

Insurgent power of the multitude

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TABLE OF CONTENTS: 1. Introduction; 2. Masses: between movements and multitudes; 3. Insurgent power of the multitude; 4. Conclusion; References.

ABSTRACT: This article explores how multitudes act as an insurgent power, influencing and challenging the limits of constituted authority, particularly in the context of Brazil's 1988 Constitution, which restricts the direct exercise of popular sovereignty. Drawing on Antonio Negri's theories and related authors, the paper differentiates the concepts of "people" and "multitude," highlighting the latter as a collective lacking homogeneous identity whose insurgent action disrupts existing constitutional structures. The multitude manifests disruptively, challenging institutional norms and practices through sporadic, emotional social movements often driven by social networks. The article emphasizes that, despite their fragmentation and apparent lack of traditional organization, multitudes possess a unique and dynamic constituent power, compelling continuous updates and adjustments within the political and constitutional system. It thus underscores the necessity for constituted powers to constantly adapt to preserve their legitimacy in response to contemporary society's insurgent demands.

KEYWORDS: multitude; insurgent power; Constitution; social movements; democracy.

1. Introduction

The 1988 Constitution recognizes that all power emanates from the people, but dilutes this power through indirect political representation, transferring it predominantly to Parliament, while paying little attention to the direct exercise of popular sovereignty and, when it does, imposing formalities that discourage its enjoyment. Furthermore, the possibility of popular initiative to amend the Constitution of the Republic has not been recognized, due to its absence from the list of those entitled to do so, which only includes members of the National Congress, the President of the Republic, and the Legislative Assemblies.

Although democratically such curtailment of its potential sounds improper, from a theoretical perspective, the domination of the people by the constituted power is justifiable, as exemplified by the 1988 Constitution. For Negri (1993; 1999), the people possess internal identity and homogeneity and are prepared to justify the claim to state sovereignty. But the people are different from a multitude¹, since the latter is an open set of relations between singu-

1 Terms used here are synonymous, given the absence of significant differences in what is adopted by the referenced bibliography (for example, Negri, 1993; 1999; Virno; Hardt, 1996).

larities without identity, whose constituent action is open and inconclusive. Therefore, the people are conceived as having a single will, unlike the multitude. Given this, the action of the constituted power attempts to dominate and transform the multitude into the people, through virtual mechanisms of representation, caging its potential within a constitutional framework.

Thus, the advent of a new constitutional framework may dampen the potential of the multitude, particularly when it reduces it to a description of the people, but it is not capable of entirely nullifying its capacity to guide, determine, or oppose the established power, since the multitude possesses a constituent power of a different character from the power attributed to Parliament and impossible to be delimited by constitutional texts or practices.

Therefore, despite the limitations imposed on the people by constitutions, this study seeks to identify how the masses exercise this constituent potential beyond what is permitted by established power, initially investigating the forms of political organization of collectivities and then understanding how they disruptively rebel against established power.

2. Masses: between movements and multitudes

2.1 The classical conception of the masses

Ortega y Gasset warned of a peculiar configuration of the masses at the turn of the 19th to the 20th century, consisting of an increased capacity for direct intervention in the course of liberal democracy, dispensing with, and even opposing, the intermediation of political elites, a situation he termed “hyper-democracy” (Ortega y Gasset, 2011, p. 32).

To advance this topic, it is necessary to understand the concept of mass, which can be found in the dichotomy developed by the classic authors of Elite Theory. Mosca, for example, argues that the larger the political community, the smaller the ruling class (or political class) will be in relation to the governed majority, presuming that the latter does not possess the capacity for self-organization of the former (Mosca, 2012, pp. 91-93). Pareto, in turn, starts from the premise that it is objectively impossible for human society to be homogeneous, so that the existence of elites (or aristocracies) that stand out for being able to exercise power over the other “commoners” would be inherent to social organization, although the author recognizes the possibility of a “circulation of elites” in the face of social innovations that force the renewal of these power groups (Pareto, 1909, pp. 128-134). In turn, Michels

argues that the mass presupposes an elite to guide it, since individuals within a crowd have their identity annulled, an element whose absence makes the crowd pathological, indifferent, and apathetic, and therefore the author recognizes “the need that the mass has to be directed and its inability to act in any other way than through initiative coming from outside and from above” (Michels, 1982, p. 37).

