

# The Philosophical and Legal Grounds of Miguel Reale's Authoritarianism: Experience, Culture and Decisionism<sup>1</sup>

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## INTRODUCTION

Miguel Reale was one of the most important Brazilian jurists of the twentieth century and one of the major names in authoritarian-conservative thought. He engaged in the great political movements and ideological clashes of his time and simultaneously produced an imposing political, legal, and philosophical oeuvre. Despite the profusion of studies on Reale, these three strands were often addressed separately. The purpose of this article is to contribute to closing this gap, seeking to establish a connection between these three dimensions of his thinking. As the text argues, the notions of culture, experience, and decision, which were mainly developed in his legal and philosophical writings, lie in the foundations of Realean authoritarianism.

It is important to emphasize that there is no inert thinking in Reale. Most studies on the specifically political dimension of his thinking are limited to his 1930s integralist work, as though he had stuck to the ideas from his youth throughout his life. I argue that this output, which was written over a five-year period, between 1932 and 1937, is not the most important part of his thinking. The hypothesis is that Reale evolved from the defense of a fascist authoritarian corporatism in the 1930s to that of a decisionist authoritarianism in the 1960s, duly purged of previous fascist references, and henceforth based on a sophisticated legal-philosophical conceptual apparatus.

Due to the diversity of his areas of expertise and the importance of his work, Reale is certainly one of Brazil's most studied intellectuals. A publication entitled *Miguel Reale: bibliografia e estudos críticos*, by Centro de Documentação do Pensamento Brasileiro (1999), found 254 texts about Reale, ranging from short journalistic articles, paeans, and honors to voluminous books with in-depth studies.<sup>2</sup> It was not possible to review such vast literature. However, the reading of some of these works showed that most studies on Reale's thought were undertaken in a way which was "compartmentalized" between the areas of law, philosophy and, to a lesser extent, history. In this regard, among academic studies about the author in the fields of law and philosophy, several were devoted to the concepts employed by the jurist in his writings, such as those of experience (Grielli, 1979; Müller, 1990; Martins, 2004), value (Bagolini, 1952), conjecture (Pimentel, 1988), legal norm (Ferraz Júnior, 1981), and fact (Lamand, 1966), as well as the way he conceived the problem of knowledge (Llorente, 1978; Olmedo, 1978; Brito, 1998).

As expected, his three-dimensional theory of law has received particular attention from scholars (Cella, 2001; Czerna, 1999). However, other aspects of his legal contribution have not been overlooked, as attested by Teófilo Cavalcanti Filho's (1977) important edited volume. It is worth mentioning Antonio Paim's equally important studies on Reale's culturalism (Paim, 1971; 1974; 1977). In the field of history, the jurist from São Paulo was one of the agents investigated by Helgio Trindade in his important study on Integralism (1979), and the pioneering work on his political thought was that of Ricardo Benzaquem de Araújo (1988). More recently, João Fábio Bertonha (2017) has sought to analyze the circulation of ideas between Reale and Italian fascist writers, while Pedro Ivo Dias Tanagino (2018) has analyzed the Realean writings of the 1930s from the contextualist perspective of the Cambridge School, emphasizing topics such as the theory of history and historiography, the theory of law and corporatist state, and the role of the historian in the construction of the state. There are few studies about the "post-Integralist" political Reale, among which Rodrigo Jucerê Mattos Gonçalves's (2016) stands out, as this article shall explore. A corollary of this disciplinary compartmentalization, most of these studies were carried out from the perspective of these different areas, that is, within the theoretical framework, the categories of analysis, and the methodology used by scholars from law, philosophy, and history.

This article aims to offer a contribution to the study of Reale's political thought from a resolutely political perspective – more specifically, from intellectual history, understood as the study and elucidation of works in their historicity (Dosse, 2003:11). This perspective seeks to account for output, routes, and itineraries beyond disciplinary boundaries. In this regard, authors such as Pierre Rosanvallon and Reinhart Koselleck were important references through which to consider the historicity of the concepts developed by Reale, the concepts' ability to create concrete political experiences (Bernardi, 2015:37; Koselleck, 2006:326), and their relationship with their respective production contexts.

Hence, despite privileging the work of a single author, this analysis intends to go beyond the exposure of his worldview. It enables the demonstration of how one of the main names of Brazilian authoritarianism understood the political problems of his time and how he sought to offer solutions to them through his understanding of community life. Thus it is possible to follow the gradual construction of an authoritarian-conservative political thought in which legal, philosophical, and political dimensions were articulated. Additionally, it is possible to identify how his authoritarianism began, at the same time as he created and assigned a specific meaning to political concepts such as democracy, revolution, liberalism, constitutionalism, etc.<sup>3</sup> This article also draws on the so-called "history of intellectuals", particularly on the contributions from the reconstitution of intellectual itineraries (Sirinelli, 1986; 2003).

This article is divided into five parts. The first seeks to offer a panoramic view of Reale's political thought in the 1930s. The second discusses the construction of his legal and philosophical thinking, from his first influences to his "three-dimensional theory of law", published in the late 1960s. The third part revisits two fundamental notions of Carl Schmitt's thinking (1988a; 1988b) – namely decision and constituent power – to analyze the way Reale appropriated them to interpret and legitimize the 1964 coup d'état and the military dictatorship in Brazil. The fourth part looks at some of his political writings from the 1960s and 1970s to analyze the extent to which his legal and philosophical reflections grounded his political thinking in his late works. Finally, the fifth part presents what he meant by social democracy, a political model he deemed suitable for Brazil.

## REALEAN FASCIST CORPORATISM IN THE 1930S: A PANORAMIC VIEW

Miguel Reale was born on November 6, 1910 in São Bento do Sapucaí, São Paulo, and moved to the state capital in 1921 to study at the Italian school Instituto Medio Dante Alighieri (Reale, 1987a:18). Reale says that Dante was of great importance to his political education, in particular due to his friendship with two anti-Mussolinian teachers: the brothers Dante and Francisco Isoldi. While Francisco moved on to study epigraphy and history of philosophy, with no particular interest in politics, his brother Dante was a socialist and admirer of Italian Marxist theorist Antonio Labriola. Influenced by these two teachers, Reale claims to have become a socialist and then a follower of the revisionism of Carlo Rosselli. In the early 1930s, the young socialist joined the São Paulo Law School (Reale, 1987a:42). During his undergraduate years, he abandoned his revisionist socialist convictions to become one of the leaders of Ação Integralista Brasileira (Brazilian Integralist Action) with Plínio Salgado and Gustavo Barroso (Reale, 1987a:72).

The years between 1932 and 1937 were particularly intense for Reale. He engaged full time in the far-right movement, traveling across the country as its National Secretary of Doctrine (Reale, 1987a:95-117), a position he managed to reconcile with a significant intellectual output. Over these five years, he published *O Estado Moderno* (*The Modern State*) and *Formação da política burguesa* (*The Formation of Bourgeois Politics*) in 1934; *O capitalismo internacional* (*International Capitalism*), *ABC do integralismo* (*The ABC of Integralism*), and *Perspectivas Integralistas* (*Integralist Perspectives*) in the following year; *Atualidades de um mundo antigo* (*Contemporary Facts from an Ancient World*) in 1936; and *Atualidades brasileiras* (*Brazilian Contemporary Facts*) in 1937.<sup>4</sup> The stepping stone in the construction of Realean thought is, therefore, eminently political. It stems not only from having read a wide range of Brazilian and European authors, but above all from his activism in the integralist movement.

As mentioned in the introduction, several authors have focused on Reale's writings from the 1930s. This article intends neither to provide a new interpretation of his "integralist work" nor to discuss its ideas at length. However, it is important to highlight some aspects that seem essential to consider when examining the evolution of his political thought. Among these writings, *O Estado moderno*, published in 1934, seems to be one of the most relevant in the period and enables an

assessment of his political thinking at that time. His ideas are characterized by an authoritarian, anti-liberal character, and offer a proposal to Brazil inspired by the corporatist model of Italian Fascism.

The critique of liberalism is found in the second essay of the aforementioned book, *O Estado Demo-Liberal (The Demo-liberal State)*, in which the author takes up the historical foundations of liberalism. Primarily, Reale proposes to demonstrate how this doctrine created a “transcendental subject”, a bearer of a universal reason that determines human behavior. The determinism of this universal reason generated a negative conception of freedom which prevented the expression of individual will, including participation in the life of the state. Secondly, for the young Reale, since the end of the 19th century, liberalism became a fiction that could be demonstrated in three elements: the loss of the importance of the individual to the benefit of groups, as well as the exploitation of one group by another group instead of the touted equality; state interference in favor of the bourgeoisie instead of the proclaimed non-interference; the loss of the national character of sovereignty, transferred to unions and cartels. Thus, his criticism of liberalism is both radical and erudite, and extends, of course, to the Brazilian liberalism of the First Republic. To the young lawyer, the alternative was Fascism.

