EITHER UNFREEDOM OR DEATH?
A genealogy of the "freedom or survival" discourse

OU AUSÊNCIA DE LIBERDADE OU MORTE?
Uma genealogia do discurso "liberdade ou sobrevivência"

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Abstract: This paper aims at highlighting the genealogy of what we may arguably consider as the on-going shrinking of post-war democratic achievement in Western liberal democracies. In focusing on the 21st century, it analyzes the way threat, freedom and democracy have been redefined in the aftermath of the September 11th attacks in order to legitimize liberty-restricting rules, and seeks to show how this radical reframing of liberal democracy has been further enhanced during the management of the pandemic crisis as part of a constantly evolving political blackmail to citizens confronted with the dilemma "freedom or survival".

Keywords: freedom, civil rights and liberties, counterterrorism, pandemic crisis.

Resumo: Este artigo explora a genealogia daquilo que pode seguramente ser interpretado como a contínua retração das conquistas democráticas do pós-guerra nas democracias liberais ocidentais. Focando-se no século XXI, o texto analisa como os conceitos de ameaça, liberdade e democracia foram redefinidos na sequência dos ataques do 11 de setembro, de modo a legitimar regras restritivas da liberdade. Procura também, por outro lado, demonstrar como este reenquadramento radical da democracia liberal foi aprofundado durante a gestão da crise pandémica, enquanto parte de uma chantagem política em constante evolução contra cidadãos confrontados com o dilema "liberdade ou sobrevivência".

Palavras-chave: liberdade, direitos e liberdades civis, contraterrorismo, crise pandémica.

Introduction

In Western liberal democracies, suppression is justified in the name of keeping public peace. It is part of a mechanism that seeks to prevent or restore breaches of an order that has been consensually accepted as social life frame by the citizens of a given country. In case of conjectural or systematic deviation, that is, when suppression is being instrumentalized in order to weaken the political opponents of the day, its justificatory ground becomes estranged from the democratic ideal but this move remains unmentionable. Formally speaking, repressive control of social and political unrest is legitimized in the name of public order-oriented policies. What lies beneath these policies — the need to protect political and economic order upon which rests the regime — is never admitted.

In the post-war period, this implicitly prevailing balance has been disturbed for the first time at a global scale in the aftermath of the 2001 Al Qaeda attacks, which stirred up an in-depth reframing of the prior citizen-executive relation, at the expense of civil rights and liberties, thus paving the way for a new form of governance to be established following the rhythm of successive Islamic attacks in many Western metropolitan centers across the world. Practically twenty years after the first Al Qaeda attacks, this gradually expanding reframing of the very structure of liberal democracy has been further boosted by the sanitary crisis caused by the COVID-19 pandemic, once again at a global scale, as its management has seriously jeopardized many different until then guaranteed civil rights and liberties across Europe.

In opting for a reflexive stance, this paper aims at highlighting the genealogy of what we may arguably consider as the ongoing shrinking of post-war democratic achievement in Western liberal democracies in order to show (dis)continuities in both its legitimization process and the nature of civil rights and liberties thus targeted. For this purpose, it will seek firstly to analyze the way certain key notions have been redefined from 2001 onwards to see afterwards how this radical reframing of liberal democracy has been implemented as part of a constantly evolving political blackmail to citizens confronted with the dilemma "freedom or survival".

Redefining the threat in the aftermath of the 2001 attacks

Ground-breaking attacks in the USA (United States of America) and, later on, in many European metropolitan centers stirred up an array of threat-defining communication strategies that held a hegemonic position in European mass media to frame the nature of threat, the attackers' key features and endangered values. Public discourses that have been elaborated by politicians, law enforcers, intelligence officers, opinion leaders and journalists were aiming at the confirmation of the real or imaginary foundations of Western liberal democracies' political past in order to draw the boundaries of a new order of things (Johnson, 2002; Steinert, 2003; Tsoukala, 2004, 2006, 2008a; Lazar & Lazar, 2004; Graham et al., 2004; Hodges & Nilep, 2007).

