis').³⁶ It seems clear that the faculties that characterise reason or rationality do not seem to change with this overcoming of the Kantian-Hegelian subject/object antinomies, whether a strong materialist or even a more multidimensional angle is taken; perhaps rather the opposite is true: reason would become more powerful across all dimensions of social life. This does not solve the problem of how the imaginary and reason or rationality would fit together once the fetishism of the commodity – and ideologies in general – was overcome, though. Would there be a symbolic world in communism or would this apply only to neutralised components of how we rationally express ourselves through the medium of language? The way Marx phrased the issue seems to lead inconclusively in the last direction.

Curiously, Weber arrived at pessimistic conclusions defending the opposite thesis to Marx, divergencies that should not hide the palpable connections between their work. Reason had triumphed, but this was regretful since it reduced us to cogs in the machines of its instrumental progress. 'Rationality in relation to ends' (*Zweckrationalität*) ruled the world, locking us in an iron cage, as part indeed of a locked-in process, of which rational-legal domination was the ultimate expression. There was no way out, even rationality as consistency in relation to values (*Werterationalität*) was over. Genuine charisma, the only mechanism he recognised for social transformation, was dead. The world had radically undergone a process of disenchantment and been rationalised, in the worst possible manner (plural values contradictorily floated around the world, in a strange and unexplained detour from

his principal line of thought).³⁷ The problem of the connection between the imaginary and rationality returns in Weber's work, insofar as meaning gives way to an almost mechanical organisation of the world. He did not however seem to have perceived the tension in the way the issue was posed.

We can partly accept Marx's thesis, which is partly also Weber's, in fact the other way round: fetishised and connected to all those other elements, which together shape the real abstractions universe of juridical-political modernity, quasi-supernatural or even more empirical rationality exhibits what Lévi-Strauss defined as 'symbolic efficacy'.³⁸ They organise the totality of modern social life and shape us subjectively too, especially because we have faith in them. While subjective reason appears as its starting point (and the state also operated in this register and maybe as its main source), this rationality is objectified in its abstractness, whereby it acquires its enchanted character and efficacy. We have seen this already at several stages of this book.

Are this sort of reason or rationality and its associated products not only fetishised but also dispiritually oppressive? I think they are far more than that, elements that do point in this direction notwithstanding. They undergird a configuration in which some level of emancipation has been achieved, contrary to Marx's view and also at variance with Weber's grumpy perspective. Even in the most basic articulation of modernity, with fundamental civil rights and, insofar as it is efficacious, the rule of law, some horizontality is accomplished. We know well how limited this is, that the state is a form of domination and how oppressive it is. We know moreover that on the precluded societal side of the primary divide of modernity, relations of exploitation, discrimination and oppression are legion. Marx was thus partly right about the illusory character of this freedom, but this was only a single aspect of the issue. Whatever its shortcomings, it is palpable, particularly for those who do not enjoy it, perhaps less so for those who can take them for granted, that the juridical infrastructure offers significant emancipatory elements. As modernity progressed, rights, premised upon the original civil citizenship mould, were enriched. State bureaucracy had to deal with a range of concrete issues that partly address those forms of inequity without, admittedly, dissolving them. Some more emancipation came about. Political rights allow for a relatively free partition of social resources, often appearing, in contrast, to bring nothing about. At this stage in history, in spite of our frustrations, rhetorical proklamations or sometimes problematic – in the end often reactionary – choices and their intrinsic limitations, nobody wants to see these fundamental freedoms taken away. Diffuse rights sound beautiful, yet we witness some more destruction of our 'natural environment' every day, and the threat – a reality already – of climate change continues largely unaddressed. However, we would not allow anyone to take such rights away. The inner logic of form and content, abstract and concrete,

must be acknowledged here, but it does not move forward by itself. Social conflict, fierce sometimes, is behind the actual evolution of rights and citizenship. That will always remain so.

In this respect, we have no fetishism, nor is reason and rationality so loft and detached from concrete social life. Instead, a horizon difficult to attain and keep looms large when we close in on it. Emancipation can hardly be fulfilled in the curbed space of citizenship. It remains nevertheless a crucial aspect of modern lived experience and a horizon of expectations to which there is no reason to say goodbye, while reason and rationality are historically embedded in social conflict and struggles. Authoritarian collectivism paid a high price, total defeat (unless we accept the strange thesis that China is a socialist country), for having thrown the baby away with the bath water. Actually, in these cases, but also in that of liberalism, the fetishism of power is radical. In this connection, what matters is to take hold of power as a valuable thing that can be possessed, whatever the justifications those who aspire to it may offer. Power as such is the ultimate aim; the state is its site. Needless to say, this stands at the antipodes of emancipation. Against it, we need to radicalise freedom and practical collective rationality as well as its systematisation, taking it to higher levels.

A last issue must be tackled regarding rationality. In most of the Enlightenment, especially concerning politics, reason was detached from affect and emotions (or sentiments and the like). The latter was taken mostly as a problem, though, remarkably, Hobbes, with fear, and Spinoza, who added hope, did not shy away from lending them a proper place in political theory. It is clear that affective – cathetic – investments, as put forward by psychoanalysis, are crucial in our relation to the world, also politically, with their reverse, namely, aversions. Collectivities of all sorts, ethnically, racially, class, gender, neighbourhood, friendship based and many others, up to the nation and the species at the highest level – though the state usually, but not always, is, in this case, in a subordinated position, if at all – are the focus of such psychic investments. Cognitive, evaluative, normative and expressive processes, at the individual and the collective levels, are embedded in and cut across by them, producing an amalgam with rationality, which is not prior nor actually posterior to such investments. The same can be said of more contingent emotions (such as fear and hope, sadness and happiness, for example), which are inevitably present when reason is at work, politically as much as in any area of human activity. They may be sombre and negative if fear and sadness prevail but can muster enthusiasm and positivity if hope and joy have the upper hand. They too influence the workings of reason, not forcibly to its detriment but as a constitutive part of what moves us forward, while taking distance from our cathetic attachments and hold of our emotions may be crucial at the moments in which we need to decide what to do with ourselves and our common life.³⁹

Whereas liberals and republicans, socialists, communists and anarchists tend to accentuate positive affects that, in variable degrees, bring people together, even if they privately compete, as in the case of the former, neoliberalism has caused them to become, in public life, particularly negative. Aggressiveness and a defensive attitude predominate since agents perceive and fear each other as competitors, adversaries or even enemies and against whom the (protective) state has to shield them. They are at best indifferent to each other, with the libidinal circuits (such as psychoanalysis conceptualises human vital energy) that link individuals and collectivities reduced to a minimum or even turned into their contrary. Politics becomes, of course, deleterious or unimportant.⁴⁰ Only a renewed solidary horizon and a long-run struggle will be able to overcome neoliberalism and its regimes of affects, though it is not, as a matter of fact, dominant everywhere, nor in all collectivities, often appearing contradictorily mixed with other affects and inclinations.

Notes

- 1 Hauke Brunkhorst, *Critical Theory of Legal Revolutions: Evolutionary Perspectives* (New York and London: Bloomsbury, 2014).
- 2 Aldo Schiavone, *Ius. L'invenzione del diritto in Occidente* (Turin: Einaudi, [2005] 2017), pp. 282, 401-39; Otto [von] Gierke, *Political Theories of the Middle Ages* (Cambridge: Cambridge University Press, [1881] 1900), pp. 88ff; Georg Jellinek, *Die Erklärung der Menschen und Bürgerrechte* (Berlin: Duncker & Humblot, [1903, 2019] 2016); Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B. Mohr [Paul Siebeck], [1921-22] 1980), pp. 496ff; Ernst Bloch, *Naturrecht und menschliche Würde* (Frankfurt am Main: Suhrkamp, 1961); Don M. Wolfe (ed.), *Leveller Manifestoes of the Puritan Revolution* (New York: Thomas Nelson and Sons, 1944); John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, [1980] 2011).
- 3 Thomas Hobbes, *Leviathan [or the Matter, Forme, and Power of Commonwealth Ecclesiastical and Civill]* (Cambridge: Cambridge University Press, [1651] 1996); Idem, *On the Citizen* (Cambridge: Cambridge University Press, [1642, 1651] 1998), chaps 10, 15; Baruch Spinoza, *Theological-Political Treatise* (1670), chaps 16-17, and, apparently deemphasised, in Idem, *Political Treatise* (1677), both in *Complete Works* (Indiana, IN: Hackett, 2002), although his was a Cartesian-geometrical – indeed somewhat outdated sort of reason; John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988); Jean-Jacques Rousseau, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (1754) and *Du Contrat social, ou principes du droit politique* (1762), both in *Œuvres complètes*, vol. II (Paris: Seuil, 1971); Immanuel Kant, *Metaphysik der Sitten*, in *Werke*, vol. 8 (Frankfurt am Main: Suhrkamp, [1797] 1977); Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts* (1920), in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, 1986). These are authors exhaustively discussed in the literature. See Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis* (Chicago: The University of Chicago Press, [1936] 1952); Richard Tuck, *Hobbes* (Oxford: Oxford University Press, 1989); Alexandre

- Matheron, 'The theoretical functions of democracy in Spinoza and Hobbes' (1985), in Warren Montag and Ted Stolze (eds), *The New Spinoza* (Minneapolis: University of Minnesota Press, 1997); Étienne Balibar, *Spinoza et la politique* (Paris: Presses Universitaires de France, 1985); Martin Saar, *Die Immanenz der Macht. Politische Theorie nach Spinoza* (Frankfurt am Main: Suhrkamp, 2013); Julian H. Franklin, *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right to Resistance in the Political Thought of the English Revolution* (Cambridge: Cambridge University Press, 1978); Louis Althusser, 'Sur le Contrat Social (Les décalages)', *Cahiers pour l'Analyse*, vol. 8 (1967): 5-42; Onora O'Neill, 'Kant and the social contract tradition', in Elizabeth Ellis (ed.), *Kant's Political Theory* (University Park: Pennsylvania State University Press, 2012); Werner Maihofer, 'Hegels Prinzip des modernen Staats' (1967-68), in Manfred Riedel (ed.), *Materialien zu Hegels Rechtsphilosophie* (Frankfurt am Main: Suhrkamp, 1975); Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972); Wolfgang Kersting, *Die politische Philosophie des Gesellschaftsvertrages* (Darmstadt: WBG Academic, 2008); Ludwig Siep, 'How modern is the Hegelian state', in David James (ed.), *Hegel's Elements of the Philosophy of Right: A Critical Guide* (Cambridge: Cambridge University Press, 2017). See more generally Riley, *Will and Political Legitimacy*; Chris Thornhill, *German Political Philosophy: The Metaphysics of Law* (London and New York: Routledge, 2007).
- 4 As immediately apparent to the usually sceptical and historically-inclined David Hume, 'Of the original contract' (1748), in *Political Essays* (Cambridge: Cambridge University Press, 1994).
- 5 Edmund Burke, *Reflections on the Revolution in France* (1790), in *Selected Works*, vol. 2 (Indiana: IN: Liberty Fund, 1999); John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, [1832, 1861, 1885] 1995), Lecture I, pp. 18ff; Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: The Collected Works of Jeremy Bentham* (Oxford: Oxford University Press, [1789] 1996), chap. 16.25, p. 206; Idem, *Non-sense upon Stilts, or Pandora's Box Opened and Exposed* (1843), in *Rights, Representation, and Reform: The Collected Works of Jeremy Bentham* (Oxford: Oxford University Press, 2002). Their main source was Hobbes, *Leviathan*, chap. 26, though he had in Bodin's concept of sovereignty and its connection to command a direct inspiration.
- 6 Hans Kelsen, *Reine Rechtslehre. Einführung in der rechtswissenschaftliche Problematik* (Vienna: Verlag Österreich, [1934, 1960] 2000, 2nd edition), § 1.4.d, pp. 15ff, §§ 4.28-30, pp. 120ff (especially p. 159), § 4.7.a, pp. 172-76, § 5.34.c, pp. 200-04, §§ 6.40-41, pp. 288-293. Command would have a prominent role to play in this. See also Idem, *General Theory of Law and State* (Cambridge, MA: Harvard University Press [1925, 1945] 1949), pp. xii-xvi, 171-72, where contract has more relevance. See further Stanley L. Paulson, 'Hans Kelsen's earliest legal theory: Critical constructivism' (1996), in S. L. Paulson and Bonnie Litschewski Paulson (eds), *Normativity and Norms: Critical Perspectives in Kelsian Themes* (Oxford: Clarendon, 1998).
- 7 Weber (*op. cit.*, pp. 28-29, 544) rendered 'command' as *Befehl*, a phrase formerly used by Kant (*op. cit.*, passim). Weber (*op. cit.*, pp. 397ff, 498) was, however, quite aware of the importance of freedom (particularly of contract) and 'subjective rights'. See further Georg Jellinek, *System des subjektiven öffentlichen Rechte* (Tübingen: Mohr Siebeck, [1892, 1905] 2011), chaps 1-6; Idem, *Allgemeine Staatslehre* (Berlin: O. Häring, [1900] 1914), chaps 12-13; Carl Schmitt, *Verfassungslehre* (Berlin: Duncker & Humblot, [1928] 1993), pp. 125, 200, 216.

- 8 Herbert L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, [1961] 1994).
- 9 Hermann Heller, 'Grundrechte und Grundpflichten' (1929), in *Gesammelte Schriften*, Erste Band (Leiden: A. W. Sijthoff, 1971); Neumann, 'Die soziale Bedeutung der Grundrechte in der Weimarer Verfassung' (1930), in *Wirtschaft, Staat, Demokratie. Aufsätze 1930-1954* (Frankfurt am Main: Suhrkamp, 1978; Kelsen, *op. cit.*, § 4.29.b-f, 130ff, § 4.32, pp. 167ff; J. A. G. Griffith, 'The political constitution', *Modern Law Review*, vol. 42 (1979): 1–21; Jürgen Habermas, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992), chaps 3-4. See also Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism* (Durham and London: Duke University Press, 1997).
- 10 Bloch, *op. cit.*
- 11 Petr Ivanovich Stucka [Stuchka], *Direito e luta de classes* (São Paulo: Acadêmica, [1921, 1924] 1988), chap. 5.
- 12 Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977); Robert Alexy, *Theorie der Grundrechte* (Frankfurt am Main: Suhrkamp, 1985); Idem, *Begriff und Geltung des Rechts* (Munich: Karl Alber Freiburg, 2020, Erweiterte Neuauflage).
- 13 A rational and apparently immanent metaphysic is possible? This is the demand, as for human rights, of R. Alexy, 'Menschenrechte ohne Metaphysik?', *DZP*, 52 (2004): 15–24.
- 14 Andrei Y. Vyshinsky, *The Law of the Soviet State* (New York: Macmillan, 1948); John N. Hazard, *Communists and Their Law: A Search for the Common Core of Marxian Socialist States* (Chicago: The University of Chicago Press, 1969), p.627.
- 15 Evgeny Pashukanis, 'The Marxist theory of law and the construction of socialism' (1927) and 'The Marxist theory of state and law' (1932), in *Selected Writings on Marxism and Law* (London and New York: Academic Press, 1980); P. I. Stuchka, 'Proletarian law' (1919) and 'Legal relations' (1925–1927), in *Selected Writings on Soviet Law and Marxism* (Armonk, New York and London: M. E. Sharpe, 1988); Stucka, *Direito e luta de classes*, chap. 5. These are mere variations in the rendering of his name. More importantly, he had a highly sophisticated understanding of law, with a critique of Pashukanis and a threefold analytical distinction which differentiates the 'concrete juridical form' of social relations, the 'intuitive form' and 'abstract form', upon which I have just drawn. And he preferred to focus on 'juridic protection' than on coercion (chap. 4). Whether his conceptual sophistication would have helped steer socialism in a different direction is doubtful
- 16 René David, *Les Grands systèmes de droit contemporains* (Paris: Dalloz, 1964), p. 4; John Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford: Stanford University Press, [1977] 1985), pp. 1–4; Ugo Mattei, 'Three patterns of law: Taxonomy and change in the world's legal systems', *American Journal of Comparative Law*, vol. 45 (1997): 5–44.
- 17 Talcott Parsons, 'Social Interaction' (1968), in *Social Systems and the Evolution of Action Theory* (New York: Free Press, 1977).
- 18 José Maurício Domingues, *Sociological Theory and Collective Subjectivity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 1995); Idem, *Social Creativity, Collective Subjectivity and Contemporary Modernity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 2000), chaps 1-2.

- 19 Nicos Poulantzas, *L'Etat, le pouvoir, le socialisme* (Paris: Presses Universitaires de France, 1978), pp. 139ff; as well as the previous, more orthodox, Idem, *Pouvoir politique et classes sociales*, vols 1-2 (Paris: Maspero, [1968] 1972). See also Bob Jessop, *State Power* (Cambridge: Polity, 2008), among his several books on the topic.
- 20 See Weber, *op. cit.*, Part 1, chap. 1; Theodor Adorno and Max Horkheimer, *Dialektik der Aufklärung* (Frankfurt am Main: Suhrkamp, [1944, 1947] 1984); Cornelius Castoriadis, *L'Institution imaginaire de la société* (Paris: Seuil, 1975), pp. 234-40; J. Habermas, *Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp, [1981] 1988), vol. 2, chap. 6 and pp. 453-65.
- 21 In Weber's work, it implied the *belief* in the justice, the correctness of a form of 'domination' (*Herrschaft*), and what was usually understood as *consent*, namely, the reasons to obey, to accept 'commands', beyond sheer force, of those who rule. He reshaped sociologically a discussion that has been a cornerstone of political thought for many centuries. See Weber, *op. cit.*, pp. 17, 124ff, 448, 548-50, 822. Therein also 'Die nichtlegitime Herrschaft (Typologie der Städte)'.
 22 Paula Diehl, *Das Symbolische, das Imaginäre und die Demokratie. Eine Theorie politischer Representation* (Baden-Baden: Nomos, 2015), pp. 106ff; C. Schmitt, *Legalität und Legitimität* (Berlin: Duncker & Humblot, [1932] 1998).
- 23 David Easton, *A Framework for Political Analysis* (Englewood Cliffs: Prentice-Hall, 1965), pp. 124-26; David Beetham, *The Legitimation of Power* (Basingstoke: Palgrave Macmillan, [991] 2013), pp. xii-xiv, *passim*.
- 24 Martin Jänicke, 'Zum Konzept der politischen Systemkrise', *Politische Vierteljahresschrift*, vol. 12 (1971): 530-544; J. Habermas, *Legitimationsprobleme in Spätkapitalismus* (Frankfurt am Main: Suhrkamp, 1973); Claus Offe, *Strukturprobleme des kapitalistischen Staates* (Frankfurt am Main: Suhrkamp, 1973).
- 25 Antonio Gramsci, 'Noterelle sulla politica del Machiavelli', in *Quaderni del carcere*, vol. 3 (Turin: Einaudi, [1929-35] 2001). This hegemony was exercised more mediately by social classes, he thought.
- 26 Castoriadis, *op. cit.*, pp. 234-240.
- 27 Not even St Thomas Aquinas attempt to reconcile faith and reason was eventually accepted. A breakthrough was achieved with Spinoza, *Theological-Political Treatise*. More generally, see J. Habermas, *Auch eine Geschichte der Philosophie*, vols 1-2 (Frankfurt am Main: Suhrkamp, 2018). He curiously focuses on an opposition between (communicatively interpreted) 'reason' and 'religion', to a large extent departing from the problematic idea of a contemporary world divided into different civilisations. He also misses how theology and the Church had themselves to learn toleration and accept a more modest role in social life, rather simply at best the other way around.
- 28 This is a complex and multifaceted phenomenon. Excellent overviews of its central aspects feature in Gierke, *op. cit.*, pp. 7-8, 78-81; Cassirer, *op. cit.*, especially chap. 1; Susan Neiman, *The Unity of Reason: Rereading Kant* (New York: Oxford University Press, 1994); Charles P. Webel, *The Politics of Rationality: Reason through Occidental History* (New York: Routledge, 2014), especially pp. 1-8. In political theory, the process of overcoming the Cartesian-geometric view of reason, as once again a benchmark, is found in Hobbes, *On the Citizen*, chap. 2, note 1: the *cogito* had no a priori certainty and had to peruse reality to find universals; on the other hand, 'reasoning' was instrumental and universally calculative, including syllogism, putting things together and taking them apart, in Idem, *Leviathan*, chap. 5. Empiricism, beyond Locke's combination of his theory of knowledge with a priori natural rights, also blended in utilitarianism, which rejected the latter, with strongly stated general 'principles', beyond any

- empirical observation, eventually with practical intent, as done by Hume (partly, one can argue), Helvetius, Bentham and others, for instance rather schematically, by John Stuart Mill, 'Utilitarianism' (1861), in *On Liberty, Utilitarianism and Other Essays* (Oxford: Oxford University Press, 2015). See, more generally, Elie Halévy, *The Growth of Philosophical Radicalism* (London: Farber & Farber, [1901] 1928), especially chap. 1.
- 29 In the social realm, foremost expressed in the categorical imperative, as an a priori 'moral law' and dependent upon 'reason' for its clear knowledge, in Immanuel Kant, *Kritik der praktischen Vernunft*, in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, [1788] 1977), §§ 7–8. In – partial – contrast, we had to, and ought to, piecemeal and empirically learn which the 'laws of nature' were, according to J. Locke, *An Essay Concerning Human Understanding* (Oxford: Oxford University Press, [1690] 1999), Book 1, chap. 2. Both distinguished between the 'understanding' (*Verstand*), responsible for more basic operations, and 'reason' (*Vernunft*), concerned with totality, a priori or a posteriori. Neither of them discarded faith at all as important for morality.
- 30 Hegel, *op. cit.*; Idem, *Vorlesungen über die Philosophie der Geschichte* (1832–1845), in *Werke*, vol. 12 (Frankfurt am Main: Suhrkamp, 1986), 'Einleitung'; Herbert Marcuse, *Soviet Marxism; A Critical Analysis* (New York: Columbia University Press, 1958), pp. 85–86, for the reconciliation between subjective and objective reason.
- 31 Daniel Bell, *The China Model: Political Meritocracy and the Limits of Democracy* (Princeton: Princeton University Press, [2015] 2016); D. Bell and Wang Pei, *Just Hierarchy: Why Social Hierarchies Matter in China and the Rest of the World* (Princeton, NJ: Princeton University Press, 2020).
- 32 See Domingues, *Social Creativity, Collective Subjectivity and Contemporary Modernity*.
- 33 Pessimism is conspicuous concerning Rousseau's (*Du Contrat social, ou principes du droit politique*, Book II, chap. 7) demand of a superior legislator capable of steering a people often incapable of giving itself an adequate Constitution as well as in his doubts about the rationality of ordinary would-be citizens. He however explicitly singled out this specific moment of original law-giving, with the example of Antiquity in mind, rather than generalising the argument. A sort of Romanticism is also present in other of his works. Rousseau was always less linear and a sort of deviant within the Enlightenment.
- 34 Reason and rationality are usually vaguely defined in these currents. Except for his fight against socialism and a tendentially more empirical perspective, such concepts remain loose in Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: The University of Chicago Press, [1960] 1978). They find a more systematic formulation in Ludwig von Mises, *Human Action: A Treatise on Economics* (San Francisco: Fox & Wilkes, [1949] 1963), chaps I, IV, XI. See also, directly connected to the Chicago School of economics and valid for all walks of life, albeit cast as a legal perspective, certainly rather sharply defined and referring to rationality and 'rational choice' even when actors are not 'conscious', Richard A. Posner, *Economic Analysis of Law* (New York: Aspen, [1986] 1911), chap. 1. The rational choice approach – including the means/ends, cost/gains or benefits pairs, 'maximization', consistency and a (crystal-) clear set of individual preferences – is best exemplified by the discussion of the so-called 'paradox of voting' in Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957). Analytically, the most relevant issue in the further development of rational choice theory related to the problems of composition of outcomes of individual rational behaviour. For neo-liberal rationality overall, see Michel Foucault, *Naissance de la biopolitique*.

- Cours au Collège de France, 1977–1978* (Paris: Gallimard and Seuil, 2004); Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (New York: Zone Books, 2015).
- 35 Castoriadis (*op. cit.*, p. 221) points to the relation between the imaginary and Marx's discussion of fetishism. 'Phantasy' turns up in vivid colours, just to vanish thereafter from his body of work, in K. Marx, *Der achtzehnte Brumaire des Louis Bonaparte* (1852), in K. Marx and F. Engels, *Werke*, vol. 8 (Berlin: Dietz, 1960). For the main theses, K. Marx and F. Engels, *Die deutsche Ideologie* (1845), in *Werke*, vol. 3 (Berlin: Dietz, 1969); K. Marx, *Das Kapital. Kritik der politischen Ökonomie*, vol. 1 (1867, 1873), in K. Marx and F. Engels, *Werke*, vol. 23 (Berlin: Dietz 1962), *passim*. Some sort of basic agreement (*Einverständnis*) to symbolically define identities and situations, but certainly not 'consensus', is present therein, no matter how it might relate to reification and reason.
 - 36 See the still Marxist argument of M. Horkheimer, 'Traditionelle und kritische Theorie' (1937), in *Gesammelte Schriften*, vol. 4 (Frankfurt am Main: Suhrkamp, 1988). I must here avoid the long discussion about alienation and estrangement, historicism and rationalism, as well as similar themes within the Marxist tradition. The brilliant articulation between Kant's concept of 'apperception' and Marx's concept of labour suffers from the forced reduction inflicted on the latter through its exclusive submersion in instrumental reason in J. Habermas, *Erkenntnis und Interest* (Frankfurt am Main: Suhrkamp, [1968] 1991), especially pp. 36–58. In *Theorie des kommunikativen Handelns*, especially chaps 6–7, Habermas opposed them to social interaction, a dualistic standpoint which Marx consistently avoided. Habermas developed an innovative but also problematic concept of communicative rationality, highly idealised – in fact almost transcendental, albeit this worldly, embedded in the structure of language and implying the rational overcoming of initial standing points beyond any kind of compromise. He opposed it to instrumental rationality – which has achieved its zenith in the rational choice approaches. See especially J. Habermas, 'Was heißt Universalpragmatik?', in *Vorstudien und Ergänzungen zur Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp, 1992).
 - 37 M. Weber, *Die Wirtschaftsethik der Weltreligionen. Die Protestantischen Ethik und der Geist des Kapitalismus. Gesammelte Aufsätze zur Religionssoziologie*, vol. 1 (Tübingen: J. C. B. Mohr [Paul Siebek], [1904, 1920] 1988), pp. 158, 198ff; Idem, 'Wissenschaft als Beruf' (1919), in *Gesammelte Schriften zur Wissenschaftstheorie* (Tübingen: J. C. B. Mohr [Paul Siebek], 1988), especially pp. 594, 612; *Wirtschaft und Gesellschaft*, Part I, chaps 1–3.
 - 38 Claude Lévi-Strauss, 'L'efficacité symbolique' (1949), in *Anthropologie structurale* (Paris: Plon, [1958] 1979).
 - 39 Hobbes, *Leviathan*; B. Spinoza, *Political Treatise and Ethics* (1677), in *Complete Works*. For contemporary works, see Cheryl Hall, *The Trouble with Passion: Political Theory Beyond the Reign of Reason* (New York and London: Routledge, 2005); J. M. Domingues, *Modernity Reconstructed* (Cardiff: University of Wales Press, [2002] 2006); Jan Slaby and Jonas Bens, 'Political affect', in J. Slaby and Christian von Schere (eds), *Affective Societies* (New York and London: Routledge, 2019); Thomas Szanto and J. Slaby, 'Political emotions', in T. Szanto and Hilge Landweer (eds), *The Routledge Handbook of Phenomenology of Emotion* (New York and London: Routledge, 2020).
 - 40 Vladimir Safatle, *O circuito dos afetos. Corpos políticos, desamparo e o fim do indivíduo* (São: Autêntica, [2015], 2016).



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PART II

Politics, dynamics and processes



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6

POLITICS

6.1 Liberalism and republic

In the beginning it was freedom – or liberty. At the initial moments of affirmation of political modernity, this appeared as a general idea, without a sharp division of its conceivably diverse aspects. Freedom to do whatever an individual would like to do as well as, insofar as this individual was deemed capable, to freely have a say in the common business of the community, was the order of the day.¹ This connected to action in the private sphere of modern societies – societal therefore – but also in the public sphere – both societal and state-based –, that which belongs to and was the responsibility of everyone and where the law would enjoy greater weight. The double character of freedom worked out at least in thought since in deed this was shot through with greater complications. This duplicity does not detract from what we saw analytically in the first chapter, with the logical and historical free-position of agents with powers, immunity and privileges, nor the piecemeal and certainly not linear, intricate development of citizenship. A more unilateral view of freedom eventually became the dominant feature of modernity, with an imaginary restriction of the reach of citizenship, although this has been by no means absolute. In any event, civil citizenship is a substantive and logical presupposition of all other kinds of freedom.

While the Romans formulated the idea of the *res publica*, the paramountcy of law and the separation between this collective domain and that in which the *pater familias* ruled unimpeded (yet not out of the reach of magistrates), power (*potestate* and *auctoritas*) continued decentralised (until the consolidation of the emperor's power), bureaucracy, thin under the republic, remained, even later on, personalised (oligarchical) and the economy was

not a separated domain; civic rituals to guarantee the favour of the Gods and the glory of Rome were also standard practices, with slaves entirely excluded from the law-based freedom of citizens.² Constitutional rationalism was not present at all. Discontinuity rather than continuity predominates, despite modernity's incorporation of Roman civic vocabulary.

We have already had the opportunity to glimpse at how republican thought and the 'mixed constitution', in its plebeian late version, immediately preceded modernity, in parallel to the surge of Absolutism. What was becoming Europe and also emerging as a particular civilisation took a while to find a stable direction. Liberals managed to assume the helm of the process and a restricted notion of freedom has prevailed, distanced from the virtues citizens were expected to display regarding their common business, gradually overcoming the initial mix of nascent liberal thought with late republicanism, whereby the fundamental formal equality of all citizens had been more or less fully recognised (some aristocratic velleities and political exclusion notwithstanding). A combination of these two strands often directed the construction of political modernity. This mix appeared in a political apotheosis in the French Revolution, particularly with the Jacobin project and their extreme exigency that the virtues of the citizen – that is, 'the love of the fatherland' as the 'love of equality' – as a political principle were paramount, although they were, in contradistinction to their dreams, creating a liberal state and society.³

Monarchical die-hards, with their cult of honour and 'tradition', have survived astonishingly well particularly in Europe, with their juridical-political institutions on the other hand approaching republican ones and the actual power to rule snatched from them. Some kings and queens have however maintained a lot of formal and informal power. This is the case especially, in Europe, of Britain, where there is no written Constitution and the so-called Privy Council still has functions, and to a lesser extent Spain, where the monarchy was reinstated in 1975, while in other Western European countries and Japan monarchs perform mostly a passive and very restricted role. Powerful monarchies were formerly the case of Brazil, in the Americas, and, more muscularly, of Thailand, in Asia, today, where the military support it to the detriment of citizens and the parliament, as well as to a large extent of Morocco or Malaysia. More radically, hybridisations with other civilisations have produced autocratic-monarchical forms on the fringes of modernity in which republicanism and liberalism are absolutely absent, in contrast to the overwhelming power of the modern state and capitalist markets. Invented traditions play an exceedingly prominent role for them. This applies, for instance, to Saudi Arabia and other very centralised and certainly not liberal Middle East monarchies – some created almost from naught by the British semi-colonial administration as a means to secure allies in this oil-rich area.⁴ Most other countries in the world are republics (even if they are still part of the British Commonwealth).

As already pointed out, at least some strands of late republicanism saw conflict as a positive phenomenon, with popular participation acquiring an affirmative slant.⁵ As we have also seen, radically concentrating and personalising power, personified in the figure of the King, Absolutism tried to subdue conflict, while at the same time it brought out its exercise in a far more explicit manner. Absolutism in fact adopted Machiavellian perspectives on the autonomy of power vis-à-vis Christian virtues, although it could not explicitly assume this outlook, keeping a supposedly Papal or eventually Protestant imaginary at the forefront as a legitimating device. At the same time, it subordinated religious institutions by establishing national churches. Liberalism initially tried, in the same direction, to rid itself of the threatening shadow of conflict, depoliticising the emerging modern political dimension, partly derived from, partly as a rupture with, Absolutism. It would be keen on privileging the private sphere, an invention it had given birth in the same movement of its public constitution. This went hand in hand with the view of an enfeebled influence of citizens over the state and, more broadly, in public life.

It was at this stage that a tricky distinction was articulated between the 'liberty of the ancients' and the 'liberty of the moderns'. This distinction was intent upon consolidating the division of freedom in distinct aspects and pulling mobilised citizens from the agitation republican life threatened to permanently yield, within the context of an 'anti-metaphysical' conservative republic. It was then that the opposition between what was later known and propagated as 'negative freedom' – freedom from, actually in the private sphere – and 'positive freedom' – freedom to, supposedly a thing of the past, in the public sphere – started to gain a dubious currency.⁶ Conversely, a male and bourgeois literary public sphere was also constituted at this stage, whereby enlightened citizens could influence 'government'. Also other, more unruly, public spheres, featuring workers and women, heralding problems that would soon emerge insofar as the limitation of the franchise turned the republic into the possession of a small cohort of citizens.⁷ This more politicised constitution of spheres of opinion unfolded hand in hand with the articulation of the public and private spheres of law discussed in the first part of this book.

The republican idea left its mark but overall this current ended up dissolved into the mainstream of liberalism, as a lesser affluent, to start with because the latter now ruled over vast stretches of land, formerly under the dominium of monarchies.⁸ This new republic was an invention that belonged to the Americas (in the north and in the south) and France at the onset, with representation from the very beginning contemplated as a modern solution for the participation of citizens in power.⁹ On the other hand, as modernity progressed, representation and political rights also developed, with the slow yet eventually generalised universalisation of suffrage, including all adult

males and then women, after a once more protracted period. Political citizenship was completed, with the inroads of concreteness we have witnessed in former chapters, to the chagrin of those who strived to keep the majority of the society in the role of 'passive citizens', that is, excluded from active political life, including suffrage.¹⁰ Its conception developed concurrently with the substitution of cold interest, rational, calculable, instrumental, for unruly passion, so crucial in some important seventeenth and eighteenth-century thinkers, and even before, as that which should motivate individuals.¹¹ Private interest was also what they should embrace, away from intense, and passionate, disruptive political participation, a task that was better fit after all for 'active citizens', since the interests of the poor, 'passive citizens' due to a lack of the necessary wealth and enlightenment, was mainly to survive.

While republics became a common political form across the world, monarchies survived, although 'representative government' also became increasingly common, even when kings and queens, as well as emperors, remained operative and for a while a central component of executive power.¹² Eventually, 'real socialism' expanded the reach of the republican form, lending all the same the republic a very different interpretation and social content. Politics were now explicitly central to the political dynamic of modernity, as a means of acquiring and exercising power. This explicitness was due principally to historical republicanism, on the plane of political thought and doctrines, whereas other strands were by no means so keen on popular participation. The depoliticisation of political modernity had become unfeasible, as much as its desubstantialisation, with also a twist regarding depersonalisation and depersonification. Social conflict around concrete issues would become paramount once again in deed and thought, while the state would have somehow to deal with them, defensively or with forthcoming answers. Citizens would be in the forefront of political life, more or less mobilised, more or less organised, from the bottom up or from the top down, in any event from now on a crucial element to be reckoned with by all sorts of rulers and political actors. Modern republics originally held fast to the exclusion of workers from active citizenship, which was deemed universal but abstract, even though labour was recognised in its abstract universality. With socialist thought and then 'real socialism', this universality took on a concrete character since the working class was an actual and imaginary construct that went beyond the individualistic abstractness of liberal citizenship. Its full political acceptance marked a crucial moment in the democratisation of political modernity.¹³

Yet there would soon be those who would like to see things differently, with practical consequences. They argued that 'elites' had always ruled and would forever rule the world. It could not be denied that their analysis had factual support since such dominance could be verified in many

civilisations worldwide for a long time. This was also, conversely, a falsification of the historical record, in which horizontality was fairly common. Modernity stressed network and voluntary collaboration concerning power relations, resuming, not entirely innocently, prior historical configurations at what it also saw as a higher level of human development. Elitist theorists had a hierarchical view of the world, especially politics, where they located the inevitable and positive role of ‘political elites’, whereas others were keen on stressing the rational limitations or even the absolute irrationality of the ‘masses’.¹⁴ Social democracy was soon to be accused of oligarchisation, with an elite rising internally in its parties and an acquiescent following passively accepting it. No real questioning of the process was put forward: it seemed absolutely normal in a capitalist society and under electoral competition.¹⁵ In turn, the debate within the revolutionary left was bitter. Communist movements articulated their own understanding of the role of political leaders and ‘vanguard’ parties led by professional revolutionaries. Many protested against this but eventually lost in the general process of ‘bolshevisation’ of communist parties. At the same time, anarchists were concerned with this separation from the very beginning since Marx and Engels put so much emphasis on the state. Theirs was a premonitory denunciation.¹⁶ Authoritarian collectivism turned the distinction between leaders (‘cadres’) and ‘masses’ as well as verticality into cardinal principles of its political imaginary and institutions. This top-down perspective survives in the countries that combine them with state capitalism.

Should we really oppose ‘negative’ and ‘positive’ freedom? In a sense, the opposition is warranted. There is indeed an inflexion in the comprehension of what it is to be free – to carry on one’s action unimpeded, like A and B in the free-position we have encountered as the vital element of juridical-political modernity. Besides, this has penetrated individuals’ self-conception and the modern imaginary very strongly, motivating them in their action and contributing to their self-understanding. Nevertheless, we can also think of A’s and B’s powers, privileges and immunity (the sphere of non-interference) in terms of freedom to participate without being prevented. They would therefore not be impeded in their desire to participate. They could exercise their power individually and collectively. There is undoubtedly a displacement of the old notion of freedom as the sheer possibility to participate in public life, but participation in modernity can also be understood according to the opening of the space for political activities, according to law and mediated by it, allowing individuals to act responsibly in public life, that is to say, political life. There was a clear polemical and programmatic intent in the opposition between those supposedly different forms of freedom; we should not take this at face value. Even if liberalism and concerns with private life became dominant in modernity, political liberty continued relevant

and of the essence insofar as politics has played a decisive part in whatever happens in social life.¹⁷

Moreover, this was to some extent the notion formally behind the republic of 'toilers' of authoritarian collectivism: dedication to the construction of socialism, selflessly and with their gaze turned to the future, embracing working-class interest and forgetting about oneself, was its motto. To be sure, as socialism should make the 'public thing', which we own and care for collectively, even more central and encompassing than the republican-liberal form, the private sphere lost its former privileged status. What those liberal negative-freedom-loving strands wanted to characterise as a mistaken hangover from the past formally took on absolute centrality. Yet it was not really mobilisation that counted, but instead mobilisation exclusively from above.

The view of freedom as participation was somehow shared by all left-wing movements, from anarchism to Marxism and eventually social democracy, notwithstanding the latter's tacit reconciliation with negative freedom and political coyness, or opportunism. It was not by chance that so many liberal thinkers refused the supposedly authoritarian conception of positive freedom that initially republicanism and then socialism embraced. It is doubtless, nonetheless, that authoritarian collectivism shrunk freedom in all aspects. However, this has nothing to do with positive liberty. If anything, only in a very controlled manner did this have the semblance of existing in this sort of postmodern type of civilisation. In practice, it became a lie, intentionally or not, with those who thought of the party as the vanguard and were as harsh as possible with political divergencies still somehow believing in and, at different stages, trying to implement it without grasping its actual operation.¹⁸

The representation of society – that is, of the societal side of the modern divide – within the state, as well as links of the latter with the former, have been crucial for this liberal-republican political form, sometimes monarchical and attached to the rule of law, authoritarian collectivist later on. The former evinces a basic juridical and rights-premised structure; even if the state has unchecked prominence, the latter evinces 'socialist legality'. Historically, representation became more open with the universalisation of suffrage. The task of often neutralising its effects was left to other mechanisms, including those associated to the prerogative state (which are often seen as autocratic or, in an older language, 'tyrannies', for some the degenerated form of monarchy). Despite this, representation frequently remained and was essential for the legitimacy of the state, diffusely, as we have seen in Chapter 5, with republican ideas as a critical template against which modern politics is sometimes judged. It is in this specific terrain that modern politics really plays out, although in some instances the political space, that is, the actual possibilities of carrying out political activities, may be extremely restricted and representation totally blocked.

6.2 Republic and democracy

If republic is a term of Roman descent, democracy stems from Greek sources. Apart from being a practice of some *poleis* in Ancient Greece, the political philosophy of the time considered it in conjunction with other ‘forms of rule’ or ‘government’. They were classical three: the rule of the one, of the few and of the many, i.e., monarchy/tyranny, aristocracy/oligarchy, isonomy/democracy, or the like, with the prospect of mixed forms of rule or government further extending the classification. The concern with the common good characterised rule based on justice, whereas mere self-interest was typical of degraded outcomes, ensuing in illegitimate forms (tyranny and oligarchy but also democracy, the rule of the mob for the elitist philosophers of the time as well as of later ages).¹⁹ If we speak of democracy today, this was also the result of a protracted development. The word itself was not usually the one chosen.²⁰ Some would prefer to speak of ‘representative government’.²¹ Universal franchise took long to become the norm, with the exclusion of slaves, women, the poor, the working classes and minorities (or even majorities at least in one radical instance – Apartheid South Africa) enduring far into the twentieth century.

Today, also where there is no democracy, it is difficult to discard the discourse about it. Although the twists were many, such as the sovereignty of Parliament in Britain, the modern idea of sovereignty already presupposed the people as its cornerstone. Nevertheless, the translation of this principle into democratic practice and institutions took a long time to come about. Open debate, broad participation and free elections are central features of democracy. Other elements – such as the protection of political minorities – have been at times contested.²² Sometimes it has been massive, as was the case of India, with the end of colonial rule and the incorporation of all citizens into the electoral process, thereby incorporating the vast number of illiterate peasants who however actively took part in the revolutionary, and astonishingly peaceful, struggle for independence (without a socialist outlook beyond loose rhetoric and with, conversely, the retention of caste relationships as well as a lurking majoritarian Hindu nationalism).²³

Neither liberalism nor republicanism are intrinsically democratic. While the former was initially concerned with the rule of law, individual liberties and the defence of private property, the latter was keen on virtue and had mostly an ‘aristocratic’ conception of public and political life, entailing some sort of elitism.²⁴ Overall, democracy rests on horizontality, on the network principle of organisation and voluntary collaboration – as a collective endeavour of all citizens. Yet verticality has always been present and, with it, hierarchy and command. In contradistinction, with the universalisation of civil rights, which suppose the rationality of individual citizens, it is difficult to sustain the exclusion of any of them from full political participation, even

if restrictions, disrespect and shortcomings have remained. Furthermore, when they get organised to fight for other rights, the demand for democracy intensifies.

Eventually, the mobilisation of the ‘people’ – not to be found, perhaps, but mobilised in its own terms, in specific locales, and wide awake in many moments – forced the democratisation of liberalism and republicanism. We thus had a process of democratisation rather than democracy tout court.²⁵ The rule of the many (if not of all) would have been achieved, though in reality representation opened a big rift between the people and those few who rule – that is, take decisions and push for their implementation –, effectively configuring a mixed regime. In any event, democratisation unfolded as a crucial trend that was part and parcel of the expansive moment of liberalism, in its republican or quasi-republican (modernised monarchical) form, both based on the rule of law. It paired up with and promoted the expansion of rights summed up in the former chapter. As a developmental process, desires upheld and struggles carried out by disenfranchised or subaltern citizens pushed it forward. With clarity or diffusely, they held democracy as their general political telos. Paradoxically, this democratising process, with clear directionality, albeit fraught with difficulties, was accomplished through the operation of large organisations, vertical in structure and in considerable measure oligarchic. In institutional politics, on the other hand, professionalisation has led away from traditional oligarchic players (in the traditional Weberian say, who lived ‘for politics’) towards more open recruitment (with politicians, also according to him, who now live ‘off politics’). This as such has not changed the oligarchical character of modern political systems. Completing that complex landscape and contributing to that transition regarding political agents, mass parties and unions were at the forefront of the democratising process, entailing the active inclusion of the ‘many’ into the political system under the aegis of the ‘few’, even though this was the way the popular masses could mobilise and somehow, indirectly actually, exercise power, with the ‘socialisation of politics’, sometimes counting on the input of committed militants at different levels of their hierarchy.²⁶

A countertrend accompanied this democratising trend, offering a violent contrast: de-democratisation, pushed forward by demophobic currents. While democratisation prevailed until the late twentieth century, henceforth the de-democratising trend has taken over, achieving its goals of restricting democracy, with its ‘excess’ of demands. Democracy was fine and should expand globally, yet it ought to be moderate. With its individualist and privatising credo, neoliberalism was a crucial imaginary component of this de-democratising push, with less than a veritable commitment to democratic forms.²⁷ Democratisation has become in this regard a countertrend, right now more a resistance against its sworn foe than a victorious push. As the twenty-first century progresses, new extreme-right forces have been making

a bid for power. Despite their rhetorical commitment to democracy and sometimes defence of plebiscitary solutions, invariably coupled with fanciful, demagogic solutions, they have produced, wherever they have risen to power, further de-democratising processes, within and without the state, beyond the neoliberal subtraction of instances responsive to democratic politics and decisions.²⁸

A genuine alternative emerged in the mid-nineteenth and early twentieth centuries. It implied much stronger popular participation through the organisation of communes and councils in which workers and other disfavoured collectivities would have a direct role in decisions, law enactment and executive power – all mixed together, hence discarding the liberal division of power – as well as in the formation of popular militias and the subordination of traditional military forces.²⁹ Their fateful trajectory was short, with the party-state imaginary and institutionality soon substituting for it, with, concomitantly, the repression and suppression of the vote of those who were seen as former oppressors.

While, without intending the abolition of republican-liberal institutions, participatory versions of democracy have been defended, though their concretisation is a far cry from reality.³⁰ What has really prevailed – contested during the twentieth century, reaffirmed at the beginning of the twenty-first – is the so-called elitist version of democracy. The rationality of the many, ordinary citizens – let alone the ‘masses’ –, has been disqualified or downplayed in favour of the rationality of the ‘elites’. The latter would compete between themselves, leaving for the former, the somewhat stupid citizen, a minor role in this low-intensity form of democracy.³¹

6.3 The political system

The general imaginary and the institutional framework presented above thus furnish the basis for the actual practices of political modernity. Moreover, within this general framework, we find the political system proper, with its double face, state-based and societal, constituting a specific collective subjectivity (with the material elements all social systems ontologically possess, including, as formerly mentioned, the state). Figure 6.1 synthesises and brings together its main elements.

I shall now carry out a detailed analysis of the political system. The vast tradition of political philosophy, political sociology and political science, from Aristotle to Marx and Weber, up to Pareto and Mosca, as well as Gramsci, Schumpeter, Poulantzas, Easton, Dahl, Offe and other several authors, has addressed this issue. If some contributions are evidently of great importance and reach, a proper categorisation of the political system seems to be still missing or is circumscribed (and, due to the increasing obliviousness to such matters of an also increasingly technified political science, runs

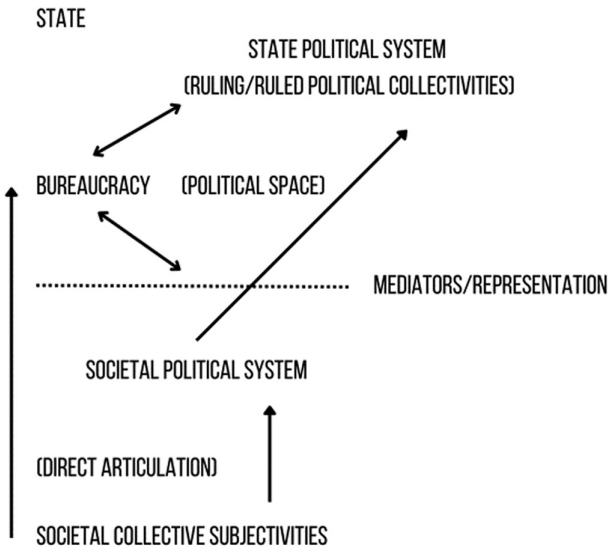


FIGURE 6.1 State/societal political system

the risk of undergoing a second effacement). To some extent this is astonishing but understandable, if we take into account the anti-political character of most of traditional and critical theories of modernity, so concerned with its economic and social dimensions, or with the steering capacity of governments, and, even when this is mitigated, usually subordinating the political dimension to its putative foundational other (or perhaps to reason, when representatives see themselves as superior to and the detached from the represented). In this respect, this chapter plays an especially prominent role in this book.

Following the fundamental split of political modernity, that which separates and dialectically opposes the state and society – or, more precisely, the state-based and the societal side of juridical-political modernity, what has also been called the public-private split, the chief characteristics of which we have analysed in the first part of this book –, the political system is also divided into two sides. We have therefore the state-based political system and the societal political system. The political system has been thought of with the former in view, including the legislative and the executive, both charged with *decision-making*, the later in particular usually called ‘government’, as well as with the implementation of decisions, which rests on some level of consensus and consent as well as coercion, such as exercised by the police and sometimes the military.³² That is where we also find a formal transfer of sovereignty, of which they appear as the active trustees while the putative absolute sovereign, the population, is, so to speak, asleep, though part of this sovereignty was already frozen in constitutions of which law and

often the courts are the guardians. Citizens thus appear from the outset of modern political theory at the basis of the political system. Eventually, their increasingly plural interests found a place in advanced versions of the social and political sciences, which does not mean that a proper conceptualisation has been achieved. While the centrality of the state-based political system must be theoretically upheld, this does not suffice. It is, as already suggested above more descriptively, at the core of political modernity, of 'politics' indeed in its quotidian, rather mundane expression, yet the societal political system must not be overlooked. In particular, the role of citizens, which is doubtlessly very important, requires attention, along with that of collective movement and organisations.

State power and the political system – specifically executive and legislative power – are, if not the centre of social life, highly relevant to all its functioning and regulation, supported by its vast bureaucratic apparatus and entailing their intervention in all societal domains. Social life is not steered from above by the state, benignly or viciously, contrary to what the aforementioned elitist theorists think, yet its weight is immense. On the other hand, the societal political system is crucial, albeit not exclusive, for expressing societal dynamics, demands and complaints, claims and perspectives. The mediation between them must also be highlighted, with representation as such playing a crucial if often ambiguous role. As the backdrop to the functioning of the political system, we always find the liberal juridical infrastructure and, eventually, the authoritarian collectivism more general, predominantly political structure, or to some extent a mix of them, under the aegis of the party-state, in its converted forms as it re-entered modernity. In all modern states, alongside the political system proper, we encounter, within the state, several bureaucratic bodies, with the characteristics we have also considered in former chapters of this book. These featured the non-specialised bureaucracy, professionals, the army and the judiciary. That said, the frontiers between the state and the societal political system with the state and society at large vary and change. An analogy between the brain of mammals and their complex and extended nervous system may be illustrative. As the brain branches out in and through the bodily innervation in its totality, the bifurcated political system goes down, if we cautiously stick to organic metaphor, the 'body politic' (state and society), with uneven intensity at different moments. Yet keeping the analytical distinction, which also largely corresponds to reality, between the political system, with its two sides, and both the state and society as a whole, is theoretically crucial.

More abstractly conceived or already invaded by the concreteness of social life, these bureaucratic bodies must therefore in principle remain depoliticised and depersonalised, although personalisation has deeply penetrated the political system, especially with respect to the main governmental positions. However, the higher we go up the hierarchy of those bureaucratic

bodies, the greater and clearer their politicisation and personalisation. Also, during other moments, of more intense political activity, lower echelons of these bureaucratic bodies may assume a more political and, besides, personalised countenance. The repressive apparatus is moreover at the disposal of the executive and partly the legislative, including the vigilance machine that is so typical of, and ever more important for, modern states. High Courts are particularly politicised, increasingly so in fact, and maybe counter-majoritarian as well as uphold constitutional principles and rights, but also push for partisan agendas, of often a conservative persuasion, but definitely not always. They have become relatively more powerful worldwide. Their relationship with the executive and the legislative powers (and even the media) may be promiscuous too, falling short even of a proper formal separation.³³ Bureaucracy is so widespread and important that military rule in Latin America and elsewhere has been based on the armed forces as a form of bureaucratic rule, with legality, of course, eschewed from its definition in what regards certain aspects of its relation with societal agents.³⁴

Those who control the state political system must be called ruling political collectivities: they are at the very core of political modernity as a system of rule. They are by no means 'elites', a term I believe should be avoided due to its inevitably charged ring and the fact that the state political system ramifies across 'society' (nation-states, in fact), with expression at diverse political levels. The possession of political power is what characterises the collective membership in the state political system, not special qualifications, except perhaps for the propensity and sometimes ability to play according to the rules of politics, big and small. Some also manage to set foot in legislative or even executive power but remain subordinated within this encompassing system of rule. Citizens are therefore ruled, with varying levels of influence, directly through the societal political system or other means, making them often powerful agents. Nevertheless, this last circumstance, indeed of exceeding importance, does not justify that we collapse the differentiation of political modernity in general and of the political system in particular into the power agents may exercise outside them and use thereof to influence and exercise leverage upon them; that is, we must not collapse it into the economic dimension or any other. We must sustain the complexity of modernity at the theoretical level so as to properly account for its actual structure and dynamic.

It is also important to note that the state political system rests on formal rules that legally establish how it should be steered, at least when it stabilises. There may be deep-seated shadow institutions, often related to neopatrimonial transactions, that is, corruption, among the rules of the game. Moreover, some political agents, due to the narrowness of the political space and repression, also within republican/monarchical-liberal political systems, are excluded on even formal and legal grounds. The reason of

state, as already discussed, often implies operations carried out on the sly and sometimes afoul of the law.

There is organisation and antagonism within the two sides of the political system; agents coordinate with and oppose each other, conflict and articulate, vertically, horizontally, collaboratively or through exchange, struggle with and competitively emulate each other. This gamut of possibilities turns up also in the interactions between them. Different political forces push for their goals, and mediators bring together the two sides. However, there are other means whereby societal agents directly connect with agents in the political system, especially the executive and the state bureaucracy, which are different aspects of 'government'. Inputs and outputs cross from one side to the other, and internal processes (withinputs) run through them. More universalist articulations may be at stake, but particularistic ones often prevail, for instance through clientelist ties and patronage. These configure interactions and relations based on the principle of market organisation, resting on voluntary exchange, although, concretely, hierarchy and command are usually important and networks may play some role.³⁵ Hierarchy and command are widespread features of political systems, especially insofar as large bureaucratic formal organisations articulate them (and those hierarchies can be really highly vertical). In contrast, they may sometimes evince a more network-based character based on the voluntary endeavour of people from diverse walks of life and varied goals. They are also often, if not necessarily, linked to neopatrimonial practices and shadow, extractive institutions.³⁶

Regarding the enlargement of the idea of political system, two solutions have been put forward. The better known is the Hegelian-Marxist or Habermasian conceptualisation. It implies that social interests of diverse sorts appear in society and constitute or translate into 'civil society'. This conceptualisation of 'civil' society weakens the idea of politics insofar as the political system continues external to it and entails a connection with society at large which is excessive. In the case of Marxism, it is also reductive, with politics becoming – whatever the greater sophistication attached to the concept – a dependent variable of class interests. This is precisely what we need to avoid in an analytical reconstruction of the political dimension and, specifically, the political system.³⁷ The other alternative speaks, in contrast to state decision-making, of a 'parapolitical system'. It moves us in the right direction, yet is insufficient because it falls short of adequately recognising the societal side of political modernity and the political system.³⁸ We shall therefore work henceforth with the categorisation of an integral political system with two sides which is not, on the other hand, reducible to societal interests of a nature at variance with those formulated directly with a *political* character. If concentric circles around the core of the societal political system become the more depoliticised the further we move away from it, any spot within them can at any time become highly politicised and a focus of

turmoil. ‘Civil society’, in turn, must be seen as a sort of ‘native’ notion, by now widely adopted by lay actors.

Public opinion and the public sphere are more circumspect concepts that make sense when we speak of the societal political system. There are ideas and views that more loosely circulate therein, inasmuch as we can think of public opinion as a collective subjectivity with a very low level of centring, whose impact upon politics may nevertheless be extremely intense. Public opinion and the public sphere contribute to the genesis of modernity. They have evolved within and with it. Commercial and hierarchical or more autonomous and decentred media are crucial in modern political systems, recent social media developments raising the hope of democratizing them. More recently we have witnessed the mining of information from social media, big data and voter targeting, eventually reinforcing the power of ruling party circles, which perniciously and covertly intervene in the societal political system, a strategy of which the infamous Cambridge Analytica firm offered a putative model case, simultaneously to the development of extreme-right networks. These developments have created a situation in which the threats to democracy have seemingly mounted. In turn, while pretending to be open for debate, the media was simply and mainly a vehicle of official propaganda in ‘real socialism’, remaining so in its versions that have transited to capitalism.³⁹

Representation and the connection of the two sides of the political system, the state-based and the societal, depend on two other elements. The first is what we may call mediators, those who produce the links between these two sides.⁴⁰ They may be elected politicians, representatives of societal associations, media people crucial in producing public opinion, or bureaucrats. Representation is dependent upon them for the inputs it receives from the societal side of the political system and those who operate within the latter too – what is input for one is output for the other, of course. More closely considered, though, mediation does not usually imply a direct translation of the societal into the state political system or vice versa. Mediators unavoidably refract what they are mediating: inputs and outputs are modified when they pass from one side of the divide over onto the other. Moreover, mediators mould, in considerable measure, the agents they mediate, usually at least as to the same extent as they are moulded by them. This mediation hinges, besides, on a second element, that is, the political space and how much it is open or closed. The more open the state political system is to an autonomous societal political system, the stronger and more responsive representation tends to be; conversely, the more closed, the feebler the representation. This thus entails a variably open or closed political space. When the political space is closed, societal agents have trouble reaching out to the state political system. Other channels may be available through some sort of direct articulation that circumvents the formal and restricted or non-existent political

system. However, these alternative routes are not available to all agents, only for those who share interests, somehow or another, with those who control state political power.

Representation in modernity has moreover historically assumed forms other than those typified by electoral processes. Historically, corporatism, usually but not only under fascism, depended on the direct contact of collectivities, such as workers' unions and business organisations, with the state apparatus. Direct articulation plays a paramount role therein too. It was resumed by what has been known as 'neocorporatism' (societal or state-based). Some researchers have alternatively cautiously spoken of 'intermediation', insofar as particularistic elements and a lack of authorisation by the citizenry would not justify a definition of representation for these arrangements.⁴¹ Business' lobbies, which imply a deep re/neopatrimonialisation of politics in the process of intermediation and which usually perversely act out in the sly, accentuate it, often implying corruption or at least arguable deals; also when deals abide by the law, they tend to favour those who engage in them rather than the citizenry.⁴²

Configuring a true tragedy, authoritarian collectivism, which was supposed to be how socialism would come about and mature, demanding intense politicisation and participation, radically reduced the political space. Representation, or rather purportedly tightly worker-controlled and revocable 'delegation' – actually mostly or at best largely a façade –, was structured from the top down, with educative functions to be shouldered by the party – actually the party-state –, whereas public opinion became the opinion authorised by its ruling circles or merely the imposition of intense propaganda. This is still the case in the countries where this sort of political system exists. The opening, always partial, of the political space in their functioning at specific points implies a concession from above, which political rulers can withdraw, as they have time and again certainly done. 'Democratic centralism' is a crucial institution in all these political systems, buttressing centralised decision-making, which revolve around the party and the executive. General secretaries amass a tremendous amount of power and often perform as brokers of distinct interests. However, they may also hover above other party and state cadres if their position is particularly strong. Direct articulation, frequently linked to the party's prerogatives, was and remains typical of this sort of political system. Much of its daily politics is carried out in the shadows, since the political space is narrow or practically non-existence. A different legal system and state property of the 'means of production' substituted for the juridical infrastructure of the liberal system of private property. Repression is, on the other hand, rampant. Ruling collectivities possess far more control over inputs, outputs and withinputs, with the societal political system consisting of a controlled sphere, which is hardly distinguishable from the state. In some of these countries, responsiveness seems

more significant, with societal political agents diffusely being able to provide inputs to the state political system, thereby conveying grievances and preferences, with powerful mass mobilisation at certain stages. They were not ‘totalitarian’, contrary to a literature I have already rejected in previous chapters, but how sectional interests found their way into the political system was very complicated and frequently inhibited.⁴³

Fascism also rested on a political system with a radically reduced political space and centralised decision-making, yet the main structures of liberal legality were preserved therein regarding less politically relevant issues, while it also consisted in a sort of prerogative state. Here too, with the narrow or practically non-existent political space, mediators played a complicated role, connecting societal agents directly to the bureaucracy or the party. In fascism, in contrast to authoritarian collectivism, capitalism operated with significant autonomy. The personalisation and direct personification of power were intense and a lot hinged on what the great leader decided. Violence was at its heart. Nazism took all this to the extreme, almost crossing over to another sort of civilisation, in which liberalism no longer had a role to play, but it was cut short by defeat in war, its further potential evolution therefore a historical enigma.⁴⁴

As to the limitation of the political space, vigilance and repression, fascism and authoritarian collectivism shared undeniable similarities. Nevertheless, speaking of ‘totalitarianism’ is not adequate. It consists of a sort of catch-all concept, so much so that, for instance, some would more carefully restrict its usage concerning authoritarian collectivism to Stalin’s era.⁴⁵ It is also somewhat premised upon an idealised view of liberalism. Above all, it conflates very different states and political systems, stressing superficial commonalities, and establishes false relations of causality with respect to their origin (let alone their entirely different social foundations and horizons). Second, it overlooks the complexity of these societies. Finally, it ignores how modern states under republican-liberal hegemony (even if they assume a modern monarchical countenance) also resort to prerogative, vigilance and repression. One should not, however, by any means try to deny the vertical and closed as well as repressive character of authoritarian collectivism, an unexpected and sad step back from republicanism and liberalism in what regards emancipation – unfortunately in the name of socialism and communism.

6.4 Political collectivities

While individual citizens are legally the foundation of modern political systems, the political dynamic of modernity has taken us far beyond this individualistic ontology. While the old republican tradition directly understood itself through its constitution by social groups, the modern political dimension initially tried to get rid of them, desubstantialising and depersonalising

its universe, in which only abstract individuals and the law were legitimate. Eventually, collectivities were perceived as a fundamental pillar for the modern political dynamic beyond the encompassing and pristine one constituted by the individuals and the state. Such broadening of focus happened with respect to both sides of the modern divide, that is, state and social life, usually entailing sharp cleavages as well as alliances and coalitions. The first sort of collective subjectivity to be discussed here has been conventionally known as ‘professional politicians’, in particular those in charge of the ‘government’ (which may stem from prosaic processes or be made up, for instance, of former ‘professional revolutionaries’). Bureaucrats – among which the military and the judiciary, alongside generalists and professionals in the administration – also have a role to play in the state side of the political system, such as aforementioned. They thus assume political positions, though not necessarily becoming professional politicians. On the societal side of the divide, collectivities are legion, some taking on particular relevance. Regarding mediation, political parties have been very central. The autonomous, albeit not isolated, constitution of the political dimension stands out in the synthetic presentation below.

Professional politicians – that is, those predominant today who ‘live off’ politics or formerly supposedly ‘lived for’ politics as their primary activity – are supposed to represent in the state-based political system those who inhabit the societal political system and, still more fundamentally, citizens by and large, who vote (whatever the scope of the electoral franchise) and constitute the putative basis of state-political systems (after all this is the original meaning of political citizenship). In this sense, we may say that they share an interest with those whom they represent and are therefore motivated by the idea of representing them, regardless of how this representation is conceived, whether as delegation or based on the freedom of the representative, as a mandate by a principal to an agent or as featuring a top down-oriented agent which directs and educates the putative principal. Professional politicians take an army of professional aids and advisors along with them. Together, they make up a sizeable political collectivity in modern political systems.

Nevertheless, we must not overlook a crucial issue, often disregarded in political analyses, save by those connected to ‘elitist’ approaches. Those who occupy positions in the state political system (as representatives or those who work with them) and even those who occupy formal positions in the societal political system have their own interests, broadly understood, which can imply prestige, pecuniary gain, political power as such, as well as perks of different sorts. Denial is usually what we find by those who practise politics and would not like to see themselves or be seen by others in this light. They are keen to convince others, their close followers and the citizenry in general, that this is not the case. As much as businessmen and businesswomen (the

‘bourgeoisie’) regarding capitalism and their purely benign role, politicians are in the grip of and also try to sell others a sort of ideology that depicts them as mere citizens’ representatives and servers of the public. This is only partly true since power and its accompanying benefits are strongly coveted by those who embrace a career in politics. In contrast, the dedication of so many to selfless militancy as well as professionalisation as an attempt at true representation, as rare as it may be, should prevent us from holding a unilateral and essentialist, pseudo-realist, cynical view, according to which politics is always the mere pursuit of self-interest. Commitments often count, also regarding professional politicians and, more generally, people in power positions. In fact, representatives do have links with all sorts of societal collectivities. And yet their self-reference and interests tend to be real enough, whether or not and to whatever extent they relish in perks and benefits as well as in the exercise of power as such not necessarily excluding an authentic defence of causes and projects, along with the representation of interests and perspectives that they usually duly embrace.

As the imaginary self-depiction and justification of collectivities, ideology needs some anchor in reality otherwise it becomes implausible; besides, the commitment may be paramount, while perks, benefits and power accrue to politicians who are not particularly interested in them and may even feel uncomfortable with their likely abundance. Consequently, both those aspects must be taken into account.⁴⁶ The very structure of the political system creates this disjunctive situation, between citizens and what are usually seen as ‘leaders’; it does not correspond to a sort of perversion of politicians, though appetite for power is necessary to propel people to top positions. Underlying this skewed bifurcation and double bind, we find, on the one hand, instrumental reason, or a rationality in which means are adapted to ends (but sometimes ends to means too), and, on the other, value rationality as well as the representation of societal interests, always flanked by the representative’s interest. They are present in a balance of varying degrees, in tandem with some level of communicative rationality between representatives (the few or even the one) and the represented (the many). Beyond ideology and an idealised understanding, this is, however, at best limited in really existing representative democracies especially insofar as the rationally unintentionally produced irrational logic of the political system, stemming from competition within it and suboptimal decisions, pushes agents (politicians above all) to behave in very instrumental and slanted ways in order not to succumb to the moves of other agents.⁴⁷

This is a line of reasoning that applies directly to liberal political systems – and could be adapted to fascism, under which circumstances the ‘nation’ was usually what politicians pretended to represent (and they would be prone to present themselves less as politicians than simply the natural leadership of their fellow nationals). The argument rings even truer regarding

authoritarian collectivism. In this civilisation, the party depicted politicians as representative of the working classes or the people. Add to that the idea that the party-state had educational roles and that the ‘vanguard’ should guide the ‘masses’ until they matured, probably already into communism, lending a stronger separated self-identity to the elected officers of ‘real socialism’. They were supposed to be the best of the nation and the people, striving hard for them with utter rationality, collective-instrumental as well as value-oriented, socialist ends shining brightly all the way. It is clear, however, that, constituting a separate social stratum, they frequently became one of the *nomenklatura*’s core elements, which sustained clear-cut interests that were theirs alone, distinct from the needs and desires, the interests, of the general citizenry. Rational instrumental behaviour has served those interests well sometimes, but unevenly insofar as the system as such either did not survive or transitioned towards a compromise with capitalism. Note that ideology works for those whose interests are undermined and for those who are benefitted, who believe they are selflessly doing their best. This is as true of politicians in authoritarian collectivism as in republican/monarchical-liberal political systems, which does not mean, once again, that, while launched principally from the top down, that is, according to party decisions, a variable level of representation, at least concerning more specific interests and issues, is not achieved in the former as it does more flexibly in the latter.

