

State of exception, politics of the enemy and (de)politicization through visible and invisible barriers to international migrants¹

Estado de exceção, política do inimigo e (des)politização por meio das barreiras visíveis e invisíveis aos migrantes internacionais

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Abstract:

Physical or moral barriers to migrants highlight the tensions surrounding the migration flow. In these spaces, the existence of regimes of exception in concomitance with democracy is questioned. The use of artifices such as the securitization of borders, the confinement of the undocumented, and the construction of the identity of the migrant as a criminal to condemn migrants to bear life, depoliticizing them as political subjects, was attested. In addition to Agamben's theses, this study also uses the concept of the political enemy, created by Schmitt, to understand the exclusion of non-nationals. In this way, value is associated with migrants only because of their economic usefulness. It identified that exception camps exist in liberal democracies. These places attest to the contradictions between the pretense of national homogeneity and multiculturalism in the age of globalization. They are justified through fear of contact with the different, where walls are built, and political subjects are depoliticized.

Keywords: state of exception. enemy policy. crimmigration. agamben. Carl Schmitt.

Resumo:

As barreiras físicas ou morais aos migrantes escancaram as tensões envolvendo o fluxo migratório. Nesses espaços, questiona-se a existência de regimes de exceção em concomitância com a democracia. Atestou-se o uso de artificios como a securitização das fronteiras, o confinamento dos indocumentados e a construção da identidade do migrante como criminoso para condenar migrantes à vida nua, despoliticando-os como sujeitos políticos. Este estudo além das teses de Agamben, também utiliza a concepção de inimigo político, criada por Schmitt, para compreender a exclusão dos não nacionais. Deste modo, associa-se valor aos migrantes apenas por sua utilidade econômica. Identificou-se a existência de campos de exceção nas democracias liberais. Esses locais atestam as contradições existentes entre a pretensão de homogeneidade nacional e o multiculturalismo

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na era da globalização. Justificam-se, por meio do medo do contato com o diferente, a construção de muros e a despolitização de sujeitos políticos.

Palavras-chave: estado de exceção. inimigo político. crimigração. agamben. Carl Schmitt.

1 Introduction

The objective of this study is to reflect on the existence (or not) of states of exception², aimed at migrant communities³, in the midst of the democracies of Western countries. The central problem of this research is evidenced in the recent phenomena of securitization of borders and criminalization of migratory flows: the identity of the international migrant is associated with the political enemy of a given country and his presence is seen as a risk to national homogeneity. However, in the face of globalization, no country is immune to the effects of multiculturalism, which permeates contemporary societies.

Human mobility is a reality accentuated by globalization. Not that this phenomenon is new. However, contemporary migration adopts different contours from those observed in other times. If in certain periods voluntary migration prevailed among the displaced, today forced migration is more intense. In the face of armed conflict, serious human rights violations and environmental disasters, affected people often see displacement as the only option. However, when leaving the country of origin, whether voluntarily or forced, the individual will face the adaptation to a new society and not only the migrant will undergo this transformation. The host society will also respond to this imminent influx. The challenge of the State, therefore, is to manage the multiple cultural diversities that exist in society. The increase in migratory flows brings with it ethnic plurality and, consequently, the need for adequate management capable of responding to the desires, inclusion and adaptation of migrants to the new space they occupy.

Migration governance is challenging due to the political, economic, religious and cultural interests that migrants' social participation imposes. In this context, Huntington (1996, p. 18) states that "people are discovering new and old identities, and parading under new but often old flags that wage war against new but often old enemies." And it is precisely in the dichotomy

² To this end, the premise is adopted that there is a "paradoxical status of the countryside as a space of exception: it is a piece of territory that is located outside the normal legal order, but which is not simply an external space" (Agamben, 2005, p. 176).

³ For the purposes of this study, the word migrant will be used only in relation to those who have crossed the borders of their country of origin. Internally displaced persons who migrate but remain in the national territory are not part of this study. Thus, the terms migration and migrant refer to international movements and the possible temporary or habitual stay in the receiving country.

between new and old enemies that the debate on migration comes to the fore in the face of its complexity.

The identity of the migrant as the "other" is accentuated when migrants are in an irregular migratory situation. The vulnerability surrounding these people exposes them to numerous human rights violations. There are many opportunities where migrants are treated as illegal. Wrongly, of course. In cases of undocumentedness, the scope of the irregularity is administrative and should not condition the dignity of non-nationals. This narrative that involves illegality and irregularity dialogues with the strengthening of enemy politics and the securitization of borders. In this context, discourses that seek to criminalize the condition of migrants are growing. This phenomenon, evidenced by Stumpf (2006, p. 381) as "crimigration", seeks to merge migration with Criminal Law, generating the classification of irregular migration as a crime. Such behavior generates the massive revision of migration policies and the construction of the idea of the non-national as the other, the enemy, the foreigner.