While, until then, the threat posed on many European governments by various armed organizations and groups was deemed to be intertwined with the transformations of a given domestic political field and integrated into a somewhat predictable repertoire of actions, the 21st century threat was presented in the public debate as the outcome of unfamiliar modes of action that were rendering it

uncontrollable because it was unpredictable, limitless, long-lasting, global and lo-cal (Tsoukala, 2008a). Media representation of this particularly fearful threat was completed by the image of a taken for granted osmosis between armed struggle and crime, as the attackers were believed to be also involved in organized crime networks.

Threat specificities were further highlighted by the embracing of many dif-ferent communication strategies to define the attackers' identity. Schematically speaking, the formerly prevailing pattern in the social construction of the threaten-ing other was relying on a rupture process, likely to exclude the perpetrator of the allegedly threatening acts from the mainstream society (Girard, 1972). By stigma-tizing the other, this pattern was legitimizing the unreserved implementation on them of a series of coercive measures, even extreme ones, while allowing broad consensual confirmation of collective values to be protected (Cohen, 1972; Hall et al., 1978; Goode & Ben-Yehuda, 1994; Critcher, 2003). Political and social exclusion of the other, frequently achieved by putting forward an image of them as irrational and bestial people (Tsoukala, 2008b), was resting upon a binary logic that was serv-ing the needs of a hegemonic public discourse due to its ability to simplify complex issues. Multifaceted causes of violent acts committed by the other were thus being hushed along with any calling into question of mainstream society's potential col-lective responsibility. Bearing in mind that such communication strategies are al-ways designed in conjunction with the evolving specificities of the political field they are addressed to (Tsoukala, 2011), it is not a surprise that discursive manage-ment of the threat posed by 21st century attacks has been adapted to current geopolitical interests at stake. Former extreme forms of social and political exclu-sion, resting upon irrationality and bestiality, have thus been dismissed in order to avoid or, at least, lessen the hostility of the worldwide Muslim community and to defend domestic multicultural models. The rupture process was not structured anymore in terms of horizontal exclusion but in terms of vertical classification. At-tackers were always being perceived following a binary logic but they were no lon-ger seen as radically other than the rest of mankind. They were simply deemed to be morally and culturally inferior. Their moral inferiority was brought forth as evi-dent in accordance with a Manichean worldview where the good lies with the threatened Western countries and the evil with the aggressors. The image of their cultural inferiority extended the aforementioned Manichean reasoning insofar as it reinforced the creation of an outer space, detached from contemporary allegedly violence-controlling societies, to relegate attackers and their leaders. This outer space has been constantly qualified as "barbaric" by contrast to the "civilized" space of Western societies (Tsoukala, 2008a).

These morally and culturally inferior attackers have been presented as ene-
mies of freedom and democracy since they were overtly seeking to harm the demo-
cratic way of life of Western societies. The powerfulness of this image stemmed
from its implicit global scope. While attacks targeted a specific way of life, which
was related to a particular politico-economic ideology, prevalent in Western capi-
talist liberal democracies (Lazar & Lazar, 2004, p. 228), the identification of this
way of life with freedom implied that the attackers were defying a universal, apo-
litical value and not an ideologically-driven definition of it. This semantic shift,
which allowed drawing a clear line between the Western-freedom-loving coun-
tries and the allegedly freedom-hating attackers, rested upon a double silence. On
the one side, freedom was never understood in the commonly accepted Kantian
sense of the term, that is, as freedom to act following rational criteria. Attacks were
presented as violent acts floating in a geopolitical/economic vacuum that de-
prived them from any rational political substantiation. On the other side, as free-
dom was implicitly believed to be an exclusive feature of the threatened countries,
the attackers were never seen as other people freedom fighters. In the absence of
any geopolitical/economic background, their attacks could not be possibly related
to the defence of other people interests or needs. Being presented in a combined
manner, these silenced freedom-related themes strengthened the image of the
backward, undemocratic and illiberal attackers, allowing thus their categorization
as radically external to the commonly shared value of freedom and its democratic
corollaries.