In turn, the societal political system indirectly counts with all conceivable social processes and collectivities, yet that is not really what directly matters for its constitution. The diverse organisations and the processes that thrive within it must constitute the substantive and analytic focus of preoccupation. These are collective subjectivities that politically act and transform impulses coming from social life as a whole into specific opinions, goals, projects, grievances and claims. Sometimes they are more centred (that is to say, they are capable of concerted and teleologically oriented movement), sometimes less so. Their relationship with society at large is very complex. Much as they may see or pretend to see themselves as representative of specific collectivities or society in its totality, we must not take this at face value. This can indeed be the case, but the connection rests on indirect relations, imaginary elements that may or may not correspond to reality, ideological conceptions – ideas that stem from the sectional interest of putative representatives – and straightforward or muddled political interactions. Whatever happens in this societal political system impacts the state political system more or less directly and intensely. Social movements, unions, non-governmental organisations, associations, churches, the media, clubs, terrorist groups and many other collective subjectivities are to be reckoned with in what refers to it and may change over time. Political parties, which we examine below, were also, in many instances, part of the societal political system, which they helped organise, a task they have shrugged off lately. Sociology and political science

have extensively studied these organised and disorganised collectivities, and we do not need to discuss them here. ‘Middle-range’ theories have often served as a theoretical umbrella for several of them.⁴⁸

It is interesting to reckon that different ‘religions’ or denominations (particularly concerning emerging protestant groups, with war between them and ultimately peace) were the first collectivities to receive attention in the emerging political thought. What later became known as ‘toleration’, especially within liberalism, and received its initial formulation in this connection. The situation of the rich then became a concern for some writers, afraid they might be oppressed by the majority.⁴⁹ Eventually, the full spectrum of societal collectivities was brought into the fold. Pluralism became normatively an issue to be increasingly recognised and promoted.⁵⁰

Curiously, when societal collectivities have been thought of in relation to the state, a very direct link is often put forward, with their influence on politics on a daily basis, that is, the impact on the decisions of an increasingly more complex state apparatus standing out. They include social classes, castes, genders, ethnic groups, races, religions and other less important or less generalised issues and agents, among which are professional groups. Class has stood out in this connection, especially due to Marxism. While it would be untenable – once the suffrage was universalised and the state become more complex – to insist that the state is the ‘committee for managing the common affairs’ of the bourgeoisie, as Marx and Engels originally did, the weight of individuals with direct class affiliation – especially to the ruling classes – has been a bone of contention within this current. The debate moved, interestingly, beyond an instrumentalist perspective, towards a more mediated one, and, although ruling-class individuals do occupy state positions from time to time, this seems not to be a typical occurrence, nor does the state seem to be so stringently and directly connected to immediate class interests, instead responding, in its heightened complexity, to a range of pressures and demands with different sources and characteristics. This lack of determination means that the actual ties between class and state, let alone the political system, remain obscure at best.⁵¹

In a more Weberian perspective, ‘crystallisations’ of societal agents associated to political collectivities within the state apparatus have been recognised, without being properly defined either.⁵² We can say the same of those other societal influences: while they exist and are manifest and even more direct in terms of the occupation of positions, a less straightforward link may be expected as to law and social policy, despite the historical role gender, race and ethnicity have been playing for the characterisation of the state (also through the definition of the nation, as seen in Chapter 3).⁵³ The same reasoning regarding mediation should be borne in mind. Within the state, we encounter the marks left by former conflicts but also cooperative interactions, which relate to societal conflicts and cooperation mediated

and internalised in its apparatuses. Nevertheless, whenever we argue in this direction, we should spell out what these connections are and how they operate, otherwise the argument remains unconvincing, while ascertaining total independence also sounds problematic.

When we speak about these significant and usually very decentred collective subjectivities, we must nonetheless bear in mind that it is through those more specific and organised collectivities that their impact is felt, with the misfit and ideological delusions we can expect from those that purportedly represent them. To be sure, ideas and feelings, cognitive schemes, normative agendas and expressive behaviour pervade social life overall and connect to the hermeneutically lived experience and horizons of these large societal collectivities. Yet, although they powerfully influence the behaviour of individuals, it is basically through the societal political system that politicisation develops beyond those looser elements. General feelings and ideas may linger on and not find expression if the political system is restricted and repression bars people from articulating them politically; the situation is, thus, likely to become fraught.

Finally, mediation must draw again our attention. A number of organisations and large organisational fields have been historically at its core, especially political parties. The media is prominent and the judiciary may sometimes appear in this role. In contrast, to restate the point just made above, mediation as the representation of 'nature' by humans is at best a metaphorical, albeit potentially positive, hypothesis.

Political parties have been decisive in the mediation between the societal and the state political systems, especially during the twentieth century, when they were mass parties, integrating large swaths of the population into the political system; so-called 'political machines' are an old reality too. Parties have been conservative, intent on reproducing the political system and, beyond that, society as a whole – the other side of their political rule; or they have promoted emancipatory projects, including the expansion of participation in the political process, opening up the political system, and sometimes changing society in its totality. They have, that said, been largely controlled by 'the few' and hierarchical, built directly around 'notables' or featuring ordinary people, as 'mass' parties, which have been vertically organised, consisting for some in clearly oligarchical organisations. Internal democracy has characterised some of them to some degree, not always or intensely, while mechanisms of co-optation have been pervasive. Well beyond their prime today, the monopoly of formal representation by political parties has become rather artificial and constrains popular participation. They may have reached a stage of exhaustion, with direct participation turning into a common demand of citizens and the attempt to create 'movement parties' coming up time and again, these often quickly and problematically becoming oligarchised.⁵⁴ In this regard, we have a permanent malaise and a

brewing crisis of representation worldwide, with dissatisfied citizens everywhere, without, furthermore, solutions at hand.⁵⁵

Political representation by political parties is even more dubious insofar as legislation tends to favour stronger parties at the expense of the weak (bizarrely in so-called Westminster systems, strongly majoritarian), also when proportional representation is adopted, which somewhat more accurately mirrors the societal political system and citizens' perspectives more generally, while majority electoral systems further enfeeble representation. Cleavages in society, which are dialectically constituted by the two sides of the political system, are much better expressed by parties in proportional representation, even though, by now, with parties for decades more attached to the state political system than to society, this too is much less clear than before. As they tend to aim for the centre of the public opinion spectrum for votes, becoming so-called 'catch-all parties', this has become less true.⁵⁶ In line with what I have observed in Chapter 4, the decline of parties as vehicles for the representation of the societal political system has strengthened the *personalisation* of politics, with the role of 'leaders' and candidates becoming even more prominent. Electronic media have intensified this trend.⁵⁷

All those other collectivities pointed out above as part of the societal political system may operate as mediators. In concert or conflict with political parties, unions, associations, non-governmental organisations and other agents, they may connect to the executive and the legislative, as well as to some bureaucratic regions of the state, working as the transmitters of societal issues, claims, demands and agendas. Insofar as the political system is, already argued and pointed out as a mounting problem, deficient in the task of mediation, even if it works well at decision-making, the judiciary may become the vehicle of societal demands. Its efficacy is however limited.⁵⁸ Mediation is not a fixed position, nor can we attribute forever and ever this role to specific collectivities. Diverse agents can take it up, while others stop being capable of performing this function. Yet mediation may be simply not forthcoming. It is increasingly missing contemporarily.

Today liberal, republican or quasi-republican political systems face two serious problems, which are tightly interwoven. Both representation and mediation are essentially blocked. State and societal political systems spin away from each other, with problems also in the organisation of the latter, bereft of political forces (formerly political parties, mostly) that may help it organise. This dearth of organising agents spells serious and deep problems, especially insofar as, according to normative expectations stemming from its partially republican imaginary, citizen participation should be constant and paramount, with a strong sway over the political system. This ideal was never surpassed or totally repressed by the triumph of liberalism but looks like a more futile and unachievable promise.

Contrary to what was the case in the West and elsewhere during mainly the twentieth century, under authoritarian collectivism parties were not meant to be integrative organisations. They were ‘vanguard’ parties, supposedly bringing together the best of the working classes or the people and educating society in the construction of socialism. At the same time, democratic centralism left ample room for centralisation in the highest directive circles of such parties when in power. In some of these countries junior parties formally survived, but they never really meant much; alongside and led by the proletariat, which had communist or workers parties as its vanguard, they could represent less revolutionary but allied classes, such as peasants. While such cleavages were rejected by the party-state in the past, although they might think of non-antagonistic contradictions, not much has changed in the top-down processes of putative representation under the political system of authoritarian collectivism. We can hardly speak of a proper mediation process concerning openly expressed, sometimes divergent interests, a process that had only to some extent convolutedly occurred, within the party-state apparatus, often away from the public eye.⁵⁹ Organisations that were supposedly not within the state and were therefore formally part of the societal political system used to be and may still be used as ‘transmission belts’ in top-down relations in authoritarian collectivism. If the legitimacy of this sort of arrangement has waned long ago, in practice it has not disappeared. Since the end of the Chinese Cultural Revolution, when things got out of hand in Mao’s attempt to shake party and state, non-mobilisation has been, all in all, the preferred option, with the party-state incapable of offering a credible horizon beyond capitalism.⁶⁰

We are speaking here of *political domination*. It cannot be mistaken for Weber’s ‘rational-legal domination’, which we have already encountered in this book. While the rule of whoever is at the helm of the state, controlling its legislative and executive organs, indeed produces an effect of permeation of its legal and bureaucratic apparatus, it is politics that steers it, not mere bureaucratic or legal rationality. Political domination evinces legal and bureaucratic aspects, but power assumes an eminently political character, with its own reproductive rationality, since the political system is the core of rule, due to the concentration of decision-making mechanisms. This power is the power to take general decisions, in the public domain, with consequences that reach far beyond it, regardless of what other agents would be willing to comply with if they were not somehow and to whichever extent forced to. Upon further reflection, we must be attentive to the fact that it is not a matter of blaming individual politicians; nor does political domination imply that there is no representation of the societal political system in the state political system, which does take place, sometimes more intensively, sometimes more feebly. What matters is how power – that is, political power – is structured and how it engenders, due to the verticality of the relationship

between rulers and the ruled, a system unheard of until modernity emerged, of specifically political domination.

Reductionism, of whatever kind, statist or economist, leaves no room for what is really relevant in terms of power: neither classes nor bureaucrats are at the centre of political domination. If Marxism has been reductive in its concentration on the economy and classes, Weberian reductionism has been due to its liberal misgivings regarding bureaucracy. Yet this latter problem cuts across all the literature of the social sciences, with Marxism showing a narrow understanding of the workings of the state and somewhat oblivious to the political system, where political domination is centred. Only a handful of cases, with ideas we shall discuss towards the end of the book, deviate from this restricted view. Liberalism has usually been blind to this issue (a limitation that does apply to authors descending from Hobbes' realism). In particular, in its generality, the state stands, when the problem is at all confronted, as the core of domination in most approaches. It is, however, only part of the problem; moreover, in modernity it is a subordinate one.⁶¹ There are different ways of organising this sort of domination, starting with the split between liberal-republican and authoritarian political systems. We will examine this later.

Can we say, in addition, that 'nature' is politically dominated? Yes, but with the caveat that, although animals are definitely not 'beasts', how human collectivities frame such relations implies an imaginary universe that goes beyond anything accruing to the most subjectively sophisticated animals. This, on the other, hand, by no means diminishes our responsibility towards them, quite the contrary. In this connection, a trendy topic more recently regarding 'nature' (just like its definition as rights-holder) centres on its 'representation'. Yet it seems actually beside the point, despite the relevant substantive issues it raises. Even if political representatives only indirectly represent, making present those who are absent, individuals, the people or the nation, humans are the ones representing humans is what is supposedly at stake, with the limitations already underlined above. Humans politically representing 'nature' (or the 'multiplicity of non-humans') may have, metaphorically, a positive impact, but, at variance with what we saw in Chapter 3 as to the relation between 'principal' and 'agent', there is no possible authorisation by the former to the latter concerning the state political system, let alone an addition to its societal side, especially important for democracy. Furthermore, this is so not only because 'nature' neither speaks nor is rationally responsible, which it does not and is not: not even as a fiction can we think of its diverse and heterogeneous beings as human-like agents (ontologically or legally) since they are incapable of producing meaning or articulating it through language (symbolic-scientific 'representation' also being very different from political representation), whatever arguments one may try and bring to bear. It goes without saying, science

and ‘nature’ have become crucial issues in contemporary social and political life.⁶²

6.5 Reproduction, crisis and change

The ordered reproduction of political systems is an ordinary and commonplace process, which many powerful agents promote, with, evidently, some change and adaptations, against the intention of other agents to change it. Though this is not absolute and unintended consequences abound, there is in this case also a political logic pushed forward by political forces, which entails the effort to reproduce the imaginary, institutions and practices intentionally. This effort also yields a strong feedback effect in that agents must comply with the norms – legal and informal – that configure these political systems in order to take part in them, even if they want to effect changes, unless they decide to remain within only the societal political system, where they cannot totally dodge norms either. While reproduction is never absolute and in political systems, as in any social system, transformations are inevitable, dominant agents may achieve its more or less unaltered reproduction for long periods. Their efforts are bound to be in vain in the long run: reproduction will eventually falter and political crises emerge (crises, let us remember, defined as the impossibility of reproduction of usual patterns, or the threat thereof, or the occurrence of disruptive side effects if reproduction simply continues). Yet most social sciences approaches have thought of political crises as stemming from social life as a whole, frequently due to wide ranging modernisation processes. Marxists have often linked them directly to economic crises. A few have addressed crises as political crises, in their specificity – that is, regarding the dynamic of the political system as such, with its inner workings and disputes. Also when connected to economic processes, political crises frequently evince different temporalities.⁶³

Marx and Engels were undoubtedly the first social scientists (perhaps apart from Rousseau’s forebodings regarding the long-lasting crisis of reason) to give attention to social and political crises. They wrote much about political processes, unfortunately without much theorisation, usually with the classes at the centre of the analysis and only rarely moving beyond them.⁶⁴ Marxists shared this sort of concern afterwards, although Lenin himself, always more attentive to politics, looked much more closely into political crises, from a practical standpoint and especially developing the thesis that the desire to change and the unfeasibility of keeping a given order were at the roots of a proper revolutionary situation.⁶⁵ In a sense, it was the modernisation of European societies and its political consequences, related to class struggle, that mattered to them. Later, other authors resumed this approach, often in connection to progressive or conservative liberalism. While most sociological work

written up to the 1950s–1960s took modernisation as a smooth process, Germani and Huntington pointed out that the integration of collective agents and the social demands that arose in its course could and indeed did lead to major disruptions, entailing ‘populism’, in the case of the former (with an intense personalisation in Peron), and the ‘breakdown’ of political systems, in that of the latter. In their depiction, social development by and large furnished the leverage for political crisis.⁶⁶ There is no reason to overlook this more general conditioning, but we need to narrow down on the political process as such in order to sharpen the concept of political crisis, at least singling out which are the specific political components in more encompassing crisis situations. Finally, Alexander correctly emphasises that if social crises overall have an objective component, they are always symbolically mediated and depend on the interpretation of agents, an apt observation regarding political processes too.⁶⁷

We saw in Chapter 5 that support for modern systems of rule may rest on (1) ‘diffuse’ or ‘specific’ legitimacy, referring to formal rules, mostly rather abstract, which delimit how power is acquired and exercised, also entailing rights, mostly abstract, and the rule of law; or (2) may be based on substantive goals and rights as well as successful performance, which may include the support of diffuse ‘cultural’ claims the system purportedly represents, often associated with ‘religion’ or nationalism. Hence the rules that structure political systems need to be respected and political rights in particular sustained, while politicians may not use state resources illegally to achieve and keep power (or for embezzlement). That is, political agents must follow general legal norms. Maintenance of formalities may be a goal too, not merely a means to an end. However, political systems may have their legitimacy and reproduction underpinned by substantive goals, related to rights or concrete governmental performances. When this happens smoothly, there are no crises. Crises of legitimacy of the political system derive from faulty lines in any of these aspects. In more radicalised situations, they may lead to severe institutional chaos or imbalances, when a more profound disruption might ensue. There is, in contrast, a particular sort of crisis that besets modern political systems ever since they exist, namely, the crisis of representation. It is directly political, yet involves broader social issues as well. Crises may imply, if they come about, a return to the status quo ante if they are overcome, but also a radical transformation of the political system as well as mere adaptation, although ultimately change may prevail at least in some measure. There is, in addition, a further possibility, which today seems to be widespread: legitimacy is very low, which would lead to a deeper crisis, yet it remains simply as a recurrent malaise, insofar as there seem to be no alternatives available to political systems as they are constituted, in different forms, across the world. Crisis is then latent, with a strong potential to become manifest.

A crisis due to formal and procedural issues rests basically on the perception and consequences that the rules of the game are not followed. Corruption offers a perfect occasion for this sort of crisis. If it is demonstrated to be a huge issue, insofar as it implies disrespect for the basic rule of law or socialist legality, illegitimate self-interest and illegitimacy of the means to fulfil it, including the falsification of electoral processes, when parties use money from corruption to canvass votes and win elections. Political upheavals may, of course, escalate, combining with processes stemming from more complex crises in society at large and in the societal political system in particular, when we would then have a crisis with relevant or predominant political elements rather than an exclusively political crisis. Predominantly political crises impact mostly institutional and imaginary elements, which tend to become more open, as well as practices in the political dimension.

The evidence of widespread corruption in Italy's political system (which coincided with the terminal crisis of communism and of the Italian Communist Party (PCI), which could therefore not benefit from the implosion of the other parties) in the 1990s is a perfect example of this. The system was then reconstructed on a very different basis. Brazil in the 2010s underwent a similar situation, with all parties involved in far-reaching corruption schemes (something that still lurks and keeps the country vulnerable to political crises), while demonstrations in 2013 yielded a general questioning of the political system. Politicians fought back and secluded themselves from the societal political system, which was mobilised at that stage, using it to produce the impeachment of the then president (Dilma Rousseff, who was not operative against prosecutors and judges as those politicians wanted), managing to defeat the judiciary. Highly politicised, the latter tried to use criminal proceedings to steer the political system towards a full clean-up but glaringly failed. An extreme-right, also corrupt president was elected in the aftermath of the main crisis. All these moves and variations notwithstanding, the crises developed so intensely only because the brutal clash between the political agents that controlled the leading positions within the state political system aimed at mutual destruction. This is unlikely to repeat itself. In contrast, malaise endures and the political crisis may resurface.⁶⁸

A crucial type of specific political crisis is the crisis of representation. Citizens do not recognise themselves in their presumed representatives. This is a recurrent problem for liberal political systems and appears in authoritarian collectivism representation with other characteristics and problems. Marx made much of it in his discussion of Bonapartism, showing how this misfit led to the rise of a singular individual, namely, Louis Bonaparte, demagogic and supposedly capable of representing the 'nation' by personifying it, in contradistinction to the fragmented and conflicting interests represented in parliament. Therefore, the solution to the crisis included an extreme personalisation of power – with its purportedly empty place becoming more

permanently and substantively occupied, beyond the temporary capture by parliamentary agents.⁶⁹ This sort of crisis may be associated to more substantive issues, when winners apply programmes that they had formerly eschewed in presidential or legislative campaigns. They also often connect to the disrespect of the rules of the game and corruption, whereby electors see in the elected mere usurpers and tricksters, who, as a consequence, do not properly represent them. Other crises stem from too much conflict, socially propelled or due to clashes within the state political system. More specifically, procedures may become stalled – leading to a crisis of legislative paralysis – due to a dispersion of power resources, configuring once again a pure political crisis.⁷⁰

These crises yield devastating results for the political system, but they do not as such mean that people want a complete transformation of the system. Instead, it is mostly its overhaul that citizens expect. People must have something else on their horizon to require or entertain the hope that deeper change will occur. This took place during the era of revolutions in the late 1700s and the 1800s, as well as in the twentieth century at times. Even where this was the case, such as in the France of 1968, when the whole political system was seen as unworthy of citizens' loyalty by many of them, the political system was far from a breakdown, though it did change in the aftermath of the crisis, with once again an intense personalisation of power (with General Charles de Gaulle keeping the reins of government, yet also suffering an eventual devaluation of his prestige).⁷¹ If no further clashes ensue, political systems tend to resume their normal governing functioning, with adaptations to the post-crisis situation. Some may persist in reproducing their practices (more openly or on the sly) until a new crisis breaks out.

Authoritarian collectivism, in particular, had stark difficulties with political crises. In fact, it may be argued that, apart from any economic problem, this is where it floundered in its attempt to build an alternative to modernity. The political system was incapable of representing the citizenry since it worked extremely vertically and the political space was too restricted to accommodate clashes and divergencies. Everything looked like an existential threat to the party-state, above all autonomous working-class mobilisation. That is how it wound up too, since opening it up immediately meant the loss of control by the top political bureaucracy. This was typical of the Soviet Union but remains a big problem for China, Cuba and Vietnam, let alone North Korea, since the political logic did not change, despite their return to modernity. Repression and the preservation of a very narrow – or practically non-existent – political space are crucial for their reproduction.⁷²

The political system's reproduction may be dependent upon a second type of mechanism: performance. It may be important for liberal political systems, republican or monarchical, as it has been as to the Welfare State, the extension of rights and the multiplication of social policies, Keynesianism

and, in the periphery, developmentalism. It is crucial, furthermore, in states where formal rules, proceduralism and representation are more restricted.⁷³ Efficient or efficacious government is crucial in this respect. It is today absolutely fundamental for the Chinese party-state. Since the Tiananmen Square crisis, it decided to restrict the political space, something it deepened more recently, and fully banked on economic performance for legitimation and legitimacy – economic growth, development and wealth.⁷⁴ Nationalism and ‘religion’ can underpin legitimacy or help in some situations, but without repression legitimacy does not seem capable of holding its ground. Performance buttressed the nationalist extremism of fascism and especially National Socialism, but absolute defeat in war led to their demise – as it would probably have had, even if it was not so absolute. It was as such a big failure regarding legitimation and legitimacy.

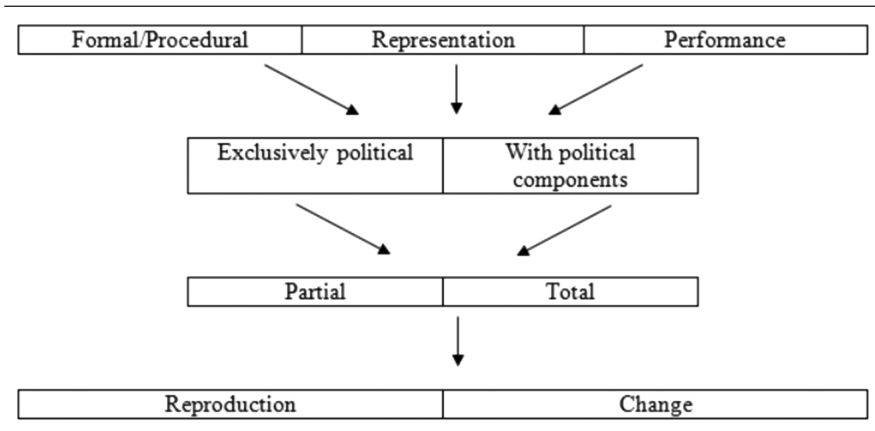
The crises pointed out above are of a sort in which the political system is capable of recovery, with or without greater modifications. Other situations imply a more radical turning point, stemming from a more general crisis and reinforcing it. This may start with a crisis in the political system and lead to the disorganisation of other aspects of state and societal institutions. This happened in Brazil in the 2010s–2020s. Again, the political system may recover without further state and societal disruption, notwithstanding unsettling political developments possibly touching these other dimensions. There are situations in which everything is up to grabs, and we can speak then of a total crisis, with political elements ending in tatters due to the centrality of the state political system, wherein the principal site of political decision-making is located. The crisis of the Weimar Republic in the 1920s–1930s is one such crisis. The meaning of the nation and the extension of the state, the dire economic situation and poverty, the military defeat and further imperialist projects, the yearning of part of the working class for revolution and the resistance of the ruling classes and the ruling political collectivities, in a country of authoritarian modernisation and fierce right-wing nationalism, with paramilitary bands roaming about, hell regularly breaking loose in ferocious street battles between the left and the extreme-right, and the gradual ascension of Nacional Socialism: many processes came together, provoking a total crisis. In particular, the format of the political system complicated the political process since it allowed for parliamentary ‘negative majorities’, in practice veto power, while presidential rule slowly and by stealth took over from parliament, formally entrusted with the government according to the Constitution. The political system was eventually totally transformed with the extreme personalisation of power, which Hitler personified.⁷⁵

As we can note in the examples above, most crises are controlled before they become excessively disruptive. That is also why we need to know which sort of crisis we are speaking of, substantively, as well as its reach. Problems really

start when conflicts overflow the limits in which institutions are meant to contain them, with an accompanying tendency towards de-institutionalisation and a radicalisation that deeply affects the political system (not to speak of the system of rule). Routines fall apart and improvisation takes over; unexpected and unusual answers from all agents exponentially foster contingency and the fluidity of increasingly complicated situations. All areas of society converge in a crisis mode to the political system and agents become incapable of finding solutions, for authoritative decision in particular, with issues, agents and energy from other areas of social life pouring into the political dynamic.⁷⁶ Beyond a substantive view, we need to work with an analytical perspective, which may make crisis a more intelligible phenomenon. According to what we have seen above and bearing this necessity in mind, we can add to those alternative paths of legitimation and the crisis that comes about once they are ineffective some other analytical elements which can orient us in interpreting such political processes. Table 6.1 systematises them. Note that those elements can be analytically displayed, but acquire causality only insofar as agents act and move upon them. The effectiveness of mediators is crucial in this respect too.

All these crises may have as their epicentre the state-based political system. In addition, they may – and often do – involve the societal political system. Clashes in both of them and problems in the connection between them, with societal political collectivities playing important roles, may characterise crises. The deeper the crisis, the more likely this is the case. Even exclusively political crises may involve societal agents. Consider also that especially those that we may define as crises with political components are liable to be propelled by or strongly count on societal collectivities, with their substantive issues and conflicts.

TABLE 6.1 Elements and outcomes of crisis



A further point about crises of representation must be discussed. They may derive from the disrespect of formal rules, in particular if citizens understand that the system is corrupt and despises their fundamental rights, civil and political, as well as due to the shortcomings of some expected performance. They may, besides, derive from how representation is organised and how representative agents behave, simply aloof in relation to their principals, that is, citizens. This seems to be an increasingly common phenomenon in the contemporary world, in both republican-liberal (or quasi-republican) and party-state political systems, restricted by political control and repression, although similar limitations in other political systems and buy-outs, for instance of the population in oil states, may also dampen this sort of problem. By and large, we see that citizens show today a disdain for professional politicians, and they also display a muted grudge towards concrete issues, primarily concerning wealth accumulation and the scandalous inequity of its distribution.

Some are prone to describe this as 'antipolitics', a politically motivated and loose idea that originates from and feeds into a huge self-interested misunderstanding: that the problems lie with citizens, not parties or the upper elements of political systems. To be sure, it is upon them to alter this situation, and they may not be as enlightened as one might wish, as well as cultivating self-interest and self-absorption. Before advancing this sort of criticism, it is however necessary to acknowledge that political systems are part and parcel of systems of rule, which count with mechanisms of persuasion, co-optation and repression, with citizens having little control over and usually being excluded from decision-making. The outcome of such crises, which drive home the fact that ordinary, anonymous citizens are basically powerless, is frequently, as people are bereft of alternatives, the personalisation of power in some saviour (or someone who appears as an avenger, demolishing the political system and snatching governmental power from politicians). In the political systems heir to authoritarian collectivism, the situation is grim too: economic performance and repression, or only repression, have become the means to forestall looming social and political unrest beyond the pious proclamation of party leaders that socialism or a harmonious society is on the making.

On the other hand, we are stuck in terms of alternatives, including how to make direct democracy a real, if partial, possibility.⁷⁷ Liberalism and republicanism, socialism and communism, even fascism: these currents of thought offered political horizons that energised agents and allowed for the contemplation of a future different from the present, better for that matter. Projects could therefore be coupled to crises and seen as a solution to them. This is hardly true today. Political systems and rulers enjoy very low legitimacy and subsist due to inertia, co-optation, performance and the sheer lack of perceived alternatives. Citizens are dissatisfied with their situation, although

a robust theory of virtue no longer dwells among us, whereas life has been privatised in the direction of liberal – and neoliberal – so-called negative freedom. Widespread malaise lingers on, as corruption sets in, in a broader republican sense, in which corruption in the narrower liberal perspective has a place too, and an atmosphere of unresolved, permanent, nagging crisis envelops contemporary modernity. The bad experience of the present – a bad lived experience indeed, more than a cognitive distortion – involves us. This is, at a rock bottom level, the lived experience of illegitimate power, power for the sake of power, without moral or ethical qualities, regardless of the developmental process represented by the recognition of conflict, concreteness and substance.⁷⁸ Politicisation has become paramount, in a strange dialectic, taking naked primacy after being denied and then exercised over the heads of citizens, with, almost paradoxically, issues coming up that have to be addressed somehow, in situations that look ever more muddled and hopeless. Despite small openings here and there, it is unclear where this will lead us.

Notes

- 1 Alan Ryan, *On Politics: A History of Political Thought: From Herodoto to the Present* (New York: Liveright, 2021), p. 579.
- 2 Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, [1958] 1998), chap. 3; John Scheid, *Religion, institutions et sociétés de la Rome antique* (Paris: Collège de France and Fayard, 2003), pp. 42–50; Peter Eich, ‘The common denominator: Late Roman imperial bureaucracy from a comparative perspective’, in Walter Scheidel (ed.), *State Power in Ancient China and Rome* (Oxford: Oxford University Press, 2015); Jed W. Atkins, *Roman Political Thought* (Cambridge: Cambridge University Press, 2018), pp. 212, 45–57, 137ff.
- 3 J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, [1975] 2016). The following are the main thinkers in this connection: Algernon Sidney, *Discourses concerning Government* (Indianapolis, IN: Liberty Fund, [1698] 1996); John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988); Jean-Jacques Rousseau, *Du Contrat social, ou principes du droit politique* (1762), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971). But the political apotheosis of this mix was surely the French Revolution and particularly the role of the Jacobins therein. For virtue, see the classical definition in Charles de Secondat de Montesquieu, *De l’Esprit des lois* (Paris: Gallimard, [1758] 1995), ‘Avertissement de l’auteur’ and Book V, chap. 3.
- 4 Robert Hazell and Bob Morris, *The Role of Monarchy in Modern Democracy: European Monarchies Compared* (London: Bloomsbury, 2020); Anthony Seldon, *The Impossible Office? The History of the British Prime Minister* (Cambridge: Cambridge University Press, 2021), chap. 7.
- 5 Cicero Romão Resende de Araujo, *A forma da república. Da constituição mista ao Estado* (São Paulo: WMF Martins Fontes, 2013), pp. xv–xvi, 1–58; Gabriele Pedullà, *Machiavelli in Tumult: The Discourses on Livy and the Origins of Modern Contractualism* (Cambridge: Cambridge University Press,

- 2018); Camila Vergara, *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* (Princeton: Princeton University Press, 2020), chaps 1–3. The latter author however neglects the rupture between the ancient world as well as the Renaissance and modernity, as is often the case with political theorists, who are thus oblivious to sociology and even historiography. Moreover, against her thesis, corruption is something derived but opposed to the underlying principles of a political form, which is false regarding the relationship between liberal republicanism and inequality, despite the tensions such a growing chasm generates.
- 6 Benjamin Constant, ‘La liberté des anciens comparée à celle des modernes’ (1819), in *Écrits politiques* (Paris: Le Livre de Poche, 1980); Isaiah Berlin, ‘Two concepts of liberty’, in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).
 - 7 Jürgen Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (Frankfurt am Main: Suhrkamp, [1962] 1990); Craig Calhoun (ed.), *Habermas and the Public Sphere* (Cambridge: MIT Press, 1992).
 - 8 Andreas Kalyvas and Ira Katznelson, *Liberal Beginnings: Making a Republic for the Moderns* (Cambridge: Cambridge University Press, 2008).
 - 9 Republics had been small and dominated by a small ruling circle, with monarchies extending over great land masses, according to Montesquieu, *op. cit.* For the representative republic, see James Madison, ‘The Federalist no. 10’ and ‘The Federalist no. 57’, in Terence Ball (ed.), *Hamilton, Madison, and Jay: The Federalist, with Letters of Brutus* (Cambridge: Cambridge University Press, [1788] 2003). Representation features already in Sidney, *op. cit.*, chap. 3.28.
 - 10 As formulated by B. Constant, *Principes de politiques* (1815), in *op. cit.*, chap. 6.
 - 11 Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton: Princeton University Press, 1977). Proto-utilitarianism is clearly present here.
 - 12 John Stuart Mill, *Considerations on Representative Government* (Cambridge: Cambridge University Press, [1861] 2010).
 - 13 This would be unthinkable for the Greeks, who stressed the (partial) universality and abstractness of citizenship, whatever the ‘form of rule’ or of ‘government’, but lacked an abstract view of ‘labour’ and, of course, of a ‘working class’. See Jean-Pierre Vernant, ‘Travail et nature dans la Grèce ancienne’ (1955), in *Mythe et pensée chez les Grecs* (Paris: La Découverte, [1985] 2005), chap. 4.
 - 14 Gaetano Mosca, *Elementi di scienza politica* (Turin: Fratelli Bocca, [1895] 1923); Vilfredo Pareto, *Trattato di sociologia generale*, vols 1–2 (Florence: G. Barbèra, [1916] 1923); Gustave Le Bon, *Psychologie des foules* (Paris: Presses Universitaires de France, [1895] 1963). Responsible for the diffusion of the ‘scientific’ approach in this regard, stressing the restricted rationality of voters, reasonably concerned at most with local issues, was Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York and London: Routledge, [1942] 1994).
 - 15 Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York: Free Press, [1911] 1949). Before him, the oligarchic character of parties was pointed out by Moisey Ostrogorski, *Democracy and the Organization of Political Parties*, vols 1–2 (London: Macmillan, 1902).
 - 16 Supporting centralism and the vanguard party, since the consciousness of the working class had to come from the outside, brought by a group of, mostly, intellectuals, professional revolutionaries – though for him workers were definitely not stupid –, see especially V. I. Lenin, *What Is to Be Done? Burning Questions of Our Movement* (1902), in *Collected Works*, vol. 5 (Moscow: Progress, 1960);

- Idem, *One Step forward, Two Steps Back: The Crisis in our Movement*, in *Collected Works*, vol. 7 (Moscow: Progress, 1961). Against him originally, but changing his views since 1917, see Leon Trotsky, *Our Political Tasks* (London: New Park, [1904] 1983); against Lenin and resolutely committed to participation, Rosa Luxemburg, 'Organisationsfrage der russischen Sozialdemokratie' (1904), in *Politischen Schriften III* (Frankfurt am Main: Europäische Verlagsanstalt, 1969). For anarchism, see Mikail Bakunin, *Statism and Anarchy* (Cambridge: Cambridge University Press, [1983] 1990), pp. 538–541.
- 17 This is true whether we understand negative freedom as non-interference or, even more so, non-domination. See, respectively, Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998); Philip Petit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999).
 - 18 This is what we see with Stalin's attempt to implement freer elections in the 1930s, with the Communist Party and independent candidates, from which he recoiled, pretty scared by the lurking rejection of the revolution. Some real debate around the 1936 Constitution did take place, though. See J. Arch Getty, 'State and society under Stalin: Constitutions and elections in the 1930s', *Slavic Review*, vol. 50 (1991): 18–35; Samantha Lomb, *Stalin's Constitution: Soviet Participatory Politics and the Discussion of the 1936 Draft Constitution* (New York: Routledge, 2018).
 - 19 The principal classical articulation of the 'forms of rule' or 'government' is found in Aristotle, *Politics and The Constitution of Athens* (Cambridge: Cambridge University Press, 1996), pp. 95–96. The medieval world concentrated on monarchy, while Italy was ruled mainly by oligarchies. Whether the Germanic notion of monarchy played a role therein is a topic for specialists.
 - 20 In medieval times, the lone author to support the democratic form of rule was Marsilius of Padua, *The Defender of the Peace* (Cambridge: Cambridge University Press, [1324] 2005). Although eventually with some ambiguity, democracy was also preferred quite lonely by Spinoza, *Theological-Political Treatise*, chaps 16–17, and, apparently de-emphasised, in Idem, *Political Treatise* (1677), both in *Complete Works* (Indiana, IN: Hackett, 2002). The translation of *vulgus* as 'mob' and of *plebs* as 'common people' in the latter (chap. 7.27, pp. 719–720) obscures the proper meaning of a critical passage. For Rousseau, democracy was practically problematic (due to size, executive power and human fallibility) and suited for angels rather than men. He was sympathetic to elective aristocracies and thought mixed governments were inevitable. Moreover, the 'general will' leaves little room for disagreement and argument, with magistrates duly controlling assemblies. Rousseau, *op. cit.*; *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (1755), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971), 'Dedicace'. At the time of the American and the French revolutions, democracy was supported chiefly by Thomas Paine, 'Common sense' (1776) and *The Rights of Men* (1791), in *Paine: Political Writings* (Cambridge: Cambridge University Press, 2000); Marie Jean Nicolas de Caritat Marquis de Condorcet, 'Exposition des principes et des motifs du plan de Constitution' (1793), in *Œuvres complètes de Condorcet*, vol. 18 (Brunswick: Vieg and Paris: Henrichs, 1804), besides his electoral writings. Relevant to a proper understanding of this trajectory, especially for controverted or lesser known authors, are Andreas Kalyvas, 'Rethinking "modern" democracy: Political modernity and constituent power', in Gerard Rosich and Peter Wagner (eds), *The Trouble with Democracy: Political Democracy in the 21st Century* (Edinburgh: Edinburgh University Press, 2016); Étienne Balibar, *Spinoza et la politique* (Paris: Presses Universitaires de France, 1985); Marilena Chauí, *Política em Espinosa* (São Paulo: Companhia das

- Letras, 2003); Martin Saar, *Die Immanenz der Macht. Politische Theorie nach Spinoza* (Frankfurt am Main: Suhrkamp, 2013); Nadia Urbinati, 'Condorcet's democratic theory of representative government', *European Journal of Political Theory*, vol. 3 (2004): 53–75. All the 'early' modern writers several times already touched upon in this book have discussed the forms of rule/government. The first full assessment of (liberal) democracy in practice, more socially in some part than political, was Alexis de Tocqueville, *De la Democratie en Amérique*, vols 1-2 (Paris: Gallimard [1835 and 1840] 1951).
- 21 Mill, *op. cit.*
 - 22 For good, liberal minded, accounts of the workings of democracy – or 'polyarchy' as he calls it in some of his books –, see Robert Dahl, *Polyarchy: Participation and Opposition*; Idem, *Democracy and its Critics* (New Haven: Yale University Press, 1989).
 - 23 Achin Vanaik, *The Painful Transition: Bourgeois Democracy in India* (London: Verso, 1990); Idem, *The Furies of Indian Communalism: Religion, Modernity and Secularization* (London: Verso, 1997). For a more retrospectively pessimistic view of independence, stressing the idea of 'passive revolution', see Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse* (Minneapolis: Minnesota University Press, 1986). For a critique of this concept, see Chapter 12 in this book.
 - 24 This was clear in the North American founding fathers, explicitly in the dream of a 'natural aristocracy' by Thomas Jefferson, 'Thomas Jefferson to John Adams', (20/10/1813), in Lester J. Cappon (ed.), *The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams*, vol. 1 (Chapel Hill: University of North Carolina Press, 1959), pp. 387–392. He drew directly upon the neo-Roman republican James Harrington, *The Commonwealth of Oceana* (1656), in *The Common Wealth of Oceana and A System of Politics* (Cambridge: Cambridge University Press, 1992).
 - 25 Charles Tilly, *Democracy* (Cambridge: Cambridge University Press, 2003).
 - 26 With his theory of the 'iron law of oligarchy', proposed with direct reference to political parties, as he gathered from the German Social Democratic Party (SPD), and applicable to many other organisations, see Michels, *op. cit.* For those two types of politicians, see Max Weber, 'Politik als Beruf' (1919), in *Gesammelte politische Schriften* (Tübingen: J. C. B. Mohr [Paul Siebec] 1988). For professionalisation, see Jens Borchert and Jürgen Zeiss (eds), *The Political Class in Advanced Democracies: A Comparative Handbook* (Oxford: Oxford University Press, 2003). With the opposite perspective, stressing the role of mass political participation, but aware of the lurking dangers, at the height of the strength of the Italian Communist Party (PCI), see Pietro Ingrao, *Masse e potere* (Roma: Editori Rinuniti, 1977), pp. 39–46.
 - 27 Michel Crozier, Samuel P. Huntington and Joji Watanuki, *The Crisis of Democracy* (New York: New York University Press, 1975); Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: The University of Chicago Press, [1960] 1978).
 - 28 The literature on this topic is burgeoning. See Markus Metz and Georg Seeßlen, *Der Rechtsruck. Skizzen zu einer Theorie des politischen Kulturwandels* (Berlin: Bertz+ Fischer, 2018); Luc Boltanski and Armand Esquerre, *Vers l'Extrême. Extension des domaines de la droit* (Paris: Dohrs, 2014); Lise Esther Herman and James Muldoon (eds), *Trumping the Mainstream: The Conquest* (London and New York: Routledge, 2018); J. M. Domingues, 'Extreme-right, democracy and oligarchy: Brazil in the global context', *Revista eurolatinoamericana de análisis social y político*, vol. 2 (2021): 101–116. I have already pointed out why I reject the concept of 'populism', in the introduction of this book.

- 29 For the Marxist classical assessment, see Karl Marx, 'The Civil War in France' (1871), in K. Marx and Friedrich Engels, *Collected Works*, 1870–1871 (London: Lawrence & Wishart, 1986); for the largely anarchist adopted proposal that underpin the original attempt at radical democracy, see Pierre J. Proudhon, 'Du principe de Fédération', in *Du Principe Fédératif et de la nécessité de reconstituer le parti de la révolution* (Paris: E. Dentu, 1863).
- 30 For instance, Carole Pateman, *Participatory Democracy* (Cambridge: Cambridge University Press, 1970).
- 31 Schumpeter, *op. cit.*
- 32 Together they comprise what may be called 'hegemony', such as conceptualised by Antonio Gramsci, *Quaderni del carcere* (Turin: Einaudi, [1929–35] 2001), *passim*.
- 33 This has frequently, though not always, applied to the United States. Earl Latham, 'The Supreme Court as a political institution', *Minnesota Law Review*, vol. 31 (1947): 205–231. More recently, with a global reach and a negative assessment, Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge and London: Harvard University Press, 2004). For a more balanced view, see César Rodríguez Garavito, *La globalización del Estado de derecho. El neoconstitucionalismo, el neoliberalismo y la transformación institucional en América Latina* (Bogotá: Universidad de los Andes, 2008). As part of the political liberal establishment and also militant against an attempted military coup d'état, promiscuity has unfortunately become overwhelming and blatant in Brazil, a good textbook case: Fabrício Castagna Lunardi, *O STF na política e a política no STF* (São Paulo: Saraiva Educação, 2023).
- 34 Guillermo O'Donnell, *Modernization and Bureaucratic Authoritarianism: Studies in South American Politics* (Berkeley: University of California, Berkeley, Institute of International Studies, 1973); Idem, 1966–1973, *El Estado burocrático-autoritario. Triunfos, derrotas y crisis* (Buenos Aires: Belgrano, 1982).
- 35 Shmuel N. Eisenstadt and Luis Roniger, *Patrons, Clients and Friends: Interpersonal Relations and the Structure of Trust in Society* (Cambridge: Cambridge University Press, 1984), pp. 166–168.
- 36 For clientelism, patronage and patrimonialism in Putin's regime, see Pavel Skigin, 'Neopatrimonialism: The Russian regime through a Weberian lens', in Mykhailo Minakov and Alexander Etkind (eds), *Ideology After Union: Political Doctrines, Discourses, and Debates in Post-Soviet Societies* (New York: Columbia University Press, 2020); in contradistinction, for Latin America and the capillarity of clientelism, though patrimonialism actually affects only ruling circles, see G. O'Donnell, 'Illusions about consolidation', *Journal of Democracy*, vol. 57 (1996): 34–51.
- 37 Gramsci, *op. cit.*, especially vol. 1, p. 662; vol. 2, pp. 734, 763–764, 800–801, 865–867, 1030–1031. He spoke of the 'enlarged state', with a very innovative perspective within Marxism. Closer to democratic liberalism or republicanism is J. Habermas, *Fakzität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992), chap. 8. See also Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge and London: MIT Press, 1992).
- 38 David Easton, *The Political System: An Inquiry into the State of Political Science* (New York: Alfred A. Knopf, [1953] 1971), pp. 129ff; Idem, *A Framework for Political Analysis* (Englewood Cliffs: Prentice-Hall, 1965), pp. 50, 108–132.
- 39 J. M. Domingues, 'Public opinion and collective subjectivity: A conceptual approach', *Distinktion: Journal of Social Theory*, vol. 19 (2018): 249–267;

- Manuel Castells, *Communication Power* (Oxford: Oxford University Press, [2009] 2013); Rachel K. Gibson, *When the Nerds Go Marching In: Moved from the Margins to the Mainstream of Political Campaigns* (New York: Oxford University Press, 2020); Roberto J. González, ‘Hacking the citizenry? Personality profiling, “big data” and the election of Donald Trump’, *Anthropology Today*, vol. 33 (2017): 9–12; Vito Laterza, ‘Could Cambridge Analytica have delivered Donald Trump’s 2016 Presidential victory? An anthropologist’s look at big data and political campaign’, *Public Anthropologist*, vol. 3 (2021): 119–147; Pablo Stefanoni, *¿La rebeldía se volvió de derecha?* (Buenos Aires: Siglo XXI, 2021).
- 40 René Zavaleta Mercado, ‘Cuatro conceptos de la democracia’ (1981), in *El Estado en América Latina* (Cochabamba and La Paz: Los Amigos del Libro, 1990).
- 41 Hobart Spalding Jr., *Organized Labor in Latin America* (New York: Harper & Row, 1977); Antonio Costa Pinto (ed.), *Corporatism and Fascism: The Corporatist Wave in Europe* (New York and London: Routledge, 2017); Philippe C. Schmitter, ‘Still the century of Corporatism?’ (1974) and ‘Modes of interest intermediation and models of social change in Western Europe’ (1977), in P. C. Schmitter and Gerhard Lehmbruch (eds), *Trends towards Corporatist Intermediation* (Beverly Hills and London: Sage, 1979).
- 42 For this subject, which is still underresearched, see Grant McConnell, *Private Power & American Democracy* (New York: Knopf, 1966); Gary Andres, *Lobbying Reconsidered: Politics under the Influence* (New York and London: Routledge, 2008); Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus and Giroux, 2014), pp. 479–481.
- 43 Ferenc Fehér, Agnes Heller and Györg Márkus, *Dictatorship over Needs: An Analysis of Soviet Societies* (New York: Saint Martin’s Press, 1983), chaps 5–6; János Kornai, *The Socialist System: The Political Economy of Socialism* (Oxford: Clarendon, 1992), pp. 33–40; Harold Gordon Skilling and Franklyn Griffiths, *Interest Groups in Soviet Politics* (Princeton: Princeton University Press, 1971); Jerry F. Hough, *The Soviet Union and Social Science Theory* (Cambridge and London: Harvard University Press, 1977); Harding, *op. cit.*; Donna Bahry and Brian D. Silver, ‘Soviet citizen participation on the eve of democratization’, *American Political Science Review*, vol. 84 (1990): 821–847. Benedict J. Tria Kerkvliet, *The Power of Everyday Politics: How Vietnamese Peasants Transformed National Policy* (Ithaca and London: Cornell University Press, 2005); Garrick and Bennett, “‘Xi Jinping Thought’: Realisation of the Chinese dream of national rejuvenation?”; Antoni Kapcia, *A Short History of Revolutionary Cuba: Revolution, Power, Authority and the State from 1959 to the Present Day* (London: Bloomsbury, 2021), especially chap. 10.
- 44 Robert O. Paxton, *The Anatomy of Fascism* (New York: Alfred A. Knopf, 2004); Franz Z. Neumann, *Behemoth: The Structure and Practice of National Socialism* (Chicago: Ivan R. Dee, [1942, 1944] 2009). Although there really were, up to a point, elections under Italian Fascism, this was not at all the core of its functioning. ‘Civil society’ and hegemony were surely important in some contexts for fascism, yet it is incorrect to call it ‘authoritarian democracy’ just because that is how they saw their regime, especially in Italy, or because it can be seen as a ‘political formula’ that implies ‘legitimacy and sovereignty’, as suggested by Dylan Riley, *The Civic Foundations of Fascism in Europe: Italy, Spain, and Romania, 1870–1945* (London and New York: Verso, [2010] 2019), pp. 3–4, 55.
- 45 Carl J. Friedrich and Zbigniew Brzezinski, *Totalitarian Dictatorship and Autocracy* (New York: Praeger, [1956] 1963); Hannah Arendt, *The Origins*

- of *Totalitarianism* (San Diego, New York and London: Harvest/HJB, [1951] 1973); Raymond Aron, *Démocratie et totalitarisme* (Paris: Gallimard, [1965] 2017). For a critique, see Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985).
- 46 Weber, op. cit.; Adam Przeworski, *Crisis of Democracy* (Cambridge: Cambridge University Press, 2020), pp. 16, 172; more specifically regarding political parties, Angelo Panebianco, *Political Parties: Organization and Power* (Cambridge: Cambridge University Press, [1982] 1988), pp. 48–49, 59–62. He however wrongly tends to make this sort of tough-minded realism absolute.
- 47 For insightful, though unilateral and exaggerated views, J. Habermas, *Theorie des kommunikativen Handelns*, vol. 2 (Frankfurt am Main: Suhrkamp, [1981] 1988), chap. 7; of N. Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: The University of Chicago Press, 2006), particularly chap. 1.
- 48 For most of them, including some bibliographical discussion, see J. M. Domingues, *Latin America and Contemporary Modernity: A Sociological Interpretation* (New York and London: Routledge, 2008), chap. 3.
- 49 The Huguenots were particularly important in this move, after their massacre by the substantively, that is Catholic, oriented Absolutist King of France. See Q. Skinner, *The Foundations of Modern Political Thought*, vol. 2. *The Age of Reformation* (Cambridge: Cambridge University Press, 1978), chap. 8. See in the already fully constituted modernity, Tocqueville, op. cit., vol. 1, Part II, chaps 7–8.
- 50 The great theoretician of pluralism concerning political systems is Dahl, op. cit. See also, with a more perpendicular and particularistic perspective, Iris M. Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, [1990] 2011). For the recognition of the problem but dismissal of particularised rights, see J. Habermas, ‘Kampf um Anerkennung in demokratischen Rechtsstaat’ (1993), in *Die Einbeziehung des Anderen* (Frankfurt am Main: Suhrkamp, 1996).
- 51 The direct and the more indirect relation between classes and the state are found, respectively, in Ralph Miliband, *The State in Capitalist Society* (London: Weidenfeld & Nicolson, 1969), chap. 2; Nicos Poulantzas, *L’Etat, le pouvoir, le socialisme* (Paris: Presses Universitaires de France, 1978), pp. 139ff; and, more orthodox, Idem, *Pouvoir politique et classes sociales*, vols 1–2 (Paris: Maspero, 1968). Bob Jessop, *State Power* (Cambridge: Polity, 2008) radicalises Poulantzas’ idea that the state neither directly responds to social classes nor is immediately occupied by them. He almost dissolves the link entirely. Other further standpoints within the Marxist tradition imply that the economy – capitalist accumulation imperatives indeed – above all limits and conditions the moves of politicians and state officials; the other approach sees the state ‘form’ as a derivation from economic processes and forms. See Claus Offe, ‘Klassenherrschaft und politische System. Zur Selektivität politischer Institutionen’ (1972), in *Strukturprobleme des kapitalistischen Staates* (Frankfurt am Main: Suhrkamp, 1973); Idem, ‘Theses on the theory of the state’, in *Contradictions of the Welfare State* (Cambridge, MA: MIT Press, 1986); Fred Block, ‘The ruling class does not rule’, *Socialist Revolution*, vol. 33 (1977): 7–28; Joachim Hirsch, *Materialistische Staatstheorie. Transformationsprozesse des kapitalistischen Staatensystems* (Hamburg: VAS, 2005), chap. 1. Block is the more detailed author concerning what he sees as the *indirect* links between the state and the social classes. Embryonic insights about the difference between the state and the political stratum (*ceto*) (as well as about possible developmental laws of the political and political cycles) appear in the neo-Marxist reflections of Mario Tronti, *Su’ll*

- autonomia del politico* (Milan: Feltrinelli, 1997). For the original dictum, see Karl Marx and Friedrich Engels, *Manifest der kommunistischen Partei* (1848), in *Werke*, vol. 4 (Berlin: Dietz, 1978).
- 52 Michael Mann, *The Sources of Social Power*, vol. 2. The Rise of Classes and Nation-States, 1760-1914 (Cambridge: Cambridge University Press, 1993), chap. 3.
 - 53 For a feminist view, see Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), chap. 7. More generally, Domingues, *Latin America and Contemporary Modernity*, Part III. The political dimension is gendered, racialised, class-based, ethnicised, etc. These are relations of power between collectivities, usually deeply institutionalised, yet do not configure 'structural' phenomena (they were not structural for Marx either, instead he always spoke of social relations), implying imaginary elements and inequalities.
 - 54 The literature on political parties is huge, but some works are classical: Michels, *op. cit.*; Duverger, *Les Parties politiques*; Giovanni Sartori, *Party and Party Systems: A Framework for Analysis* (Cambridge: Cambridge University Press, 1976); Panebianco, *op. cit.* Duverger had formerly stressed the model of the 'mass party', while Panebianco later revised Michels' thesis in terms of a trend rather than an inevitability and pointed to a new model of party, the 'electoral-professional', with 'dominant coalitions' (a weaker concept for oligarchies). See also A. Gramsci, 'Noterelle sulla politica del Machiavelli', in *op. cit.*, vol. 3. For closer links between parties and state, as well as 'party collusion', see Richard S. Katz and Peter Mair, 'Changing models of party organization and party democracy: The emergence of the cartel party', *Party Politics*, vol. 1 (1995): 5-28. More recently, see Pietro Ignazi, *Party and Democracy: The Uneven Road to Party Legitimacy* (Oxford: Oxford University Press, 2017), especially regarding growing citizen disaffection with them.
 - 55 Pippa Norris (ed.), *Critical Citizens: Global Support for Democratic Governance* (Oxford: Oxford University Press, 1999).
 - 56 Douglas Rae, *The Political Consequences of Electoral Laws* (New Haven: Yale University Press, [1967] 1971); Otto Kirchheimer, 'The transformation of the Western European party systems', in Joseph LaPalombara and Myron Weiner (eds), *Political Parties and Political Development* (Princeton: Princeton University Press, 1966).
 - 57 Ian McAllister, 'The personalization of politics', in Russell J. Dalton and Hans-Dieter Klingemann (eds), *The Oxford Handbook of Political Behaviour* (Oxford: Oxford University Press, 2009); Amanda Bittner, *Platform or Personality? The Role of Party Leaders in Elections* (Oxford: Oxford University Press, 2011). She speaks of 'competence' regarding conservatives and 'character' as to more left-oriented politics in terms of voters' expectations and criteria of evaluation.
 - 58 Antoine Garapon, *Le Gardien des promesses. Justice et démocratie* (Paris: Odile Jacob, 1996).
 - 59 Skilling and Griffiths, *op. cit.*; Hough, *op. cit.*, chap. 2.
 - 60 Alain Badiou, *L'Hypothèse communiste* (Paris: Lignes, 2009); Richard Curt Kraus, *The Cultural Revolution: A Very Short Introduction* (New York: Oxford University Press, 2012).
 - 61 In this regard, despite the presence of 'political associations' and 'politics' (with its 'vocation' and parties, fighting for 'power' as well as 'power' – *Macht* – and violence – *Gewalt*) in some of his texts, Weber never presented an elaborated concept of politics, which was either very general and loose or remained a residual category in his work, moreover never well-articulated to domination. See in particular Weber, *op. cit.*; Idem, *Wirtschaft und Gesellschaft. Grundriss der verstehende Soziologie* (Tübingen: J. C. B. Mohr, [Paul Siebeck], [1921-22] 1976),

- pp. 27–28, 613–618, 631–633. In Marx the problem was also present, since he conflated state and politics, in an especially clear way in his early texts, despite his concern with revolution and the societal organisation of the working class, as well as his early, Jacobin influenced, *politicism*. This is confirmed, contrary to his intentions, in Miguel Abensour, *La Démocratie contre l'Etat. Marx et le moment machiavélien* (Paris: Le Félin, [2004] 2012). See also Patrice Higonnet, 'Terror, trauma and the "young Marx" explanation of Jacobin politics', *Past and Present*, vol. 191 (2006): 121–164. With Lenin, this was taken to extremes, though it is also arguable whether he too had a proper conceptualisation of the political dimension – especially in view of later Soviet developments.
- 62 Pace Bruno Latour, 'Esquisse d'un parlement des choses' (1994), *Ecologie & politique*, no. 56, (2014): 47–64; *Politiques de la nature. Comment faire entrer les sciences dans démocratie* (Paris: La Découverte, 2004). The fuzzy, all-collapsing notion of 'actants' introduced in Latour's former works is unable to do the amount of work he expects from it. Curiously, his demand of going beyond the supposedly 'purification chambers' of science and politics, aided by technocracy, smacks of updated Saint-Simonianism (of which he is in fact partly aware). For a subsystem of politics related to science, see Ulrich Beck, *Risiko Gesellschaft. Auf dem Weg in eine andere Moderne* (Frankfurt am Main: Suhrkamp, 1986).
- 63 N. Poulantzas, 'Les transformations actuelles de l'Etat, la crise politique et la crise de l'Etat', in N. Poulantzas (ed.), *La Crise de l'Etat* (Paris: Presses Universitaires de France, 1976), pp. 25–30.
- 64 Unsurpassed in K. Marx, *Der achtzehnte Brumaire des Louis Bonaparte* (1852), in K. Marx and F. Engels, *Werke*, vol. 8 (Berlin: Dietz, 1960).
- 65 V. I. Lenin, *The Collapse of the Second International* (1915), in *Collected Works*, vol. 21 (Moscow: Progress, 1964), chap. 2.
- 66 Gino Germani, *Política y sociedad en una época de transición* (Buenos Aires: Paidós, 1965); S. P. Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, [1968] 2006). See also S. N. Eisenstadt, *Modernization: Protest and Change* (Englewood Cliffs: Prentice-Hall, 1966).
- 67 Jeffrey C. Alexander, *What Makes a Social Crisis: The Societalization of Social Problems* (Cambridge: Polity, 2019).
- 68 Przeworski, *op. cit.*, pp. 11–12; J. M. Domingues, 'The republic in crisis and future possibilities', *Ciência e saúde coletiva*, vol. 22 (2017): 1747–1758; Idem, *Esquerda: crise e futuro* (Rio de Janeiro: Mauad, 2017); Idem, 'Extreme-right, democracy and oligarchy: Brazil in the global context'; Breno Bringel and Geoffrey Pleyers, 'Junho de 2013... dois anos depois', *Nueva Sociedad*, special issue (2015): 4–17.
- 69 Marx, *op. cit.* For how this impacted the communist debate on fascism, see N. Poulantzas, *Fascisme et dictature* (Paris: Seuil and Maspero, [1970] 1974).
- 70 Wanderley Guilherme dos Santos, *O cálculo do conflito. Estabilidade e crise na política brasileira* (Belo Horizonte: Editora UFMG, 2003), p. 22 and *passim*.
- 71 This is surely one the events of the last century that generated the most printed pages. But see Edgar Morin, Claude Lefort and Cornelius Castoriadis, *La Brèche* (Paris: Fayard, [1968] 2008); Eric Hobsbawm, 'May 1968' (1969), in *Revolutionaries* (London: Phoenix, [1973] 1994); Michel Winock, *La Fièvre hexagonale. Les grandes crises politiques de 1871 à 1968* (Paris: Calmman-Lévy, [1986] 1987), chap. 8; Serge Bernstein and Pierre Milza, *Histoire de la France au XXe siècle*. vol. 4: 1958–1974 (Paris: Complexe, [1992] 1999), pp. 79–80ff. The 1968 crisis started with students, then massively involved the working class and was further politicised, until de Gaulle managed a counterattack, putting an end to the situation.

- 72 Nicos Mouzelis, 'Evolutionary democracy: Talcott Parsons and the collapse of Eastern European regimes', *Theory, Culture & Society*, vol. 19 (1993): 145–152.
- 73 J. Habermas, *Legitimationsprobleme in Spätkapitalismus* (Frankfurt am Main: Suhrkamp, 1973).
- 74 Dingxin Zhao, *The Power of Tiananmen: State-Society Relations and the 1989 Beijing Student Movement* (Chicago: The University of Chicago Press, 2002); Marc Blecher, *China Against the Tides: Restructuring through Revolution, Radicalism, and Reform* (London and New York: Continuum, [1997] 2003), chap. 4.
- 75 Arthur Rosenberg, *Geschichte der Weimarer Republik* (Frankfurt am Main: Europäische Verlagsanstalt, [1955] 1961); Heinrich August Winkler, *Weimar 1918–1933. Die Geschichte der ersten deutschen Demokratie* (Munich: C. H. Beck, [1993] 2005); Mario Rainer Lepsius, *Demokratie in Deutschland. Soziologische-historische Konstellationenanalysen. Ausgewählte Aufsätze* (Göttingen: Vandenhoeck & Ruprecht, 1993). Similarly to what happens with the May 1968 crisis, social scientists mostly shy away from Weimar, described mainly by historians. Perhaps the absence of a concept of crisis is one of the problems behind this coyness.
- 76 Winock, *op. cit.*, pp. 381–84; Michel Dobry, *Sociologie des crises politiques* (Paris: Presses de la Fondation National de Science Politiques, [1986] 1992), pp. 21–22 and chaps 3–4.
- 77 N. Urbinati, *Democrazia in diretta. Le nuove sfide alla rappresentanza* (Milan: Feltrinelli, 2013).
- 78 For these categories, see Reinhart Koselleck, "'Erfahrungsraum" und "Erwartungshorizont" – zwei historische Kategorien' (1977), in *Vergangene Zukunft. Zur Semantik geschichtlicher Zeit* (Frankfurt am Main: Suhrkamp, 1988); Idem, *Kritik und Krise* (Frankfurt am Main: Suhrkamp, [1959] 1997). We must not accept his early Schmittian authoritarian yearnings nor buy into his conservative and skewed denunciation of the Enlightenment. Actually, we need to invert the relations of causality he postulated. See Klaus Eder, *Geschichte als Lernprozess. Zur Pathogenese politischer Modernität in Deutschland* (Frankfurt am Main: Suhrkamp, 1985). Pathology is not, at any rate, a good concept to discuss social life.

7

STATE POWER

7.1 The coronavirus/COVID-19 pandemic and the fate of neoliberalism

At the beginning of 2020, as the coronavirus pandemic and its connected disease COVID-19 ravaged the world, coping with the sanitary emergency that befell humanity became a critical question. What was once a *risk* – since the possibility of a devastating pandemic had been looming large for some years, according to experts – became a concrete *threat*, engulfing all countries and wreaking havoc everywhere, above all taking lives from a great many people. The state quickly moved to the centre of the efforts to tackle the massive crisis. It then displayed its impressive arsenal in ways that just a few months before would elicit censure from many quarters, with makeshift but effective answers. This astounding move would have a long-lasting impact.

The state has thus flexed its muscles in many directions. We have seen the state administrate social, in particular economic life, implying logistics, planning and the allocation of resources; a sort of emergency Keynesianism was implemented, in order to keep markets afloat, guarantee individual survival and collective purchase power, as well as the continuity of individual businesses. That the state could do much to deal with the economy and its problems had already been clearly shown during the 2008 financial crisis and its aftermath, with governments bailing out banks and other companies.¹ Afterwards, buying vaccines against the coronavirus and distributing them became an imperative overall carried out fast and effectively, more efficiently where previous vaccination systems were already in place. We have seen the state push people to take responsibility for their behaviour, protecting themselves and others, to at least dampen the virus outbreak,

hence to some extent shaping their subjectivity; it also took serious coercive measures to make sure that people would comply with the interruption of social contact that preventing contagion required. Enforcing this demanded a vigilance of people's behaviour in large scale, by different and in some cases technologically advanced means. Law was resorted to, as discussed in Chapters 1 and 2, to lend state measures constitutional frameworks according to what prevailed in each country. Thus far, we have not seen significant changes in national taxation other than in the United States and concerning big global companies, but they lurk insofar as expenditure grew during the coronavirus/COVID-19 crisis. We must expect a move in this regard, whether or not expenditure stays high and cutbacks in diverse areas are introduced.²

In the pandemic political and administrative process, we were therefore witness to what might be called a positive kind of 'biopolitics', to allude to Foucault's concept. Vigilance was then its core, connecting it, as we have seen in the chapters mentioned above, to the security and preservation of life.³ In what follows, I shall not directly engage with this now widespread concept. Instead, I shall handle the different aspects it evinces according to different state capabilities. The deployment of the state's various means of intervening in society and mobilising its apparatus to achieve those goals was uneven and differentiated globally. Some states bet more on individual responsibility, while others were keen on more – or very – repressive measures. Watching over and controlling citizens was crucial in some settings. Economic intervention varied according to material prowess and technological strength. How to get vaccines and distribute them became a huge problem as well, implying a full range of management, technological and financial issues. A new world seemed to be in the making, for better or worse, although some were sceptical about more far-reaching changes. Just the same, this seemed to confirm what many already suspected: neoliberalism was as good as dead. Or was it?

Part of the problem is that it is unclear what neoliberalism has meant for state power. The closer we look, the more bewildering the picture appears. Neoliberals made their reputation and organised themselves largely by demanding that the state be rolled back. It had grown excessively and was oppressive, whereas people's freedom suffered under its unwarranted domination of social life, they argued. In order to reverse course, the market should resume its proper and dominant place. Governments ought to cut back and shrink the state, 'deregulate' the economy and skirt social benefits.⁴ The New Left advanced similar criticisms, related to state domination and freedom, not expenditure, since the state was invading people's lives and taking decisions against them, following its own administrative logic and imperatives.⁵ Within the left many rejected such criticisms. Eventually, they sided with a more statist view,⁶ with in some, other moderate left-of-the-centre

perspectives, this statism having been in good measure colonised by neoliberalism – especially as put forward by the today discredited so-called Third Way.⁷ Other more critical currents reconsidered much of its previous animosity, yearning to return to a strong Welfare State and state control of the economy. It eventually became clear that the neoliberal ‘Washington Consensus’, which steered economic policy across the world, especially in the periphery and the semiperiphery, yielded meagre results, leading to what may be called the ‘Washington Confusion’, even before the massive 2008 financial crisis.⁸

Of course, this is true in countries where liberalism (and capitalism) prevailed, which became a global circumstance after the debacle of the Soviet Union and authoritarian collectivism. Even where the rulers of ‘real socialism’ managed to transit smoothly to capitalism and maintain their political system more or less intact, similar issues came to the fore, with some of them clinging to previous schemes. When these prevailed absolutely, the matter was simple, theoretically, irrespective of its ineffectiveness in practice: the state controlled everything; consequently, its strength vis-à-vis society was overwhelming, steadily growing as society developed. Inadvertently, it stifled social development to such an extent that the whole social system fell apart.⁹ The return to modernity and the reintroduction of the division between the state and the societal side of the modern divide became seemingly inevitable and was pushed forward by dominant political agents. While the state has clung to its centrality and prerogatives in these reconverted authoritarian collectivist remnants, as important as in particular China, far less reformed in Cuba and North Korea, the actual evolution of the state where liberalism prevailed proved to be more complicated than its critics and apologists anticipated. The liberal difficulty in coming to terms with state power such as it really exists comes to the fore here once again, with neoliberalism incapable, at different junctures, of carrying out its programme and promises, although, as regards the rich and powerful, it has not hesitated to introduce radically favourable changes concerning fiscal policies.