However, his Fascism was not totalitarian, as defended by ideologues like Alfredo Rocco. Reale advocated for the “integral state”, which sought to overcome what he considered a contradiction between the state and the individual. The chapter entitled “Integral Democracy” reveals the way the model worked. He argues that, in a democracy in a territory as vast as Brazil, voters do not know candidates, showing no interest in them. Furthermore, the vote is meaningless, being described as an illusory civic expression. Thus, in addition to failing to achieve democracy at national level, municipal life is corrupted. The young lawyer, then, suggests the fascist experience in which “democracy takes on a group sense” (Reale, 1983:152).

What is this system Reale calls the only possible democracy in Brazil? It is one based on the professional group, that is, on its form as a trade union. This is the level in which democratic life is possible, in the self-determination sense. Unions are not isolated, for they establish ties with others at different levels, forming federations and confederations. At another level and above such organizations, there are corporations,

which bring together common interests from each branch of production. Finally, at the top, there should be a coordinating body, a task to be undertaken by the state, which is responsible for joining the parts in an organic, complementary, and hierarchical whole. This model of political organization would allow liberal society and capitalism to be overcome, while preserving a qualitative individuality and the active role of the state. While unions mediate between individuals and corporations, corporations mediate between unions and the state. Hierarchically, from the bottom up, the instances that form the polis would be the individual, the union, the corporation, and the state.

Evoking the 1930s, Reale affirms that there was no homogeneous "integralist thought" (1987a:80). Nationalism, corporatism, and authoritarianism were the basis of the movement, but this allowed for quite different ideological constructions, which he distinguished along three lines: the ideology of leader Plínio Salgado, founded on the social doctrine and nationalist exaltation of the Church; the one that Reale himself defended, facing social and union problems on the one hand, and the legal and institutional problems of the state, on the other; and a third line, represented by Gustavo Barroso, founded on anti-Semitism.

Reale insists on one point: the integralist movement was not a mere application of Fascism in Brazil. He does not deny the influence of what he calls "first Fascism", referring to what preceded Hitler's rise to power, which he considers "a creative phase, influenced by thinkers like Giovanni Gentile and Ugo Spirito, or jurists like Giorgio del Vecchio, Antonio Navarra or Ugo Redanò" (Reale, 1987a:72). Despite this fascist influence – which half a century later he says was "excessive and naive" (1987a:83) – the integralist movement would have been impregnated with the ideas of Brazilian thinkers who, since the mid-1910s, turned to national problems to propose political solutions which were, in most cases, authoritarian.

## THE CONSTRUCTION OF A JURIDICAL AND PHILOSOPHICAL THOUGHT

Reale's first legal and philosophical works came after his early political activism in the ranks of the Brazilian extreme right and his integralist work. In 1938, after a failed coup attempt by the Integralists, the young jurist went into exile in Italy, where he spent little more than a year. He says in his memoirs that, already disappointed with Brazil, he was also disappointed with Mussolini's regime "when he saw it up

close” (Reale, 1987a:138-139). His official break with Integralism came when he began to devote himself to study after his return from Italy in 1939 (Reale 1987a:144). In 1941, Reale was approved in the selection process for the Chair of Philosophy of Law at the Faculty of Law of Largo do São Francisco. On that occasion, he published his first two legal works: *Fundamentos do direito* (*Fundamentals of Law*) (1940), which was the thesis he has presented for the selection process, and *Teoria do direito e do Estado* (*Theory of Law and the State*) (1940). Some years later, he published *Filosofia do direito* (*Philosophy of Law*) (1953), a book that he considered to be a landmark in his trajectory, because it was the culmination of the reflections he had been developing in his courses since 1941. According to the author, it was a conclusive step in his continued attempt to “understand law in its concrete rational wholeness” (Reale, 1987a:163). Finally, during the military dictatorship, the publication of two other works made him an international reference in the field of law: *Teoria tridimensional do direito* (*The Three-Dimensional Theory of Law*) (1968a) and *O direito como experiência* (*Law as Experience*) (1968b).

His philosophical thinking, in turn, developed alongside his legal thinking, gaining increasing prominence from the 1950s onwards with the publication of several articles. These ideas were later systematized in works such as *Cultura e experiência* (*Culture and Experience*) (1977), *O homem e seus horizontes* (*The Man and His Horizons*) (1979) and *Verdade e conjectura* (*Truth and Conjecture*) (1983). It is the articulation of a theory of knowledge that connects law and philosophy in his thinking. Here again, this attempt to summarize poses a considerable risk of simplification. However, this article seeks to retrace the evolution of Reale’s thought, focusing on two intrinsically interconnected categories which, from our point of view, are at the root of his political thinking from the 1950s onwards: experience and culture.

As Tercio Sampaio Ferraz Júnior (1999:84) reminds us, Reale’s first legal work, *Fundamentos do Direito* (1940), is a considerable break with a long legal and philosophical positivist tradition in Brazil. This rupture was possible thanks to three important intellectual sources that the Brazilian jurist began to study in the 1930s, and with which he engaged, either absorbing them or opposing them: the German neo-Kantianism of the Baden School, the legal culturalism of the Recife School (*Escola do Recife*), and the legal normativism of Hans Kelsen.

From the neo-Kantianism of the Baden School, Reale absorbed the notion of value as an indispensable element for knowledge. The return to Kant's philosophy in mid-nineteenth-century Germany took place with a view to reflecting on the foundations, methods, and limits of science (Reale; Antiseri, 1991:438). Neocriticism – as it came to be called – intended to combat the positivist fetishism of “fact” and the idea of a metaphysically absolute science, as well as the reduction of philosophy to empirical science, theology, or metaphysics. For neo-Kantians, philosophy should return to what it had been with Kant: the analysis of the conditions of validity of science and other human products, such as morality, art, or religion. In other words, neocriticism was less concerned with the actual situations that could be intertwined with the production and dissemination of a sociology, than with the conditions of validity of an either moral or legal theory or norm.

Among the neo-Kantians that Reale studied were the two main representatives of the School of Baden – Wilhelm Windelband and Heinrich Rickert – exponents of a philosophy of values. Windelband attributed to philosophy the function of seeking the a priori principles that guarantee the validity of knowledge. He introduces two innovations: on the one hand, these principles are interpreted as necessary and universal values, typified by the normative character regardless of their effective actualization. In this sense, philosophy is not about judgments of fact, but rather evaluative ones. This is how values are distinguished from natural laws: the validity of natural laws is the validity of the *müssen*, the empirical validity of not being able to be otherwise; the validity of norms, or values, is that of *sollen*, that is, of the “ought to be”. For Windelband, therefore, philosophy consists of a theory of values: its function is to establish which values are at the base of knowledge, morality, and art (Reale; Antiseri, 1991:448).

Heinrich Rickert, on the other hand, known for his endeavor to found the autonomy of historical knowledge, returns to Windelband's conception of philosophy as a theory of values. In his analysis of the antitheses between subject and object, he denies that knowledge is the relation of the subject to a transcendent object, independent from it and which knowledge must face (Reale; Antiseri, 1991:448). The representation and the object represented are both objects and contents of consciousness. Therefore, their relationship is that which exists

between two objects of thought. Consequently, the guarantee of the validity of knowledge does not lie in being, but in the “ought to be”. As Giovanni Reale and Dario Antiseri (1991) point out:

for Rickert, knowing is judging, that is, accepting or rejecting, approving or disapproving, which suggests the recognition of an “ought to be” that lies in the foundation of knowledge. Denying the “ought to be” is denying the norm, which would be tantamount to ratifying the impossibility of any judgement, including that of the one who denies it. A judgement is not truthful because it expresses what it is; it can be affirmed that something is only the judgement that expresses it is truthful due to the strength of its “ought to be”. And the “ought to be”, that is, the values, that is, the norms, are transcendent in relation to the empirical consciousness (Reale; Antiseri, 1991:448).

Reale’s second intellectual source was the Recife School, an intellectual movement which spread the philosophical naturalism conveyed in the evolutionary monism of Spencer, Haeckel, and Noiré, and whose institutional hub was the Recife Faculty of Law. The movement was not homogeneous. It developed along several phases and brought together renowned names, among which those of Sílvio Romero, Clóvis Bevilacqua, Fausto Cardoso, Martins Júnior, Arthur Orlando, and Laurindo Leão (Paim, 1966) stand out. However, its undisputed leadership fell to Tobias Barreto. The members of the Recife School initially expressed themselves through poetry, but later they followed the philosophical trends of evolutionism, monism, and Kantianism, culminating in their legal and social expression (Machado Neto, 1969:73).

For this article, it is important to emphasize the contribution of this intellectual movement and Tobias Barreto to the rupture in Reale’s legal thought from the 1940s onwards, of which two aspects should be highlighted. The first is the critique of natural law, which, for Tobias Barreto, was incompatible with social sciences insofar as man should be considered in his historicity, which in turn was incompatible with the idea of universality of original and innate rights. The second and more relevant aspect is his legal culturalism. For Tobias Barreto, “law is a work of man, at the same time a cause and an effect of human development” (Tobias Barreto apud Machado Neto, 1969:87). It was through a critique of natural law that the main representative of the Recife School arrived at the notion of law as a cultural object. Hence the finalistic and axiological character of culture, already present in

authors such as Júlio Froebel – who had discovered the epistemological relationship between nature and causality, on the one hand, and culture and purpose, on the other. As Machado Neto (1969:88) reminds us, this is what led Tobias Barreto to overcome Haeckel's mechanicism, since mechanicism does not fully apprehend and explain reality in the human territory of culture.