Thus, it seems that these authors understand that, in periods of “normality,” social organization is formed, broadly speaking, by the command of a small elite, which possesses greater organizational rationality, and by the relative subservience of the other members, with reduced capacity for organized collective action, who residually comprise the concept of “mass.” On the other hand, although they have not devoted much attention to the subject, these authors also recognize that elite groups do not remain in power indefinitely, and one of the main factors for these changes is the rare (considering the aforementioned organizational difficulties), yet powerful mobilization of the masses against the *establishment*.

Thus, similarly to Ortega y Gasset, Le Bon warned that the “age of the masses” was knocking at the door, and that the divine right of kings had been replaced by the “divine right of the masses,” since they had the power to cause historical changes with the renewal of opinions, conceptions, and beliefs of a civilization (Le Bon, 1895, pp. 10-11).

It is therefore pertinent to identify how these masses act within the political spectrum. Renowned writings on mass psychology largely support the thesis of a “psychological law of the mental unity of the masses” (Le Bon, 1895, p. 17), based on the idea that a sporadic collectivity tends to drastically reduce the intellectual capacities of individuals to a necessary leveling that enables interactions within the group, while, freed from the constraints generated during the formation of each psychic structure, a common emotional force emerges that makes a primitive impulsiveness its main driving force.

In addition to the drastic atrophy of intellectual capacities, Freud highlights the “disinhibition of affectivity, the inability to moderate and postpone, [and] the tendency to surpass all barriers in the expression of feeling and to discharge them entirely in action” (Freud, 2011, p. 60) as striking characteristics of the mass. And, in the search to understand the “collective soul” (Freud, 2011, p. 13) of the masses from the leader’s perspective, and sharing the view on the suspension of personality before such a collectivity, Freud also found that, once the capacity for autonomous thought on the part of

its members is obscured, they act by collective contagion (or suggestibility) of feelings and affects, that is, by “influences without logical foundation” (Freud, 2011, p. 32).

In turn, without acknowledging this apparent indifference of psychology towards the various organizational levels of this type of collectivity, other studies have advanced towards a better visualization of the traits that characterize the mass as a social movement, with greater organizational aptitude, or as a crowd or multitude, with less capacity for collective orchestration.

2.2 The distinction between social movements and multitudes

However, establishing the boundaries that separate a social movement from a multitude is a complex task. Even recognizing the difficulties, some authors choose to examine the configuration of social movements by focusing on the interactions and disputes between marginalized groups and those in power, aware of the possibility of social movements whose demands originate from and are directed at powerful groups, for example (McAdam; Tarrow; Tilly, 2009, p. 21), or as a “challenge to authorities or cultural codes by a field of actors employing non-institutional means of influence” (McAdam; McCarthy; Zald, 1996, p. 283).

If the lines defining social movements are tenuous, the definition of multitudes is also difficult, to the point that authors such as Virno situate them in a “middle region between the individual and the collective” (Virno, 2004, p. 25). Thus, the difference between the two may reside in the level of organic historicity of the collectivity, since differentiation based on the behavior of those involved does not seem reliable, given the absence of significant differences in the emotional states of the members of these groups, since the individual and the mass are in constant adjustment in the struggles for the expansion of spaces of recognition (Mead, 1982, p. 284-286).

To aid understanding, unlike a multitude, the collective action of a social movement is guided by a prior process, and is therefore not limited to a mere fact or event (Melucci, 1989, p. 45). There is a characteristic iter of social movements: claimants with diffuse agendas come together at some opportune moment to form alliances and pressure their targets; the most active members stand out in the formation of coalitions and in the pursuit of forging a more comprehensive collective identity, which gives them greater adherence for controlling the collectivity; internally, the rough edges of the agendas that rival each other are smoothed out with the identity forged for a

group with unified slogans; finally, a more cohesive group emerges, capable of bargaining with other social actors (McAdam; Tarrow; Tilly, 2009, p. 23-24). In this process, its mode of operation is carried out through “cycles of claims,” a mode that, with the meeting of the first members, initially goes through a “point of maximum intensity, then followed by a decline in the frequency, success, and civility of the claims and the claimants” (McAdam; Tarrow; Tilly, 2009, p. 23).