Thus, the question arises: who is the other? Is it possible to attest that, due to the "risks" that the other causes, it is plausible to have state of exception regimes in Western democratic governments, in order to establish rules different from the behavior of non-nationals, or even not to establish rules at all, leaving only the free will of the sovereign? This study examines the phenomenon of migration governance from the perspective of enemy politics, the state of emergency, the national security discourse and the hardening of borders that many Western countries have been adopting since September 11, 2001. What happened in the Twin Towers in 2001, in the United States, gave space to the securitization of borders on the domestic political agenda. The event placed migrant communities in Western countries at the centre of the debate and contributed to increasing xenophobic sentiment, especially in relation to migrants of Islamic belief. President Bush's speeches after September 11 demonstrate the articulation of Manichean terms to differentiate good/evil, friend/enemy, civilized/uncivilized (Kellner, 2003, p. 63-64; Leite, 2013, p. 104; Pecequilo, 2013, p. 20).

In advance, it is anticipated that one of the possible answers to the question of who is the other, in light of the eyes of the receiving countries, is that the other is the people who knock on the door. And "for those behind these doors, they have always been, as they are now, strangers" (Bauman, 2017, p. 13). The feeling of strangeness causes fear and insecurity because they are different, that is, those who do not have predictable behavior, such as the individuals with whom we live every day and know what to expect. But, after all, who is, in fact, the other?

This analysis will be carried out in two different parts, which are guided by a common argument. First, the theoretical bases for the construction of this identity of the migrant as an enemy and its political-legal consequences as a permanent state of exception will be examined. Next, it is questioned whether the justification for the existence of this fear and the insecurity of the other comes from a migratory crisis or from the denial of the conception of the migrant as a political subject. As a methodology, the logical deductive method was applied in this study. Documentary and bibliographic sources were used in order to promote the discussion in an introductory way without the intention of exhausting it in this text.

2 The state of exception derived from the notion of the migrant as an enemy

2.1 Who is the other? The construction of the identity of the migrant as an enemy

The global context shows that: if the flow of trade is governed by the principle of reciprocity, migration is seen as a one-way street (Corneloup, 2014, p. 307). This treatment of migrants is not fortuitous. The preservation of national migration policies to the detriment of multilateral approaches of a universal nature is justified by the lack of interest of the great powers in regulating the equal treatment of non-nationals, regardless of their legal status or country of origin (Faria, 2015, p. 24). While at the international level there is interest in the dispersion of multilateral forums, institutional fragility and asymmetry of treatment, at the domestic level it is advisable to promote the identity of the migrant as peripheral, criminal and foreigner. Government arrangements that allow the marginalization of this population contribute to their subjection to constant violations by the State and society itself. The post-Cold War world political scenario is marked by conflicts between peoples belonging to different cultural entities (Huntington, 1997, p. 21; Pecequilo, 2013, p. 16). Migration issues are directly related to political issues.

Migrants, as non-nationals, defy the limits of domestic structures when they arrive in another country. Especially when they want to enter the political territory of a sovereign state.

For this study, it is understood that the imposition of borders⁴ also reveals political struggles (Sayad, 1998, p. 276), with the border area itself being a representative space where spaces of exception are permeated. These fields of tension have often exposed discrimination and segregation in a legitimized way. It is therefore possible that borders represent what Agamben affirms is a space in which "bare life and the norm enter a threshold of indistinction" (Agamben, 2005, p. 181), since, on many occasions, the civility and ethical sense of the police govern as sovereign, determining who is included and excluded from the political field.

It is observed that contemporary politics, especially in so-called democratic countries, is threatened when it is subject to polarization. The politics of confrontation, whose confrontations are frequent, is done in a simplistic way, reduced to binary options in which the option for one excludes the other (Leite, 2013, p. 109-110). Thus, it is notorious that certain governments promote discourses that polarize nationals and non-nationals. In this sense, a relationship is observed with the friend/enemy distinction, conceived by Carl Schmitt, which influenced Nazi policy in the twentieth century (Schmitt, 2015, p. 50). At that time, the political enemies were Jews, socialists, homosexuals, and foreigners. This clash between binary relations good/bad, friend/enemy, sacrificed democracy and gave rise to policies of an authoritarian nature. Thus, when instability began to flourish in society, totalitarian signals began to be heard. Although this context emerged in the twentieth century, a period in which the world was marked by its bipolar characteristic (capitalism and socialism), many contemporary governments still adopt discourses inspired by these thoughts, even in the face of a global world.

Schmitt's theory relates the concept of the State to the⁵ concept of the politician, because in some way the political⁶ is equated with the State (Schmitt, 2015, p. 80). And he conceives that everything in the State is political (Schmitt, 2015, p. 46). Also, in this way, the political antonyms between friend and enemy differ (Schmitt, 2015, p. 50), without ethical conceptions, such as good and evil, being included in this concept, since the enemy is the other, foreigner, that is, the public enemy. Schmitt states that "the concepts of friend, enemy, and combat acquire their true meaning when they have and maintain reference to the real possibility of physical death [...] war is nothing more than the most extreme realization of enmity" (Schmitt, 2015, p. 62). Carl Schmitt's *The Concept of the Political* introduces two possible interpretations of the

⁴"The truth is that there is a logic of exclusion within borders, extended to the other securitizing dynamics of human mobility, such as the selection of foreigners and the discretionary power of the State over the 'legalization' of immigrants, or the restriction of acts of civil life to non-nationals" (Redin, 2017, p. 137).