The legitimization of counterterrorist emergency rules

If we focus on counterterrorism policies introduced by EU (European Union) coun-
tries in the post-September 11th era, we realize that they converge on two points. On
the one hand, they tend to reinforce international cooperation among law enforc-
ers, judges and intelligence officers. On the other hand, they rely heavily on laws
and emergency rules that restrict civil rights and liberties in the name of the effi-
ciency of counterterrorism. In a nutshell, relevant laws provide namely for the cre-
ation of new offences; for the extension of the powers of law enforcement agencies;
for derogatory procedures regarding prosecution and trial of a series of offences;
and for harsher penalties and stiffer forms of detention. More often than not, the
strengthening of the legal arsenal goes along with the declaration of a state of emer-
gency and the subsequent introduction of initially temporary emergency measures
that in certain cases are being turned into permanent elements of domestic legal
systems (Vauchez, 2019), thus creating a *de facto* permanent state of emergency that

establishes the insecurity of the law in the name of the security of the state and unveils contradictions and shortcomings of Western liberal democracies.

Far from being a recent phenomenon, liberty-restricting states' responses to armed struggle have been a constant feature of post-war counterterrorism policies across Europe as governments faced with domestic armed organizations and groups have usually dealt with this form of political violence by introducing derogatory laws and, occasionally, by declaring a state of emergency to provide for suspension of certain civil rights and liberties (Groenewold, 1992; Della Porta, 1993; Donohue, 2001; Cettina, 2001). The introduction of emergency rules went always hand in hand with their legitimization by appropriate communication strategies so that governments would not lose their moral advantage over armed organizations and groups, which believed that the end justified the means, and therefore would not be denounced for their authoritarian stance. Yet, discursive approaches to security (Waever, 1995; Buzan et al., 1998) have pointed out that, when successful, such political discourses were embedded into the implementation of new forms of governance, as inherent part of a broader process of transforming security into a key political stake (Huysmans, 2004). In seeking to establish these forms of governance, the legitimization of counterterrorism policies had relied heavily on the argument that civil rights and liberties were impeding the implementation of efficient counterterrorism policies and had therefore to be restricted in order to protect the security of the individuals.

Despite the fact that this thesis has been a constant object of vivid criticisms in international academia (Della Porta, 1993; Chalk, 1995; Donohue, 2001), the 21st century key argumentation does not differ in any significant way from former discursive schemes. Current emergency rules have been legitimized through public discourses that sought to reclassify and to redefine freedom, as political value, in order to reconfigure the relationship between the executive and citizens in Western liberal democracies.

From 2001 onwards, the introduction of liberty-restricting laws rested upon the argument that democracy, due to its intrinsic open nature, is vulnerable to serious security threats, especially when these originate from armed organizations and groups. It was therefore considered that the protection of citizens' freedom was conflicting with the protection of their security because it was hindering the implementation of efficient counterterrorism policies.

Since freedom and security were perceived as two equal but conflicting values, it was obvious that lawmakers would follow the general legal pattern that whenever the law protects two or more opposed values one of them must be sacrificed or redefined so that it becomes subordinated to the other. Public discourses,

both at the domestic and EU level, have thus been structured around the idea of a balance to be struck (Tsoukala, 2004), of a necessary readjustment between two conflicting values, freedom and security. In presenting this readjustment as an absolutely rational need, the defenders of this thesis obscured the fact that its acceptance would imply a fundamental distortion of the notion of democracy, which cannot be possibly dissociated from civil rights and liberties (Waldron, 2003). Contrary to the key argument of the established public discourse, democracy is the framework in the inside of which can evolve security and not a theoretically equal to security set of values that can be sacrificed if this is deemed to be necessary by the executive. In disregarding the fact that civil rights and liberties are a substantive part of this frame, the executive sought to pull them instead inside the frame, as one among other values to protect during the ordinary act of governing. This repositioning entailed their transmutation as it broke their fixed conceptual substance to turn them into fluid, flexible concept containers. Being thus transformed into a mere political instrument, civil rights and liberties became adjustable to the requirements of everyday governing. From then forth, they could be selectively implemented, variously interpreted or even temporarily suspended without entailing any major political crisis. Accordingly, law and security were no longer the means to guarantee the exercise of civil liberties but were turned into ends in themselves and, consequently, into internal restrictions of these freedoms. As for justice, it ceased to be the core element of the rule of law to become a relative, politically-oriented social value, in the service of the executive (Tsoukala, 2006).