Nowhere did state expenditure go down with neoliberalism, especially in economically advanced countries, but also in China; taxes were not overall slashed either, with debt at some point, in particular, being de-escalated.¹⁰ Criticising the state’s growth was easy; recognising and conceptualising how it operated and what neoliberals sustainably wanted to do with it was another matter. They, therefore, have largely lived in convenient denial, while authoritarian collectivist rulers saw no reason to feel abashed. Where states spend their resources and from whom and how they extract them has, on the other hand, changed.¹¹ Corporations were left off the hook, and in particular tax havens multiplied, implying a drain of resources from the state, damaging its capacity to intervene and especially expand social policies more strongly. These issues may be revised in the next years, including a

recently enacted global flat rate of taxation, introduced to prevent tax planning and tax avoidance, despite its numerous loopholes, if efforts to block changes in this area are not successful (more disperse and nationally based measures having been taken for a decade now). That notwithstanding, as argued above in what refers to the coronavirus/COVID-19 pandemic, the state remains a potent agent, a paramount ‘power container’.¹² This has only become more accentuated as modernity develops. Whether, in which direction and how the state chooses, partly in a concerted way, partly according to more decentred policies, to intervene nevertheless varies a lot, and so do the concentration and the aims of its expenses. Its links to different social agents are also crucial, and there is no direct relation, rather the opposite to a large extent, between its actual power and an exclusivist centralisation in its own apparatus.

To deepen our understanding of these problems, let us now examine with analytical detail, beyond the empirical description I have provided above of the coronavirus/COVID-19 crisis and the state response, what will be called the *capabilities* of the state. I will also articulate the concept of *total state power* and analyse its continuous expansion in modernity as a developmental trend, beyond and above the differentiation between modern (liberal, but also fascist) and postmodern (authoritarian collectivist) states. We cannot speak of a process of monopolisation of power. Yet we can unmistakably discern an enduring *strengthening of the state*, which is not the same as the concentration of power in its apparatuses. The *enhancement of state power*, a connected and convergent process, not to be conflated with its strengthening, will also be discussed. The *concentration of power* in a few sites in social life, the state standing out among them, will then be tackled, with their entwinement brought to the fore. Last but not least, we will analyse the *bureaucratic thickening of the state*, which has been accompanied of late by *digitalisation* in large scale, which is increasingly traversing all state operations and its capabilities and capacity to influence social life. The object of the analysis is therefore the evolution of state *domination* at a very general theoretical level.

Modern states, whose essential features we have examined in Chapters 2 to 5, profoundly differ from other states that populated the globe before their emergence. First of all, they evince, especially as they developed, a capacity to penetrate its ‘society’ that no other states had ever had. The state of authoritarian collectivism took this further. Because of that, the modern state is, at the same time, more closely bound to its society. Almost paradoxically, it is, conversely, more independent from it, especially due to the strict legal separation that has come about between public and private (despite sometimes the somewhat fuzzy contours of the former and its location partly beyond the state, especially in what regards the ‘public sphere’ of debate). Such separation accompanies the modern state’s formal insulation

and to a large extent real separation from societal collectivities, social classes especially, however profound the influence they exert upon and within its apparatuses. The processes we shall examine in what follows are in particular premised upon these basic imaginary and institutional demarcations.¹³

7.2 Elements and overall state power

7.2.1 Capabilities

We can break down state power analytically into six *capabilities* that allow it to intervene in social life at large. These are: *taxation*, *managing*, *moulding*, *surveillance*, *coercion* and *materialisation*. They all rest on the general bureaucratisation of the state, such as analysed in former chapters, at the centre of which we find the instrumental adaptation of means to ends and the impersonality of relations in administrative settings, notwithstanding the increasing importance of substantive – that is to say, *concrete* – goals (although more abstract ones, especially related to the law, may be at stake too). These capabilities have not fundamentally changed from liberal modernity or even fascism to authoritarian collectivism, save for the decreased importance or ultimate irrelevance of taxation in the latter. All specific capabilities depend on a *legal meta-capability*, although there are differences regarding modernity and liberalism on the one hand and postmodern collective authoritarianism on the other. Consisting of a great novelty, digitalisation, connected to the internet or whatever may eventually succeed it, has become of the utmost importance for the exercise of all state capabilities, allowing for greater control, prediction and influence through coding and algorithms. Digitalisation's exponential development implies the possibility of continuous and fine adjustments, with Artificial Intelligence increasingly buttressing its deployment.¹⁴

It should go without saying that the successful deployment of these capabilities is contingent, dependent upon projects crafted in the political system and the alliances with agents within and outside the fold of the state, as well as due to the relative opacity of society for the state and the always uncertain implementation of those projects, from which multiple unintended consequences derive. Yet state power is a reality and its strengthening as well.

Taxation refers to the state's capacity to extract resources, on a regular basis, from society, that is, from social agents. This was very difficult before modernity since societies were poorer, economic relations relied much less on monetised resources and the state had fewer means to wrest them: the surplus in what eventually became Europe was substantially lower before the 1700s and cash flows more limited, with a level of state taxation that was equally low and limited, let alone the role of decentralisation of power in a feudal society.¹⁵ A radical change came about once wealth accumulated, 'free-floating' resources now became available largely because of the writ of money

in capitalism and new instruments of tax collection as well as the centralisation of power developed. The fact that the state's officialdom could be paid by monetary means and became more directly dependent upon autonomous state power rather than upon patrimonial schemes was crucial for its consolidation, with a decreasing relevance of the social origins of state agents, though this was not a linear process.¹⁶ European state taxes reached around 40 or 50 per cent of gross domestic product (GDP) (and even more in Scandinavia) around the early 1970s and have not significantly gone down afterwards (up to 40 per cent in Finland, for instance), despite changes in the role and the activities the state takes up.¹⁷ The collection of taxes has hit the middle and the popular classes in particular; in other words, it has become far more regressive.¹⁸ Tax avoidance, tax evasion, tax planning, tax havens and so on imply that a tremendous amount of wealth is pumped out of the national state, representing a substantial diminution of resources that could otherwise have been collected (and even different ways of accounting for national wealth). It affects all countries and is actually promoted by action or omission, including legal loopholes that handsomely paid giant global legal firms thoroughly explore.¹⁹

As aforementioned, taxation had a very different meaning in authoritarian collectivism and was not a means to extract resources from society, which was not economically independent, except on its fringes, due to the absorption of economic life by the state. The distinction between companies' profit as well as social contributions and income tax flowing into the central budget and taxes proper stopped making sense, save for a small number of private businesses, cooperatives and individual peasants and artisans.²⁰ The transition back to modernity entailed the reintroduction of modern fiscality in the countries that underwent it, usually with highly regressive schemes, which account for wealth disparities, as it also partly does in traditional liberal-capitalist countries.²¹

Taxation consists of a capability that sustains all other capabilities. It has been charged with amassing the resources the state as such needs. In this regard, it directly implies fiscal goals and the tapping of resources from the society over to the state. But it performs a further goal, as an instrument of the state to softly – and maybe not so softly – impose its designs upon societal agents and activities and achieve politically or bureaucratically devised ends.²² As an instrument to steer social life, taxation spans from economic behaviour to individual habits, from the arts to the sports, from the balance of economic power between social classes, gender and racial collectivities to how it deals with 'nature' and, in principle, underpinning almost any imaginable aim. The more resources the state collects, the more it can operate using this prop. What will happen in the next few years remains open, especially since the imbalances of the state in the post-coronavirus/COVID-19 era are huge and expectations relatively high, with correlations of forces between social agents having probably not changed much.

Managing refers to policies directly pursued by the state, commands and inductions put forward to affect immediate realities. Thereby the state steers social life with direct control, differently from taxation, although it can also outsource the required administrative activities to attain its objectives. Managing has been perhaps the most discussed capability of the state. All the state does, directly or indirectly, falls within this categorisation: macro-economic policies and policies geared to economic and social development, social and educational policies, physical and communication infrastructural projects, the organisation of elections, the payment of officials and state organisation, as well as, as seen above, the organisation of sanitary lockdowns, the administration of health facilities, the distribution of vaccines and the disbursement of economic aid, among innumerable other interventions in society, but also in what regards its functioning, that is, the organisation of its bureaucratic and political activities. This capability has been strongly altered in the last decades, with outsourcing and the New Management, neoliberal and market-oriented approaches we have discussed in previous chapters. Managing became a self-evident yet huge problem in authoritarian collectivism, since bureaucracy pervaded social life. Not only was over-centralisation a problem, it was the very logic of bureaucracy that stifled social life, stimulating moreover ways to evade the official administrative channels.²³

Moulding is the capability that buttresses the power of the state to shape social life, above all the imaginary and practices, individual and collective subjectivity, our emotions, ideas and bodies, the practices of individuals and collective subjectivities and how they intervene in the world, concerning one another and 'nature'. Who we are and what we want, the symbols that lend meaning to our lives and the world at large, the regularised and more or less repetitive, formally established or not, actions, moves and relations that weave social life: all this is to a large extent modelled by the state, through action or omission, directly or, once again, outsourcing its activities. Individual responsibility and respect for others featured explicitly in the moulding activities of the state during the coronavirus crisis. Moulding is run by several state agencies, political and bureaucratic, very often in connection with societal agents. It was very limited before modernity since the state could hardly penetrate society, partly because of its administrative shortcomings and deficiencies. With modernity, moulding has assumed a deeper, piercing impact and much more capillarity.²⁴ In authoritarian collectivism, with its self-image of a 'socialist' – or 'real socialist' – society, moulding was crucially important but ended up in a cul-de-sac: since 'ideological' proclamations did not match what happened in social life, a sort of withdrawal and distancing from the state increasingly set in, even if we should not belittle its success, especially in societies where autonomous revolutions took place, while in those where military occupation was the primary vehicle of its implantation this was always far more restricted.²⁵

Moulding is intrinsic to social life (there is no natural individual or society that would pre-exist it) and covers all aspects of social life; if, inevitably, it falls short of total control and forecast, it runs deep. Former states in possession of this sort of capability reckoned very circumspectly with it since they could touch only specific sectors of the population and places within their frontiers (and sometimes beyond them). People are now moulded by the state, up in some part to their rebellious character, since societal agents move within frames offered by the state's set-up and manoeuvres, granted that a lot escapes its purview and design. Moulding is not an exclusivity of the state, which enjoys, in any case, centrality in its workings. It refers to individuals and several collectivities, which may encompass the population of a country and, beyond national borders, of the whole world.

As mentioned above, force and violence, physical and psychological, formerly and today, possibly despotically and suddenly, are permanent, internal components of moulding. Their deployment always looms as a possibility. Moulding is essential to all social processes since we cannot duck or really hide long from the state, disappearing into protected and sealed spaces – with, besides, moulding being carried out by other agencies if individuals and collectivities could elude the state. As already suggested, the social function of taxation can be linked to moulding insofar as it bends people according to economic incentives and disincentives. We should, however, not take this line of reasoning too far: moulding is overall soft power, sometimes very gently shaping and seducing agents, in spite of the harsher, if partly indirect effects that everyday market pressures may, for instance, exert on the working classes' individual and collective subjectivity. Some level of compulsion is present, connected to negative sanctions, but positive aspects stand out in moulding. Consent and consensus, with varying intensity, are present or constructed to some extent in such social interactions.²⁶

Knowledge is decisive in moulding operations, intricately evincing the intertwinement of cognitive and constructive operations.²⁷ They imply the mapping and design of social agents and their enclosure within specific pigeonholes according to public policies (mobilising the criminal system as much as social policies, let alone education, sport activities, sexual practices, class, gender, racial and ethnic identities, just to mention some aspects of it). This involves the state, ordinary agents and experts, with theories moving from daily life into specialised knowledge and the other way around, in an incessant process of symbolic and practical elaboration. A two-way production of theories and hermeneutic-symbolic constructs plays a crucial role in moulding. Cognition and emotion, as well as values and norms, are part and parcel of moulding operations, encompassing all agents that take part in it, with the violence of such processes usually strongly befalling far more subaltern agents, regarding their class, ethnic, racial, gender and political position. The notion of the citizen and of the agents within the state apparatus,

of ‘toilers’ and of ‘cadres’, in liberal modern states and in ‘real socialism’, hinges on moulding. Arts, music, drama, literature, painting and the like have also been crucial for moulding under direct or indirect state influence, as part of its aesthetic-expressive element (in liberalism, ‘socialism’ and fascism). Science – including the social sciences and other humanities – is never innocent in these operations. However, we must be careful not to reduce any of them to an instrument of power (which would imply, to start with, a performative contradiction).

Coercion is the capability centred on the use of physical and psychological force to directly compel people to do things they might not otherwise be inclined to do. Pandemic lockdowns and other restrictive measures considerably depended on coercion, while not entirely excluding appeals to individual responsibility, which, if it did not replace state command it, served as a complement. Coercion may be pervasive, but, almost paradoxically, it is invisible or lurks somehow or another concealed. As pointed out above, coercion rests on knowledge too. Who, why and how to repress and hurt is no longer a random process, far beyond what former states could imagine, notwithstanding their own conceptions about who their subjects were and which populations should be conquered – or kept at bay. If all capabilities to some extent count on coercion as a background element, taxation rests rather directly and bluntly on the state’s power to coerce people into paying their dues.

Law-making, not only the preservation of law, always implicitly contains violence. This may not be the case regarding its immediate origins, insofar as the institutionalisation of the rule of law or socialist legality mediates between the brute force that underpins state domination and its smooth daily operations. The problem is rather that violence always lies in dormancy and may flare up if people do not abide by the law. Coercion is no sheer repression, although it may burst out despotically and viciously. It is, on the contrary, directly connected to the modern state’s legal framework, appearing also in most daily operations beyond liberalism, despite the leeway the prerogative state grants itself, outside the law (in fascism as well as authoritarian collectivism – actually one of the reasons why it deserves this unflattering definition). Yet coercion is not purely negative; that is, it implies not only repressive sanctions, showing a productive edge insofar as it directs people towards some sorts of beliefs and behaviour. It may be predominantly punitive, including, in extreme cases, genocidal practices. Its endpoint may be the prison system where the state supposedly re-educates, that is, remoulds the inmate (‘the delinquent’) to re-enter social life.

Surveillance appears in both moulding and coercion, as the state maintains a permanent watch over individuals and collectivities. Its role has steadily grown, with the power of the state to penetrate society and accumulate knowledge about it, especially about agents, individual and collective, and their moves. Collecting and interpreting information, following

specific, targeted populational groups and singled out individuals, intermittently or systematically, are crucial aspects of state activity. Everyone is now increasingly under some sort and level of surveillance, in a sense permanently, especially since digitalisation and internet traceable connections have become ubiquitous aspects of daily life. Tax offices, medical and psychological apparatuses, educational and social policy departments are trusted with these tasks, but big corporations have also played a gradually more relevant role. We have touched on how crucial this was for controlling the coronavirus pandemic (beyond the specific element of surveillance which is dear to epidemiologists with reference to the development of pathogens) and how ambivalently society has responded to it. The knowledge present in moulding and coercion rests on and orients surveillance, which branches out also in the dimension of fiscality (including the whole of bank operations, which the state now monitors closely, at least insofar as it is interested in doing so). Shaping and repressing hinge directly on surveillance since it allows for the identification of general practices and patterns of behaviour, leading to the inference of beliefs, desires and fears, as well as possible or actual detours and resistances that demand renewed efforts and corrective measures.

Last but not least, let us not forget materialisation, the capability without which the state cannot build its physical infrastructure (among which jails, civil and military buildings, roads, airports and communications, weapons, space rockets and sewage systems), and with which it can affect social life as a whole. The twentieth century saw this capability greatly expand (beyond preparation for war) with Keynesianism and developmentalism, and its apotheosis during the high tide of authoritarian collectivism. Apparently oblivious to the news about its passing away, it remains alive and kicking, albeit in a more circumscribed manner and strategically, in its new state capitalist format. Also the coronavirus crisis, which included an economic dimension due to the restrictive measures the state took and the ensuing economic crisis, showed the importance of materialisation in a way that will never be forgotten irrespective of what happens from now on, with what I have above called emergency Keynesianism – likewise during the 2008 financial meltdown and the banks' bailout. Materialisation is also a crucial feature underlying all state capabilities, mainly depending on legal definitions, taxation and managing. Otherwise the state can hardly do anything, save at its very centres, a shortcoming modernity has managed to overcome, perhaps historically more slowly than we are used to thinking. The assumption of direct material activities by the state, as well as financial and logistic support, are another aspect of moulding.¹⁶

The legal meta-capability was originally the apple of the eye of liberals and to some extent republicans, beyond the rule of law, which is also part of its deployment. Everything the state touches becomes legal or illegal

regarding what we may and may not do.²⁸ This capability has become crucial for the republican/monarchical-liberal state, supposedly held only by its legislative branch, with the supervision of the judiciary, while implementation would be a responsibility of the executive. As modernity advanced, parliamentary legislation, or laws put forward by the executive, along with administrative-bureaucratic regulations became more far-reaching and ever more intrusive, with more prosaic regulations writ large across social life, encompassing all its aspects, including the inner workings of the state.²⁹ Even beyond the law in legislative and executive terms, modernity has seen in the last decades, based on the United States' liberal model, an expansion of all sorts of regulation in the relation between state and society as well as with respect to the functioning of the market, whether or not the state was materially rolled back (except until recently vis-à-vis antitrust law – to be discussed below).³⁰ If modern law exists as law, it is precisely because it is state-based or somehow implicitly recognised and legitimated by the state. Only if individuals and collectivities have their relations largely woven by the law is the liberal state able to reproduce itself. When this comes about, it tends to achieve a higher level of stability. This is the cornerstone of the liberal hegemony, creating a solid consensus, against more fleeting crisis tendencies, which hardly touch its core – although it may severely affect the political system and those who have run afoul of the law.

The executive has in fact steadily become more central to all state activities, with a shift to some extent in the structures of the liberal state, which has thereby become more authoritarian.³¹ Rather than speaking of a supposed 'state of exception', we need to draw attention to a new, different institutional and practical configuration, which may include shifts in the metal-legal capability. In a parallel development, the party-state basic framework for political rule in the remnants of authoritarian collectivism simply carried out with their traditional model, under a more autocratic configuration as of lately.³² If state capabilities were to a large extent already deployed by the executive, this has intensified the concentration of power.

In particular, there is a very dark side to capabilities, which seems to have become incredibly starker in the last decades. We have seen, in Chapters 1 and 2, shifts that would make its legal aspects more ad hoc. There has been a startling swelling of the penal wing of the bureaucracy in the US and elsewhere, including the courts and the police, extending well beyond into the prison system. More brutal ways of handling inmates have, consequently, often substituted for moulding (the transformation of the 'delinquent'), a regular feature, incidentally, of many non-Western, more peripheral countries. This repressive and violent approach is, of course, not external to liberalism, even if neoliberalism has in particular made of such activities a significant source of revenue.³³ Surveillance has also reached unprecedented peaks, invading privacy, with individuals often willingly and innocently exposing themselves to a complex amalgam of state

and private agents that pry on them.³⁴ Again, this is not external but internal to liberalism, with its security dimension connected to the protection of the state itself, in tandem, explicitly or implicitly, with the principles of the ‘reason of state’, which we have formerly examined, alongside the putative protection of society. We have witnessed the strengthening of a ‘security state’. The prevention of crimes (by no means only terrorist acts, which certainly receive centrality) now implies that everyone is a potential suspect (with some populations chiefly targeted). Not only must the state punish, it ought to forestall crimes as well.³⁵ It is China, not surprisingly, that appears as the most advanced case of surveillance at present, closely connected to social moulding (towards a presumably ‘virtuous society’) and political control, together with internet censorship, police and judicial repression and especially the so-called social credit system.³⁶ Big data has become increasingly pivotal for all these surveillance efforts.

Even more drastically, the state as such has consistently resorted to illegal measures and strategies. This ‘deep state’ may thus be easily intertwined with neopatrimonialism and entertain links with societal criminal groups, as a result opening up to the murky world within the societal side of the modern divide, in this case in a rather peculiar and sinister manner. This also produces internal connections, thus becoming an integral part of modern statism, not a mere aberration.³⁷ Premised upon the rule of law on the one side, and its disrespect as well as criminal conspiracy on the other, a ‘dual state’ seems to be the norm rather than the exception, with surveillance and veiled operations carried out on the sly (with other operations taking place too, such as the financing by the CIA of abstract avant-garde art in a veiled way in order to defeat ‘communism’ and its ‘socialist realism’).³⁸ If the meta-legal capability is crucial for the modern state, it shows a very different face in several of its operations. Some have been magnified and come to the fore or at least been more exposed in the last decades. The party-state, with its prerogatives, has fewer problems justifying this variety of activities. Whether societal and even state agents take such justifications at face value is something else.

A word about so-called totalitarianism is necessary at this point. Surveillance and repression, and in some measure also moulding in the form of ideological indoctrination, stand at the centre of this interpretation. It is as if the state enjoyed complete control of social life, especially under National Socialism and Stalin’s rule.³⁹ Indeed, the state achieved control of social life in unprecedented ways during certain periods under fascism and authoritarian collectivism, in tandem with the exercise of state terror, that is, generalised and often arbitrary violence, engendering an atmosphere of threat and constant fear. Surveillance, coercion and moulding were crucial. We observe this being expanded today in the remnants of the latter, but also regarding liberal states, which ever more make recourse to these capabilities, with a vigilance and penal state fast developing, usually short of terror, though. At

the same time, moulding did not at all disappear; it has merely become consistently more flexible and subtle under liberal domination and hegemony. Moreover, that absolute control never resulted, although surely fascism and Stalinism – and also today the new lease of life of authoritarian collectivist states and political systems – achieved a high level of authoritarianism.

It seems clear that these capabilities are multiple and do not operate uniformly over time. While the market was the central institution, along with the judiciary and the criminal system, for the actual functioning of the state and its relation to society in the nineteenth century, the twentieth century witnessed an accentuated expansion of the state, especially in terms of its meta-legal capability, and in unprecedented fashion in what concerns taxation and materialisation as well as social policy, while at the same time moulding was taken up in very systematic and far-reaching ways, vis-à-vis growing social complexity. Several combinations have stemmed from this shifting utilisation of capabilities, which may be dormant for some time, depending on the general political choices the decision-making core of the state and the political system embraces. Right now, novelties are already legion, while others seem to be in the making.

7.2.2 Total state power

When we speak of the state, we speak of power and domination. Remember how they were defined in Chapter 3: whereas power is the capacity to make things happen – or keep them as they are – domination implies a system of power relations which is vertical (hierarchical) and stable, constituting a system of rule. More specifically and simply, state power is the power the state has, in different aspects, to penetrate, shape and coerce society, to get things done in ways its diverse apparatuses, harmoniously or contradictorily, so decide. This is not necessarily, in addition, an absolutely unilateral process, since they can be chosen with some sort of joint design, more or less vertically, with societal agents.

We can now define total state power: it consists of the sum of all the capabilities we have analytically displayed above, both in their entwinement and possible contradiction, both analytically and empirically. Together they answer for the active side of this juridical-political entity as a power-container in its relations, particularly with citizens and more generally with the full array of agents across social life in its multiple aspects.

7.3 The strengthening of the state

All aspects of state power have been mounting from the onset of modernity. There is some fluctuation in the direction of this development, and its six aspects, which together combine to form total state power, do not necessarily

grow irreversibly and at the same pace. The overall result is however clear: state power enhancement constitutes a developmental trend, heightening its potential to intervene in social life.⁴⁰ Whether or not state agents mobilise and deploy the six capabilities varies considerably, though they are always there, depending on projects and opportunities to make their presence felt. This is what we have seen at the beginning of this chapter regarding the state response to the coronavirus/COVID-19 pandemic.

We must carefully distinguish two concepts, namely, *strengthening* and *centralisation*. The former refers to the increase of power states themselves have or can muster in alliance with other agents. The latter refers to the direct control over capabilities. The strengthening of state power may be more significant insofar as decentralisation is maintained or accompanies it. At the same time, centralisation, generating blockages and rigidity, lack of transparency and feedback, may decrease power, complicating the deployment of capabilities. This is true as to the internal workings of the state and as to its connections with societal agents. The exceptions to this relative tendency are the monopoly, within the state's territory, of the means of violence, in terms of weaponry at least, not necessarily in what concerns our bodies (as men's violence against women demonstrates, which has indeed become far less legitimate than it was until recently within modernity), and notwithstanding empirical variation in a few cases (especially the US). Of course, many modern states cannot moreover fully implement their claims to monopoly. This is mostly but not always a 'zero-sum' power game – in which for one to win, the other has to lose power. Mostly the state reserves violence to itself, yet may, occasionally or systematically, resort to illegal or legal armed bands (death squads, paramilitary armies). It then outsources violent activities that it is not willing to carry out itself, thus legitimising these actions to some extent and forging alliances with them when convenient. When this takes place, both the state and such collectivities benefit and enhance their power, with a positive-sum outcome, although this breaks with the rule of law and implies, from time to time, extremely savage moments.⁴¹

Concerning capabilities and power, we often think of so-called zero-sum games rather than positive (all or many win) and negative (all or many lose) sum power games. The strengthening of state power is often accompanied and buttressed by a simultaneous intensification of the power of societal organisations closely connected to its several agencies, which can function in unison or clash with each other, with varied sorts of deals. This more complex development of power implies that the hierarchical principle of organisation and command as a mechanism of coordination is, if not relinquished, complemented by the network principle of organisation and voluntary collaboration as a mechanism of coordination. Joint ventures and projects can be finely tuned, or the state may more loosely outsource some of its capabilities and tasks, also drawing upon the market principle and coordinating

processes through voluntary exchange. This more complex articulation comes up particularly in moulding, surveillance, and materialisation, as well as managing to some extent.⁴²

Instead of the state's splendid but possibly inefficacious isolation, a *shared concentration of power* may thus develop vis-à-vis other societal agents that do not partake in the networked strategy. It results in a positive-sum power game, increasing the state's potency to intervene in social life and, simultaneously, the potency of its associates. The state therefore exercises its power to a variable extent through societal organisations. Such arrangements become the more necessary and common the higher the complexity of social life becomes since the state would have to multiply its domains of activity in the face of an ever more opaque society, an overextension that would bring about, once again, blockages and rigidity, lack of transparency and feedback, with a decrease of its power, especially in what concerns moulding and surveillance, but also management and materialisation, which are themselves either subtle or as such complex and expensive. The state can partly overcome those latent drawbacks through its links with societal agents. What is more, state policies and strategies may stem from societal agents' projects and practices. They may be embraced and generalised or kept operative and eventually the state may start to regulate them from above.⁴³ Besides, the state's legitimacy is enhanced by this sort of networked alliance, irrespective of hierarchical imbalances in its favour (sometimes in fact the opposite occurs, depending on other factors mostly related to the ally or the alliance as such).⁴⁴ Also the general production of meaning, that is, of the imaginary in its multi-layered totality, is part of the state's operations, mainly through moulding as well as counting on all those other capabilities.⁴⁵ Once again, the more it can join forces with societal agents, the greater its strength and efficaciousness. Rigidity and blockages, due to a surplus of repression, may ultimately become one of China's Achilles' heels insofar as the centralisation of power around the state, the executive and within it one single person looks bad for its ability to cope with an increasingly complex society. Time will tell. But the tale told by authoritarian collectivism does not bode well for the contemporary party-state in this regard.

7.4 The state and societal collectivities

Power enhancement and power centralisation, allowing for the strengthening of the state, initially went together: the state deployed its capabilities on a social tissue that was not so complex and directly politicised. It had to offer answers to the expectations and demands arising from specific agents in the societal political system or within its apparatus. As its tasks and resources were limited, it could forgo stable networks with societal organisations (an outcome which took in some places a while to be completed, with, for

instance in Britain, local administration largely and graciously depending on the gentry). The political system was secluded enough to prevent further encroachments of concreteness upon the abstractly smooth surface of its legal countenance. Nevertheless, complexity progressed and the state political system was forced open by and to various societal agents and organisations, with multiplying concrete issues. This move featured primarily, if not only, subaltern collectivities. To deal with this plastic societal life, the state as a collective subjectivity directed by other collective subjectivities, i.e., elected and unelected officials, had to adapt. As it grew, it had no choice but to give up the centralisation of power – in which the executive has always had a decisive role to play, with its increasingly bulky bureaucratic apparatus. Greater suppleness was necessary in order for the state to be able to craft the necessary partnerships required for its rule, absorbing societal inputs and demands and undertaking to deliver on them. If the state cannot perform properly, it sees its power diminish; if it is capable, also through its societal alliances, to properly furnish responses to what society at large and specific agents expect, its power expands. This relative restraint does not mean that the very structure of the state does not grow. On the contrary, a thickening of the bureaucracy ensues, with all sorts of state bureaucrats and experts peopling the landscape of modern societies, even if the state actively seeks alliances with and outsources part of its activities to societal agents.

As political modernity developed, state power has to some extent fluctuated, concentrating, expanding and dispersing successively, with no linear directionality. Yet a more general trend has prevailed over these fluctuations in the longer run, namely, the strengthening of the state. This trend does not exclude the possibility of societal collectivities becoming stronger too, notwithstanding a zero-sum game between them being at stake, with some having to lose power for others to gain. This is true save with respect to our relation with ‘nature’, which, with disregard to the unintended negative consequences dramatically expressed particularly in climate change, has been collectively fostered, with the state as a central objectifying agent that politically and juridically works to put it at our disposal. At least until recently, the alliances and networks states have been building since the 1980s have mostly excluded the subaltern classes, including, in contradistinction, other oppressed collectivities and their (representative) organisations, within the framework of what has been called ‘progressive neoliberalism’ (even if social movements have not always been responsible for this twist, while some have been co-opted indeed). Corporations, and among them, increasingly those linked to ‘platform capitalism’ and finance capital, the rich and powerful as well as neoliberal (or Third Way) politicians became, conversely, the leading players in the political power games and alliances between state and societal agents from the 1980s to the 2010s. They will certainly maintain their vast influence in the post-pandemic age, despite changes that are already

underway and are bound to unfold.⁴⁶ More sinister is how the state has relied on them, especially on Facebook, to collect data and watch on citizens. This was most clearly and legally authorised with the post-11 September 2001 Patriot Act in the US, especially with the Prism programme, but is certainly much more pervasive and not always, even minimally, legally underpinned.⁴⁷

This general argument applies particularly well to the liberal system of rule, its states and political systems, with its split between the state and the societal side of political-juridical modernity, although the authority of corporations encompasses the world beyond liberal states. It is today partly globally dominant, with all the variations we can find in its actual existence and sometimes brutal authoritarian derivations, beyond normative expectations. In contrast, in its full embodiment, authoritarian collectivism was utterly unable to develop alliances with societal forces since any questioning, indeed slight divergencies at times, implied a dent to the legitimacy of the party-state. Fascism did have alliances with businessmen, and middle-class professionals, more often than not the Church and other corporate powers, since the societal dimension was not fully absorbed in the state, not even in its more extreme case, namely, National Socialism. Once again, we may wonder what will happen in China, whose model may look appealing in the periphery and the semiperiphery of global modernity, in the next years or decades. The Chinese state and political system have proved far too restrictive to incorporate the mounting societal complexity of the country, whereas nobody shares in the present successes – but also eventual failures – of the party-state and its ‘leaders’. Surveillance and coercion seem, therefore, to be the inevitable outcome of this mismatch, the unfolding of which we will witness, especially if legitimation through economic growth gets stalled – a problem that besets other exemplars of this sort of system of rule, even if modernisation theories linking economic development to mounting demands for political rights have proved highly questionable.⁴⁸

7.5 State power: a formalisation

I have laid out above the following analytical distinctions: six *capabilities*, the *strengthening of the state*, the *enhancement of state power* and the *concentration of power* in the state. Those six capabilities refer to the potentiality and instruments the state has to intervene in social life; in turn, the strengthening of the state points to the *amount of power* it increasingly directly has or can muster along with other agents. The enhancement of state power refers to the intensification of those capabilities, yielding *total state power*. The concentration of power in the state points to *how much power revolves around it*, by and in itself or through *power-sharing* with societal agents.

There is a convergence of the enhancement of state power and the concentration of power in the state. They are related processes, with each facilitating and spurring the other, both depending on *bureaucratisation* (and increasingly on *digitalisation*). Yet they must not be conflated, since each has its characteristics and dynamics. If these elements fluctuate in the short and the middle run, in the long run state capabilities and state power become stronger (without necessarily implying centralisation of power), thereby configuring a robust developmental trend with two crucial aspects. This trend takes place across the systems of rule on which we have been focusing here – liberal and authoritarian collectivism, with the aborted development of fascism and the return of the party-state to modernity. Their analytical relationship can be synthesised in a basic formula, presented in Figure 7.1. Note that relations with society are historically variable and involve different ‘power games’ (zero, positive and negative-sum games). The power resultant of this combination may be greater or lower, varying with the analytical elements underlying it. If it is doubtful – albeit not impossible – that this formula can be fully rendered mathematically, it may serve as a general sensitising scheme for more empirically-oriented research. It helps to ‘factor in’, in qualitative analysis, the distinct elements and directions of development of state power.

Taxation, managing, moulding, surveillance, coercion and materialisation are analytically discrete variables, though they are concretely entwined and enhance state power as it gains weight. They have their own analytical values in the formula and, taken together, result in total state power, concretely underpinning it in their entanglement. They are moreover variably related to the power of societal agents of any kind, augmenting or diminishing state power, as indicated by the brackets that correspond to power-sharing in Figure 7.1. The resultant is the combination of these variables, while the character and direction of the negative, positive and zero-sum games, which include state power and societal agents, count for the total resultant value and direction of the situation. Capabilities may decrease, and state strength may plunge, to the point of dwindling, with societal agents perhaps increasing their power but perhaps also having it reduced. In principle, the equation expressed in the figure formally accepts the centralisation of power

$$\frac{TSP (=TAX+MAN+MOU+SUR+COE+MAT)/SAP=[SS]PC}{SS}$$

FIGURE 7.1 Total state power

(*TSP* total state power, *TAX* taxation, *MAN* managing, *MOU* moulding, *SUR* surveillance, *COE* coercion, *MAT* materialisation, *SS* state strengthening, *SAP* societal agents’ power, *[SS]/PC* shared state power concentration)

in the state, which may have problematic results if societal agents stay aloof or resist state commands, rejecting its inducements. The state would hence be unable to implement its policies properly. This may happen because the state political system is ineffective or due to a lack of capabilities to follow through with its directives. More seriously, this may derive from the aloofness and prospective resistance of societal collectivities, entailing a total loss of state power.

Some of these capabilities, especially taxation, depend on the state as a highly centred collective subjectivity. In contrast, others may count on more decentred interventions in social life, without detriment to the overall strength of the state, with contradictions and clashes ensuing from time to time. Consistency will be low if this happens, which does impede that those capabilities are taken up by core sectors within the state. Then its interventions will be more centralised and centred, with more intense intentionality. This partly depends on the homogenisation of the societal influence within the state and on the coalitions that it builds with forces it finds directly on the societal side of the political system. In any case, the causal impact of state intervention does not necessarily depend on its level of centring. When this level of centring is high and policies important, the state's causal impact can be intense, in turn depending, in the long run, on how it correlates with other societal developments.

7.6 The return of the state? Some recent developments

In the last years, we have witnessed some shifts in how state capabilities are mobilised and deployed. We have started to see this with the bailout governments provided for banks, those 'too big to fail', in an actual break with the basic neoliberal credo of non-intervention, as in passing mentioned at the beginning of this chapter. An injection of money and then a modicum of new regulation to avoid new 'Ponzi schemes' of the sort that inexorably finite debt, especially in mortgages, eventually engendered the 2008 financial crisis. Now, however, the role of the state has been assuming is much broader, without detriment to regulations, which have also been significant, increasingly so indeed. The coronavirus/COVID-19 pandemic did not generate this shift but deepened and accelerated a process already underway.⁴⁹ Neoliberalism was already seen as too limited to cope with the economy; more explicitly or implicitly, governments were already moving away from some of its tenets and now powerful agents appear to gradually become aware of the problem.⁵⁰ Implementing changes has been more complicated, with inconsistencies, resistance and opacity frequently characterising such recent developments.

Take for instance the European Union (EU). We can discern three potential scenarios: a conservative (business as usual) one, a somewhat chaotic

and conflictive one and a transformative one, in which the goals of tackling climate change (especially with an energy transition), digitalisation and a revamping of social policy are achieved, in tandem with mutations in taxation. The project NextGenerationEU, with common funds from money borrowed in the market, already moves in this direction, with a strengthening of a European state as such. It can make the tasks of powerful national states easier, combining with them, and propelling the efforts of others (for instance financing up to 40 per cent of the France relaunch plan – seeking for technological renewal up to 2030 –, with one third of its resources going to Italy, while Spain and Portugal, accompanied by smaller countries, and even Germany, also make recourse to large chunks of money, that is, grants and loans, though the latter has not enticed much anyone). In principle it should be a one-off initiative, but it has altered the financial architecture of the EU, especially with the emission of common bonds. With respect to taxation, apart from the global flat tax rate of 15 per cent on corporations aimed at avoiding their tax havens schemes, and, more generally, tax planning and tax evasion, not much has been discussed (save in the United States, where taxes on the rich had been formerly slashed, with some having returned more recently and probably being stepped up in the next years). This global tax, which experts and politicians discussed for some time when the pandemic broke out, was limited, as critics argued, and was eventually watered down, with the US Congress thus far refraining from ratifying it; yet is unprecedented, moving from taxation due to physical presence through ‘permanent establishments’ to consumer market presence. Loopholes and carveouts have weakened it, but a movement in this direction will likely go forward, expanding what has been in a more disperse manner happening in the last decade, despite resistances. Whatever happens, the political system will mediate these regulatory changes.⁵¹

In the US, the approval in August 2022, after fierce wrangling, of the Democratic Party’s \$740 billion project to curb inflation, the push to replace fossil fuels with renewable energy sources and to lower health care costs was a breakthrough, albeit far more modest than hoped for by the left. It followed the \$280 billion CHIPS and Science Act, intended to shore up the country’s semiconductor industry, to be swiftly put into practice. The US has been at the forefront of such novelties – regarding funding, regulation and direction.⁵² The subsidies for green energy production in the US package have been creating an unsurmountable pressure for the EU to finally step its budding industrial policy – which it had more discretely been slowly resuming already a decade ago – in the same direction, against resistance and timidity due to what consisted in its constitutive liberal project.⁵³

Moulding was mobilised during the pandemic, but as such it has not been so starkly impacted, the same happening to coercion, although in some

places the harshness of lockdowns and the massive amount of people they affected (such as in Shanghai in 2022) was astonishing. On the other hand, surveillance received a boost worldwide but, evidently, above all in China, as seen above more generally, with a severity that only a remarkably authoritarian political system could deploy. The accommodation of this development to the framework of modern rights is ongoing and an interrogation. It may imply a likely strengthening of the state vis-à-vis the citizen or a preservation of rights, which are undermined by stealth, which does not mean that we should adopt a sharp separation between the illiberal and the liberal paths that such processes have been following. China in particular has mixed the ‘prevention and control’ of its general surveillance and repression schemes with combatting the pandemic, with a more radical contempt for civil rights, as we could naturally anticipate. There seems to be no reason to expect its rulers will roll it back.⁵⁴

Materialisation has also received a boost, with the measures of support to economic activities and wages, which the state, to the surprise of many, handsomely absorbed, as well as with the promise that the shortages in the provision of essential goods to fight the pandemic at home should not be repeated. These defensive and emergency interventions combined with a relaunch of the financing of economic activity in a very specific direction on both sides of the Atlantic – mirroring in fact what is, of course, the very definition of the Chinese developmentalist state, certainly on a smaller scale and without direct involvement in productive activities. The partial rise – to which extent and up to when is an open question – of social democratic parties or those with a similar component in its ranks has also included proposals to extend social policies (minimum wages, expansion of health care, new unemployment schemes), but this has been limited and policies have not changed significantly, as pointed out in Chapter 4 (though in Europe the Recovery and Resilience Plan – a central aspect of the NextGenerationEU – has stressed very relevant goals in this respect).⁵⁵ Whatever their potential as to other goals, they hardly touch the brutal concentration of wealth of the last decades, actually deepened by the pandemic, opening room for dissatisfactions with which the extreme-right has happily played. The legal meta-capability we have analytically tackled in Chapters 1 and 2 in its essential components was strongly mobilised. The limitation of rights came to the fore, yet it appears not to be undergoing significant transformation. Nevertheless, an outburst of new interventions can be observed here.

These feature proposals to finance a renewal of the material infrastructure, particularly in digitalisation as well as in more prosaic things such as bridges and roads, and a transition in energy sources capable of mitigating ongoing climate change in both the US and Europe. Strategic high-tech areas are above all at stake, with microchips standing out, spurred by geopolitical anxieties and strategies, with the focus on China and with lots

of money, new organisms within the state to promote such goals and state procurement for innovative products (a strategy the usefulness of which was buttressed by how vaccines against the coronavirus were supported by the state). Joe Biden's rather transformative presidency has been pushing hard in this direction with his 'Bidenomics' (though his social agenda was blocked in Congress).⁵⁶ Industrial policy is making a comeback; rather different from its heyday in liberal-capitalist countries, it has become no less relevant compared to what occurred in the last quarter of the twentieth century and the beginning of the twenty-first. Some speak of the return of planning, in the aftermath of the coronavirus emergency, the climate change-provoked energy transition, in the face of economic competition and impasses, all aggravated by the consequences of the Russian-Ukraine war. Industrial policy has been resurrected in Europe and the US in the 'indicative' mould typical of capitalist countries in the twentieth century, albeit at least thus far in a restricted way, as well as counting on complex networks. France is moving in this direction in what concerns climate change too, besides high-tech and re-industrialisation. What was anathema for some decades is becoming standard practice. Corporations have been mildly targeted with a raise of taxes and the introduction of global taxation.⁵⁷

The Biden government policies are moreover, after a short period of astonishment, pushing the EU commissariat towards similar initiatives in order to keep up with the US, despite confusion and probably hopeless resistances, related to 'excessive' spending and possible distortions to the European level playing field regarding competition.⁵⁸ Meanwhile, China under Xi Jinping's presidency inflected its interventionist and regulatory policies, in which industrial policy and science and technology research have achieved prominence beyond infrastructure especially by local and provincial governments in its efforts to overcome its actual, against upbeat views, medium-income country status, despite the size of its economy, and even what may be a mounting crisis as well competition from other semiperipheral peripheral countries (e.g., India).⁵⁹ China's rise has, of course, partly spurred those recent shifts in the US and the EU.

Overall, in any case, budgetary limitations have become much softer and spending elastic, especially in the US but partly in other areas and countries too. This includes the numerous 'bail out' operations or, more mildly phrased, subventions – since 2008 with money for the banks, in 2022 almost for everyone with respect to energy prices – that the state has implemented in many countries.⁶⁰ We must, however, note that globally austerity and cuts are to be found everywhere, save in the central countries of the world system, where they appear at most much more gently. In the periphery and the semi-periphery greater harshness is at least partly due to advice and pressure from international financial organisations, with deleterious effects for social policies (one more example of combined and uneven, as well as differentiated,

development).⁶¹ This would be in line with what has been called the new ‘Wall Street Consensus’, which suggests that finance be deployed in development projects, with the state serving as a ‘derisking’ agent under severe monetary-financial and budgetary constraints, with therefore limited leeway. In contradistinction, infrastructure build-up and industrial policy have been present in the countries of the world capitalist periphery and semiperiphery in variable intensity and with uneven chances of success, but also in central countries (the US and many in the EU).⁶²

In regulation, a veritable change – not to say revolution – unfolds. For decades, antitrust policies were de-escalated, with the supposition that they had become self-defeating. They were supposed, since the Reagan government, to be concerned with consumer welfare (hence dumping – slashing prices to defeat competitors – ought not to be seen as a problem, for instance) and the protection of competition as such, not with specific competitors (hence mergers and fusions creating gigantic oligopolies would not merit intervention). Now the old wisdom that oversized companies were dangerous because they wield excessive market power is back, especially in the US, where this has been a big issue (contrary to Europe – save for Germany to some extent –, where big companies used to be treated indulgently, also because they should be preserved to compete with their US rivals, which in particular in the digital area have now been targeted). Merger-control and business-model regulation have, as a consequence, become crucial.⁶³ Moreover, the regulatory scheme has expanded from a typical and more limited US institutional approach towards dealing with market services to consumers of, in particular, basic monopoly-like public goods (telephony and post, water and sewage, trains and aviation) to encompass social policy and other activities.⁶⁴

At this point, we must resort to what I have defined in Chapter 4 as the rhythms of stability and change of public policies, which may remain without major modifications for long periods, with a punctuated development at the same critical junctures that imply sudden and more substantial twists, with new agendas emerging, pushed by different interests. There was considerable overall dissatisfaction with neoliberal and at times even social liberal policies before the recent pandemic, but no punctuation in social policy has emerged challenging the stability of steadily expanding social liberalism and the social investment perspective, as a matter of fact already strengthened before the pandemic broke out.⁶⁵ There is widespread social dissatisfaction, yet no organised forces have shown enough power to deflect social policy (though in the US the government has been trying to strengthen unions). This paralysis is at variance with other spheres, above all the economy, where much more significant reforms are underway. Still we can ask: even if the pandemic was a critical moment, will the changes it will beget involve these more gradual processes regarding social policy, another possibility examined in that very same chapter? Alternatively, maybe nothing will

happen in terms of new policies but those in operation will be spread and deepened worldwide, especially concerning the combat against, or administration of, poverty. Or is the situation going to remain absolutely unchanged with respect to social policies?

In the economic sphere, the push has been far stronger, and an array of new policies have been delineated and are being implemented – partly in the US already under the presidency of Donald Trump, then more far-reaching under Joe Biden, and especially in the EU dating from the ascension of Ursula von der Leyen to the presidency of the European Commission, hence were *previous* to the outbreak of the pandemic.⁶⁶ What will become of these shifts is still to be seen. That they are underway is indubitable. The legitimacy of the state, after responding to the demands and claims of citizens regarding the protection of individual health and collective security, has, moreover, significantly increased. Paradoxically, this does not mean that the legitimacy of the political system has increased too. Its lurking crisis has by no means been damped by the pandemic, but nor, on the other hand, has it delegitimised the role of the state in tackling the virus, whatever libertarian cry outs and irrespective of *Querdenken*'s misgivings. Much seems to be expected from the state, in contrast to politicians, who have mostly been receiving a cold shoulder.

The verdict is not out yet. In particular apropos the role of the state in the economy, neoliberal-oriented actors are fighting back, for instance using inflation as a ghost in the attempt to discredit the new course this has been taking. In Europe, Germany's position will be crucial (which is complicated by its 'ordoliberal' tradition, under pressure now, and facing real challenges due to serious problems with the national industry and the project for a more interventionist state policy).⁶⁷ What happens in the US and Europe more generally will, in turn, be crucial for the world, perhaps in particular as to the management of climate change, while China's bid to overcome its present relatively backward position must be closely observed.

Notes

- 1 See for instance Manuel Castells, João Caraça and Gustavo Cardoso (eds), *Aftermath: The Cultures of Economic Crisis* (Oxford: Oxford University Press, 2012).
- 2 José Maurício Domingues, 'From global risk to global threat: State capabilities and modernity in times of coronavirus', *Current Sociology*, vol. 70 ([2020] 2022): 6-23; Idem, 'Coronavirus and social change', in Breno Bringel and Geoffrey Pleyers (eds), *Social Movements and Politics in a Global Pandemic* (Bristol: Bristol University Press, 2022). I will discuss the role of the World Health Organization (WHO) in Chapter 10.
- 3 Benjamin Bratton, *The Revenge of the Real: Politics for a Post-pandemic World* (London: Verso, 2021). Foucault introduced the concept mainly from a critical

- angle, and this outlook was radicalised by most of those who adopted this line of reasoning.
- 4 David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005). The idea was forcefully announced by Friedrich A. Hayek, *The Road to Serfdom* (Chicago: The University of Chicago Press, [1944] 1994). He had a very early predecessor in Wilhelm von Humboldt, *Ideen ein Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen* (Stuttgart: Reclam, [1792, 1851] 1991).
 - 5 Jürgen Habermas, *Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp, [1981] 1988), especially vol. 2, pp. 489–547.
 - 6 Colin Crouch, *The Strange Non-Death of Neoliberalism* (Cambridge: Polity, 2011).
 - 7 Anthony Giddens, *The Third Way: The Renewal of Social Democracy* (Cambridge: Polity, 1998).
 - 8 Dani Rodrik, ‘Goodbye Washington Consensus, Hello Washington Confusion? A review of the World Bank’s *Economic Growth in the 1990s: Learning from a Decade of Reform*’, *Journal of Economic Literature*, vol. XLIV (2006): 973–987.
 - 9 Ferenc Fehér, Agnes Heller and Györg Márkus, *Dictatorship over Needs: An Analysis of Soviet Societies* (New York: Saint Martin’s Press, 1983), especially p. 60; Neil Harding, ‘Socialism, society, and the Organic Labor State’ and ‘Conclusion’, in N. Harding (ed.), *The State in Socialist Society* (Albany: State University of New York Press, 1984). This did not happen by chance: Stalinism was enthusiastic about the growth of the state, which would supposedly eventually lead it to ‘wither away’ – a ‘contradiction’ ‘bound up with life’. Stalin went far beyond Lenin’s improvised choices (though still broadly in line with Marx’s and Engels’ in this regard naïve views). Joseph V. Stalin, *Political Report of the Central Committee to the Sixteenth Congress of the C. P. S. U. (B.)* (1936), in *Works*, vol. 12 (Moscow: Foreign Languages Publishing House, 1955). This choice marked the whole trajectory of authoritarian collectivism.
 - 10 Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus and Giroux, 2014), p. 468. It is hard to come by synthetical and consistent data to ascertain such arguments. See, however, principally for OECD and especially selected Latin American and a few other countries with systematic historical series, Esteban Ortiz-Ospina and Max Roser, ‘Government spending’ (2016), in *OurWorldInData.org* (<https://ourworldindata.org/government-spending>); IMF Fiscal Affairs Department (<https://web.archive.org/web/20220207112554/https://www.imf.org/external/datamapper/exp@FPP/USA/FRA/JPN/GBR/SWE/ESP/ITA/ZAF/IND/CHN>); for the elusive data for China, see OCDE, ‘Challenges for China’s public spending’ (<https://www.oecd.org/economy/public-finance/challengesforchinaspublicspending-governmentspendingisbiggerthantlookstheneedforgreatertransparencyandcontrol.htm>). Social policy and state procurement (as well as ‘defence’ and debt servicing) are the main elements in state expenses. We have discussed social spending in Chapter 4. Here let me only mention the debate around the cost containment/retrenchment, recommodification and recalibration, along with related issues sparked by Paul Pierson, *Dismantling the Welfare State?* (Cambridge: Cambridge University Press, 1994). Expenditure mostly did not go down, although some retrenchment (cut-backs) did occur at some point, and social policies were considerably changed. Pierson also had a more general view of state expansion. See Idem, ‘The rise and reconfiguration of activist government’, in P. Pierson and Theda Skocpol (eds), *The Transformation of American Politics* (Princeton: Princeton University

- Press, 2007). See, even for the post-pandemic world, a much more negative and pessimistic view in Wolfgang Streeck, *Gekaufte Zeit. Die Vertagte Krise des demokratischen Kapitalismus* (Frankfurt am Main: Suhrkamp, 2013); Idem, *Zwischen Globalismus und Demokratie. Politische Ökonomie im ausgehenden Neoliberalismus* (Frankfurt am Main: Suhrkamp, 2021). See also Lars Döpking, *Fiskalische Herrschaft. Steuern, Staat und Politik in Italien seit 1945* (Hamburg: Hamburger Edition, 2023), especially chaps 1–3.
- 11 International organisations have been influential in this regard, but what may be called the ‘cunning state’ actually took its own decisions, often putting the blame on those other agents. Shaline Randeria, ‘Between cunning states and unaccountable international institutions: Social movements and rights of local communities to common property resources’, *WZB Discussion Paper*, no. IV 2003-502 (Berlin: WZB, 2003): 1–30.
 - 12 A. Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985), pp. 120, 172.
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8

POLITICAL AUTONOMY

8.1 Horizontality, verticality, autonomy

In his study of the Nuer, one of the great founding monographs in Anthropology, Evans-Pritchard noted the absence of ‘political authority’ among them. Not even lineages could discipline this individualistic people. The Nuer lived in an ‘ordered anarchy’, on the other hand, with longstanding feuds among themselves all the time. The sacred leopard-skin chief could, astonishingly, one might say, at most play the role of mediator in these sometimes-deadly disputes.¹ More recently, Graeber and Wengrow tried to convince us that the Enlightenment’s notions of freedom were produced by native American ‘intellectuals’, especially a warrior called Kandarionk. They argued that all ‘European’ intellectuals were acquainted with a book by Baron de la Hontan published in Holland. La Hontan had lived in North America and met Kandarionk. He learnt then, and announced to Europe, according to Graeber and Wengrow’s implausible statement, that freedom was possible (a point which, for instance, directly clashes with Patterson’s consistent research and arguments).² As discussed in Chapter 3, we can and must use general concepts – such as network and hierarchy – to study different civilisations worldwide and historically. We need to be careful, however, not to introduce – and, worse indeed, multiply – anachronisms that obscure rather than illuminate human social evolution.

It seems clear, according to the social sciences literature, that before human groups settled in the course of the Neolithic revolution, with agriculture engaging many people and eventually the growth of cities, as well as, not always by any means, before some form of the state emerged, individuals were not totally bound to their collectivities. Relations were based essentially on networks as

a principle of organisation and voluntary collaboration as the mechanism of coordination (with women and the youth typically subordinated to mature or older warriors). If individuals and groups felt that others wanted to impose their desires and preferences upon them, with hierarchical structures looming, they could just move away, keeping the partial horizontality of internal relationships. The character of decision-making was mostly consensual, often articulated in long assemblies, apart from war situations, when instrumental hierarchies were often temporarily introduced. Once humans settled, they obviously could no longer afford just leaving their contenders behind, and collective determinations increasingly relinquished consensual procedures – decisions by a majority, of which the Greeks offer us the foremost example, became common. Inequalities thus recurrently emerged through the imposition of some armed groups (beyond the clerics that usually dominated the first cities) on labourers now trapped by how they organised their means of subsistence.

Most unequal societies were in fact ‘class divided societies’, with classes created by the dominance of some groups over others via hierarchical state power and only partly playing a role in the productive process (which they did, by organising water works and granaries in centralised states or administering the manor in feudal settings, for instance). Several processes of ‘false homology’ (‘homoplasy’) took place (see Chapter 5); that is, they developed in parallel and independently of each other but unfolded in the same direction, eventually leading to state domination or the like in most of the world, much as, until modernity emerged, many independent collectivities resisted the imposition of hierarchy or even prevented it from developing. Modernity, as a radical evolutionary *divergence*, took those scattered evolutionary trends further, consolidating hierarchy and state dominance, altering them with a new imaginary, institutions and practices that created a stark division between public and private.³

Genuine autonomy, not so much individual as collective, was originally rather significant, declining as hierarchy and inequality escalated. This change was first of all related to the control, although not monopoly, whether legitimate or not, of the means of violence and the effort to lend them symbolic justification as well as monopolise the definition and application of justice. This is the focus of the reasoning of the two anthropological works mentioned above. Yet should we conflate what autonomy meant for those peoples, so different from us and not least between themselves, with what autonomy and particularly freedom mean in modernity? What autonomy, power and decision-making mean in each different civilisation is deeply bound with a cosmological understanding of the human condition and its place in the universe, that is, with a usually extremely complex imaginary, weaved together with equally specific institutions and practices. The question is therefore not inconsequential.

Thinking in terms of ‘anarchism’ for any one human group, the Nuer or whichever else, can thus be acceptable in terms of the *civilisational dialogue* and the *scientific translation* we make of their ways of life and imaginary constructions. We should nevertheless connect this to how they themselves think of it – in other words, in what regards our main issue here, with how they outline what we comprehend by ‘autonomy’. Simply believing that a warrior in the Americas would use a language very similar to ‘westerns’ to explain what he thought life should be – and how autonomy fit into it – is to incur a sort of naïve anachronism and inverted sort of Eurocentrism. Whatever Kandariok thought, his view of individual and collective autonomy was closely entangled with his cosmological universe. Needless to say, he could himself translate it into categories understandable to ‘westerners’, but it is unlikely that the match was precise. On the other hand, attributing such an almost (literary) mythic demiurgic part to him makes no sense. Even more serious, and bizarre if we take pause to think, is to suppose that autonomy and freedom, such as defined in the ‘West’, derived from reading one book or a number of them (which is the same). Such interpretive misstep rests on the complete disregard for those false homological evolutionary developments, particularly the evolutionary divergence modernity represented. We need to address this issue adequately so as to grasp what autonomy and freedom mean in modernity – within the republican-liberal imaginary to start with – and postmodernity – with the authoritarian collectivist perspective.

Hierarchical relations and inequality in modernity are extremely strong. At the same time, particularly regarding political power, they are not underpinned by a very efficient complex of justifications beyond the law – which the state has to maintain, hence guaranteeing freedom – and the services it must provide – which the state must do in order to stay open to citizens’ demands, in terms of rights and economic performance or whatever other issues. They therefore buttress the actual development of inequalities and vertical power relations that have been growing especially in the last decades, though the very emergence of modernity, political but not only, was as such a means to lend a new shape to the deep hierarchical and unequal relations which were already characteristic of feudal Christianity just before its surge. These hierarchical and unequal developments have not gone unchallenged. The specific modern way of phrasing autonomy and freedom has always worked as an answer to them.

8.2 Autonomy and authority

8.2.1 *Autonomy and freedom*

This book started with an analysis of freedom; this central category for modernity has remained crucial throughout the analysis. We saw that freedom (‘negative’ and ‘positive’, an opposition I have tried to dispel) was

institutionally rooted and legally demarcated. This entails limits for the encroachment of one individual upon others and of the state upon individuals (with a perimeter of protection against this prospect of encroachment), but also that political participation must be seen as an uninhibited process. Freedom to and freedom from are present in both cases, with individuals moving unimpeded within the private and public domains. Therefore, freedom has an objectivity that is not independent from social relations and other agents, including the state. Autonomy, a concept that crops up in all social and political narratives, is often blended with freedom. It does not actually have a stable meaning.⁴ Nevertheless, it is possible and necessary to draw the difference between them to ensure that, analytically and substantively, our exposition is systematically accomplished. After all, etymologically, the meaning of the Greek *autonomia* is precisely that one gives oneself its own law, originally referring to independent cities, while *libertas* was the social freedom enjoyed by Roman citizens under the law (in contradistinction to slavery).

With this line of reasoning in mind, we can define autonomy as our capacity to choose and decide about our courses of action and the fates and fortune this brings. Autonomy is both individual and collective and corresponds to *self-determination* (in opposition to heteronomy). In practice, we need to be socially free to be autonomous, yet we must not conflate these concepts. Autonomy is social yet it is in a sense removed from actual social relations. It is more mediately connected to them insofar as it depends on the internal decision-making processes that entail action and movement, although radical rationalism, which moreover sharply separates means and ends, should not be conceptually accepted (as pragmatists have repeatedly underscored). Thus conceived, autonomy aims at social goals. Taken to its extremes, any variety of individualism may entail the loss of capacity to be truly autonomous since autonomy always relies on relations with other agents so that the individual (or the collectivity) can effectively rule over itself and causally impact others. Not even radical utilitarian individualism can afford complete detachment from others. We would be close in fact to the universe of stoicism, in which autonomy, as socially embedded and at the political dimension, would not be present.⁵

We need to have the power necessary to take the paths we may choose individually, admittedly never in isolation, and face no obstacles when we collectively decide about our common issues. However, this places us squarely in the realm of freedom, which involves our relations with other individuals and collectivities, in principle on an even basis, with equivalent power, that is to say, premised upon equal freedom. Liberalism typically and strongly stressed the total autonomy of the individual prior to the construction of the collective will in what regards social relations. This depended on the radical individualism of this tradition, which was keen to deny the

deep connections intrinsic to social life. We should not think of autonomy in this vein. It should not be seen analytically as detached from social connections, for modern individuals and collectivities are, as always and everywhere, interactively constituted and weave together more or less stable social relations. However, predominantly in modernity, autonomy has been seen as an attribute that pertains to individuals and collectivities understood in the mould of this classical individual, therefore preceding social relations.

What is more, while the individual has been at the centre of modernity's concept of autonomy, the issue of collective autonomy must not be overlooked. The latter includes the recognition of the intrinsic value of collectivities, which has, in practice more than theoretically, come about, as we have seen in Chapter 4 with respect to the nation and rights.⁶ The autonomy of individuals is operative in both the private and the public domains. Can we speak of women as autonomous, morally, politically and legally, as a collectivity, in both the private and the public domain? I think we should, with the proviso that this is in its encompassing character a rather decentred collectivity, with a relatively high level of identity but a low level concerning its capacity for concerted action. Other collectivities share this decentring and should be valued if this is the case and recognised in their autonomy, irrespective of their level of centring – for instance, nations, whose relative centring usually derives from efforts of nationalist movements or even the state. Autonomy may lead to self-satisfaction, which, notwithstanding, must be seen as a different question, implying different conceptual connections.

As to both individual and collective autonomy, in its social and political aspects, that is, as oriented to the circumstances of the agents and not merely regarding internal self-determination, we can think of autonomy as logically prior to freedom. To be sure, concretely, freedom and autonomy are always entwined and, without a modicum of social freedom, it is not likely that we can contemplate agents as autonomous. Nevertheless, as modernity, despite shortcomings and partialities, depends, for its characterisation, on the rights edifice discussed in the first chapters of this book, this is indeed a limit situation. It is because we are autonomous – or can be autonomous – that freedom belongs to us in social life; that is, that autonomy can then be translated into the juridical conception of freedom or liberty. It is our independence as individual and collective rational agents that allows for our juridically-demarked freedom. This juridical notion includes a moral dimension and identity since autonomous agents are usually defined in the mould of the traditional individual we have known since the beginnings of the Enlightenment. The problem is that they are not necessarily capable of behaving as centred subjects, an issue that becomes intractable to many of the assessments of collective autonomy.⁷ Therefore, we need to think of collective subjectivities from a more complex perspective so that we can reckon with autonomy in relation to agents with different levels of centring.

8.2.2 Authority and hierarchy

As one of the founders of anarchism, Proudhon thought that political power was merely negative. Like Bakunin, Proudhon initially rejected ‘authority’ tout court (which for him was legitimate only in the family) in favour of multiple, decentralised ‘contracts’ between free men and ‘anarchy’, that is to say, the lack of government. Autonomism, a recent offspring of anarchism, resumed this sort of perspective. Later on, however, with a mix of historical insight and metaphysical naivety, Proudhon pointed to an eternal, ahistorical and abstract dialectic between ‘authority’ and ‘liberty’, with the latter progressively acquiring social weight.⁸ In contrast, authority found a particularly fierce defence in the old Engels, against its dismissal by the anarchist movement.⁹ Whatever we think of authority, it is hard to see how the idea of autonomy can be easily reconciled with hierarchy – which has command as its mechanism of coordination and is the crudest expression of relations of authority. This understanding must go beyond anarchism proper, which in this regard radicalises republican liberalism, with, if not the dismissal of the state, at least the expression of its dissatisfaction with it. Republican liberals, of course, never discard this juridical-political entity since they believe in the law and rights, which it has to assure, contrary to the anarchist standpoint.¹⁰

Autonomy, when we think of it in terms of social connections, inevitably entails the horizontality of relations – through market principles and voluntary exchange, when these do not actually hide hierarchical power, as the example of giant corporations whose ‘market power’ is immense shows¹¹; or through proper network relations in which voluntary collaboration is of the essence and power differentials must not be too big. Early modern thinkers, as we have seen in Chapter 1, banked on both, whether defending the market, with egalitarian individualism, with this move of course hiding the power differentials between the owners of the means of production and those who were owners of only themselves, or concerning politics and the law, with the idea of the social contract, a networked relationship between individuals.

The problem is that for modernity, as already observed in Chapter 3, justifying hierarchies, including authority, is hard. This may be characterised simply as the authorisation to issue commands without the necessity of further explanation or justification. Justice and the common good are presupposed as already given in this case and the same is true of the possibility that those who command acquire such power through a horizontal collective choice. Obedience then follows suit. In the ancient Roman universe, for instance, authority (*auctoritas*) had to do with religion and social prestige. These informed an unquestioned relation in which those – aristocrats – who occupied the upper echelons of power relations could issue commands to

those below them. Modernity dissolved this sort of legitimation and post-modern authoritarian collectivism did not fare better in this respect.¹² If authority has not entirely dissipated, it is far more difficult to justify vis-à-vis individual citizens who have no particular reason to see rulers as authorised to issue commands without further justification, although a large number of elements can and have been mobilised to justify positions of authority (concerning the political dimension, the honour of the republic, moral and intellectual superiority, electoral selection, informal family lineages, the control of the future through knowledge or the embodiment of the values of the nation). Such justifications are always irremediably unstable. Collective decisions to place some people in superior positions facilitate the establishment of authority, but even so it is not smoothly exercised.

It has not been easy to fit autonomy and authority together, especially if citizens do not feel that their potential for collective self-determination is appropriately considered. In any event, autonomy and authority, to some extent, go together in modernity insofar as the state is the juridical agent that guarantees freedom through law, according to the dominant liberal conception, as well as that which responds to claims regarding rights and performances that citizens demand. This junction may be rejected by other political perspectives – not only anarchism and autonomism, but revolutionary communism as well, accept this authority only within narrow and provisional limits. Yet, most individuals and collectivities, not least political currents, have agreed to this depiction of the state. The state has, consequently, a higher or lower level of authority that varies according to its level of legitimation. The same is true of the political system, whose legitimation is based fundamentally on the same elements. The higher the level of legitimation of the state and the political system with respect to the formal elements and the performances it is supposed to deliver, the greater its authority; the lower the level of legitimation, the smaller its authority. They have all become more unstable and tended to fall with the lasting crisis of political systems that has characterised the last decades. Citizens have become ever more dissatisfied and unwilling to recognise any aspect of superiority, even if they confer it through electoral choice. They usually deem the performance of the government and representatives as mediocre and unresponsive; they are often unconvinced of their dedication to the common good too.¹³ This malaise is compounded and complicated by the perception that corruption and tricks to attain or keep power are widespread. This does not help but-tress legitimacy and authority.