⁵"The State is a unit, and the paradigmatic unity is based on its political character" (Schmitt, 2015, p. 80).

⁶It should be noted that "the definition of the political is neither warmongering, nor militaristic, nor imperialist, nor pacifist" (Schmitt, 2015, p. 63).

enemy. The first in relation to political criteria, including one's own nationality, that is, the foreigner can be the enemy, and the second vision refers to the figure of the foreigner as the other, the one who is not part of the state's homogeneity. Câmara, quoting Schmitt, states that "the foreigner is seen as the other, that is, not only is he excluded from political ties, but he even puts them at risk" (Câmara, 2008, p.130). It is observed that this binary relationship, despite having been conceived in the mid-twentieth century, still prevails in the governmental policies of contemporary states. Migrants, often seen as enemies, are marginalized and suffer discriminatory policies and criminalization due to their status as non-nationals.

The construction of this identity of the immigrant as an enemy does not have a specific date of appearance. However, several events in the history of the world have contributed to the formation of this narrative that remains in the imagination, especially in the West. It is important to highlight the role of the United States of America in this discursive construction in which the figure of the migrant is used for political purposes, depending on the interests involved. One of the clear examples is the refugee resettlement policy in the Cold War period. Despite the U.S. Legislature's resistance to emergency resettlement measures, the Executive Branch used its prerogatives, through executive actions, to grant refuge to people living in communist countries with the logic that "people living in communist countries didn't want to be there, and by escaping to the United States, they would reveal the undesirable character of communist countries and the superiority of the West" (Scribner, 2017, p. 269). This narrative strengthens the driving force that moved the Cold War, i.e., national anti-communist sentiment, which encourages the maintenance of war financing programs. Resettlement, therefore, was part of a strategy of U.S. foreign policy objectives, which was repealed with the end of the Cold War (Scribner, 2017, p. 270).

The dissolution of the Soviet Union brought with it the clash of civilizations, in terms of international conflicts, no longer for ideological reasons, but for cultural reasons (Scribner, 2017, p. 270; Huntington, 1996, p. 54), as well as the conflicts between the Western world and the Islamic world. During a certain period of the Cold War, there was a truce, but this clash came to the fore again (Scribner, 2017, p. 271; Huntington, 1996, p. 54). It is clarified that Huntington's thesis (1996) coexists with other theoretical formulations developed in the post-Cold War period, such as Fukuyama's (1989), but for this study the position of the former is adopted. This political tension is evident, especially after 11 September 2001. Thus, the discourse fostered by the U.S. federal government has since claimed that Islam poses a threat to national values.

In 2002, the "Axis of Evil" narrative was created and classified countries such as Iraq, Iran, North Korea, Cuba, Libya, and Syria under suspicion of U.S. national security. Direct confrontations in Afghanistan (2001) and Iraq (2003) contributed to this perspective. Asymmetric wars, therefore, were mainly directed against "Islamic fundamentalist terrorism" (Pecequilo, 2013, p. 21-22).

This logic was explored by George W. Bush when he initiated the War on Terror (Kellner, 2003, p. 63-64; Leite, 2013, p. 104; Pecequilo, 2013, p. 20), and was strongly used by Donald Trump (Scribner, 2017, p. 272; Hall, 2021). The central arguments for the defense of this position is the emphasis on Judeo-Christian culture and its importance to Western life. However, the Christian tradition is in decline and puts the West at a supposed disadvantage⁷.

In the United States of America, the pillars of Trump's campaign in 2016 were based on "the fear of Islam and the claim that Muslims pose a threat to national security, the cultural insecurities that have arisen among many white Christian Republicans in particular, and economic stagnation" (Scribner, 2017, p. 275). Totalitarianism, therefore, gains strength on both sides of this discussion. On the one hand, according to Scribner (2017, p. 273), there is a tendency to think that there is a global jihadism, which aims to be a new form of totalitarianism without geographical links to a state or a region. On the other hand, also in authoritarian terms, Calveiro (2012, p. 157) highlights the tendency of totalitarianism to update itself in the neoliberal context. The war on terror also encourages the construction of the external enemy, which is terrorism. This discourse induces the behavior of "all non-state violence is terrorist and all state violence, justified as anti-terrorist, is automatically legitimized." This counter-terrorism thinking has severely contributed to the control of borders and migration centres, often turning them into detention centres, triggering the criminalisation of migration.