The meaning thus given to the new order of things served a twofold political objective. Firstly, it suggested that the measures in question should not be attributed to undemocratic intentions. On the contrary, they were deemed to strengthen democracy; they were a necessary democratic response to new security problems, the emergence of which required the redefinition of political priorities through the establishment of a new balance between conflicting collective values and interests. Secondly, the idea of a balance to be struck between two allegedly opposed social values was very reassuring. While making an implicit reference to the notion of justice, it was perceived as the outcome of a thorough and rational consideration of the interests at stake that guaranteed by definition optimal crisis management without having recourse to excessive, disquieting undemocratic measures. Liberty-restricting measures were thus presented as positive aspects of evolving democratic societies and not as negative characteristics of a regressing democratic process. Accordingly, public discourses focused solely on the resolution of the value conflict, hence thrusting aside the question of the conflict itself.

To achieve this objective, reversed presentation of liberty-restricting measures rested upon an equally reversed definition of freedom, which ceased to be defined in positive terms, as freedom to think and act in a law-abiding way, to be understood in negative terms, as release from a threat. Acts committed by armed organizations and groups were not perceived as a threat posed on the freedom of people to think and act in democratic terms but as a threat that people had to set themselves free from so that they may remain alive — in the strict biological sense of the term, not as citizens living in democracy. The public discourse on freedom became a discourse on fear and insecurity in front of the allegedly forthcoming destruction and the protection of a freedom defined in such a way served to justify all future counterterrorism measures, regardless of their illiberal content. In other words, far from being identified with civil rights and liberties, freedom legitimized their restriction. People should accept restriction of their ontological freedom in the name of the protection of their freedom from fear. This transformation of fear into a key political stake allowed, in turn, the legitimization of a new form of governance, grounded on the management of fear and unease and relying both on sophisticated technologies of surveillance and permanent introduction of illiberal elements in the legal system of many Western liberal democracies (Bigo, 2002; Huysmans, 2004, 2006; Bigo & Tsoukala, 2008).

From counterterrorism to the pandemic crisis

Representing freedom as a value opposed to one's survival depoliticizes political reality because it disregards both geopolitical stakes lying beneath Islamic attacks (Collectif, 2020) and longstanding racist policies that impoverish and marginalize Muslim communities in many European countries, thus enhancing their vulnerability to Islamic radicalization (Bonelli & Bigo, 2008; Guibet Lafaye, 2017). Academic research has further shown that this depiction of freedom is arbitrary as it does not rely on any reliable causal relation between the effective protection of security and the restriction of civil rights and liberties. Nonetheless, the counterterrorism discourse that opposes freedom to survival is nowadays dominant, as a taken-for-granted truth, thus framing people in a position of voluntary obedience or essentially fruitless resistance.

When the COVID-19 threat emerged at a global scale, this well-established perception of the citizen-executive relation served as a solid background to integrate new liberty-restricting policies that, once again, were relying on the necessity to sacrifice our freedom in order to remain alive. Introduction of wide-sweeping emergency rules was so intense that the US Freedom House (Repucci & Slipowitz, 2020, p. 1) considered that "since the coronavirus outbreak began, the condition of

democracy and human rights has grown worse in 80 countries", while the European Parliament's Civil Liberties Committee (European Parliament, 2020, p. 1) stressed that "emergency measures pose a 'risk of abuse of power' and (…) that any measure affecting democracy, the rule of law, and fundamental rights must be necessary, proportional and time-limited".

The management of these two crises bears many similarities. In both cases, the threat is seen as exceptionally worrisome because it is hard to control due to its unfamiliar modes of manifestation that are rendering it unpredictable, limitless, long-lasting, ever-changing, global and local. In both cases, there is no reliable or even rational causal relation between liberty-restricting measures and the efficient protection of our security or safety. For example, there is no evidence that the introduction of derogatory criminal proceedings has had any impact on citizens' security. Nor is there any plausible justification of the fact that, in many European countries, public health measures implied that restaurants or bookshops had to shut down, in spite of them respecting sanitary protocols, while everyday working people kept on being crowded in public transport systems. Finally, in both cases crisis management relied heavily on repressive policies that have been used as an instrument to control fear rather than to keep public peace, thus allowing the increasing strengthening of the executive.