Finally, young Reale's third intellectual source was the legal formalism of Hans Kelsen, which worked more as a counterpoint to his legal conception. In his memoirs, the Brazilian jurist wrote that "each philosopher has his double, and this can be a double by contrast. In my personal case, I do not hesitate to say that early on Hans Kelsen became the overt, or hidden, partner of my philosophical-legal dialogue, despite the deep divergences that separate us" (Reale, 1987b:15). The dialogue that Reale established with Kelsen and, more specifically, their divergences, can already be found in *Teoria do direito e do Estado*.

As it is well known, for Kelsen (2016) there is a correlation between law and state, and it is unfeasible to conceive of the latter as a reality prior to the normative system that structures it. Neither are two legal realities, but one single reality: the normative one. The state is nothing but a set of legal norms; its existence is not natural but artificial, a human invention designed to accomplish certain goals (Kelsen, 2016; Sgarbi, 2019:102). In *O Estado moderno*, Reale had already criticized Kelsen's formalism, a criticism he would intensify in *Teoria do direito e do Estado* with his refusal to equate law and state.

Although Reale considers Kelsen his "double by contrast", and it is the reference to Carl Schmitt that prevails in his political writings of the 1960s and 1970s, it is important to mention Rodrigo Jucerê Matos Gonçalves's interpretation of Reale's appropriation of Kelsen. For Gonçalves (2016:147ss.), this appropriation clearly emerges in *Filosofia do direito* (1953) and is reflected in the jurist's consideration of the "ought to be" in the present, giving an authoritarian sense to the Austrian jurist's explanation when he shifts the norm to an act of political will. Still according to Gonçalves, this appropriation allowed the jurist to continue the dialogue with fascism, especially with Giovanni Gentile. We will return to Gonçalves's interpretation and to the bridges that, according to him, Reale managed to establish between conservative liberalism and fascism.

Indeed, with *Fundamentos do direito* (1940) and *Teoria do direito e do Estado* (1940), Reale paved the way for a discussion on law from a historicist and culturalist perspective in Brazil. *Fundamentos do direito* already distinguishes three domains: the domain of nature, constituted by real phenomena, connected by causality; the ideal domain of values, which transcend the subject and the object; and the domain of culture (Reale, 1972:179). The influence of the School of Baden can be seen in this work. This path would be consolidated thirteen years later with *Filosofia do direito* (1953). This work simultaneously represents a culmination, as it systematizes a series of reflections that he had been carrying out since 1940, and the beginning of a new stage in his legal thinking that would culminate in *Teoria tridimensional do direito* (1968).

What does the three-dimensional theory of law consist of? Reale (1968a) understands the legal experience from three distinct dimensions, which are inseparable from each other, and interact dialectically: facts, values, and norms. Facts are the set of circumstances that surround human beings. These are events generated either by nature or by human action, and that impact people's lives. Values consist of the meaning given to facts by human beings at a given time and place. Facts themselves are meaningless, for they are valued by men according to a given culture: whether they are desirable or undesirable, favorable or unfavorable, good or bad. It is from the consciousness that exists and the search for meaning in their existence that human beings stipulate values and qualify them, building the world of culture. Norms, in short, are the relationships that integrates facts and values. Depending on whether certain facts are considered valuable or not, a rule will be established for the reinforcement or rejection of certain human conducts in terms of what is valued or rejected in a certain culture. From there, a legal order is set up. Therefore, given the three-dimensional conception, law is considered a cultural experience, i.e., a reality resulting from the social and historical nature of society, which requires us to consider both what is natural and what is constructed. In this sense, law presents itself as a synthesis or integration between being and "ought to be", between facts and values (Reale, 1968; Gaziero, 2012; Czerna, 1999).

If we now move to Reale's philosophical thought, it will become clear that the primary objective of philosophy for him is not ontological inquiry, that is, about being, but about the knowledge of being. Philosophy is not just a gnoseology – concerned with the validity of knowl-

edge in terms of the knowing subject –, but an ontognoseology – which refers to the essential a priori relationship between the subject who knows and the object of knowledge. Therefore, the objective and subjective conditions of knowledge and the process of implication-polarity between subject and object through which knowledge is achieved need to be considered (Teixeira, s.d.:7).<sup>5</sup>

Immanuel Kant is the starting point of Reale's philosophical reflection, more specifically the German philosopher's premise that the structure and nature of the knowing subject transcendently condition the objects, which contributes to their *gnosiological* constitution. Reale (1977) considered this conception insufficient, proposing a displacement in the subject-object relationship. For him, the social and historical conditionalities of all knowledge and the historical nature of the individual's being needed to be considered. This is because, as António Braz Teixeira recalled (s.d.:5), the transcendental subject is not an empty and static form, but it is constituted in the processes of capturing the real: knowledge is always a dynamic correlation between what is immanent in the subject who knows, and what is immanent in the real. In this sense, the subject of knowledge is necessarily linked to their social-historical conditions.

Reale's ontognoseological criticism intends to be broader than transcendental criticism, as it is not limited to mathematics and natural sciences, but also encompasses the ethical experience. Realean ontognoseology maintains that knowing is knowing something in a process in which the spirit orders the multiple and sparse data of experience in new syntheses, giving them meaning. Knowledge then depends on a subject who seeks to capture something and make it their own, and an object already possessing an objective structure. Within this construction, the notion of experience occupies a central place. Experience is not only a source of knowledge, but also the domain in which entities manifest themselves, conceived as a complex of forms and processes through which human beings seek to ensure the truth and intercommunicability of their interpretations of reality (Teixeira, s.d.:12).

It is important to highlight that the notion of experience implies that of value, as any experience involves taking an axiological position. In other words, every action – whether in the sense of knowledge or practice – presupposes something valuable that justifies it. Therefore, valuation precedes the act of knowledge and the act of action. A final

observation about the notion of experience in Reale: it is inscribed in the domain of culture without submitting to it. These are complementary but not synonymous terms: the first makes history dynamic, while the second is everything that the individual has managed to objectivize. The concepts of culture and experiences are, thus, at the source of an ethical program, which necessarily implies political and legal aspects (Reale, 1987b:296).

## DECISION AND CONSTITUENT POWER IN CARL SCHMITT

Having explained the meaning of the concepts of experience and culture for Reale and, more specifically, their philosophical and legal foundations, it is essential to add the third pillar of Reale's authoritarianism in his maturity: decisionism, which draws directly on Carl Schmitt. In the second volume of his memoirs, in the chapter entitled "Revolução ou golpe de Estado?" ("Revolution or *coup d'état*?"), Reale discusses the character of the military takeover and whether what took place in Brazil in 1964 was a coup or a revolution (1987b:123-134). In an excerpt, the jurist states that, if former military president Costa e Silva (1967-1969)

did not lift a finger for the movement of March, once he was invested in the Command of the Revolution, he showed uncommon energy and decision-making, altering the course of events to the point of converting what could have been one more *coup d'état*, of the Latin American kind, into an authentic revolutionary act (Reale, 1987b:124).

Further on, Reale reproduces Adhemar de Barros's account of a meeting between Costa e Silva and the governors in favor of the coup, in which he defined the choice of marshal Castelo Branco as President of the Republic. For Reale, the way Costa e Silva led the meeting and took the lead in the process meant that, for the general, there was a revolutionary fact:

Upon hearing these words [from Adhemar de Barros], I understood that, for Costa e Silva, there was a revolutionary fact that legitimized itself, even though his knowledge of the decisionist thesis was unlikely. However, it was this theoretical position, inspired by the teachings of Carl Schmitt, that guided the first steps of the Revolution; first when Costa e Silva appointed himself Minister of War at the head of the Revolutionary Command,

together with Vice-Admiral Lieutenant Brigadier Augusto Rademaker and Brigadier Correa de Mello, dispensing with the decree with which President Ranieri Mazzilli intended to place him in the Ministry; and, later, when an Institutional Act was decreed, which, in theory, should not have had a number, as it was intended for a transitional phase, outside of constitutional imperatives (Reale, 1987b:126).

In his memoirs, more than 20 years after the military takeover, Reale correctly stated that Carl Schmitt's decisionism was all in the preamble of the Institutional Act of April 10, 1964, written by Francisco Campos. For Reale, this was the document that legitimized the military takeover, characterizing it as a revolution and not as just another *coup d'état*.

Examining Carl Schmitt's thinking in detail falls outside the remit of this article. The German jurist is certainly one of the most controversial, well-read, and studied authors of the 20<sup>th</sup> century, and his concepts were appropriated by intellectuals and activists from the most diverse political spectrums, from the extreme right to the extreme left.<sup>6</sup> However, it is critical to revisit two specific key concepts used by Schmitt, and then analyze the way they were appropriated by Reale.