The construction of the image of the immigrant as an enemy is fostered by various state initiatives, whether in the "War on Terror" or even in the maintenance of a naval base that is outside the jurisdiction of the United States Courts (Guantánamo, as will be discussed in the next section) (Kellner, 2003, p. 178-181; Gómez, 2008, p. 270). One of the main acts that promote this idea is the association between migration and Criminal Law. According to Stumpf, in 2008 the United States Congress made "deportation mandatory in cases of commission of any crime by any noncitizen, regardless of the length of the sentence or the particular conduct

⁷ "The West is and will continue to be for many years to come the most powerful civilization. However, its power relative to that of other civilizations is diminishing. As the West tries to impose its values and protect its interests, non-Western societies are faced with a choice. Some try to emulate the West and join it or "tie themselves to it." Other Confucian and Islamic societies try to expand their own economic and military power to resist and "counteract" the West (Huntington, 1997, p. 29).

in question" (Stumpf, 2006, p. 371). The change in legislation helped to promote the image of migrants as criminals. The change also affected long-term lawful permanent residents. The Migration Act, which provides for such criminalisation, makes no distinction in terms of blood, professional and cultural ties.

Thus, in the United States there are so many relationships between immigration policies and criminal policies that the two systems are only separated in name (Stumpf, 2006, p. 376). The term migration, therefore, appears in three aspects, namely: in the overlapping of the substance of the criminal and migratory content; in the similar application of the two laws; and, finally, in its procedural aspects (Stumpf, 2006, p. 381). The first aspect arises, above all, from the tendency to exclude and deport convicted non-US citizens. The second is marked by the criminal consequences of migration, which were previously only civil violations. And finally, the Migration Law tends to detain and deport those who may pose a threat to national order and security (Stumpf, 2006, p. 382).

In the U.S. scenario, this relationship between criminal law and migration has been close for a long time. Thus, since 1929 violations of the Migration Law have ceased to be of a merely civil nature. From that year on, illegal entry was considered a misdemeanor and re-entry became a crime (Stumpf, 2006, p. 385). This tendency to criminalize migratory acts tends to increase over the years, especially with the advent of control of terrorist attacks. One of the main laws that affirms this trend is the *USA Patriot Act* of 2001, which authorized the indefinite detention of immigrants suspected of terrorism without even recourse to criminal justice (Stumpf, 2006, p. 386; Gómez, 2008, p. 270-271). Another clear example, according to Stumpf (2006, p. 471), is the United States Border Patrol, which has the authority to conduct surveillance, pursue undocumented foreign suspects, make stops, and make arrests." In addition to arbitrariness, within the borders, immigration inspection is guided by racial and ethnic criteria, with a tendency to commit xenophobic and racist acts. This last example reflects the political tensions that exist in border areas and condemns migrants to submit to exceptional camps, where access to justice is denied and orders are enforceable.

Given the evidence of convergence between migration policies and criminal policies, and the tendency of the North American experience to be exported and reproduced in other countries in order to change immigration legislation to stricter regulations, the motivations that originated this merger are sought. It can be said that both policies address fundamental issues in society: the inclusion and exclusion of individuals. Stumpf (2006, p. 397-398) points out that criminal policies seek to imprison, and therefore exclude from society, while migration policies

exclude through the removal of the individual from the national territory. Thus, there are "choices about who should be a member of society . . . characteristics or actions make them worthy of being included in the national community" (Stumpf, 2006, p. 415).

The exclusion of convicts and non-nationals from inclusion activities in society solidifies this binary conception of choosing between the included and the excluded. Thus, those who have been excluded for not belonging to the group that has social participation are stigmatized, therefore, "a class of strangers without access to these rights or privileges" (Stumpf, 2006, p. 415). In the case of immigrants, there are the excluded and supposed enemies of the receiving society. When crossing the borders of their country of origin, they also move from the category of nationals to non-nationals. When the civil and political rights of migrants cease, they are excluded from the law and society. In this context, they are also framed in terms of the *state of exception and bare life in the country of destination*, in the light of Agamben's thesis. In the next section, these categories will be explored, in order to insert them in the contemporary context in relation to the migration issue.

2.2 Dealing with insecurity and fear: the permanent state of exception

The image of the immigrant in the eyes of American society is in transition. If in the past undocumented immigrants tended to arouse more positive perceptions than those of criminals, Stumpf reveals that, currently, illegal entry into the country is awakening the social perception that these individuals are more likely to commit criminal acts and have connections with terrorist groups (Stumpf, 2006, p. 391). The fear and insecurity caused by the attacks of these groups make this image spread in political and media discourses. This type of discourse is capable of altering everyday behavior. Thus, American thought is exported to other capitalist countries. The War on Terror, which permeated the first decades of the twenty-first century, relativized the international legal order and declared sovereignty over subjects who have bare lives,⁸ in the terms of Agamben's thesis.

