

The political *a priori* of Merleau-Ponty and Lefort*

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Abstract: An investigation into “the judicialization of politics and the politicization of the judiciary” restricted to the proper functioning of the “rule of law” would be prey to the damage that the very idea of the “State” entails, embodied in the theory that supports it, the theory of sovereignty. It is necessary to escape “state-centrism” and one of the ways to do so is to investigate the notions of “power” and “law”. In this article, we investigate these notions in Merleau-Ponty and Lefort.

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I

“Judicialization of politics and politicization of the judiciary”. The subject points to an unwelcomed confusion between domains that should, in principle, be kept separate. On the one hand, the political domain, which contains executive and legislative powers; on the other hand, the judiciary, which entails the judicial system. Indeed, no one ignores that decisions made in the first domain should be in conformity with statutory legality or with the constitutional order. Precisely for this reason, the “judicialization of politics” does not imply that politics itself, in principle, should not conform to the law. Rather, it means that the judicial system may be required to interfere and to take decisions on behalf of the political actors. On the other side, everyone knows that court decisions are also “political”, even if they are restricted to norms. Therefore, “the politicization of the judiciary” does not mean judicial decisions no longer emanate from the pure norm, but rather that they now intervene in the production and execution of the law. In other words, everyone knows that the above-mentioned fields are not separate from one another, even when the rule of law is not corrupted. However, a difference still persists because it originates the separation of the fields. It concerns the difference between the realm of politics and the realm of justice—which ultimately refers back to the difference between power and law. Alternatively, the intermingling and difference between the realms of politics and justice refer back to the relationships between power and law. We must turn our attention to such relations and not so much to the functioning of what is sustained by them, i.e. the operation of the “Rule of Law”. Instead, it is more important to return to what precedes it.

Let us begin by suspending “state-centrism” and the theory of sovereignty that supports it. In its various forms, such theory has always sought to legitimize power, i.e. to establish an internal nexus between power and law. In doing so, as Foucault claimed, the theory of sovereignty “dissolves” “the fact of domination”, giving rise, on the one hand, to “legitimate rights of sovereignty” and, on the other, to “legal obligation to obey” (FOUCAULT, 2001b, p. 177; FOUCAULT, 2004, p. 26). Foucault will try to do the “inverse” of this, stating “the fact of domination” on one side and “subjection” on the other. In other words, he assumes the validity of power without seeking any legitimation of obedience behind it. In the Foucauldian universe, this path requires certain “methodological precautions” (FOUCAULT, 2001b, p. 178), and it is interesting that it is precisely—or above all—in light of and against the theory of sovereignty that he makes them explicit. For now, we should note that this problem cannot be addressed until the knot of legitimacy entailed by the model of sovereignty is undone. It is necessary to “cut off the king’s head” (FOUCAULT, 2001a, p. 150), which, Foucault assures us, “has not yet been done in political theory” (FOUCAULT, 2001a, p. 150). The following could also be added: as State and sovereignty go together, it is also necessary to put away the State: “to put the problem [of power] in terms of the State is still to put it in terms of the sovereign and sovereignty and in terms of law” (FOUCAULT, 2001a, p. 151).

Undoing the knot that legitimizes power is also a step in Lefort’s *démarche*. In his case, this knot appears undone by the modern revolutions and the consequent emergence of “democratic societies”. Power and law become “disintricated” according to Lefort’s vocabulary; and, by contrast, in pre-modern societies (the most developed counterpoint is the *Ancien Régime*), they appeared “intricate”—different, yet “intricate”. What if the source of this “intricacy”? It is less the result of political discourse—in this case, the theory of sovereignty—and political practices than the outcome of a particular “symbolic” dimension from which the society of the *Ancien Régime* represented itself. Lefort brings into play here a “symbolic” that supports that “intricacy”. This means that political society as a whole—that is, the pole of power, the position of classes and social groups, the internal differentiation—refers to an extra-social focus, that society is mediated precisely by reference to this focus, this “divine” focus. In the *Ancien Régime*, the theological and the political are inseparable, which means that the (king’s) power is already referred to and grounded by such mediation, and therefore legitimated; in other words, power and law are “intricate”. In this reference, the model then held that the king’s body is “duplicated”, a “mystical body” duplicates his “natural body”, in the manner

of Christ's body. And because it is thus duplicated, both "right seems consubstantial to the person of the prince" (LEFORT, 1983, p.53) and power appears "embodied in the prince" (LEFORT, 1991, p.28); even if the prince was subject to law, since the "origin [of law] was found in God or justice", the truth is that his power knew "no *de facto* limits" (LEFORT, 1983, p.53). Well, by suppressing the reference to the "symbolic" dimension of the divine, modern societies have "disintricated" power and law and suppressed thereby the intrinsic legitimacy of power, thus unleashing a set of questions unknown to classical political discourse. What horizon is opening up here? Similarly to Foucault, the question of power also comes to light. But do the questions of "domination" and "subjection" arise along with it? Not quite. The Lefortian reduction, by preserving a "symbolic" dimension, prevents transforming power into the decisive and exclusive pole of the constitution—which is also the case for productivity. And, for this very reason, the law cannot be reduced to what power lays hold, i.e. to "procedures of subjection". "The system of right and the judiciary field are permanent vehicles for relations of domination and polymorphous techniques of subjugation. Right must, I think, be viewed not in terms of legitimacy that has to be established, but in terms of the procedures of subjugation it implements." (FOUCAULT, 2004, p. 27) Let us see from another angle how Lefort approaches the same question of power.