The first is the concept of decision, which appears in one of Schmitt's best-known books, *Political Theology* (1988 [1922]). In this book, he begins his battle against legal normativism, attacking both the neo-Kantian school in general and Hans Kelsen in particular. Schmitt opposes the personal political decision and abstract norms, which Kelsen identifies with the state. Schmitt refutes the latter's idea, according to which the legal order is a system of references linked to an ultimate reference and an ultimate fundamental norm (Müller, 2003:22). According to the author of *Political Theology*, the legal order is based on a decision and not on a norm. Consequently, no norm as such can be sovereign. Moreover, the state may be faced with situations that are outside the norm.<sup>7</sup>

It is important to highlight that, for Schmitt, the exception is not subordinated to legal concepts, since every order is based on a decision and rules only apply in a normal situation (Schmitt, 1988:17). Ultimately, the authority capable of facing the exception is at the heart of the legal order. In this sense, the exception may be more important than the rule and it may be more interesting than the case of the normal.<sup>8</sup> Like Schmitt, Reale uses the concept of decision to legitimize the constitution of an authoritarian state. For both the German and the Brazilian

jurists, as we shall see, it is less important to know how and by whom decisions are taken than the fact that they are taken. In short, the state does not need to be subject to law to create law (Müller, 2003:23).

The second concept is constituent power, as Schmitt sets out in his *Constitutional Theory*, published in 1928. Müller offers a good synthesis of Schmittian constitutionalist theory. In *A Dangerous Mind: Carl Schmitt in Post-War European Thought* (2003), he states that Schmitt's ambition is to reconstitute a unified theory of the state at a time when it seemed to have lost its functions of integration and participation. Schmitt draws a distinction between a part of the Weimar Constitution that is properly political and another part that concerns the rule of law (*Rechtsstaat*), liberal and apolitical. The political component contains and formulates the decision in favor of the fundamental constitution, that is, a "global decision" in favor of the "form of political existence" that people have chosen. The apolitical component aims at separating powers and individual rights, and it contains provisions to protect citizens against political power. It cannot constitute a state by itself.

Schmitt sees the political dimension of the constitution essentially in terms of the nation's free decision, without a normative foundation. The nation is not to be confused with the state, defined by Schmitt as the "status of political unity" (Schmitt apud Müller, 2003:29). The state precedes the "national awakening", constituting one of its conditions in the same way that absolute sovereigns made their countries a political unit, and it is in this context that the nation "becomes aware of itself". However, in addition to giving the state a new content and a new "substance", the nation reinforces its power by mobilizing the people in a constant and deliberate way. The influence of Sieyès's (2009) writings on Schmitt about the popular sovereignty of the Third Estate is well known. The German jurist takes up the ideas of the French abbot to affirm that the constituent power presupposes "the conscious will to exist politically, therefore, a nation". The paradigmatic case is the French Revolution, in which "a people were fully aware of taking their destiny into their own hands, and freely decided the genre and form of their political existence" (Müller, 2003:30).

The power of the nation is essentially unlimited, precisely because it is not constituted and the national will remains present alongside and above the constitution. To change the constitution, it is enough that the "substance" of the state, that is, the nation, reaffirms itself in the

immediacy of its absolute power. The constituted power, that is, the state, however powerful it may appear externally, always depends on the will of a substantial nation as a constituent power and on its capacity to disrupt this political power every day as it is constituted.

In sum, Schmitt (2008) asserts that the state is based on two principles: the identity of the *Volk*, present as a political unit when it can distinguish between friend and foe through its own political conscience and its national will, and the representation through which political unity is incarnated by government. According to Müller's (2003) interpretation of Schmitt's work, there is an opposition to liberalism and democracy behind an apparent interpretation of liberal democratic constitutionalism. As we shall see, this opposition is also noted in Reale's writings. For Schmitt, as for the Brazilian jurist, the notion of democracy has little to do with any form of collective self-determination. Democracy is expressed in appearance, but blocked and made compatible with authoritarianism (Müller, 2003:31).

Having examined the concepts of experience, culture, and decision in their legal and philosophical dimensions, the next section will analyze how they make up the founding concepts of Reale's political thought.

#### REALE'S AUTHORITARIANISM: DECISIONISM, EXPERIENCE, AND CULTURE

The introduction emphasized the changeable and multifaceted nature of Reale's thought. His trajectory was not linear either. His political and intellectual networks were not, of course, limited to authoritarian personalities. At certain times, he approached both liberal and populist political actors. A rigorous analysis of his thought calls on us to consider this complexity and the heterogeneity of ideas that compose it. This implies standing on the opposite side of a part of the historiography that categorized him as an "integralist" author or as another "authoritarian" among many other categorizations. In this sense, the period of his life that spans from the break with the integralist movement up to the 1964 coup is particularly significant.

During these years, Reale considerably expanded his area of interest. Politically, he did not adhere to either the "clientelism" of the Social Democratic Party (Partido Social Democrático, PSD) or the "formal-le-

gal abstractions” of the National Democratic Union (União Democrática Nacional, UDN), in his words. He instead founded the Popular Syndicalist Party (Partido Popular Sindicalista) (Reale, 1987b:194). The party’s *Manifesto*, partially transcribed in his memoirs, shows traces of some of his ideals from the 1930s, such as the defense of a centralized state organizing society through unions (Reale, 1987b, p. 195). As the party had failed in the 1946 elections, Reale decided to bring together small political forces, including Adhemar de Barros’s Progressive Republican Party (Partido Republicano Progressista, PRP). This merger led to the emergence of the Progressive Social Party (Partido Social Progressista, PSP) and a long and complicated partnership between Reale and Barros, who is considered one of the great figures of populism in Brazil. As stated in his memoirs, Reale sought to “use the personal prestige of a leader to carry out a series of ideas that seemed necessary for the country”; however, also according to him, “*Adhemarism* ended up swallowing *social-progressivism*” (Reale, 1987a:198).<sup>9</sup>

Regarding his intellectual work, in addition to his first and brief term as Dean of the University of São Paulo (USP) between 1949 and 1950, he created the Brazilian Institute of Philosophy (IBF) in October 1949. For him, IBF’s objective was to support Brazilian philosophers “to participate in the universal dialogue of ideas” and not just “to assimilate what came from abroad”. This objective was to be achieved through the publication of Brazilian authors, the assistance to the participation of Brazilians in international philosophy conferences, and the organization of conferences in the country (Reale, 1987a:220). He also created the *Brazilian Journal of Philosophy* (*Revista Brasileira de Filosofia*, *RBF*) in 1950.

There are few studies that focus on the political Reale of the post-integralist period, among which the works of Ronaldo Poletti (1981), Celso Lafer (1981), and Rodrigo Jucerê Mattos Gonçalves (2016) stand out. While Poletti’s text is quite panoramic and schematic, Lafer’s text sought to highlight the combination of thought and action in Reale. Lafer proposes to examine the relationship between law and power in the jurist’s work and, to this end, it notably highlights his legal work and his tridimensional theory of law, bypassing the truly political work of his maturity. Thus, for this author, power in Reale must be understood in a three-dimensional perspective as a given external and independent from the norm, but also as a means by which to reach it (Lafer, 1981:219). The analysis of the jurist’s thought proposed herein

does not contradict Lafer's conclusions, although, as will be demonstrated later, this article seeks to lend more consistency to the analysis by integrating Reale's political works into it.

This essay finds a more fruitful dialog with Gonçalves's study. His doctoral thesis, *The Conservative Restoration of Philosophy: the Brazilian Institute of Philosophy and Bourgeois Autocracy in Brazil (1949-1968)* (2016), refers to the concept of "philosophical hegemony apparatus" to analyze the role of USP, IBF and RBF as instruments for the formulation of an autocratic ideology that should ultimately serve the rearrangement of the power structures of the ruling class. In the author's view, this endeavor by the ruling class became successful once it had claimed victory in the 1964 coup. Furthermore, concerning the process of the reorganization of power structures, in which these three institutions and especially Reale played a major role, an important stage took place with the publication of two political works by the jurist, *Parlamentarismo brasileiro (Brazilian Parliamentarianism)* (1962) and *Pluralismo e liberdade (Pluralism and Liberty)* (1963).

Gonçalves states that, in the first publication, "the author makes a parliamentary profession of faith", while in the second "he seeks the development of politics from legal authoritarianism (from the post-integralist fascism phase) and, as the title suggests, a dialog with liberalism" (Gonçalves, 2016:207). Later on, Gonçalves examines these two works in depth. Regarding *Parlamentarismo brasileiro*, he states that Reale saw in parliamentarism a solution to the political crisis that Brazil was experiencing in the early 1960s (Gonçalves, 2016:208). This article agrees with the statement that Reale's thought remains fundamentally anti-democratic, despite a defense of parliamentarism (Gonçalves, 2016:209). Regarding *Pluralismo e liberdade*, the author states that it "promotes a dialogue between fascism and liberalism, seeking an organic unity" (2016:212). Still according to Gonçalves, "there is an adherence to a technocratic conception of power, according to autocratic liberalism in its most conservative version" and "a renewed proposal for class conciliation" (2016:213).