The multitude, on the other hand, is more a combination of “social individuals” (Virno, 2004, p. 80) who, on a different scale from those involved in social movements, are less likely to relinquish their autonomies and ways of thinking when gathered en masse. Therefore, its constitution is detached from “principles of affiliation typical of social movements” (Jesus, 2013, p. 494). This difficulty in dissolving individualities within the mass renders the multitude unable to continue with the aforementioned process of historical constitution of social movements, given the impossibility of building a broader collective identity. This is because the notion of multitude “seeks to question the homogenizing and anomic idea of mass, to recognize the centrality of the ‘singular’ in the construction of the ‘common’” (Mendonça, 2017, p. 138).

In other words, the level of singularity of the multitude means that the fragmentation common in the beginning of the masses cannot be overcome for a collective articulation of demands, as occurs in social movements. It is, in fact, the casual gathering of a “multitude of intellectuals” – which is not linked to levels of education – (Virno, 2004, p. 39), who do not relinquish their points of view in favor of a greater cause or a collective identity, nor do they bow to the authority of people who intend to assume leadership or protagonism. Therefore, the multitude does not allow “political unity, is recalcitrant to obedience, cannot have its legal *status recognized* and, thus, is unable to make promises, pacts or acquire and transfer rights” (Virno; Hardt, 1996, p. 199).

However, these differences seem to end at the level of organic historicity, since social movements and multitudes experience the same process of complexity and contingency as mass society, and contemporaneity has caused these collectivities to acquire new characteristics. This fact, in the end, reduces (but does not eliminate) the disparities in the scope of action of both groups, so that some authors do not bother to discriminate the type of mass when analyzing its performance in the political spectrum.

2.3 Mass action in contemporary times: the “nomads of the present”

In Virno’s view (2004, p. 93), what is currently an important factor for mass action is the mass media, whose information, when passed on to collectivities, incites Heideggerian “chatter,” a kind of uprooted discursive continuity, since it is unconcerned with returning to the original sources of that communicational chain (Heidegger, 2005, p. 229). It instigates Heideggerian “curiosity,” which is the restlessness of having constant access to new information simply for the sake of novelty, not for its reflective understanding (Heidegger, 2005, p. 233), but rather stimulates Benjaminian “distraction,” which is the use of information by the masses as a mere object of amusement, dispensing with concentration on the text (Benjamin, 1975, p. 32). The disorientation generated by superficial information hinders cognitively grounded mass action, which also opens the movement of these groups to the emotional aspect.

To better understand this statement, individual cognition is the mental capacity for conscious judgment in a given environment/context, associated with knowledge of different courses of action and the calculation of their short- and long-term consequences (Damasio, 1994, p. 166; Sadock, Sadock, Ruiz; 2017, p. 1410). In turn, for what matters to the masses, social cognition “involves the effective analysis of social stimuli, the integration of current information with historical information, and the planning of an efficient response. This domain is also called ‘social problem-solving’” (Sadock, Sadock, Ruiz; 2017, p. 894).

And since mass media obliterates the possibilities of in-depth reflection on information, this forces the masses to act not only through full judgment but also through emotion, as a “mental experience with high intensity and high hedonic content (pleasure/displeasure)” (Cabanac, 2002, p. 76). After all, emotions, by providing immediate interpretive means of understanding the contexts of mass mobilization, should also be considered as tools for analyzing political action (Jasper, 2007, p. 85). Recognizing this role of emotions does not imply that the gathering of the masses is equivalent to a moment of collective hysteria, but rather to cultural articulation, since collective identity is formed by both emotional solidarity and cognitive bonds (Jasper, 2007, p. 81).

In this process, hating and blaming others is crucial to mass action: impulses, affects, states, and moral complexes (compassion, outrage, disgust, fear, and anger) make up the “power of negative thinking,” which must be considered a human motive for mobilization, beyond the rational and ordered vision of collective action (Jasper, 2007, pp. 83-89). Thus, initial purposes need to be

evaluated together with the passions of the masses, because, in the absence of a purely “rational” explanation, emotions help us understand why some agendas become more prominent than others at different times of collective action, for example (Jasper, 2007, p. 87).

In Jasper’s view, this superficiality of the media hinders the emotional understanding of the masses, given that they primarily seek to capture the cognitive aspect of collective action to justify a rationally “closed” (or complete) narrative, thus preventing the sublime aspect of their stories (Jasper, 2007, p. 100). When not, such media tend to portray the personal and conflictual peculiarities of the participants, instead of focusing on the collective message (Vliegthart; Walgrave, 2012, p. 14).