II

To highlight this issue, I begin with a difficulty pointed out by Merleau-Ponty in the post-war 1940s, right after the publication of *Humanism and Terror: An Essay on the Communist Problem*. Merleau-Ponty noted—in a 1949 farsighted writing on Machiavelli—that the question of "power" was open-ended: the Soviet experience by then already disproved the hypothesis of a "solution", which would be an "absolutely new relationship between power and subjects" (*du pouvoir aux assujettis*)—in which, if not "annulled", "power" would at least be "controlled". Now, this promise of revolution turned out to be a debacle, assures Merleau-Ponty: the "revolutionary power" ended up being autonomous, thus constituting a "ruling stratum" and "without control" (MERLEAU-PONTY, 1964, p. 222). It is in this context that he suggests re-reading Machiavelli.

Why Machiavelli? The most obvious reason is that, like Marx, Machiavelli poses the problem of "power" not in terms of "principles"—be they religious, cosmological, metaphysical, or rational—but interrogates power "in operation". Marx faces the problem—in Merleau-Ponty's phenomenological evaluation, so to speak—going directly to the "situation" and the "vital movement" of the most exploited and oppressed human beings; he would have searched there the "basis for revolutionary power, that is, a power capable of suppressing exploitation and oppression" (MERLEAU-PONTY, 1964, p. 222). Now, Machiavelli also searches for the "effective truth of the thing", according to the famous statement of Chapter 15 of *The Prince*, and does not subsume politics to transcendental principles, nor intends to found the State or the civil society in a contract.

But now, vis-à-vis Marx, the difference seems to lie elsewhere. Machiavelli thinks of conflict without a "solution" as an alternative, i.e. without the end of domination. In Marx, on the other hand, the question of political power remains ultimately obliterated, insofar as it appears entirely reduced to social conflict, and for this very reason, the promise of revolution concerns a political society free from domination, with no reference to a separate power. In Machiavelli, political power is irreducible, and this explains why his work is invoked in the search for "political clarity". Everything happens as if Merleau-Ponty wanted to keep his distance not only from revolutionary politics but also from that "myth" so widespread in the 19th century, in Lebrun's terms, in which both liberals and Marxists participate, namely the myth of a self-regulated society which thus removes political power; according to this "myth", "power knew its decadence and had begun its agony" (LEBRUN, 1981, p. 9). In other words, Merleau-Ponty steps out of the canoe of revolution, which sees in the proletariat the embodiment of the universal, reactivating a classic theme of political thought—*power*.



In the short writing on Machiavelli, Merleau-Ponty restricts himself to pointing out a research orientation. And it is precisely this orientation that Claude Lefort will follow in the ensuing years. What is the question for Lefort? The one that will always be *his* question: the search for the “generative principles of the social”, the “form” of the social, the “institution of the social”. These are expressions that occur at the beginning and the end of his career (see, for example, “The Question of Democracy” [1983]), as it was also the question of the intermediate phase, the Machiavellian one: according to Lefort, Machiavelli would not be the thinker of political realism, of the State reason, etc., but the thinker of the State’s foundation, of its “ceaseless foundation”. In the initial phase, regardless of what the answer to the above-mentioned question is and the variety of possible answers to it, as well as its tentative and erratic character, already appears an element that will pose serious problems later on, namely: this foundation, despite slight variations in the answers, will always have *social praxis* as its vanishing point. It is not a mistake to call this period, as Poltier does, a “phenomenology of the social”.

However, if the beginning of his career can be described as such, it is also true that, still in the 1950s and throughout the 1960s, Lefort, a reader of Machiavelli, began a self-critique and a revision of some of the basic categories of his thought. In my view, the core of the transformation seems to be precisely the emergence of a strictly *political* conception of power—which means the abandonment of the previous Marxist model, strongly based on “production”. From now on, political “domination” is not explained by economic relations alone. In the beginning, the search for the “generating principles of the social” was solved with “*praxis*”—without reference to “power”. There was then a “*constitutive experience* of society” (LEFORT, 1979, p.33). What will soon come out very clearly—and this already in his great work on Machiavelli—is the outline of a “political ontology” (LEFORT, 1979, p. 368, p. 426) based on the primacy of the “political”. The twist here, according to our interest, is the appeal to a notion of “symbolic” capable of overcoming the prejudices of the first model—a “symbolic” that tied the theological to the political in the *Ancien Régime* and that will have another configuration in “democratic societies”. The “constitutive” dimension of the first model was *praxis*, an act. Now here will be a decentering process: the *social praxis* is understood according to the “symbolic”, whatever it may be, and not the other way around.