8.2.3 *The full analytical framework*

Table 8.1 displays the connections of autonomy – analytical distinctions and links between the categories that gravitate around it and to some extent

TABLE 8.1 Autonomy and its connections

| | |
|----------|--|
| Autonomy | Authority |
| Freedom | State |
| | Guarantee of legal freedom/ domination |

constitute the core element of the modern imaginary, irrespective of how difficult it is to lend it effective practical meaning. Autonomy directly correlates with authority. It is not inimical to it, but authority, against the backdrop of relations of autonomy, is far more dependent upon horizontal relations and the delicate and continual justifications that must be provided in order for it to run consistently and smoothly. Freedom, legally articulated, is institutionally laid down, pertaining to the imaginary as well. Authority is, in turn, institutionalised in the state, also occupying a relevant position in the imaginary. Of course, as the state implies domination and a system of rule, centred on the political system, hierarchy seeps in and we must account for it, hence the double character of the state. It thus becomes much harder to justify. Insofar as the state is always a system of rule – that is to say, domination – authority lives an always precarious life in modernity.

8.3 Autonomy in modernity and beyond

Let us now investigate the journey of autonomy, as a general idea and a clear-cut concept, in the bosom of modernity and beyond it. It was first phrased within the republican-liberal tradition.

We may start with the individual and ‘real rights’, which we have examined in Chapter 1. ‘Real rights’ are, as we have seen, absolute rights over material things. As opposed to ‘personal rights’, which demand the participation of other legal persons for their definition, real rights look rather odd. This has naturally led me to reject such a sharp distinction in conceptual terms, while at the same time recognising its importance in current legal reasoning. At a closer glance, real rights’ secret is slavery: the things (*res*) they referred to were slaves (‘reified’, that is), stripped of their human attributes and taken as absolute property under the absolute *dominium* of their owners/masters, which they could not ever challenge. This ancient legal figure hangs over the understanding of labour and property in modernity, notwithstanding the contortion it has suffered. Now we *own* ourselves and our rights, which define us as citizens. We are thus not subordinated to anyone, neither subjectively nor objectively, and are moreover juridically free to act, establish contracts and own property as rational and responsible individuals.

The Cartesian-Hobbesian tradition, detaching the mind, where it locates reason, from the body, which it controls, allows for this proprietary relation and the contracts proprietors may enact.¹⁴ The aspects of fetishism we

have found regarding the law and the state rest on this view of individuality. What is more, the whole contractualist tradition depends on it. Moreover, the idea of self-ownership has not been superseded. As strange as it may be, we are free because we are slaves only of ourselves, as absolute masters in our isolated, monadological sovereignty and rationality, as if psychoanalysis and other approaches had not yet dethroned this fanciful sort of individual. While it is true that the individual body is a major element of any social system and defines to a large extent the individual itself, the idea that we own our body is a particular way of conceiving this sort of relationship, one that is dominant albeit not absolutely exclusive even in modernity. Here it is worth to stop and reconstruct a bit of the history of autonomy in modern socio-political thought.

Locke was central for the liberal conception of self-ownership, speaking of our 'liberty, lives and states' (in the old British sense of the latter) as our properties. Keeping those properties safe was the goal of 'civil society'. At this point, *dominium*, which in Roman antiquity concerned property, had displaced *imperium*, which had become a mere type of rule, as the characterisation of the relation between political superiors and inferiors.¹⁵ With Rousseau, in contrast, we are already on a different plane. The issue had a direct political ring in his demand for an absolute surrender of the individual will to the state as the proper way of realising freedom in and through the 'general will', whereby the chains of political subjection could be broken once collectively it became possible to give ourselves our own law. We could thus, differently from the poor English, avoid becoming slaves of representatives, who were their masters in a 'corrupted' form of government oblivious to natural equality, as well as 'dependence' upon other people through being subjected to their will.¹⁶ Autonomy is clearly present here, with socio-political aspects.

It was Kant, however, opposed as he was to the idea of self-ownership, who established the concept of autonomy that became largely dominant, also under the influence of Rousseau. Kant's writings somehow distinguish between autonomy and freedom. Yet, with respect to autonomy in transcendental terms – which refers to free, unconditioned will and consists in the very basis of morality – the distinction tends to fall short of a sharp break, with some circularity in his argument ('freedom of the will' cannot be anything other than 'autonomy' – 'will being a law to itself'). In contradistinction, external freedom is less ambiguously phrased. Kant states that freedom – as 'independence from someone else's constraining, arbitrary will (*Willkür*)' and from an asymmetrical bond with another person – is rooted in human 'innate equality'. Any human being is, can or should be his own 'master' (*Herr*). No mention is made to autonomy here, which is placed directly at the transcendental, not the social level. On the other hand, the

rational ‘categorical imperative’ and its universal maxims for action are the culmination of his construction of the idea of autonomy. This is when we recognise the external (social) as essentially internal determinations according to the law of reason rather than as mere juridical impositions that we are really autonomous, even if the law is out there guaranteeing our socially established freedom. Furthermore, contrary to the Roman and Lockean tradition, Kant argued that property is a right exercised only over ‘external things’, which is false regarding our bodies. Reason remains the ultimate element that allows us to overcome their threatening and potentially demeaning impulses.¹⁷

As if to stress that the idea of self-ownership was still central to modernity, Hegel returned to its tenets in his discussion of freedom, labour and the ‘system of necessities’.¹⁸ It was Marx, with deep knowledge of this philosophical tradition, who eventually connected it to Political Economy. He spoke of workers as owners of their ‘labour power’ and nothing else, simultaneously able and forced to dispose of it as a commodity, juridically as free as the capitalists who could buy it. They must do that on a daily, partial basis, never permanently, lest they become slaves.¹⁹ Nothing has changed in this sense. Even in the heyday of social democracy, with a modicum of overall decommodification, the self-ownership of labour power was never by any means supplanted, whatever the mitigating role of labour contracts. The permanence of the idea of self-ownership in commodified relations also underpins the unacceptability for capitalists and pro-market politicians of ideas such as basic income. It would challenge the very principle of capitalist labour markets. This was also true of the position of married women, whose rationality was purportedly defective or limited: first controlled by fathers, upon entering marriage they once again lost their freedom; due to their human character, at least formally they were not the property of husbands.²⁰ Whether or not women retained control over their bodies is far more arguable. Men ‘acquired’ wives and took dominion in marriage for granted. No wonder feminism’s battle cries feature the (liberal) ‘my body belongs to me’ (alongside ‘the personal is political’). This relation of *dominium* has basically vanished, but it is not absurd to ask whether now spouses (including in looser arrangements whose model remains that of liberal contractualism) do not after all symmetrically own each other, though they may decide to interrupt this lease at any point in time, at least in juridical regimes where individual autonomy and freedom have fully developed.

Yet in libertarianism’s main strand, self-ownership became a crucial issue.²¹ It actually justifies property more generally, based on supposed individual natural rights, and buttresses a radically individualist concept of freedom, though its application to social life has been restricted to some areas, such as reducing taxes for the rich and privatising public services. No gain in

autonomy, especially for most citizens, has come out of its reiteration which has sapped the very basis of the common citizenship status, with its egalitarian claims and partial upshots, such examined in the first part of this book.

Both freedom or liberty and autonomy appeared, as seen above, originally within in-the-making Europe, regardless of their resonances and conceptual roots, respectively, in Greece and Rome.²² They both expanded globally, theoretically and practically. In this process, freedom has been more easily institutionalised insofar as it is not necessarily tightly bound with internalised subjectivity. Law, constitutions and the like as such produce its reality, although without some level of individual and collective commitment freedom is bound to wane. In practice, those institutional devices become ineffective wherever such processes occur. Autonomy is more closely associated with the internalisation of decision-making processes that, despite their social links with other individuals and collectivities, are more demanding in terms of conformity with ethical standards specific to the 'western' imaginary, as well as social relations. Restrictions, subordination within their own 'communities' and violence in India (but also in the West) have been critical elements in social control, to which the *de facto* restriction of civil rights decisively contributes.²³ In any case, we must avoid an essentialisation of imaginaries. Moreover, autonomy is not something that naturally subsists; on the contrary, it is part of a process of moulding which render agents autonomous subjects – extremely rational in the Western tradition, yet not necessarily so. That said, it makes sense to recognise that very often authority is a crucial aspect of other systems of rule and domination prior to global modernity. This issue subsists within its hybridisations.

We must consider that if the West is where autonomy as a concept and practice developed, other civilisations have resources that could be tapped to articulate other notions of autonomy, entwined with the absorption of modernity. Beyond this general suggestion, this is by no means an obvious or easy projection. For instance, China seems to have seen the rise of elements that infused its imaginary and practices with something similar to what modernity has called autonomy. However, the emphasis of the party-state, in the utilitarian-consequentialist tradition of Marxism-Leninism, has been a contrasting element, namely, an encompassing ethic to which individuals must adapt and which should contribute to the economic development policies it has been pushing forward. The social credit system is surely a practical element in this direction, particularly concerning political domination, to which autonomy and lack of control by the party are permanent worries.²⁴

It is curious to see that 'real socialism', even in the most generous definitions of the imaginary of authoritarian collectivism, seems to have lacked more generally a concept of autonomy. We find this for instance in Guevara's view of the 'new man': he (and today Guevara would certainly add a 'new

woman' to his formulation) would be generous, active, solidary, ascetic and truthful, but depended on a vanguard while it did not mature in revolutionary terms and overcame his (and her) alienation. Whether this 'man' would then become morally autonomous was not specified. With some imagination, we can somehow connect the end of alienation with the end of heteronomy. It is also true that even in the late Soviet 'philosophy of personality', apologetic as it was of 'real socialism' yet enjoying the moment of great social freedom provided by Khrushchev's 'thaw', socially constituted individuality was stressed. Not surprisingly, these philosophers apparently did not bother to develop a concept of political autonomy, out of disinterest or perhaps partly of fear. This absence contrasted with the attitude of the professional revolutionary, who, at least according to Lenin's original view of the party, was supposed to have autonomous initiative, with, in contradiction, absolute responsibility before the organisation.²⁵ Whatever we make of this complicated issue, these ideas should not be attributed to Marx: he was adamant about the social relations that constituted the human individual, but he and Engels were keen on individual free decision, in the course of class struggle, to form the revolutionary political coalitions of the proletariat and saw the eventual 'development of each' as the 'condition for the free development of all'. They were no individualists and adopted a sort of value-collectivism regarding the proletariat or the working class, which they wanted to build into a centred collective subjectivity, but at the same time they also embraced value-individualism. This is a perspective 'real socialist' states in practice reversed, privileging the collective over individuals, not to speak of curtailing political autonomy, irrespective of always buttressing their arguments with quotations from that founding duo.²⁶

It is worth asking what happened to self-ownership in 'real socialism'. The party-state fully reinstated labour as a peculiar commodity, since this was not a social formation based on the universalisation of the commodity form. Formally, workers received, all the same, a wage with which they bought their means of subsistence and reproduction, along with the benefits, as life became better, of 'socialist' welfare. Some would state that workers in this condition were in fact enslaved and could not actually choose to whom they would sell their labour power. However, as these societies developed, the situation of workers became better, with many customary rights at the shopfloor and beyond at the state firms vis-à-vis managers, without detriment to the wage relation.²⁷ Furthermore, China created an entirely new system based on the *danwei* – the work unit – that encompassed all aspects of the lives and activities of factory workers. Overall, mobility was greatly diminished, but the vagaries of the market too. This experience was cut short and what appeared as an alternative to capitalism and self-ownership, also in this particular, did not last enough to constitute a full-blown system.

This is just a figure on the mural of memories of Maoism.²⁸ Peasants, secondary and untrustworthy in the revolutionary theory, in sharp contradiction with reality, were always underprivileged (except perhaps in Vietnam, for instance, after its Stalinist-style agrarian reform floundered).

In any event, if we return to the first paragraphs of this chapter, we can now see which was the essential problem. The individual autonomy that Nuer warriors were seemingly eager to affirm, in the almost 'anarchist' way Evans-Pritchard grasped it, is very different from what we come across today, although he, in a further anachronistic argument, even spoke of 'rights' among the Nuer. Autonomy is exercised within the framework of the legal state, rights and the rule of law, as far as this goes. Anarchism may imply the rejection of this sort of political-juridical arrangement, yet it emerges from its imaginary and institutional universe, sharing some of its presuppositions, as socialism and communism did too. The same, of course, goes for Kandariok. While he may have insightfully and even brilliantly translated his own imaginary notions into the vocabulary of modernity regarding what the latter defines as autonomy, as well as freedom, with the imaginary overlap and instability that have characterised these notions in the 'West', the framework of the rational-legal state, subjective rights and the rule of law were entirely foreign to him. This is, like it or not, the modern heritage we have received, and it is with it we have to grapple, at this point in the framework of a truly global modern civilisation. There are, I believe, good enough reasons to like it, despite the need to look beyond its tenets, without detriment to contributions that stem from other civilisations (which must be, if that is to go beyond mere rhetoric, spelt out).

The twentieth-century socialist/communist revolutions tried to introduce other principles; they sadly failed. Massive unintended consequences and distortions created states and societies awfully different from the ones imagined as stemming from the principle of autonomy, explicitly or implicitly, for the intellectual and practical agents that initially strove for a civilisational change. What continues with us is, all in all, what can still be called the 'project of autonomy', in conjunction with and as a presupposition of freedom as non-domination, legally and politically, as well as more generally, which works on the other hand as a condition for the faithful exercise of the former.²⁹ Whether it can eventually re-emerge remains open, despite the mishaps and defeat of what metamorphosed into 'real socialism' and the transformative shortcomings of both social democracy and anarchism.

8.4 The radicalisation of autonomy

Autonomy, we have seen, is logically prior to freedom, or liberty, as a more political-republican reading might prefer. However, this is how its translation into social relations has appeared. This means that freedom functions

to a large extent as a juridical actualisation of autonomy, at the individual and collective levels. This connection may be smooth when citizenship can accommodate the yearnings and practices of autonomy. It may become more complicated once the former is not contained or expands beyond the bounds of the latter. We have accepted the framework of citizenship and rights in our craving for the translation of autonomy into freedom, but this has not been absolute, including within republican-liberal conceptions. More radical ways of dealing with the issue have time and again flared up. Socialism, anarchism and communism are the most usual movements set in this direction. The former has historically relied upon the state to push through its reforms; the two latter have rejected the state as a constitutive part of post-modernity, aiming to jettison it in tandem with rights, which it would not, as a consequence, have to guarantee. Anarchists and communists identified a threat to human freedom in the state's power and denied its authority beyond domination. The latter's theory was obviously fraught with inconsistencies in this regard since in practice it embraced an even stronger state.

Against the market, the social-democratic (or labourist) Welfare State implied more freedom for the working class, contrary to common parlance in the New Left and other currents. It developed through electoral representation. The actual provision of a safety net and other material entitlements in the direction of more or less universal citizenship allowed for the increase of autonomy, especially for young working-class people, who did not feel so brutally the compulsion of the market upon their lives. This runs contrary to what has been supposed by more orthodox sociological – and liberal – approaches, such as those stemming from Weber, who stressed above all the oppressive aspects of the state and the bureaucracy.³⁰ Yet the state as such remained a problem. For some, it was the ultimate guarantee not of freedom but of the ruling class's power or a bureaucratic machine geared to discipline the population, through moulding as well as sheer coercion. 'Civil disobedience' has also constituted a form of doing politics that traditionally stays within the bounds of citizenship and the law, even if it stands at its limits – that is, peacefully breaking laws seen as unfair and unjust in order to conquer new rights and redress old wounds, or at least trying to make sure that former conquests are not overturned.³¹ At this point, legitimacy and authority are denied. Finally, the public sphere, despite its commodification, has time and again returned as a locus of power in which citizens, often very rebellious, can intervene and, directly in the societal political system, press against power and produce change without breaking with the modern imaginary and institutions. In so doing, it also perhaps pushes it to its limits.³²

Beyond its simply dismissal, Proudhon proposed a solution for the restructuring of political power through federations in which authority would be limited to the specific objects of established contracts. The 'federative principle' would open room for a greater freedom for its units and individuals.³³

In turn, for the transition to communism, during its initial socialist phase, Marx submitted that the revolution should erect an alternative political system *outside* and *against* the bureaucratic and oppressive politico-administrative state apparatus, the military included, a 'fearsome parasitical body', at least in France. Marx saw no productive or positive contribution of the state to society. The collective experience of the Parisian workers during the 1871 Commune, as a 'dictatorship of the proletariat', would overcome this problem. Alternatively, he and Engels, regarding initially Britain and then Germany in word and deed, accepted the possibility of an electorally driven solution. The state would eventually 'wither away', with the whole structure of modern citizenship and the bureaucracy ditched. Rights had a relatively minor role in this transition and would eventually become irrelevant.³⁴ Lenin resumed this view and consecrated it as the formal dogma of the communist movement, according to which councils were the solution for proletarian, working-class autonomous and sovereign power. In practice, however, he already moved in the opposite direction, demanding power and authority to the party as a substitutive agent for the proletariat, which had vanished during the civil war that followed the 1917 Soviet Revolution. It should exert the dictatorship in its name.³⁵ Stalin, in turn, reversed, even at the theoretical level, this perspective, adamant as he was about the authority of the (vanguard) party (which Lenin introduced) and the state, which should grow (something Lenin would most probably have been uncomfortable with), as well as above all his own prominence since he controlled them all.³⁶ The *authority* of the party – extremely difficult and eventually impossible to justify – was an obsession of Marxist-Leninist communism.

With the transition of the party-state to state-based capitalism, this perspective was defeated in its core, namely, its socialist and future-oriented supposed knowledge as a form of legitimation, but assumed a new countenance, with the party holding out and claiming for itself the maximal authority in economic development and national enhancement or survival as well as taking over the mantle of tradition. Some go as far as to try to justify this sort of hierarchy as necessary and positive, beyond the party's vanguard role. Banking on a putative Confucian heritage, which the party-state has also mobilised as an element of legitimation, top-down 'meritocratic' relations are put forward as the solution for the problems of this system of rule, entailing a curious praising of its putative functioning.³⁷ Since the Tiananmen Square 'incident', the party-state has been trying to legitimise itself through performance, with rhetorical tropes and props as auxiliary elements. No other large-scale disruptive processes have taken place since then.³⁸ Whether this will remain so is anyone's guess.

In the West, Latin America and Africa, dissatisfaction has become endemic, with 'global indignation' becoming the norm and expressing itself in protests that have spanned the planet from 2008 to today. People reject

authority, not for the sake of rejecting it, but because of unsatisfactory performance (with neoliberalism blocking it) and even the disrespect of the rule of law (primarily though not only through political corruption), hence harming the state, the political system and the formal liberal infrastructure.³⁹ For quite a while, Chile seemed to be a country where this sort of popular explosion resulted in what seemed to be a sea change – with the election of a president coming out of social movements and a new political force and a new Constitution. It was however rejected in a plebiscite, with the political space eventually taken over by the extreme-right (which then also misread the conjuncture and had its own text voted out).⁴⁰ Civil disobedience, including against brutal state repression, has been present in all these cases. The demand and exercise of autonomy, as the capacity to affirm self-determination and the will to decision-making, is present in all these movements. They frequently tend to go over board and beyond the framework of citizenship and rights, with, dangerously, nothing to replace it, contrary to the left revolutions of the twentieth century, with their rhetoric, in practice falsified, of workers councils and the similar representative or delegative institutions. There has been in the end, unfortunately, a lack of durable translation of the disgust and uprisings of increasingly autonomous citizens in the state political system.

A number of authors, foremost Hardt and Negri, have tried to theorise such processes and pointed to alternatives. Initially, ideas such as the ‘multitude’, which could immediately bring about communism, or the quasi-Rousseauian idea that rulers should ‘rule obeying’ those whom they rule, against the ‘fetichism of power’ and the wholesale corruption of politics, have been put forward since the turn of the century. They did not endure as political solutions since they proved unrealistic or, at best, limited.⁴¹ More recently, the perspective of the refoundation of the ‘commons’ has been receiving much attention. It implies what we – politically – *do* in common, against the view of the ‘commons’ as something we can collectively possess.⁴² Nevertheless, these are also still limited practical and theoretical moves, let alone the difficulty to engage with the political shortcomings of such societal moves. Dissatisfaction lingers on, regardless of how hard professional politicians and often political scientists try to look the other way; sooner or later, new mobilisations will flare up, new paths will be found and new ideas are bound to emerge, be rediscovered and expanded.

For an emancipatory politics, we need to go beyond an individualist (also at the collective level) notion of autonomy. There is no autonomy in the social solipsism of the totally autonomous individual (or closed collectivity); autonomy is not contradictory with multiple collective belongings, including class, race, gender, religion, nation, family, friendship, neighbourhood and many others. Absolute autonomy is merely a negative imaginary construct, however pivotal it has been for modern civilisation, as much as the notion

of self-property; an alienating delusion, however positive it was in terms of broadening the inner space of the individual, psychically, morally, politically and intellectually. We need to recognise our dependence on others, in all these dimensions, our common belonging and that we constitute ourselves in multidimensional social processes in which power and conflict are ubiquitous, regarding both autonomy and freedom. What matters is whether they are horizontally or vertically organised and, if hierarchical, how this hierarchy is structured. This would also involve the restructuration of forms of political mediation and a renewed commitment to theory, beyond immediacy and sheer experience, which are a hallmark of social and political processes today, in a world in which large hierarchical organisations have crumbled or lack legitimacy.⁴³ It is not clear how to further develop individual and collective autonomy, as such a positive evolutionary acquisition, in this difficult situation, recombining it with collective endeavours.

Notes

- 1 E. E. Evans-Pritchard, *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People* (Oxford: Clarendon, 1940), pp. 5–6.
- 2 David Graeber and David Wengrow, *The Dawn of Everything: A New History of Humanity* (New York: Fair, Straus and Giroux, 2021), pp. 35–49ff. Compare this with Patterson's deeply elaborated and researched theses according to which 'freedom' emerged in contrast to slavery within what eventually became the Western, especially the modern tradition – and nowhere else. Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982); Idem, *Freedom*, vol. 1. Freedom in the Making of Western Culture (New York: Basic Books, 1991).
- 3 Pierre Clastres, *La Société contre l'Etat. Recherches d'anthropologie politique* (Paris: Minuit, 1974); Klaus Eder, *Die Entstehung staatlich organisierter Gesellschaften. Ein Beitrag zu einer Theorie sozialer Evolution* (Frankfurt am Main: Suhrkamp, 1976); Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985), chaps 1–4; Michael Mann, *The Sources of Social Power*, vol. 1. A History of Power from the Beginning to A.D. 1760 (Cambridge: Cambridge University Press, 1986), chaps 3–5; David Graeber, *Fragments of an Anarchist Anthropology* (Chicago: Paradigm, 2004). For evolution, see José Maurício Domingues, 'Power and rule, civilizations and the modern political dimension: Parallelism, convergence and divergence in social evolution', *International Review of Sociology*, vol. 32 (2022): 174–199.
- 4 Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), pp. 5–6. The problem is that, first, he holds a very traditional view of the individual, homogenous and clear-sighted, oblivious therefore to psychoanalysis and other twentieth-century currents, and, second, reproduces it in what regards collectivities, expecting them to have the same (in this extent fictive) highly centred subjectivity of that sort of individual (organised, transparent, with a clear identity, a decision-making centre and intentionality). In the absence of these features, he falls back on 'value-individualism'.
- 5 Stoic autonomy has been concerned with internal morality and self-determination alone, not with the social world, whether or not the agents have strong connections with it in practical life, where they can accept a situation of total

- heteronomy. See John M. Cooper, 'Stoicism and autonomy', *Social Philosophy and Policy*, vol. 20 (2003): 1–29. We are not far from the flight from the world we spot in several versions of Catholicism and in Hinduism.
- 6 I diverge therefore from Christopher Heath Wellman, 'The paradox of group autonomy', *Social Philosophy and Policy*, vol. 20 (2003): 265–285.
 - 7 For an example touching on indigenous people-cum-peasants, see Alice Soares Guimarães and Fernanda Wanderley, 'Between autonomy and heteronomy: Navigating peasant and indigenous organizations in contemporary Bolivia', *Journal of Agrarian Change*, vol. 22 (2022): 576–591.
 - 8 Mikhail Bakunin, 'What is authority', in *God and the State* (New York: Dover, [1882] 1970); Pierre J. Proudhon, *Idée générale de la révolution au XIXe siècle. Choix d'études sur la pratique révolutionnaire et industrielle* (Paris: Gariner Frères, 1851), especially studies 3–4 and pp. 192ff, 277ff; Idem, 'Du principe de Fédération', in *Du Principe Fédératif et de la nécessité de reconstituer le parti de la révolution* (Paris: E. Dentu, 1863); Carl Boggs, 'Marxism, prefigurative communism and the problem of workers' control', *Radical America*, vol. 11 (1977): 99–122.
 - 9 Friedrich Engels, 'Von der Autorität' (1874), in Karl Marx and F. Engels, *Werke*, vol. 18 (Berlin: Dietz, 1976).
 - 10 Robert Paul Wolff, *In Defence of Anarchism* (New York, 1970 – www.ditext.com).
 - 11 Paul M. Sweezy and Paul A. Baran, *Monopoly Capital: An Essay on American Economic and Social Order* (New York: Monthly Review, 1966), cf. p. 22.
 - 12 Hannah Arendt, 'What is authority?', in *Between Past and Future: Eight Exercises in Political Thought* (London: Penguin, [1961, 1968] 1993); Kathya Araujo, *¿Cómo estudiar la autoridad?* (Santiago: Editorial USACH, 2021), particularly chaps 1–2.
 - 13 K. Araujo, *El miedo a los subordinados. Una teoría de la autoridad* (Santiago: Lom, 2016), chap. 5. She keenly differentiates more authoritarian, but also less rigid, Latin America and particularly Chile from the West. See also Pippa Norris (ed.), *Critical Citizens: Global Support for Democratic Governance* (Oxford: Oxford University Press, 1999).
 - 14 C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, [1962] 2011), general assumptions stated in pp. 3, 54, 163ff; James Tully, 'The framework of natural rights in Locke's analysis of property', in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993); Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2008), pp. 146–154; D. Graeber, *Debt: The First 5000 Years* (New York: Melville, [2011] 2014), pp. 205–207; Talcott Parsons, 'Social interaction' (1968), in *Social Systems and the Evolution of Action Theory* (New York: Free Press, 1977). More specifically, see G. A. Cohen, *Self-ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995); Carole Pateman, 'Self-ownership and property in the person: Democratization and a tale of two concepts', *The Journal of Political Philosophy*, vol. 10 (2002): 20–53.
 - 15 In the historical change underwent by the meaning of these terms, Grotius' position, originally in Latin, stands out as trying to distinguish between both notions, while English Stuart Absolutism, to which Hobbes was attached, conflated them. See Eric Wilson, *The Savage Republic: De Indis of Hugos Grotius, Republicanism, and Dutch Hegemony within the Early Modern World-System (c. 1600–1619)* (Leiden and Boston: Martinus Nijhoff, 2008). See also Thomas Hobbes, *Leviathan [or the Matter, Forme, and Power of Common-Wealth Ecclesiastical and Civill]* (Cambridge: Cambridge University

- Press, [1651] 1996), *passim*. The conflation of those two ideas started, not by chance, in Imperial Rome, with the emperor at its core, and carried on during the Christian Middle Ages. See Melissa Lane, *The Birth of Politics: Eight Greek and Roman Political Ideas and Why They Matter* (Princeton, NJ: Princeton University Press, 2015), pp. 288–289; Pierre Dardot and Christian Laval, Dominer. *Enquête sur la souveraineté de l'Etat en Occident* (Paris: La Découverte, 2020), especially pp. 100–112.
- 16 John Locke, *Second Treatise* (1689), in *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988), chaps 2, 4–5, 9; Jean-Jacques Rousseau, *Du Contrat social, ou principes du droit politique* (1762), in *Œuvres complètes*, vol. II (Paris: Seuil, 1971), chaps 1.1, 1.4, 1.6. Note that, despite a later revision of such a view in the context of a contribution about government in Poland, Rousseau distinguishes ‘citizens’ – who do not ever surrender their sovereignty – from ‘subjects’, a point the English missed when accepting representation and enslaving themselves, becoming ‘nothing’ indeed, he argued in chaps 1.6, 3.15; Idem, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (1755), in *op. cit.*, Second Part. For Locke, see also J. Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980), pp. 61, 69, 71–72, 93, 146, 167, 174. If being a temporary servant was not, in civil terms, a problem, it often meant exclusion from active political citizenship due to a putative dependence on masters.
- 17 Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, [1785] 1977), especially pp. 74–75, 81–82; Idem, *Metaphysik der Sitten*, in *Werke*, vol. 8 (Frankfurt am Main: Suhrkamp, [1797] 1977), especially ‘Eileitung in die Rechtslehre’, §§ A-B, pp. 344–346. ‘Independence’ – autonomy – from empirical objects of desire is *negative* freedom; self-legislation according to rational ‘maxims’, *positive* freedom. Idem, *Kritik der praktischen Vernunft* (Frankfurt am Main: Suhrkamp, [1788] 1977), § 8, p. 144. See Susan Neiman, *The Unity of Reason: Rereading Kant* (New York: Oxford University Press, 1994), chap. 3; Paul Guyer, ‘Freedom: Will, autonomy’, in Will Dudley and Kristina Engelhard (eds), *Immanuel Kant: Key Concepts* (London and New York: Routledge, [2011] 2014); Edward Demenchonok, ‘Learning from Kant: On freedom’, *Revista portuguesa de filosofia*, vol. 75 (2019): 191–230, especially p. 198. For the relation between the two philosophers, see Ernst Cassirer, ‘Kant and Rousseau’ (1939), in *Kant, Rousseau, Goethe* (Princeton: Princeton University Press, 2016).
- 18 Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts* (1820), in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, 1986), § 57. See (also for Kant), Charles Taylor, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979), pp. 4–5, 75–84.
- 19 Karl Marx, *Das Kapital. Kritik der politischen Ökonomie*, vol. 1 (1867, 1873), in K. Marx and F. Engels, *Werke*, vol. 2 (Berlin: Dietz, 1962), vol. 1, pp. 181–183; already also in K. Marx and F. Engels, *Manifest der kommunistischen Partei* (1848), in *Werke*, vol. 4 (Berlin: Dietz, 1978), p. 468.
- 20 C. Pateman, *The Sexual Contract* (Cambridge: Polity, 1988).
- 21 Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (Albun, AL: Ludwig von Mises Institute, [1973] 2006, 2nd edition), chaps 2–3.
- 22 Lane, *op. cit.*, pp. 35–36.
- 23 Paula Banerjee, ‘Women’s autonomy: Beyond rights and representations’, in Ranabir Samaddar (ed.), *The Politics of Autonomy: Indian Experiences* (New Delhi, Thousand Oaks, and London: Sage, 2005).
- 24 Paolo Santangelo, *Individual Autonomy and Responsibility in Late Imperial China* (Amherst: Cambria, 2021); Børge Bakken, *The Exemplary Society:*

- Human Improvement, Social Control, and the Dangers of Modernity in China* (Oxford: Oxford University Press, 2000), pp. 11–12ff.
- 25 Ernesto Che Guevara, 'El hombre y el socialismo en Cuba' (1965), in *El socialismo y el hombre en Cuba* (Mexico: Oceansur, 2011); Regula M. Zwahlen, 'The lack of moral autonomy in the Russian concept of personality: A case of continuity across pre-revolutionary, Soviet and post-Soviet periods?', *State, Religion, and Church*, vol. 2 (2015): 1–43. It might be argued that moral – and political – autonomy could not thrive in a political system where the values and behaviours that prevailed were loyalty, obedience and shame, the latter as the main external sanction, short of administrative and policy measures, that was applied to political and plain bureaucrats. But this is likely to be an exaggeration, though not totally deprived of truth. See Ferenc Fehér, Agnes Heller and Györg Márkus, *Dictatorship over Needs: An Analysis of Soviet Societies* (New York: Saint Martin's Press, 1983), pp. 208–209. On the other hand, the interpretation that accepting blame for objective mistakes which would become evident in the future was responsible for the confessions under Stalin's Moscow show trials could make some sense if we did not know about the violence imposed on the leading Bolshevik cadres at this point and that they would certainly not share this interpretation, contrary to Maurice Merleau-Ponty, *Humanisme et terreur. Essai sur le problème communiste* (Paris: Gallimard, 1947). See also V. I. Lenin, *What is to be Done? Burning Questions of our Movement* (1902), in *Collected Works*, vol. 5 (Moscow: Progress, 1960).
 - 26 K. Marx, 'Thesen über Feuerbach' (1845), in K. Marx and F. Engels, *Werke*, vol. 3 (Berlin: Dietz, 1978); K. Marx and F. Engels, *op. cit.*, p. 482.
 - 27 For some, it was slavery, and hence much less freedom than in capitalism, that characterised the Soviet Union since workers could not even choose their boss; for others, workers 'owned' their jobs. See Bruno Rizzi, *Le Collectivisme bureaucratique* (Paris: Champ Livre, [1939] 1976); Michael A. Lebowitz, *The Contradictions of Real Socialism* (New York: Monthly Review Press, 2012), pp. 90–92, 154.
 - 28 David Bray, *Social Space and Governance in Urban China: The Danwei System from Its Origins to Reform* (Stanford: Stanford University Press, 2005), especially chaps 1, 5.
 - 29 For autonomy, see Cornelius Castoriadis, *L'Institution imaginaire de la société* (Paris: Seuil, 1975), pp. 103ff, 138ff; and, particularly, Idem, 'Pouvoir, politique, autonomie' (1988), in *Le Monde morcelé* (Paris: Seuil, 1990). He was, however, far more pessimistic in Idem, *La Montée de l'insignifiance* (Paris: Seuil, 1996).
 - 30 Adam Przeworski and John Sprague, *Paper Stones: A History of Electoral Socialism* (Chicago: The University of Chicago Press, 1986); J. M. Domingues, *Social Creativity, Collective Subjectivity and Contemporary Modernity* (Basingstoke: Macmillan and New York: Saint Martin's Press [Palgrave], 2000).
 - 31 H. Arendt, 'Civil disobedience', in *op. cit.*; Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, MA and London: MIT Press, 1992), pp. 564ff.
 - 32 Jürgen Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (Frankfurt am Main: Suhrkamp [1962] 1990); Idem, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat* (Frankfurt am Main: Suhrkamp, 1992); Idem, *Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik* (Frankfurt am Main: Suhrkamp, 2022); Craig Calhoun (ed.), *Habermas and the Public Sphere* (Cambridge: MIT Press, 1992). See also the optimistic reading of Manuel Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age* (Cambridge: Polity, [2012] 2015).

- 33 Proudhon, 'Du principe de Fédération', chaps 1–4, 7.
- 34 K. Marx, 'The Civil War in France' (1871), in K. Marx and F. Engels, *Collected Works*, 1870–1871 (London: Lawrence & Wishart, 1986); Idem, 'Kritik des Gothaer Programs' (1875), in K. Marx and F. Engels, *Werke*, vol. 19 (Berlin: Dietz, 1987). Marx was fiercely critical of Proudhon's *economic* concepts and assumed that capital created nothing, stressing, however, that, if capitalists did not create value, the organisation of production they carried out provided for the workers' increased productivity. This stemmed from the greater productive power of the workers 'acting together' (*zusammenwirken*) in the process of 'cooperation', which was exercised through the 'command' (*Kommando*) of capitalists. Idem, *Das Kapital*, vol. 1, chap. 11, pp. 349–350. See, for the original statements, P. J. Proudhon, *Qu'est-ce que la propriété? Ou recherches sur le principe du droit et du gouvernement* (Paris: Garnier Frères, [1840] 1859), pp. 9, 99–101, 129 (I have retranslated *Kommando* and *Befehl* differently into English, although they both are most certainly a way Marx rendered *command*, such as used in Political Economy, from that language into German). Weber (*op. cit.*) used *Befehl*, which I have formerly translated as *command*, as we find it from Hobbes to Austin in political theory and jurisprudence. Topics were similar, conceptual legacies alike. Yet when it came to politics and the state, Marx was incapable – as if entirely captured by antibureaucratic liberalism – of seeing any productivity and role for the bureaucracy. K. Marx, *Der achtzehnte Brumaire des Louis Bonaparte* (1852), in K. Marx and F. Engels, *Werke*, vol. 8 (Berlin: Dietz, 1960), p. 196.
- 35 V. I. Lenin, *The State and Revolution: The Marxist Theory of the State and the Tasks of the Proletariat in the Revolution* (1918), in *Collected Works*, vol. 25 (Moscow: Progress, 1964). See, further, Ernest Mandel, *Control ouvrier, conseils ouvriers, autogestion* (Paris: Maspero, 1981).
- 36 Joseph V. Stalin, *Political Report of the Central Committee to the Sixteenth Congress of the C. P. S. U. (B.)*, in *Works*, vol. 12 (Moscow: Foreign Language Publishing House, [1930] 1955).
- 37 Daniel A. Bell, *The China Model: Political Meritocracy and the Limits of Democracy* (Princeton, NJ: Princeton University Press, [2015] 2016); D. A. Bell and Pei Wang, *Just Hierarchy: Why Social Hierarchies Matter in China and the Rest of the World* (Princeton, NJ: Princeton University Press, 2020).
- 38 Dingxin, Zhao, *The Power of Tiananmen: State-Society Relations and the 1989 Beijing Students Movement* (Chicago: The University of Chicago Press, 2002); Peter Hay Gries and Stanley Rosen (eds), *State and Society in 21st-Century China: Crisis, Contention and Legitimation* (New York: RoutledgeCurzon, 2004).
- 39 Breno Bringel and J. M. Domingues (eds), *Global Modernity and Social Contestation* (London and New Delhi: Sage, 2015).
- 40 K. Araujo (ed.), *Hilos Tensados. Para leer el octubre chileno* (Santiago: Editorial USACH, 2020); Manuel Antonio Garretón (ed.), *Antecedentes y proyecciones del estallido social de octubre de 2019* (Santiago: LOM, 2021); Sylvia Eizaguirre, 'Fracaso constitucional', *El País Chile*, 18/12/2023 (<https://elpais.com/chile/2023-12-18/fracaso-constitucional.html>). Retrieved 18/12/2023.
- 41 Michael Hardt and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2001); Idem, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin, 2004); Idem, *Commonwealth* (Cambridge: Harvard University Press, 2011); Idem, *Declaration* (New York: Argo, 2011); Enrique Dussel, *20 tesis de política* (Mexico: Siglo XXI, 2006).
- 42 Pierre Dardot and Christian Laval, *Commun. Essai sur la révolution au XXIe siècle* (Paris: La Découverte, 2014); Raquel Gutiérrez Aguilar, *Horizontes*

comunitario-populares. Producción de lo común más allá de las políticas estado-céntricas (Madrid: Traficantes de sueños, 2016); M. Hardt and A. Negri, *Assembly* (New York: Oxford University Press, 2017).

- 43 See, with Adornian inspiration but also perhaps some nostalgia for older forms of (Marxist) mass organisation, Anna Kornbluh, *Immediacy or, the Style of Too Late Capitalism* (London and New York: Verso, 2023).

9

TRENDS AND PHASES OF MODERNITY

9.1 State strengthening and the expansion of autonomy and freedom

The modern state emerged in a region where it would be counterintuitive to expect its rise. If a medieval king of this region was asked in the thirteenth century whether he envisioned himself or his offspring as a true sovereign (beyond the mere supremacy which he, if lucky enough, could enjoy in his surroundings), he might dream of Charlemagne's empire; yet, if honest, he would surely be incapable of giving a positive answer. A few centuries later, Absolutism consolidated in what was quickly becoming Europe. Soon enough, even a different type of state appeared, that is, the modern state as a massive 'power container', more powerful than any other entity at this stage. In other areas of the globe, other massive states, more advanced than those in the regions occupied by Christianity or similarly developed civilisations, also existed – in Japan, where feudal states were eventually centralised, and above all in China, within whose borders wealth was supposedly greater. Nevertheless, the modern state – actually modernity overall – did not emerge anywhere save in what became Europe – loosely synonymous with the West before the constitution of the United States.¹

This new state developed its capabilities in a radical evolutionary divergence (beyond that 'great divergence' between Britain and China economically). It would soon penetrate society more deeply than any other state, surveil it and mould its subjects now turned into citizens; it had systematic law at its core but could also draw upon it for its purposes; there were resources at its disposal that were unsurpassed anywhere else and an administrative body articulated according to formal rules and a means-ends adaptation that were unique, with a collection of taxes that would make the

powerful in any former system of rule die of envy. This prowess did not mean that it could walk alone. On the contrary, as modernity developed and society became more complex, it increasingly had to rely on other agents with bigger or smaller power to achieve its – not necessarily homogenous – goals, either through the political system or through administrative and lateral political moves.

The rise of the state took place in tandem with another long-term development, namely, the expansion of the autonomy of individual and collective agents, as well as, for the first time in history, the formal establishment of freedom, more precisely equal freedom, at least regarding fundamental civil rights, and a little later in political terms too. Although imaginary elements had been unfolding for a long time, the contrast we almost inevitably draw with the medieval imaginary is also stark. Relations of dependency and a corporate view of the universe lay at the centre of a worldview in which collectivities had a place and a value foreordained by God, with the imaginary pre-eminence of kings or queens, nobles and the Church.² Other areas had their conceptions of individuality, without an individualist perspective, but at least they had the potential to develop a view of autonomous political agents that could move in this world. They remained, notwithstanding, at most oriented to a transcendental space, to the *jenseits*, autonomy and the end of suffering coming about when the individual managed to entirely escape the cycle of reincarnations that would throw him (and to some extent her) back into the mundane world, as was the case with Hinduism and Buddhism, with only very partially the same sort of issue turning up in neo-Confucian and Taoist China. In this world, however, the sort of attachment of people to their collectivities and social placement seemingly did not allow for this search for salvation to be brought down to earth.³

This development did not unfold according to any teleology: freedom is not part of the rational fulfilment of the ‘Spirit’ in history, nor is it even a subproduct of individualism; even less so was the state part of the plan.⁴ Contingent outcomes and perceptions spread and, in the course of a protracted process, led to the crystallisation of particular sorts of individualism – republican, utilitarian, neoliberal or aesthetic – in which autonomy and freedom – phrased differently in each of them – played a crucial role, actually consisting to a large extent in the exact elements that would be central for modernity. These were relatively independent developmental processes but have become mutually reinforcing from a certain point onwards. While partly contingent, at a certain stage they locked in, following each and both together a logic from which it is difficult to escape. They have both opposed and driven each other forward. The dominant developmental trend today is the strengthening of the state, which reproduces the first process pointed out above. The expansion of autonomy and its entanglement with, at present perhaps also limitation by, freedom, at least as expressed in citizenship as a

system of rights (and duties), works as a countertrend in partial opposition to the strengthening of the state and following its own logic. Each is premised upon a mechanism and depends on complex imaginary articulations.

We will resume what in this book and many places elsewhere has consisted in the discussion of the historical roots of modernity. They are manifold and contingently converged towards a directional development which the trend-concepts presented below are geared to grasp. We must also remember that there was also a rupture with the emergence of modernity, with an unprecedented type of civilisation emerging, as a substantial divergence within social evolution. Though capitalism, in particular, should be placed along with them in this discontinuist understanding, this historical breakthrough has much to do with the advent of the modern state, with its abstractness, homogeneity and capabilities, as well as with the sort of autonomous, eventually free, and thus individualised, this-world-oriented agent that modernity crafted at the political level (with its presence also being intensely felt in other dimensions). The supersession of modernity will probably lead to a once again unprecedented civilisation. The only attempt to accomplish this leap into the future has melancholically crashed. At this point, nothing lies on the horizon, for better or worse, that appears as a moment of overcoming modernity. Its internal trends are furthermore still in full swing.

We shall see below that state strengthening and autonomisation today are trends at odds with each other: while the state yearns for more control, agents strive to be more autonomous, and, vice versa, as they look for autonomy, the state seeks more control. This is not absolute insofar as states can intervene in social life to answer the claims of citizens (for security, health, education and decommodification, among many other things) and thereby foster individual and collective autonomy. Since state strengthening is the dominant trend, we can say that autonomisation is generally a countertrend, as opposed to the strengthening of the state, always and especially today, with the proviso that they may sometimes be complementary, in their own terms, rather than oppose each other. In relation to state strengthening and autonomisation, there are some further countertrends. In the case of state strengthening, intentional struggles for decentralisation as well as projects for over-centralisation that unintentionally block the fruition of capabilities, confounding the concentration of power with its centralisation, end up weakening instead of strengthening the state. In the case of autonomisation, demands for enhanced individual autonomy may be so extreme and phrased in such an egotistic and self-centred perspective that the necessary social conditions to be genuinely autonomous are enfeebled, while simultaneously creating barriers to collective autonomy. This may also, if internally the collectivity leaves little room for individual autonomy, eventually choke the individual agent. The expansion of rights, especially social rights, may, on the other hand, furnish a springboard for further autonomisation insofar as

decommodification concretely heightens the likelihood of self-determination beyond formal freedom.

As we have already seen, developmental processes may be of two types: (1) in one of them, imaginary teleology, intended or unintended, may steer developmental processes, lending them a constant directionality, although, in this case, agents can more easily drop out and find other paths through creative innovations, which are hard to develop institutionally and practically. It implies an unintentional sort of outcome, whether or not agents grasp what is happening and participate, willingly or unwillingly, happily or unhappily, in them. Dropping from them alone does not alter processes, in any event; (2) there are in addition processes that lock agents into a logic (*Eigenlogik*) from which it is very difficult to escape, although one may always break off, looking for new paths, with consequences that may be more or less dramatic, but often lead to defeat and exclusion from dominant processes, basically due to their competitive character (beyond any 'transaction-cost'). The first sort of process may also imply some level of unintentionality and entail far-reaching unintended consequences.

Modernity has emerged from the womb of the old feudal world. Actually, other civilisational configurations might have emerged, had conditions been different. Many novelties appeared between the fifteenth and the eighteenth centuries when that region was becoming Europe, emerging from feudal Christendom, with history taking an unprecedented direction. Today it is almost impossible to imagine other possibilities. Nevertheless, they were there. To start with, the state structure, whose fragmentation could have been recreated if the forces of cities and feudal lords had turned the table against the always greater centralisation that culminated in the Absolutist state. Alternatively, instead of the this-worldly affirmation of the individual, a renewed flight from the world, typical of medieval monasteries, could have come about due to some sudden innovation that rejected the systems of domination prevalent in that period. These are issues that speak directly to political modernity, to which we could add other intervening factors that contributed to the genesis of political modernity, such as capitalist development and the rise of inner-worldly individualism. Contingent processes – the third kind of social process – dominated this period until an intense directionality took over. As to history, this chapter is therefore not concerned with the entire period immediately prior to modernity. Instead, it looks back with outcomes and other lines of development in mind so as to understand and reconstruct how what eventually took place took the direction it did, though there was initially no teleological necessity regarding what effectively came about. Thereafter a directional progression indeed prevailed, which is what mainly interests us here.

We will now further systematise what was laid out mainly in the former two chapters, but also thus far throughout this book. Before we proceed, it is

helpful to synthesise the theoretical argument, guiding the reader into what will come next.

The political dynamic of modernity is premised upon a tight cluster of contradictions. State power grows partly due to the desires and designs of ruling groups and administrative bodies. They follow their appetite for power, often self-serving, and the deeply ingrained belief that the state must control and somehow steer social life to make it more rational, safer, better and even freer for most citizens. The state must be equipped with the means to pursue its tasks and must be preserved in its integrity. This mix underlies the drive towards state expediency in all its aspects. Conversely, citizens demand that the state intervene and respond to their claims about rights – including safety – social policies and well-being, which suffuse the modern imaginary as a telos to be consummated. Socio-economic development, whatever its content, remains more generally as a background issue that also interests some specific social collectivities. But citizens reject state control, in the name of autonomy and freedom, and also hierarchies more generally, despite and sometimes entangled with more hierarchical perspectives, whether substantively or instrumentally to consummate that telos. Complementarity between citizens and the state as well as permanent antagonism lies therefore at the heart of modernity. Its directional developmental dynamic, with its trends and countertrends, rests on this complex set of relations. In the nineteenth century, some might have called this a law, which is really not the case, due to its variations and the contingency that cut across its inner logic. Nevertheless, the directional push, with its strong locked-in aspects, prevails, over and above such variations and contingency.

9.2 The emergence and long-term strengthening of the modern state

The colonial expansion of the modern state may have helped it to somehow develop its capabilities, in fact principally due to its perceived shortcomings rather than to how it was structured. Nevertheless, the colonisation carried out until the nineteenth century was undertaken by patrimonial centralised Absolutist states that had still little to do with modernity – particularly the Iberian monarchies of Spain and Portugal – save in what regards their centralisation, which became shaky in the at that time very distant Americas. In fact, the state's capabilities were sharpened in the emerging European context before they were taken abroad, even if it learnt with private companies that were, for the Dutch and the British, a means of colonisation with only indirect state support. What was the generative mechanism underpinning the seemingly unlikely yet specific emergence of the modern state in Europe?

Elias, in his major work, most surely emulating Marx (and his discussion of the developmental accumulation of capital through competition between capitalists) and also dialoguing with Weber (with his thesis about

the monopoly of the legitimate means of violence), as well as conceivably with some influence of geopolitical arguments, pointed out conflict, more precisely the military struggle between feudal lords, as the mechanism that led to the increasing centralisation of power, prior therefore to modernity. Competition and territorial conquest propelled this primitive or original accumulation of power, which, Elias believed, heightened the interdependency between humans and led to internal pacification. If initially rather independent feudal lords clashed, eventually rising Absolutist states took to the battlefield in a way that only Japan to some extent matched. We have never approached a situation of monopoly proper, though; it is as if oligopolisation had achieved on the other hand a definitive victory. Initially, territorial conquest remained pivotal for interstate relations and power accumulation; after World War II, its importance severely declined, yet it did not disappear. The recent Russian incursions against Ukrainian territory, whatever the arguments put forward for this war and its outcome, are proof of that (what National Socialism in Germany, shortly after Elias published his book, painfully made clear as well).⁵ While the powerful agents, often willingly and happily, involved in this process showed a sustained interest in its results and learnt from one another, most perishing – literally or not – in its course, there was little they could do other than to take part in it. Individually dropping out would not have modified the direction of those ongoing developments.

Another crucial generative element is the capitalisation of war. It rested on an alliance between the bourgeoisie and the state, both assuming ‘national’ forms. This partly explains why it prevailed over imperial formations, with a greater potential concentration of power but less capacity for nationalisation and the encasement of the bourgeois merchants and financiers in the emerging national configuration, as well as over city-states, which could not concentrate military resources as those large monarchies were able to do. Taxation developed simultaneously since states needed to finance their wars and pay their debts to the bourgeoisie that lent it money. Besides, the enduring and future-oriented effort carried out by states, in which the Mercantilist doctrine was pivotal, was to develop the core of their possessions economically, to make them rich and prepare for war. Competition was in this regard crucial too.⁶ Verticalized cooperation then played a role in the centralisation and concentration of resources in the state. Here, once again, although we can find intentionality and projects, along with learning from other states, the process locks in its main agents.

Bureaucratisation also set in as a trend and greatly facilitated the growth and deployment of all state capabilities, with a rationalisation of its procedures and means, in order to fulfil tasks such as mobilisation for war and other goals state rulers demanded. The more efficient it looked, the more it was required and the more was required from it. This bureaucracy was

increasingly non-patrimonial, with resources becoming free for the administration of the state as such and feeding into all its capabilities.⁷ Nevertheless, this is only part of the history, however crucial, of the initial emergence of the modern state, with taxation and materialisation, management and coercion as the capabilities that stand out. We need further to reckon with surveillance and moulding: they both grew in the same period, with moulding maintaining a strong foothold in other societal organisations of the societal side of modernity, as usually happened before too, especially with the Church, and still happens today. Regardless of how important the state's role in moulding was, for instance, in the creation of nations in Europe, it is far too subtle to be entirely and exclusively related to it. The state developed piecemeal the general capacity to pierce deeply into society and steer many aspects of social life, which it often did by proxy, making alliances in which it carried out moulding.⁸ Surveillance, too, soon became a key feature of state capabilities as part of the arsenal of devices of the reason of state. The meta-legal capability also emerged as a crucial element of the structuration of the state, whether through the 'common law' or the re-emergence of Roman law, historically mediated by canonical law, and the gradual rise of 'civil law' in the continent. The legal capability did serve societal agents, also providing an excellent means for the state to organise and intervene in society; in particular, it homogenised citizens as a category of people that had common rights, from civil to social, later on.⁹

Ultimately, nation-building as such became crucial for the emergence of state power. A common national identity, shared by most of the population, was not an absolute necessity for state functioning in modernity, as shown by the proliferation of empires.¹⁰ Yet empires crumbled, showing how a sense of national belonging could buttress state power. Actually, nation-states inherited and acquired colonies, but they were internally rather cohesive. A locked-in process, with learning from one another and systematic projects, still predominates in this respect.

We thus have a complete synthetic description of the empirical elements of the emergence of the modern state, premised upon the mechanisms that steered its initial moments. Clearly, the principle of organisation at the core of this process was hierarchy, with, naturally, command as its mechanism of coordination, whereas the principles of antagonism, competition and conflict, with their mechanism of opposition, emulation and struggle, also come here to the fore. The densification of the capabilities that the state can put to use when it intervenes in social life is part and parcel of the process, complemented by the demands individuals and collectivities raise and to which it must respond in order to ascertain its legitimacy, with the affirmation of rights of all sorts, often underpinning equal freedom (through law and social policies). Networked relations between state and other social agents (through voluntary collaboration) are not to be excluded from the exercise

of these capabilities, with the market also playing an important role therein (through voluntary exchange).

Nowhere else did a development combining these elements come about. Other states and civilisations followed their own path. What has been argued thus far, and I shall further elaborate, does not mean that all states, including those in the region that became Europe, were capable of developing in this direction, with centralisation and the growth of their capabilities. In some places, specifically in Latin America, the process took off and difficulties multiplied with the first inroads of modernity as such, basically due to centripetal forces, which were eventually surmounted. In other areas, specifically Africa, lack of resources and a complicated geography made this much more difficult. In others still, like China and Vietnam, but India as well, with significant problems, this was successfully resumed after colonial domination ended. Japan decidedly went on in its own direction. In this regard, the centralisation of the state prior to the Meiji Revolution considerably helped. In turn, wherever it appeared, authoritarian collectivism significantly contributed to further pushes in this direction, with a lack of continuity where the party-state did not manage to transit to capitalism. Across all this variation, in the long run what did occur – through emulation, direct diffusion through conquest or learning through observation, as well as direct teachings – was a strong tendency towards the strengthening of the state, though it may not prevail in the short run and this is not a blind law. Such developmental processes – qua trends – depend on, are accompanied and sometimes contradicted by others that push in different directions. Rulers have been, usually adopting the same or similar innovations or sometimes taking different directions, very attentive to the success of other states and learnt from it from the very beginning.

If these are the generative mechanisms that historically answer for and conceptually explain the emergence of the modern state, once that situation disappeared or partly changed, why and how does it keep growing? In other words, which are the reiterative mechanisms that assure the strengthening of the state in the long run? How and why then are its capabilities bolstered and how does its strength build-up?

There are three types of answers to these questions. First, the reiteration of the strengthening of the state may come about because state rulers have projects for it and depend on its strength to promote and accomplish them, permanently keeping a watch on what other states do or being forced to learn from international organisations. Second, the process may move forward propelled by the goals of state bureaucrats, the attainment of which frequently leads to such a strengthening. These are, so to speak, supply-side answers. Finally, the demand-side answer stems from claims societal agents put forward to the state in a range of issues that tend to become even more numerous as modernity develops. Ultimately, the state is reproduced only

through officials, elected or not, and its power augmented. State agencies, accompanied by societal agents in many cases, build departments, buy material implements, produce knowledge, devise rules and strategies, implementing policies in all areas of social life. Alongside inputs from the societal side of modern life and especially from the societal political system, this is where we find impulses for state change and growth, or sometimes, yet rarely for long, diminution. We may say that during the coronavirus/COVID-19 pandemic we saw this moving both ways. If, on the one hand, a radical and antisocial (or at least anti-state) view was certainly important in many places and moments, on the other, it is also true that there were, stronger, albeit mostly diffuse, demands from citizens (including in their radical autonomy, more socially oriented in this instance) and peoples for the intervention of the state – counting moreover on its experts and bureaucrats. At the same time, bureaucrats and experts had an opportunity to exercise power and steer society when answering to this demand and even anticipating it, although politicians always kept the upper hand in the decisions taken to tackle the pandemic.

When bureaucrats and politicians are intent on enhancing the power of the state by developing its capabilities, strengthening its power and centralising or decentralising it, hence keeping it concentrated, the mechanism that reiterates the developmental trend we examine here is clear: intentional individual action and collective movement (learning from other settings is often present too). Catching up with competitors or enemies or simply adopting policies and means to achieve that goal and enhance state power appears straightforwardly and sometimes explicitly. In other cases, such processes are less obvious since nobody explicitly or consciously strives to enhance capabilities. It would therefore only be through the unintended consequences of the attempt to achieve other goals that we could explain why the improvement of capabilities strengthens state power and leads to its concentration. Elected and unelected officials, individually and as collectivities, must be implementing more discrete goals, a path that then leads to that more general outcome. Their activities could be related to direct personal interests in material things, prestige and power, but also to their interest in the programmes they are in charge of implementing.¹¹ While there is some plausibility for this sort of perspective, this utilitarian and rational-choice approach no longer works if taken to its extreme. To start with, strengthening the state does not necessarily have to do with ‘fat budgets’ or hiring lots of people; flanked by people who prefer to flaunt their job duties, some may moreover adopt this sort of behaviour, which may, in a turn of events, prove self-defeating if it is inefficient.

There are many types of state bureaucrats. Some may be keen on commitments, including honour and a sense of public mission, while others are keen on their own selfish ‘utility’ calculations. Some want to progress in

their careers, whereas others prefer to do nothing; others still become advocates or even ‘zealots’ regarding the implementation of programmes and the proper management of the state’s budget.¹² All in all, it is reasonable to believe that the bureaucracy, considering that its mission is at the core of the stability of society or social progress, will be inclined to the expansion of the state. Yet that is not always true, although at least in some areas – security and surveillance, for instance – this is more likely than in others. The sort of system of rule we are referring to is extremely important. Whereas society is largely independent of the state in modernity, the complexification of social life in authoritarian collectivism inevitably and directly entailed the growth of the state.

Bear in mind that growth is not tantamount to strengthening, as we have seen in a previous chapter. Only a balanced sort of growth, in addition somehow integrated with social life, is capable of strengthening the state. We must also recall to mind that the strengthening of the state is not directly related to even its growth. Not even the strengthening of bureaucracy hinges on its numerical growth. Actually, from now on the opposite may be true if we consider how digitalisation and Artificial Intelligence have become crucial for both the state and bureaucracy, which can become leaner.¹³ This is true for both the supply-side and the demand-side (including of democratic participation), with tense and even contradictory relations between them.

Politicians within the state political system are usually more important than unelected officials. After all, if high-ranking bureaucrats (or even lower ranks concerning less encompassing or less important issues) usually have a significant influence on policy formulation and application, the latter are based on political decision-making about what the state must do and how what it must do is thought of and implemented. To be sure, they have their own preferences and a lot of autonomy to put forward ideas and projects, usually according to official political decisions, notwithstanding sometimes deviations from them. Aloofness is however never absolute: the claims of the societal political system, directly or indirectly, impact politicians. An open political system may mediate this impact, with the caveat that it may depend on more fuzzy consultation or sensing public opinion and feeling, for instance through polls.

We must thus take into account the claims, such as interpreted and shaped by the state, and sometimes simply imagined, that arise in the societal side of the modern divide but also on its multifaceted state side, such as put forward to other agencies within it, without detriment to the relevant role mediators in the political system usually play in how they are selected and answered. In previous chapters, we have dwelt upon demands that concern rights, especially social rights. We could return to the coronavirus/COVID-19 pandemic and see how the state grew in the areas where responses were needed, much as such responses have been uneven. We could for instance

already start to speak about climate change, which demands involvement in several domains. The fact is that, as the state expands its areas of knowledge and intervention, either directly or through regulation, not only are such demands multiplied: it is from outside the bureaucracy, or one branch of it towards the other, that the enhancement of state power, its strengthening and the concentration of power therein, are propelled (with power possibly being shared with societal organisations).

Keynesianism and the Welfare State in the central countries of the global economic system, with a partial and innovative replication through developmentalism in the periphery and the semiperiphery, were obvious instances of the mostly benign aspects of such process, despite the whole gamut of problems modernity and modernisation entail (inequality, environmental disruption, exploitation). They usually produced ‘aggregate demand’ (deemed necessary against cyclical economic crises through the supply of services, finance and direct production, thereby generating labour and consumption), development (heavy industry, material infrastructure, science and technology) and welfare (responding to claims and societal expectations such as filtered by political mediators and the state apparatuses, via the political system directly or otherwise). Alongside the permanence of economic and social policies (including those aimed at regulation and correcting so-called ‘externalities’, ‘market failures’ and the effects of ‘natural monopolies’), other domains have become crucial for economic policies and plans, in, again, an ever more complex society. Across all the twists and turns undergone as they develop, social policies have also been a vast – perhaps the vastest – internal domain in which state intervention permanently demands the enhancement of capabilities.

All this is feasible only insofar as the state occupies a place in the imaginary according to which it is legitimate, responsible for the well-being of citizens and even justice. If that does not work, the tendency is for the state to have its power at least temporarily emptied out, without detriment to the maintenance, even if dormant for some time, of its capabilities. We have seen in former chapters that this is true: albeit not out of itself, instead, rather as an expression of the societal side of the modern divide, the modern state is today seen largely by citizens as legitimate and charged with many functions, while the political system is in really bad shape, lacking the trust of many. We still need to draw some conclusions from this curious situation.

May we surmise that the enhancement of the state’s capabilities and its strengthening as well as the concentration of power has an inner dynamic (*Eigenlogik*) from which it is at least very difficult to escape? In other words, are we allowed to say that it locks agents in an inescapable direction? Are these mechanisms absolute, or is it possible to break free from them short of a wholesale change of the imaginary, institutions and practices? It seems clear that neither the supply nor the demand side of the process is absolute,

either in their unintended or intended aspects. Contingent deviations from the paths we have discussed above cannot be ruled out; radical ones too, but that would require agents to place themselves outside the regular deals and routines characterising these activities. Which agents, ideas and interests are prevalent in specific historical (space-temporal) settings seems to matter at each stage. But, if the argument makes sense historically, a trend prevails over and above these contingent choices and moves by the different agents. We can surmise that to be locked in does not mean that agents cannot do something different; it means that they will most probably reiterate the given practices associated with a specific trend.

Then we must ask why this is so. In answering the question, we can list a number of motives – or causes, if ‘motives’, subjectively defined, are taken as essential for social causality, as we take them here – that explain why this happens, that is to say, that explain why developmental – locked-in – processes prevail and the trend-concepts we have suggested in the passage from the abstract to the concrete as well as in the present chapter are scientifically warranted. First, people reiterate practices because the cost of doing so differently is too high, if not prohibitive, in several cases (for example, as the competition in the market leads to monopoly – in fact, oligopoly – as Marx argued). This is, to some extent, the answer path dependency theorists give. Another answer, perhaps only apparently prosaic, is that this reiteration occurs because this stems from what people do without much questioning, simply following routines and infused with ideas that are present in the imaginary at higher or lower levels, although this does not mean that they behave without reflection (which may be merely practical). Finally, reiteration derives from people’s desires and ambitions, an argument whose justification need not lead us into questions of ontology or anthropology (that is, the historical record simply demonstrates it). In principle, anything may be done differently – people go crazy, revolutions erupt – yet this is not what prevails in the long run.¹⁴ Just think of how the promises of neoliberalism came to naught, as too rigid a doctrine, while incapable of rolling back the state as it once had promised, because, in all its radicalness and with the defeat of working-class organisations, it was still unable to force, or was not really interested in, the thorough and possibly limited retreat of the state from social and even economic policy. Therefore, a system of forces ensues that regularly pushes in a specific, recurring direction, despite potential countertendencies. This happens regarding the enhancement of state capabilities, strengthening and concentration (beyond mere centralisation) in its (multiple and at times contradictory) agencies. Is it contextual? Yes, it always is. Does it escape a locked-in logic? This answer is actually no.

We shall soon discuss transformative mechanisms, but here it is necessary to stress again that authoritarian collectivism did not enjoy, in its country of origin and in many other places, the proper balance between state and

societal agents and agencies, whereby excessive centralisation led to its radical de-concentration and eventually de-legitimation. Hence those reiterative mechanisms were brought under extreme tension, and, as soon as the pressure was taken off, things fell apart, with change coming in rampantly. If this was clear in the economic dimension, despite reform attempts, reaching a positive conclusion only in those that maintained party control but managed to move towards capitalism, it was above all in what refers to autonomy and freedom that they decisively failed (and those remnants may still do). Citizens intentionally and creatively (albeit limited by liberal notions) brought down the whole political system and pushed for wholesale changes of the state. In the Soviet case, the consequence was the total disorganisation of the state apparatus and a massive decrease in its capabilities and strength. Under Putin's new regime, a complete reorganisation of the state apparatus was intentionally carried out. Its strengthening was resumed, with capabilities upgraded in several areas, including moulding, based on Orthodox Christianity and nationalism, surveillance and coercion, now indeed to the detriment of individual autonomy and freedom.¹⁵

9.3 The emergence and development of autonomy and freedom

Long-term changes have also brought about autonomisation and freedom into what would become modernity in the turn from the eighteenth to the nineteenth century, though changes were underway a bit earlier here and there. Several substantive processes of great significance dissolved relations of personal dependency. Placed at higher theoretical level, the concept of *disembedding mechanisms*, subsuming those processes and being followed by the operation of *reembedding mechanisms*, will be at the core of the argument below, with specific reference to political processes. Their workings entail an *autonomisation of agents*, individual and collective. These are the generative mechanisms of political modernity, which we can conceptualise under three categories.¹⁶

First, we encounter the *abstract homogenisation of a 'national' space by the state*. It is unambiguously connected to the gradual establishment of the political dimension in modernity, in which juridical elements enjoy centrality too, and of particular relevance to our topic. It dissolves personal relations of domination directly at the level of the system of rule, in its expression on the state, and therefore both allows and forces people to make decisions about all aspects of life. This abstract homogenisation is based to a large extent on abstract law and the establishment of at least civil citizenship. The free-position we have discussed in Chapter 1 is its juridical outcome, with far-reaching political repercussions. In this regard, we may say that autonomy comes about as an inexorable process insofar as people have no choice once the state is structured so that corporations, the Church and in due course even

kings and nobles lose their hold. Ascriptive relations are softened and eventually liquified too. This heightened autonomy of individuals goes hand in hand with the expansion of juridical freedom, for which autonomisation is a presupposition; in practice these processes develop largely intertwined. Also to a large extent, individualisation in modernity, with its several aspects, stems from this autonomisation and the establishment of juridical freedom; again, they all feedback on each other. The main – logically prior to all others – reembedding of modernity is precisely that which implies the definition of individual and collective agents as autonomous, juridically free and, in the case of the former, individualised. The identity of modern individuals and how we collectively understand ourselves are first and foremost rooted in those three categories.