The application of detention as an immigration sanction, as well as incarceration, is used in the criminal sphere and strengthens this narrative; and when it comes to detention centers, there is no way not to mention the Guantánamo prison (Kellner, 2003, p. 178-181; Gómez, 2008, p. 277) element. The U.S. naval base is the place of detention for numerous members of

⁸ "Bare life refers to the condition of total defenselessness of those who are cornered in a vague condition, deprived of their rights and citizenship, forced to live in a "state of exception" (Martins, 2016, p.195-201).

the Taliban, who are foreigners, detained by the United States, in a state of indefinite imprisonment. The jurisdiction of U.S. courts is excluded, and detainees are under the control of the armed forces. Guantánamo Bay places detainees "beyond the rule of law, beyond the protection of any court, and at the mercy of the victim" (Steyn, 2004, p. 8; Gómez, 2008, p. 275) element. It is an execution without accusation, nor without trial, that is, carried out in an executive manner. Steyn (2004, p. 1) states that "often the loss of freedom is permanent. The executive branches of government, faced with a perceived emergency, often resort to excessive measures." Therefore, abuses of power are configured in democratic governments, especially in relation to non-national ones. This grim context creates fertile ground for human rights violations to be committed in the name of national security and order without victims having access to justice, including effective remedies.

In these places, the forms of punishment took on new formats. They materialize through isolation and extreme isolation along with sensory deprivation (such as sleep deprivation). At Guantánamo, they adopt stress and coercive tactics, such as standing for long periods (Steyn, 2004, p. 7; Pecequilo, 2013, p. 21). In the same way, clandestine detention centers, especially at the borders, constitute, according to Calveiro (2012, p. 157), "a movement for the constitution and implementation of a state of emergency within the framework of the rule of law." In other words, they are environments that reinforce the discretion and exceptionality of legal and police procedures. Especially when it is private⁹, such as in the United States of America.

Immigrants, refugees and stateless people are also subjected to other exceptional spaces, such as airport waiting rooms, where they are deprived of their liberty, borders, detention centers, as well as refugee camps, where thousands of people are placed daily due to the massive flow of migrants. According to Braga (2011, p. 14-15), "the proliferation of 'camps' has then become the permanent spatial arrangement, since the lack of control at state borders is increasing, where we find numerous groups of refugees living in conditions of territorial precariousness".

The state of exception, therefore, is not configured only as the total absence of the legal system. Despite the classic concept of the term, in contemporary publishing, this figure would assume its disguise through discriminatory decrees, which depersonalize the subjects in the convenience of national interests. An exclusion zone is created for the effectiveness of legal norms. It is possible to say that even democratic states have fields and spaces of exception

⁹ "[...] the tendency to privatize the construction and administration of prisons and the presence of a high percentage of the incarcerated population in the world who are poor and immigrants, in addition to problems of overcrowding, access to justice and corruption" (Calveiro, 2012, p. 157).

aimed at specific people or groups, according to Agamben. Thus, the exception assumes a permanent character, becoming the rule (Carneiro, 2018, p. 60; Hodgson, 2009, p. 129). Through the executive orders of the Head of State¹⁰, the migrant becomes a politically deportable body with an economically exploited existence (Carneiro, 2018, p. 60), which is constantly being regulated through enforceable administrative acts and police force, which puts him at the mercy of the imposed power. Therefore, it is subject to the vulnerability and marginalization of bare life.

It is therefore necessary to reflect on the concept of a state of exception addressed by Agamben. The author criticizes the lack of a theory of the state of exception in Public Law. However, he affirms that it is difficult to establish a boundary between the legal and the political, since this manifestation cannot have a legal form, precisely because it is located outside the legal system. The state of exception, *par excellence*, is related to wars. However, Agamben (2004, p. 13) points out that throughout the twentieth century this exceptional measure was given as a technique of government and threatened the constitutional powers.

In short, the exception is configured as "a level of indeterminacy between democracy and absolutism" (Agamben, 2004, p. 13). In this sense, the concept of a state of emergency is difficult to delimit in the legal field because it is the suspension of the legal system itself, being characterized as a limiting concept. Thus, the institutional divisions between the Legislative, Executive and Judicial Branches are extinguished. Some legal systems present this route in their constitutional texts. However, authors such as Schmitt believe that the state of emergency cannot be regulated by itself. When he tried to articulate contributions to create the theory of the state of exception, he synthesized it as the existence of an order, even if it is not the legal order. When there is a suspension of order, there is autonomy in relation to decisions; This is what the sovereign decides. Political decision is intrinsically the very existence of the State.

Agamben, in turn, affirms that the debate on the insertion or not of the state of emergency as a possibility in legal systems is a political phenomenon. Discussions about the interior or exterior; The total or partial suspension of the legal system reveals the complexity of the state of emergency and the aforementioned author includes it as a zone of indifference, where the phenomena are indeterminate. Thus, if there is a need, the concept of which is subjective, the fact is transformed into a right and the right is suspended and eliminated in fact (Agamben,

¹⁰ "[...] the state of legal exception, expressed in the broad discretionary power of the Head of State and the Executive Branch represented by him, who assume, in relation to immigrants, all the functions of the State: the prerogative to legislate, execute and decide on the lives of non-nationals in its territory, incorporating, in the sphere of political power, all the attributes of sovereignty" (Carneiro, 2018, p. 61).

2004, p. 46). In this context, Agamben (2004, p. 14) and Gómez (2008, p. 271) cite *the USA Patriot Act*, which allows US authorities to detain foreigners suspected of activities that "endanger" national security. Agamben (2004, p. 191) states that "[...] an absolute indistinction between fact and law, between life and norm, between nature and politics" permeates the lives of these migrants deprived of liberty.