Gonçalves's study is a relevant contribution to understanding the conservative political and intellectual forces acting between the 1950s and 1960s, particularly regarding Reale's role. Despite the different theoretical references and categories of analysis of this article, it agrees to a large degree with Gonçalves's assessment of these two works from

the first half of the 1960s. Concerning the problematic of parliamentarism in Reale, as already mentioned, it has already been defended since the *Manifesto* of the Popular Syndicalist Party; after that it was systematized in *Parlamentarismo brasileiro*. This article contends that the jurist conceived it more as an instrument for authoritarianism and, at the time of its publication, for the fight against João Goulart, than as an ideal form of governance for the country.

In *Pluralismo e liberdade*, Reale pays less of an adherence to liberalism than an accommodation to this political ideal in the context of the semi-democratic experience of 1945-1964. In fact, the author makes concessions to liberalism, expressed notably in such parts as that which describes the “legacy” of liberalism, stating that it “survives a set of ideal achievements [...] which is the singular value of the individual within the political community, his right to exercise ‘free criticism’ [...]; his firm awareness of the limits of sovereign power” (Reale, 1963:293). However, the book brings together essays that deal more with what the jurist calls the “being of man” and his ontological freedom than with political liberalism itself. As argued below, Reale’s scathing criticism of liberalism, already present in his integralist work, is resumed after the publication of these two volumes, especially after the 1964 coup. This event, viewed by Reale as a revolution, was to have opened a new cycle in the legal life of the country. In that context, the “abstract formalism” of liberalism was considered one of the greatest threats to the “revolutionary process”.

Crucially, this study cannot forgo Reale’s proximity to Adhemarist populism, on the one hand, and his accommodation of liberalism, on the other, in order to apprehend the changing and multifaceted character of his trajectory and thought. However, we cannot lose sight of the fact that his versatility – as well as the very possibility of accommodation between liberalism, populism, and fascism – takes place against a profoundly authoritarian backdrop, the pillars of which are ultimately anti-communism and the phobia of people (demophobia). The first pillar is understood here according to Becker and Bernstein’s definition (1987:10), which refers to groups and individuals dedicated to the struggle against communism through words and actions. The second, as the fear of the social elite that the expansion of civic participation outside of their circle, from the perspective of democratization of societal life, would trigger disorder, subversion, and ultimately the breakdown of the political and civilized world (Lynch, 2014:249).

After the victory of the 1964 political movement, Reale was dismissed from the São Paulo State Secretariat of Justice, a position to which he had been appointed for the second time by Adhemar de Barros in 1962. In his memoirs, he does not reveal the details of this dismissal, limiting himself to say that, after the governor of São Paulo had employed him in hazardous endeavors, he discharged him. Reale adds that he could not complain, having accepted the position aware of the "risks that circumstances led him to assume" (Reale, 1987b:112). In October 1964, only a few months later, he published *Imperativos da Revolução de Março* (*Imperatives of the March Revolution*), a book aimed at providing historical and legal legitimacy to the new regime.

Reale's work refutes the criticism which alleges that the mobilization that brought the military to power had no program and proposes to show the directions that the "revolution" should take. For the Brazilian jurist, the "revolution of March 31" was devoid of a program only in "appearance", since it was in fact the final stage of a "process of national affirmation started in 1922" (Reale, 1965:9-10). *Imperativos da revolução de março* was the first attempt at a coherent explanation of the military takeover from the angle of the authoritarian right. The essays published in this collection can be separated into three distinct categories, the first of which is an attempt to provide a historical basis for the event that had just taken place, inscribing it as part of a medium-term revolutionary process originally started in 1922. The second deals with the political-institutional problems that preceded the military intervention. Finally the third lists the most urgent measures to be adopted by the new regime. In addition to the essays, it includes a lecture given on April 17, 1964, an interview for the newspaper *A Gazeta* published on May 7, 1964, and finally a radio proclamation read on the night of April 1, 1964, a few hours after the military takeover.

The chapter entitled "O Ato Institucional e a revolução da opinião pública" ("The Institutional Act and the revolution of public opinion") offers an interesting perspective from which to examine Reale's use of Carl Schmitt to legitimize the military power grab. For Reale, the 1964 rupture was the result of an institutional crisis. This crisis would have been caused by the political class because, at its origin, there was an absence of authority from both the Executive and the Legislative powers. According to the Brazilian jurist's interpretation, composed in the heat of the events, the unity of the country – or "federal idea", a term also used by him – was under serious threat in the first months of

1964. Faced with this risk of fragmentation and civil war, and thus with a threat to the very existence of the national community, three states of the federation managed to maintain the unity of the country thanks to the actions of their governors: São Paulo, governed by Adhemar de Barros; Minas Gerais, governed by Magalhães Pinto; and Guanabara, governed by Carlos Lacerda. According to Reale's interpretation, the country began to "detour" from democracy with Jânio Quadros in 1961, a deviation accentuated when João Goulart took office that same year. It is in this sense that the jurist considered the "revolution" of 1964 an act of "resistance" against the "deviation from the democratic line" begun three years earlier. The idea of an "authentic Brazil", so present in authoritarian thought in the 1930s, resurfaces in Reale's political writings in the 1960s. He wrote:

It is not at all extraordinary, therefore, that at a certain moment state governors denounced the repeated attacks on state autonomies and public order, as well as directed political strikes that devastated national production – thus coming to represent the authentic Brazil, faithful to the path of its historical continuity. The government of the Republic was the one, therefore, that positioned itself in a state of subversive conspiracy, legitimizing the reaction of the democratic forces (Reale, 1965:96).

He then completes his argument:

When the central government lacks federative allegiance, the "right to revolution" naturally emerges as an imperative for national survival. The March revolution was not, however, a revolution of state governors, but a revolution of the Brazilian people who, at a critical time, had state governors as their interpreters, who were converted into trustees of the common commitment (Reale, 1965:96).

The "right to revolution" is a term used by Reale that deserves further examination. It leads to a political-legal debate of great complexity, and it is in this discussion that he resorts to Carl Schmitt's decisionism. Under which circumstances is an institutional break justifiable? For Reale, it is justifiable, in the first place, for the survival of the nation: the "revolution" was the only way to save the nation. But he goes further in this truly juridical question concerning the legitimacy of certain institutional ruptures with a discussion of the first Institutional Act, enacted on April 10, 1964. It is not surprising that this document

receives special treatment, since the author claimed it legally legitimized the military *coup*. To support this argument, he appropriates Carl Schmitt's theses previously discussed.

Reale maintains that the "revolutionary act" automatically entailed the rupture of the existing legal order, above all because the 1946 Constitution had proved incapable of prohibiting the plans of "international communism" (Reale, 1965:100). Faced with this situation, the leaders of the "Revolution" ostensibly saw only two possible paths to follow: either the closure of the National Congress, which would imply the establishment of a dictatorship; or its maintenance, which would imply the preservation of the "old structures". The problem is that, for Reale, neither option was acceptable "from a democratic point of view". A "third way" was then sought: the Institutional Act (1965:102).

It is worth reproducing an excerpt from its preamble, however well-known it may be, written by Francisco Campos. After stating that the military takeover had been an "authentic revolution", the famous jurist from the 1937 Constitution, who had a deep knowledge of Carl Schmitt's work, wrote:<sup>10</sup>

The victorious revolution invests itself in the exercise of constituent power. This is manifested by popular election or revolution. This is the most expressive and most radical form of constituent power. Thus, the victorious revolution, as a constituent power, legitimizes itself. It removes the previous government and has the capacity to form a new government. It contains the normative force, inherent in the constituent power. It edits legal norms without being limited in this by the normativity prior to its victory. The leaders of the victorious revolution, thanks to the action of the Armed Forces and the unequivocal support of the nation, represent the people and, in their name, exercise the constituent power, of which the people are the sole holders (apud Fico, 2014:99).

The preamble to the Institutional Act included Schmittian concepts discussed above: decision and constituent power, as a conscious will to exist politically as a nation. Reale reinforces this interpretive line in *Imperativos da revolução de março* (1965). If the people, as a constituent power, through the Armed Forces and some governors, had decided to interrupt a certain political order to create another, it was no longer important to know whether the crisis that preceded the 1964 rupture could have been resolved in another way: a revolution, he repeats, legitimizes itself,

implementing a new cycle in legal life even if it had been triggered with a view to “preserving the previous legal system” (Reale, 1965:101). The heart of the theses of Carl Schmitt’s Constitutional Theory are found here: the state is the constituted power and, however powerful it may appear from the outside, it always depends on the will of a substantial nation in terms of its constituent power and its capacity to interrupt this political power as it is constituted (Müller, 2003:30).