Here it is important to emphasize that the return to Machiavelli represented for the young Lefort a work project whose terms Merleau-Ponty announced in his 1949 essay: 1) to think the political by itself, not only, as Machiavelli does, without reference to theology and cosmology, but also (and here lies the self-criticism, the overcoming of the “phenomenology of the social”) without support in the social: power will no longer be conceived as a projection of social relations; hence the primacy of the political; with some variations, something analogous is also happening with Merleau-Ponty at the turn of the 1940s to the 1950s; 2) to think another notion of conflict without a “solution” to the “social problem”. And, as for Merleau-Ponty, also here the proletariat ceases to embody the universal, a class that would put an end to classes, even putting an end to itself as a class; realizing the universal, it would put an end, therefore, to the divided society. With the end of the universal, another horizon now opens, in which conflict is affirmed as irreducible. Here are the terms of both self-criticisms; *arkhê* and *telos* disappear with them.

III

Exercising his self-criticism in *Adventures of the Dialectic*, Merleau-Ponty notes that he remained in the terrain of morality until *Humanism and Terror*: if the proletariat appeared to him as embodying negativity, bearing the universal, it was not because the logic of capital would lead to an opposition of classes, unifying the proletariat in antagonism to the bourgeois class; rather, it was the bearer of the universal because it was deprived of the particularity of interest, and thus its action made value “pass through”: it was the proletariat that made it possible to escape abstract humanism and “realize” “humanity”. Therefore, the proletarian practice had an axiological function; thus, Merleau-Pontian politics was still governed by the *a*

a priori of morality: “we were not on the terrain of history (and of Marxism) but on that of the *a priori* and morality”, it was “not a philosophy of history—it is Kant in disguise” (MERLEAU-PONTY, 1973, p. 232). The critique will focus not on dialectics, but on the idea that a class can embody dialectics and carry within itself the universal. He will then trace an analysis that goes back to Weber (as a model of “understanding”), through the vigorous Marxism of Lukács (of the 1920s), Lenin, Trotsky, and finally Sartre, in a journey that he calls “the adventures of dialectics”. Around the 1950s, such adventures will culminate, according to Merleau-Ponty’s diagnosis, in an ossified Marxism and a dogmatic and willful revolutionary praxis. What is the culmination of this critique?

In my view, it concerns the critique of teleological history, a history regulated by strict laws (or, at least, laws of the historical social form based on the capitalist mode of production), and, linked to this, the critique of revolutionary politics. The result will be: 1) not the refusal of history, but of teleology: by refusing the telos, what emerges is a “plural” history, a variety of “plans or orders”; 2) not the end of dialectics, but of the idea that a class can embody dialectics and carry within itself the negative, i.e. as criticism incarnate, the being that abolishes class society and itself as a class, criticism and self-criticism at the same time (MERLEAU-PONTY, 1973, p. 204). Now, “oppositions”, “contrarities”, “becomings”, “differences”, and “sublatings” are localized, involve *previously instituted* plans, and are unable to resolve this common whole that surrounds them (MERLEAU-PONTY, 2000, p. 281-2). What Merleau-Ponty now rejects is the idea of a total signification of history, that history itself organizes its own retrieval; that a critique can imply the contestation of itself, be critical from within, be “permanent revolution”; revolution as “absolute action” is still a concept governed by the moral *a priori* (MERLEAU-PONTY, 1973, p. 232). The conclusion of *Adventures of the Dialectic* leads Merleau-Ponty to praise Weber’s “heroic liberalism” because it “brings into its universe that which contests it” (MERLEAU-PONTY, 1973, p. 226) and thus restricts absolute power. According to Merleau-Ponty, Weber’s liberalism “does not demand a political empyrean, it does not consider the formal universe of democracy to be absolute; he admits all politics is violence—even, in its own fashion, democratic politics. His liberalism is militant, even suffering, heroic. It recognizes the rights of its adversaries” (MERLEAU-PONTY, 1973, p. 26).

Hence, the “new liberalism” that Merleau-Ponty arrives at wants to keep in hand “both ends of the chain”: on one side, the “social problem”, class struggle (“since there are classes”); on the other side, “freedom”. If other politics can be worth other than liberal and revolutionary ones, “posing social problems in terms of struggle” is as necessary as “refusing the dictatorship of the proletariat” (MERLEAU-PONTY, 1973, p. 226). These will be the landmarks of a “non-communist left” announced by Merleau-Ponty in the 1950s. Commenting on Merleau-Pontian politics, Lefort calls it a “politics of contestation”, which for him was more radical than Marx’s. Why is that so? Apparently, for this very reason. For, no longer aiming at a totality, the struggle would be endless and would become generalized: it would become permanent, without rhyme or solution. That this entails greater “radicality” seems a contradiction, precisely because it no longer envisages the totality. Merleau-Ponty’s self-criticism, according to Lefort, goes hand in hand with another, in which he no longer seeks to “equate reflection to the unreflective life of consciousness”, ceasing to seek the “fiction of a *de jure* coincidence between Being and thinking” (LEFORT, 1978, p.122), which he would still do in the period of *Phenomenology of Perception*. It is only after this self-criticism that he finally opens himself to *indeterminacy* (although he had always had such a project): “the idea of a thought devoted to indeterminacy and a politics devoted to contestation”, that is Merleau-Ponty, according to Lefort. It is now important to note that it is by developing the idea that this milieu in which we live, in a specific time and society, this “milieu of history”, carries within itself, in its “structure”, an “indeterminacy”, which must finally be restored “within the framework of its own symbolism” (LEFORT, 1978, p. 103). It is here that Lefort slides from Merleau-Ponty’s thought to his own. Merleau-Ponty’s “indeterminacy”—we will see later its political consequence—must be read in the light of a “symbolism” that Lefort wants to account for in his “political philosophy”.