Then we have the *advancement of means of communication*. They furnish agents with an unprecedented and increasing volume of information and do not stop multiplying in modernity as it progresses. There is of course monopolisation of the means of communication at different stages, but new channels also appear, often linked to new technologies in the last years. The advancement of means of communication produces two crucial effects. It potentially engenders a public sphere that is relatively free, depending on the relative openness or closure of the political space (see Chapter 4), with also a potential pluralistic perspective, in the face on the other hand of the media concentration in oligopolies and the state's use of its surveillance and coercive capabilities. Finally, the *expansion of market relations* dissolves personal ties of dependency and domination through the generation of other types of subordination, of an impersonal character, cancelling out personal, direct relations of domination in which several power relations coalesced. If we should not push the political constitution of markets too far, the state is always crucial for their original organisation and further development.¹⁷ Since the seventeenth century, in emerging Europe and in some measure the Americas, these three mechanisms have worked together and reinforced each other. In other settings, systems of rule may bring the flow of information under control, yet the latter tends in the long run also to seep through the rigid walls of the former when they count on a very closed political space. Political tensions are likely to mount when political autonomisation is blocked and even pluralism restricted by state policies. Only the closure of the political system has guaranteed, temporarily, these political choices.

Released from direct social domination, individuals and collectivities have acquired social autonomy, which then became political. In fact, at several moments this political autonomy was early on affirmed and its institutionalisation demanded in the form of republican freedom. This meant that the participation of the few was opened up – then widened to include larger sectors of the population deemed rational enough to enjoy 'active citizenship' and eventually aiming at universal (male) participation. Several

sorts of constraints due to the emergence of new forms of domination or the transformation of former ones (capitalism, patriarchy, racial and ethnic hierarchies, political subordination) have filled the new social configuration, particularly in what more directly interests us here – state rule –, let alone the presence of subtler and more limited forms of personal domination in all these situations. On the one hand, the new configuration of the state and the legal system has allowed for and legitimated this process, with the constitution of a neutral private sphere. Nevertheless, no relations of dependency that imply deprivation of an agent's social freedom are formally accepted in this societal side of modernity, although women, in the beginning, were subordinated to men and not seen as morally autonomous. Beyond that primary one, agents seek other re-embeddings in this private sphere and the non-state public sphere of opinion, including the full array of activities and identities with which individuals and collectivities are endowed. The liberal legal infrastructure, which became so central to modernity, was part and parcel of this insofar as the free-position stood at its centre. Individualisation implied de-collectivisation, that is, the weakening of ascriptive ties, but individuals were re-collectivised through their re-embeddings.

How this has taken place varies, and there has been a tension throughout modernity between the individual and the collective, especially in the political dimension. Individuals did not aim at any of this, although, increasingly, autonomy and freedom became objects of desire and intense moral valuation, pushed by such disembeddings and re-embeddings. These were surely contextual developments, which were decisively interconnected across a large area, lending directionality to the process. Motives and volition, stemming from those values, steered them in a distinct direction. Learning and creativity are also crucial for their contextual reworking, without detriment to the general developmental trend.

Two elements that were crucial for the medieval period must be taken into account here. The medieval city – as a space of freedom – was particularly important in this regard, keeping the idea alive even when it was not central for the imaginary of the period, with corporations, in contrast, playing a more restrictive (ascriptive) role in these urban centres. Also the idea of a contract – not between equals but in some sense recognising the autonomous will of those who entered it – helped push European modernity towards the idea of autonomy and freedom. Not by chance did the idea of a social contract between equally free people develop in Europe and not elsewhere – nor was it accidental that this idea acquired such enormous force ever since it emerged. Feudalism in Japan, which was far more rigid, with no role for an autonomous city where freedom could thrive, nor any semblance of a contract between warriors and lords, let alone peasants, did not unfold in a similar direction. Again, we see that values and motives – embedded in a

specific imaginary – steer social change with a consistency that, while not absolute, allows for a directional, locked-in developmental process.

The imaginary was therefore, together with a certain number of practices connected to them, also very important for developing autonomy, freedom and individualism. It implied values and motives for intervention in the world, underpinned by volition, which, across contexts and despite variations (or, more precisely, through them), push modernity in a definite developmental direction, not as a closed logic, since it excluded not creativity, but as a shared collective movement, highly decentred, internally contradictory, very long term and, all things considered, very effective. We have examined this in several chapters of this book.

This very long-term process has included the rise of natural rights and rationalism, liberal (more market-oriented) and republican (directly political) freedom, utilitarianism and romantic-aesthetic individualism, with several heritages at play, especially Roman and Greek, in addition purportedly also Germanic, unfolding across Europe and then globally with many variations. Medieval Christianity, the Protestant Reformation and the Counter-Reformation, especially in the Iberian Peninsula, the Renaissance and Humanism, offered significant conjunctures and imaginary levers, whereby somehow, possibly contradictorily, autonomy and freedom, along with to some extent this-worldly individuality, were affirmed. As those disembedding processes progressed, they converged with these heritages and the concepts that developed from them as modernity threw up innovations in its surge (to start with subjective natural rights, in different versions, and proto-utilitarianism).¹⁸ At the same time, transcendence was brought down to earth as it was here that salvation, or at least a change in this world, had to be worked out.¹⁹ How could individuals operate these changes without autonomy and its social crystallisation in freedom?

At the same time, while individual autonomy and freedom predominated as a concern and conceptually, they were crucially relevant at the collective level. ‘Religion’ was the first issue that cropped up in this connection, with the ‘religious’ wars that ravaged emerging Europe. Classes and the organisations related to them became an additional and crucial element of collective autonomy, with political currents dedicating themselves to bringing workers together and articulating autonomous political programmes. This was followed suit by the organisation of women and other subordinated collectivities in terms of race and ethnicity, to which other characteristics were added (gender, lifestyle, bodily constitution). Eventually, the Welfare State put forward an array of policies, insofar as it generally promoted (universal) social rights and citizenship, that furnish a more solid social basis for individuals and collectivities (whereas targeted policies usually imply some level of tutelage). Decommodification, allowing for a life less determined by market compulsion, especially concerning

the daily commercialisation of labour power and the possibility of choosing other life paths and styles, concretely allowed for the upsurge of autonomy. This line of reasoning, stressing the role of the state, evidently runs counter to what many liberals are prone to believe, whether because they think individual freedom will decrease, society cannot afford it, productivity will go down or the rule of law will suffer, though Marshall, in his famous citizenship article, and other social democrat liberals did not accept this view.²⁰

Rather centred collective subjectivities thus became hallmarks of the political landscape, with high levels of identity and organisation, leading to a high level of intentionality as well as, politically, discipline. The societal political system was populated by them, gathering great masses of citizens on the basis of several substantive elements and identities. This increase of collective autonomy (as self-determination) paradoxically tends to in some measure voluntarily limit individual autonomy, insofar as consciously belonging to a collectivity and especially organisations referred to it creates a common identity, ties of dependency and mutual responsibilities. At least it lent a particular content to what individualism meant. It implied that individuals were autonomously dedicated to the organisation of a collectivity, with its beliefs, practices and struggles. The nineteenth and twentieth centuries offered the scenery for this somewhat paradoxical sort of dialectical reinforcement of individual and collective autonomy.

More recently, new forms of individualism surged, which damped this contradictory political dynamic, also pushed by developments in those other disembedding mechanisms. They underpin the reiteration of the trends we have been analysing here. Neoliberalism has become very influential socially, with the individual projected in its autonomy as a sort of entrepreneur whose long-term plans must be selfish and rational. This doctrine was not as such, contrary to what some are keen to argue, even though it dialectically contribute to it, responsible for emptying the public space and particularly for the disorganisation of the working classes.²¹ The very evolution of capitalism – with its patterns of flexible accumulation – must be principally credited with that. At the same time, political organisations – political parties – shirked from these links and looked for other electoral strategies, with a general closure of the political space. Another sort of development can be spotted, namely, what may be called ‘social individualism’, which is at the root of the sort of decentred political demonstrations, more decentralised and disorganised indeed. The return of autonomism and anarchism as relevant political currents is part of the same movement. Autonomy and singularity, as well as solidarity, lie at its core, but, out of choice by political actors and lack of mechanisms of incorporation in the political system, such sort of development has not evinced much institutionalisation potential. This strand of individualism is highly critical of and rejects deference, shunning, whenever

and insofar as possible, hierarchical structures, hence domination, as well as the idea of authority, in personal and political relations.²²

The coronavirus/COVID-19 pandemic pushed people to radical isolation in many places, significantly everywhere, against the background of those complex processes of individualisation, including a potential mix of self-centredness and neoliberal-utilitarianism with the view of the other as a danger of contagion, with the attendant negative affective effects, namely, fear and, even if denegated or hidden, some amount of hostility. The dependency of people on others, as well as the longing for contact, was clearly felt at the same time that people were also forced, even under the threat of criminal accusations, to become more closed and private.²³ While it is indeed likely that this will have some impact, difficult to identify, on how we relate to each other, with the presence of anti-social, privately-slanted and partly defensive individualism, those deep trends towards autonomisation coupled with socially oriented individualism are not likely to be reversed or even really deflected. Immediacy, and the even more radical immersion in personal experience, as pointed out in Chapter 8, has been strengthened, also in the political dimension.

In sum, we can truly recognise the reiterative mechanism that operates in the course of this relatively long journey of autonomisation and amplification of freedom, with the conquest of political rights and, culminating the process, social rights and a paradoxical articulation between individual and collective autonomy. The imaginary dramatically contributes to this, in tandem with those three disembedding mechanisms, with a permanent though shifting hermeneutical background in which a sort of stock of knowledge formed by its inherited strands offers different alternatives to understanding of what is to be expected and must be done. In this regard, we must once again consider motives as causes since what people desire and strive for matters for history's direction. Context matters, but we must recognise that it is an institutional, practical and imaginary context shared by many individuals and collectivities. Finally, it is necessary to ask whether it will ultimately be possible for new forms of organisation and links between this extremely fluid societal political system and the state political system to be crafted. It certainly is, in principle. Right now, it seems not to be at all feasible to envisage what they could be.

This coyness strongly contrasts with the situation leading up to the socialist revolutions of the twentieth century and their aftermath. In the first case, especially in the 1917 Soviet Revolution, a mix of centralised political organisation provided by the Bolsheviks and spontaneous autonomous mass organisations produced an unprecedented change of modernity towards what revolutionaries envisaged as socialism.²⁴ Especially after 1921, a significant change occurred, with the introduction of democratic centralism in the party and subsequently the state, the vanishing of the working class and the

transformation of the soviets into a formal cloak for Bolshevik power during the civil war, with the party substituting for the working class. Autonomy was lost – actually, it was explicitly jettisoned. The party and then the party-state took over politics and all dimensions of social life, starting with the economy, hence blocking what might be the autonomous organisation of workers in the soviets and the socialisation of the means of production, which was, as a matter of fact, replaced by the state monopoly.²⁵ All following revolutions banked on and institutionalised this model, with the consequent exclusion of the notion of autonomy from the imaginary.

Today, in spite of some diehards – often Stalinists that do not know who they really are –, this model has been rejected, although it partly informs the blockage of autonomy, individual and collective, in those countries where the party-state rule has amalgamated with capitalism, with a bet on surveillance and coercion, alongside performance, to guarantee it. This detour entailed a historically missed opportunity. The transformative mechanism that would push autonomy and freedom towards new heights, fashioning a new, much more socially embedded form of individualism, with changes in those disembedding mechanisms in directions we can hardly fathom, led to their cancellation. This was really a perverse historical turn.²⁶ Maoism was a strange, and in the end hypocritical, solution to this problem, since its supreme leader never intended to relinquish his power and that of the party, notwithstanding lots of talk and action around the autonomous initiative of the masses against the bureaucracy.²⁷

We may and should be sensitive to the difficulties that twentieth-century revolutions inevitably had to endure. These difficulties do not make their shortcomings milder. State power, controlled by the party according to its designs and interests, trumped the desire and struggle for autonomy that workers and citizens more generally have displayed since the inception of modernity. Today, autonomy and freedom have their fate connected to the mounting power of the state and the decentred movements of dissatisfied citizens. We are still to see how this will evolve.

9.4 Trends and the phases of modernity

Modernity was a contingent evolutionary divergence and has unfolded according to some decisive developmental trends – including, evidently, those that affect its political dimension. Besides, it has also been articulated in somewhat different ways as it has developed, while cut across by the trends that oppose and to some extent entangle the expansion of both state and autonomy. Modernity is also global, with common features across the planet, variations and hybridisations, and the rather short-lived challenge authoritarian collectivism presented. In its expansion, modernity as a civilisation has kept the upper hand in relation to other civilisations. It was

pushed forward by *modernising moves* that were more or less intentional, more or less centred and intentionally compact, which may be therefore deemed *modernising offensives*. Furthermore, these modernising moves, as offensives or in their more decentred form, have been always contingent in their concretisation and prone to unintended consequences. They have also already displayed hybridised elements, insofar as alterity – the non-modern – has been internalised and modernised, entailing a push towards a *heterogeneous global modernity*. Sometimes individuals and collectivities have aimed at modernising goals, though these may be entangled with other traditions; sometimes they have been busy with other issues, yet their action and movement have implied lesser or more substantial modernising moves.²⁸ The nation-state, political systems and capitalism have been the most prominent elements of this new global civilisation, propelled by decentred modernising *political* moves or true modernising *political* offensives, as well as moves stemming from other coordinates or which have political consequences.

Political modernity and the capitalist economy in particular have from the beginning been closely entwined, despite the actual differentiation which is also constitutive of their structuration.²⁹ Of course, violence in primitive accumulation and formal legal equality, along with the rationalisation of law, was crucial for the genesis and functioning of capitalism; these are founding themes in the history of sociology. Furthermore, for capitalism, the free-position and citizenship as the basis for the possibility of enacting contracts within a territorially controlled space are crucial, complemented by the actual self-ownership that modern individuals enjoy and allows them to sell their labour power in the market. This is probably the most important element in the connection between state and capitalism if taken in abstract isolation. Without these elements – which implied clear developmental trends with a long-term reach – there would be no generalised commodification, hence no capitalist accumulation and no modern statehood. The homogenisation and unification of a national market – also a long-term trend – by the nation-state is an essential element for the functioning of capitalism, intertwined with the former's projection abroad, in different ways in different stages, to further and defend national capitalism and the expansion of the global market. For political modernity, the actual individual independence allowed for by the evolution of capitalism, disembedding people as capitalists, professionals and workers is a social presupposition and constitutes a developmental trend. The same goes for the liberation and monetisation of resources that henceforth the state can bank on. It has implied a complementary sort of directional process.

For both, the mutual reinforcement of individualisation and state power in tandem with capitalist development, in different ways in different moments, has been crucial, consisting actually in an intertwined long-term occurrence. Here also, the specific structuration of the family in modernity

has given a significant contribution, while the individual that emerged from the disembeddings produced by the nation-state and the market is a necessary support. This consists in one more developmental trend. An evolutionary divergence came about with the emergence of authoritarian collectivism, which combined state and material production differently, under the aegis of the former. Its developmental processes were short-lived, as much as its existence, precluding a more conclusive assessment.

Liberalism and in a significantly smaller measure republicanism drove such modernising moves at the specific political level, especially when they were intended, constituting a modernising offensive. Corporatism and fascism, despite the recent comeback of something with similitudes to the latter, have not seemed fit to withstand the challenge of liberalism in the long run. Postmodernising moves – misguided offensives overwhelmed by unintended consequences – of the sort carried out in the pursuit of socialism and, once authoritarian collectivism was established, in its pursuit (regrettably for those who believed they were fighting for socialism), impacted modernity too. Eventually the return to modernity by the rulers of these societies introduced one more layer in modernity, derived from the surviving political dimension of authoritarian collectivism, the party-state.

In a way or another this is what we have seen in the several chapters of this book, with reference to a large range of issues. I have nevertheless refrained from proposing a specific periodisation and have concentrated on the analysis of the key imaginary elements of political modernity and authoritarian collectivism and on their institutions and practices, rather than detailing their entanglement and hybridisation with other civilisational elements in a systematic way. Some authors had already proposed different periodisations of modernity.³⁰ Their work distinctively lacks a global dimension, unfortunately usually paying heed exclusively to the ‘West’. Actually, those who work with theories of global modernity on the other hand have not so much given attention to such periodisation, except regarding finance capitalism and imperialism in Marxism. In itself, the literature about modernity was often very problematic – mostly unilinear – when it came to dealing with its global configuration, forcing a reading of the world in which it would as a whole become similar if not fundamentally identical (though theories of imperialism clearly saw the world as structurally divided between a rich industrialised centre and a poor agrarian periphery).³¹ I have therefore tried to overcome these shortcomings, thus proposing a theorisation of modernity’s successive phases, as well as of its global expansion and reach, previously to this book. I have therefore pushed in the direction of a global understanding of the issue, while reformulating what that periodisation might mean. Let me thus briefly recapitulate my main theses.³² Bear in mind that the trends that lead towards the strengthening of the state and greater individual and collective autonomisation cut through these phases,

with substantive inflexions but unabated, as we have seen in basically all former chapters.

Modernity appeared in Europe and consolidated itself in the nineteenth century, followed by its global expansion beyond its proto-modern genetic traits. Some of its main institutional components are the modern (rational-legal) state, with abstractness, and capitalism (premised upon the regular exploitation of wage labour, not only on the expansion of the market), alongside a specific political dimension. In its imaginary, autonomy and freedom, rights and the law play a crucial role. Initially, the market had the upper hand – if not practically, normatively and as a horizon of expectation. While this happened at the centre (or core) of the modern global system, colonialism played a crucial role in the periphery, although the Americas, which early on became independent, had formally shed this form of direct domination (in the south as much as in the north coeval with Europe in what regards, bearing in mind their differences, the modern imaginary and institutions). These features characterised the first, liberal-colonial phase of modernity, spanning the late eighteenth and the nineteenth centuries, with a crisis at the end of the period. The first half of the twentieth century saw the elevation of the state to pre-eminence, with the full impact of concreteness and the far-reaching intervention of the former's apparatus in social life. Colonialism was formally abolished and liberal democracy progressed, with a stop-and-go dynamic. At the same time, authoritarian collectivism adopted the essential tenets of a state-based economy. However, in many other respects, for instance, the law, it aimed at a breakthrough from modernity, a feat in which it was fundamentally defeated. That was the second phase, state-based, of modernity. While the state-cum-capitalism remained dominant and ruled most of the world, authoritarian collectivism, learning initially from German 'state capitalism', developed as an alternative, in which the state had absolute prominence in the economy and social life in general, including politics. Aiming at socialism, they produced another sort of society, which evolutionarily proved to be a dead end.

This world ceased to exist in a radical way for 'real socialism', but many shifts led the liberal world into a new phase of modernity too. Some saw in it the pre-eminence of the market – which is partly correct, with its further globalisation, with the caveats about the supposed roll-back of the state during this period – yet, in a far more complex world, other methods and strategies of rule were introduced. The economy in particular has benefited from the return of networks of collaboration, which have mushroomed across social life. It may be called complex modernity.

In fact, in the late 2000s and the 2010s, the neoliberal arrangement, characteristic of the third phase of modernity, showed enormous fatigue. It was too simplistic to cope with the world's challenges at that point. Then the coronavirus/COVID-19 pandemic came about. At different points in this

book, I have asked what the impact of such a crisis means to modernity, which has been moreover followed by a war right at the fringes of Europe, with the invasion of Ukraine by Russia. Are we, therefore, in the middle of a chaotic situation where no one force seems capable of imposing its preferred direction of development but also witnessing the beginning of a new phase of modernity? Many elements surveyed at different stages of this book, especially in Chapter 7, suggest that this may be the case, especially with a new centrality for the state in a situation of high complexity and uncertainty. To be sure, large corporations, especially but not only those of platform capitalism, are powerful, and, for some, they might outcompete capitalism as such.

As also argued previously, this appears very unlikely, with modernity pushed forward by their workings and strategies instead.³³ Health care expansion and especially social liberal policies aimed at diminishing, or administering, poverty, combined sometimes with active labour-market approaches, alongside some reindustrialisation, especially in high-tech areas, in central countries, with more direct state regulation and direction, funding and planning are becoming real or loom large. Upgrades in labour law and minimum wages may be implemented to some extent since they require no further state expenditures. The joint Brazilian and US initiative, with the support of the International Labour Organization (ILO), points in this direction, as well as their internal perspectives.³⁴ This may occur in tandem with the establishment of a new regime of accumulation, featuring some new, more nationally intensive norm of consumption if some wealth redistribution does take place, beyond the globally polarised and extensive norm operative at present, while those new modes of regulation and direction, as well as patterns of funding and planning, unfold.³⁵ Variation must be expected, along with a more pivotal role for the state. Hierarchy but also network, as means of coordination with non-state agents, particularly business, would be strengthened, yielding positive-sum games. Social policy, short of more radical changes in programmes and social mobilisation, will simply carry on, possibly with some reinforcement in some areas but no decommodification.

As of today, it seems possible that we are in the middle of a strong inflexion in the third phase of modernity, but perhaps a new arrangement that combines aspects of former phases of modernity, along with some innovations, is emerging through elaborate projects and tentative approaches. Many are wont to see the social landscape established since the mid-1980s as characterised simply by neoliberalism. I have elsewhere, dialoguing with other interpretations of the period, argued, in contrast, that the third phase of modernity implied far more than the direction that restrictive doctrine enforced, with 'deregulation' (actually other forms of regulation since there are no natural markets, which are always social creations) and overall the restriction of rights (workfare policies, for instance, discussed in Chapter 4). Particularly a

very high level of complexity could be spotted in the third phase of modernity, demanding a much larger role for network as a principle of organisation.³⁶ This has not changed and will be inevitably deepened in the next decades.

In turn, neoliberal orthodoxy has proved far too limited to cope with the burgeoning challenges of our time – climate change, pandemics, poverty, industrial backwardness and decaying infrastructure in some rich countries, not to speak of inequality; and now, on top of those already visible problems, a new geopolitics and war as well as the intensification of immigration. Too few have won, while too many have lost, whereas problems mount. The return of an explicitly stronger state does not completely break with the formerly established patterns but inflects them, allowing for better management of those challenges. The pandemic did not by itself cause this return, though contributing to it in some respects and giving visibility to serious problems. In particular it worked as an accelerator, also providing room for several relevant experiences, the continuity of which may summon social democracy and more welfare, alongside economic modernisation, or the extreme-right and its obsession with national identity and control, especially over immigration.³⁷ Climate change has been a key element – and may become even more central – in the ongoing changes in the patterns of capitalist accumulation, not just regarding energy but beyond it, as green new deals and other moves across the world have been demonstrating.³⁸ Remember moreover that law may be undergoing mutations that would lead to a regime beyond liberalism, with control over citizens and migrants, as well as ad hoc solutions that clash with the rule of law, implying a change in the way the state as such operates. The extent of changes is not, as seen in Chapters 1 and 2, entirely clear.

Against a backdrop of change, the global distribution of power and division of labour reserves different futures for each region. While it is conceivable that a new phase will really break through, despite prominent changes, this is not as yet the case. This is clearer in the unfolding trajectories of the richer, less so in the less rich and poorer countries of the world. Whereas most of the former tend to remain with large expenditures, at least partly reversing austerity policies, adjustment threatens to once again burden the trajectory of the latter two. Even before this inflexion, China, with its different, party-state entangled capitalism trajectory, had of course already strengthened the role of the state. From 1978 and especially 1992, it embraced a radical market-oriented shift, combined with an expansion of networked relations, but since the mid-2000s ruling circles have established greater strategic state control over its private capitalist firms (as well as over its citizens). Together these moves are a sign of the times and partly a cause of global change, escalating interstate competition (with China's economy facing more complicated challenges now).

We shall see. It is doubtful that Minerva's owl only spreads its wings at dusk. However, the development of a social phenomenon cannot be fully understood before it comes of age. The specific fate of 'socialism', with the rise and fall of authoritarian collectivism, should advise us about the vagaries of history. From the present mess, a more patterned situation will inexorably emerge.

Notes

- 1 Marc Bloch, *La Société féodale. La Formation des liens de dépendance* (Paris: Albion Michel, 1929); Reinhard Bendix, *Nation-Building and Citizenship: Studies of Our Changing Social Order* (New York and London: John Wiley and Sons, 1964); Idem, *Kings or People: Power and the Mandate to Rule* (Berkeley and Los Angeles: University of California Press, 1978); Perry Anderson, *Lineages of the Absolutist State* (London: Verso, [1974] 1979); Michael Mann, *The Sources of Social Power*, vol. 1. A History of Power from the Beginning to A.D. 1760 (Cambridge: Cambridge University Press, 1986); Idem, *The Sources of Social Power*, vol. 2 The Rise of Classes and Nation-States, 1760–1914 (Cambridge: Cambridge University Press, 1993).
- 2 Otto [von] Gierke, *Political Theories of the Middle Ages* (Cambridge: Cambridge University Press, [1881] 1900), pp. 7–23, 93–99. Others argue that Gierke overstated his argument. Cf. Anthony Black, 'The individual and society', in J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought c. 350–c.1450* (Cambridge: Cambridge University Press, 1988), p. 588.
- 3 Max Weber, *Die Wirtschaftsethik der Weltreligionen. Gesammelte Aufsätze zur Religionssoziologie*, vols 1–3 (Tübingen: J. C. B. Mohr [Paul Siebeck], [1904–1920] 1988); Paolo Santangelo, *Individual Autonomy and Responsibility in Late Imperial China* (Amherst: Cambria, 2021).
- 4 Georg Wilhelm Friedrich Hegel, *Vorlesungen über die Philosophie der Geschichte* (1832–1845), in *Werke*, vol. 12 (Frankfurt am Main: Suhrkamp, 1986).
- 5 Norbert Elias, *The Civilizing Process* (Malden and Oxford: Blackwell, [1939] 2000), pp. xi, 260–261, 269, 304–305, 369, 379. In later works, he tried to come to grips with twentieth-century wars, which posed insurmountable problems for his theory of pacification and the 'control of instincts' associated to it. Idem, *Studien über die Deutsche. Machtkämpfe und Habitusentwicklung im 19. und 20. Jahrhundert* (Frankfurt am Main: Suhrkamp, [1989] 1992).
- 6 Charles Tilly, *Coercion, Capital and European States, ad 990–1992* (Oxford: Blackwell, [1990] 1992), p. 28; pp. 30–31, 99, 159–160, 188ff; Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of System Change* (Princeton: Princeton University Press, 1994), chap. 8 and pp. 188–194; Ha-Joon Chang, *Kicking away the Ladder: Development Strategy in Historical Perspective* (London: Anthem, 2003), chaps 1–2.
- 7 M. Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B. Mohr [Paul Siebeck], [1921–22] 1980), p. 128; Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris: Gallimard, 1975); Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985), pp. 15–16, 95–96, 113–15. M. Mann, 'The autonomous power of the state: Its origins, mechanisms and results', *European Journal of Sociology*, vol. 25 (1984): 185–213; *The Sources of Social Power*, vols 1 and 2, especially the first one's pp. 185–213.

- 8 M. Foucault, *Naissance de la biopolitique. Cours au Collège de France, 1977–1978* (Paris: Gallimard and Seuil, 2004); Mann, *The Sources of Social Power*, vols 1–2, with reference to ‘infrastructural power’.
- 9 Weber, *Wirtschaft und Gesellschaft*, pp. 387–513, featuring ‘rational-legal domination’, of course; Giddens, *op. cit.*, chap. 7.
- 10 Otto Hintze, ‘Staatenbildung und Verfassungsentwicklung. Ein historische-politische Studie’ (1902), in *Staat und Verfassungsgeschichte* (Göttingen: Vandenhoeck & Ruprecht, 1970). Social unification under an increasingly centralised and expanded territorial state, with eventually constitutional demands, was at the core of his argument.
- 11 Adopting a harsh perspective, ‘public choice’ theory launched a concerted attack against public service. It did however make some relevant points, although taking them usually too far, conceptually and ‘ideologically’. Their arguments and empirical evidence are usually superficial and wanting. Niskanen affirmed that ‘budget-maximization’ was the way bureaucrats pushed forward their interests, leading to ‘oversupply’; he soon, softening his position, spoke of ‘discretionary budgets’ rather than ‘total budgets’, where output is a more serious issue, as the measure of bureaucrats’ ‘utility’. For him, moreover, because they are, albeit a minority, a sizeable one, well informed and politically connected, civil servants have a disproportionate influence in politics, being capable of strong rent-seeking (for themselves and for others, often in collusion with politicians). He went as far as to suggest depriving them of voting rights, demonstrating his, at best, mild (Benthamite/Hayekian) support for liberal democracy. Tullock added that this would be ultimately dependent upon the benefits bureaucrats generate to their own lives (i.e., when they ‘improve’ the ‘utility’ of state officials). This would mean that if the state grows, it opens more jobs, salaries get fatter, promotions are more likely, working conditions become nicer, offices more beautiful, especially when they get promoted, discretionary budgets may become thicker, their power over other people increases, and so do their reputation and public respect. Of course, the reasoning contradictorily goes on, this would mean that they have to work more, whereas many people are just lazy and live on ‘shirking’. William A. Niskanen, Jr., *Bureaucracy and Representative Government* (Chicago: Aldine, [1971] 2007), pp. 39–45; Idem, ‘Bureaucracy: A final perspective’ (2001), in *Reflections of a Political Economist: Selected Articles on Government Policies and Political Process* (Washington, DC: Cato Institute, 2008); Gordon Tullock, ‘An essay in the economy of politics’ (1976) and ‘Democracy as it really is’ (1994), in *The Economics of Politics* (Indianapolis: Liberty Fund, 2005); Idem, *Rent Seeking* (Aldershot: Edward Elgar, 1993), pp. 51–59. For sharp criticisms and more balanced accounts, see B. Guy Peters, *The Politics of Bureaucracy* (New York and London: Routledge, [1995] 2010), especially chap. 1; Patrick Dunleavy, *Democracy, Bureaucracy and Public Choice: Economic Explanations in Political Science* (New York and London: Harvester Wheatsheaf, 1991), especially chaps 6–8. Regarding authoritarian collectivism, it has been argued that bureaucrats are were not public servants, insofar as they served only their masters at the political bureaucracy. Ferenc Fehér, Agnes Heller and Györg Márkus, *Dictatorship over Needs: An Analysis of Soviet Societies* (New York: Saint Martin’s Press, 1983), pp. 175–176. But with the popular support consistently given to the Welfare State built under ‘real socialism’, this argument becomes more difficult to justify, whatever the distortions we can spot there.
- 12 Weber, *Wirtschaft und Gesellschaft*, pp. 129–130; Anthony Downs, *Inside Bureaucracy* (Boston: Little Brown & Co., 1965).
- 13 Jamie Susskind, *Future Politics: Living Together in a World Transformed by Tech* (Oxford: Oxford University Press, 2018).

- 14 This is the case even of the trend towards monopolisation as intrinsic to capitalist accumulation such as described in Karl Marx, *Das Kapital. Kritik der politischen Ökonomie*, especially vol. 1 (1867, 1873), in K. Marx and Friedrich Engels, *Werke*, vol. 23 (Berlin: Dietz, 1962), especially pp. 789–791. New strands may appear in capitalist accumulation through new, small businesses (as they did in the 1980s–1990s) and individual capitalists. But while those smaller companies amazingly quickly ended up as almost global monopolies, capitalists that do not follow the rules of competition in the market are bound to be wiped out.
- 15 Olga Kryštanovskaya, *Anatomie der russischen Elite. Die Militarisierung Russlands unter Putin* (Köln: Kiepenheuer & Witsch, [2004] 2005), pp. 152, 164.
- 16 See especially José Maurício Domingues, *Modernity Reconstructed* (Cardiff: University of Wales Press, [2002] 2006), chap. 1; Idem, *Global Modernity, Development, and Contemporary Civilization: Towards a Renewal of Critical Theory* (New York and London: Routledge, 2012), Part III.
- 17 This is the kernel of truth and the exaggeration of Karl Polanyi, *The Great Transformation: The Political and Economic Origins of our Time* (Boston: Beacon [1944] 2002).
- 18 These strands of development have been studied with a theoretical inclination, by, among many others, Ernst Cassirer, *Philosophy of the Enlightenment* (Princeton, NJ: Princeton University Press, [1932] 2009), chap. 6; Agnes Heller, *Renaissance Man* (New York and London: Routledge, [1966] 1978); Quentin Skinner, *The Foundations of Modern Political Thought*, vols 1-2 (Cambridge: Cambridge University Press, 1978); Richard Morse, *El espejo de Próspero. Un estudio de la dialéctica del nuevo mundo* (Mexico: Siglo XXI, 1982); Michael Mann, *The Sources of Social Power*, vol. 1, pp. 397–398; Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1992).
- 19 Shmuel N. Eisenstadt, ‘Multiple modernities’, *Daedalus*, vol. 129 (2000): 1–29; Domingues, *Modernity Reconstructed*, chap. 1. See below for my view of a *heterogenous global modernity* rather than of almost water-tight ‘multiple modernities’.
- 20 J. M. Domingues, *Sociological Theory and Collective Subjectivity* (Basingstoke: Macmillan and New York: Saint Martin’s Press [Palgrave], 2000); Idem, *Social Creativity, Collective Subjectivity and Contemporary Modernity* (Basingstoke: Macmillan and New York: Saint Martin’s Press [Palgrave], 2000), chap. 7.
- 21 Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West* (New York: Columbia University Press, 2019).
- 22 Danilo Martuccelli, *La Société singulariste* (Paris: Armand Colin, 2010); Kathya Araujo and D. Martuccelli, *Desafíos comunes. Retratos de la sociedad chilena y sus individuos*, vols 1–2 (Santiago: Lom, 2014); Göran Therborn, *From Marxism to Post-Marxism?* (London and New York: Verso, 2010). For some, this singularisation of individuals constitutes a radical change. See Andreas Reckwitz, *Die Gesellschaft der Singularität. Zu Strukturwandel der Moderne* (Frankfurt am Main: Suhrkamp, 2017). Yet I think that triad – autonomisation, freedom and individualism –, in connection with those disembedding mechanisms, still offers a more plausible explanation for current developments.
- 23 Jill Lepore, ‘Is society coming apart?’, *The Guardian*, 25/11/2021 (<https://www.theguardian.com/society/2021/nov/25/society-thatcher-reagan-covid-pandemic>). Retrieved 30/09/2023. See also Chapter 5.
- 24 These were the neo-Hegelian expressions used in K. Marx, *Misère de la philosophie. Réponse à la Philosophie de la misère de M. Proudhon* (1847), in *Œuvres*, vol. 1 (Paris: Gallimard, 2005), chap. 8.

- 25 Karl Korsch, 'Was ist Sozialisierung? Ein Programm des praktischen Sozialismus' (1919), in *Schriften zur Sozialisierung* (Frankfurt am Main: Europeanist Verlagsanstalt, 1969); Cornelius Castoriadis, 'Le rôle de l'idéologie bolchevique dans la naissance de la bureaucratie' (1963), in *L'Expérience du mouvement ouvrier*, vol. 2. Proletariat et organisations (Paris: Union Générale d'Éditions, 1974).
- 26 Herbert Marcuse, *Soviet Marxism: A Critical Analysis* (New York: Columbia University Press, 1958); Talcott Parsons, *The System of Modern Societies* (Englewood Cliffs, NJ: Prentice-Hall, 1971), pp. 86-94 (in terms of 'integration').
- 27 Alain Badiou, *L'Hypothèse communiste* (Paris: Lignes, 2009).
- 28 J. M. Domingues, *Latin America and Modernity: A Sociological Interpretation* (New York and London: Routledge, 2008); *Global Modernity, Development, and Contemporary Civilization*.
- 29 This is actually a complicated issue since the connection between capitalism and the nation-state has been as obvious as difficult to pinpoint. For the classics, see Marx, *Das Kapital*, chap. 24 and passim; Weber, *Wirtschaft und Gesellschaft*, passim, especially regarding his sociology of law, though that provides a thin argument. See also Giddens, *op. cit.*, chap. 6; Bendix, *op. cit.*, Part I; and, overconcerned with property rights, Douglass C. North, 'Institutions', *The Journal of Economic Perspectives*, vol. 5 (1991): 97-112.
- 30 Claus Offe, *Disorganized Capitalism: Contemporary Transformations of Work and Politics* (Cambridge: MIT Press, 1985); Scott Lash and John Urry, *The End of Organized Capitalism* (Cambridge: Polity, 1987); Peter Wagner, *A Sociology of Modernity: Liberty and Discipline* (London and New York: Routledge, 1994); Luc Boltanski and Eve Chiapello, *Le Nouvel esprit du capitalisme* (Paris: Gallimard, 1999). In Political Economy, the French regulation school had gone in the same direction, although it has lost steam. See Robert Boyer, *Économie politique des capitalismes. Théorie de la régulation et des crises* (Paris: La Découverte, 2015); R. Boyer and Yves Saillard (eds), *Théorie de la régulation. L'Etat des savoirs* (Paris: La Découverte, 2002). Rudolf Hilferding and Antonio Gramsci have been the underlying inspiration for these authors.
- 31 For modernisation theory in sociology, see Wolfgang Knöbl, *Die Kontingenz der Moderne. Wege in Europa, Asien und Amerika* (Frankfurt am Main: Campus, 2007); for Marxism, Anthony Brenner, *Marxist Theories of Imperialism: A Critical Survey* (New York and London: Routledge, [1980] 1990). See also Leon Trotsky, *History of the Russian Revolution*, vol. 1 (London: Sphere Books, [1932-1933] 1967), chap. 1, for the concept of 'uneven and combined development' – which has to be reformulated as uneven, combined and *differentiated* development.
- 32 See especially Domingues, *Modernity Reconstructed*.
- 33 R. Boyer, *Les Capitalismes à l'épreuve de la pandémie* (Paris: La Découverte, 2020).
- 34 'ILO welcomes US-Brazil initiative on decent jobs', International Labour Organization Press Release, 21/09/2023 (https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_894623/lang--en/index.htm). Retrieved 29/09/2023. Curiously – or not – the international press lent almost no visibility to the initiative.
- 35 See for instance Boyer and Saillard, *op. cit.*, for an exploration of this sort of conceptualisation; also Domingues, *Global Modernity, Development, and Contemporary Civilization*.
- 36 J. M. Domingues, 'Modernity, complexity and mixed articulation', *Social Science Information*, vol. 41 (2002): 383-404; *Modernity Reconstructed*, chap. 5; Idem,

- 'Post-pandemic tendencies and the phases of modernity', *Global Dialogue*, vol. 13 (2023) (<https://globaldialogue.isa-sociology.org/uploads/imagen/3326-v13i1-english.pdf>).
- 37 Paolo Gerbaudo, *The Great Recoil: Politics after Populism and the Pandemic* (London and New York: Verso, 2021).
- 38 J. M. Domingues, 'Critical theory and climate change: Collective subjectivity, evolution and modernity', *International Journal of Politics, Culture and Society*, online first (2023): 1–15.

PART III

The international level



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10

THE INTERNATIONAL DIMENSION OF POLITICAL MODERNITY

10.1 States, system of states and the contradictory dynamic of modernity

Modernity is a civilisation of states. Of modern nation-states, obviously. With this as a given, should we think of them as our units of analysis, as the vast majority of studies in international relations do? To a large extent this position is sound since they are the major players beyond their borders in the political dimension and a cornerstone of modern thinking. Perhaps exactly because of their centrality, the consideration of states in international relations theory is always problematic since it conceptually demands too much from the state as social atoms. Realists, whose essential concern is power, are often methodological individualists, with the individual in the case in point consisting of a collectivity: they see states as billiard balls that interact in the global/international space, although more systemic approaches have confusedly tried to overcome this 'methodological nationalism' without giving up on states as their basic unit of analysis. Interaction is the key word here, against realists, but also international liberals, regardless of the more prominent role they might attribute to law and other sorts of agreements in the space of which individual states exercise their sovereignty, the incapacity of those liberals of fully elaborating what this theoretically implies notwithstanding. Even so-called constructivists, who in principle espouse a more sociological perspective, accept the pre-eminence of the state.¹ The rationalism that informed political thinking at the nation-state level reappears at international level in both approaches. Nevertheless, at this as much as at that level, as seen in Chapter 5, more or less stable cathetic investments in collectivities of all sorts obtain, especially varying communal, ethnic and

national ones, and emotions are intertwined with it, of course, regarding cognition, evaluation, normativity and expressivity (with aversions developing too). The imaginary, institutions and practices embody them in the short, medium or long run.²

The interaction between states allows for an approach that may more directly bring together characteristics of their interaction that sometimes appear as mere accretions to what was foreordained in their individual indivisibility. Within such interactive processes, we will see that those three principles of organisation and mechanisms of coordination (hierarchy, market and network – with command, voluntary exchange and voluntary collaboration) and two of antagonism and corresponding mechanisms (conflict and competition, with struggle and emulation), presented systematically in Chapter 3, will return. The interaction between states – and between them and other collectivities – will therefore assume a rather complex nature. Organisation and antagonism clearly furnish the two pillars of this international political system, such as it exists in modernity. Antagonism is not absolute, but organisation, especially in terms of an inclination to cooperate via network and voluntary collaboration, which does not exclude hierarchy and command, is only conditionally feasible. If the latter might eventually leave the former behind, nothing at present says it really will. This is not due to ‘capitalism’, as Marxists claim time and again – which does not mean that imperialism is not a fact, even if not necessarily as Lenin or Luxemburg classically understood it, and that capitalism and the struggle for markets and resources have not led to brutal wars. Without detriment to capital's high level of globalisation today, ‘capitalism’ is still nationally based.³ The problem lies to a large extent in the very logic of the modern nation-states system, with its power dynamics and nationalist ideologies, which may converge yet are often prone to clash. This tension exists either because political agents, especially political rulers, within and across nation-states, really believe in them or because they serve as convenient covers for their power drives, which are mediated and simultaneously shaped in the imaginary dimension of what people collectively think they should do as representatives and rulers of the state.

States – including modern nation-states – are collective subjectivities, as we have already seen in this investigation. They are potentially very centred – and, in practice, that is how they operate in the world, internally and externally. Whatever their degree of decentring regarding internal politics, states are in contradistinction usually highly centred collectivities regarding their external standing and relations in particular to other states, though this may break down once internal strife leads to a rupture of their political system or to its fragmentation. We may also expect a lot of porosity in their dealings with other foreign agents. In the last case, it becomes almost impossible to have a centre that holds at bay the always-present centripetal tendencies that

states inevitably exhibit. These tendencies may relentlessly wreak havoc in the state's centring. However, they can be overcome discretely or even overwhelmingly if the main institutional and practical power centres within the state so decide, provided that they have the power to prevail. All elements of the state apparatus can contribute to its decentring, while executive power is decisive in processes of centring. Nevertheless, states are not individuals.

First, as collective subjectivities, states have many decision-making centres and internal divisions, with very complex relations between them and several connections to society. Unless we are speaking of human individuals with serious psychotic or schizophrenic issues, there is no way we can compare this to what goes on within the state: individuals, despite the workings of our 'id' or 'it' (*Es*) and the unconscious (*das Unbewusste*), are far more centred, that is, our internal centripetal tendencies can – and must – be usually more easily kept in check. People interact, as individuals and within variably (de)centred sub-collectivities – with citizens at the bottom and rulers at the top. Their interactions weave the social system we call state. Second, states do not have a body. What they do have are material properties that are part and parcel of their constitution as multidimensional social systems, along with space-time (including control of their territory and its development in this regard), power (political in modernity, including administrative elements) and imaginary (symbolically hermeneutic, with its traditions, myths, beliefs) dimensions. States may at times not be continuous. A fragmented constitution tends to complicate their control of the territory they rule, with secession more easily and dangerously looming (as has happened to Pakistan, with Bangladesh thus becoming independent). It is materially more difficult to rule such discontinuous territories.

States are also decentred in that they are not self-sufficiently constituted (similarly to individuals). That is to say, there are no states prior to their interaction with other states. States exist insofar as other states recognise them as states, even if sometimes this must, due to the denial of some but not other states, hang on a balance (just recall the complicated situation of Taiwan since it had to leave the United Nations and mainland China replaced for it). This recognition, or lack thereof, takes us directly to the international system, which is actually the social system where states interact, as intrinsic units, neither prior nor external to it (nor can they theoretically be suddenly introduced to fill some problematic argumentative gap). The ontological reality of states and the states system are tightly entwined. As already pointed out in Chapter 2, the state, as well as the system of states, has as such all the dimensions of social systems: material (with the whole administrative, productive and military devices), of power (that is, related internally to politics), space-time (with its implantation in history and geography) and hermeneutic-symbolic (imaginary) dimensions. The state has institutions – that is, regularised behaviours, practices and rules – that refer to relations of antagonism

and organisation which do not come from nowhere. This stems not only from the intrinsic individual characteristics of states, but from their long-term internal evolution but also external interaction. History counts, without ever tying us into a straitjacket.

This is true in general, yet principally because of a fundamental and fundamentally contradictory dynamic in the modern international system. It derives from a twofold tendency: towards increasing globalisation and cosmopolitanism, even universalisation and universalism, since the very early hours of modernity, along with ever stronger interdependency, on the one hand; and the reaffirmation of nation-states as the paramount agents, recalcitrant to external intervention, and jealous of their sovereignty, on the other, as well as often expansive. The weight of those two aspects varies from country to country and from time to time. Moreover, the internal dynamic of nation-states, with their political systems, must be taken into account, since it may either reinforce or ease the contradiction, depending on the perspectives of the internal agents. Of course, human collectivities – with or without a state – had related to each other as external or semi-external agents since even before humankind proper (*sapiens sapiens*) existed. They produce several assemblages of imaginaries, institutions and practices, more or less coherent and homogeneous. Law and several regulations of what might be seen as sitting at a lower level and trade stand out in the network aspects of the relationship between states. Conversely, diplomacy and strategy appear at the core of that dynamic contradiction.⁴ They do so within specific correlations of force between states, with war appearing as the ultimate expression of antagonism (conflict and struggle), while other aggressively driven interactions, such as sanctions, feature too, cut across by more benign ones, such as competition (hence emulation) in what regards trade and the projection of the images of each country abroad.

Moving away from a concentration on the internal workings of the nation-state, we reach out now to a higher scalar level: the international – inter-state – level that is inevitably interspersed with the more generally global.

10.2 International assemblages, states' dynamic

10.2.1 *The dyad in inter-state relations*

In the first part of this book, we have discussed how dyadic relations should help us understand the elementary interactions of modernity. We need to resume it now with respect to nation-states. The dyadic relation will be our starting point in terms of the analytical strategy since we can observe in it, at the most simple level, how nation-states interact in this social system conventionally named 'international relations', with the picture becoming more complex as we move forward with the discussion.⁵ Law will be important here, without covering all aspects of the relations between states;

different types of regulation mediate between them. If we can easily draw a line between the two sides of the modern divide at the national scalar level, this is less distinct when we look at the global system since abstract law is restricted, albeit not inexistent, while concrete aspects, legally regulated, occupy centre-stage. Moreover, power as such plays a crucial role much more openly, independently from the law. This is what the so-called ‘balance of power’ implies, with one or some states neutralising each other, as well as what great power politics, with its polarised or multilateral aspects, entails, let alone what so-called ‘hegemony’ by a single state means.⁶ Each of these aspects includes different assemblages of imaginaries, institutions and practices, and, frequently, organisations. Figure 10.1 serves as a blueprint for our following analysis.

Is there something that may be really called international law? Can law exist without an external agency that can guarantee it coercively? Do we not live in an ‘anarchical society’ in which states disregard other states’ purported rights, save insofar as they have enough power to dissuade or repel those that resist dissuasion? Answers to these questions depend, of course, on what we define as law. There can be no equivalence between national and international law, at present. Although we cannot think of international law in terms of a complete absence of coercion, there is no apparatus above nation-states that can play such a role. Which raises the question: is

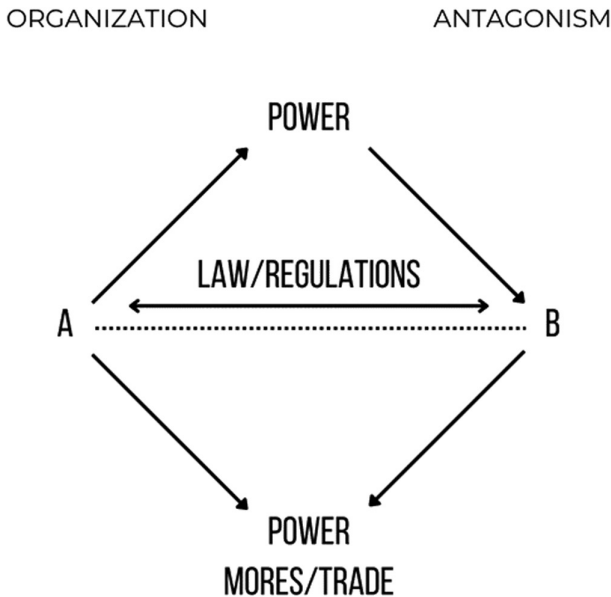


FIGURE 10.1 The international dyad

this apparatus and coercion absolutely necessary? Is law always command backed by force? Just the same, there are other types of looser regulations, which all depend on the willingness of states to join in. These are often called (international) regimes. They are exceedingly important for global organisations. Besides, beyond such formalised realms – already by now for centuries regulated through law or at least treatises, with much legal pluralism involved –, we find trade based on market and voluntary exchange, very frequently side by side, most certainly, with competition and emulation if other states are involved. Mores are extremely relevant and have also underpinned the relations between states to a large extent, making mutual recognition easier. Power as such is nevertheless of paramount significance, whether in terms of hegemony (what has been called ‘soft power’, including financial support), especially regarding values, artistic products, even aid, or concerning coercion (‘hard power’, physical, commercial, psychological). We can identify all these elements in the dyadic relationship between states and the international system in its complete configuration.⁷

Contrary to what initially happens within nation-states, at the imaginary level, to be sure, power in international relations is a founding, explicit element. The formal state structure of liberalism implied depoliticisation, with international liberals emphasising the law and cooperation. Within international organisations, bureaucratic bodies try moreover to reproduce the original depoliticised outlook of liberalism, deploying a neutral or neutralised discourse.⁸ However, modern international politics, which may be said to have been established with the Treaty of Westphalia in 1648, with therefore greater continuity with the late Absolutist period, has implied that sovereign states openly exercise power between them, with proto-realist views predominating. The concepts of ‘balance of power’ and great powers – with their ‘rights’, ‘duties’ and spheres of influence – directly express this, later complemented by hegemony, polarisation and multilateralism. Liberal and authoritarian collectivist states are part of these power structures, which, with the modern vocabulary, have assumed an explicitly political character. The Soviet Union had, in practice, without abandoning the rhetoric of ‘proletarian internationalism’ and its support to revolutionary upheavals in the ‘Third World’, fully accepted the rules of the liberal international system, accompanied by a highly politicised realist view, with a consequentialist (utilitarian) bend (politics are worth for what it achieves, whatever the means). Once dismissed as a bourgeois artefact in the heyday of a revolution that wanted to expand across Europe as once the French did, sovereignty, in particular, became foundational for Soviet thought (though its standpoint was eventually formalised in a way that allowed for its use of force to defend the ‘socialist camp’ when necessary).⁹ Despite the existence of some secluded spaces, the international system at large has had politics openly and from the beginning at its core.

10.2.2 *Mores and trade*

The more basic element lending identity to different states, through the creation of a common home for their populations, is their shared civilisation or at least respectful difference along with similar mores and trade; or at least some have argued in this direction (especially the so-called British School),¹⁰ which seems doubtful on closer inspection since, as the Europeans have proved, this has never prevented war (while collective political agreements have). Its increase, reinforcing interdependency, may have helped sometimes. In contradistinction, there is ample evidence of surplus brutality in relation to different peoples elsewhere in the world, that is, those who did not partake of the same civilisation and were not, almost as a rule, respected in their difference, with colonialism dividing, exploiting and subordinating them politically. When non-European peoples refused ‘civilised’ trade, Europeans forced them to open up in not very civilised ways. This troubled past does not preclude that common perspectives, especially a robust cosmopolitan conception and feeling about the world, decisively contribute to peace in international relations and something akin to the rule of law, with probably some level of open trade – implying interdependency – backing this sort of emancipatory development.¹¹

From the late 1990s onwards, the state was further zealously depoliticised in the process of adapting and connecting its territory to global capital, making the latter friendly for investors. As we have seen in previous chapters, since the latest global pandemic the state has, in contradistinction, partly turned inside and politics has assumed a more explicit role inwards and outwards.¹² The ongoing reorganisation of global commodity chains, so important for the expansion of global trade and globalisation, started before but was accelerated by the coronavirus/COVID-19 pandemic. Such inwards movement and reorganisation will probably lead to more rivalry and possibly conflict. A general state-led relocation of strategic industries will probably ensue too. How far this will go is still to be seen, to be sure, as well as its full impact.¹³

If anything, modernity is totally global today. New power blocks and the supposed rebirth of Eurasian and Confucian-influenced civilisations should not blind us to the fact that the imaginary and institutions of modernity have conquered the world. Yet as such this does not guarantee a harmonious evolution, that war will not happen and that peace and law will prevail. Particularisms are extant in this heterogeneous modernity, whereas homogeneity has not, as already stated, prevented war among Europeans, or anywhere else, for that matter, despite the latter’s facilitating role, notwithstanding the narcissistic push in an opposite direction. Besides, states and national pride are features of modernity running high in decadent and emerging powers; they are more discrete but no less relevant in well-established ones.¹⁴ Some

positive tendencies, including the expansion of modern emancipatory elements revolving around equal freedom, have, regardless, stayed their course in the middle of war and insecurity, short-sightedness and anachronism.¹⁵

10.2.3 Sovereignty and international organisations

Sovereignty, as we have seen in the first part of this book, is a cardinal concept of political modernity. Internally it signalled the absolute and undivided power from which authority to rule or govern emanated. Its other side are the external features which a state shares with other states in the international system of states.¹⁶ There is indeed some similitude between state sovereignty and the individual free-position analysed in Chapter 1. The former enjoys a zone of immunity akin to rights or even formulated as such and has a degree of unimpeded movement insofar as it does not harm other states and their rights. However, as we will soon see below, if law within national borders was strong enough to characterise individuals according to the modern divide (abstract/concrete, public/private), with a complex dialectical evolution unfolding from this, states face each other in a much thinner legal environment, their identities only very partially encircled by their formal sovereignty, with naked power, whatever arguments and justifications, very often showing its face. The unequal structure of the United Nations (UN) Security Council and the World Bank (WB) should be enough to make the point empirically. We must be aware of more vague similitudes between individuals and states. That said, avoiding conflating them is a better conceptual strategy and substantive consideration.

The Absolutist state was supposed to enjoy unitary ‘organ sovereignty’; in contrast, liberal constitutionalism introduced the division of powers and popular sovereignty, with sovereignty acquiring a more diffuse quality shared across the political system and citizens. The Westphalia treaty, which originated with Absolutist states, was prolonged when these went under, without prohibiting but rather regulating war and conquest. This was particularly useful for empires or what may be called the imperial nation-state, whether republican or monarchical, with colonies bereft of sovereignty.¹⁷ This political formation is characterised by the formal hierarchical and authoritarian power of a core over a periphery, in modernity specifically when a nation-state had direct control over another territory which will thus not be capable of self-government and decision-making – with the latter appearing as a colony (of ‘exploitation’ or ‘settlement’). Colonialism, the other face of empire, lasted until the end of World War II (not least under Nazi racial barbarism and enslavement in Eastern Europe and especially the Soviet Union) or even the 1970s (with Israeli contemporary cowboy settlers and Brazilian Amazon colonisers for instance pushing the last frontiers of these processes). On the other hand, the global expansion of the state

implied the reiteration of sovereignty as an organising principle. Henceforth international law absolutely ruled out territorial expansion, while respect for borders became formally paramount.¹⁸

Sovereignty has been premised upon territoriality. Today, other ‘spaces’ have become the target for sovereign control, beyond territoriality, actually deterritorialised ‘spaces’. This new ‘space’ is a virtual web dimension with several layers, which states have enormous difficulty controlling. That said, location still matters, although it is often offshore, out of reach therefore from a state’s legal and territorial jurisdiction. States have been fighting back, but this is no easy task.¹⁹ Sovereignty is actually, despite former aspirations, a matter of degree. It has never been absolute. Beyond Absolutism, sovereignty took on those abstract features typical of liberalism (states tending to blend with nations – already more concrete – in their relations with other states; or, for that matter, countries – a looser and unspecified as well as multidimensional descriptive notion). While only more recently have states formally accepted restrictions on their sovereignty, in actual practice and beyond that formal abstractness, their relations have always implied a direct asymmetry of power in the international system.²⁰ Economic factors have often been stressed in this regard, but the capacity for self-rule and self-determination is heterogeneous. Likewise, the influence each can exert on others, politically, as states, usually in combination with internal forces, varies. Cross-state alliances hence are weaved. This may be so strong, especially if two powerful competitors simultaneously put pressure on a weaker country, that a state may be torn asunder. Post-Soviet Ukraine, divided between Russia and the compound United States-European Union before the Russian aggression, is a prime example, with competitors meddling in elections and eventually militarily, with tragic results.²¹ Sovereignty imploded. This has often happened.

This is no exception: it is indeed how the international system is organised. States use others as a proxy (during the Cold War, for instance, and today again, at least in part) and try to influence, more directly or more ‘softly’, the politics of other states, especially weaker ones.²² At the military level, direct activity may have more violent consequences. Invasion of another country without solid grounds is forbidden, and other forces can defend the attacked party, while the aggressor may also be punished within reasonable limits. This set of responses is the pillar of the dynamic state element mentioned above, which, with its reasons of state (hidden or confessed) and its claim to absolute right to move on the international scene, tends to clash – as a powerful or a weaker state – with other states and other elements that are part of the modern international system.

International organisations have been developing now for already a century, particularly since World War II. They should instantiate multilateralism, which they do indeed, much as the power politics of mightier states is

also alive and kicking, sometimes murderously. Most international decision-making, apart from more circumscribed treaties, takes place within them, in spite of severe limitations or even impossibilities regarding implementation, and the global order is largely achieved by the work of those in inter-state organisations. The UN has radical and obvious shortcomings. With its multiple apparatuses – giving rise to the so-called UN system, with its formally subordinated but in practice often basically autonomous organisations, such as the International Monetary Fund (IMF), and many formal and informal groups – it is, failings and limits notwithstanding, vital for how the world works today, alongside regional organisations, the World Bank (WB), the World Trade Organization (WTO) and the Organisation for Economic Co-operation and Development (OECD). While they are supposed to serve states without relatively little autonomy, they eventually attain a life of their own, as their bureaucracies develop internal dynamics, knowledge and projects. This, to be sure, does not at all entail that nation-states are not key players in their workings, though, on the other hand, this implies that initiative and negotiation are part of their two-way relationships. Law-enactment or at least the production of regulations falls within their portfolio of activities, whether as indicative and as recommendations or, less frequently and improbably, mandatory. Prevention of conflicts has been a prime concern for the UN, while putatively sound economic policies keep the IMF, the WB, the WTO and the OECD busy. In their dynamic concreteness, all possible issues have nevertheless been brought into the purview of international organisations.²³ As within nation-states, neopatrimonialism – as corruption – is present in these international organisations, which are effectively para-state machines, in different degrees.²⁴

Yet the potential of those organisations was inevitably partly dampened during the Cold War, with a bi-polar order of Great Powers.²⁵ Now the Warsaw Pact is gone and the North Atlantic Treaty Organization (NATO) remains alive and powerful, but its post-war absolute – necessarily temporary – dominance has been overcome. Mainly, states that dissent from dominant imaginary frameworks (such as human rights) or concrete policies still try to work through the UN, whose greatest difficulty lies in peace-keeping and avoiding war, especially insofar as a group of selected states has power veto in its security council. Interestingly, especially in the UN system (with tensions and complementarities with the WB, for instance), an imaginary and a lexicon have been developed that cut across several areas and aims at tackling all crucial issues that beset humanity: disasters, hunger, pandemics, climate change, to name the most prominent ones. A whole province of meaning and action has been carved out by what I have called social liberalism in Chapter 4, with a stark technocratic trust. These organisations, the UN included, present themselves as fundamentally apolitical, while their communities of knowledge play a crucial role in the organisation of the

world, as do most nation-states' bureaucracies. They have produced a large body of knowledge with technical characteristics and a great capacity to shape individual and collective subjectivity across the globe. Their political character is undeniable; what is more, it has been associated with progressive liberalism or neoliberalism, even if the latter has undergone a social turn that has given it a 'human face'.²⁶ Born under the auspices of international liberalism, these organisations try to create the bonds that would allow for cooperation and the avoidance of war, as well as with the goals of directing humankind's efforts and resolving those global problems. Partly successful only, they have, all things considered, enormously contributed to the success of the liberal paradigm.

10.2.4 *International law*

We do not have a global state that could function with a centred and efficient political system capable of governing the world and applying the law, jointly made – though, as we shall see further ahead, relevant elements thereof exist; nor do we have a global judiciary, save for commercial disputes and – with a relatively low level of adhesion – to trial crimes against humanity.²⁷ The UN system partly plays this role, but with limited results if states are not inclined to collaborate, as we have seen regarding health, during the coronavirus/COVID-19 pandemic, with the World Health Organization (WHO) struggling to assure funding and lead the combat against the sanitary threat, or with the recent Russian aggression against Ukraine. These limitations do not however amount to 'anarchy', which is indeed a social construction (whatever the weight of human anthropological constants in this). Modern nation-states are indeed sovereign, at least up to a point and in different degrees, both internally and externally. This does not mean that in their co-formative development they have not created general rules for their interaction and those between their citizens. The dynamic between globalisation and cosmopolitanism, even universalisation, of modernity and the nation-states' continuing power and interests appears here again.

Jurists often try to square the circle so as to make international law fit into the individual/rights-state/coercion. Kelsen's attempt to find an equivalent for the 'basic norm' in international law, the disrespect of which would imply interstate violence as a sanction, does not make sense. The idea of a fuzzy international ('transnational') Constitution does not solve the problem either. Mentioning 'rules of recognition' that might establish that international law is law and point to its enabling character is sensible yet still insufficient.²⁸ Basically, we should consider that states are always explicitly distinct among themselves regarding power while the international system maintains, in its formal legal organisation – limited, faulty and frequently inefficacious – a formally horizontal character. Law, such as it exists in these

coordinates, does not depend on an external entity to make it work through sanctions, in contrast to what happens within nation-states. In other words, although the international system has very hierarchical relations at its core, sometimes brutal power differences, its legal aspects in considerable measure imply a networked, voluntarily crafted architecture. There is no reason to mould international law intellectually according to national law. Therefore, the very definition of law escapes the necessity of identifying an ultimate guarantor, such as a global state (abstracting here from whether and how desirable it might be). If the UN cannot fulfil this role, this has to do precisely with the aforementioned dialectic between global law and the self-centredness of nation-states, which cast each other as potential adversaries in their relations within this very international system. All goes well until their opposing strategic interests come into play, when their veto power intervenes, formally or informally. Law is then blocked in its tracks. In many cases, we do not even get there since many aspects of international law rely on voluntary adhesion – and, regardless of some impact over states that did not sign them, this is actually ineffective.

Today the world is moving from an apparently relatively liberal situation – under US hegemony – towards a more polarised, not precisely multilateral, situation, in which the US and China predominate, the latter as an ascending but still limited power. They tend to clash on several issues, without, hitherto at least, really breaking with the former framework. In turn, Europe reinforces the liberal canon, whereas Russia has more defiantly collided with it, as its war against Ukraine has shown. Meanwhile, China demonstrates more dubious positions that fluctuate according to the issue.²⁹ These bumps and disputes do not imply that international law is ineffective. Its effectiveness varies across issues and according to the nation-states more directly involved. Nevertheless, commercial activity still develops despite the pressures of the competition between especially the US and China and changes in goals and strategies. Its regulation is enacted through the WTO (which most likely will have to adapt) or partly through what may be framed according to legal pluralism, with ‘private’ agents outflanking the state and producing a *lex mercatoria*.³⁰ The role of law surfaces moreover with the push towards an agreement regarding the global minimum tax rate to be imposed on global corporations, which the OECD has been for years promoting.³¹

Besides, there is no alternative framework for international arrangements in their complexity. The Chinese state does not have it since today it is just one more nation-state among others, while its old tradition rested on a harsh view of hierarchy (as a big brother in relation to little brothers) and the demand of tributes from the periphery of the Middle Kingdom – which was the world, not a simple state among others. Nothing of this is applicable now. It is true that China has been making an effort to develop its own theory of international relations and has been trying to score points in this

direction on the fringes, with such discourses as ‘human rights with Chinese characteristics’. Yet it is so apparent that the latter entails such a return to hierarchy and the legitimation of far-reaching coercion that its presumed traditionalist pedigree has trouble legitimising itself. The contradictory dynamic of political modernity seems to be stacked at the heart of China’s policies, with a stress on its central principle, namely, sovereignty, and the integration within current global organisations and institutions. It is difficult to imagine anything more modern.³² Russia, in turn, is too weak and tends to be confined to itself, dreaming perhaps of expansion but incapable of achieving it.³³ Hence, although there has been a crisis of overarching liberal views of international relations – in which universal abstract law has pride of place –, it is unlikely that a departure from this framework will come about. It will remain checked and checkered by the power of nation-states, not least those that profess it, without giving way to an international architecture of power that is by no means new. While polarity (uni or bi or whatever) tends to grow in practice, multilateral perspectives still carry weight and tend to be stronger, notwithstanding the burgeoning competitive tension between the US and China, Russia’s growing resentment, and even the fact that the immediate future seems to be at present particularly open.

Laws related to war are also an exceptional topic to be considered, despite the seemingly almost intractable character of the phenomenon. It deals with *ius ad bellum* and *ius in bello* – the rightful causes of war and the rightful behaviour in war. Whatever its violations, the law of war has set a standard against wars of aggression (that is, first attack) and conquest, which are not acceptable according to the present international consensus. Laws regarding war have been developing for centuries and have today the agreement of most countries in the world, at least formally – in any case, war crimes, which break with the law of war, can be punished by international courts. This does not mean that power – the power of nation-states – is not present in the contorted manoeuvres and selective respect for these statutes, yet they set parameters which make warfare an activity with considerable differences with war such as formerly carried out between states or other collectivities. Several treaties and conventions, among which the Hague and Geneva conventions stand out, have been enacted in the last two centuries, replacing the law of peoples of medieval times and Absolutism. Aggression, defence, military necessity, distinction, proportionality and reprisal, treatment of soldiers and civilians, peace settlements and regime change are themes that crop up in this often loose body of law, often surrounded by controversy.³⁴ Customary law must be considered too – whether custom (mores) are the source of law or law as such, and irrespective of the extent to which it is really customary or just an instrument in the hands of more powerful states, despite its seemingly growing relevance.³⁵ After all, old habits die hard; if they ever do.

10.2.5 Regimes

What international relations researchers call ‘regimes’ is particularly relevant as an area in the construction of legal rules. Some would dismiss their relevance since other powerful actors in the global system would be overlooked through a misguided concentration on this sort of arrangement. Bearing in mind the caveats this argument correctly suggests, regimes are, all and all, very important. They refer to everything: arms control, health, climate change, labour law, human rights and a lot more. Regimes differ from contracts and specific agreements as well as organisations and governments. They are soft, always renegotiable and renegotiated, and their implementation is frequently complex. They facilitate specific and mutually beneficial agreements and cooperation beyond ad hoc solutions and diminish what a rational choice perspective would put as ‘transaction costs’, reducing uncertainty and conflict, in a world of anarchy and the utilitarian and necessary pursuit of states’ interests, especially if there is no hegemonic power. They may be strictly control-oriented – as is the case of the nuclear weapons non-proliferation regime, though it is only, partly intentionally, effective; or just allow for some level of insurance arrangements. They provide principles and procedures, rules and norms. Actually, they have often been based on specialists’ collectivities with their own set of ideas, concepts and policies.³⁶ Much of what international regimes produce may not be strictly called ‘law’, yet they cover a large terrain, which they sometimes regulate very tightly.