In any case, there is a feedback loop: the news market exploits mass eruptions and, in turn, the collective also takes advantage of its *framing* to disseminate its identity and voice within the social environment in which it intends to insert itself or alter (Torres, 2016; Vliegthart; Walgrave, 2012, p. 14). Thus, the “minimum information” passed on by the media, by which the masses are defined and guided, makes the union and action of these collectives also occur through the “minimum common ground,” which, in Virno’s words, is the mere feeling of “no longer feeling at home” (Virno, 2004, p. 93), even if one does not fully know what is going wrong within the home.

Thus, in the absence of an informational framework that allows them to be fully aware of the roots of the problems they are fighting against, the movement of the masses is predominantly instigated by a (negative) feeling about the present, which is why Alberto Melucci (2012) calls these collectivities “nomads of the present.” For the author, the characteristic of these new masses lies mainly in the fact that they do not possess grand plans or a traditional political ideology as a vector of action. The symbolic challenge of these masses is to make visible the rationality and vicissitudes of the established power in the present time, and they act disruptively in limiting its ability to resolve new demands, based on the assumption that the (established) constitutional system has a natural limitation in absorbing and solving present demands.

In other words, according to Melucci, democracy exclusively and satisfactorily safeguarded through established political means is an impossibility, and this is what makes the masses disruptive when they manage to expose this incapacity. His vision of democracy presupposes a political power necessary to regulate society and also that its exercise brings with it an asymmetry between elites and masses (not an abstract political equality), in which

social life is not limited to what is discussed in the established political field. In this context, the disruptive character of the masses lies in their capacity to be a counter-power, as they prevent the reproduction (totalization) of power itself, forcing it to innovate, forcing the circulation of elites, inserting issues previously excluded from the public sphere into the social agenda, and revealing the invisible zones and silences of the system (Melucci, 2012, pp. 168-169).

People's propensity to join these collective movements depends on the level of resources they have available, whether informational, professional, communication networks, etc. (Melucci, 2012, p. 35). But participating in this mass does not necessarily imply an exclusively rational and isolated choice by individuals, because, instead of being induced to participate, they can be aggregated (McAdam; Tarrow; Tilly, 2009, p. 32). And recruitment networks among acquaintances have been relevant for the adhesion of other people to the mass movement, demonstrating that emotional proximity also forges collective bonds, not just cognitive affinities (Jasper, 2007, p. 93; Bennett; Segerberg, 2013, p. 24-25).

And prior and extensive planning for action is unnecessary: those who speak out first are the most affected, and these are the symptoms of the system's fissures, where (something wrong with) the present becomes the conflict. Once in motion, traditional political mediation is avoided by these masses, but this does not mean they are anti-political: they are pre-political because their demands stem from new issues arising from daily life, and they are meta-political because the representative system is unable to translate them (Melucci, 2012, p. 72).

And this makes it common for these masses to use anachronistic, incomplete, or inadequate language to fully express a feeling about a present that, because it is new, is not yet nameable, and whose causes are not yet fully known, which makes the established political representation fail to visualize the scope of the ongoing political and social transformations instigated by the masses, since it does not have a dictionary for understanding the new expressions (Melucci, 2012, p. 171).

Given this situation, the masses adapt the dissemination of their demands to pre-existing mobilization repertoires, which, due to their importance and prominence throughout history, pave the way for new collective movements to begin their journey and build their own mobilization strategies along the way. This reused repertoire is, then, "a set of *forms*' of action [that] emerges

as an agglomeration of ‘*instruments*’ for the realization of interests, without meaning in itself” (Alonso, 2012, pp. 23-24, our translation), and is equivalent to a cultural knowledge acquired through the performances of the masses throughout history, such as strikes, marches, protests, boycotts, barricades, revolutions, organized movements, etc.

Tilly (2006), who dedicated a large part of his research to the causal relationships between changes in various political regimes and the use of mobilization repertoires, found a considerable probability of repeating, with adaptations, the performances used in previous situations if the masses feel some similarity with the new context. And the level of innovation in the performances that make up the repertoire will depend on the political time: in times of apparent institutional and social normality, the masses will not make major improvisations in pre-existing forms of demonstration; “but in crises and cycles of protest, there are rapid variations in political opportunities that, apprehended differentially by the actors according to the position they occupy, generate a cleavage” (Alonso, 2012, p. 30).