IV

Lefortian symbolism already appeared in his reading of Machiavelli. Already there an image of the prince is projected beyond the conflict that opposes the great and the people, an image that ensures unity in a divided society. Only at this moment does force become political power itself, and a condition for the unity of the principality. Already there, therefore, Lefort had abandoned the social motives of his first phase and pointed beyond the social struggle to an irreducible political dimension.

But it is only in the last phase that he will develop his theory of “democracy” and the “symbolic” implied by it. What is unprecedented in democracy is that, while in the society of the *Ancien Régime* the body of the king acted as a mediator between the visible and the invisible, between the visible and the *Otherworld*, and thus assured society the representation of its unity in a imaginary figuration of the “symbolic”, in democracy, on the contrary, the figure of mediation disappears. This captures what Lefort refers to as the “disembodiment of power”; the place of the *Other* remains, but it remains as an *empty place*. This is the core of the modern “political revolution”—or, if you like, the emergence of modernity does not lie in “political emancipation”, as the young Marx thought, or rather, in the “political illusion”, in the split between the “political” and the “social”, between the “citizen” and the “bourgeois”, between the universal and the particular, all of which is, according to Marx, consequences of the “parceling out of private interests”, of the “emancipation of bourgeois society” (LEFORT, 1983, p.52). The core of the modern revolution lies in the *mutation of the symbolic*, and this imposes an understanding of the “political” to which Marx was “blind”. What is this mutation?

Its core is the “simultaneous” “disembodiment” of power and society (LEFORT, 1983, p. 53)—and here Lefort draws the consequences of his reading of “indeterminacy” from a “symbolic dimension”. To a transcendence that can no longer be imagined, to an “empty place”, corresponds a society without a body (LEFORT, 1991, p. 34) impossible to be circumscribed (LEFORT, 1983, p. 54).

According to Lefort, *on the society side* the issue is not the emergence of “civil society”, a society atomized according to private interests, defined by an economic determination. Hence, it will neither be the society unified by the sovereign, nor the “spontaneous” society, no longer the result of a contract, but of a “natural” agreement, in the manner of the Scottish liberal tradition (Ferguson, Hume, Smith). These are two different ways of approaching the problem, one seeking the constitution of society from above, the other, from below. Lefortian society has no determination, it is “purely social” (LEFORT, 1991, p. 34), and it is “*indeterminate*”.

On the power side, the “People” seems to be the instance of unification. But this substantial “People” can neither be circumscribed nor delimited and is therefore equally indefinite; when it is called upon to manifest itself, as in elections, for example, it ceases to be “substance” to become “number” (LEFORT, 1991, p. 34). In this case, the “People” is “*indeterminate*” and precisely because of this the place of power remains impervious to all occupation. Now, we can raise the following question: is this not a simple difference between People as a “political body”, therefore “constituent”, and “real people”, the people who vote? Why should this obvious difference suppress popular sovereignty? This difference is already found in Rousseau: it is not the “real people” who legislate. Instead, a “general will” is necessary to endow the law with authority; being universal in origin, because of the general will, it must be valid for all: the general law has the general will as its origin. It turns out that the unity “People” is then forged through a contract, which supposes an internal connection between “power” and “law”, a connection that ensures the “sovereign people” as the source of legitimacy. Lefort’s “empty place” is not limited to the mere impossibility of figuring power; it is also the effort to “desintricate” power and law, thus opening the question of the legitimacy of power. For this very reason, there is in Lefort no “sovereign power” nor normative foundation: it happens that



the law loses its “anchorage” when power is “disembodied” (LEFORT, 1983, p. 54). Lefortian democracy runs without demos and foundations.

Lefort states: “What is essential, in my view, is that democracy is instituted and maintains itself by *dissolving the reference marks of certainty*. Democracy inaugurates a history in which human beings are tested by an *ultimate indeterminacy* both regarding the foundation of Power, Law, and Knowledge, and the foundation of the relationship of *one* to the *other*, according to all registers of social life” (LEFORT, 1991, p. 34; emphasis added on “ultimate indeterminacy”).

V

Merleau-Ponty and Lefort share the same political horizon: on the one side, the critique of Marxist revolutionary politics and, on the other, “totalitarianism”. These are, for both thinkers, the great political events that impose themselves on reflection. Although Merleau-Ponty did not develop a critique of “totalitarianism”, it was already implicit in its critique of revolution, even in the ambiguous *Humanism and Terror*. Conversely, what seems to present itself to both thinkers is the horizon of a democracy that *institutionalizes conflict* (LEFORT, 1991, p. 32). In both, the reduction that opens the problem of power leads not to “domination” or “subjection”, but to *conflict*, and Machiavelli is the dominant reference: it was the conflict between the people and the great that made Rome great, both thinkers claim. This conflict is more complex than that of the “class struggle”: thus, in both cases the blossoming society is broader, more diversified, and fragmented than bourgeois civil society and its class economic main branch. Indeed, a new conception of power comes to light with the extension of the conflict: no longer intrinsically legitimate power—as in Merleau-Ponty, a power that would no longer be a revolutionary power bearing in itself universality; as in Lefort, a “democratic power” that “desintricates” itself from law, i.e. that is permanently in question as to its legitimacy, which therefore must forever seek the latter since power no longer bears it in itself.