Following Reale’s reasoning, the “revolution” would be clearly at an impasse. It was carried out to preserve the existing legal order, but the latter had failed to preserve the nation from the dangers to which it had been exposed, and to carry out the necessary reforms. According to him, it would be unwise to “consolidate the revolutionary work” within a system that people judged “incapable of preserving the Nation against communism and corruption” (Reale, 1965:99). It would therefore be imperative to overcome this impasse and establish a new system. He openly assumed a minority position in the conservative field at that time, at least in rhetorical terms: authoritarian, anti-liberal, and, one could argue, “Schmittian”, which was a counterpoint to the liberals who had supported the *coup*. Reale considered the latter excessively bound to “legal formalities”:

It is quite possible that some prefer to detect a simple “crisis in the system” rather than “a crisis of the system”, and only make changes at the head of government, calmly returning to the rules of the primitive game. In reality, however, the lines of opinion that came to prevail, determining the fall of the previous government, did not explicitly take care of this or that legal and normative framework, but acted according to a substantial legality, corresponding to a set of ethical and civic values, whose legal-formal expression must be revealed by those who took responsibility for the armed insurrection, which was a decisive moment, but not the last nor the definitive moment of the revolutionary process [...] Undeniably, we witness, as a reaction to the national-communist threats, the spontaneous formation of a “common awareness of wanting” and, if in Gerber’s words, the state is the expression of this awareness, it is up to the elites, above all, to the theorists of politics and law, to bring it to the expressional plenitude of normative systems, so that it can be considered a revolutionary “praxis”. This was what the Institutional Act set in motion (Reale, 1965:102).

Hence, Reale goes back to defending some controversial aspects of the Institutional Act, such as the purges that took place after the *coup d'état* and Article number 3, which strengthened the power of the Executive. As for the purges, they would have been the consequence of the revolutionary act, within which were intrinsically implied the removal of "elements that betrayed the functions entrusted unto them, putting the national community in imminent danger, saved by the extreme recourse to arms" (Reale, 1965:103). The government could not, thus, renounce these exceptional powers to drive these enemies out of the political system.

For those responsible for the "revolution", the purges did not go far enough towards the immense task facing them, namely, national reconstruction. Hence, Reale examines another aspect of the Institutional Act that is at the center of his concerns, Article 3, which allowed the Executive to amend the Constitution. This meant that the process of national reconstruction could be facilitated and accelerated to the detriment of the control of power for a part of the Legislature. He argues that every revolution signals a new phase in the life of Law, holding values that justify the institution of exceptional norms not only as a legitimate defense of the Law that has been violated, but also to prevent other attacks against the order that should be preserved and perfected. Thus, when it is proclaimed that revolutionary power houses the "constituent power", it is recognized, in fact, that the "revolution" is at the service of an "idea of law" (Reale, 1965:106) that should rapidly produce results. In this sense, institutionalizing the revolutionary process would amount to elevating the "ideological root" from which it comes to the "ethical source" that drove the use of force, namely, the preservation of national unity and the fight against communism and corruption. He thus took a clearly anti-liberal and anti-parliamentary stance:

I wish to declare immediately that, if Article 3 is converted into a dead letter, under the impact of a formalistic and anachronistic liberalism, we will imperceptibly return to the rules of the old and ill-fated game, without fulfilling the nation's hopes. No one is more divorced from reality than those who now cling to "presidentialist purism", missing this magnificent opportunity to introduce reforms into the 1946 Constitution that the democratic technique of our time is demanding, especially considering the bitter experience of these last 18 years (Reale, 1965:106-107).

While Reale launched himself into the exercise of explaining the legal mechanisms implemented by the military and defending the establishment of a new legal order, he placed the previous democratic regime in the dock, particularly insisting on what he considered its weaknesses. The chapters “A crise do Legislativo, ponto vital da reforma do Estado” (“The Legislative crisis, a vital point of state reform”) and “Na dança das lendas” (“In the dance of legends”) both targeted political parties due to their lack of ideology and representation of different sectors of civil society. Again, Schmittian echoes are indisputable, in particular with regards to the criticism of parliament. In 1923, the German jurist began a systematic critique of liberal parliamentarism, notably publishing a treatise entitled *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1988 [1923]).<sup>11</sup> In this work, as Müller (2003) states, Schmitt presents an ideal view of parliamentarism as it would have existed in the 19<sup>th</sup> century, when a bourgeois elite represented the population and openly and rationally discussed matters in order to come to political decisions. In the 20<sup>th</sup> century, political parties would have become highly disciplined and self-interested, coming to dominate debates in which bargaining had replaced open discussion. Therefore, even if parliament did still exist, liberal parliamentarism had lost all legitimacy in Schmitt’s eyes (Müller, 2003:29).

Finally, one of Reale’s concerns in the immediate post-coup period was the apparent absence of an idea that should have been embodied by the “revolutionary leaders”. Thus, he aims to offer a historical foundation for the institutional rupture and the new regime, contextualizing them in a process that dates to the political and cultural movements of 1922. The creation of historical legitimacy would allow the identification of the “mandatory” transformations that the “Revolution” needed to initiate as they were “legitimately” requested by those who had been in search of the “national soul” since the 1920s (Reale, 1965:112). The idea that the origin of the “1964 revolution” began in 1922 is reinforced in the interview Reale gave to the newspaper *A Gazeta* just one month after the coup, which was reprinted in the final chapter of *Imperativos da revolução de março*. The “revolution” of 1964 was the last stage of a long process which had started in 1922, an “effort of nationality in search of our authentic being” (Reale, 1965:112). The jurist places all the revolutions, crises, and attempted coups of 20<sup>th</sup>-century Brazil onto one line of continuity. The last, in 1964, would be the one in which the people’s “state of mind” would be revealed, with the objective of self-affirmation. According to Reale, the brief intervals that separate each of these

political upheavals show that the people's revolutionary "impulse" has always been kept alive. Thus, the "1964 revolution" would have been the revelation of the "civic maturity" of the people that would have allowed their victory over Caudillism. At that moment, he argued that the urgency was to find a system that corresponded to Brazilian characteristics and that the last thing to do was to get bogged down in abstract notions of parliamentarism and presidentialism.

In the second half of the 1970s, Reale published two more important books: *Da revolução à democracia* (*From Revolution to Democracy*) (1977) and *Política de ontem e de hoje* (*Politics of Yesterday and Today*) (1978).<sup>12</sup> The essays of the former, in its 1977 expanded edition – the first edition was published in 1969 – were written at different times. Despite the difficulty of dating each one accurately, it is possible to distinguish those written in the second half of the 1960s from those written about ten years later. However, they do complement each other and give coherence to the book as a whole. The first three chapters – "A revolução de março no contexto da nossa história política" ("The March revolution in the context of our political history"), "Revolução e normalidade constitucional" ("Revolution and constitutional normality"), and "Revolução e processo revolucionário" ("Revolution and revolutionary process") – were probably written between 1966 and 1969 and defend the legitimacy of the 1964 movement. From this central argument, the author makes a connection with the sixth chapter – "Problema da conjuntura política" ("Problems of the political situation") – written around 1977, in which he proposes an "exit" from the dictatorship through a model of democracy "adapted to Brazil". In other words, there was a revolution, it was legitimate and now it should be left behind. In these writings, we find the notions of experience and culture, examined above, supporting his arguments.

For Reale, a legitimate revolution took place in 1964, although there were some "mistakes" made during its early years. Two new essential questions arise from this conviction: how to "institutionalize the revolutionary process" and move towards a "de facto" democracy? And what democracy are we talking about? According to the jurist, the starting point is to reconcile what would be a false opposition between "revolution" and "legal order". Thus, it is a reflection on the relationship between law and revolution. Unlike a coup, whose objective is only the replacement or continuance of a man or group in power, for the author a revolution gives rise to a new legal order.

Therefore, the condition required for the existence of an “authentic revolution” is the institution of a new system in the legal and political life of the nation (Reale, 1977:37).

The argument about the legitimacy of the “revolution” developed since 1964 is completed at that moment by an analysis of another notion: “constitutional normality”. According to Reale, they are opposed “only in appearance” (Reale, 1977:40). He argues that the idea of “constitutional normality” cannot refer to a return to the 1946 Constitution, as this would be to recognize the illegitimacy of the “revolution”. For the jurist, the notion of “constitutional normality” must be considered in an abstract way. Let us analyze this statement in more detail. Reale claims that insisting on the previous legal order would have implied the rejection of the correlation between the law and events such as wars, revolutions or, more generally, armed movements. Like Schmitt, he argues that events which break legal norms inevitably impose solutions that could not have been fixed in advance and that are necessarily in conflict with existing arrangements.

Following this reasoning, the relationship between his political and legal thinking emerges strongly. In *O direito como experiência (Law as Experience)* (1968b), particularly in the chapter entitled “Gênese e vida dos modelos jurídicos (a crise do normativismo jurídico e a exigência de uma normatividade concreta)” (“Genesis and life of legal models (the crisis of legal normativism and the demand for concrete normativity”), Reale draws attention to the importance of the emergence and constitution of legal order, a process he called *nomogenesis*. As noted in the appraisal of his *Teoria tridimensional do direito* (1968a), for Reale there are three dimensions of the legal phenomenon that correlate in a complementary way: the fact, the value, and the norm, the latter integrating the first two. These elements are also indispensable in the creation of a new legal order.