The virtualization of means of expression has not implied the abandonment of customary repertoires, since, according to Tilly’s analysis, technological innovations are circumscribed to the local political process and their use occurs only to the extent that they serve the aspirations of the masses, whose purposes prevail over the technology employed in the event of a possible conflict (Tilly, 2006, pp. 41 and 42).

Similarly, Torres warns against the overvaluation (to some extent deterministic) of the relationship between the masses and social networks on the internet, not only because this viewpoint ignores the fact that these electronic tools have not derogated the broad essence of social networks, since other traditional (or *offline*) forms of social interaction are still decisive, but also because “the study of past movements that resulted in mass events reveals the existence of social networks with possible effectiveness according to the available technical means” (Torres, 2016, p. 1,235).

Certainly, although it is not an agent of political or social change *per se*, one cannot ignore the significant changes that internet social networks have caused in the dynamics of mass action. According to Bennett and Segerberg, on the one hand, the internet enhances the collective action of social movements, but the novelty provided by electronic networks lies in what they call “connective action,” because, for those masses with minimal levels of organic historicity (multitudes), where fragmentation and individuality hin-

der the sharing of collective objectives, the internet allows the connection of personal visions and their collective orchestration without the need for “strong organizational control or the symbolic construction of a unified ‘we’” (Bennett, Segerberg, 2013, p. 28).

In any case, even in times of greater technological advancement, repertoires and their innovations continue to be drawn from identities, social ties, and organizational forms observed in the daily lives of the masses (Tilly, 2006, p. 42).

Therefore, what matters for the success of the masses in adapting their repertoire to a new situation, regardless of the tool employed, is the extent of their ability to surprise their target, thus hindering their reaction, and the disruption generated to the codes of public order. The masses, then, even lacking clarity of their objectives or a defined language, inaugurate new political opportunities through their actions. This is how, even in the face of difficulties created by the prevailing normative framework, they manage to influence the political landscape as a constituent power with peculiar characteristics.

3. Insurgent power of the multitude

3.1 Justification of the concept

The initial idea for this study was to promote an approach to the influence of the masses on the political landscape with references to the constituent power of the multitude. The term “constituent” is used here as a synonym for any fact, act, or behavior that seeks, intentionally or not, to institute, alter, or exclude some state of affairs, detached from any personal quality or *status*. It is not, therefore, imagined as limited to the institutionalized manifestation of constituent power, such as a national assembly or a reforming parliament, since only this quality of the activity performed by social actors is considered, in the most generic sense of the term. However, there is some difficulty in understanding this usage in law, as seen in previous essays, which lies in the fact that constituent power has been confused exclusively with a state function, when its origins are closer to an insurrectionary phenomenon of mass movements against the state. On this point, Étienne Balibar argues that “modern constitutionalists (attacked on this point by Antonio Negri) have become accustomed to defining ‘constituent power’ not as an insurrectionary power, but as a state function” (Balibar, 2013, p. 41), which alienates the concept from its conflictual genesis.

To avoid confusion with this inappropriate and restrictive use of the concept of constituent power, and even to encompass the destituent capacities of the masses discussed below, the idea of insurgent power will be used². This is a common radical for the possibilities of action of the masses, which must be recognized in its tumultuous character, since its connection with the contestatory performance of these movements can help in understanding the impacts of these masses on legislative agendas.

When considering the study of the beginning of another constitutional historical milestone, it is common to recall Bruce Ackerman's commentary on the "constitutional moment," especially due to his keen perception that the Judiciary or other political institutions are merely the tip of the *iceberg* from which changes in the constituent (or constitutable) paradigm emerge, and therefore he advocates for understanding the social movement ("We the People") that ended up gaining strength in the discourse of these institutions (Ackerman, 1991, p. 139).

However, it does not seem beneficial to the research to apply this theory to the analysis of the phenomenon in question, since its assumptions are apparently deeply rooted, its conclusions are drawn exclusively from the American sociopolitical context, and its generalization (or projection) to other realities could mask relevant aspects of other constituent moments.