Thus, the problem transforms itself. It is no longer a matter of a truth-bearing power, nor is it a question of sheer force: “neither pure fact nor absolute right” (MERLEAU-PONTY, 1964, p. 213), “[m]en let themselves live” under its domination (MERLEAU-PONTY, 1964, p. 212). However, once they surpass a certain limit, they realize it is unjustifiable (MERLEAU-PONTY, 1964, p. 212), Merleau-Ponty claims in his reading of Machiavelli. There is a certain limit that power cannot cross, namely the limit that leads to the contempt and hatred of the subjects. Nonetheless, power possesses a “tacit” consent: “power does not coerce or persuade; it thwarts—and we are better able to thwart by appealing to freedom than by terrorizing” (MERLEAU-PONTY, 1964, p. 213). These are the lessons Merleau-Ponty takes from Machiavelli. From now on, faced with a power no longer endowed with “justice”, the political question is relocated: it is no longer a matter of searching for a politics that realizes the universality or truth (which Merleau-Ponty understands now as a moralization of politics), but rather a “*politics which is not unjust*” (MERLEAU-PONTY, 1964, p. 214, emphasis added). A politics, therefore, whose horizon avoids the “absolute”, the “just”, and the “truth”. Thus, the conflict perspective requires that also the critique “confront itself with the judgment of an opposition” (MERLEAU-PONTY, 1973, p. 226); it requires that the critique denouncing “the defects of capitalism” “be freed from any compromise with an absolute negation” (MERLEAU-PONTY, 1973, p. 231). Therefore, Merleau-Ponty’s critique of power dissolves the mirage of absolute power and praises conflict: apparently, only power restricts power, only the struggle can ensure the republic: “History is a struggle, and if republics did not struggle they would disappear” (MERLEAU-PONTY, 1964, p. 221).

As for Lefort, the thesis concerning the “symbolic” leads him to other conclusions, namely: the place of power is an *empty place* that “prevents rulers from appropriating power”. More precisely, according to Lefort, it prevents them “from *incorporating themselves into power*” (LEFORT, 1991, p. 32; emphasis

added). What does that mean? Regarding a power that no longer can be legitimized, does the “empty place” coincide with Merleau-Ponty’s notion of power constraint? Let us take a closer look at the issue from the perspective of a few research clues.

V.a

The first clue relates to the *political* (or, the political *a priori*). Merleau-Ponty’s critique of revolutionary power took place in the context of a critique of the philosophy of history: it is the reform of this philosophy, which then ceases to be a process of totalization to become a plural history, that enables the critique of revolutionary power. The “institution” as a “means for history” signaled this action decentralization away from revolutionary action, which produces but is also *produced* in setbacks, oppositions, and local differences. For Lefort, on the contrary, every action takes place within a “symbolic” dimension that the former is not able to modify. Lefort’s “symbolic” is *over and above*, it is an *Otherness*. Therefore, there will not be Merleau-Ponty’s action-passivity to and fro, or what he calls “reversibility”: when I touch, I am touched; when I act, I am “acted” etc.; on the contrary, the symbolic is the “immovable in history” (NEVES, 2016, p. 127). Well, is this not the same as removing from human action the role of a historical agent? (NEVES, 2016, p.127).

This question fits Lefort more than Merleau-Ponty. However, for it to be properly evaluated, it is necessary to note that Merleau-Ponty’s representation of plural history is still partial: Merleau-Ponty is not, as Lefort thinks, a “relativist”. If the idea of a totalization in progress, of a revolving of history in its entirety, disappears, the idea of totality does not. Roughly speaking, the new philosophy of history brings an idea of totality that is no longer the product of synthesis and that would thus be something like the “immovable”. However, there is a crucial difference. While for Merleau-Ponty such totality is a *common* “element” (in the usual sense, in which water, fire, etc., are elements), for Lefort, in contrast, this third term is an *Otherness*, an irreducible *other*. Where Merleau-Ponty sees “symmetry” and reversibility among subjects—all bound to a single “flesh”, which allows one to think of activity-passivity—, Lefort sees rather the subject as being itself initiated by an Other: beyond the fusional relationship with their mother, Lefort claims, the infant is thrown into a confrontation with a third thing, which opposes the law to their desire. A mediation analogous to this one institutes the social: the “symbolic efficacy” establishes political society.