Are they effective? The pressures are immense. We have seen how complicated this may be with the coronavirus/COVID-19 pandemic and the difficulties the WHO faced to bring it under control, with nation-states, especially the most powerful, adopting a national interest-oriented policy at times, such as China, the United States and some European countries. There was, for some observers, the expectation that the WHO would become a sort of global health ‘governance’ apparatus; they were bitterly disappointed with the evolution of the situation. Note that the WHO is a UN body, with nation-states present at its core, along with other agents (such as pharmaceutical companies and the Gates Foundation). If the WHO fell short of a more intense coordination of governmental initiatives, it did at least provide parameters and technical – albeit minimal political – direction. The problem was previous to the pandemic and, after it started, the political interests of nation-states’ rulers got the upper hand, especially in China and the US, vis-à-vis the WHO. This was, at a closer glance, a development we could expect, should we take into account the contradiction I have pointed out as to the international system at the opening of this chapter, with on the one hand international law operating above nation-states and these, with their own circumscribed and often ‘egoistic’ interests, pushing against it, on the other, when their goals implied other paths. Steps of a technical nature and

possibly more funding, such as pledged by many governments, in the direction of strengthening the WHO, are being implemented. However, we have to wait and see what will be the actual upshot of the crisis and of the need for preparedness in the face of the likelihood of another pandemic, which has been framed by a security-preparedness perspective, with uneven financing according to the income levels of different countries. An international treaty to manage pandemics is, in a slow pace, it is true, in the offing.³⁷

The same sort of issue comes up concerning the arguably most dramatic contemporary issue the world faces: climate change. It has connected to the former, rather fragmented, environmental regime, as some sort of continuation. Yet it has constituted a distinct and visible sort of province of meaning, comprising institutions and collectivities, drawing upon concepts and vocabulary associated with other UN areas and policies.³⁸ The Intergovernmental Panel on Climate Change (IPCC) lies at its core. This is a loosely patched regime, with many layers and activities, for some excessively fragmented, which can be seen at the same time as an extensive network of agents. Many treaties, protocols and minor agreements frame it institutionally, and an imaginary of impending catastrophe is part of its outlook and public standing, with, more generally, the vocabulary of risk, vulnerability, resilience, mitigation and adaptation holding centre-stage. This climate change regime primarily relies on the 'framework agreement model' – the UN Framework Convention on Climate Change (FCCC) is the most important –, usually based on 'soft' law. That is, it usually dispenses with the command model, towards which it had moved closer with the 2016 Paris Agreement, whereby decisions formally became mandatory, without, conversely, no guarantee of full implementation by any of the parts to it (nation-states). Consisting of an issue of general and far-reaching impact, climate change is in principle open to grabs. In the face of that, there has been a clear strategy of the UN's organs to monopolise and depoliticise its discourse, a usual approach of this organisation, as aforementioned.³⁹

It would be incorrect to say that the climate change regime has been fruitless, or at least totally so. Many things have been transformed, from public opinion to states' policies, particularly in terms of a transition away from fossil energy and massive greenhouse gases (CO₂, methane, etc.) emissions to carbon neutral technologies. There are plenty of reasons to denounce the nagging and dodging that emerges from such a loose organisation format, especially due to the issue's urgency. Nevertheless, given the vast problems and interests at stake, it is on the other hand impressive that things have achieved a certain level of coordination. How effective it will look depends on the accuracy of the forecasts about brutal changes in the immediate future. Furthermore, a security agenda, more directly connected to the UN Security Council, offers a counterpoint to that more benign perspective.⁴⁰

10.2.6 *Peace and war: political processes*

The open exercise of power is a daily occurrence in the relations between states, although it is usually carried out with international law and regimes as a background. They pertain to the everyday workings of peace as a social process based on different principles of organisation: hierarchy, network and market. Cooperation through state channels and diplomatic efforts are also of foremost importance. In contrast, the attempt to diplomatically influence other countries, threatening and blackmailing some, cajoling others with offers of financial, political and military help, building alliances and sanctioning those that resist the desired course of a policy, mobilising the secret services, spying and building covert operations, are also manners of intervening in the affairs of other states. This may happen through a strategy applied directly upon them or through the organisations in which they carry their joint endeavours, in times of low-intensity aggression, short of armed conflict – that is, peace –, with conflict and competition enjoying a subdued course. Diplomacy is far from totally opposed to conflict and competition, without detriment to its combination of hierarchy and network, which positively organises international interactions.

Reason of state plays a role in international relations that is even larger than it does in internal politics since only partly do law and other regulations cover the interaction between states. States are supposed to stand for and further their interests internationally and globally, with certain limits, especially between allies, being in principle respected, which is by far not always the case (just remember how it came to light more than once that the US had spied on liberal heads of state in Europe and those of international organisations).

These are political processes between states, but they also happen in the relationship between international organisations and states. In contrast, states with greater power can use them on their behalf to steer international politics in their preferred direction. Just look at how the IMF deals with indebted nation-states in the periphery and the semiperiphery. Less verticality marks its relations with central states. Similarly, the UN General Assembly, in which each state has a vote, may contribute to this more balanced situation. It formerly helped skew some organisations of its system to the left, as was the case with the United Nations Educational, Scientific and Cultural Organization – UNESCO –, leading to retaliations by the US, in the form of withdrawal of funding, or as the then US president Donald Trump did with the WHO, punishing it by withdrawing membership and resources. Multilateralism is always, including when it is most efficient, a partial perspective. Nation-states may be powerful and counterpose it. In any case, as globalisation progresses, different players grow in relevance and issues sometimes reveal themselves harder. The paradox of our situation becomes clearer and stronger, with often gridlock setting in regarding much-needed global policies, though this is by no means absolute or inevitable.⁴¹

The ultimate denial of those principles of universalism and cosmopolitanism is war (save when geared to the punishment of an aggressor state). Antagonistic conflict and its articulation through struggle lie at the core of war – even before push comes to shove and physical violence breaks out.⁴² War is a conflict between states in which their elementary sovereigns, individual citizens, play a crucial role. However, if they are part of this collective subjectivity and may respond morally for their behaviour, an atomistic vision of war is patently inadequate. This misunderstanding is compounded by the fact that the weaponry that furnishes, along with individual bodies of soldiers (mostly citizens in arms), the material basis of armies (collective subjectivities too), cannot be accounted for by an individualistic perspective.

For some, war stems from deep power drives within human beings, and there is little hope that we could ever control it, in contrast to more circumscribed and even optimistic views. Whatever our persuasion in this respect, it seems difficult to escape Clausewitz's conceptualisation, according to which war is an 'act of force' (*Gewalt*) to constrain an 'opponent' to fulfil a state's 'will', violently. It is the ultimate expression of conflict and struggle, to summon the categories we have been employing, and, as Clausewitz famously put it, the 'simple further pursuit of political ends by other means'. Ends matter above all, qualifying war, which would otherwise be an act of force without limits. Furthermore, in practical terms, means modulate ends and the inevitable 'attrition' of war, due to its dynamic and difficulties, does not allow for such a radical and absolute deployment of violence.⁴³ At the same time, war usually does not entail the absolute rupture of diplomatic contacts and even negotiations⁴⁴ – unless it includes, 'total war' and innegociable regime change in the state to be defeated (something that is problematic regarding the law of war, but which World War II inaugurated). The latter is legally justified only in extreme instances of mistreatment of a population and perhaps repeated aggression against other states. Organisation and antagonism go together here, with various balances; at the extreme, with unconditional surrender, hierarchy becomes absolute, while military-political stalemates may lead to the resumption of organisation through both hierarchical and networked relations.

Other questions have arisen with respect to who is fighting whom so that a proper definition can be found for war: states? If this is true, it seems that violence, before states existed, could not be so classified. Would war mean 'organised violence' between 'political units'? If this conceptual choice is made, what is meant then by 'political units' (remember that we are not, in this case, within the bounds of modernity, with its separation of a specific political dimension)? 'Units' as a concept already begs the question: should they be independent, or could we then not characterise colonial wars – where there is precisely no independence – as war? Is it intrinsic to states because they inexhaustibly crave for power or because they are always

insecure vis-à-vis other states, hence need to prepare to defend themselves against a possible aggressor whose power, often through alliances, they have to offset? Or is it because offensively bettering their position vis-à-vis other states is perceived as a necessity for survival? But, if anarchy – that is, the absence of rules and the inexorable self-help of individual states – does not exist, is war really inevitable? If, in its multiple variations, war stemmed from a learning process and has developed as a frame of mind, might it not be unlearned?⁴⁵ Although this is a somewhat controversial issue, it seems rather clear that the Soviets, beyond their doctrines that emphasised peace, painfully learnt, after so many invasions and destruction, that war should not be visited upon another country, sustainably refrained from it (wars by proxy notwithstanding and above all the occupation of Eastern Europe in the aftermath of World War II, a buffer zone which they did not hesitate to suppress when deemed necessary).⁴⁶ The present Russian ruling circles seemingly unlearned such wisdom, while military compounds, above all since 1949 the North Atlantic Treaty Organization (NATO), until the 1990s opposed by the Warsaw Pact dominated by the Soviets, reinforce a conflictive rather than a cooperative international logic, though they were mostly committed to *détente*.

The perplexity that accompanies discussions of peace and especially war is tremendous. Some seem to revel in war – usually providing that they do not take part in combat, but it usually yields feelings of uneasiness, with acts of heroism perhaps bringing up some mainly – and manly – abstract enthusiasm. As noted above, in the course of many centuries or even millennia, humanity has created laws to limit and regulate the brutality of war and, more optimistically, limit or avoid it altogether. They fall short by much of what we need for a life emancipated from violence and oppression, which are the essence of war. Nevertheless, the sort of settlement we have is undoubtedly better than nothing (regardless of the dubious hypothesis according to which war may be politically productive for emancipation).⁴⁷ On the other hand, war must not always or at all costs be avoided, especially when civilians are being purposefully and indiscriminately targeted or when an aggressor state may get away with murder, which does not mean that negotiations – that is, to come back to a more cooperative relation – are not eventually necessary to end wars.⁴⁸

10.3 Opposition and complementarity: capabilities and human rights

10.3.1 Capabilities, total power and power-sharing

We have analysed state capabilities in Chapter 8 of this book, whereby its power was more thoroughly conceptually grasped. We need to resume this

analysis now. International organisations have capabilities, too, and this impacts nation-states, including their capabilities; yet states have tried, at least partly, to go their way alone.⁴⁹

The legal meta-capability of the state is especially affected by the growing importance of international organisations, which encroach upon state sovereignty. Legal production has partly shifted upwards with the multiplication of social domains requiring regulation. This global character notwithstanding, it is only through the mediation of the nation-state that this finally occurs, since this juridical production must be enshrined in national law, treatises and agreements. Powerful states may more easily reject these legal frameworks, while weaker states may accept unwelcome schemes due to a lack of enough power.⁵⁰

Taxation continues mostly confined to the national level. However, we have seen that this is most surely changing. The limitation of taxation, despite some interstate agreements, has created problems for states due to the global and mobile character of capital today, with tax havens further complicating things. States, on the one hand, jealously guard these prerogatives; on the other, they have always left room for tax planning and evasion, permitting loopholes in legislation and often loosely enforcing it over the 'rich and powerful', with even sometimes extraterritoriality within their own territory (just recall the City of London and Delaware, in the US). As is well-known, necessity is often the mother of virtue, though, and the global tax minimum for corporations discussed in Chapter 7 may partly overcome present arrangements, making fiscality more of a global interstate phenomenon. In turn, managing seems to become more critical regarding both the national bureaucracies that deal with international and global issues and international para-state bureaucracies, which also get thicker. Moulding, in particular, has been dramatically reinforced in its international workings, in several settings, from the WB (for instance, as to poverty combat – or administration – programmes and the moral subjectivity the poor must cultivate) to the WHO (with responsible social behaviour during epidemics) and beyond.⁵¹

Surveillance and violence remain by and large a preserve of the nation-state, yet have become more networked globally in order to be effective. Especially 'terrorism', due to its often (not always) networked organisation, has put lots of pressure on what can be deemed the globally networked security state. The expansion of surveillance has been partly explained thereby, as well as justified. Liberal constitutional rules are simply sometimes brushed aside (always indeed, if we recognise the hidden workings of the 'deep state' as a feature of most or all modern states). As formerly observed, stringent surveillance and security are not inimical to liberalism as a system of rule. At the same time, the traditional party-state of retrofitted authoritarian collectivism has no problems operating out of the public

eye according to its utilitarian expediency requirements. Besides, even more stringent surveillance and security were and carry on an outstanding attribute of the party-state system of rule. While the 'dual state' is intrinsically international concerning its secret networks (and may easily turn against the formal liberal state), they work all the time within other states, whether those of allies or, especially, those of adversaries and enemies. With more intense global conflict and competition at present, this is bound to increase. While the police play a crucial role overall within the state's border, in what regards movements across borders it is also paramount – often with the help of the armed forces.⁵² What is also at stake here is the control of both the legal and the illegal 'means of movement', whether the latter is legitimate or not, which is a crucial element of sovereignty. Intentional breaches of the law can be seen in this case, if the state is interested in immigration but wants to keep discretion about whom to expel later, or if at lower levels corruption operates. Passports have been pivotal in this respect, for all sorts of territorial control.⁵³

Particularly distinct from the state at the international level are two specific sorts of activity that are hallmarks of modernity, namely, diplomacy and war-making.⁵⁴ Diplomacy as a capability provides counselling and helps implement the state foreign policy, allowing especially for political contacts between countries, by members of national political systems and career diplomats. Diplomacy goes far beyond that, becoming a crucial element of international organisations, with appointments by nation-states for their leading positions.⁵⁵ Likewise, war-making has been steadily enhanced as a capability overall and regarding each state, with technology and organisational techniques yielding a far superior potential of violence. However, we must conceptualise this enhancement as it occurs within a system of states, in which some are stronger, or much stronger indeed, while others are weak, or much weaker. The war-making capability integrates organisational, material and symbolic elements in its structuration, with far-reaching industrialisation and high-tech improvements.⁵⁶ It is at the basis of the pursuit, beyond diplomacy, of political objectives, but does not serve as a replacement. Private contractors or mercenaries are, besides, increasingly active at the global level (as a form of power sharing that harks back to previous historical periods and thrives at the margins of the traditional international legal framework).⁵⁷

State and para-state capabilities are specific power instruments developed according to their necessities and goals. They rest in principle on potentialities – which do not directly translate into capabilities, without which the latter could not develop. The realist school of international relations has treated them as power factors, stressing geography, natural resources, economic development, size, population, diplomacy, the population's commitment to the state and effective government, while geopolitical approaches

concentrate on the control of space.⁵⁸ Power factors, which include the space available for a state's expansion or consolidation, may facilitate or complicate the development of those capabilities and the strategic situation and correlation of forces between states. To this more traditional list of bureaucratic structures of state and para-state organisations and, particularly, technological development and the industrialisation of war, which makes it, in principle, far more destructive, we must add the consideration that this depends on political goals and decisions. These potentialities outstandingly affect the war-making capability yet impact all other capabilities. In this regard, a particular capability, namely, to launch nuclear weapons, has perhaps brought more radical changes than any of these capabilities and their deployment. For the first time in history, states can completely destroy each other and even humanity – or leave it in such a sorry shape that it will surely be entirely different. Deterrence used to be the absurd argument for their accumulation, but whether this will hold in the future is an open question.

Significant adjustments have come about since the 1940s and especially in the last decades concerning the strengthening of the state and the concentration of power in its apparatuses, with symbolic impacts. First and foremost, this stems from the larger role international organisations now play and the adjustments that have unfolded in the global regime of sovereignty. I have previously mentioned that nation-states no longer enjoy a monopoly in the production of international law; the other side of that is, additionally, an increasing interference in their internal affairs by international organisations. Some are more impacted by these transformations than others, depending on their relative power and position in the international system. War can no longer be so easily unleashed without justification, even though powerful states sometimes can get away with it, especially the US and its NATO partners, with new sorts of wars developing in which states and non-state agents get entangled beyond what would be a traditional sort of warfare between the former, with several precedents for this sort of mix of regular forces and partisan fighters – often guerrilla soldiers.⁵⁹ A new regime of sovereignty is emerging, formally more limited, with, paradoxically, boundaries becoming more sacred than ever and wars of aggression, particularly of conquest, being rejected, irrespective of whether they once again occasionally take place. The dangers are apparent and have been reinstated time and again since great powers can use – and they have indeed used – the arguments of justice to promote or enact war themselves, often coupled with regime change. The US and, once again, its NATO allies have employed this cover, but Russia has also drawn discursively upon this sort of argument to invade Ukraine, with long-term unpredictable effects.

Power concentration has been, at any rate, present at the international and global levels. Lest someone think exclusively of the state in this regard, it must be said that it can afford this concentration of power only because it occurs

in tandem with power-sharing. States and para-states organisations, and other societal forces, often big corporations, despite deviations and disagreement, work together. Citizens, especially at such a higher level, thus become incapable of counteracting this union of the powerful. A positive-sum game of power is the result of this coupling, to the detriment of the citizenry. More concretely, the nation-state has been re-equipped to cope with global processes and internalised them. Thereby its capabilities are usually enhanced, with power concentrated in the state through sharing, against disadvantaged societal agents, at the national and global levels. Consequently, total state power also grows, while international organisations likewise increase their power, with the negative-sum game reserved for that category of citizens.

10.3.2 *Human rights and autonomy*

Once a vague figure in our imaginary, the notion of human rights has become highly relevant in global politics. The chief document in this development is evidently the 1948 UN Declaration of Human Rights, with others following suit. As a radical and problematic expression of this commitment to individual human rights, the ‘right to protect’ (R2P) and to intervene in the internal affairs of states, up to military intervention, has become a bone of contention. There have been advances in this respect, since especially what states may do to their populations has been brought under considerably more stringent rules, genocide remaining a principal situation that may justify that foreign armies step in to protect ‘human security’. Global human rights regimes have at times played a relevant role for struggles by citizens’ movements in countries where governments and states, regular and irregular military forces, have been murderous. Of course, the individualism of such values creates trouble for their adaptation to the environment and independent development elsewhere.⁶⁰ On the other hand, indigenous peoples’ rights, both individual and collective – as an expansion on how rights were originally imagined in modernity – have become, demanded by those peoples themselves, a cornerstone of the international customary law on the subject, pace resistance by some powerful states, showing how modern values have become globally relevant in emancipatory terms. Indigenous female leaders, for instance, have been in the forefront of struggles in which they have prominence.⁶¹

Human rights were projected, initially, principally in straight connection with humanity, that is, directly at the global level, before citizenship and nation-states. Individual *dignity* underpins the idea of individual human rights, both a heritage of the Enlightenment, with a universal claim. Who belonged to its universe used to consist in a contested theme, which could not, what is more, be openly argued, with Western white people standing out but eventually formal full-blown global inclusion. In its extreme abstraction

and very partially 'positivised' in the international system and law, above all through declarations and a specific regime, human rights have been crucial, beyond its original reach. They have played an important role particularly in connection with international liberalism. To be sure, when this centre piece of modern imaginary travels across the world, new shades of meaning come up in its connection to concrete social struggles, yet its core values are reaffirmed, an emancipatory development while simultaneously questionable due to that abstract individualism that inevitably underpins it.⁶²

In Part I of this book, we have seen that the abstractness of rights is highly problematic within countries. It used to veil all sorts of inequalities and oppressions, irrespective of its high productivity in terms of elementary individual emancipation. At the global level, the concentration of justice exclusively on individual human rights may be very limiting for a critical approach to modernity as well, although collectivities, such as the indigenous ones mentioned above, have lent them a different slant, which has been taken up in global fora. Abstractness veils and may moreover, if not quite block, obscure the multidimensional inequalities and oppressions between countries placed at the centre, the semiperiphery and the periphery of the international system (with particular detrimental effects for the latter two) that characterise global modernity.⁶³ Crucial aspects of the societal side of global modern life, through a separation between abstract humanity, individual citizens and concrete human beings, may stall the necessary moves to overcome them. It is through the embedment of human rights in a large range of more concrete collectivities, including those pertaining to unequal national contexts, that such shortcomings can be checked.

I have pointed out above that when we speak of the international dyad, the abstract-legal layer is thinner and almost directly imposes a consideration of sheer power in the international system. This is why I have used the word country rather than state in the passage above since it keeps us aware of the global double bind of the state and societal sides of modernity. With this in mind, we may move forward with utilising human rights with no further qualms. In fact, we need to do so: it is the basis for the idea of autonomy at the global level, protecting that essential attribute of human individuals and allowing for the legal inscription of their freedom. While we are dependent upon one another, human rights tell us that we are autonomous to choose whom we want to depend upon and how. Moreover, respect for human rights has allowed for the functioning of more open political systems, wherein political autonomy can develop.

As the world compresses and globalises, immigration, which had at some point subsided, has become once again a crucial global issue. It directly relates to autonomy. Sometimes more flexible legislation is introduced to cope with it, yet the opposite is becoming increasingly true. At the same time, sovereign states cling to their restrictive definitions of national citizenship,

with nationalist movements, often xenophobic and extreme-right, pushing for more restrictive legislation and closed borders. They deny thereby a proper space of ‘hospitality’ to immigrants. Autonomy to choose where to live – which may be regarded as a fundamental human right – and freedom of movement – almost a citizenship right – are unavoidable demands in an intensely globalised world. Human rights tend to be pushed aside and harmed by harsh legislation everywhere once this is not recognised. The opening of borders does not however imply that problems in the countries of origin of migrants must not be addressed in order that emigration is a genuinely autonomous decision rather than driven by heteronomous necessity. The latter is the case of asylum seekers and refugees due to persecution, or fear thereof, on account of political opinion, race, religion and the like, or due to war and natural disasters (which will increase with climate change); it is also the case of those who emigrate because of economic want or a lack of perspectives. On the other hand, we should not overlook that citizens of national states may have legitimate material concerns and may want to keep some level of internal homogeneity as well as that democratic sovereignty is, in the world of nation-states, legitimately trusted upon them. All things considered, while cosmopolitanism is critically the more adequate perspective, many other issues creep in, which are not at all simple to solve.⁶⁴

Collective autonomy has also become a global issue. Of course, this has been the case concerning autonomisation, first of all with the affirmation of original modern nation-states as sovereign, then with the formal independence of peripheral and semi-peripheral countries. It was present in the nineteenth century and exploded in the twentieth century. Anticolonial struggles, liberation movements and self-assertion, economic or otherwise, lay at its core, with a juridical phrasing that allowed for self-determination. This was the first time this became a central political issue, with long-term consequences.⁶⁵ In addition, a further contemporary angle deserves our attention regarding collective autonomy, the far more open and globally influenced construction of post-ascriptive identities. While some level of heteronomy – implying history and social connections – certainly limits autonomy, since we are not abstract beings, individuals can draw upon previous social memories in which identities find support and creatively refashion and recombine such memories with information coming from afar. Misrecognition and the hardening of somehow essentialised identities may also come about – as we see with political Islam and similar phenomena – but emancipation may be achieved thereby, partially.

10.3.3 Mechanisms and developmental trends

We should first recall that there are two kinds of developmental processes, beyond more contingent ones, as I have argued at the beginning of this

book: (1) locked-in processes, with unintended reproduction, whether or not agents are aware of outcomes and underlying causes; (2) intended learning and creativity, centered on the imaginary such as it appears to agents, (also which may be linked to more contingent processes or appear as a way out of locked-in ones). We started our analysis with Elias' account of the competition between feudal lords. This process, in which they were locked in mortal competition and conflict, led to the survival of just a few of them and ultimately the centralisation of power in large Absolutist patrimonial and largely feudal monarchies. Sovereignty was thus born. Feudal lords – the greatest of whom were Absolutist Kings and Emperors – were key players in this process, with the ascending urban bourgeoisie playing a vital role in providing money, as an additional, not locked-in element in the process. There were other political arrangements at the time, such as city-states and city-leagues, which in the long run proved to be no match for the Absolutist, centralised and capitalised state. In their initial incarnation as Absolutist states, they were better at decision-making and enforcement due to the centralisation of administration and justice within clear-cut boundaries, as well as in the administration of colonies. Considering the topics approached in this chapter, it is imperative to note that this development eventually led to a system of sovereign states premised upon mutual recognition, which still, to a large extent, drew upon the law of peoples as an expression of natural law. The transformation of the Absolutist state into the modern state and of the former's system of states into the modern system of states was an inter-linked and interdependent process, in which each of them learnt from each other capability advances. The conflictive and competitive character of their relations and the feeling of belonging to the same civilisational space pushed in this direction. The Peace of Westphalia, whatever the provisos one may point out, was an outcome of the relations between Absolutist states that survived in modernity and, despite changes, lives on in our time. It represented a sort of learning and creative process that started to lead emerging Europe beyond the medieval perspectives of the law of peoples.

Besides, Absolutist states partly homogenised their 'societies', banking on administration, law, language, institutions and specific values, with variable results (limited, for instance, in the case of Spain and, albeit less so, Britain, a situation transplanted to their imperial expansions). Thus the 'nation' – even if it had to internally accept other 'nations' – was born, drawing upon features developed in previous moments. While we must avoid reductionism, cohesion at this stage corresponded to 'ideological power', as realists suggest, functional for kingly rulers. This idea of the nation eventually flowed into the nationalism that the late eighteenth century transformed into another hallmark of modernity, connected as it was to sovereignty – formerly monarchical, then of the people. Territorial conquest and war would assume other characteristics, but today, if military prowess remains a pillar of national pride, political participation, or

lack thereof, and different relations with immigrants, often of rejection, characterises nationalism, along with the reaffirmation of national particularities and the elevation of national achievements. So much for the generative mechanisms that led to global political modernity, which are basically the same – at this stage of the analysis with the addition of the concept of system of states – as those of modernity at the nation-state level.

Since political modernity was in time fully established, the modern state spread and became the form according to which the world is ordered, with a system of states that organises the whole planet. Europe and the Americas were the first regions where they emerged (with the modern state's creative and generative epicentre in the former); they are coeval. This implied that all the features of the modern state would also spread, namely, its legal constitution and neopatrimonial character, its capabilities, its foundations on citizenship and the consent of citizens to rule and nationalism. It also implied the expansion of the system of states, which basically encompassed the globe, with the spread of the principle of sovereignty, with therefore a double genesis of the modern state, initially in emerging Europe, after that through its spread. Colonialism was often the initial vehicle of the second phase of that genesis. It was resumed later on by the middle of the nineteenth century, only now with a more truly modern character (hence not really important for the genesis of modernity). In other areas and countries, such as Japan, the realisation of the modern state's power enticed people to embrace it.

At this point, we are really speaking of the reiterative mechanisms of modernity. Competition and struggle have continued, through peace and war, no longer as generative, instead as reiterative (inevitably also, if minimally, partly creative) mechanisms, with states learning from each other in several aspects – legal-constitutional, bureaucratic, capabilities –, along with inclusion in the international system, which could be very disruptive, in particular insofar as colonialism and empire were involved. All this learning regarding the enhancement of state power was instrumentally oriented and followed the logic of power Elias had uncovered as underlying premodern processes. No monopoly ever came about, but the centralisation of sovereignty and the modern system of states were crucial unintended consequences of the conflict and cooperation between states, as well as a limited recognition of each other through more formally horizontal relations, without entirely excluding war and conquest. We find in this conjunction the genesis and reiteration of one of the mainstays of the dynamic contradiction enunciated at the beginning of this chapter, with, in addition, the general recognition of sovereignty already pointing to the second element in the equation – the cosmopolitan development of relations based on law, regimes and trade, in spite of the reinstatement of the first pillar with the legitimacy of war and conquest. In this sense, a categorically locked-in, directional process has been developing. Get stronger or perish is an ugly but forceful imperative.

Underpinned by trade and especially after so much devastation caused by global military conflicts, a new learning and creative – more directly collective – process has been taking place. Even the Cold War, with its nuclear menace and deterrence, implied open conflict only, as brutal as it might be, in peripheral areas of the world. There has also been an intensification of interdependency, practically bringing societies and states closer. This induced ruling political collectivities and the bureaucracies of national and international organisations, with the support of several societal collectivities, to bet on the limitation of sovereignty and a strengthening of international law and regulations, fashioned according to international liberalism. There is now more to lose than gain from sovereignty conflicts, though the verdict on the Russian invasion of Ukraine is not out yet. There seems to be more to gain from smoothly run joint-ventures than from losses with military conflicts, despite the push of the international system's hierarchies and domination (hegemony) in the opposite direction as well as the simultaneous prevalence of geopolitical thought. In any case, war cannot now usually lead to territorial conquest, and the problems this might create are excessively complicated if a state ventures in this direction. The danger of nuclear conflict since 1945 is also real, and populations have preferred to avoid conflicts, which have been related, in particular, to internal security. Such elements shape the workings of reiterative mechanisms, which have moreover evolved: sovereignty has been reiterated, yet has not remained immutable. Other globalising phenomena that increasingly cut across national borders, first of all globalised capitalism (production and trade), have evidently impacted it.

A further issue must be considered: the demands of states for international organisations that can fulfil some tasks, but also those from individuals and collectivities, including social movements and non-governmental organisations (NGOs). These demands may strengthen global para-state apparatuses and bureaucracies, often in the framework of the regimes analysed above. Climate change stand out today, as did peace and human rights before, while more prosaic ones – such as measurements and standards – go in the same direction. To be sure, they do not evade the dialectic of cosmopolitanism and nation-state power exercise, which is central to the dynamics of modernity, as we have seen with the potentiality exhibited as well as the difficulties faced by the WHO during the recent pandemic. Interdependency and the recognition of our common fate to a large extent undergird these demands.

The three disembedding processes discussed in Chapter 9 are also operative at the global level. The abstract push for homogenisation provided by the nation-state is taken to extreme heights, limited by the borders of nation-states. In any event, the development of international law and regimes provides a modicum of further institutional and practical homogenisation, with the advancement of the means of communication and the expansion of the market displaying even greater global impacts. With the centrality of

autonomy and freedom in the modern imaginary, a strong trend has been developing, as if inexorably, with pronounced directionality and strength. The enticing force of the modern imaginary has been thoroughly demonstrated. While people have drawn upon it (in this regard learning) to further their goals unimpeded, in both the private and public domains, creatively changing and adapting its core elements to diverse situations, states have been keen to manipulate them. Yet many, if not most, people are also keen on seeing their concretisation in the international system. These developments depend on contexts, needless to say. We must speak, in addition, of a global context of contexts, shared by the inhabitants of global modernity, all of us indeed, even if some populations have been less or only more indirectly touched by this process of globalisation of modernity and may not embrace its imaginary horizon (just think of the Islamic State).

After the defeat of ‘real socialism’, regardless of China’s putative commitment to its former values and with the party-state difficult and in fact hostile reaction to these emancipatory elements of the modern imaginary – autonomy and freedom, at least in political terms – they remain strong around also their internal spaces. Countries must pay at least lip service to them, also hypocrisy, distortions and limitations notwithstanding. Intentionality truly works here and lies at the core of the mechanism of reiteration of this area of the modern imaginary, though it may be dampened by systems of rule and domination, with a trade-off with other expectations related to state performance. On the other hand, widespread dissatisfaction and mobilisation have flared up time and again. Despite the global crisis of the left and the emergence of a global extreme-right, human rights and freedom have become an increasingly important element of global politics. Nevertheless, it is unclear how we could face up to the state-shared concentration of power with a more vigorous renewal of emancipatory politics. The intentional reiteration of human rights and freedom as values, as well as the push towards their institutionalisation, certainly constitutes the main processual countertrend to the strengthening of the state at the national and the global levels.

10.4 The international political system

With rising interdependence and the vast array of organisations and movements that cut across the global dimension, with decision-making processes ever more taking place directly at the international level, in spite of the looseness and shortcomings already mentioned, we can now speak of a truly global political system for the first time in history. The original modern divide – state/society, public/private – persists as the infrastructure underpinning, at both the national and the international levels, this global political system, which also contains state and societal aspects.⁶⁶ Thus far

in this chapter, I have referred to the *state and para-state global political system*, in particular concerning international organisations, while the relationship between states and their participation in these para-state organisations, which of course fall short of constituting a global state, stand out too, including during war, with its contacts and negotiations. This para-state side of the global political system is exceptionally closed. If we encounter oligarchies at the national level, here they are absolute, with international organisations and diplomacy managed by the very few and operating entirely from the top down. This side of the global political system is aloof to ‘public opinion’ in diverse countries. In peace and war, with the intent of building hegemony and influencing internal politics, so-called ‘soft power’ occupies some space at a more general level, but this is not usually at the centre of its concerns, especially regarding more concrete issues. In spite of the already pointed out tensions that may and do surface between dominant nation-states and the bureaucracy of international organisations, some form of convergence comes about between them, to the detriment of other states, often still emerging powers.

Finally, what has often been called ‘global civil society’ has been undergoing some expansion, even if irregular at times. Resuming my argument in Chapter 6 with reference to national political systems, I will call it the global societal political system instead, underscoring its political character. It relates principally to those emerging para-state organisations, with social movements and fora, advocacy networks and global NGOs becoming a palpable reality in global politics and taking international relations a step further beyond interstate relations. We observe different combinations here: social movements and NGOs may be based in different countries and above all address other nation-states. At the same time, they may not, in principle, be globally oriented and, even so, address international organisations. They may also deal with national and global issues, adopt advocacy strategies, or bank on protests and demonstrations. Playing with the contradictions between states and between these and international bureaucracies, and working on public opinion, social movements and NGOs sometimes further their complaints and demands. Hierarchical and more horizontal, grassroots organisations, as well as more dispersed citizens, are the agents of this global societal political system. Its strength fluctuates, similarly to what happens domestically.⁶⁷

Socialist, communist and nationalist movements previously weaved a global societal system, with far more centralised and hierarchical structures, as was typical of the twentieth century, though sometimes their entwinement with the state could be great (like the communist Third International). Before that, the nineteenth century witnessed other sorts of, more decentralised, organisations, from masonic lodges to Abolitionist campaigns to the nascent working-class movement. The plurality and fluidity of this new ‘civil

society' is a strong and further expression, at the planetary and collective levels, of the processes of autonomisation identified in Chapters 8 and 9 and shall be resumed below. We may suppose, somewhat encouragingly, that this global political system will expand in the following decades, tackling several topics, with at present human rights and climate change occupying centre stage in its articulation and activities. Yet speaking of global citizenship is, beyond a good rhetorical strategy, something conceptually problematic insofar as citizenship remains firmly anchored on nation-states.

10.5 Antagonism and organisation globally: phases of modernity

In the former chapter, I have systematised some issues related to the three – or perhaps – four phases of modernity that have endowed it with more or less consistent configurations since its emergence. The first phase had the nation-state, empires and colonialism at its core (only at this stage partly 'rational-legal' in its state scaffolding). The second saw an internal strengthening of nation-states and the end of colonialism, with imperialism finding ways to keep its dominance, while different versions of cosmopolitanism and universalism competed with the existence of two blocs. At the same time, international organisations were born. Eventually, we witnessed the unequivocal victory of liberalism. This outcome entailed a push for globalisation led by the US, according to international liberalism, in tandem with neoliberalism, which showed an overriding globalising thrust. Is that going to change now, or do we witness merely an inflection? One thing is certain: the contradictory dynamic that pits nation-states against each other and simultaneously promotes cosmopolitanism shall carry on, not only unabated but reinforced. The tensions between the US and China, as well as the geopolitical posture of Russia, have recently strengthened the nation-state pole of the equation. Will it have the upper hand in the next decades? Is war-making staging a more far-reaching comeback? Or, despite all appearances to the contrary, will cosmopolitanism ultimately prevail?

Of course, the role of the state vis-à-vis internal as well as international dynamics is crucial in this regard, and it may be that we will have two competing globalising blocks once again. Decisions as to strategic industries and technologies also lead towards a more prominent role for nation-states, if not nationalism as such. Whether the China-led block will be capable of mounting a challenge to the present, enduring hegemony of the US beyond economic and military power, including the elements of a robust, different imaginary, really capable of global influence, is anyone's guess, but looks unlikely, especially insofar as autonomy is not contemplated in the imaginary of the adjusted party-state. International liberalism will thus remain relevant in the architecture of the global nation-states system, even if more limited in its effects. Competition is, just the same, inevitable. On the other

hand, whether antagonism will continue concentrated on economic emulation rather than sliding towards conflict and struggle, and, pushed to its limit, into war, including of a nuclear nature, is an open question. It will test the cooperative elements – especially law and regimes, and diplomacy – that, in parallel to trade, have lately minimally organised the global system of states.

These developments of the international and global political dimension will combine with the other changes we have examined in the previous chapters (especially Chapter 9), where we discussed the signs that could suggest we might be entering a new – the fourth – phase of modernity. The interaction between national and international political processes will ultimately partly define the reach of changes.

Notes

- 1 Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (New York: Alfred A. Knopf, [1948] 1967); Kenneth N. Waltz, *Man, the State and War* (New York: Columbia University Press, [1959] 2001), chaps 1–3; Idem, *Theory of International Relations* (Reading: Addison-Wesley, 1979); Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977); Alexander Wendt, ‘Anarchy is what states make of it’, *International Organization*, vol. 46 (1992): 391–425; Idem, *Social Theory of International Relations* (Cambridge: Cambridge University Press, 1999), chap. 4. Bull provides the best refutation of Hobbes’ ‘anarchy’ (with provisos I will introduce below) in interstate relations (though begging the question of what he argues regarding intrastate violence), discarded in favour of Locke’s idea of imperfect harmony in the absence of ‘government’. Whereas Waltz wants to eat his cake and have it – postulating simple units in his systemic approach and smuggling afterwards ‘attributes’ of units in the framework –, it is difficult to understand why Wendt, so steeped in symbolic interactionism, so inconsistently speaks of states as ‘prior’ to the system of states and of their ‘presocial’ character in relation to it. For a good overview of these traditions, see Michael Doyle, *Ways of War and Peace: Realism, Liberalism, and Socialism* (New York: W. W. Norton & Co., 1997); he tries nevertheless too hard to fit classical authors into the framework of contemporary international relations theory. Curiously, Hobbes used the term ‘anarchy’ only once or twice in each of his two main books. ‘State of nature’ hardly appears in the later book, where he defines the situation rather by the absence of a ‘civil’ society or state, though the ‘state of war’ is pervasive in it. Thomas Hobbes, *Leviathan [or the Matter, Forme, and Power of Common-Wealth Ecclesiastical and Civill]* (Cambridge: Cambridge University Press, [1651] 1996); Idem, *On the Citizen* (Cambridge: Cambridge University Press, [1642, 1651] 1998), especially chaps 10, 15.
- 2 Neta C. Crawford, ‘The passion of politics: Propositions on emotions and emotional relationships’, *International Security*, vol. 24 (2000): 116–156; Idem, ‘Institutionalizing passion in world politics: Fear and empathy’, *International Theory*, vol. 6 (2014): 535–557; Emma Hutichson, *Affective Communities in World Politics: Collective Emotions After Trauma* (Cambridge: Cambridge University Press, 2016).
- 3 V. I. Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline* (1917), in *Collected Works*, vol. 22 (Moscow: Progress Publishers, 1964); Rosa

- Luxemburg, *Die Akkumulation des Kapitals. Ein Beitrag zur ökonomischen Erklärung des Imperialismus* (Berlin: Institut für Marxismus-Leninismus, [1913] 1975).
- 4 Raymond Aron, *Paix et guerre entre les nations* (Paris: Calmann-Lévy, 1962), chap. 1.
 - 5 Claus von Clausewitz, *Vom Krieg* (Bonn: Dümmler, [1832] 1991), chap. 1. Curiously he was who, of all authors, pointed to the *dyad* as the unit of analysis in international relations when he defined war a ‘duel’ between political units – states more precisely – in their extension of politics by other means. In so doing, he pioneered an approach that Marx and Simmel would, at a more general level, also develop. See Chapter 1 in this book. In other respects, duelling and war-making are evidently very different activities.
 - 6 Morgenthau, *op. cit.*, chaps 9–12; Bull, *op. cit.*, chaps 6, 9.
 - 7 Antonio Gramsci, *Quaderni del carcere* (Turin: Einaudi, [1929–35] 2001); Joseph S. Nye, ‘Soft power’, *Foreign Policy*, no. 80 (1990): 153–171; Idem, ‘Public diplomacy and soft power’, *The Annals of the American Academy of Political and Social Science*, vol. 616 (2008): 94–109.
 - 8 Marieke Louis and Lucile Maertens, *Why International Organizations Hate Politics: Depoliticizing the World* (London: Routledge, 2021).
 - 9 Robert A. Jones, *The Soviet Concept of ‘Limited Sovereignty’ from Lenin to Gorbachev: The Brezhnev Doctrine* (Houndmills: Palgrave Macmillan, 1990); Jon Jacobson, *When the Soviet Union Entered World Politics* (Los Angeles and Berkeley: University of California Press, 1994).
 - 10 This is a central trope of liberal internationalism classically present in Charles de Secondat de Montesquieu, *De l’Esprit des lois* (Paris: Gallimard, [1758] 1995), Book 20, chap. 2.
 - 11 Bull, *op. cit.*; Edward Keene, *Beyond Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002); Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin: Duncker & Humblot, [1950] 1974); Bertrand Badie, *L’Etat importé. Essai sur la occidentalization d’ordre politique* (Paris: Fayard, 1992); Nicolas Onuff, ‘“Tainted by contingency”: Retelling the story of international law’ (1995), in *International Legal Theory: Essays and Engagements, 1966–2006* (New York and London: Routledge, 2008); José Maurício Domingues, ‘Globalização, reflexividade e justiça’ (2002), in *Ensaio de sociologia* (Belo Horizonte: Editora UFMG, 2003); Mary Kaldor, *Old and New Wars* (Cambridge: Polity, 2012, 3rd edition), chap. 6. Hegel observed that Europeans built a ‘family’ according to the ‘general principles’ of their legislation, mores and education, with consequences for the ‘law of nations’. Other regions fell outside the frame. Despite this, war and death were what would make citizens worth. Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts* (1820), in *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp, 1986), §§ 211–40, § 339, § 502. Bull’s commonalities are excessively thin; Schmitt still premised them upon dense politico-cultural identities: Rather than for cosmopolitanism, he craved for a ‘conservative’ German block.
 - 12 Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, [2001] 2006), especially chap. 5.
 - 13 Hiroyuki Suzuki, ‘Building resilient global supply chains: The geopolitics of the Indo-Pacific region’, Report, Center for Strategic and International Studies (February 2021) (<https://www.csis.org/analysis/building-resilient-supply-chains-geopolitics.indo.pacific.region>). Retrieved 02/03/2021.
 - 14 Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (Tübingen: J. C. B Mohr [Paul Siebeck], [1921–22] 1980), pp. 520–21.

- 15 H. Bull and Adam Watson (eds), *The Expansion of International Society* (Oxford: Clarendon, 1984); Sudpita Kaviraj, 'A state of contradictions: The post-colonial state in India' (2003), in *The Imaginary of India: Politics and Ideas* (New York: Columbia University Press, 2010). Juridical-political real abstractions and the state power apparatus have expanded, but so have ideas of autonomy and freedom. See Dipesh Chakrabarty, *Provincializing Europe: Post-Colonial Thought and Historical Difference* (Princeton, NJ: Princeton University Press, [2000] 2007); J. M. Domingues, 'Global modernization, "coloniality" and a critical sociology for Latin America', *Theory, Culture & Society*, vol. 26 (2009): 112–133; Idem, *Global Modernity, Development, and Contemporary Civilization: Towards a Renewal of Critical Theory* (New York and London: Routledge, 2012); Olúfemi Táíwò, *How Colonialism Preempted Modernity in Africa* (Bloomington and Indiana, IN: Indiana University Press, 2010).
- 16 Sovereignty was, in a classical definition, deemed the absolute autonomy of a 'public authority'. It emanates from a 'self-governing nation', totally independent of any foreign power, that lives according to 'its own laws'. States would be 'moral persons', absolutely free in their 'state of nature', but had to obey natural law, even if in so doing they were judges of their own behaviour. They were allowed to pursue just wars, monopolising external relations, especially warfare, as an ultimate means to settle disputes. Emer de Vattel, *Le droit des gens, ou Principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains* (London: Liberius Tutor, 1758), vol. 1, pp. 9, 18, 19, 6; vol. 2, pp. 1–2. See also Jean Bodin, *Les Six livres de la République* (Paris: Librairie Générale Française [1576, 1594] 1993), Book I, chap. 8; John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, [1832, 1861, 1885] 1995), Lecture VI, pp. 1117ff. See further Rob B. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Jean L. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge: Cambridge University Press, 2012).
- 17 Peter Crooks and Timothy H. Parsons, *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century* (Cambridge: Cambridge University Press, 2016), p. 4.
- 18 Gary Wilder, *The French Imperial Nation-State: Negritude and Colonial Humanism Between the World Wars* (Chicago: The University of Chicago Press, 2005); Krishan Kumar, *Visions of Empire: How Five Imperial Regimes Shaped the World* (Princeton: Princeton University Press, 2017).
- 19 Benjamin H. Bratton, *The Stack: On Software and Sovereignty* (Cambridge and London: MIT Press, 2015). That is exactly how he calls this space: The 'stack'.
- 20 Dependency theory, beyond direct and reductive economic explanations, proceeded to emphasise the role of political coalitions internal to dependent and peripheral countries and their connections to 'central' countries. See Fernando Henrique Cardoso and Enzo Faletto, *Dependencia y desarrollo en América Latina. Ensayo de interpretación sociológica* (Mexico: Siglo XXI, 1969). In world systems theory, states ('core', peripheral and semiperipheral) stand out more directly. Immanuel Wallerstein, *The Modern World System*, vols 1–3 (New York: Academic Press, 1974, 1980, 1989).
- 21 As we see clearly in Volodymyr Ishchenko, 'Towards the abyss. Interview', *New Left Review*, no. 133/134 (2022): 17–39.
- 22 Gramsci, *op. cit.*, vol. 2, pp. 964–965; vol. 3, pp. 1562–1563, 1618, 1628–1629; René Zavaleta Mercado, 'Problemas de determinación dependiente y la forma primordial' (1979), in *El Estado en América Latina* (Cochabamba and La Paz: Los Amigos del Libro, 1990), pp. 128–130; Robert Cox, 'Gramsci, hegemony,

- and international relations: An essay on method' (1983), in *Approaches to World Order* (Cambridge: Cambridge University Press, 1996).
- 23 Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY and London: Cornell University Press, 2004); Margaret P. Karns, Karen A. Mingst and Kendall W. Stiles (eds), *International Organizations: The Politics and Processes of Global Governance* (Boulder: Lynne Rienner, 2015); Mônica Herz, Andrea Ribeiro Hoffmann and Jana Tabak, *Organizações Internacionais: história e práticas* (Rio de Janeiro and São Paulo: Elsevier, [2004] 2015); Thomas G. Weiss and Sam Daws (eds), *The Oxford Handbook on the United Nations* (Oxford: Oxford University Press, 2018, 2nd edition). 'Governance' is a term recently used for conceptualising regimes. Due to its somewhat vague character and underplaying of the role of the state, I refrain from using it. For a sceptical view, see Claus Offe, 'Governance: An empty signifier?', *Constellations*, vol. 16 (2009): 550–562.
 - 24 Laurence Cockcroft, *Global Corruption: Money, Power and Ethics in the Global World* (London: I. B. Tauris, 2013).
 - 25 For the Soviet's initial views of international organisations, see, with opposing assessments, Kalevi J. Holsti, *Peace and War: Armed Conflict and International Order 1648–1989* (Cambridge: Cambridge University Press, 1991), pp. 254ff; more robustly, Geoffrey Roberts, *The Soviet Union in World Politics: Coexistence, Revolution and Cold War, 1945–1991* (London and New York: Routledge, 1999), chap. 2.
 - 26 Louis and Maertens, *op. cit.*; P. M. Haas, 'Introduction: Epistemic communities and international policy coordination', *International Organization*, vol. 46 (1992): 1–35; J. M. Domingues, 'Social liberalism and global domination', in Breno Bringel and Heriberto Cairo (eds), *Critical Geopolitics and Regional (Re) Configurations: Interregionalism and Transnationalism between Latin America and Europe* (London and New York: Routledge, 2019); Idem, 'Climate change and its lexicon: An analytical and critical view', *International Journal of Politics, Culture and Society*, vol. 36 ([2021] 2023): 163–178.
 - 27 These were the not – as yet, hopefully – fulfilled expectations of Immanuel Kant, *Zum ewigen Frieden. Ein philosophischer Entwurf* (1795), in *Werke*, vol. 11 (Frankfurt am Main: Suhrkamp, 1977).
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- 31 Ulrich Schmid, *Vom Technologien der Seele. Vom Verfertigen der Wahrheit in der russischen Gegenwartkultur* (Frankfurt am Main: Suhrkamp, 2015), chaps 4, 6.
- 32 Tim Nicholas Rühling, *China's Foreign Policy Contradictions: Lessons from China's R2P, Hong Kong, and WTO Policy* (Oxford: Oxford University Press, 2022).
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- 35 Bryan D. Leppard (ed.), *Reexamining Customary Law* (Cambridge: Cambridge University Press, 2017).
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- 37 David P. Fidler, *SARS, Governance and the Globalization of Disease* (Houndmills and New York: Palgrave Macmillan, 2004); Idem, 'Coronavirus: A twenty-year failure'. Think Global Health, Council on Foreign Relations (2020). Available at (<https://www.thinkglobalhealth.org/article/coronavirus-twenty-year-failure>); Idem, 'The World Health Organization and pandemic politics'. Think Global Health, Council on Foreign Relations (2020). Available at (<https://www.thinkglobalhealth.org/article/world-health-organization-and-pandemic-politics>); Andrew Lakoff, *Unprepared: Global Health in a Time of Emergency* (Berkeley and Los Angeles: University of California Press, 2017); J. M. Domingues, 'From global risk to global threat: State capabilities and modernity in times of coronavirus', *Current Sociology*, vol. 70 ([2020] 2022): 6–23. See also 'WHO opens pandemic intelligence hub to look out for future crisis', *The Guardian*, 01/09/2021 (<https://www.theguardian.com/world/2021/sep/01/who-opens-pandemic-intelligence-hub-to-look-out-for-future-crises>). Retrieved

- 01/09/2021; Alexander Kentikelenis and Thomas Stubbs, 'Austerity redux: The post-pandemic wave of budget cuts and the future of global health', *Global Policy*, vol. 13 (2022): 5–17; Jay Patel, 'International negotiations for a pandemic treaty: A thematic evaluation of 43 member states', *Global Policy*, vol. 14 (2023): 573–577.
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- 40 L. Maertens, 'Climatizing the UN Security Council', *International Organization*, vol. 58 (2021): 640–660.
- 41 See David Held, *Cosmopolitanism: Ideals and Realities* (Cambridge: Polity, 2010); Thomas Hale, D. Held and Kevin Young, *Gridlock: Why Global Cooperation Is Failing When We Need It Most* (Cambridge: Polity, 2013).
- 42 This is what Hobbes, in *Leviathan* (chap. 13), called the 'state of war': Peace would never come about.
- 43 Clausewitz, *op. cit.* All writings about war summarise his views at some point.
- 44 Aron, *op. cit.*, chap. 1; Eric Hobsbawm, *Age of Extremes: The Short Twentieth Century* (London: Abacus, 1995), chap. 1.
- 45 Holsti, *op. cit.*; John Weltman, *World Politics and the Evolution of War* (Baltimore and London: The John Hopkins University Press, 1995); Doyle, *op. cit.*; John A. Vazquez, *The War Puzzle Revisited* (Cambridge: Cambridge University Press, 2009), chap. 8 in particular; Morgenthau, *op. cit.*; Walz, *ops. cit.*; Bull, *op. cit.*, especially chap. 8; John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York and London: W. W. Norton & Co., 2001); Wendt, *ops. cit.* See also Hans Joas and Wolfgang Knöbl, *Kriegsverdrängung. Ein Problem in der Geschichte Sozialtheorie* (Frankfurt am Main: Suhramp, 2008).
- 46 Jones, *op. cit.*; Jacobson, *op. cit.*; Roberts, *op. cit.* Since Lenin, the Soviets established a doctrine that accepted the international system as it existed, emphasised 'peaceful coexistence' and avoided war. The defeat of the European revolution, socialism in one country, the perspective of being encircled by hostile powers and consequentialism prompted their strategic perspectives.
- 47 Jens Bartelson, *War in International Thought* (Cambridge: Cambridge University Press, 2018).
- 48 Kaldor, *op. cit.*; Jürgen Habermas, 'Krieg und Empörung', *Süddeutsche Zeitung*, 28/04/2022. Retrieved 28/04/2022.

- 49 Perry Anderson, 'Imperium', *New Left Review*, no. 83 (2013): 5–111. This is a clear concern of Chinese foreign policy. See Chen Zhimin and Chang Lulu, 'The power strategy of Chinese foreign policy. Bringing theoretical and comparative studies together', *NFG Working Paper*, no. 3 (2013): 1–26.
- 50 Cohen, *op. cit.*
- 51 Domingues, 'Social liberalism and global domination'; 'From global risk to global threat: State capabilities and modernity in times of coronavirus'.
- 52 See Renée C. van der Hulst, 'Terrorist networks: The threat of connectivity', in John Scott and Peter J. Carrington (eds), *The Sage Handbook of Network Analysis* (London: Sage, 2011); Walter Enders and Todd Sandler, *The Political Economy of Terrorism* (Cambridge: Cambridge University Press, [2006] 2012). See, at the opposite pole, Peter D. Scott, *The Road to 9/11: Wealth, Empire, and the Truth of America* (Berkeley and Los Angeles: University of California Press, 2007); Eric Wilson (ed.), *The Dual Parapolitics, Carl Schmitt and the National Security Complex* (Surrey and Burlington, VT: Ashgate, 2012). If terrorism strikes against sovereignty, sovereignty has become terroristic, based on the reason of state and often running afoul of international law. Donatella Di Cesare, *Terrore e modernità* (Turin: Einaudi, 2017).
- 53 John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000); S. Sassen, *Losing Control: Sovereignty in the Age of Globalization* (New York: Columbia University Press, 1996), chap. 3.
- 54 Aron, *op. cit.*, chap. 1.
- 55 For diplomacy, see R. P. Barston, *Modern Diplomacy* (New York and London: Routledge, 2019, 5th edition). Foreign policy engages several societal collectivities and their state crystallisations. Michael Mann, *The Sources of Social Power*, vol. 2. *The Rise of Classes and Nation-States, 1760–1914* (Cambridge: Cambridge University Press, 1993), pp. 71ff, 87–88.
- 56 Mann, *op. cit.*, chaps 11–12; Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity, 1985), chap. 9.
- 57 Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca and London: Cornell University Press, [2003] 2008); Gary Schaub Jr. and Ryan Kelty, *Private Military and Security Contracts: Controlling the Corporate Warrior* (Lanham: Rowman & Littlefield, 2016).
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- 59 Kaldor, *op. cit.*, passim. Save for what amounts to almost common criminality in these wars rather than ideological elements, a great many phenomena she describes as new had already been acrimoniously discussed, especially irregular warfare, with the blurring of the friend-foe distinction, in C. Schmitt, *Theorie des Partisanen. Zwischenbemerkungen zum Begriffe des Politischen* (Berlin: Duncker & Humblot, [1962] 2017).
- 60 Jack Donnelly, 'International human rights: A regime analysis', *International Organization*, vol. 40 (1986): 600–642; J. Habermas, *Die Einbeziehung des Anderes. Studien zur politischen Theorie* (Frankfurt am Main: Suhrkamp, 1996); Richard Falk, *Human Rights Horizon: The Pursuit of Justice in a Globalizing World* (New York and London: Routledge, 2002), especially Part 1; Regina Kreide, *Globale Politik und Menschenrechte. Macht und Ohnmacht eines politischen Instruments* (Frankfurt am Main and New York: Campus, 2008); Philip Alston and Frédéric Mégret (eds), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2020, 2nd edition); Cohen, *op. cit.*

- 61 S. James Ayala, 'The human rights of indigenous peoples: United Nations developments', *University of Hawai'i Law Review*, vol. 35 (2013): 983–1012; Denise Vitale and Renata Nagamine, 'Towards another cosmopolitanism: Transnational activism of indigenous women in Latin America', *Revista Direito FGV*, vol. 18 (2022): 1–27.
- 62 Immanuel Kant, *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* (1784), in *Werke*, vol. 11 (Frankfurt am Main: Suhrkamp, 1977); Edward Keene, *Beyond Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002), pp. 148–149; Joaquín Herrera Flores, *Los derechos humanos como productos culturales. Crítica del humanismo abstracto* (Madrid: Catarata, 2005); Held, *op. cit.* Universalism and particularism are, with different weights, balanced in these two last works. To charge older authors for their faulty views should be premised upon the fact that their core ideas are supportive of their possibly problematic perspectives (which must be critically pointed out, of course). This does not seem to be, for one, Kant's case, especially in his mature writings. See Katrin Flikshu and Lea Yoi (eds), *Kant on Colonialism* (Oxford: Oxford University Press, 2014).
- 63 This faux pas is taken by Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalized World* (New York: Columbia University Press, 2009).
- 64 Roger D. Waldinger and Thomas Soehl, 'The political sociology of international migration', in Steven J. Gold and Stephanie J. Nawyn (eds), *Routledge International Handbook of Migration Studies* (New York and London: Routledge, 2013); Robin Celikates, 'Migration. Normative und sozialtheoretische Perspektiven', in R. Kreide and Andreas Niederberger (eds), *Internationaler politische Theorie: Eine Einführung* (Stuttgart: J. B. Metzler, 2016); Irene Bloemraad and Alicia Sheares, 'Understanding membership in a world of global migration: (How) does citizenship matter?', *International Migration Review*, vol. 51 (2017): 823–867; D. Di Cesare, *Stranieri residenti. Una filosofia della migrazione* (Turin: Bollati Boringhieri, 2017).
- 65 Lenin introduced the rights of nations to self-determination in Marxism, but his proposal has not been generally followed: National chauvinism prevailed in authoritarian collectivism very often, although in national liberation autonomy was what foremost mattered for many revolutions, among which the Chinese, Vietnamese, Cuban, Angolan and others, with of course a close link to sovereignty, which the Jacobins had already fiercely underscored. See V. I. Lenin, 'Theses on the national question' (1913), in *Collected Works*, vol. 19 (Moscow: Progress, 1963); Idem, 'The right of nations to self-determination' (1914), in *Collected Works*, vol. 20 (Moscow: Progress, 1964); René Gallissot, 'L'imperialismo e la questione nazionale e coloniale', in Eric Hobsbawm (ed.), *Storia del marxismo. Il marxismo nell'età della Terza Internazionale* (Milan: Einaudi, 1981); Hauke Brunkhorst, *Critical Theory of Legal Revolutions* (New York and London: Bloomsbury, 2014), *passim*. US liberalism became, against the desire of Europeans, also adamant about, formally defined, anti-colonialism. Ikenberry, *op. cit.*, especially p. 120.
- 66 Bull, *op. cit.*, pp. 20, 276–278.
- 67 M. Kaldor, *Global Civil Society: An Answer to War* (Cambridge: Polity, 2003); Enara Echart Muñoz, *Movimientos sociales y relaciones internacionales. La irrupción de un nuevo actor* (Madrid: IUUCD and Catarata, 2008); Geoffrey Pleyers, *Alter-Globalization: Becoming Actors in the Global Age* (Cambridge: Polity, 2010); Carl Cassegård, Linda Soneryd, Håkan Torn and Åsa Wettergren (eds), *Climate Action in a Globalized World* (London and New York: Routledge, 2017).

PART IV

Political configurations and processes



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11

POLITICAL REGIMES

11.1 Political systems and political regimes

The concept of political system contains a high level of generality as an analytical category that exists only in its actual empirical exemplars. We therefore need to move towards a lower level of generality. The concept of political regime goes in this direction, although it also stops short of representing a proper empirical object.¹ Likewise political systems, of which they are the more empirical expressions, modern political regimes are systems of political domination, with vertical relations between rulers and the ruled. Moreover, as we have previously seen, political systems are entangled with other dimensions of social life. This perspective will return in the analysis of specific regimes that will be carried out in this chapter. Again, we will not carry out any detailed empirical analysis of this entanglement: we will remain at a level of generality that precludes such a move, despite the introduction of concrete examples in the course of the analysis. Other aspects of social life at large (i.e. social classes, in particular) will already be present in what follows and, later, so will the connections with the evolution of capitalism inasmuch as at the level of generality we are now working they are very important for the definition of regimes.

The study of political regimes has a long history, harking back to the ‘forms of rule’ or ‘government’ discussed in Chapter 6. What matters here is an analysis of modern regimes and a careful discrimination between them, avoiding the effacement of the discussion through a reification of liberal democracy and mere technical-mathematical exercises, but also their excessive multiplication based on immediate empirical inputs, as has also often been the case in this literature.

How to build a consistent classification of political regimes with this heightened political awareness in mind? Most approaches are in this regard inductive, arriving at empirical types, ideal-typical in fact, which arise from a generalisation or selection from a few or even a single case, which the researcher then exaggerates in order to build a 'pure' concept.² This construction is then later confronted with reality. In contrast, the classification of regimes I shall lay down in this chapter is analytical rather than ideal-typical. It is based on the decomposition of regimes into their constitutive elements rather than on a direct inductive illation taken from empirical observation. Thus, they consist of analytically-built types that provide regime models with a particular concern with the political dimension, to be deployed in examining singular empirical instances. Models operate at a level of generality lower than the other categories we formerly examined in this book, yet do not directly stem from empirical analysis.³

11.2 The constitution of political regimes

11.2.1 *Basic configuration*

As we have seen in Chapter 6, a political system comprises the *state* and the *societal* sides of political institutions, practices and processes, as well as the *mediators* connecting them. The modern political system – republican-liberal or quasi-republican, that is, monarchical-liberal – rests on a liberal juridical infrastructure, even if its penetration in society varies from case to case. The generalisation of civil rights and usually political rights, along with (rational-legal) modern bureaucracy, is crucial here. If liberal democracy – but also its oligarchic counterparts, especially in their contemporary varieties – seems to embody this imaginary with great clarity, institutional and practical configuration, even borderline cases, such as Nazism, with its striking irrationalism, rest on the basic liberal infrastructure, although under fascism or autocratic forms, it is pliable to political interference. Authoritarian collectivist political systems have, of course, discarded these liberal arrangements, although bureaucracy, in some rational-legal configuration, is reintroduced, and a more restricted and simplified framework of civil rights is put in place, whereas political rights are formally expanded and, in their less authoritarian version, socialist legality is presupposed. A highly politicised 'real socialist' framework is instituted, stable and predictable yet open to party interference and evaluated according to a consequentialist view, in other words, to which outcomes it brings about.

Figure 11.1 depicts the general configuration of modern political systems, including their colonial version, which are re-functionalised in the framework of authoritarian collectivism, with the societal political system greatly

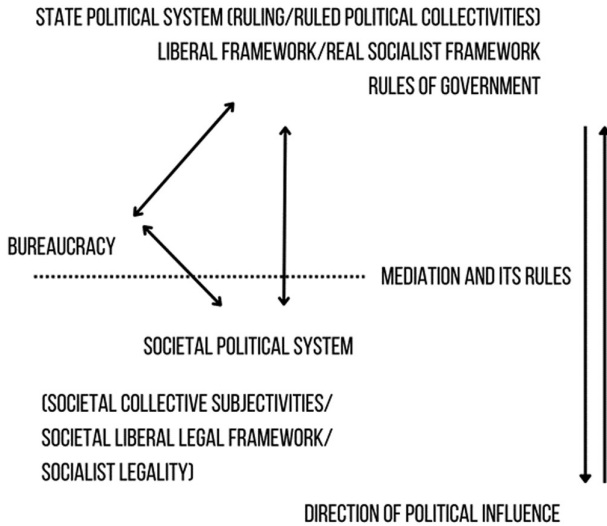


FIGURE 11.1 Political regimes' basic constitution

subdued or even smashed. Remember that what is shown in the figure has an analytical rather than an ideal-typical status.

11.2.2 Elements

With this basic configuration in mind, we can specify the elements of the analytical model and the relations between them.⁴ Political regimes comprise the following elements, exhibited analytically below:

- 1) *In the state political system:*
 - a) Definition of governmental rules – that is, procedural, formal and informal rules that set the possibilities, ways and limits for governmental exercise, including but going beyond the relationship between the executive and the legislative (fused in authoritarian collectivism) as well as, albeit in principle an independent branch, the judiciary; this also comprises the choice of specific 'forms of rule' or 'government' – parliamentary, presidential, monarchical, 'soviet', 'mixed regimes';
 - b) Levels and forms of citizen participation and mobilisation (voting, demonstrations, top-down controlled mobilisation, letters to official newspapers, public debate and involvement in the administration, among other elements) within the state political system, individually and collectively. This participation and mobilisation may be high or minimal, or even non-existent;
 - c) Levels of political decision-making and administrative centralisation, including federalism and unitary centralisation, as well as monarchical

or republican. The role, in particular, of the national executive as the main decision-making body, administrator, manager and source of funding or controller and ultimate guarantor of collective property is relevant here;

- d) Rules and practices, both formal and informal, of the political system in tandem with the state bureaucratic apparatus, including surveillance and repressive forces, partly in terms of internal communication and processes if the focus is on the state;
- e) Methods and procedures to produce outputs and implement policy in social life at large. These include the level of despotism-repression in any of such systems – with the police and similar entities standing out.

2) *In the process of mediation:*

- a) Rules, both formal and informal, and processes of mediation connecting the state and the societal political systems. They encompass party (single, bi or multiple) and electoral systems and rules (majoritarian or proportional) as well as goals (partly representation or top-down mobilisation), campaign financing (public, private, firms), direct representation, social control and licit or illicit capture (corporatism, bureaucratic influences, lobbies, clientelism, consultative councils, corruption and neopatrimonialism); the way candidates are chosen (with greater or lesser influence from below, and according to which criteria); how elections are conducted (fairly or perhaps including systematic or occasional fraud). They also comprise the selection procedures to fill state political posts (versus element 2b below). Who may be elected refers not exactly to persons but rather to the conditions and programmes with which candidates may run for elective positions and be selected, sometimes in highly restricted circumstances. Finally, this may involve how agents in the societal political system reach out directly to lower or higher-level agents in the state bureaucratic apparatus. When society and state are fused, there is of course a weakening of the very separation between state and societal political systems;
- b) Formal and informal rules determining how incumbents of the state political system are selected in circumstances in which they are basically independent of formal mediation between state and societal political systems (contrary to what happens when item 1b above is applicable, in which processes take place principally or exclusively within the state side of the divide, even though attention may be paid to feelings on the ground). This is where we find the practical rules and informal processes whereby societal agents and influences (whether of classes, genders, ‘races’, castes, ethnic groups, regions, ‘religions’) cut across the state and the societal side of the political system.

3) *In the societal political system:*

- a) Various societal processes of political organisation, both those that are inwardly oriented and those that produce outputs that seep into the state political system through mediation processes, in circumstances in which the regime is open to them (most are at least to a minimal extent permeable to such influence, possibly selectively, the alternative course possibly leading to political suicide). The forms and direction of organisation and mobilisation within societal political life are one aspect thereof, as well as the projection of these processes in the political realm; this may present the opposite operation insofar as the societal political system is so subordinated to the state political system that very little of a bottom-up process can be recognised, although it may connect to the state political system but, then, disconnect from those it purportedly represents;
- b) Type and composition of the general legal liberal and ‘socialist’ frameworks, whether state-established or arising from social processes, as well as their reach and depth. Even when it partly emerges from the societal side, as occurred in several liberal cases, once crystallised the legal framework eventually operates mainly from the top down, i.e., is imposed by the state onto the societal domain, while in authoritarian collectivism it was actually established from above;
- c) Those societal processes include – as a more general element, of great consequence, empirically and analytically – the several underlying social trends, institutions and imaginary elements that generate dynamics in other dimensions of social life.