Thinking from the perspective of countries that securitize borders, criminalize migrants, and protect national interests and security also exposes government abuses. It also highlights the social control of migrant populations and the constant surveillance of the subjects. This reflection directly touches on the limits of the power of the ruler and the existence (or not) of democratic institutions. The identification of immigrants as internal and external threats arouses attitudes that reveal fear and insecurity and favor arbitrary measures. The enemy does not manifest itself only as the non-Aryan, as it was in the Nazi regime of the twentieth century. And so they are excluded from the most diverse portions of society (services, programs, assistance). Schmitt bases his concept of democracy on the identity between rulers and governed (Rosenfield, 2020, p. 34). However, this identity presupposes homogeneity and, therefore, the exclusion of non-nationals.

Faced with this conflictive scenario, the threat revealed by the civilizational conflict is not only in the international sphere, that is, externally. Scribner (2017, p. 273) states that "disparate civilizational orders come into contact, and sometimes conflict with each other." Migration, therefore, comes directly to this point, as mass migration "can bring with it threats to the common order and undermine the cultural foundations of a society" (Scribner, 2017, p. 274). In light of white Christian thinking in the United States, "Muslims not only represent an external threat to national security in relation to terrorism, but an internal threat insofar as they threaten the cultural and political foundations that have given the United States its distinctive character" (Scribner, 2017, p. 275). This narrative evidences the nationalist and exclusionary nature of this conservative vision (Gómez, 2008, p. 282). Thus, the presence of migrants is configured as a threat to the existing political and social system. Not only Islamic culture awakens this fissure, but also the Latin American community. It is concluded that the encounter of disparate cultures leads to the bifurcation of the receiving society and the rupture of any type of homogeneous national identity (Scribner, 2017, p. 274). In the presence of immigrants, which in this view causes instability, little by little the rule of law is abandoned and arbitrariness prevails, although democratic legal formality is maintained. In the next chapter, we will analyze how this rupture manifests itself, either by the narrative of the emergence of the migratory crisis,

or by the denial of migrants as political subjects. In both contexts, there are arrangements that aim to depersonalize and depoliticize migrant life.

3 Migratory crisis or denial of the conception of migrants as political subjects?

States' responses to migratory flows have been as variable as possible. Many countries reinforce the securitization of borders, the criminalization of migrants and xenophobic discourses, as is the case of the United States of America and many countries of the European Union, which control entries through the Mediterranean Sea. Other states, in turn, are trying to respond to these challenges, as Brazil did when it created the humanitarian reception visa for Haitians during the 2010 crisis¹¹. However, even in Brazil, a country that for some time showed signs of positive receptivity to migrants¹², the conduct of migration policy suffers oscillations because it is managed by the Federal Police, which operates on the borders, and also because of the presence of conservative military in the current governments. The presence of the Armed Forces in civilian governments is worrying, since it violates the rights of citizens and goes beyond their institutional intentions, that is, to be called upon to act in the face of internal threats and to play the role of acting in internal public security.

In today's democracies, the role of the Armed Forces is often not very well defined by national Constitutions or goes beyond their true functions: to protect the sovereign State against external threats (Ríos-Figueroa, 2019, p. 433; Gómez, 2008, p. 269). Proposing to reflect on the influence of the military in civilian positions requires revealing the weaknesses, importance and risks that this implies, especially for non-nationals, seen as enemies from the perspective of national security.

The responses to migratory flows, therefore, have something in common. They are mainly configured as government policies that address "migration crises". These countries are little interested in creating state policies¹³ capable of establishing solid institutions, guidelines and

¹¹ Creation of CNIg Normative Resolution No. 97 of 2012. Subsequently, the residence permit for humanitarian reception was institutionalized through Law 13.445/17 (Migration Law).

¹² "In this period (2010-2016), such paradigms were made more flexible with the introduction of normative resolutions, of humanitarian criteria in the treatment of immigrants in Brazil" (Carneiro, 2018, p. 75).

¹³ Government policies are considered to be those that the Executive decides in an elementary process of formulation and implementation of certain measures and programs, with the aim of responding to the demands of the domestic political agenda, even if they involve complex options. State policies, on the other hand, are those that involve more than one State agency, generally through Parliament or in different instances of

programs aimed at protecting the human rights of migrants. This challenge related to multiethnic populations directly involves the state sphere. The responses, as government policies, reveal the democratic weaknesses existing in the receiving state and propose reflections on social control, the state of exception, the rule of law and authoritarianism. Agamben (2004, p. 14) states that the exception, materialized by xenophobic and discriminatory laws, is intended to "radically annul all legal status of the individual, thus producing a legally unnameable and unclassifiable being," such as the *USA Patriot Act*.