Furthermore, by discussing the founding of the country, post-secession reconstruction, and the *New Deal* as "jurisgenerative" moments, in which "profound changes in public opinion gained constitutional recognition" (Ackerman, 1991, p. 41), and thus seemingly placing such events as a finished synthesis of a new constitutional moment, this theory may obliterate the specificities of other constituent processes that are in continuous progress and, therefore, do not possess a (single) temporal marker with such prominence that it can be defined as the apex of a new constitutional moment. In other words, despite the relevance of this orientation on social movements as an indicator of other constitutional temporalities, the maximum understanding of constituent nuances could be compromised if they were analyzed with the same circumstantial lens in which Ackerman's theory originated, since it apparently isolates the contested structure and temporally fixes the prevailing social project that has overcome it, without allowing for a future that could problematize this *zeitgeist* defined by the aforementioned author.

2 The term is, in fact, the title of the work by Antônio Negri (1999).

It is therefore necessary to seek a more fluid theoretical framework that allows for the visualization of the initial structures of a new history of constituent movements, but which leaves their future and effects temporally open, and it is recommended, therefore, to shift the lens from the constitutional moment to the insurgent movement.

3.2 The theory of insurgent power in Antonio Negri

The premises of the manifestation of insurgent power provided by Antonio Negri seem useful for this study, as they are not confined to a specific time frame, nor are they limited to the usual European or North American spatial context. As evidenced by this, he is one of the few prominent authors who highlight the Haitian Revolution as a paradigm for modern constitutionalism, and who adopt Latin American bibliography to expand the horizons of his theory (for example, Hardt; Negri, 2016). His theory brings the interaction between collectivities and elites into the constitutional field when it demonstrates the dialectic between insurgent power and constituted power, although this analysis is not exhausted within the legal field (Negri, 1999, p. 329).

The first historical trajectory of his concept of insurgent power is based on the project of emancipation and realization of collectivities within the political spectrum that encompasses the Machiavellian proposition of the virtue of the multitude; the Harringtonian conception of armed counter-power; the spatial dialectic provided by the American Revolution regarding the rights to freedom in the emancipation process; the idea of equality provided by the French Revolution from the perspective of the liberation of labor; and the Bolshevik efforts to create a political arrangement founded on labor, operationalizing the transformation of the potential of the constituent force of this segment into concrete possibility, as supported by Marxist theory.

In turn, the second path, to which Negri devotes considerable attention in several works, is founded on Spinoza's idea of the passion of the multitude, which is the power that drives attempts at constitutionalization. Notwithstanding this considerable journey, one perceives the emphasis the author places on the thought of Machiavelli, Marx, and Spinoza when seeking to shape the concept of insurgent power, since the three would represent "the irreducible alternative to any concession of bourgeois mediation of development, of any subordination of productive forces to capitalist relations of production" (Negri, 1993, p. 192).

However, Spinoza gains relevance in his writings due to their insurgent character, symbolizing “the attempt to determine the continuity of the revolutionary project of humanism” (Negri, 1993, p. 193). With regard to constitutional theory, Spinoza is privileged for repudiating any imposition of formality in the constitutional field: “limits are forces, points of imputation of power are powers” (Negri, 1993, p. 262). This is because these formal limitations are objected to against the potential for insurgency when those exercising this power assume themselves as constituted power. However, when a new manifestation of insurgent power emerges, such limits do not prevent its creative manifestation in the search for another paradigm, open to a new constitutional temporality.

In other words, beyond the generalized representation of a given collectivity and the special mediation it promotes between antagonistic interests when creating a new constitutional paradigm, insurgent power has a temporal dynamic that imposes accelerations. Indeed, the constituted power relates dialectically to the insurgent power to prevent its rise, neutralizing its accelerating impulses. In fact, insurgent power is a social reality from whose strength the constituted power feeds. And to try to keep this source under its control³, the constituted power seeks to neutralize or isolate the insurgent, diluting its social force in the legal and political control provided by formal mechanisms.

Thus, the constitution of a State, the claim to sovereignty, and the identification of a people are instruments of constituted power used to put an end to the full insurgent process. In particular, constituted power, from the perspective of the formalism repudiated by Negri, seeks to inhibit insurgent impulses by annulling the real world in which political disputes are waged through its “duplication into a legal and political image” (Negri, 1993, p. 114), with the granting of a constitution.