At the same time, management of the abovementioned crises diverges in many respects. First of all, while in both cases reinforced suppression fulfills various political needs and interests at stake, the reluctance to adopt alternative strategies is associated with different temporalities as regards the manifestation of the threatening phenomenon. In counterterrorism, the hegemonic place held by suppression arguably reveals longstanding unwillingness to address the abovementioned origins of (inter)national political violence. In the management of the COVID-19 pandemic, the importance of the role conferred to suppression stems from the reluctance to address major facets of an already existent phenomenon. Though it is undeniable that efficient control of the pandemic requires strengthening of public health and education systems, improvement of public transport and slowing down of the production rhythms of key domestic economic sectors, such as heavy and small industry, neo-liberalism-oriented government plans seek to avoid all relevant reforms.

Secondly, while in both cases political management of the respective threat aims, among others, at weakening the position of the individuals-subjects of rights, their ensuing declining political existence is being established in a gradual way. Initially, individuals were asked to accept passively their rights to be restricted but responsibility for tackling the Islamic threat was resting on public authorities. Nowadays, people are asked to actively contribute to further restrictions of their

rights, are seen as heavily responsible for the (in)effective control of the pandemic and have to bear guilt for potentially threatening other people's life due to their alleged lack of discipline.

Thirdly, targeted civil rights and liberties differ greatly from one case to the other. Implementation of counterterrorism laws and measures seriously affected an array of legal rights (rules and guarantees in criminal proceedings, restricted privacy due to expanding surveillance, etc.). Individuals have been deprived from many protective filters that were meant to define their constitutional association with the repressive apparatus. Implementation of pandemic-related measures affects rights that concern people as political subjects (restricted/banned freedom of assembly) or refer to their ontological condition (restricted/banned freedom of movement, restricted social life, etc.). Individuals are being stripped off their immaterial needs, be they political or psychological, to be identified with mere living creatures that are endowed with only material needs and exist to serve the material needs of their respective political and economic system.

Conclusion

This overview of the impact on democracy of two major events sought to seize the rationale of what underlies counterterrorism and pandemic-related policies in order to unveil the core concepts and correlated mechanisms that determined an ongoing consensus-oriented legitimization process of liberty-restricting measures, which made possible a worldwide regression of the post-war democratic achievement in many Western liberal democracies. In being placed in front of the arbitrary yet presented as rational and necessary dilemma "freedom or survival", people have been called to abdicate from many different forms and expressions of freedom. Management of respective threats thus ended up by enlarging fissures of liberal democracy. Worldwide gradual transformation of fissures into cracks, with subsequent sliding of post-war liberal democracy to authoritarian models of governance, is by definition detached from any specific power games within the (inter)national political field, hence allowing us to suppose that it does not uncover primarily the quest for power of illiberally-oriented political elites but liberal democracy's inherent political vulnerability. If, as I had argued elsewhere (2009), civil rights and liberties have been cherished by political elites during the first post-war decades as a major propaganda tool in a Cold War ideological struggle and, consequently, have lost most of their political appeal after 1989, it should be predictable that, from then onwards, governments would seek to modify, for their own benefit, prior balance of power in democracy.

Deconstructing discursive schemes that in the course of time generated current illiberal state of things entails awareness and, as such, it is a necessary stage to counter this ongoing transformation of the political field. Yet, the ground that has been lost as regards protection of civil rights and liberties cannot be possibly gained back, let alone be further expanded, if we do not meet the challenge to identify these initial fissures. The question is not so much to analyze why political elites relied on preexisting fissures to expand their power at the expense of civil rights and liberties but to understand what these fissures consisted of and why they remained unaffected during the post-war democratization process of Western liberal democracies. This question concerns all of us, both as scholars and political subjects.

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