If we apply his legal thinking to the period of the 1964 coup, we can pinpoint the facts that he considered relevant at the time based on his writings: the political and economic crisis accentuated during the Goulart administration; threats of various orders, such as communism, the rise of the working class, which he associated with anarchy, and the risks of the country’s disintegration. But facts alone do not create a new legal order; what is needed is “a compound of axiological requirements” that can also be identified in his writings: national

unity, order, anti-communism, anti-liberalism, the “democratic character of the army”, among others. Finally, it is worth highlighting the decision for legal nomogenesis, given the incompatibility of law with uncertainty or lack of guidelines (Reale, 1968b:193). In short, for Reale, every legal norm

1. Marks a *conclusive moment*, but in a given field, as it is inserted in a *process* that is always open to the supervenience of new facts and new valuations.
2. Has no meaning in itself, as a mathematical expression, that is, abstracted from experience (*abstract normativism*), but it is valid in the functionality of the moments that condition its effectiveness (*concrete normativism*).
3. Involves a prior optional positioning, that is, a *decision* by the power, whether it is a body constitutionally predisposed to the emanation of the rule of law, or the diffuse power of the social body, as in the case of customary legal norms (Reale, 1968b:210).

For Reale, it was essential to consider the documents on which those responsible for the “revolution” based their legitimacy. With regard to 1964, once again he cited the first Institutional Act, which left no doubts about the legitimacy of the movement because, through it, the “Supreme Command of the Revolution” would have established the foundations of its “constituent power” (Cunha, 2014:10). However, this reflection also explains Reale’s criticism to liberals’ “formalism” and “abstraction”. Thus, the Constitution promulgated in 1946 should not be considered an “archetype of the ideal legal order” (Reale, 1977:41) just because it was implemented by a democratically elected Constituent Assembly. On the contrary:

“Constitutional normality” must be understood as the legal organization of the state corresponding to the current requirements of Brazilian society, from the moment when the outbreak of the revolutionary phenomenon, as an irremovable historical fact, amounts to a denial of the previous legal order, which it cannot but be regarded as overcome (Reale, 1977:42).

In the second half of the 1970s, when Reale was writing these lines, the real question was knowing

how to achieve “constitutional normality” in the concreteness of the present circumstances, with a broad understanding of the prospects for the future of a nation that, since 1922, has been living in an intermittent revolutionary process, in the incessant search of its own image, which will only be found through the self-affirmation of our own values, enriching the scenario of universal values and placing us within them with full awareness of our cultural autonomy (Reale, 1977:43).

### **IN SEARCH OF A POLITICAL MODEL FOR BRAZIL: “SOCIAL DEMOCRACY” OR “STATE OF CULTURE”**

As we have seen, Reale thought that the “abstract” character of some notions – such as democracy – should not be applied to the Brazilian reality as “ideal archetypes”. According to the jurist, there is no model of a “pure” democracy to be achieved by all societies. On the contrary, the historical experience of each society and their “cultural conditions and circumstances” must be taken into account when all political regimes are conceived (Reale, 1977:136). The democratic question should be considered in its relation to reality, and there are several paths to its realization. From this perspective, Brazil would not adapt to either “abstract liberalism”, in which democratic politics is “condemned by demagogues and opportunists”, nor to the “totalitarian solution”, which imposes a “radical change, anesthetizing the individual by the impact of an artful propaganda” (Reale, 1977:138). The ideal that Reale defended would be a third path: a “social democracy” – which he also calls the “state of culture” – in which the demands of a strong government could be reconciled with the responsibility to translate people’s expectations into their actions. In his words, “a free people [...] thanks to a system of representation that ensures the legitimacy of the options chosen, and allows for freedom of communication and information” (Reale, 1977:139).

According to him, the “March revolution” was a response to the “imperatives of national affirmation”, and the guidelines for its institutionalization should be the establishment of legal and political structures capable of ensuring the continuity of the development politics, in order and security. To do this, Reale insisted on the need to combine the continuance of the “imperatives of the 1964 Revolution” with the reduction of the “despotic quantum” until the exclusive existence of constitutional norms was reached (Cunha, 2014:17).

Reale revealed what a "social democracy" was in several writings, interviews and conferences: a political model that he wanted to see institutionalized in Brazil from the mid-1970s. Reale understood it as:

a phase of the rule of law disconnected from the formal-juridical "liberal democracy" to overcome it in the sense of an institutional order that enables the processes of action that are essential to a state that must constantly interfere in economic life, either overseeing the private activities, making up for their deficiencies, or acting as an entrepreneur itself, putting, as I said, the idea of planning at the center of political and administrative action (Reale, 1974:23).

Reale also highlights the need for a "socialization of progress" that should replace what he considered "sterile doctrinal and ideological debates" about whether there should be a "socialization of production". He does not detail, however, how the redistribution process would take place, to which the idea of "socialization of progress" is referred. In relation to this point, he only clarifies that choosing between "the path of nationalization" and that of "free enterprise" (Reale, 1974:23) is not the only option. According to him, both are valid: the option of nationalization imposing itself when the option of free enterprise is insufficient.

Social democracy should also guarantee "civil and political freedom". For Reale, the military regime had perfected the system of guaranteeing private rights. What had happened were "restrictions" imposed around political prerogatives "from the need to face the forces that threatened to subvert '*ab imis fundamentis*' the mainstays of society" (Reale, 1974:24). Following his reasoning, these restrictions were not introduced in order to implement a dictatorship, but to preserve what he considered the "fundamental values" of social democracy: order, freedom, and development.

This was the "Brazilian political model" suitable for Brazil, according to Reale. As Marcos Napolitano (2014:237) recalled, the term "Brazilian political model" was "a euphemism used to designate the dictatorship's will to institutionalize itself". What the jurist proposed was in perfect harmony with what was being thought in the more restricted circles of power; that is, "the perception of the need for a strategic withdrawal of the military from the heart of the state without threatening the 'principles of the Revolution': security and development" (Napoli-

tano, 2014:237). Furthermore, according to Napolitano, (2014:238), “the military dreamed of a hegemonic official party regime, endorsed by the vote, mostly civilian, and a state shielded from ‘crises’, whether they came from the extreme military right, or from the pressures from the left and social movements”.

## FINAL CONSIDERATIONS

The democracy “on new foundations” – “social democracy” or “state of culture” – that Reale wanted to see established in Brazil was, for him, the initial commitment of the “revolution”. But it failed to be implemented. In this respect, Reale and the “revolution” were ultimately defeated. According to the author, this happened because the military deviated from its initial aspirations by placing an excessive emphasis on economic and financial problems that led to the loss of ideological and political values and the decline of the political class. The person responsible for this “deviation” was marshal Castelo Branco and his Minister of Justice, Milton Campos, who was “very attached to the old liberal models” (Reale, 1987b:130). This one-sided view of the political problem led to a rupture between the state and civil society which became a mere recipient of decisions taken by the military, instead of being an active agent of the political process.

As it is well known, the 1970s marked an important historical break, when Reale developed these reflections and still believed in the possibility of establishing a political model close to what we would now call an illiberal democracy. In Tony Judt’s (2011:97) words, the time had come for the “revenge of the Austrians”: the end of the Keynesian consensus, which had been in force in Europe since 1945, dethroned by the rhetoric of the free market. It was also the beginning of what Samuel Huntington (1994) called the “third wave” of democratization, initiated by the Carnation Revolution in Portugal in 1974 and which spread notably throughout Latin America.

Brazil underwent important changes in that decade in what refers to both politics and ways of thinking. It was the beginning of the long process of political opening that would culminate with the end of the military regime and the proclamation of the 1988 Constitution. Intellectually, these years marked the renewal of reflections on democracy, no longer the “authentic”, “real”, “social”, “strong”, or “possible”, which had been developed and defended by authoritarian thinkers since the

1930s, but about democracy *tout court*, without adjectives.<sup>13</sup> The new times were thus no longer prone to authoritarian solutions, which partly explains Reale's defeat in his struggle for the establishment of his "social democracy" in Brazil. The end of the military regime, the beginning of the construction of a negative memory of that period, and the enthusiasm of broad sectors of society with democratization in the 1980s seemed to have put an end to a long authoritarian-conservative lineage of Brazilian political thought. It dates back to the 19th century and Reale is one of its last great representatives. This was no more than a chimera, as shown by the rise of conservative and reactionary authoritarian forces in the mid-2010s, consolidated with Jair Bolsonaro's victory in the 2018 presidential elections. More than ever, the return to the authoritarian-conservative sources of our political thought seems inescapable in order for us to understand the present.