Now, whether it is a “common element” (Merleau-Ponty) or an “Otherness” (Lefort), it seems we are beyond the realm of human action. However, the idea of reversibility models *another notion of action*—or, if you like, a different notion of “power”, and this is what seems relevant here. Action-passivity allows us to think of a power constraint embedded in the *power relation* itself—or even, allows us to think of the idea of *resistance*. It is this power relation that Lefort seems to lose sight of when he points to a symbolic that denies “incorporation into power”. Let us consider an example of the range of this difference. When dealing with the Welfare State, Lefort takes it under a “double face”, Welfare State and Guardian State, one enlightened, the other darkened. The question is then the following: the expansion of the Welfare State does not reveal its hidden, “obscured”, coercive face? The critique is well-known to liberals and non-liberals alike. For Lebrun, for example, Roosevelt’s New Human Rights had nothing to do with the “improvement of individual liberties” (LEBRUN, 2006, p. 252; 1981, p. 87, p. 90), they do nothing but increase the power of the great Leviathan: “What history teaches us is that these rights [to life, happiness, body, health...] can only be satisfied at the cost of an *increase in state power*. How else to analyze, for example, Swedish socialism?” (LEBRUN, 1981, p.92). For Lefort, however, there is something that prevents the coercive state from expanding: the “democratic device”; “if the Welfare State does not become a Guardian State, the main reason is that *it does not have a lord*. If a lord were to emerge, the State would lose the uneasiness which is inherent to democracy” (LEFORT, 1991, p. 46; emphasis added). Thus, what prevents the Welfare State from becoming a Guardian State, pure coercive power, is a negative reason, and the problem

becomes the following: what prevents *incorporation into power*? In this case, it is a “symbolic” that makes power unfigurable and the State, unsusceptible to lordship appropriation. It is under this condition that there will be, beyond the ambiguous face of the State, “the emergence of claims, of struggles for rights” (LEFORT, 1991, p.31); it is also for this reason that Lefort thinks resistance from a right, certainly not as a natural right, but still as a right, now affirmed in the struggle for its own holder and inseparable from it (LEFORT, 1991, p. 49). In Merleau-Ponty, “reversibility” paves the way to consider a power relation in which resistance is constitutive of the relation itself, without remission to a “symbolic”. In Lefort, this remission prevents “incorporation” and thus opens a field of struggles.

V.b

A *second clue* refers to the *social* (or to “social struggles”). To move to the “institution” does not mean moving to the “state form” as opposed to civil society. Merleau-Ponty does not put “political form” beyond “social struggle”. Thus, the refusal of revolutionary power, on one side, does not involve a transition to liberal democracy, to a “rule of law”. On the other side, the transition to “institution” implies the refusal of the possibility of society’s self-determination and recognizes conflict as definitive. The political form is thus inseparable from the “social struggle”. And, in Merleau-Ponty’s case, at least at the time he was announcing his politics, the “social struggle” corresponded to the class struggle. Now, is the social conflict restricted to this economic form?

Lefort, in turn, seems to dissolve, if not the class struggle itself, at least its connection with the political. Again, the reason for that is that he conceives society from the perspective of a separate “symbolic”. Hence objections such as Ruy Fausto’s, who, although by other means and reaching conclusions different than ours, claims that class struggle vanishes from Lefort’s horizon. Fausto’s subject is Lefort’s critique of the way Marx read the *Declarations* in *On the Jewish Question*. Lefort points out Marx’s “blindness” in taking the *Declarations* as a mere consecrating document of bourgeois society and “Man”, who is none other than the egotistical member of that society. Marx “allows himself to be imprisoned”, argues Lefort, “by the ideological version of rights, without examining what they mean practically, what turn they make in social life”, without paying attention to “the new mode of access to public space” (LEFORT, 1983, p. 46-7). Now, Fausto has replied, “would Lefort have sufficiently taken into account the egotistical-bourgeois aspect of the *Declarations*? (FAUSTO, 2018, p. 212) Lefort would have seen in them a “duality”, “but, when he refers to the ‘negative’ tendencies that can take place within democracy, he addresses them somewhat *as if this were not essential*. In reality, what runs against democracy as democracy, Lefort tends to see as elements of the order of the ‘*de facto* application’ or ‘*de facto* elaboration’ of laws.” In this case, “the violence of capital” is taken to be “violence ‘*de facto*’, neither inscribed in its essence nor the ‘mode of constitution’ of the society in question” (FAUSTO, 2018, p. 212-3). On this precise point, Fausto’s critique is correct, the reason being that Lefort’s “symbolic” is a separate instance, or an Otherness, which lead him to isolate social conflict and political form from each other; for him, it is enough to guarantee power’s “empty place”.

It is precisely this leap that Merleau-Ponty cannot make, which is stressed in opposition by Lefort, i.e. a leap from the “symbolic” as “otherness” to Merleau-Ponty’s conception of the common “flesh”. In contrast to Lefort, Merleau-Ponty poses the problem concerning the nature of the bond between the social and the political. Hence a question arises: Fausto’s examination consists of thinking through the “tension” (FAUSTO, 2018, p. 212) between capitalism and democracy in the context of the debate regarding the *Declarations*, namely the tensions between “man” (democracy) and “egotistical man” or class interest (capitalism). However, what seems more interesting is not the “tension” between the two conflicting sides, but the political as the *form of the social*, inseparable from the former. In other words, conceiving capitalism’s democracy is more interesting than assuming the opposition between democracy and capitalism.

A *third clue* concerns the *right* (or the “democratic politics”). From the “desintricate” character between power and law follows, in Lefort’s thinking, the *problem* of the legitimacy of power, for it is then no longer intrinsically legitimate, and, on the side of the law, there follows the problem of right’s “anchorage”, previously “consubstantial to [...] the person of the prince” (LEFORT, 1983, p. 53-4). Although recognizing that monarchy based itself on the theory of sovereignty and, therefore, that the “dissociation between the instances of power and right [...] was initially part of the monarchical State”, Lefort cannot help but noticing that “the prince’s power [...] was, in fact, boundless” (LEFORT, 1983, p. 53). Only with the “modern ‘political revolution’” did the “disembodiment” of power and law take place, accompanied by the “desintrication” process, which leaves unanswered the question of power and law: power’s place appears empty and its legitimacy becomes a question. And what about the right? The whole problem boils down to the question of who now utters the right. “Now” this problem arises within a horizon in which there is no longer a “sovereign people”, i.e. no source of internally legitimate power. Then, who possesses the “authority” to state the law?