In the global era, it is inconceivable to think of a country that is not related to the phenomenon of migration. The dichotomy between country of origin and country of destination has merged into waves of migration, which oscillate at points of origin, transit, and destination (Faria, 2015, p. 37). The issue of migration, in recent times, has taken on a fundamental role in political discussions and has also influenced electoral results. The anti-immigration stance of certain candidates leads them to leadership positions because they attribute the disastrous responsibility for economic crises to the volume of migratory flows (Faria, 2015, p. 39). If, on the one hand, governments violate the human rights of migrants by securitizing borders and criminalizing irregular entry and stay, on the other hand, when migrants are already in the territory of the country of destination, society tends to exclude migrants, isolating them in migratory ghettos. According to Faria (2015, p. 40), "the rejection of this divisive trend by sectors of local society inhibits and discourages the adoption, by governments, of effective policies for the integration of these migrants".

When reflecting on the relationship between migration, the rule of law, and democracy, it is unthinkable to say that the treatment given to migratory flows frustrates the very spirit of globalization (Faria, 2015, p. 51). In this sense, at the same time as information, communication and transport are facilitated, people are repelled by walls (often physical) and border controls. In this way, there is a tension between the agglutinating and disaggregating effects, which prevent the full realization of the right to migrate. On the one hand, technological advances reduce physical distances, on the other hand, the accentuation of cultural differences imposes socio-economic barriers. Faria (2015, p. 52-53) states that "wealth, therefore, is global and misery is local".

Migration, in turn, according to Sayad (1998, p. 14), is a movement with a double dimension: the first concerns individual foundations, and the second concerns collective

discussion, resulting in changes to other pre-existing norms or provisions, with an impact on broader sectors of society (Oliveira, 2011, p. 239).

factors, that is, it constitutes a historical and structural fact. In historical terms, the migrant is identified as a foreigner, whose stay in a certain place is temporary, since he is a being who does not belong to that community in the country of destination. In this same context, it is pointed out that the "provisional status is the central element of the definition of immigration for the Law. However, its enduring condition, in particular [...] is what characterizes it in fact" (Vedovato; Camargo; Pessoa, 2019, p. 28).

The society of immigration lives the illusion of provisionality by belonging to a hostile society, whose main characteristic is transformation. In the face of the balance of burdens and benefits, as a result of the provisional condition of migration, it should offer only advantages, at no cost to the receiving State (Sayad, 1998, p. 14). Migration regulation, therefore, changes according to circumstances, in order to balance the *cost-benefit equation*, and is constituted according to the needs of the moment. This cold calculation conditions the migrant to be "defined and treated as provisional, that is, revocable at any time" (Sayad, 1998, p. 55). Migrants, on the other hand, are recognized only for their mechanical strength, and States, on the other hand, believe that it is necessary to grant them the minimum, since they are recognized only for their work, as *a sine qua non* of existence¹⁴.

A concrete example of this logic can be cited as the vision of the legislator at the time of the enactment of Article 16 of the Statute of Foreigners in Brazil¹⁵. There was a depersonification of migrants to massify them and see them only as labor, that is, for their economic utility. This false transience also reveals the illegitimacy of the immigrant's presence, except for the legitimacy of his work. Thus, when residence is prolonged in the receiving country, the State denies him "the right to belong to a body politic, to have a place in it, a residence, a true legitimacy" (Sayad, 1998, p. 270).

In this context, it is stated that "the distinction according to the criterion of nationality or national relevance is more strongly recalled when we find ourselves in periods of employment crisis, which is also an immigration crisis" (Sayad, 1998, p. 280). Thus, the question arises: is the so-called migratory crisis really a crisis resulting from the migratory flow or can it be interpreted as the negation of the conception of migrants as political subjects? The supposed

¹⁴ "Work is the condition of existence of the migrant. When it exists, there is also the immigrant, regular, tolerated, productive person. When it does not exist, the immigrant's existence is also denied, he passes into the sphere of "non-being" and is denied all the possibilities of exercising any fundamental right. This work, however, is not just any work. It is the work available in the 'labour market for immigrants' which, when it disappears, takes with it the very existence of the immigrant" (Vedovato; Camargo; Pessoa, 2019, p. 30).

¹⁵ Article 16. Sole paragraph. Immigration will primarily aim to provide skilled labor to the various sectors of the national economy, with the goal of increasing productivity, assimilating technology, and raising funds for specific sectors. Cf. Law 6.815/80 (repealed).

"politicization" of immigration provokes the interests of various entities, both public and private (Sayad, 1998, p. 278).

Sayad (1998, p. 274) is emphatic in affirming that the immigrant forces the national order to think what is unthinkable, in the sense of unmasking its own foundations, because the political order itself has excluded him. It is observed that "relegating the immigrant to what is alien to politics, because he is politically alien to politics, is a way for the democratic form to settle accounts with its egalitarian ideal: it is enough to delimit the field of the political [...] constitute the code of inclusions and exclusions" (Sayad, 1998, p. 276). Thus, the suspension of the political dimension of migration is convenient to its regulation as a mere transfer of work, ignoring the fact that it is, in reality, the mobility of political subjects (Sayad, 1998, p. 278).