Formal rules are thus explicitly recognised, often written down in official documents. Informal rules may simply be habits that do not contradict those formal rules, complementing them and providing ways through which the system runs more smoothly. Contrariwise, they may be illegal and oppose the rule of law. Clientelism may be a borderline case, while neopatrimonialism or regular electoral fraud are radical instances of informal rules, constituting shadow institutions on which the political system depends and which may even imperil its continuity at a certain point.

11.3 Models

With the analytical elements introduced above, we can proceed to build models of political regimes. Concerning liberal regimes, we can propose six variants. Concerning authoritarian collectivism, only two variants are enough. A radically democratic model, which emerged with the 1871 Paris Commune and the 1917 Soviet Revolution, must be summoned too. I shall discuss it in the next chapter, but I will already make the caveat here that

it should not be reified. Moreover, it was short-lived and is today related only to the immanent political potential of modernity. Table 11.1 displays those six models, specifying how those analytical elements appear in each of them.

The *radical autocratic* regime is typical of fascism, in its several historical variants, and the foremost expression of the autocratic regime. We have two other models of the autocratic regime: *personal autocratic* and *bureaucratic autocratic* – being that an *advanced* variant looms large in the horizon today.⁵ The *imperial-colonial autocratic regime* was extraordinarily harsh and in particular not based on a legal liberal infrastructure for most of the population, except the Europeans. This regime had a direct link of subordination with the metropolitan imperial regime, exerting variable impact upon it (usually buttressing internal state domination and political rule, conversely often entailing crisis when colonial decline set in abroad). So-called ‘indirect rule’ by indigenous people (with some level of decentralisation), rather than ‘direct rule’ by colonial administration (more bureaucratic, rational, without being fully legal), was the more common pattern. Eventually, some degree of freedom for ‘public opinion’ was allowed in some areas, with even the election of limited representative bodies introduced. Such a regime no longer exists. Its more or less ‘inclusionary’ or ‘exclusionary’ character partly determined the postcolonial fate of the regimes resulting from independence. The imperial-colonial features of this regime did not at all deny its modern character: it utterly depended on the existence of metropolitan regimes and showed modernity at its ugliest.⁶ Note that the autocratic regimes may rest on the rule of the one, though a small, nearly oligarchic group is attached to the single ruler. Alternatively, it may evince a more collective character, as the Latin American military regimes used to.

The *liberal oligarchic* and *liberal democratic* regimes are the most relevant types of modern political regimes, consistent and long-lived, and the most studied.⁷ We must further split the former into the *traditional liberal oligarchic* and the *advanced liberal oligarchic* regimes, the latter still an emergent reality.⁸ With the establishment of authoritarian collectivism, two new sorts of regimes emerged beyond the short-lived proper Soviet experience: *oligarchic communism* and *autocratic communism* (communist, we may call them, not because this was actually so, instead because the general form of rule was thus self-defined). Once authoritarian collectivism gave way to capitalism in the economic dimension, these regimes were readapted with remarkably little alteration to rule over their societies, further evincing a vertical (and ‘class-divided’) character.⁹

In the autocratic imperial-colonial regime, the decisions about the key incumbent positions were taken in the metropolis, with some negotiation with local authorities, while men from the colonising country occupied all chief positions. Open debate was either forbidden or subdued, political rights

TABLE 11.1 Models of regime

| Regimes | Imperial/ Colonial | Autocratic | Liberal | Collectivist Authoritarian | | |
|---|---|--|--|--|--|---|
| Criteria | Radical | Bureaucratic | Oligarchic | Democratic | Oligarchic | Autocratic |
| Selection of incumbents, participation, public debate | Radical formal separation between rulers and the ruled | Restricted to the ruling circle, unstable rules | Restricted, but representative, more or less open to agents below, stable rules; advanced types mostly plebiscitary | Broad consultation, representation, open debate, stable rules | Restricted but open to the highest ruling echelons, stable rules | Restricted almost to personalist control, unstable rules |
| Weight of police/infrastructural domination and weight of rights | Fierce repression, absence of rights for most of the population | Variable but usually high level of repression and relative suppression of civil rights and high of political rights; moderate infrastructural domination | Moderate – though not always limited – use of police and force, widening of civil rights, restriction of political rights in the traditional variant, broad exercise in the advanced one, but strict media and programmatic control, as well as often through campaign financing, distance of state from society in the traditional variant, strong infrastructural domination in the advanced one | Moderate use of police and force, widening of civil rights, broad exercise of political rights, strong infrastructural penetration, but considerable level of influence of the societal side of the political system upon it | High level of repression, permeation of social life by party and state, formal persistence of civil and political rights | Fierce repression, permeation of social life by party and state, formal persistence of civil and political rights |

(Continued)

TABLE 11.1 (Continued)

| <i>Regimes</i> | <i>Imperial/Colonial</i> | <i>Autocratic</i> | <i>Personal</i> | <i>Oligarchic</i> | <i>Liberal</i> | <i>Democratic</i> | <i>Oligarchic</i> | <i>Collectivist/Authoritarian</i> |
|---------------------------|---|---|---|---|---|---|--|--|
| Criteria | | | | | | | | |
| Governmental rules | Variable levels of centralisation | Centralisation | Centralisation | Variable levels of centralisation | Variable levels of centralisation | Variable levels of centralisation | Centralisation | Centralisation |
| Social basis | Absent or extremely thin, totally demobilising/Metropolitan forces are dominant | Restricted, despite often mobilising (historically)/Landed or industrial classes usually support the regime if it is to succeed | Restricted, demobilising/ Usually the state is used in a neopatri-monial way to create classes from above | Restricted, though apparently large political opening in the advanced variant, restricted or with no mobilisation/ Big landlords, but also sometimes bourgeois strata (merchants and industrialists) play a significant role, with more advanced social classes and big capital gaining influence | Plural, although variably skewed in favour of dominant collectivities and tending towards demobilisation, though open to social mobilisation and conflict/ Consolidated bourgeois classes of different sorts are economically dominant and politically influential, though other classes have their say in politics too | Plural, although variably skewed in favour of dominant collectivities and tending towards demobilisation, though open to social mobilisation and conflict/ Consolidated bourgeois classes of different sorts are economically dominant and politically influential, though other classes have their say in politics too | Broad, controlled mobilisation/ Class divided society, control of property by the core party-state | Broad, controlled mobilisation/ Class divided society, control of property by the core party-state |

were non-existent or minimal; the police and repression were, conversely, overwhelming. No hint of democracy proper was to be expected, with at most a very restricted level of representation introduced in a few situations. In the radical and the bureaucratic authoritarian models, the selection of incumbents is restricted to the ruling circle and rests on unstable rules. Open debate is inexistent in the radical model and, at best, restricted in the bureaucratic. In the personal autocratic model, personalisation and personification are extreme, power concentrated, and everything is further inhibited since the rule of the one is overwhelming. It is often unstable. Debate is not necessarily foreclosed, though it mostly is, and nothing prevents and protects against outbursts of and repression by the autocrat when some discussion is allowed. Keeping the external trappings, and sometimes also substantive elements of liberal democracy, advanced autocracy has delivered initial, partial exemplars in Russia above all, Hungary and Poland, as well as, more mildly, Turkey.

In the traditional liberal oligarchic model, rules are potentially stable and selection restricted but representative to some extent and for some people; struggles between different oligarchies and fractions may lead to recurrent crises if one of them monopolises power. Traditional oligarchy may be highly competitive politically and electorally, even though electors do not participate in the definition of those they must vote for; moreover, their vote may be tightly controlled. Debate can be relatively open, especially regarding the urban middle classes, yet those who express divergent and critical opinions always incur the risk of retaliation since no effective protection is offered, beyond legal formality, with factional struggles being quite likely. In a truly liberal democratic regime, if it has ever existed, consultation and representation are broad, debate and participation meaningful, and the whole political process counts on stable rules. After a protracted evolution, the heads of government in this regime are now fundamentally elected politicians (while heads of state are sometimes selected by other means), but kings and queens, emperors and empresses still play some role as heads of state, which are, that notwithstanding, overall the preserve of professional politicians, with different rules and combinations..¹⁰

We will discuss this further in the final chapter. At this stage, it is necessary to point out that, alongside its democratic elements, liberal 'representative' democracy rests on an oligarchic core. Voting rights, with eventually universal franchise, open public debate, protected participation of the many in political life, as well as the rule of law as part of this protection, thus combine with the monopolisation of political positions and decision-making concerning what really matters by the few, despite the turnover of individuals and even the ascension of different collectivities. Advanced liberal oligarchy appears to be an open regime: opinion is reasonably free and the law upheld, all citizens may vote and be elected, as typical of the liberal

democratic regime. The process is nevertheless, by stealth, emptied of democratic content. The oligarchic features of liberal democracy are greatly exacerbated and factional power struggles may be aggravated.

Within the development of political modernity, it took a long time until restricted processes incorporated all citizens and became more open, protected and representative. A process of democratisation of liberal political regimes slowly unfolded, amid fierce struggles. This has also consolidated the republican or quasi-republican framework, thereby undermining stronger monarchies and the like, with their autocratic heritage. This more democratic regime has been unevenly established across the world, where liberalism is dominant, and democratisation processes have developed as part and parcel of the developmental trends we have examined in the first part of this book. I have synthesised them in Chapter 6 as characterising the expansive moment of liberalism. We witness a reverse movement in the emergence of the advanced liberal oligarchic model and of new forms of modern autocracy, which may not dispense with some of the elements of liberal democracy, regardless of how restricted and even meaningless they may be. This is likely to involve the control and pliability of the judiciary.¹¹

Political rights are broader and more meaningful according to the level of democratisation of modern political regimes. Stricter regulation of the role of money and business in politics also usually happens. In oligarchic and autocratic models, the opposite is true. The higher the level of democratisation, the more robust the mediation between the state and the societal sides of the political system. Decentralisation often prevails in more democratic regimes (the Jacobin perspective tending to push against that, with sometimes centralisation democratically helping to overcome local veto powers), while more authoritarian regimes tend towards centralisation in what concerns more significant issues. Whereas in all modern regimes the liberal infrastructure, whether more or less solid and exclusive, is relevant, the role and weight of the police and repression varies. More democratic regimes cultivate, to a large extent – never absolute when reasons of state ‘demand’ – the rule of law, while autocracies more or less intensely and violently limit the reach of civil rights. The more authoritarian the regime configuration, the more critical or accentuated the role of the police, surveillance and repression, which are present, after all, in all political regimes, a crucial point missed by the proponents of the concept of ‘totalitarianism’. The more authoritarian the regime, the narrower its bases, even if at times it initially enjoys a certain level of popular support. That is, the more democratic the regime, the more the societal side of the political system is relevant for its political dynamic and the more open the political space is likely to be. Some form of controlled, top-down mobilisation of the ‘masses’, such as in fascism, may be instrumental for the functioning of the regime.

Capitalism is a crucial force in all these regimes, while socially and economically dominant classes are essential for their support. In the beginning, their direct influence, including creating the imaginary and institutions, was paramount (for instance in the United States). As modernity develops, they remain highly influential, even though in general they do not politically rule directly, instead making use of other mechanisms to influence decision-making. The middle and even the working classes (as well as peasants) have more influence in the liberal democratic model. Professionals (lawyers especially) tend to offer the bulk of professional politicians in the liberal democratic and the advanced oligarchic variants, with sometimes businesspeople playing direct political roles once again.

In the authoritarian collectivist oligarchic and autocratic regimes, we find formal political rights, participation and representative processes, notwithstanding original claims about direct democracy. As a matter of fact, everything really relevant was decided from the top down, basically very directly by the ruling party. Factional struggles were very intense and violent at several moments, or threatened to become thus. Controlled mobilisation was typical of this sort of regime. The (explicitly political) police, surveillance and repression were paramount, as well as the need to limit the scope of debate within the bounds defined by the party-state. Insofar as it was not entirely brought into the state, the societal side of the political system was almost irrelevant (save for would-be dissidents). Through the political bureaucracy, it could exert, in some cases, some limited influence, with mediation proper usually playing a drastically reduced role. 'Consultation' with non-party or non-state agents might introduce a more relaxed, albeit conditionally, political situation. The political space opened up sometimes, typically not for long, while socialist legality eventually became well-established in most cases, without detriment to the party's political prerogatives. In the autocratic model, personalisation was extreme, even though this could combine with a more obscure oligarchic rule; the prominent role played by the party's first secretary regarding personalisation was always a cultivated aspect of this regime.

Whereas the social basis of these regimes may be broad for some time, especially in the aftermath of revolutions or wars, with time it tends to shrink severely. With the return to capitalism, these regimes gained a new lease of life. Originally a class-divided society, this direct political character and state-based structuration has been combined with the development of capitalist classes outside this fold but mediated by the party-state. Support may stem from social ascension through the state and party machinery of previously deprived social strata.

While these are the main political regimes the world has ever known (since political regimes as such could exist only in modernity, if we are to accept the general premises of this book), we may add some other elements

of empirical variation. These are, for example, the role political parties play in different regimes – leading to multi-party or bipartisan systems, to dominant or single party systems; how the electoral system is organised, elections carried out and incumbents selected (through majority or proportional vote, for instance); how the influx of money is regulated.¹² Other traits have to do with the role of ‘religion’ (concrete political regimes in which ‘religion’ and ‘religious’ organisations do not play some role are in fact rare), sometimes implying a modern theocratic republic; the same applies to ethnic or racial relations in what could be called an ‘ethnocracy’.¹³

Before we move further, a crucial issue must be addressed. Why, and how, do processes that lead to more or less concentrated political regimes, and similar processes within them, occur? That is, why are there more autocratic, oligarchic or democratic systems? In other words, which mechanisms underpin the creation and evolution of political regimes?

We find two vectors underlying the autocratic and the oligarchy component of modern political systems and regimes. The first is imaginary. Modern politics was predominantly the initial work of socially and economically powerful people – land, commercial and industrial proprietors – though not only; particularly lawyers were, and remain, along with other ‘middle-class’ professionals, important for that, as for instance the Jacobins made clear. A hierarchical perspective, often conjoined to some sort of ‘natural aristocracy’ idealisation, later referred to as ‘elites’, was mobilised for its justification and legitimation. Political operators have looked down on the disadvantaged and even those who did not belong to the top social strata, politically, economically and socially. On the other hand, they have consistently held fast to the preservation of their own privileges. Therefore, political systems have been premised upon that objective, as they are intrinsically hierarchical, even if liberal democracy ensures variable levels of representation. This aristocratic feeling of superiority remains essential for the identity of what are, in fact, political oligarchies, even if they may be partly concerned with the well-being of citizens.

The problem is that even if that benevolent concern is true, as well as when democratic commitments are at the core of the representative's thinking and action, modern political systems, as well as the post-modern we have known, have an inner dynamic geared to the dispute for, acquisition and withholding of power. Competition, with emulation, and conflict, with direct struggle, are the mechanisms in this respect, with cooperation (networked voluntary collaboration), in contrast, also playing a role. The higher up we go, the fiercer competition and struggle become. Evidently, only people who thrive with, and are capable of, fighting for and achieving power usually make it there. These are, moreover, exactly the people who usually thrive with, and are capable of, keeping power once they achieve their initial objective. The fact that competition and conflict are so central

and fierce does not mean that there are no rules to be followed (though many try and bend them), but whether they retain power also depends on the rules that allow or prevent that from happening. Autocracy may be eventually consolidated and oligarchy tends to become more closed. All things considered, it is not 'organisation' per se that produces oligarchy: in principle other forms of organisation can produce more democratic, horizontal, networked political systems and regimes.¹⁴

Operating against this hierarchic and competition-based logic, we find pressures for democratisation stemming from both imaginary and practical demands, implying horizontal, network-oriented political relations. The more potent the imaginary and the practical efforts aimed at the concentration of power, the more oligarchised and even autocratic the regime; the more potent the imaginary and the practical efforts aimed at the de-concentration of power, the more democratic the regime. If veto points at lower levels of the distribution of power are sometimes more easily overridden by the concentration of power in some particular institutional instances, democracy and a lower level of concentration of power usually go hand in hand.

11.4 Oligarchy, autocracy and the party-state

There are in the world today many democratic pressures, and the desire for democracy seems to be dominant across countries, connected as it is to the development of individual and collective political autonomy. However, the main contemporary institutional developments seem to go in the opposite direction. Three paths have been trodden: liberal oligarchy, party-state and autocratic rule. That is to say, mostly the rule of the few but also potentially the rule of the one.

In this regard, the distinction between the liberal variants is, to start with, of overwhelming importance. The democratisation of liberalism and its expansive moment was paradoxical, as we will further discuss in the next chapter, in that the organisation of citizens partly achieved it through large, vertical organisations. Its de-democratisation is bringing about that new type of oligarchised political regime. We have to be clear here: while the return of oligarchy as a relevant concept in the social sciences and especially political theory is to be welcome, a curious operation has been underway. What some have called a 'materialist' approach, supposedly inspired by Aristotle's view that the rule of the few is the rule of the rich, a 'plutocracy', has consisted in a relevant recent political-intellectual development.¹⁵ Nevertheless, this hardly corresponds to how political modernity has differentiated from the economic dimension. This separation of the political dimension was at most very limited in the case of ancient Greece, where the polis encompassed moreover the whole of social life, as also Aristotle's book makes unequivocal

(the polis was actually an ‘ethical totality’, as Hegel clearly understood). In modernity, the ‘economy’ certainly plays an outstanding and to some extent overwhelming role, yet it operates outside the domain of the state and particularly of the political system (which we must not conflate either). They are in many ways entangled, but their very separation allows for a complex web of articulations, to which I shall return below.

When I speak about political oligarchies, I refer to the groups that hold political power. Whatever the precise links between wealth and power, we must spell them out rather than rhetorically take them for granted. Concerning the political system characteristic of the party-state, this is quite obvious, insofar as authoritarian collectivism surged directly from the political dimension and state economic property has been explicitly subordinated to political power, restricting political participation, irrespective of ideologically suggesting it promotes it.¹⁶ In capitalist societies, the influence of social classes is huge and, in some instances, just too easy to grasp. At the same time, the political system is institutionally, practically and imaginarily separated. In Chapter 6, we have already discussed which are the possible connections between them. I shall further elaborate on other aspects below.

The political system of present-day party-state forms of rule seems relatively static at the moment – even when opposition to them can be observed. They remain as inflexible regarding their fundamentals as in the era of authoritarian collectivism proper. Today as before, they are adamant about their democratic character. Liberal political systems are the ones which are in movement, from liberal democracy to advanced liberal oligarchy, though this is by no means a process brought to completion. The oligarchic political character of liberal democracy is thereby greatly strengthened. Concentration of power in the executive, separation of parties from social life – and development of strong links with the state –, uniformisation of political programmes for candidates to political positions, media oligopolisation (despite the spread of social media), the irrelevance of mobilisation and public opinion: these are the main features of this new developing regime. But while the oligarchical core of political systems may depend above all on money, which in turn augments the influence of the dominant social classes, as is typical of the US, it may be more bureaucratically structured, such as is the case of the European Union, without even the need for elections (implying its so-called ‘democratic deficit’), with neopatrimonial, apparently more traditional oligarchies, often calling the shots elsewhere, as in Latin America and Africa.¹⁷

A further development must also be noted: the already more authoritarian and already oligarchic political systems of some countries have sometimes moved towards more autocratic regimes, which are wont to present at least a democratic façade, as in the cases of Russia and also of, less authoritarian, Hungary, Poland and Turkey.¹⁸ Other countries, such as Israel, already

a highly militarised and security-saturated ethnocracy, as well as based on a liberal-democratic infrastructure, and India, with radical Hindutva majoritarianism, are under further authoritarian pressure (with, in India, a tension remaining inside the ruling group between personalisation and oligarchy).¹⁹ It would indeed mean a sort of advanced autocratic regime. Although important in many countries and moments, especially as a threat, this move towards autocracy does not seem to be the principal emerging pattern globally at present – oligarchisation, modernised in different degrees, and the party-state regime, whether or not more autocratic, are the main lines of antidemocratic development today, even when the extreme-right conquers executive power. Middle-East and North African monarchies and a couple of others are, it goes without saying, variably autocratic, while party-state systems are all more or less oligarchic or autocratic, bereft, regardless, of democracy. Traditionally regressive too, we have once again witnessed military coups and regimes in some countries (Myanmar, Mali, Burkina Faso, Niger), though whether they conform to the bureaucratic model is open to doubt.

11.5 Legitimation, legitimacy and crisis

When we think of processes of legitimation and legitimacy as to political regimes, we must see them fundamentally as a specification of those components of legitimation and legitimacy laid out in Chapters 4 and 6, and of which they provide a more empirical expression. We are dealing here with two elements: formal legitimation, which is related to the respect of rules, and performance, practical or symbolic; they can be more specific or diffuse. Their weight varies in different regimes.

In liberalism, rules are the major components of legitimation that we can find in both (traditional and advanced) oligarchic and democratic regimes (with the proviso that it is less respected in the former since the power of the few is therein more salient). Such rules include respect for the liberal infrastructure (the rule of law) and especially for the rules of the political game (how to get to power and keep it). This involves the acceptance of electoral results, attention, apparent or genuine, to citizens' desires and interests as well as fundamental rights (restricted for sure in traditional oligarchy, with also a diminution of whose concerns should be politically addressed). They further include probity and the adequate observance of the procedures of the political system. Nevertheless, liberal democracy, and to some extent, advanced oligarchy, have incorporated the principle of performance – economic and social, 'cultural' and 'religious', with at this point the environment and the climate also serving as focal points (as health acutely was during the coronavirus/COVID-19 pandemic). That is where so-called legitimation crises find their disruptive foothold. This was the case with the Welfare State and Keynesianism but may connect to other principles of legitimation. War

has often been present, even if in a somewhat disguised form. Being part of the liberal concert of nations or enjoying power therein has been relevant for legitimation. Possessing colonies, buttressing national pride in the metropolis, was once an essential component of legitimacy.

Fascism was partly based on performance, particularly regarding war, something that was taken to an extreme level with National Socialism. Nationalism has always played a crucial role in diverse forms of fascism and various right-wing regimes or governments (sometimes only because these forces have had difficulty to undermine consolidated liberal regimes). It has always been particularistic. In its distinct versions, bureaucratic autocracy resorted to a putative defence of rules – and freedom – which communism was eager to destroy. Nationalism and religion were always present in their legitimation strategies. Personal autocratic regimes often bank on ethnic-nationalist issues, whether the performance, resumption or production of a trajectory of independency, nation-building or renewal, and, when affordable, performance in terms of economic development. Advanced forms have also shown a tendency towards the personalisation of politics and the personification of the regime in one popular ‘leader’.

In authoritarian collectivism, the presumed construction of socialism was, out of necessity, an essential element of legitimacy. Other principal elements were rights (even if not pristine), well-being, economic development and the mastery of science and nature. Rules became ever more important in some of its exemplars as they matured and autocracy was left behind, but they were always open to consequentialist interpretations if the party so decided. This was true as for both socialist legality and the political system as such. In its more autocratic versions, pseudo-charisma played a crucial part. Today the legitimacy of the party-state enormously depends on economic performance. Complementarily, they have resorted to ancient identities and nationalism to buttress their system of rule, whose Marxism increasingly looks like a practical oxymoron in the face of capitalism’s embrace, whether eager or lukewarm. The power of the party vis-à-vis the legal system makes respect for rules a problem in terms of legitimation and legitimacy.

Today, the idea that a ruling regime is democratic – even though it may not be democratic at all – is fundamental for legitimacy. Even those who adopt the party-state system have to pay at least lip-service to it. If, on the one hand, de-democratisation is always a possibility, at this point perhaps already in good measure a reality, no regime – other than those as peculiar as the Taliban or even a Middle-East sultanate – on the other hand, can afford to jettison the discourse of democracy, whatever its supposed ‘native’ characteristics are.

We must now touch again on an issue already broached in Chapter 6: political crisis. Recall that it was defined as the impossible reproduction of usual patterns or the threat that this is stalled, or carries on generating

further disruptive side effects. Crises indeed come about through conflicts in the political system. Furthermore, it is necessary to stress also that, combined with such conflicts, the resulting delegitimation and lack of legitimacy sap respect for rules, highlight failed concrete performance and unmask imaginary success. Such crises may close political cycles inside established regimes, which do not essentially change if this happens, sometimes in fact fundamentally nothing, or may lead to more profound convulsions and disruption. The latter may produce deeper and radical transformations, leading perhaps to a change of political regime (with coups d'état, civil wars and revolutions) once the imaginary and institutions, with their practice-related aspects are more deeply touched, which to some extent they always are when crisis sets in.

11.6 Political regimes and capitalism

Finally, it is worth asking whether there is any connection between the phases of modernity I have introduced in Chapter 9, political regimes and the development of capitalism, beyond the general association with social classes, as indicated above. Before doing so, I must approach an issue of great relevance. There are certainly other social phenomena and trends in other dimensions that impact political systems and political modernity more generally. The family, even regarding political dynasties and generations, the arts and organised 'religion' are some of them. All things considered, we must recognise that the weight of capitalism has been overwhelming, trumping even authoritarian collectivism (though for instance in North Korea, formerly a very Confucian country, it is the almost dynastic characteristic of the autocratic regime that counts). Concerning our main question, it is necessary to say that there is by no means a one-to-one correspondence. Nor can we speak of democracy primarily concerning social rights, notwithstanding the likelihood of these suffering restrictions when de-democratisation unfolds. The more democratic the regime, the more likely taxation is progressive (reaching the rich instead of the poor), and the less democratic, in all likelihood the more regressive the fiscal regime is too (reaching predominantly the poor), even though there are surely divergent situations in this regard.

Very consistent, on the other hand, is the monopolisation of the economy – in fact, oligopolisation –, something Marx correctly observed and theorised in *Capital* as the master-trend of capitalist development, hence of modernity for him, which did not at all correspond, contrary to what he believed, to a simplification of the class structure.²⁰ Of course, oligopolies have concentrated economic power and can strongly influence, directly or indirectly, incumbents in the political system. Finally, note that while political collectivities rule, paramount power in capitalism today is in the hands of huge oligopolistic capitalism firms, notably yet by no means only

financial, implying therefore different sorts of identities according to those placed at the top of each of these hierarchically organised systems (moreover, while individual millionaires matter, capitalism is today much more a bureaucratic-collective phenomenon).

First of all, it is evident that the performance regarding the economic dimension is crucial for the legitimisation of the state, the political system and specific regimes. Individual and collective well-being, in addition to national power, depends on it. Citizens' satisfaction with rulers is premised upon the smooth and positive functioning of the 'economy', capitalist or otherwise. However, other correspondences and articulations also occur.²¹ The traditional liberal oligarchy, to which the imperial-colonial regime was subordinated, to start with, was adamant about free-trade, in Britain above all, where capitalism first took off, though later in the colonies these colonial masters introduced protectionism to fight off competition. Elsewhere the presence of the state was strong, in Germany clearly, to some extent in France and especially in Japan since the Meiji revolution. Social rights were out of the question, while social policies were limited or merely concerned with pauperism. Overall, the telos of development and the junction of politics and the economy were still predominantly based on laissez-faire doctrines. With the second phase of modernity, the state intensified its presence and stakes in the whole tissue of social life, regarding property, investment, social policy and regulation, in different ways and with varied weight yet consistently in all countries, at the centre and at the periphery. It was a moment of passage from traditional oligarchy to liberal democracy, in which citizenship in social terms, or, in the lack of it, stouter social policies, corporatist or even residual liberal, came to the fore. With Keynesianism and developmentalism, state intervention in the economy reached new heights at this point, allowing, accompanied by social policies, for far greater integration of popular citizens into the system. Fascism was keen on state intervention; with the working classes repressed, it showed less interest in strong social policies, despite sometimes corporatism's in practice vague preoccupations.

With the third phase of modernity and capitalism, a more complex situation of networked relations, along with a more robust market and an always present state (conspicuously, the financing of scientific-technical innovations), arose, with significant weight for finance capital, even though non-financial services grew too. Social policies were consistently and globally oriented to social liberalism, the administration of the poor and residual liberal social policy overall. Neoliberalism was the by far dominant doctrine during this period. The different rhythms of the capitalist economy – increasingly accelerated – and the political system have made decision-making often more difficult for the latter²² (but we should not let politicians off the hook easily because of that since citizens could expect they ought to search for creative solutions). Yet these changes have been harder to enact in countries

with strong social democratic traditions. At present, while we witness a significant drift in the understanding of what should be the relation between the state and the economy, as seen in Chapter 9, it does not seem likely that the expansive moment of liberalism, which pressed it towards liberal democracy and strong social policies, may resume. That expansion happened in the second phase of modernity due to the weight of popular mobilisation through mass parties and other such organisations. They are absent today, and it is unclear how a renewed expansion of democracy and social citizenship may gain momentum, even if intermediate policies between minimum monetary handouts for the poor and universal income may be implemented. On the other hand, tackling climate change is a task the heaviest burden of which, regulatory, as well as in terms of investment, falls on the state, with a new mode of accumulation probably emerging in the next few years. The threatening rise of the extreme-right might also wake liberal politicians, as seemingly in the United States, and goad them on to implement stronger social policies to broaden its social basis, although this choice is not certain.

Meanwhile, in authoritarian collectivism, the situation was consistent during the whole twentieth century: state property and investment, heavy industry and developmentalism under the name of socialism, social rights from the top-down and slowly a better pattern of consumption are features of all of the specific countries organised according to oligarchic and autocratic communism. Today the presence of the state (that is, with its hierarchical organisation, but certainly alongside market and network) in the countries that have preserved the party-state and adopt those two types of regimes, even if they embrace capitalism, is much stronger than in the liberal-oriented countries of the centre, the semiperiphery and the periphery. Social policies are similarly social liberal and the problems they face, starting with climate change, are the same.

Therefore, if there has not been a complete and causally related connection between political regimes and accumulation regimes over the last two centuries and a half of modern civilisation, there are several points of contact between them. These have a lot to do, albeit not exclusively, with how democracy has performed in each country, at each point in time.

Notes

- 1 Here I draw partly upon José Maurício Domingues, 'Political regimes and advanced liberal oligarchy', *Constellations*, vol. 26 (2019): 78–93.
- 2 The first important references in liberalism and Marxism regarding regimes were Alexis de Tocqueville, *De la Démocratie en Amérique*, vols 1-2 (Paris: Gallimard [1835 and 1840] 1951); Karl Marx, *Der achtzehnte Brumaire des Louis Bonaparte*, in K. Marx and Friedrich Engels, *Werke*, vol. 8 (Berlin: Dietz, [1852] 1960). A well-known typology comprises 'totalitarian', 'authoritarian', 'sultanist' and 'democratic' regimes, identifying liberalism directly with democracy such as proposed by Juan J. Linz, *Totalitarian and Authoritarian Regimes*

- (Boulder and London: Lynne Rienner, 2000), chap. 3. Others speak of ‘democratic’, ‘authoritarian’, ‘competitive’ and ‘semicompetitive’ regimes: Ruth Berins Collier and David Collier, *Shaping the Political Arena: Critical Junctures, the Labour Movement and Regime Dynamics in Latin America* (Notre Dame: University of Notre Dame Press, [1991] 2002), pp. 781–782. ‘Polyarchy’ became central for the discussion of regimes, but the other types contrasted to it did not have conceptual impact. See Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, [1960] 1963). Marxist debates about the fascist regime are highly relevant too. See Franz Neumann, *Behemoth: The Structure and Practice of National Socialism* (Chicago: Ivan R. Dee, [1942, 1944] 2009); Nicos Poulantzas, *Fascisme et dictature* (Paris: Seuil and Maspero [1970] 1974). ‘Bureaucratic authoritarian’ regime was a conceptual innovation introduced by Guillermo O’Donnell, 1966–1973. *El Estado burocrático autoritario. Triunfos, derrotas y crisis* (Buenos Aires: Editorial Belgrano, 1982).
- 3 Apart from more abstract discussions that date back to Weber, while the ideal-typical approach has ever since been deployed repeatedly, rarely has it been systematically articulated, as pointed out, referring directly to political regimes, by Gary Goertz, *Social Science: A User’s Guide* (Princeton, NJ: Princeton University Press, 2006), pp. 83ff.
 - 4 For an interesting characterisation of the elements of regimes, too centred on the state, though, see Collier and Collier, *op. cit.*, p. 789.
 - 5 Actually, personal autocratic regimes were often connected to the experience of one-party rule, usually consisting in very neopatrimonial regimes. Though we can find them elsewhere, especially Asia, Africa was often plagued by this sort of problem. See Charles Debbasch, ‘Le Parti unique à l’épreuve du pouvoir. Les expériences maghrébines et africaines’, *Annuaire de l’Afrique du Nord* (Paris: Edition du CNRS, 1965); Aristide R. Zolberg, *Creating Political Order: The Party-States of West Africa* (Chicago: Rand McNally & Co., 1966); Tunteng Kiven, ‘Toward a theory of one-party government in Africa’, *Cahier d’Etudes Africaines*, vol. 13 (1973): 649–663. The bureaucratic autocratic regime was a Latin America specialty, also appearing in Southern Europe and the Middle-East, sometimes mixed with personal autocratic elements in the latter, as discussed in O’Donnell, *op. cit.*
 - 6 James Chiriyankandath, “‘Democracy’ under the Raj: Elections and separate representation in British India’ (1992), in Niraja Gopal Jayal (ed.), *Democracy in India* (New Delhi: Oxford, 2001); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996); Jeff Goodwin, *No Other Way Out: States and Revolutionary Movements, 1945–1991* (Cambridge: Cambridge University Press, 2001), Part 2; Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley and Los Angeles: University of California Press, 2005).
 - 7 Descriptively and analytically, according to a liberal standpoint, we can rely on R. Dahl, *Polyarchy; Democracy and Its Critics* (New Haven: Yale University Press, 1989); *On Democracy* (New Haven: Yale University Press, 1993); Wanderley Guilherme dos Santos, ‘Democracia em 3D’, *Dados*, vol. 41 (1998): 207–281; Idem, ‘O sistema oligárquico representativo da Primeira República’, *Dados*, vol. 56 (2013): 9–37.
 - 8 J. M. Domingues, ‘Extreme-right, democracy and oligarchy: Brazil in the global context’, *Revista eurolatinoamericana de análisis social y político*, vol. 2 (2021): 101–116.
 - 9 Stephen F. Cohen, *Rethinking the Soviet Experience: Politics and History since 1917* (Oxford: Oxford University Press, 1985); Robert C. Tucker, *Stalin*

- in Power: The Revolution from Above – 1928–1941* (New York: Norton, 1992); Daniel Tarschys, ‘The Soviet political system: Three models’, *European Journal of Political Research*, vol. 5 (1977): 287–320; Steve Tsang, ‘Consultative Leninism: China’s new political framework’, *Journal of Contemporary China*, vol. 18 (2009): 865–880; S. Tsang and Olivia Cheung, ‘Has Xi Jinping made China’s political system more resilient and enduring?’, *Third World Quarterly*, vol. 43 (2022): 225–243.
- 10 It is curious to see how those who are wont to save liberal democracy from authoritarian ‘demagogues’ (and why the two qualifications would necessarily go together is not spelt out) stress the role of gatekeepers – oligarchic systems – in excluding them from political competition, as well as ‘elite’ toleration and forbearance, rather than a change in democracy as such. Their eventual mention of social inequalities and universalist policies as solutions for partisan polarisation hardly makes sense in this regard. Steven Levitsky and Daniel Ziblatt, *How Democracies Die: What History Reveals About Our Future* (London: Penguin, 2018), especially pp. 20–24ff, 40, 95ff, 227ff.
 - 11 David Landau and Rosalind Dixon, ‘Abusive judicial review: Courts against democracy’, *UC Davis Law Review*, vol. 53 (2020): 1313–1387.
 - 12 Maurice Duverger, ‘Introduction a une sociologie de régimes politiques’, in Georges Gurvitch (ed.), *Traité de sociologie*, vol. 2 (Paris: Presses Universitaires de France, 1968).
 - 13 José Casanova, *Public Religions in the Modern World* (Chicago: The University of Chicago Press, 1994); Said Amir Arjomand, *After Khomeini: Iran and His Successors* (New York: Oxford University Press, 2009); Samy Smooha, ‘The model of ethnocracy: Israel as a Jewish democratic state’, *Nations and Nationalism*, vol. 8 (2002): 475–503.
 - 14 Contrary to Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York: Free Press, [1911] 1949), pp. ciii, 31–32. Making a direct and almost absolute relation between organisation and oligarchy, as well as democracy more generally, out of necessity, is where he got astray. However, the issue of the division of labour between leadership and grassroots is real enough.
 - 15 The central and pioneering work is Jeffrey A. Winters, *Oligarchy* (Cambridge: Cambridge University Press, 2011). For him, however, wealth and politics seem directly albeit mysteriously conjoined, while the defence of property is the essential issue. See further, with the same virtues and shortcomings, Camila Vergara, *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* (Princeton, NJ: Princeton University Press, 2020).
 - 16 Mihailo Marković, *Dialektik der Praxis* (Frankfurt am Main: Suhrkamp, [1968] 1969).
 - 17 Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton: Princeton University Press, 2008); Bruce Ackerman, *The Decline and Fall of the American Republic* (Cambridge and London: The Belknap Press of Harvard University Press, 2010); Michael J. Glennon, *National Security and Double Government* (Oxford: Oxford University Press, 2015); Hauke Brunkhorst, *Das doppelte Gesicht Europas. Zwischen Kapitalismus und Demokratie* (Frankfurt am Main: Suhrkamp, 2014); G. O’Donnell, ‘Delegative democracy’, *Journal of Democracy*, vol. 5 (1994): 55–69; Domingues, ‘Extreme-right, democracy and oligarchy: Brazil in the global context’; Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder as Political Instrument* (Oxford/Bloomington: James Currey/Indiana University Press/The International Institute, 1999). Advanced liberal oligarchy does not configure an oxymoronic eternal ‘state of exception’, contrary to Giorgio Agamben, *Stato di eccezione* (Turin:

- Bollati Boringhieri, 2003). It is instead a new sort of political regime, with strong staying power
- 18 S. Levitsky and Lucan A. Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (Cambridge: Cambridge University Press, 2001); Richard Sackwa, *Putin: Russia's Choice* (New York and London: Routledge, 2004); Burak Gümü, Yunus Yoldar and Wolfgang Gieler (eds), *Die neue Turkey* (Frankfurt am Main: Peter Lang, 2015); Banu Bargu, 'Year one: Reflections on Turkey's second founding and the politics of division', *Critical Times*, vol. 1 (2018): 23–48.
 - 19 Smootha, op. cit.; Christophe Jaffrelot, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy* (Princeton: Princeton University Press, 2021), though he greatly stresses 'populism' and 'competitive authoritarianism'.
 - 20 Karl Marx, *Das Kapital. Kritik der politischen Ökonomie*, vol. 1, book 2 (1867, 1873), in K. Marx and Friedrich Engels, *Werke*, vol. 23 (Berlin: Dietz, [1867, 1873] 1962). Besides, as pointed out in previous chapters, Marx was a pioneer in the phrasing of generative (primitive accumulation), reiterative-developmental (the accumulation and centralisation/concentration of capital) and transformative (the proletarian revolution) mechanisms.
 - 21 The literature on these questions is of course immense. I have discussed some of it in J. M. Domingues, *Global Modernity, Development, and Contemporary Civilization: Towards a Renewal of Critical Theory* (London and New York: Routledge, 2011). For another sociological account, see Peter Wagner, *A Sociology of Modernity. Liberty and Discipline* (New York and London: Routledge, 1994). The French regulation school, already referred to in the notes to Chapter 9, is of utmost importance in this discussion, though without direct reference to political issues, especially political regimes.
 - 22 Hartmut Rosa, *Beschleunigung. Die Veränderung der Zeitstruktur in der Moderne* (Frankfurt am Main: Suhrkamp, 2005), pp. 480–490.

12

POLITICAL PROCESSES

12.1 Reproduction and change

Specific political processes give rise to political systems and political regimes, as well as to state structures – let us remember that, according to the perspective upheld here, they are inevitably modern or postmodern, since there was no political dimension before modernity. As we have seen especially in Chapters 6 and 11, the reproduction of political systems and political regimes carries on insofar as reiterative mechanisms prevail over transformative ones. When crises are too strong and overflow the institutions and boundaries of political regimes, political systems and even state structures, we tend to witness a transformation of more or less significant magnitude. Legitimacy crises are a key component of the transformative mechanisms of these socio-political systems. Their lesser or greater severity points to a greater or lesser change of the imaginary, which may become unhinged and wide open, institutions, which cannot limit conflicts, and practices, which are then questioned.

Before we go into the different types of change, we must look into the reproduction of political regimes (the relatively more concrete expression of political systems). Needless to say, there is no teleological necessity in this reproduction, no functionalist or autopoietic logic that autonomously delivers it. Yet it is true that agents within these social systems are locked into specific relations and can do little other than accept, at least partly and apparently from the outside, the formal and informal rules, often of an especially reflexively practical character, that weave and sustain their imaginary and institutional parameters. When it seems that agents are outside the system, they are actually part of the societal political system, eager to

transform it somehow (when they are simply not lying or succumb to delusions regarding their actual belonging in the state political system).

Of course, reproduction is neither eternal nor automatic. The political dimension of modernity emerged at some point from within very different structures of power. As modernity in general and specific societies develop, it changes, without dissolving its basic patterns; at some point it will be altered beyond recognition. This was the case with the emergence of authoritarian collectivism as the unintended consequence of socialist revolutions. We have discussed it more generally with respect to mechanisms at different stages of this book; it is now important that we focus on some specific political processes within modernity.

Let us start with the reproductive cycles of political regimes. We will then tackle how change takes place.

12.2 Political cycles

Political cycles are political processes with a beginning and an end, more or less identifiable, which occur within political systems and specific political regimes. They happen in the space-time of nation-states but may also have a regional or even global reach when their characterisation tends to be more diffuse since they unfold in a combined and uneven way. A political cycle is in particular defined by the articulation of three elements, analytical in character, within the functioning of a political regime:¹

- 1) *institutions*, with their formal and informal aspects, including constitutions and laws, and the *imaginary*, which furnishes the internal and external rationale for the actions and moves within the political system and, together with its practical workings, legitimises it (always counting on the support of the *material* dimension that is part of their constitution as social systems). In addition, *practices* are mostly regular and explicit, connected to legitimate institutions and corresponding to legitimate elements of the imaginary, hence with both means and ends (or goals) not deviating from what is formally and legally expected; or they may be at a remove from the letter of the law when either ends or means – or both – are illegitimate. If this is so, they must remain hidden, as in the case of decisions pertaining to the logic of the reason of state or as to political corruption (for instance, inasmuch as this is crucial for winning elections, a legitimate end, the attainment of which may depend on illegitimate means).² If they remain somehow hidden, they consist of ‘shadow institutions’;
- 2) an *agenda* that is more or less stable, despite variations and inflexions, in the public sphere and to which the dominant agents need to respond since it resonates strongly in society at large and the state and societal

political systems in particular (for example, misery and hunger, social rights and corruption, climate change and war). Agendas have a solid connection to the specific elements of the imaginary in a given period and are dependent upon previous political disputes;

- 3) *agents*, that is, individuals and collectivities, emergent at the beginning of the cycle and continuing at its core throughout. Other agents may replace them, giving continuity to the commitments and behaviours of those they substituted. Agents are the subjective force at the centre of the unfolding of a cycle. They obviously enjoy a limited lifetime, particularly in terms of political durability, which may extend beyond the lifetime of single individuals. Someday, however, usually much before biological life, political life and the ability to influence the concrete unfolding of political time – the ‘conjuncture’ – comes to an end, more or less gloriously, more or less depressingly. Some agents just disappear into the private world or take on more modest roles in public life. This shorter time span refers to individuals in particular, although similar phenomena occur with collectivities, namely parties, associations and unions, among others, which can, on the other hand, cut across political cycles, whereas sometimes rapidly disappearing or declining, with others emerging as old cycles continue or transmute into new cycles. What we may dub the ‘correlation of forces’ between these political agents is decisive.

Figure 12.1 displays the analytical elements and movement that characterises a political cycle, with the agents that move within it, the reiterative process and the possibility of change that always looms large, the institutions, the imaginary and the material elements that pattern the process.

Once a cycle is over, things change more or less radically, sometimes minimally, just as the duration of each cycle may also vary. The rhythm of change varies too. Institutions and imaginary elements, as well as agents, may be carried over into a new cycle. However, they are no longer exactly the same, having undergone more or less subtle or conspicuous changes, even if, in the case of the former, they have not changed the discourse and trappings that lend them public expression. If there is a reproduction of the political regime, let alone of the political system, the cycles must, more or less smoothly or turbulently, with more profound or more superficial crises, lead into new cycles that do not essentially alter the imaginary, institutions and practices. At the same time, certain inflexions may introduce new elements or give prominence to those who once were, or appeared to be, secondary or subordinate ones. It may be that when the cycle is about to tip into a change of regime and even of the political system, the process ends up frozen or is rolled back because the principal agents therein fight back those who aim at more decisive change.

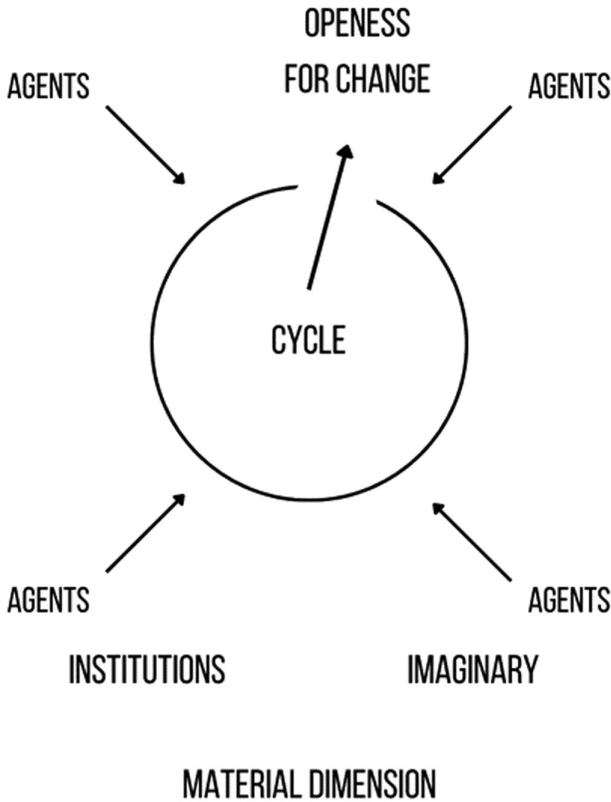


FIGURE 12.1 Political cycles

The Brazilian crisis of the 2010s is emblematic of two political cycles, without regime change, with the formal permanence of institutions and agents, regardless of the deeper inflexion that occurred in the correlation of forces between political currents and the specific expression of the encompassing national imaginary. This crisis was to a large extent a purely political process, irrespective of the deep economic and, more generally, social connections that lay at its core. Since the 1970s, along with other Latin American countries, Brazil underwent a democratising cycle, leading it out of the military-bureaucratic autocratic regime and into a very oligarchised liberal democracy. The social question was also at its core, especially extreme poverty, as a dramatic expression of concreteness (ensuing for instance in the free universal or of ample cover free public health system and the Bolsa Família quasi-constitutional law, with its targeted, conditional cash transfer scheme). The dispute between the main parties that emerged during the period of democratisation was fierce and eventually assumed a destructive factional character, resulting in an acute crisis. Meanwhile, the societal political system, basically at this stage unhinged

individual citizens, exploded in the global moment of popular indignation that marked the earlier part of the decade, with 2013 as its pinnacle, when the imaginary was opened up and institutions appeared as wanting. A parliamentary coup expelled the left from the government. This disruptive move counted nevertheless on massive popular support due to brutal corruption scandals –, which the incumbent party (the Workers' Party – PT) shared with all the others – economic mismanagement and electoral lies. This implied a rightwards shift of the imaginary. As a belated result, an extreme-right president, Jair Bolsonaro, was then elected, with mainly a negative agenda which sought to destroy all that the previous cycle had engendered and implicitly resumed the attempt at self-reform and permanence in power the military had tried out at the end of their harsh rule. His incompetence and callousness led to electoral defeat.

We see two cycles here, with a crisis mediating between them. Yet the agents that were part of this drama were more or less contemporary, despite some novelties and the strengthening or enfeeblement of some of them, and with changes in the correlation of forces; there was no formal change in the 1988 Constitution, save for a cap on expenditure, though the extreme-right incumbent tried to in practice distort constitutional rules whenever he could. While the right-wing elements that sprung forth seemed to come out from nowhere, in reality they lurked from the beginning of the first cycle in the imagination of the Brazilian population (and in many ways the Constitution was never fully implemented, for instance, regarding universal free health care). We can thus consistently point to both continuity and some change. This includes the return of a president, Luiz Inácio Lula da Silva, who somewhat modified his mentality and tactical options, partly trying to build a broad front (as all he ever does, largely personified in himself and dominated by his party) against Bolsonaro, the extreme-right incumbent (who also bet on the personalisation of politics). More dramatically, change also relates to a more explicit presence of extreme-right forces in the political system. At the same time, the (neo)patrimonial and oligarchic character of the state political system remained untouched, despite former massive citizens' protests. There has been a change of cycle, but not a sea change, of regime and even less of political system. In the midst of tension and sudden shifts, political agents have reproduced the regime, foremost because those more committed to liberalism among them, in the political system and the judiciary, so decided. Highly oligarquic liberal democracy survived; on the other hand, the crisis went to waste, without even small steps towards the desired further democratisation of the political system, such as demanded in 2013, having occurred.

12.3 Coup d'état

A coup d'état may be, and often has been, an attempt to shore up a decaying political regime. It may sometimes, conversely, partly serve as an auxiliary

in transformative processes. Given its own characteristics, this is unlikely. A coup d'état (sometimes in the form of a military putsch) is basically the deployment of some section of the state apparatus, from agents within this section or outside it but with deep connections therein, against challengers of the political regime. It may consist in a hybrid combination if forces in the societal political system can reach out to forces within the state, command them and execute what then becomes a coup d'état. Nevertheless, such coups relate to the reason of state, or the reason of the political forces that, at any given moment, control the state apparatus and enjoy dominance in a regime or government that may be in jeopardy of losing its hold on power.³

The beginnings of the consideration of the coup d'état lie in the proto-European Renaissance monarchies, when power was not properly political and the nobility controlled it. It counted on a political system based on the one, and at most on the few, the military forces themselves not totally differentiated from the nobility and subordinated to the executive, the overwhelming power agency in the state. A coup should be a Prince's coup. With the delineation and growth of the modern state, and a differentiated out political system springing from it, the equation became more complicated. Now the state is clearly differentiated from society as well as internally. Several different sectors can be responsible for the coup, which can easily blend with the establishment of a 'state of exception'. Concerning the military, this seems to always obtain: with the force of arms, they may take over power, expel incumbents and – in alliance with state and societal agents – install a government of their liking, headed chiefly by themselves. Other agents may be at the forefront of the process, though, as, for instance, when there is a parliamentary coup, which has most decidedly a very different character from a military one. In the first situation, there is regime change; in the second, this may or may not come about. Other forces (i.e. the judiciary or parliament in particular) can moreover play a similar role. A coup mobilises state and societal parts of the political system and parts of the state that are not formally part of the political system. Armies have been notorious in this respect. Coups constitute an act of force, which must count on the police and military forces – or at least on their neutrality – against an opposition that is too weak to resist. A rupture aimed at maintaining the political system ensues, with inevitably more repression, with many times a more significant change in the imaginary and, above all, institutions.⁴

The minimal definition of a coup implies that state agents, more or less central in the political system or other parts of the state apparatus, often in alliance with societal agents, move against other sectors of the state apparatus, in particular placed within the state political system; those state agents usually also target agents within the societal political system, sometimes even predominantly or exclusively. The correlation of forces and the agents' political intelligence respond for the conflict's outcome. Add to that the role

played in support of the different parts played by forces operating from abroad (i.e. other countries' governments or, more generally, political forces).

Military coups are best exemplified by events that unfolded in twentieth-century Latin America, with the armed forces taking over and organising governments under their control that would last for decades in some countries. Fascist coups happened in several countries of Europe in the same century, usually after partial electoral victories of the right (in the aftermath of the defeat and demoralisation of the left). In these cases, there is, obviously, a radical change of regime. This was also the case in Adolf Hitler's and his National Socialist party's accession to power: the state of exception was decreed shortly after their electoral triumph. As once argued by a famous author, they proved they were the sovereign. In other circumstances, we may have more subtle modifications, such as after a surprising and decisive electoral victory of General Charles de Gaulle in the 1958 elections, which led to a forced change of the Constitution – liberal democracy persisted as the political regime, which however turned from a principally parliamentary into a strongly presidential arrangement, with a weakened parliament.

In Brazil, in 2016, at the end of the cycle described above, parliament, so as to shield itself from the charges put forward by an increasingly 'Bonapartist' judiciary, ousted the president, Dilma Rousseff, employing at best arguable charges concerning non-compliance with budgetary rules to achieve such a goal. In Bolivia, a few years afterwards, the ruling party, which controlled the judiciary as well, after a defeat in a plebiscite itself summoned to allow for one more (unconstitutional) term for the president, Evo Morales, forced a constitutional change using its control of several sectors within the state. A deep political crisis followed the governmental-judiciary coup, with the temporary de-structuration of the political system and the attempt of the right-wing opposition to take over power, partly supported by the police forces, which decided to continue inactive against popular, mostly though not only middle-class, mobilisation. As we could expect, the president and his party denounced an imperialist and reactionary coup, while his adversaries called out against electoral fraud, in fact, according to the definition here deployed, also a coup. Just the same, it constituted an ugly closure to a very potent popular-plebeian cycle.⁵ But the extreme-right cycle that announced itself triumphantly with Bolsonaro's election also seems to have at least temporarily stalled. After losing his bid for re-election, he and a large swath of top military commanders consistently tried, if clumsily, to stage a traditional putsch to remain in power. This will probably land Bolsonaro (already disqualified to appear in the ballot due to electoral crimes) and his acolytes in jail, which does not mean that he is no longer very popular.⁶ A precarious balance within this new cycle is likely to endure.

Once a coup brings about a more authoritarian regime, many issues emerge, related to the characteristics of the new regime and to its future. How to transit towards another type of regime had been a complicated issue, especially in Latin America as well as often in other regions, namely, Eastern Europe, Asia and Africa. This conundrum was common in Western Europe in the nineteenth and the twentieth centuries too. Regimes of exception or consistently autocratic must be replaced by other types of regimes, liberal democratic or with other characteristics.⁷ But other sorts of moves, more ambiguous and limited, may go in a direction similar to those far-reaching changes. On a more restricted scale, unconstitutional changes – with constitutional hermeneutics taken beyond a reasonable interpretation, possibly enacted by the highest courts – may have the effect of *de facto* altering the constitution. This is usually carried out on the sly or by stealth and along with denegation, in Europe and the United States as much as elsewhere.⁸ In both the Brazilian and the Bolivian cases mentioned above this has clearly happened with greater magnitude and almost scandalously in the course of very conflictive political processes. It was also of course accompanied by denegation by agents on all sides, according to their strength and interest, albeit not on the sly or by stealth.⁹

12.4 Revolution and molecular processes

Revolution was one of the hottest topics, if not the hottest, of the nineteenth and the twentieth centuries, regardless of whether one was in favour of it or not. Meaningful social change seemed to demand a process such as those that unfolded in France in 1789 and Russia in 1917. To these, others were added, such as China in 1949 and Cuba in 1959; still others, which could have been so described, were denied this title. These include India's relatively peaceful movement of independence, while others, where only political change came about, like in Portugal, have been deemed deserving of the title. Iran, in 1979, introduced a different modality, in which 'religion' had a prime function, whereby a theocratic-political revolution yielded a regime rooted in the same outlook. Today, revolution is out of fashion. The fascination it used to produce has waned. For good? Probably yes, though history never fully reaches foreclosure. What can be said about social change in such a different scenario? Is there, without revolution, a possibility of true, comprehensive transformation away from and beyond modernity?

Firstly, we need to define the categories we are articulating here. Revolution, rebellion, civil war and others are terms with a certain proximity to each other. Some of the terms associated with them have never been adequately articulated, whereas others are hotly contested.

Revolt is easier to characterise: it is an explosion of discontent directed against the political system and anything the people who rise up may

associate with it, whether in public or privately. It does not last long. Revolts may be fleeting, be chaotic and blurred, or may produce long-term change, with a more consistent agenda, which depends on some level of previous, even if highly decentralised, popular organisation.¹⁰ The 2000s–2010s witnessed many revolts, known by various names, which clashed with the political system as a whole.¹¹ They meant an affirmation of citizens' political autonomy, individually and collectively, which had been boosted by the processes discussed in Chapters 8 and 9. If revolts become a mass phenomenon, they may involve military agitation. Revolts may moreover consist of specific moments of more encompassing processes, for instance, the fall of the Bastille, the very onset of the French Revolution. Another possibility is that they remain inconclusive and dissipate their energies, as in the outbursts that occurred in 2013 in Brazil, or, more positively, achieve positive outcomes, stopping short of overthrowing a government and changing the state. Sheer immediacy is a main risk. Processes like the 1989 political revolution in Russia and Eastern Europe followed a curious pattern, in which peaceful upheavals combined with support from the outside to steer a liberal-oriented transition (stalled in Russia).

Revolts may imply the exercise of violence or intensely and peacefully unravel. When peaceful, they might be understood as being close to 'civil disobedience', hence standing at the frontier of what is considered legal and illegal, usually insofar as political systems and ruling collectivities continue irresponsive to social demands and protest. However, which precise contours and dose of violence as well as 'incivility', beyond basic symbolic action and law-breaking, and which objects (unjust laws and policies as well as public and private behaviour) and modes of action (physical or even through cyber defiance such as hacking), characterise civil disobedience, in a liberal, radical democratic or even anarchist mould, have increasingly become open questions. Once again, political autonomy is affirmed. Digital disobedience is becoming more prominent, overlapping with whistle-blowing, an issue that is as such not new insofar as the latter involves some sort of law-breaking behaviour. Though this is unusual, we can imagine widespread civil disobedience as an engine of radical change when it buttresses large-scale revolts (as it did in the struggle for independence in colonial India). A debate about the definition of civil disobedience unfolds while state repression mounts.¹²

Revolution is by far the most complex concept here. In the most general sense, revolution is an encompassing social process that sweepingly transforms society, in all its dimensions, cutting across the imaginary, institutions, practices and processes. In fact, we may speak of an 'era' of social revolution, with different aspects and moments.¹³ Nevertheless, we need to focus on revolution as *political* revolution, as a political process, of a much shorter duration, possibly placed within that 'era' of social revolution, as a political rupture, but not necessarily.¹⁴ Changes as to the incumbents of the

political system and the political regime, changes as to the political system and the state in general, are features of political revolutions, which include revolts, insurrections (armed uprisings), even guerrilla struggle and the like, whereby the period of political revolution is dilated. Revolution is, in any case, a mass phenomenon. Insurrections carried out by small groups and coups as sudden power takeovers may be a part of revolution, which, however, fill in but a relatively smaller space in its unfolding. The prime example of this is offered by the Bolshevik takeover of power on 25 October 1917, staged by the insurgent Military-Revolutionary Committee, on the eve of the Second All-Russian Congress of Soviets of Workers' and Soldiers' Deputies, scheduled for November, which then accepted, under protest by the Mensheviks, the consummated fact. All things considered, political revolutions are highly complex political processes, which sometimes unfold in the medium or even longer duration, although intense moments of contention are typically involved. The substitution of a ruling collectivity by another is the necessary outcome of successful revolutionary uprisings, while revolts usually stop short of that (if not, they become revolutions).¹⁵

The preconditions for a triumphant revolution listed by Lenin are well known, referring, we should note, to social classes and, fundamentally, conjunctural conditions: it is not enough that those below no longer accept to live as they formerly did; those above must be divided, with cracks between them allowing for the revolutionary energy to burst through. He added a third aspect to these two, to some extent for him the most decisive: the existence of a committed and organised revolutionary party capable of intervening once a solid challenge to the system of rule emerges.¹⁶ Eventually, geopolitical tensions – especially war – assumed a central place in the explanation of revolutions, with external competition and the population's suffering accompanying the disorganisation of the state apparatus.¹⁷ Many other elements may be added to the causes of revolution. They are usually contingent and concrete (for instance, 'relative deprivation' or the increase in equality which may be incomplete, leading to further grievances,¹⁸ the perception of loss of a cherished way of life, etc.).

As discussed in former chapters, a general crisis of the political system and of the state is a precondition for a revolution to emerge from what might be only a revolt without further consequences. The loss of legitimacy, the willingness to take political risks and the incapacity of the existing political system in particular and the state apparatus more generally to control the situation – ultimately through repression – may have a revolutionary situation as an upshot, in which people revolt and a fluid situation ensues. Revolts may signal the death throes of a political cycle since they are a sign, at least to some degree, of the illegitimacy of the political regime.

A revolutionary rupture depends on how far the disorganisation of the power-holders goes, on the balance of military forces (especially when the

armed forces are neutralised or divided) and, indeed, on whether there are political organisations capable of taking over power, by insurrection or more institutional, even negotiated, means, with the substitution of politically ruling collectivities. In the context of complex societies, only deep cracks in what Gramsci called ‘hegemony’ (basic consensus, that is, the acceptance of the system of political domination, ultimately backed by coercion), leading to an ‘organic crisis’ that engulfs the whole of society, can make room, albeit without guarantee, for revolutionary initiatives, as he argued too.¹⁹ If the revolution is successful, change comes about lock, stock, and barrel. But revolution inexorably entails counterrevolution, which often assumes the countenance of a coup d’état, aiming at blocking change, slowing it down, or deflecting it. ‘Transformism’ – that is to say, changing in order not really to change – is another way of going about against revolutionary processes, concentrated or long-term, by absorbing elements of the programme and opposition politicians, repressing bolder moves with violence, corruption and through political manoeuvres. Political cycles are thus dealt with in a way such that they never allow for a greater breakthrough. Revolutions thus combine, to summon categories introduced in Chapter 10, more general, decentred collective modernising – and postmodernising – moves and modernising offensives of organised political forces.

Usually connected to revolutionary processes, and often in conjunction with anticolonial struggles and national liberation – aiming at collective autonomy – as well as coupled with resistance to foreign occupation, civil war and guerrillas, or irregular war, have been studied as political phenomena, implying the dual control of territory by opposing armies. They cannot be reduced to violence, but armed struggle is intrinsic to them, and, whereas they may include terrorist acts, terrorism as such calls for a specific categorisation.²⁰ Civil war, national liberation armed uprisings and guerrillas consist in high-intensity political processes, of which Fanon was one of the main apologists, with supposedly cathartic violence occupying a central, politically problematic, place in his views of decolonisation.²¹ Terrorism proper, a radically contested concept, implies organised violence in which political goals as well as asymmetry of power and status are typical, but so are the targeting of (usually specific groups of) civilians and an effect disproportionate to the number of victims (which may be numerous, nevertheless).²²

Molecular political processes may also shape a long-term revolution, though, even when smaller and briefer moments of upheaval, at times intense, are usually part of them. A *molecular revolution* – considered as a loose, rather decentred modernising move – then fundamentally alters the political configuration of society, with violence usually subdued. Molecular change has been, in fact, the pattern of social transformation all along modernity, rather than the flashy revolutionary explosions that the French (in both margins of the Atlantic, that is, in metropolitan France and in Saint-Domingue)

and the Russian revolution introduced as the criterion to classify them, with the later addition of twentieth-century anticolonial struggles, which were – but no longer are – much more central in the colonial periphery of modernity, without exclusivity. With the sprawling complexity of contemporary modern societies, a resistant societal political system and the military prowess of the state – almost invariably strongly skewed in favour of the status quo and against the possible independent armed strength of the population or insurrectional groups –, the irruption of sudden armed conflict that might lead to a revolutionary rupture, let alone long-run armed struggle, has most probably been dislocated, for good, to the world of fantasy.²³ Even phenomena such as the ‘autonomist’ (neo-anarquist) ‘black block’ tactics that for a while played a role in this sort of revolt, with their ritual of violence and akin to rioting, seem to have quickly become anachronistic.²⁴

Mass revolts have consequently acquired a very different character, implying pressure on the political system, without the direct attempt of a power takeover, against police and military forces. In the early twentieth century, as discussed in Chapter 8, such revolts seemed to have political productivity perhaps only in the Chilean 2019–2022 uprising, which led, through negotiation, to a constitutional assembly (with tragic results, namely, the eventual hegemony of the extreme-right). At no moment did a typical revolutionary situation, such as defined by Lenin, set in. More than other similar revolts, it relied on a rising tide of political mobilisation and grassroots organisation, ensuing in restless demonstrations, largely peaceful despite vicious police violence. Right-wing currents cunningly weathered the storm and turned back the wheel (with unexpected political success, just to lose their own constitutional plebiscite shortly afterwards).