This type of alienation of the collective’s insurgent potential is also found in the relationship between the people and the multitude. As previously mentioned, for the author, the people possess internal identity and homogeneity and are prepared to justify the claim to state sovereignty. In turn, the multitude is an open set of relations between singularities without identity, whose insurgent action is open and inconclusive. Therefore, the people are conceived as having a single will, unlike the multitude. Given this, the action of the constituted power seeks to dominate and transform the multitude into

3 In a similar reflection, Agamben emphasizes that power “is the isolation of potential in relation to its act, the organization of potential” (1999, p. 63).

the people, through mechanisms of representation by race, class, or hegemonic group.

But insurgent power rejects this type of idealization, as it always manifests itself as a counter-power that possesses the potential capacity for continuous response to established power (Negri, 1999, p. 125), depending on political opportunities. The rationality of insurgent power, rooted in the relationship between multitude and potency, rests on its creative movement against limits and measures imposed by established power. This multitude results from the union of the collectivity and its appropriative vocation of political space and the unlimited imagination of these subjects, and potency is the capacity for expansion of the practical being, unaware of hierarchies and permanently open to renewal, which “only knows its own constitutive force” (Negri, 1993, p. 38). These elements are articulated insofar as “potency is the radically democratic force that resides in the desire of the multitude, which seeks to revolutionize the *status quo* through social and political change” (Negri, 1999, p. 336).

Thus, insurgent power remains alight due to its inherent potency and reorganizes itself as a multitude, allowing it to present itself as a force impossible to be totally or permanently neutralized, open to other temporalities not understood or admitted by the hegemonic paradigm. These pillars sustain the itinerancy of insurgent power because, in the author’s view, the social contract formed since the constitution does not imply the transfer of ownership of insurgent power, but only a momentary accommodation of divergent interests that ends up promoting the partial lending of power to the constituted power.

This assertion is inspired by Spinoza, from whom we extract the latent confrontation of constituted power by insurgent masses. Spinoza asserts that men have not entirely renounced their insurgent potential in favor of constituted power, in such a way that “they cease to be feared by those who received from them the right and the power, and that the State is no more threatened [by these] citizens, even if deprived of their right, than by its enemies” (2004, p. 339). This is, therefore, the clash of *potentia versus potestas*, “human power against the power of the absolute – and therefore against the political absolute of power” (1993, p. 112), which reveals a continuous process of crisis that erupts in moments of marked social disunity, and whose strength is fueled by struggle⁴.

4 John Holloway's observations are pertinent to the modern meaning of "revolution of the masses" in the crises of capitalism: "if crisis expresses the extreme disarticulation of social relations, then revolution must be understood as the intensification of the crisis" (Holloway, 2005, p. 291).

Incidentally, Negri argues that the rise of capitalism and its derived social organization placed the insurgent principle as a crisis in the relationship between the force of society and state legitimation. Thus, the legal apparatus at the disposal of the established power is characterized by operating through crisis, as a system of exception that prioritizes police activity, whether through prevention, repression, or rhetorical force aimed at achieving social stability. Through this formality, the established power seeks to legitimize its actions as a repressor of potential insurgents who attempt to rebel against the status quo.

3.3 Dystopia as a political form of the multitude

Crisis becomes an inherent element of insurgent power and sets it in motion when allied with the dystopian characteristic of the masses: the insurgent power of the multitude is a kind of constitutive dystopia (Negri, 1999, p. 318) triggered by the failure of constitutional promises.

At this point, it is appropriate to touch upon Paulo Ferreira da Cunha's work on the relationship between law and utopia in the context of constitutionalism, which he did by contrasting classics of utopian literature with specific constitutional realities. The author focuses more on the similarities between the themes, as he presupposes that their differences lie in their formality and level of concretization, since the constitution would be the conferring of juridicality to the political, law would be a mediator for the realization of the constitution, and utopia could be summarized in the perspectives of an ideally happy city.

The object of his attention is the political utopia endowed with pretension and potential for realization, whose roots, still remaining, go back to the 18th century. And because he observes that modern constitutionalism also emerged at the same time, he understands that the approximation with its contemporary utopian phenomenon arises from the shared cradle of the Enlightenment. From this aspect, utopia incites criticism from the collective about the real state of things, and therefore its realization would lie more in its counterfactual political and social role than in a concrete future, since it is the maker of models that contain the architecture of other possible futures for the ideal city. And "desiring an ideal city, one cannot allow free rein to politics, a game of ideologies and forces that ultimately dispute among themselves large or small projects of individual or group happiness" (Cunha, 1996,

p. 236): hence, law serves utopia, as it needs the sanctioning duty of other visions that do not subsume it.