The answer to the question is twofold: certainly, no one has the “authority”—i.e. legitimate power—to grant or confirm rights. *Except*—and this is the first element—if *the one who states the rights is the same one to whom the rights belong*. Without natural law as a foundation, however, this entails that, amongst rights and statements, there is the same relation—to take up Flynn’s good example—between the table being red and the statement that the table is red: the redness of the table is prior to our predication and unaffected by it (FLYNN, 2005, p. 168). In turn, the right discussed by Lefort only emerges with the following statement: it is not only “the object of a declaration, but it is also of its essence to declare itself” (LEFORT, 1983, p.54). It only emerges in the struggle that affirms it. The second aspect of the answer is the following: *according to Lefort’s symbolic model, law is now revealed as the “symbolic” itself*, it appears as a “symbolic dimension of the rights of man”, the only dimension capable of showing itself as “*constitutive of political society*” (LEFORT, 1983, p.56; emphasis added). And it is precisely this dimension of law that Foucault ignores. However, did we not say that power corresponds to an “empty place” in a democratic society? Certainly. Does this mean that law is to democracy, in its way, what embodied power is to the *Ancien Régime*? The answer to this question requires knowing how the right “constitutes” a democratic political society.

Lefort shows this “constitution” in three moments, which reproduce, with some modification, the dialectics of time in *Phenomenology of Perception*. *First moment*: the one to whom the rights belong is Man, not this or that man, but all men; this is the moment of the Whole. *Second moment*: but the democratic society, precisely because it is “deprived of the mediation of an embodied power” is “bodiless”. The image of the Whole is then disfigured, and it has to be said that the rights belong to individuals, “small independent sovereigns, each reigning over their private world” (LEFORT, 1983, p. 54). Here, the moment of the parts. *Third moment*: this representation, as negation, destroys the previous one, “that of a totality transcending its parts”, but which is also destroyed by it, allowing the “discovering of a *transversal* dimension of social relations”: in this case, individuals are both producers and products of social relations; they draw their identity from them and also produce them (LEFORT, 1983, p. 54). Here, both the moment of the Whole and the parts or if you like, the moment of a “horizontal totality”. Finally, here the law’s “constitutive” character comes to light: it is constitutive. After all, it unifies because it binds: my right includes your right. However—this is the decisive point—, it unifies not only the parts but also both the parts *and the whole at the same time*, it unifies the parts *to the whole*, constituting them *simultaneously*. It is precisely this binding of the parts to the whole, according to a dialectics in which the part entails the whole and the whole entails the parts, which brings out a transcendence dimension, according to the phenomenological orthodox vocabulary, and which Lefort—not without some inflections—will term “symbolic”. The model



of the phenomenological *logos*, already at work in simple perception, rules that I do not perceive the sides without reaching the thing since the sides are sides of such a thing, which I reach only *through* its sides. To avoid misunderstandings: we said that society cannot be apprehended as a “unity” unless it is mediated by a “transcendence” dimension—in this way, the gods are not there, their “place” remains “empty” and, therefore, no “transcendence” asserts itself. None other than *society itself*, which is now posited, not as a whole transcending the parts, but as a “transversal” whole entailed by them, *which is why* it is an *open* totality, always provisional and forever to be made. And, by reference to it, inversely, the “unified” society is never well constituted, in the sense that the internal schism or internal conflict is never overcome.

Hence, for example, Marx’s objections and his thesis of the egotistical man: even the right of opinion is reduced by him to a “spiritual equivalent of private property” (LEFORT, 1983, p. 43). He does not see it as the construction of a “public space”: “for example, the right of one to speak, write, print freely implies that of another to hear, read, preserve, and transmit the thing printed” (LEFORT, 1983, p. 54). Such dialectic models a figure of the “universality” of law that is no longer identical to a mere abstraction—which means that the totality constructed here is not an abstract Man, following that well-known and easy opposition between abstract and concrete: such a Man, says Marx, but also Joseph de Maistre, is neither this nor that, is not historically and socially determined, etc.; it is pure abstract fiction, they say. Now, the abstract is a void (neither the French nor the English man), or—to keep the analogy—it is the house seen from nowhere. However, the point is precisely to bind part and whole, not to separate them; therefore, it is the house seen from all places, even those that one part may have from another. The “man” here is this totality, a totality which is not only “horizontal”, but above all *indeterminable*, in the sense of indomitable, in which each stated right produces relations and identities that again produce new relations, which demand new rights and reformulations. It is to this extent that “man” can be the “anchor of right”, and “human rights” can be stated as “political”.