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## NOTES

1. This article is the result of postdoctoral research conducted between 2016 and 2019 in the Postgraduate Program in Political Science at the Federal University of Pernambuco (PPGCP-UFPE) with funding from the Postdoctoral Program (PNPD) of the Coordination for the Improvement of Higher Education Personnel (Capes) under the supervision of professor Ernani Carvalho. A preliminary version of this article was presented at the 43rd Annual Meeting of the Brazilian National Association of Graduate Studies and Research in Social Sciences (Anpocs) (Caxambu, October 21-25, 2019). The author wishes to thank the session discussant, professor Maria Arminda Nascimento Arruda, as well as the coordinators of Thematic Seminar 28, "Social Thought in Brazil: Limits and Possibilities of Conservatism", Bernardo Ricupero and Simone Meucci. The author also wishes to thank the reviewers of this journal for their valuable suggestions.
2. Considering that this was published twenty years ago, this number must have increased considerably, especially after his death in 2006.
3. That said, the use of Pierre Rosanvallon and Reinhart Koselleck brings some limitations to the type of analysis undertaken herein. Both Rosanvallon and Koselleck undertook long-term analyses in their work, either on the different conceptions of democracy in the case of the former, or on concepts analyzed in their historicity and in their disputes also in the long term, particularly during the period he calls *Sattelzeit* (1750 to 1850), in the case of the latter. In this sense, they are authors who offer insights, but whose methods cannot be replicated as they are for the study proposed in this article.
4. These books were collected in three volumes which were reprinted by the University of Brasília press in 1983.

5. Essay by the Portuguese philosopher Antonio Braz Teixeira, entitled “O criticismo histórico-axiológico de Miguel Reale” (“Miguel Reale’s historical-axiological criticism”), available on the internet in PDF, but without a reference to the place of publication. Available: [http://cdpb.org.br/antigo/criticismo\\_historico\\_axiologico\\_de\\_miguel\\_reale.pdf](http://cdpb.org.br/antigo/criticismo_historico_axiologico_de_miguel_reale.pdf). Accessed: 26/12/2019.
6. Specifically on the “oeuvre” of Carl Schmitt, see Müller (2007) and Kervégan (2011).
7. As is clear from the article, both Hans Kelsen and Carl Schmitt played an important role in Reale’s thinking. As is well known, the Austrian and German jurists waged one of the greatest legal and intellectual controversies of the 20th century regarding the protection of the Constitution. Kelsen stated, in *A garantia jurisdicional da Constituição (A justiça constitucional) (The Jurisdictional Guarantee of the Constitution (Constitutional Justice))*, that the annulment of an unconstitutional act is the main and most effective guarantee of the Constitution. For this, only a different and independent body from Parliament or any other state authority – a Constitutional Court – should oversee the annulment of its institutional acts. Carl Schmitt responded in 1931 with *O guardião da Constituição (The Guardian of the Constitution)*, defending the idea that it was up to the head of State to be the guardian of the Constitution. It is not possible to delve into this topic within the limits of this article. On the controversy between Hans Kelsen and Carl Schmitt, see, among others, Herrera (1994), Pinto (2015) and, on its importance for today, Costa Matos; Herrera; Pinto (2015).
8. As he states, “the normal case proves nothing; the exception proves everything; it does not just confirm the rule: in reality the rule only exists thanks to the exception. With the exception, the force of real life breaks the carapace of a mechanism caught in repetition” (apud Müller, 2007:597 of 7920).
9. On post-war integralism, in addition to Gonçalves (2016), discussed in more detail throughout this article, see Calil (2001), who studied the formation of Plínio Salgado’s PRP; Gonçalves (2017), who approached the theme from the trajectory of Plínio Salgado; and Gonçalves and Caldeira Neto (2020), who recently published a history of integralism, from its formation in the 1930s to modern-day neointegralism. Specifically on Adhemar de Barros and the PSP, see Sampaio (1982).
10. On Francisco Campos as reader of Carl Schmitt, see SANTOS (2007; 2009).
11. The French edition of this book entitled *Parlementarisme et Démocratie* was used for this article. The author has not found a Portuguese translation.
12. Excerpt presented at the Brazilian Studies Association Congress (Brasa XII), held in August 20-23, 2014 at King’s College (London, United Kingdom).
13. It was an important break in Brazilian political thought that can be illustrated by the title of some works published during the period such as *Autoritarismo e democratização* (1975), by Fernando Henrique Cardoso; *Democracy as a universal value* (1980), by Carlos Nelson Coutinho; *Law, citizenship and participation* (1981), organized by Bolívar Lamounier, Francisco Weffort and Maria Victoria Benevides; *Culture and Democracy* (1981), by Marilena Chauí; *Why democracy?* (1984) by Francisco Weffort; or *How Democracies are Reborn* (1985), organized by Alain Rouquié, Bolívar Lamounier and Jorge Schvarzer.

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## RESUMO

*Os fundamentos jurídicos e filosóficos do autoritarismo realeano: experiência, cultura e decisionismo*

Miguel Reale foi um dos juristas brasileiros mais importantes do século XX, tendo produzido uma imponente obra política, jurídica e filosófica. A partir da perspectiva da história intelectual, esse artigo busca estabelecer uma conexão entre essas três dimensões com o objetivo de revelar os fundamentos jurídicos e filosóficos de um pensamento político francamente autoritário e conservador. Mostramos que na base do autoritarismo realeano estão as noções de cultura, experiência e decisão, desenvolvidas sobretudo em seus escritos jurídicos e filosóficos. Argumentamos também que a “obra integralista” de Reale, uma das mais comentadas pelos historiadores e cientistas políticos, não constitui a parte primordial da sua reflexão política. Nossa hipótese é que o jurista evoluiu de um corporativismo autoritário de corte fascista nos anos 1930 para a defesa de um modelo político autoritário e antiliberal devidamente decantado das referências fascistas e, a partir dos anos 1950, amparado num importante instrumental conceitual filosófico e jurídico.

**Palavras-chave:** Miguel Reale; Autoritarismo; Experiência; Cultura, Decisionismo.

## ABSTRACT

*The Legal and Philosophical Foundations of Miguel Reale's Authoritarianism: Experience, Culture, and Decisionism*

Miguel Reale was one of the most important Brazilian jurists of the 20th century, having produced an important political, legal, and philosophical work. Based on the perspective of intellectual history, this article seeks to establish a connection between these three dimensions in order to reveal the legal and philosophical foundations of a clearly authoritarian and conservative political thinking. We show that the notions of culture, experience, and decision underlie Reale's authoritarianism and are developed mainly in his legal and philosophical writings. We also argue that Reale's so-called “integralist work”, which has been widely commented on by historians and political scientists, is not the primordial part of his political reflection. We hypothesize that the jurist evolved from authoritarian corporatism of fascist inspiration in the 1930s to the defense of an authoritarian and anti-liberal political model arising from fascist references and, from the 1950s, supported by important philosophical and legal conceptual devices.

**Keywords:** Miguel Reale; Authoritarianism; Experience; Culture, Decisionism.

## RÉSUMÉ

*Les Fondements juridiques et philosophiques de l'autoritarisme chez Miguel Reale : expérience, culture et décisionnisme*

Miguel Reale était l'un des juristes brésiliens les plus importants du XXe siècle, ayant produit un travail politique, juridique et philosophique impressionnant. Du point de vue de l'histoire intellectuelle, cet article cherche à établir un lien entre ces trois dimensions afin de révéler les fondements juridiques et philosophiques d'une pensée politique franchement autoritaire et conservatrice. Nous montrons qu'à la base de l'autoritarisme chez Reale se trouvent les notions de culture, d'expérience et de décision, développées avant tout dans ses écrits juridiques et philosophiques. Nous soutenons également que « a obra integralista » de Reale, l'une des plus commentées par les historiens et les politologues, ne constitue pas la partie primordiale de sa réflexion politique. Notre hypothèse est que le juriste a évolué d'un corporatisme autoritaire d'une coupure fasciste dans les années 1930 à la défense d'un modèle politique autoritaire et antilibéral dûment décanté de références fascistes et, dès les années 1950, soutenu par un important instrument conceptuel philosophique et juridique.

**MOTS-CLÉS:** Miguel Reale; Autoritarisme; Experience; Culture, Décisionnisme.

## RESUMEN

*Los fundamentos jurídicos y filosóficos del autoritarismo realiano: experiencia, cultura y decisionismo*

Miguel Reale fue uno de los juristas brasileños más importantes del siglo XX, habiendo producido un imponente trabajo político, jurídico y filosófico. Desde la perspectiva de la historia intelectual, este artículo busca establecer una conexión entre estas tres dimensiones para revelar los fundamentos jurídicos y filosóficos de un pensamiento político francamente autoritario y conservador. Demostramos que en la base del autoritarismo realiano están las nociones de cultura, experiencia y decisión, desarrolladas sobre todo en sus escritos jurídicos y filosóficos. También sostenemos que la "obra integralista" de Reale, una de las más comentadas por historiadores y científicos políticos, no constituye la parte primordial de su reflexión política. Nuestra hipótesis es que el jurista evolucionó de un corporativismo autoritario de corte fascista en los años 1930 para defender un modelo político autoritario y antiliberal debidamente decantado de las referencias fascistas y, a partir de los años 1950, apoyado por un importante instrumento conceptual filosófico y jurídico.

**Palabras-clave:** Miguel Reale; Autoritarismo; Experiencia; Cultura, Decisionismo.