Part of a molecular revolution may also be the interstitial emergence of phenomena in the periphery of social life, which ruling collectivities are oblivious to or do not initially identify as a threat. Historically this has been, prior to modernity, a recurrent phenomenon.²⁵ With the strengthening of the state and its surveillance capability, this has become more unlikely, perhaps not impossible, to happen. These new difficulties coming from above are aggravated by the present disorganisation of the population – in tandem with and in spite of its increasing political autonomy – and globalisation.²⁶

A molecular revolution, insofar as it is sustained, is bound to entail sweeping social change going beyond the political dimension. It features independent transformations of the political system and of the state more generally. To start with, its actual creation, in contradistinction to previous forms of the structuration of power relations at the beginning of modernity, was an effective and highly innovative outcome, especially in its state dimension, since in many areas a societal political system was already developing prior to a revolutionary explosion that facilitated the breakthrough for the establishment of political modernity. Its development also counted on molecular

Notes

- 1 The theorisation of political cycles is poor, basically inexistent. Speaking of the ‘business cycle’, with the electoral strategy of government incumbents who seek re-election and manipulate the budget with this intention, see Alberto Alesina, Nouriel Roubini and Gerald D. Cohen, *Political Cycles and the Macroeconomy* (Cambridge: MIT Press, 1997); for the alternation between republicans and democrats in the United States, see Arthur M. Schlesinger Jr, *The Cycles of American History* (Boston: Houghton Mifflin, 1986). Cycles of protest and social movement, with their agendas and repertoires, were conceptualised in Doug McAdam, Sidney Tarrow and Charles Tilly, *Dynamics of Contention* (Cambridge: Cambridge University Press, 2001). As to the ‘conjuncture’, but with great acuity for what I have called here political cycles, the masterpieces are V. I. Lenin, ‘Letters from afar’ (1917) and ‘The task of the proletariat in the present revolution’ (1917), in *Collected Works*, respectively vols 23 and 24 (Moscow: Progress, 1964). Cycles within the revolution are more clearly dealt with in Idem, ‘On slogans’ (1917), in *Collected Works*, vol. 25 (Moscow: Progress, 1964). When cycles have reached beyond national borders, some authors have spoken of ‘waves’, including Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma: Oklahoma University Press, 1989); John Markov, *Waves of Democracy: Social Movements and Political Change* (Boulder and London: Paradigm, 2015, 2nd edition). The former suggests multi-causal explanations, stressing the regional ‘snowballing’ effect of the diffusion of democracy, whereas the latter focuses on the push of social movements and ‘elite’ adaption (or not) as implicit mechanisms of democratisation and de-democratisation. I draw here upon Breno Bringel and José Maurício Domingues, ‘Ciclos políticos: su conceptualización y la América Latina contemporánea’, in Esteban Torres and J. M. Domingues (eds), *Nuevos actores y cambio social en América Latina* (Buenos Aires: CLACSO, 2022). See, for legal-political cycles, Daniel Capecchi Nunes, ‘O desmembramento da Constituição de 1988: constitucionalismo abusivo e fim do ciclo político democrático’, *Revista Publicum*, vol. 4 (2018): 37–62. The idea of ‘constitutional moments’, though they are more extended in time, and ‘super-statutes’, which appear and change more easily, go in the same direction. Bruce Ackerman, *We the People*, vols. 1–2 (Cambridge: Belknap Press of Harvard University Press, 1991–1998); William Eskridge, Jr. and John Ferejohn, ‘Super-statutes’, *Duke Law Review*, vol. 50 (2001): 1215–1276.
- 2 I evidently refer here to the classical distinction proposed by Robert K. Merton, *Social Theory and Social Structure* (New York: Free Press, 1968), chap. 6.
- 3 This is close to the classical definition of Gabriel Naudé, *Considérations politiques sur les coups d’état* (Paris: s/ed, 1667), p. 103. Coups, which would be the work of the executive, would be based on the ‘exception’ and a duty of the Prince to defend the state, for example such as in the poorly executed Night of Saint Barthelemy, launched against the Protestants (pp. 169ff).
- 4 Decay of the political order and ‘Pretorian’ interventions – of course carried out by the military, which a conservative view tries to polish out with references to students and the Church – led to disruptions, which were actually coups. Such a reading justifies the ‘breakdown’ of political order, in a slight, politically skewed improvement of the more upbeat modernisation theory. See S. P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, [1968] 2006).
- 5 See Edward Luttwak, *Coup d’état: A Practical Handbook* (New York: Alfred A. Knopf, 1969). There is basically no specialised literature on coups, and what exists is of dubious quality. An exemplary instance is the unscrupulous book by

- the fascist Curzio Malaparte, *Tecnica de golpe di stato* (Florence: Coop. Al Ponte delle Grazie, [1932] 1998). The ‘state of exception’ as a decision of the ‘sovereign’ is the thesis of the conservative-cum later-National Socialist Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* (Berlin: Duncker & Humblot [1922] 2009).
- 6 For those two countries, see Rafael Archondo, ‘¿Fue golpe? Pulsando la supuesta fascistización de Bolivia’, *Revista eurolatinoamericana de análisis político*, vol. 1 (2020): 245-260; Karina Ferreira, ‘Veja passo a passo de como seria o golpe de estado orquestrado por Bolsonaro e aliados segundo a PF’, *Estado de São Paulo*, 08/02/2024 (<https://www.estadao.com.br/politica/veja-passo-a-passo-como-seria-o-golpe-estado-orquestrado-bolsonaro-aliados-operacao-policia-federal-pf-nprp/>). Retrieved 08/02/2024.
 - 7 This even gave rise to what was later called ‘transitology’, with reference to Latin America but also Southern and, later, Eastern Europe. See Guillermo O’Donnell, Philippe C. Schmitter and Lawrence Whitehead (eds), *Transitions from Authoritarian Rule: Comparative Perspectives* (Baltimore: John Hopkins University Press, 1986); Terry L. Karl and P. C. Schmitter, ‘Models of transition in Latin America, Southern and Eastern Europe’, *International Social Science Journal*, vol. 128 (1991): 267–282.
 - 8 Alec Stone Sweet, ‘The juridical *Coup d’État* and the problem of authority’, *German Law Journal*, vol. 8 (2007): 915–927.
 - 9 For Brazil, where the problem has become increasingly salient, with the intense personalisation of the highest court decisions, see Fabrício Castagna Lunardi, *O STF na política e a política no STF* (São Paulo: Saraiva Educação, 2023).
 - 10 Diana E. H. Russell, *Rebellion, Revolution and Armed Force* (New York: Academic, 1974), pp. 58–79.
 - 11 B. Bringel and J. M. Domingues (eds), *Global Modernity and Social Contestation* (London and New Delhi: Sage, 2015).
 - 12 See, for a relevant assortment of approaches and assessments, William E. Scheuerman (ed.), *The Cambridge Companion to Civil Disobedience* (Cambridge: Cambridge University Press, 2021).
 - 13 The classical statement was put forward in Karl Marx, ‘Vorwort’, in *Zur Kritik der Politischen Ökonomie* (1859), in K. Marx and Friedrich Engels, *Werke*, vol. 13 (Berlin: Dietz, 1961).
 - 14 Theda Skocpol, *States and Social Revolution: A Comparative Analysis of France, Russia, and China* (Cambridge: Cambridge University Press, 1979), pp. 33–35.
 - 15 Peter Calvert, *A Study of Revolution* (Oxford: Clarendon, 1970), pp. 3–4, 29; Charles Tilly, *From Mobilization to Revolution* (New York: Random House, 1978), p. 193. A further discussion of revolution in all historical eras distorts the concept of revolution. We should reserve it for upheavals that create or transform the modern political system. See P. Calvert, *Revolution* (London: Pall Mall, 1970). See further Jeff Goodwin, *No Other Way Out: States and Revolutionary Movements, 1945–1991* (Cambridge: Cambridge University Press, 2001).
 - 16 V. I. Lenin, ‘The collapse of the Second International’, pp. 214–214. See also Tilly, *op. cit.*, chap. 7.
 - 17 Skocpol, *op. cit.*, pp. 14ff and passim.
 - 18 Alexis de Tocqueville, *L’Ancien régime et la Révolution* (Paris: Gallimard [1856] 1964).
 - 19 Antonio Gramsci, ‘Noterelle sulla politica del Machiavelli’, in *Quaderni del carcere*, vol. 3 (Turin: Einaudi, [1929–35] 2001), pp. 1602–1604. Interestingly, although he did not elaborate on the concept of crisis as such, despite the famous but for a general definition limited sentence that states that it corresponds to the

- period when ‘the old is dying and the new cannot be born’ and attendant ‘morbid’ phenomena (Gramsci, *op. cit.*, vol. 1, p. 311), it was the crisis (and reconstitution) of capitalism, simultaneously to, paradoxically, the crisis of the workers’ movement that deeply informed Gramsci’s thought. See Juan Carlos Portantiero, *Los usos de Gramsci* (Mexico: Folio [1977] 1983).
- 20 Walter Lacquer, *Guerrilla Warfare: A Historical and Critical Survey* (New Brunswick: Transaction, [1976] 2004); Stathis N. Kalyvas, *The Logic of Violence in Civil War* (Cambridge: Cambridge University Press, 2006); Stefan Deißler, *Eigendynamische Bürgerkriege. Von der Persistenz und Endlichkeit innerstaatlicher Gewaltkonflikte* (Hamburg: Hamburger Edition, 2016). Last but not least, see, pioneeringly, C. Schmitt, *Theorie des Partisanen. Zwischenbemerkungen zum Begriffe des Politischen* (Berlin: Duncker & Humblot, [1962] 2017). Schmitt evinces, as usual, intense nostalgia for forms of war that were never exclusive (entailing a blurring of civilian and military roles and the laws of war).
 - 21 Frantz Fanon, *Les Damnés de la terre* (Paris: La Découvert, [1961] 2002).
 - 22 From an endless literature, see J. Goodwin, ‘A theory of categorical terrorism’, *Social Forces*, vol. 84 (2006): 2027–2046; Idem, ‘Explaining revolutionary terrorism’, in John Foran, David Lane and Andreja Zivkovic (eds), *Revolution in the Making of the Modern World* (New York and London: Routledge, 2008); C. Tilly, ‘Terror, terrorism, terrorists’, *Sociological Theory*, vol. 22 (2004): 5–13. The killing of military personnel is not therefore ‘terrorism’. If terrorism is a ‘weapon of the weak’, though these do not always resort to it, states are *strong* and it is better therefore to speak of *state terror*, which may be much more *masive*. Others may disagree: Grant Wardlaw, *Political Terrorism: Theory, Tactics, and Counter-measures* (Cambridge: Cambridge University Press, 2009, 2nd edition), chap. 1. Ethnic cleansing is already a different category, as is also genocide, both of course including terror. See Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005).
 - 23 Gramsci, *op. cit.*, vol. 2, pp. 962–964, 1220, 1324–1325; vol. 3, pp. 1766–1768, 1781, 1885, 2011. The residues of a Jacobin – and Leninist – view of revolution clearly lurked in Gramsci’s mind. They prompted him to conflate ‘passive revolution’, ‘revolution-restoration’ and ‘molecular change’ with ‘transformism’, which implies change was always stalled and subsumed under the reproduction of old forms. Should we stick to this characterisation, almost all revolutions in modernity would have been passive, which is evidently a meaningless and misleading conclusion. In contradistinction, ‘molecular revolution’ points to a genuine push for social change, which may even count on more Jacobin moments, with the caveat that, today, insurrection and the like can hardly be part of the revolutionary plot. See J. M. Domingues, *Latin America and Contemporary Modernity: A Sociological Interpretation* (New York and London: Routledge, 1998), pp. 199–22. But, connected to those still partly problematic ideas, Gramsci (*op. cit.*, vol. 1, pp. 801–802, 810; vol. 2, 865–892, 962–964, 1089, 1220–1229, 1324–1325; vol. 3, pp. 1766–1768) crafted the strategic concepts of ‘war of position’ and ‘war of movement’.
 - 24 Francis Dupuis-Déri, ‘The Black Blocks ten years after Seattle’, *Journal for the Study of Radicalism*, vol. 4 (2010): 45–82.
 - 25 For ‘interstitial emergence’, see M. Mann, *The Sources of Social Power*, vol. 1. A History of Power from the Beginning to A.D. 1760 (Cambridge: Cambridge University Press, 1986), pp. 30, 312–313, 537.
 - 26 Krishan Kumar, ‘The future of revolution: imitation or innovation?’, in Foran, Lane and Zivkovic, *op. cit.*
 - 27 Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt and Hannah Arendt* (Cambridge: Cambridge University Press,

2008), pp. 254, 295–300. In this regard, despite the liberal-conservative trust of the whole work, we find an interesting standpoint in Hannah Arendt, *On Revolution* (London: Penguin, [1963] 1990), pp. 28–29. The same may be said of her considerations about the changing meaning of the word as such ('revolution' becoming directed to the future rather than thought of as a return to the original starting-point).

- 28 André Gorz, *Réforme et révolution* (Paris: Seuil, 1969); Carlos Nelson Coutinho, 'A democracia como valor universal' (1979), in *A democracia como valor universal e outros ensaios* (Rio de Janeiro: Salamandra, 1984).

13

DEMOCRACY

13.1 Liberal democracy: the need for qualification

In the course of this book, we have analysed several aspects of political modernity that touch upon democracy. Firstly, we have dealt with freedom, citizenship and political rights, then with representation, finally with the political system. We have seen how political rights logically build upon civil rights, following a weak historical sequence, one that is not totally linear and uniform. We have also seen how through representation citizens have been understood as having influence over legislative and executive functions in the modern state. We have analysed the political system, with its republican or quasi-republican aspects and how its imaginary, institutions and practices, with their liberal features, have connected society to the state, with a bigger or smaller opening of the political space. At this point we also dealt with constituent power. Autonomy, already in a more developmental perspective, was eventually tackled analytically as the political self-determination of individuals and collectivities. In a more concrete direction, political regimes were lastly discussed, with democracy featuring among them. There was in fact a progression and several transitions – principally those listed above – between the chapters that partly led to this mounting concern with aspects of what has been since Ancient Greece called ‘democracy’ and has elicited the wonder – and at times disgust – of the world, though we are aware now that the horizontal, networked exercise of power has arisen across historical space-time countless times. Participation, which we have also already introduced, is part and parcel of democracy. Nevertheless, we also know that participation must remain limited in liberal democracy due to the inner workings of this sort of political regime, in spite of extraordinary

moments in which it comes to the fore, to the point of bursting open the political space.

If liberalism is doubtless a modern invention, democracy such as we know it is also closely connected to modernity, with the contemplation of the Greeks and the teaching of the three 'forms of rule' or 'government' to some extent providing for inspiration, whereas collective self-rule often appeared in other historical circumstances. Specific struggles, often without a proper or explicit name, were carried out usually on behalf of the right to participate and especially of freedom, as we define them today though they were part of universes of meaning very different from ours.¹ Modern democracy has involved a universalisation the Greeks could never have imagined, due to their deep-seated and impossible-to-overcome exclusion of slaves, metics and women, as well as individualised rights and participation. In contrast, it has simultaneously eschewed practices such as the radically egalitarian lot and adopted representation, with its 'aristocratic' assumptions.² Democracy has developed in modernity independently from and frequently in opposition to liberalism; it was seen by the latter mainly as a problem, although from the beginning of the institutionalisation of political modernity there were explicit democratic currents endeavouring to combine both strands. As we have also seen, the 'republic' was the initial incarnation of something that might have to do with democracy and 'representative government' and the first accepted stabilisation of the combination of liberalism with democratic elements, with this amalgamation strongly skewed in favour of the former. Remember how closed the original modern political systems were, mostly the traditional oligarchic regime, not to speak of autocracies. It was the struggle of the working classes and ordinary citizens by and large that opened up the political system, leading to the broadening of suffrage, with women joining ranks and expanding it beyond male exclusiveness. 'Polyarchy' was even a term put forward to accept the limitations of really existing – liberal – democracy, shorn of any supposedly abstract normative overburden.

Universal citizenship and suffrage, representation and division of powers, the rule of law and open public debate are the essential elements of liberal democracy. Some go as far as to suggest that adding any qualification – such as liberal, as I have just done above – to the definition of democracy is silly or, worse still, a serious mistake. Democracy would be democracy tout court and dreaming of any other form would be misguided and, besides, dangerous. This is how the mainstream social sciences, especially political science, have framed the issue. The problem would be that demagogues and 'populists' are wont to disturb the natural course of the evolution of liberalism. This in turn takes place because there is evil and bad will, due to misguided ideas or because institutions do not work properly. Nothing intrinsic to liberalism would militate against democracy and those problems would

be exogenous to their conjunction, which would, in principle, harmoniously function.

I have argued – and this is somehow present in all chapters of this book – that the situation is more complicated and that particularly the problems of liberal democracy are intrinsic to it. Its seeming absoluteness today is no blessing in disguise for an emancipatory project, perhaps helping the latter to sober up, which as such is not bad at all when democracy is at stake. The separation between abstractness and concreteness initially expelled many issues from its core, which, only with great effort, imperfectly, moving back and forth, have been absorbed by the modern juridical order. The separation between representatives and the represented brings about a permanent – more or less deep – rift between citizens and the actual exercise of power, which thus operates inevitably from the top down. State expediency, connected to a form of domination prior to liberalism, let alone democracy, allows for numerous arbitrary and illegal interventions. The constitution of large bureaucratic apparatuses, which should shoulder the burden of organising participation, introduces a vertical element that shrinks what it was supposed to enlarge. The attempt to characterise politics abstractly, implying the participation of the ordinary citizen, has as its counterpart the permanent intrusion of the personalisation and personification of power in its political exercise, not necessarily so as to recognise concrete questions but to celebrate the powerful. Even when some of these negative elements of liberal democracy paradoxically further democratisation (such as mass parties, unions and associations, or the role of ‘bigger than life’ – mostly – men as leaders of mass movements, often so-called ‘populists’), in the long run they damage this combination.

Deep down, and thus presenting an unsurmountable problem, liberal democracy is as such a mixed regime, as I have stressed at different stages in this book. It possesses democratic but also crucial oligarchic components that are intrinsic to its workings. We know that liberal democracy has meant very low politicisation and the rule of ‘elites’, with a persistent tendency to exclude or dampen the participation of the mass of citizens in politics. Reiterating this was in particular the concern of ruling circles across liberal-capitalist countries in the 1970s, which led to a – successful – project of curtailing democracy and the ‘excess’ of demands it was supposedly entailing, hence yielding a permanent crisis of liberal political systems (surely ill-prepared for this). This was however a mobilisation against the democratisation of both liberalism and republicanism, the accentuation of the democratic features of democracy as a mixed regime, consisting in a trend that was central during the former decades, much resented by ruling political collectivities and dominant classes. De-democratisation did not therefore happen by chance or at random: it has stemmed from demophobia and was unchained by projects aimed at rolling back the participation of the organised ordinary

citizens in the life of the republic. Although we cannot say that advanced liberal oligarchy, as defined in Chapter 11, was envisaged by these perspectives, this would not be overstating the case insofar as the trappings of democracy were not to be touched, while its substance was to be emptied. This is how, in considerable measure, there was a global expansion of liberal democracy across the world in the 1980s, a so-called 'democratic wave', while other areas, above all Latin America, underwent a bumpy but more consistent expansion of democracy, which, despite the desire or misperception of some, was by no means merely the outcome of intra-'elite' agreements (bear in mind that these indeed existed, with ambiguous results, allowing for transitions but restricting them).

Liberal democracy constitutes an imaginary, institutional and practice-steeped political configuration with a crucial role in world history. It has furthered an emancipatory process, intrinsic to some extent to its main outlook, based on rights. One sort of right logically leads to others, especially regarding civil and political rights, insofar as denying them to rational and responsible citizens is hard and openly implies discrimination. It has given leeway for many others to develop too, with the opening of the political space and the law-based protection of contestation of various sorts. If we compare liberal democracy to other political regimes that have appeared in the course of modernity, it is not difficult to see how much more freedom it permits, in spite of yet also along with and curbed by its political inequalities and those others that cut across social life as a whole. It goes without saying that, whatever the form of democracy, it contrasts strongly with autocratic regimes. Even the more limited forms of liberal representative democracy should not be taken for granted nor that contrast belittled.

What is more, liberal democracy must be assessed and evaluated in its own terms as a political form – prior to and beyond any other aspects we may be concerned with, values we may hold and perspectives we find essential to sustain and fulfil. It is not whether social rights and some social leveling out are achieved that matters for the understanding and the consistency of this sort of regime, though overall it is clear that social rights and democracy tend to be associated and the latter is more robust when the former are secured; in this respect, we must also be careful with the opposition between 'formal' and 'substantive' types of democracy.³ On the other hand, the concreteness of issues that turn up in social life, especially for the working classes and other disadvantaged citizens, above all in a universalist-oriented sense, is crucial for the expansive dynamic of liberal democracy. One dynamic reinforces the other. They must not, however, be collapsed, analytically or substantively. The history of socialism and communism testifies to the necessity of their distinction.

If liberal democracy is a particular and constrained configuration of democratic political life, other democratic systems are possible. And yet the

experience of authoritarian collectivism seems to belie this: in looking for more democracy, the societies in which it was established were taken over by some form of authoritarian regime, in which a specific agent has always had the upper hand and unassailable prerogatives, including against socialist legality such as defined by themselves. This shortcoming has not changed at all in its capitalist remnants. The obvious question – raised at least since the nineteenth century – is if it is possible to have a democratic sort of socialism. Liberals tend to think that this is unfeasible since capitalism, with its freedom-based economic structure and dynamic, is essential and actually fits together with liberalism and especially democracy (of course a relatively recent perspective, since liberalism was exceedingly distant from democratic commitments). But this is certainly not true, though we can surmise that, with other ways of organising the relation between humans and ‘nature’ as well as social life at large, democracy would acquire features that would be different and perhaps inimical to liberalism, no less democratic for that – perhaps more democratic indeed. Molecular revolutions would be dependent upon this change of democracy and on a true socialisation of politics.

13.2 From the Commune to the Soviets and beyond

Moving beyond liberal democracy – which at the time the first attempts were made to install it was not even really democratic, to start with due to the almost universal restriction of suffrage to propertied or well-earning males – was the manifest project of anarchism, socialism and communism since the nineteenth century. The debates among these currents were fierce, intelligent and sometimes visionary. However, they all seemingly converged when the 1871 Paris Commune showed how a new sort of popular power could be built and how it could embryonically work. To be sure, the Commune initially tried to govern only one city, albeit the national capital. Federalism projected to connect Paris with the other cities of the country, a plan cut short by its fall and massacre at the hands of French soldiers, with the backing of the already victorious German army. The Commune developed chiefly according to the Proudhonian blueprint. With some perplexity, Marx celebrated it in his famous report, in a delicate moment of the First International, which was about to fall under the command of anarchists, and to some extent against the grain of his own conceptions (which had parties and the state at their core, despite the absence of a systematic political perspective in his work). A new, provisional state form, the anteroom of communism, was devised, though its precise relation to socialism and the time span of its ‘withering away’ was not ever determined. A new, unprecedented horizon of possibilities opened up, though the workers (actually mostly artisans) that had carried out the attempted revolution were unprepared for the task.⁴

The 1905 and 1917 Russian Soviets once again showed how this could be central to the defeat of capitalism and advanced democracy. Resuming Marx's in fact critical celebration of the new state form brought about by the Paris Commune, Lenin greeted but always showed an evident ambivalence towards it. He positively evaluated the Soviets only if they followed Bolshevik strategy and tactics, even hastily deeming them counterrevolutionary when this was not the case.⁵ The party was actually much more self-centred and reasoned in a way the German social-democratic party had inaugurated – that is to say, thinking of itself as the engine of revolution, rather than attributing this role to a truly autonomously organised working class.

In Russia, the Soviets soon became a shadow of what they originally had been, with the Bolshevik takeover in October–November 1917 and the disorganisation of the working class due to the ensuing civil war. In defiance of that, the idea of councils as the form of proletarian power was, regardless, firmly established across the world, among anarchists, left socialists and communists.⁶ Revolution rather than democracy came to the forefront, with the former trusted with in principle furthering the latter. Sadly, Stalinism was by no means keen on that and pragmatically finally instrumentalised the Soviets, or rather their empty shell, in the frame of its brutal consequentialism.⁷ In contradistinction, social-democrats clung to parliamentary politics. Luxemburg was one of the lone voices within the left that was adamant about democracy – as the right of minorities to express and act on their disagreement; she received too little heed from all quarters. The combination of council power with some sort of parliamentary politics and universal suffrage (which had nothing to do in principle with bourgeois politics, contrary to Trotsky's views) could have been a left-wing solution for the new borne Weimar Republic, although regular full-time work created problems for inclusive participation. Regrettably, few were willing to consider this alternative.⁸ Other revolutionary perspectives, connected to the 'mass line', entailed that ruling political forces, or those aspiring to become rulers, should pay attention to popular perspectives and demands; yet this is not tantamount to democracy – verticality still characterises it.⁹

As we have seen in former chapters, authoritarian collectivism, despite the violence that befell especially peasants in forced collectivisation, did expand social rights and provisions, in some countries establishing a relatively advanced Welfare State for the working classes. However, it did so at the cost of smashing not the state; instead, it smashed democracy, of whatever kind, in its building. Any socialist project must start from the recognition that not only did this falsify the twentieth-century experiences as socialist but also placed a stain on the very idea of socialism and communism that has become extremely difficult to remove. Even though many would like to wish it away, such a hope is in vain, with only a thorough revision of what happened allowing for the resumption of something like the socialist project.

That said, the initial Soviet experiment was, whatever the revolutionist consequentialism that came to predominate from these early moments onwards, a perspective of radical democracy. It allowed for what could be seen as the self-government of society. It echoed Marx's 'free association of producers', which, although not named a democracy, plays precisely this role in the architecture of *Capital*, with a direct connection between workers and collective self-administration and self-determination, a scenario that could also have been projected when he pointed to 'the expropriation of the expropriators'.¹⁰ This stemmed from the anarchistic view of association as a path to self-government beyond the state (at times comprising the federative principle, as in Proudhon), which might be seen at least softening the idea of sovereignty, especially if the latter is understood as directly related to state power.¹¹ It also prefigured what Castoriadis put forward as the 'autonomous society' giving itself its 'own law', with democracy and socialism standing in an intrinsic relationship (account taken of the Rousseauian-Kantian reverberations of this formulation that seem to resurrect the sovereign principle).¹² The state survived within it, a very different state on the other hand, since it preserved the dictatorial character of all states according to Marxism, as the 'dictatorship of the proletariat', the Blanquist expression that also collected the Roman sense of emergency and exceptional power, but involved the whole working class in its administration, with the militia comprising citizens in arms. Further developed, this free association of producers would not however imply any kind of 'domination' (*Herrschaft*), since there would be neither state nor repression. How this could come true was never spelt out by Marx, who, in spite of suggesting utopian outcomes, soon became a realist when he had to explain what would eventually come about and how really to get there, especially politically and, more generally, in terms of power.

More recently, the idea of the 'commons' as that which we collectively make (at variance with the liberal perspective that understands it as that which we own or use, reifying human activity) has gained some traction as a means of mediation and collective self-determination. Unfortunately, politically and democratically, it has fallen short of a proper definition.¹³ In all these forms, participation and implicitly association, as well as co-responsibility, have been a basic requirement, the absence of which immediately falsifies them.

While revolution was the way forward during the last two centuries, this road is seemingly closed today. If we think of revolution as a long-term process, this is undoubtedly not the case: modern civilisation will be overcome at some point, including political modernity, likewise the surviving party-state systems that evaded the fate of the Russian and East European variants of authoritarian collectivism. Regarding political revolutions, this has become extremely unlikely, save for skirmishes and revolts in the outer periphery

of the global system. Suppose ‘communism’ persists as a horizon-concept (though thinking of it in a Platonic way is not of great help). It must not, today at the very least, be dissociated from democracy as the free collective exercise of self-determination and government. At present, a different and more decisive issue must receive our attention vis-à-vis the mixed character of liberal democracy, particularly its derivation towards an advanced form of liberal oligarchy.

13.3 Radical democracy and immanent critique

Democracy has classically been the government of the ‘many’. This is radically true in radical democracy, indeed part of its outline and open (future) ontology. Ideally, to resume the elements and models laid down in Chapter 11, in Table 11.1, we can present radical democracy as suggested in Table 13.1. It may be at this point helpful to look at the former again in order to compare it with the present one.

Radical democracy is evidently a type of regime that has never been further developed. It has never survived for more than extremely short periods. The Paris Commune and the Russian Soviets, besides a handful of other short-lived experiences and approximations, were attempts to bring into existence something that would lead in this direction, something modernity had never known. They allowed a prominent role for repression to overcome the hostility of ruling collectivities which they dislocated or could eventually dislocate. Radical democracy, with encompassing participation and open

TABLE 13.1 A radical democratic regime model

| <i>Selection of incumbents, participation, public debate</i> | <i>Weight of police/infrastructural domination and weight of rights</i> | <i>Governmental rules</i> | <i>Social basis</i> |
|--|---|---|--|
| Totally encompassing, very open debate, variably stable | No political repression and expansion of civil, political and other sorts of rights, though they may be superseded as rights; strong and many-sided infrastructural dynamic, though beyond traditionally defined state structures | Tendency to decentralisation, possibly partly direct, partly representative | Plural, conflictive and mobilising, solidary |

debate, expansion of rights, ultimate supersession of the division between state and society as well as repressive apparatuses and practices, the decentralised exercise of power, with far-reaching mobilisation and conflictual but solidary political dynamic exists only in the eye of the mind, as an ultimate imaginary, institutional and practical horizon. We could think of it as a 'regulative idea', in a Kantian sense, to which the life of actually existing democracies could be contrasted and adjudicated. To some extent this is in order and will be drawn upon in what follows, with the proviso that I take radical democracy instead as immanently present in modernity, though within this configuration it cannot even start to flourish. It lies therefore at the core of the *immanent critique* of political modernity and modernity as a whole, as an emancipatory horizon prefigured in those brief periods in which communes and councils emerged, which scientific knowledge must be open to recognise as a possibility, beyond the reification of really existing liberal democracy.¹⁴ In other words, the values underpinning radical democracy, which equal freedom qua equal power synthesises, loom in the daily imaginary and in the intellectual configurations of political modernity and modernity more generally, practically energising agents keen on bringing them to bear on the institutions that organise our common life.

Radical democracy refers first and foremost to the political system and a specific political regime. At closer inspection, it is certainly more than that. Taken in its radicality – implying the inexistence of inequalities that hamper political participation – and a new articulation between abstract and concrete, with the complete cancellation of domination, radical democracy is incompatible with strong and permanent hierarchies. No division between rulers and the ruled can be accepted: at most citizens may take turns in hierarchical political (or post-political) power positions, with direct and representative aspects being combined. Capitalism, patriarchy, racism and chauvinism would not be permitted either, as they, directly and indirectly, affect the division of social power and yield undue influences upon the political system. There would be no reason to tolerate them, with equal freedom and solidarity calling the shots across social life. Free time for participation is of the essence in radical democracy, a need that beset councils in capitalist societies.¹⁵ Lack of time away from work for the majority would soon once again open space for the emergence of new professional politicians – under the guise of professional revolutionaries, as it did, especially in the Russian soviets – or of something with a new countenance in the name of antiparty movements. The liberation from work, the overcoming of gender divisions of labour and the side-lining of other institutions and processes that hinder the possibility of being part of decision-making processes as well as collective execution and administration are crucial for radical democracy. The former state apparatus is unlikely to disappear, but radical democracy would bring its repressive machine down to a minimum, with in addition

citizens (or post-citizens) taking on a far more regular and shared supervisory role regarding the bureaucracy, with new configurations emerging. Radical democracy is the absolute socialisation of politics, with the participation of each and every one. It may even imply the surpassing of politics as an independent dimension of social life, in a configuration in which redifferentiation processes have altered the imaginary, institutions and practices.

Usually, radical democracy has been thought of in connection to direct democracy, as indeed a form of socialisation of politics. These were the experiences of Paris in 1789–93¹⁶ and during the 1871 Commune; all councils that sprung up with and after the example of the Russian revolutionary Soviets tried to reproduce it. Participation is, of course, intense once this happens. Nevertheless, we must not consider radical democracy only in terms of direct democracy, that is, as if only with decisions taken in the presence of all citizens' or workers' democracy would assume a radical character. This was not true even regarding the 1917 Soviets, which possessed superordinate organs in which restricted and revocable 'delegation' (in practice eventually a form of inverted pyramidal representation) had a paramount role to play (to start with in accepting power after the October Bolshevik insurrection). Although there are aspects – intense participation and open debate, beyond Rousseau's quasi-plebiscitary voting, bereft of discussion – that strongly recommend direct democracy, which has also once again become a desire for many who take part in contemporary mobilisations, with their demand for autonomy, other elements point in the opposite direction. The complexity of contemporary modern societies is the first of them. It is unfeasible to put citizens together to discuss and take decisions that affect them all; this is feasible and commendable only on a smaller scale, and perhaps someday in part through electronic means. Representation in some form or another will be inevitably introduced in order to allow for encompassing decisions at the national and, ultimately, the international level. Participation and debate can assume different forms, with news channels and institutions involving citizens in varied and intensive manners. Then we could speak of representation as embodying a more advanced principle, which is most decidedly far from true today.¹⁷ It may combine with direct mechanisms, such as diverse types of council, debates and voting procedures (with eventual online initiatives).

Radical democracy may be unstable, due to its open conflictual texture. While it should be contingently fixed, solidarity as a value should push for the self-correction of instability. Institutional participatory reforms, opening and strengthening the societal political system, should be paired with renewed forms of inclusive national identity, without shying away from conflict and support to social and political plurality. It should go hand in hand with social and economic reform, universally oriented, beyond liberalism, curbing state violence and intrusive, especially political, surveillance. This

perspective might, should indeed, in advanced programmes, move towards collective property arrangements.¹⁸

Ideally, radical democracy aims at the global level, however hard this may seem to bring about in our present conditions. Yet we need to consider that there may also be limits to this since the structure of political power as such reproduces a system of domination that is obdurate. Should we simply give up and recognise that sovereignty and the very idea of self-legislation, that is, the exercise of collective autonomous law-making merely provides the cover and justification for the division between rulers and the ruled, with the corollary that the use of rights to fight for more equality is all we can hope for? In other words, that elections, open debate in an uncensored public sphere, protected participation, as large as it may be, and other institutes of liberal democracy, including an autonomous judiciary, are at most capable of allowing for some control of rulers (in a way not dissimilar to what is suggested by minimalist understandings of democracy) and are all we can have in our horizon? Or alternatively, that democracy is just the perpetual struggle against the state, a form that is prone to kill any democratic content?¹⁹

These perspectives contain a rather undialectical core, which overlooks the fact that this struggle around rights has allowed for changes, especially more democracy. Notwithstanding their retreat in the last decades, these are part of a larger movement that is a practical immanent critique of really existing democracy that cannot avoid its entanglement with the political system and, more generally, the state, without illusions about self-legislation (let alone the problems the very idea of sovereignty, autonomy and self-created *nomos* entail). Can we think of a distribution of power, within a massive emancipatory movement, in which huge apparatuses, to start with parties aiming in principle at emancipation, would imply cooperation and conflict? Can large political organisations, especially political parties capable of mediating with the state political system, be reinvented? Could they operate with greater horizontality rather than resorting to verticality, without losing efficiency, with less competition for power and more cooperation and sharing – meaning that organisation is not equivalent to oligarchisation, perhaps an intractable problem regarding political parties, a sort of organisation that seems unavoidable but difficult to save? Can we consider political cycles that may lead to more openness of the political system and of the political space, in spite of its closure in other cycles, both shorter or longer run? There can be no peremptory answers to these questions if we want to maintain the moment of radical democracy.

We are as far from radical democracy as we could be, and there are no ready-made recipes or ideal institutional blueprints. Liberal democracy is, in the best of situations, the rule under which we live, if not under more oligarchic or even autocratic regimes. We must envision radical democracy as a horizon which we can come nearer through the sober recognition of the

limitations of the present, but also looking for the possibilities it offers, irrespective of how narrow they may be. And, if we choose this path, we must ask who might be the agents of this push for radical democracy.

13.4 Radical democracy and plebeianism

The ‘people’ and the ‘working classes’, the ‘poor’, ‘plebeians’ and the ‘multitude’ have been the names attributed to subaltern collectivities in history.²⁰ In a negative sense, the working classes or the people (the ‘populace’) have been the principal categories used by those who want to transform the world in an emancipatory direction. The poor has appeared as a more passive category, except sometimes in revolutionary moments, having become once again conceptually politicised with recourse to ancient philosophy. More recently, some have returned to the classical ‘multitude’ as the collective agent of emancipation. These are all in themselves and to a variable extent pertinent approaches, depending on the standpoint adopted.

As we know, the working classes (or the ‘proletariat’) have been the staple of Marxist theories, with a rather loose definition oscillating between industrial workers and waged workers in all domains, regardless of the kind of labour they perform and their social location. Britain and Germany moved closer to the generalisation of an industrial working class at the beginning of the twentieth century, but this has never happened elsewhere. There is no reason to believe that it will happen in the future, with the multiplication of the middle classes and the growth of the tertiary sector, save if we take all wage workers homogeneously, disregarding the heterogeneity of these working classes as such and the increasing number of unemployed and unemployable people. This conceptual and political operation would also have to neglect the factors that push the middle classes away from self-identification as part of the working classes, as well as consider if they are able to organise themselves and become a centred and politically active collective subjectivity, a problem for the working classes as such too. The people as the part of the population of a country lacking social standing and often seen as rough and uneducated was a category very much activated at the beginning of modernity. While it lingers in the background of a lot of what is said and done by the socially privileged, it can no longer be used for publicly disqualifying anyone, nor can it be applied by critical thinking to identify agents of emancipation. The poor – who were the many for the Greek theory of ‘forms of rule’ or ‘government’ – indeed function as a phenomenological category, descriptive of people bereft of wealth and even the essential means that must allow for physical survival. That said, turning it into a (or the) primary emancipatory category is problematic insofar as it refers primarily to the economic (at most social) condition of such collectivities, whereas they have been consistently, albeit not necessarily, conservative in most modern

societies if they do not partake in the collective organisation of the working classes. The multitude, a medieval and classically modern concept, as the collective agent of emancipation has depended on a very loose phrasing and an immediacy that betrays the lack of, say, dialectical thought, characterised by the absence of mediation. Without rejecting the validity of these other approaches, I will adopt plebeianism as my axial category in emancipatory terms with respect to political modernity.

Who are the plebeians, then? They are certainly not the political embodiment of an imagined homogeneous ‘people’, though this concept need not be discarded either, if its internal plurality is acknowledged. What does plebeianism mean specifically at the political level thus?

Initially, we can take a more general view and see in plebeians all those who are, albeit different among themselves, deprived of the social links, usually inherited through family, that confer privilege of all sorts regarding money, knowledge and political power. This was the meaning of the term in its Roman and Renaissance incarnations. Once we think about political power, and its differentiation in modernity, we are referring to plebeians as those with limited access to its levers and little influence on the political system, against diverse versions of aristocrats/oligarchs and ‘grandees’ that, even if in rotation, rule in this dimension.²¹ To be sure, those other connections and sources of social power can usually be, and indeed recurrently are, translated into political influence. It perfectly fits therefore the structuration of the modern political system, not least autocracy (since autocrats do not rule alone, whether they are all-powerful or the ground upon which they stand is shakier), oligarchy (traditional or advanced) and liberal democracy (with its mixed political constitution).

Plebeians, in modernity, are those placed outside such ruling *political* circles; they are politically submitted and subaltern to them – in short, dominated. Plebeians are thus citizens subjected to political domination, as defined in Chapter 6, with moreover the ramification of the political system across the whole state apparatus. Liberal democracy has opened room for the influence of subaltern agents in politics, yet, in the end, it is always a small circle of people who have collectively ruled in political modernity as well as in authoritarian collectivism and its remnants. Plebeians include and crisscross with especially the poor and workers, but their circle also encompasses at least part of the middle classes insofar as these do not enjoy political influence. That is what we have seen in the last decades, reproducing what had happened in other moments of modernity. Conversely, those who do not rule directly but have significant social influence, primarily due to wealth – or, more precisely in modernity, ‘capital’, so as to go beyond the phenomenological characterisation the former term implies – cannot be cast as plebeians. All in all, in concrete regimes, under the aegis of a political ruling circle, these and the dominant classes (with their distinct ‘fractions’) make a more or less cohesive historical power block.

Plebeians are usually, or at least frequently, unruly – which links up with the fact that they are the agents of radical democracy. Aristocrats have been depicted throughout different civilisations in all manners, as plebeians have been, with the question however of their unruliness always coming up as modernity, with its specific political systems and regimes, develops. The telos of the political action of plebeians is precisely ‘non-domination’.²² Empirically, the main expression of plebeianism today, reflecting their political exclusion or side-stepping, are the mass demonstrations the start of which can be dated to the Argentinian 2001 motto ‘they all must go’, through the early 2010s Arab Spring, followed by the Spanish indignados and the Brazilian 2013 massive popular explosion, to the 2020 US movement triggered by the murdering of Georg Floyd and the Chilean uprising: these are all to a large extent *plebeian revolts*. They have become a permanent fixture of the contemporary political landscape, sided by other, more restricted manifestations, such as the *gilets jaunes* in France. Yet, if radical democracy is dependent upon plebeianism to thrive, plebeians cannot be politically essentialised, likewise the proletariat and the poor, who can be brutally antidemocratic. Plebeians are often in awe of monarchies (just bear in mind the relation between the people and their kings and queens in Britain’s quasi-republican political system and state), while Nazism and so-called ‘populism’, as social movements, have for instance served as political outlets for the indignation, frustrations and even resentment due to exclusion that also tends to be a hallmark of plebeianism, with the monstrous forms it has sometimes assumed not to be taken lightly.

In some of these arrangements (certainly not fascism), democracy may develop through a form of ‘Cesarism’. The process may go some way towards mobilising plebeians (or, alternatively and simultaneously, the working-classes, the poor, the low-middle classes, the multitude, as far as this as such exists). Or extreme-right politics may be the outlet, leading to far-reaching de-democratisation, though initially such groups may offer a democratic outlet to the population. In the first case, much as hierarchies are reproduced at the top, overall a more horizontal (networked) political relationship comes about, imaginarily, practically and institutionally; in the second case, it is hierarchy and command that prevail and possibly coups d’état or, in the mildest cases, the restriction of democracy.²³ As usual, also when recognising the plebeian aspect of popular mobilisation, left-leaning politicians are keen to skip the discussion of their role and of their organisations as potentially – and in the end of the day effective – new collective oligarchies, not to speak of the intense personalisation of power and the rule of the one.²⁴ These problems must be however confronted if we want to keep and deepen democracy. The left needs to learn to deal with and further democratisation in a world of gelatinous political dynamics.

Plebeians are here, evidently, modern citizens, though they may be somewhat uncivil too, especially when levels of oppression are high. They

strengthen citizenship with their unruly behaviour, surpassing its limits at certain moments and making it thicker when linking their moves to the democratising trend that accompanied modernity up to the 1990s, comprising predominantly members of the working and popular classes more generally, with middle-class elements usually joining their ranks. Plebeianism questions citizenship on the other hand in that it brings out the formal and limited character of the rights-form underpinning it – socially more generally and particularly in what concerns the political dimension. Today this has been radicalised with the development by stealth of advanced liberal oligarchy as an innovative political regime, with plebeians' unruly mobilisation exploding, especially insofar as mediations between the state and the societal political system have contracted. The core of this new experience of plebeianism has doubtlessly been sustained by the workers and the poor, but we can often see relevant swathes of the middle classes sharing the same sentiment that political exclusion has engendered worldwide.²⁵ This does not need to be grasped according to the now pervasive and, as I have repeatedly argued, problematic concepts of 'populism'. Instead, an actual and sharp separation between rulers and the ruled is typical of our times. To live up to its promises, modern politics needs to be democratised, not delivered into the hands of such sort of big 'leaders'.

We do not need, moreover, to suppose such a trenchant and pure rationality as Enlightenment thinkers tended to do, nor demand the transparency that sometimes visions of autonomy and capacity for decision-making imply. Much of what we must see as rational may be practical rationality, combined with good sense,²⁶ and reasonability, with the circularity of discussions in the public sphere promoting the rationality necessary for democratic life. This more circumscribed, collective and practical view of rationality has nothing to do with the elitist view of incapable citizens, on the contrary; their exclusion is actually what in considerable measure generates the drawbacks this standpoint denounces, following a vicious circle in which elitism causally partakes. Plebeian citizens are neither illuminated nor stupid; and, although they may collectively adopt reactionary and irrationalist perspectives, they can achieve collective enlightenment through mobilisation and rational engagement, also beyond the instrumental rationality attached to individual or particularised interests. We must thus not dismiss concerns with rationality, communication and deliberation, especially since there is a fragmentation and to some extent 'mass' individualisation of the public sphere with the emergence of the internet and social media. Empty polarisation or, even worse, the dissemination of right-wing views, wedged with so-called 'fake news' (not such a novelty nor a monopoly of the right – found also in left-wing 'narratives'), is detrimental to rational debate, which has moreover lost its centre of gravity. If traditional mass media were highly oligarchic, and usually at best politically centrist, they in some measure provided for

professionalism and fact-checking. To reconstitute a rational plebeian and democratic public sphere, broadening its accessibility to citizens as authors and supporters of opinions, is an urgent, even if not easy political task. It will be necessary to somehow snatch back from the ‘alternative right’ the rebellious view of social life and attendant projects that belonged to the left (though fascism as such had had a go at that too).²⁷

As of today, plebeianism tends to show a republican face, despite the awe plebeians may sometimes display in the face of queens and kings, within the bounds of the liberal infrastructure characteristic of modernity. Beyond that, we can think, as a project, of a radicalisation that would imply a sort of socialist plebeianism. The total abolition of hierarchies – to start with, political – would be carried out, in all domains of social life, with the elevation of plebeians in all of them. Once again, as aforementioned, we could take this as a regulative ideal, to gauge democracy as it really exists, implying also the political education of plebeians must be carried out in order to buttress free and general participation.²⁸ Above all, we can see it as part of immanent critique, which points to plebeianism, with its anti-hierarchical strand, as committed to equal freedom in all spheres of social life. Besides, any radically democratic plebeianism inevitably has its dissolution as a telos since a horizontal-network push should lead to the dissolution of the superposition of rulers and the ruled, dominants and dominated, which modern – and postmodern – political systems restlessly reproduced anew. We would then finally see radical democracy come into being. Whether this can be fully realised is arguable, but it certainly provides a telos that is worth striving for.

Notes

- 1 Despite his anecdotal method and a contradictory main thesis, with the unfortunately usually superficial statements about modernity, see David Graeber, ‘There never was a West: Or, democracy emerges from the spaces in between’ (2005), in *Possibilities: Essays on Hierarchy, Rebellion, and Desire* (Oakland: AK Press, 2007).
- 2 Catherine Colliot-Thélène, *La Démocratie sans ‘demos’* (Paris: Presses Universitaires de France, 2011), chap. 2.
- 3 Cf. Colin Crouch, *Post-democracy* (Cambridge: Polity, 2004); Ellen Meiksins Wood, *Democracy Against Capitalism: Renewing Historical Materialism* (London and New York: Verso [1995] 2016), pp. 202–203.
- 4 Karl Marx, ‘The Civil War in France’ (1871), in K. Marx and Friedrich Engels, *Collected Works, 1870–1871* (London: Lawrence & Wishart, 1986).
- 5 V. I. Lenin, *The State and Revolution: The Marxist Theory of the State and the Tasks of the Proletariat in the Revolution* (1918), in *Collected Works*, vol. 25 (Moscow: Progress, 1964). For his changing practical view of the Soviets, in which form and content are sharply separated, and the decision to build on their model as a responsibility of the Bolsheviks themselves after victory, see Idem, ‘On slogans’ (1917), in *op. cit.*
- 6 For a selection of texts, see Ernest Mandel (ed.), *Contrôle ouvrier, conseils ouvrier, autogestion* (Paris: Maspero, 1970).

- 7 In the strategy of communist parties, liberal – bourgeois – democracy was only a stage to be superseded by proletarian democracy, which ended in an antidemocratic framework. This often led to its viewing as merely a tactical moment, which they could discard when necessary, though eventually this changed for several of them.
- 8 Rosa Luxemburg, ‘Die russische Revolution’ (1918/1922), in *Politischen Schriften III* (Frankfurt am Main: Europäische Verlagsanstalt, 1968); Arthur Rosenberg, *Geschichte der Weimarer Republik* (Frankfurt am Main: Europäische Verlagsanstalt, [1955] 1961), pp. 16–19 – for whom the Soviets were a form of ‘primitive democracy’ and had nothing to do with Bolshevism; Leon Trotsky, *The Revolution Betrayed* (New York: Path Finder, [1937] 2004), pp. 190ff.
- 9 Mao Tse-Tung, ‘Be concerned with the well-being of the masses. Pay attention to methods of work’ (1934) and ‘On the correct handling of contradictions among the people’ (1957), in *Selected Works of Mao Tse-Tung*, vols 1 and 5 (Peking: Foreign Languages Press, w/d).
- 10 K. Marx, *Das Kapital. Kritik der politischen Ökonomie*, especially vol. 1, books 1 and 2 (1867, 1873), in K. Marx and F. Engels, *Werke*, vol. 23 (Berlin: Dietz 1962).
- 11 Pierre J. Proudhon, *Idée générale de la révolution au XIXe siècle. Choix d’études sur la pratique révolutionnaire et industrielle* (Paris: Gariner Frères, 1851); ‘Du principe de Fédération’, in *Du Principe Fédératif et de la nécessité de reconstituer le parti de la révolution* (Paris: E. Dentu, 1863). See also Pierre Dardot and Christian Laval, *Dominer. Enquête sur la souveraineté de l’Etat en Occident* (Paris: La Découverte, 2020), chaps 9–10.
- 12 Cornelius Castoriadis, *Le Contenu du socialisme* (Paris: Unión Generale d’Éditions, 1979); Idem, ‘Pouvoir, politique, autonomie’ (1988), in *Le Monde morcelé. Carrefours du labyrinthe III* (Paris: Seuil, 1990), pp. 160–61, 171. They both, at least in these passages in the case of the latter, entertain, at any rate, strong Cartesian perspectives regarding the future transparency of society, a problem especially for a psychoanalytical approach.
- 13 Michael Hardt and Antonio Negri, *Commonwealth* (Cambridge: Harvard University Press, 2011); *Declaration* (New York: Argo, 2011); Idem, *Assembly* (New York: Oxford University Press, 2017); P. Dardot and C. Laval, *Commun. Essai sur la révolution au XXIe siècle* (Paris: La Découverte, 2014), especially pp. 49–51ff; Raquel Gutiérrez Aguilar, Mina Lorena Navarro Trujillo and Lucia Linsalata, ‘Repensar lo político, pensar lo común’, in Daniel Inclán, L. Linsalata and Mária Millán (eds), *Modernidades alternativas* (Mexico: UNAM, 2016).
- 14 Seyla Benhabib, *Critique, Norm, Utopia* (New York: Columbia University Press, 1987); José Maurício Domingues, *Modernity Reconstructed* (Cardiff: University of Wales Press, [2002] 2006); Idem, ‘Vicissitudes and possibilities of critical theory today’ (2011), in *Emancipation and History: The Return of Critical Theory* (Leiden: Brill, 2017 and Chicago: Haymarket, 2018); Idem, ‘Ecumenical critical theory, pluralism and developmental trends’, *Thesis Eleven* vol. 181 (2024): 1–17, including immanent critique. See also Titus Stahl, *Immanent Critique* (Lanham: Rowman & Littlefield, [2013] 2021).
- 15 Heinrich August Winkler, *Weimar 1918–1933. Die Geschichte der ersten deutschen Demokratie* (Munich: C. H. Beck, [1993] 2005), p. 51.
- 16 Very early on a constitutional project aimed at stabilising, disciplining and clearly defining the functions of the direct democracy which had so voluptuously taken over Paris. See Jean-Antoine Nicolas de Caritat dit Condorcet, ‘Plan de Constitution présenté a la convention nationale’ (exhibiting in addition an ‘Exposition des principes et des motifs du plan’) (1793), in *Œuvres de Condorcet*, vol. 12 (Paris: Hachette, 2012).

- 17 Only then could we speak of ‘communicative’ ‘circularity’. See Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: The University of Chicago Press, 2006). I consider this interesting but ambiguous, also because Urbinati has partly since then apparently altered her views. See Idem, *Pochi contro molti. Il conflitto politico nel XXI secolo* (Bari and Rome: Laterza, 2020). It is worth remembering here the sophisticated Italian discussion of the 1970s: Norberto Bobbio et al., *Il marxismo e lo stato* (Roma: Mondoperaio, 1976).
- 18 Claude Lefort, ‘La question de la démocratie’ (1983), in *Essais sur le politique* (Paris: Seuil, 1986); Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy* (London and New York: Verso, 1985); Andrew Arato and Jean L. Cohen, *Populism and Civil Society: The Challenge to Constitutional Democracy* (New York: Oxford University Press, 2021), chap. 5.
- 19 These are the perspectives of Colliet-Thélène, *op. cit.*, and Miguel Abensour, *La Démocratie contre l’Etat. Marx et le moment machiavélien* (Paris: Félin, 2004] 2012). See also the rather dichotomous argument of Jacques Rancière, *Au Bords du politique* (Paris: Folio, 2004).
- 20 I have dealt with the ‘people’ in Chapter 4; Marxism excessively focuses on the working classes. For the poor and the multitude, see, respectively, Andreas Kalyvas, ‘Democracy and the poor: Prolegomena to a radical theory of democracy’, *Constellations*, vol. 26 (2019): 538–533; M. Hardt and A. Negri, *Empire* (Cambridge: Harvard University Press, 2000).
- 21 Martin Breaugh, *La expérience plébéienne. Une histoire discontinuée de la liberté politique* (Paris: Payot, 2007). Further into Roman history, see Arnaldo Momigliano and Andrew Lintott, ‘Plebs’, in Simon Hornblower, Antony Spawforth and Esther Eidinow (eds), *The Oxford Classical Dictionary* (Oxford: Oxford University Press, 2012, 4th edition). Classically, the ideas more closely associated with the sympathy towards plebeians – a move that as such does not entail proper democratic commitments – is found in Niccolò Machiavelli, *Discorsi sopra la prima deca di Tito Livio* (1531), in *Edizione nazionale delle opere di Niccolò Machiavelli* (Rome: Salerno, 1997).
- 22 In his discussion of the medieval city, Weber was far more perceptive and grasped the element of power in social struggles. However, he was oblivious to it in political modernity as *politics* (despite smaller pieces that do not fit into the general typologies of domination). Max Weber, ‘Die nichtlegitime Herrschaft (Typologie der Städte)’, in *Wirtschaft und Gesellschaft. Grundriss der verstehende Soziologie* (Tübingen: J. C. B. Mohr [Paul Siebeck], [1921–22] 1976); J. M. Domingues, ‘The City. Rationalization and freedom in Max Weber’, *Philosophy and Social Criticism*, vol. 26 (2000): 107–126.
- 23 J. M. Domingues, ‘The imaginary and politics in modernity. The trajectory of Peronism’ (2016), in *Emancipation and History*; L. Trotsky, ‘Bourgeoisie, petty bourgeoisie and proletariat’ (1932), in *Fascism: What It Is and How to Fight It* (Chipendale: Resistance Books, 2007), pp. 19–20.
- 24 This applies to Bolivia, for which see Álvaro García Linera, *La potencia plebeya. Acción colectiva e identidades indígenas, obreras y populares en Bolivia* (Bogotá: Siglo del Hombre and CLACSO, 2009). Rulers, in his depiction, would be only the traditional oligarchies and the bourgeois classes – whereby the traditional Marxist economic reductionism comes once again to the fore, with deleterious political consequences.
- 25 A more collective and radical, and a more liberal individualistic perspective of plebeianism, are found, respectively, in Breaugh, *op. cit.*; Jeffrey Edward Green, *The Shadow of Unfairness: A Plebeian Theory of Liberal Democracy* (Oxford: Oxford University Press, 2016).

- 26 Antonio Gramsci, *Quaderni del carcere* (Turin: Einaudi, [1929–35] 2001), vol. 1, pp. 75–76; vol. 2, 1334–1483; vol. 3, pp. 2270–2271.
- 27 Manuel Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age* (Cambridge: Polity, [2012] 2015); Jürgen Habermas, *Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik* (Frankfurt am Main: Suhrkamp, 2022).
- 28 Though Marxists were oblivious to the issue, while practically betting on it, plebeian intellectualism was recognised in the European and Russian left by Weber, *Wirtschaft und Gesellschaft*. Weber, *Wirtschaft und Gesellschaft*, p. 631.

PART V



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EPILOGUE

Political modernity, social change and critique

I have explored in this book the complex evolution of political modernity, its origins, development and alternatives, the dominant position of liberalism within it, seconded by republicanism, but also fascism and corporatism, socialism, anarchism and communism. I have dwelt upon the failed attempt to build the latter that ensued in authoritarian collectivism. Of particular interest was to theorise the expansive moment of liberalism, with its embrace of concrete social issues and its protracted democratisation, followed by its retraction, with callous social policies and de-democratisation. Plebeianism, rather than 'populism', has been a response to this regressive turn of events, although sometimes siding with right-wing or even left-oriented personalism and demagoguery, by default mostly. I have also dwelt upon the return of 'real socialism' to modernity, by opting out of its own project and espousing capitalism. Some would say that authoritarian collectivism is, at present, really on the long-term course towards a truly socialist society. Considering China's and Vietnam's political authoritarianism, as well as their deep capitalist inequalities, this has to do with wishful thinking rather than with reality. It is also unlikely, albeit not impossible, that liberalism can resume its truly expansive moment, despite the fact that some, starting with important political currents, especially in the United States, seem to bet on this 'progressive' agenda.

It is precisely the self-blockage of liberalism, politically and socio-economically, in tandem with the defeat or limitations of left undertakings and projects, that has open room for extreme-right and personalist currents – which, following liberal, almost common-sense perspectives, a considerable number of social scientists have been calling 'populist'. It is doubtful

whether we are living through a time of, properly speaking, political crisis – of which, when it does surface, plebeian revolts have been, usually unsuccessfully, the main expression (along with rare extreme-right coup attempts or actual military coups). Crises imply a deeper and more concentrated delegitimisation of political regimes and political systems, whereas liberal democracy has been amended incrementally and, if not on the sly, almost by stealth in an authoritarian direction. A generalised malaise is, in contrast, plain to see, with promising movements appearing time and again, but also with extremely self-serving currents, with or without personalistic strong men and women, taking advantage of the oligarchic closure of the political system. To be sure, acute crises have emerged from time to time, but they have been mostly contained by dominant collectivities.

What does the future hold in stock then? To try and answer this interrogation, we shall consider social change here from two angles: one from within a more limited time-frame and another one with a long-run radical outlook. A politically oriented critical theory must address them both.¹

Right now, we are witness to an inflexion within the third phase of modernity or possibly the beginning of a fourth phase, with the state assuming a more proactive position, with possibly new networks between its apparatuses and business in innovative areas, while with respect to social policies changes have been very restricted. In particular the impulse towards the universalisation of citizenship that was so important during a large swath of the twentieth century is missing. Geopolitics, with the mounting dispute between the United States and China, accompanied, respectively, by Europe, Japan and South Korea, and by Russia, is part and parcel of that first part of the new, liberal transformative agenda, while the party-state stresses nationalism and control with the goal too of further economic and scientific-technological development (with India striving to take off while other areas of the planet simply fall behind). To be sure, the situation may change. Social movements and plebeianism may gather strength, new connections between the societal and the state political system may emerge, social policies may be strengthened and universalised, while climate change is properly addressed regarding justice and democracy deepened. Attention must be paid to uneven developments across the world, especially as to the differences between central, peripheral and semiperipheral countries, economically and geopolitically speaking, although a more general move seems to be unfolding. Moreover, even if the resumption of the expansive moment of liberalism is unlikely, the struggle for democracy and rights remains vital across the world, as discussed in the last chapter. We can hopefully take it beyond liberalism, with renewed forms of social democracy and socialism, beyond also technocracy and coyness, centralisation and authoritarianism, thus without forgetting the insights of anarchism.

In this conjuncture, what should we expect from critical theory? I have in particular argued that critical theory must adopt on an immanent approach

based on key aspects of the modern imaginary and modernity's developmental trends, with different civilisational elements (internalised alterity regarding modernity) possibly having a role to play in it – which must be, whatever our position on the subject, spelt out. The challenges facing us are legion, in both their abstractness – the strengthening of the basic features of citizenship – and concreteness – with social issues related to wealth and inequality, labour and rent, the still subordinated position of women and the discrimination against 'races' and ethnic groups, alternative genders and sexualities, health, education, the arts and so on and so forth. Eliminating war is of course a key task too. The environment, our relations with other species and climate change present an increasingly important area of concern for critical thinking. Socialism, or however we call it, and whatever it may come to mean – in principle the radical socialisation of all that is important, implying networked horizontality and well-being for everyone, far beyond state control – is a very distant and pale image looming in our horizon. The defeat of the projects that tried to implement some version of socialism was tremendous, yet it lingers and it may well be that one day, in the long run, the human species will learn to fly.

Marxism has been the main critical theory of modernity. This book has actually drawn upon it in many ways. I have rejected, in contradistinction, many of its tenets, which have not stood the test of time. This is clearly the case at the political level – regarding the numbers and orientation of the working class as well as the role of the state, the party and democracy –, though Marxism's influence in this dimension was huge through diverse socialist and communist currents. In this respect, anarchism and social democracy have historically played an important role too, their lack of relevant theoretical foundations notwithstanding. The fact is that none of the three was capable of assuring the passage to socialism or something similar to it. So-called 'Western Marxism', with the significant exception of Gramsci, has failed on this count too and is moreover plainly exhausted, including the Frankfurt School, on both aspects, with its diverse generations. Postcolonial and decolonial theories have recently claimed a central critical status, but they have largely been confined to discursive operations, loosely articulated regarding concepts and limited in their systematic connections to social reality. They have too often reified modernity unilaterally, with a stress on its oppressive side, making very little conceptual progress and even less providing a vision of the future in a social formation in which true emancipation would have been achieved. If they are capable of energising and offering comfort to agents that have taken the brunt of modernity's dark side, postcolonial and decolonial stances fall short of offering proper horizons for social change, let alone a strategic approach. In turn, liberal critical thinking, despite more occasional insights and a commitment to democracy, rarely defies the foundations of modernity.

At the heart of critical theory – or critical thought, if you will – remains, just like at the very beginning of modernity and regardless of whatever else we add or subtract, the diffuse idea of *equal freedom* as, let me stress once again at this stage, *equal power*. Liberalism phrased it initially in legal terms; moving further, its development had it branch out in several directions and ever more deeply, substantively for the most part. Critical theory must today be *ecumenical* in that it must accept a plurality of approaches as well as in its internal scaffolding. Nevertheless, the articulation of freedom and equality, which sublates both, must be its *criterion of demarcation* vis-à-vis other critiques of modernity so that it keeps reactionary standpoints at bay, in addition to developing proper criticism and theoretical aptitude. How and with what sort of semantics would equal freedom as equal power morph into something else akin but eventually different from what we find in modernity, in the bounds of a new, genuinely (no longer parasitical) post-modern imaginary is anyone's guess. Radicalising it would likely imply a socialist society, in whatever sense it can be forecast, which must, whatever else is supposed, have democracy at its core, concerning all decision-making processes. Socialism must necessarily reproduce and take equal freedom qua equal power to completion if it is to make any sense.

Besides, how we relate, along with a renewed form of social and planetary solidarity between human beings, to the whole of what modernity has understood as 'nature' is still a very much open question. Climate change is doubtlessly a crucial and urgent question yet the interrogation looms larger. Answers ought to lead us beyond the relations of 'domination' already denounced by the Frankfurt School, without falling into more restricted and insufficient approaches, supposedly connected to 'ancient' knowledge and which are more often than not the proposal of middle-class intellectuals, considering their sometimes-sensitising power (as we see with the Latin American 'buen vivir' and the like). Any solution must be ready for the long haul and engage large social majorities, much as its practice may be confined to minorities at an initial stage. The left must surely go against and beyond right-wing forces that have been awfully successful by insisting on the defence of the supposedly traditional family and on opposing immigration, two chimeras – since changes underpin them that are not reversible – they have cleverly and demagogically manipulated. Conflict has been, as class struggle, embraced by the left, while its democratic plebeian political character has been neglected. Now that the latter has been mounting, with, regrettably, citizens' dissatisfaction frequently captured by the extreme-right, its positivity must be embraced and its energy channelled to effect social change in an emancipatory direction, more or less far-reaching in programme and consequences, without neglecting the necessary democratic alliances to contain and defeat those regressive forces when necessary.

All in all, irrespective of how many and of which questions can and must be raised, the political dimension must receive adequate attention from critical theory. This is where decisions are taken and the direction of social development intentionally established, as far as this is possible. As I have tried to show in this book, we must start from the actual contradictions and tensions intrinsic to and engendered by modernity. This is what I have specifically sought here regarding the state and the autonomous individual citizen, rights and domination, cosmopolitanism and state-centredness, in their entwinement with nationalism, democracy, oligarchy and autocracy. The horizon of our imagination must always be broadened in the direction of overcoming such contradictions, according to their internal movement, although other, perpendicular vectors, may be brought to bear. It is only through a constant forward-movement that we can avoid falling into the traps of a thoroughly accomplished, skewed and chameleonic modernity. We can then sail towards what is actually an unsurmountable emancipatory horizon, at least until it is radically modified, which we can approach only asymptotically. Questions of programme and organisation, especially in a social atmosphere in which hierarchies are inevitable but autonomy has established its prerogatives and democracy become a central issue, are difficult to answer, yet inescapable. Practice and reflection should show us the way, beyond the limited perspectives or false renewing solutions the left has often been prone to entertain at present. How to translate proper and consistent solutions into the state political system is also of the essence, today a challenge difficult to address.

Highly sensitive is the very concept of reason (or, almost more technically, rationality). A full discussion would take us far afield. However, since political modernity is premised upon the modern – originally at times quasi-supernatural or at least abstractly universal – conception of reason, we need to close these reflections with a brief reference to it and its further evolution. As much as what critical theory and emancipation mean, reason in the form we imagine it is a legacy of the Enlightenment, which has of late frequently been heavily, although mostly loosely or even only implicitly, attacked. We certainly need to recognise the original one-sidedness of the Enlightenment, its initial Eurocentrism and false pretence of absolute universality, as well as the abstract and disembodied, individualistic character it once attributed to reason. Notwithstanding this mandatory awareness, enlightened we must be. Social mobilisation and movements, revolution and anticolonialism depended on the appropriation of the Enlightenment emancipatory core, transformed by critical approaches, by peoples and agents beyond its original addressees, the relatively well-off in the Europe wherein it emerged. Does it matter that it appeared in the ‘West’? I do not think so. It is today an asset of the human species, with a far more cosmopolitan character.

The same can be said of the modern conception of reason, which is an important component of modernity and certainly a faculty of the human species, one that must, of course, be cherished, but on the other hand overcome in the direction of a post-individualist, interactive and to some extent situated understanding, which must, moreover, not stop there. Losing sight of its, scientifically speaking, possible analytical systematicity would be a mistake. It is in fact simply false to attribute a Cartesian character to all modern, especially advanced epistemological theories and practices, as hermeneutics and dialectics, along with diverse sorts of analytical thought, demonstrate. Add to this that ‘experience’ (or *Erlebnis*) has not been by any means inimical to science, despite some more purely objectivist or ‘positivist’ approaches. Finally, politically, experience does have a crucial place in the development of radical emancipatory projects. Specific perspectives, defined by social locations, have not been strange to critical theory since Marx stressed that knowledge was premised upon class belonging, in which experience once again plays a pivotal role. Both experience and positional angles must be however further worked out and sublated if we wish to reach a more encompassing as well as scientific standpoint, without letting go of emotions, especially those that spring from indignation and hope. This is the task of critical theories. A *rational and universal* commitment to emancipation must be at stake.

The defence of reason, however modestly it is conceived of, is a pre-condition, though not a criterion of demarcation, for critical theory. Liberalism and republicanism usually embrace it too, including when distant from a critical perspective, in contrast to extreme-right irrationalism, with its set of absurd, mystifying ideas (that it was outbid by twentieth-century fascisms does not make it less harmless). There may certainly be ethical, political and aesthetic, also to some extent cognitive, motives to make recourse to different forms of human knowledge and organisation of experience. Yet we do not want – or at least I must suppose so within the plural critical universe – to return to analogical or mythical thought, let alone magic. We must be committed to push forward a concept of reason that can enrich its original unilateral abstract universality. It is precisely by critically appropriating and lending the necessary shifts to the modern conception of reason, which underpins critical theory from the very beginning, that emancipation, to start with regarding the political dimension, can be achieved. That is what progress, also a battered concept today, may actually mean, rather than the unilinear and triumphant narrative the Enlightenment originally proposed. Concreteness is certainly at the heart of such an endeavour.

It seems clear that there is no intelligence in refraining or shying away from reason or the progressive fulfilment of the aspects of the modern imaginary that are at the antipodes of domination, exploitation and oppression, to start with equal freedom and solidarity (which needs to be complex and

multifaceted in such a complex and plural world). This is the history of modernity and of the movements that have embraced its emancipatory horizon, at least as a project. Indeed we are in need of a strong, communicative and dialogic, concept of reason, more modest than its original incarnation and open to the contextual inputs creatively provided by social agents and their actual struggles, mostly for rights and democracy, at the modern political dimension and beyond. It must also be consistent and unbending. This is what may ultimately lead us in the direction of a form of social life as yet unknown in which each may have their dignity properly cherished and flourish.

Note

- 1 I partly draw here upon José Maurício Domingues, *Uma esquerda para o século XXI. Horizontes, estratégias e identidades* (Rio de Janeiro: Mauad, 2021); Idem, 'Ecumenical critical theory, pluralism and developmental trends', *Thesis Eleven* vol. 181 (2024): 1–17.

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