This debate on the identity of the migrant, artificially constructed, as the political enemy, the other, the criminal, the foreigner, has its roots in the attempt to molithize migrant bodies in the territories of the country of destination. However, as Agamben states, "as exiles and exiles know, no life is more 'political' than their own" (Agamben, 2005, p. 189). Depoliticizing the non-national means that the potential risks it offers are diminished due to the rights that are taken away from them. Thus, the contemporary migration crisis resides precisely in the illusion of governments of ignoring the complexity of the migratory phenomenon and only wanting to take advantage of the presence of migrants in their territories, exploiting them as cheap and informal labor.

The crisis, in fact, is the hidden part of the consequences of the displacement of political bodies, something that has always existed; but previously denied. Today, it can no longer be denied. Thus, as a way of responding to the repulsion to solve challenges, the narrative of the migrant is created as an enemy and as a burden to be borne by the receiving country, since it is no longer possible to obtain only advantages from this flow (it never was). The provisional nature of migration permeates the constant violations suffered by these individuals. The (illusion) of provisional stay means that the residence of the migrant is conditioned only to the extent that economic utility is attributed to it.

"Drowned children, hastily erected walls, barbed wire, overcrowded concentration camps and competing with each other to add the insult of treating migrants like hot potatoes to the insults of exile [...]" (Bauman, 2017, p. 8). Global challenges also require global responses. Forced flows, a reality resulting from civil wars and environmental disasters, are not only

consequences of the disorders caused in domestic environments¹⁶. They are the result of global tensions, which are producing results in the localities. In this way, the absence of rights, which characterizes the bare life of migrants, is also reinforced by the characterization of the absence of presence (Lorenzo, 2017, p. 64).

In the narrative presented in this text, the migrant is both the supposed agent and the victim of violence. This logic legitimizes that they are assimilated as the other, who has in himself, par excellence, the figure of otherness. By this word we refer to what is "different, diverse, and distant from the subject or a specific group" (Lorenzo, 2017, p. 63). However, it is conceived beyond the dialectic between the "us" and the "other". In this context, there is coexistence between these figures that "in a given time and space and that at the same time interrelate and interdefine each other, giving rise to an extremely complex game of dynamics and social figures" (Lorenzo, 2017, p. 66). Thus, the migratory crisis exposes the crisis of otherness. It is, in fact, an economic, socio-cultural, ethical and environmental crisis, which affects not only migrants, but the problems that affect us all.

4 Final Thoughts

The construction of barriers, whether physical or moral, is a contemporary reality. The position of States in relation to international migratory flows turns these barriers into political fields of tension. These confrontations gain strength in the face of the growing movement of securitization of borders and the construction of the identity of the migrant as a criminal and enemy. In this sense, the historical role of the United States of America in the formulation of this discourse was demonstrated in the light of Schmitt's theses on the conception of political friend and enemy. The U.S. tendency to merge immigration policy with criminal policy has echoed the term "crimigration" and exported this narrative to other Western countries.

The spaces assigned to migrants when they arrive in the country of destination were also analyzed. These territories were observed from the perspective of the category of state of emergency, according to Agamben. Whether borders, prisons or refugee camps, migrants are directed to camps where the normative order is suspended and the will of the sovereign prevails, without access to justice and dignity. Migrants are subjected to a bare life, that is, without civil

¹⁶ "[...] total volume of migrants who were already knocking on the doors of Europe [...], these are collateral damage produced by the military expeditions to Afghanistan and Iraq, fatally misjudged, poorly conducted and calamitous" (Bauman, 2017, p. 11).

and political rights, condemned to be non-nationals and excluded from society. What remains for them from this point of view, therefore, is their economic utility.

In the last chapter, it was questioned if, in fact, there is a migratory crisis or if there is a movement of denial of migrants as political subjects. Over the years, the migration issue has been treated in light of the usefulness of migrants as cheap labor, i.e., only the benefits of migration were absorbed and the burdens were denied. However, this perspective has been questioned in the face of massive migratory flows that have exposed the need to treat non-nationals in a more complex and multifaceted way.

The tendency to apoliticize the migrant and have it only as a body of work has collapsed. And one of the responses to the effervescence of the migratory flow is the fear of the different. In this sense, political and media discourses are propagated that reinforce xenophobia and racism. The alternative that states see in this context is exclusion, at borders, in prisons and in refugee camps. The deposit of those excluded in the exception fields is adopted. Securitization, through the discourse of maintaining security and national order, reveals its true intentions of stigmatization and discrimination against migrants, regulation of mobility, confinement and militarization. Therefore, the existence of states of exception, aimed at migrant communities, in the midst of Western democracies is confirmed.

Forging the identity of the migrant as the other makes it difficult to dialogue with what is different. Otherness is shown as one of the possible keys to answering the question in the title of this text. Otherness in itself is not an identity quality, but an effect resulting from the contact between two heterogeneities. Contact between two different cultures does not necessarily generate antagonism or opposition. Otherness is perfected by interdependence. So, who is the other? The other, in fact, enunciates the traits of ourselves.

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