Now, to the extent that rights are posited as “constitutive” of a democratic society—for they not only unify but rather constitute this open, indeterminate transcendence—, a “pole of right” takes shape, in front of which, Lefort assures us, State power must give an answer to avoid the risk of “plunging into triviality” (LEFORT, 1983, p. 62). After all, the State is a “*de facto* power” grappling with the question of legitimacy, and the politics of rights, or “democratic politics” (LEFORT, 1983, p. 69), is the politics that carries a *legitimacy*, an idea of what is “socially legitimate” (LEFORT, 1983, p. 60). What is the origin of this “legitimacy”? It arises from “demands” and “contestations”, which refuse the “established legitimacy” and testify a “diffuse sense of justice” (LEFORT, 1983, p. 60). Because they are many and varying, nothing seems to unify the different struggles for rights—“minority struggles”, for example—except the “idea of legitimacy” (LEFORT, 1983, p. 61). This is what, finally, confirms the “symbolic efficacy of the notion of rights” (LEFORT, 1983, p. 62): it is *this binding between the part and the whole*, this “combination”, “conjunction”, “in a way that seems paradoxical”, between “*the idea of legitimacy and the representation of a particularity*” (LEFORT, 1983, pp. 61-2). The “part”, then bound to the “whole”, becomes “constitutive”, and thus distinguishes itself from the notion of “interest”, in the same way that the “symbolic” differs from the “relation of force”: there, a “whole” is constituted; here, the parts “clash against each other” (LEFORT, 1983, p. 62). Well, considering these struggles “inspired by the notion of rights” (LEFORT, 1983, p. 63), it is a “reformist” illusion to assume the State could become “the agent of social change and the promotor of an increasingly egalitarian system” (LEFORT, 1983, p. 63). And why could the State not do it? Because the State would end up “concealing” the “plurality, fragmentation, heterogeneity of socialization processes, and also the transversal character of practices and representations, the mutual recognition of rights” (LEFORT 1983, p. 68). In this case, it would replenish the dangerous “worship of unity” (LEFORT, 1983, p. 69), thereby suppressing internal conflicts. Hence the need—so insists the former “self-management” enthusiast—to “free the parties that have a vocation for power from the mortgage imposed on them [the struggles]” (LEFORT, 1983, p. 64). Struggles for *rights* are, therefore, struggles that can weave a plural,



heterogenous, indeterminate society. But if so, why do such struggles, bearers of “legitimacy”, do not occupy the “empty place”, the place of Power of “democratic societies”? Exactly the opposite is true: they are made possible by the “democratic form”; instead of filling the “void”, they feed on it; they are a possibility of the “democratic form”, just as “totalitarianism” is—in this case, that of trying to bridge the social gap, while “democratic struggles”, on the contrary, preserve it, and precisely because of this they certify “symbolic efficacy”, while “totalitarianism” is swamped in violence.

VI

We have seen that the way through Machiavelli was decisive in Merleau-Ponty and Lefort’s self-critique. Apparently, Merleau-Ponty retain from it the requirement to assume a factual condition in which power is never entirely legitimized. That it is more worthwhile, for this very reason, to seek a restriction on power than the source of its legitimation. The search for a “politics that is not unjust”: Is this not what defines Merleau-Ponty’s political *a priori*? And does this not distance it from Lefort’s “democratic politics”, based on the “diffuse sense of justice”? Is there not a difference of political *a priori* involved here?

However, if it is true that Lefort’s politics continues to revolve around legitimacy, it is also true that the target is no longer factual power, but “contestation struggles” that escape State control. We said that “the judicialization of politics and the politicization of the judiciary” push into the forefront the operability of the “rule of law”, but also and above all that it is important to investigate the relationship between power and law, precisely because, in this way, we escape “state-centrism” and the prejudices of the theory of sovereignty, embodied in the legitimacy of power and the legal obligation of obedience. Law appears here at the service of power, as Foucault shows. Lefort, in turn, seems to recover a dimension of law—ignored by Foucault—in which it is now placed before power as an “indomitable focus”, in an “indelible exteriority” (LEFORT, 1983, p. 53): it is the power that must finally conform to the right, or risk collapsing into violence.

‘Ending notes’

<> - On this subject, the young Marx says in 1843: “a class with *radical chains*, a class in civil society that is not of civil society, an estate that is the dissolution of all estates, a sphere of society having a universal character because of its universal suffering and claiming no *particular right* because no *particular wrong* but *unqualified wrong* is perpetrated on it; a sphere that can claim no *historic* title but only a *human* title; [...] a sphere, finally, that cannot emancipate itself without emancipating itself from all the other spheres of society, thereby emancipating them [...] This dissolution of society existing as a particular class is the proletariat. In Marx, K. *Critique of Hegel’s ‘Philosophy of right’* (Introduction). Joseph O’Malley (Ed.). Trans. Annette Jolin; Joseph O’Malley. Cambridge: Cambridge University Press, 1970, p. 141-2.

<> - “It is still Kant who we finally find in the concept of revolution as absolute action” (Idem, *ibid*, p.321).

<> - We will see below where this permanence of the symbolic comes from.

<> - The problem of “spontaneous” and “natural”: in Hume, the agreement implies an adjustment, it is not inscribed in the terms themselves, always different. The agreement is therefore “artificial”, and must be fixed by the advantages it brings. But it is not the fruit of an explicit agreement, like a contract. This is why “artificial” is not opposed to “natural”.

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