Constitutions converge on this point, because, according to the author, “they are always crystallizations that seek to economize or end (hinder and/or institutionalize) a revolution” (Cunha, 1996, p. 266), thus intervening in the ideal city through the imposition of law as a fictional element endowed with imperativeness. Thus, utopia and constitution share a similar aim, since “building an ideal city is a profoundly political task. Doing so, as is typical of utopia, in a normative and institutionalized way, is to establish a constitutional right” (Cunha, 1996, p. 346).

The shared desire between constitution and utopia, for the author, is some vision of happiness as the meaning of collective life, since both point “to another world, without a place, but which aspires to have a place [...] it is not a problem to say that the ideal of a constitutional society is that of the happy city, and that the ideal utopian city is the happy city” (Cunha, 1996, pp. 356-370). Therefore, in this view, the constitution would have the face of Janus, since it is constituted by the situational and contingent normativity of law, as well as by this futurity instigated by utopia.

In both cases, the level of realization of both utopian ideals and constitutional programs will be measured by utopianism, which is the act of bringing reality closer to the ideal. Bearing this in mind, Cunha understands that the constitution would be more utopian than utopia, since it would have provided with greater assertiveness the realization of the regulatory impulse that characterizes utopia. Therefore, he states that he is unaware of other utopias that have been realized in such a way as to “subdivide reality into articles, duly ordered and numbered, with numbers that are a *fumus* of an autonomous existence [...] they come to be named, invoked and wielded in the decisive reality” (Cunha, 1996, p. 375) of the societies in which they are in force.

As a consequence of the regulatory checks against political and social changes resulting from the realization of this utopianism, the constitution equips itself with various security mechanisms aimed at launching itself into eternity, to prevent the emergence of other constitutional futures incompatible with its central core. Engineering mechanisms such as programmatic norms, with contained or limited effectiveness, are examples of this attempt to totalize the future, of a “such vagueness in its diaphanous mantle of potentially infinite potential that, desiring a closed text, ultimately becomes an open text. Resulting in an open work, insofar as it, in its own way, attempts to close

itself” (Cunha, 1996, p. 374). This realized constitutional utopia, with all these regulatory nuances, would be framed as eutopia, which, as inferred from the author, would be characterized as a more positive or propositional vision of an ideally happy city. In turn, challenging an ongoing constitutional project can be done through dystopia (or anti-utopia), since, once impacted by the eutopian reality, it would demonstrate how “programmed and compulsory social good can result in the most suffocating of prisons” (Cunha, 1996, p. 219).

Dystopia, by revealing the injustice or the impossibility of realizing the constitutional utopia, is a key element in investigating the fissures that can lead to the rupture of a given social reality. But, unfortunately, Cunha does not dedicate his attention to the subject, and presents dystopia either as mere absence or as a simple critique of (eu)topia (Cunha, 1996, pp. 93 and 219). Hence the return to Negri to investigate the power of this phenomenon, because if the constitution condenses the utopian desires of the constituted power into a political arrangement, the political form of constituent power is dystopia, which, for the author, is synonymous with democracy and the terrain of the immanence of the multitude (Negri, 1999, p. 321). This vision of dystopian democracy is, therefore, the very negation of established constitutionalism, which lays bare “the real forces that move behind the rupture of the ideological perfection” (Negri, 1993, p. 230) of constituted power.

But it is not a manifestation that aims at ordering, “on the contrary, it destroys and dispenses with any idea of ordering that is not immediately an expression of a potential of the determined being” (Negri, 1993, p. 234): it is the movement and expression of the nomads of the present (Melucci, 1989).

Thus, the creativity of the multitude acts contrary to the utopian uniformity imposed by established power, always seeking difference. This is why the constitution is a *locus* of latent disputes (Hardt; Negri, 2001, p. 340) and is “always driven by resistance to power, it is a physics of resistance” (Negri, 1993, p. 285). Unlike the modern sense of insurgent power as something extraordinary in terms of legitimation, being alien to the requirement of (legal) formality, Negri envisions its action when some alteration of the ontological meaning of the social is perceived: it is a creative force that forges a new ontological link between the social and the political and enables the advent of a new constitutional subject, and is noted, considering its contradictions, as indicative of a new temporal trend.

In other words, this constituent power manifests itself independently of the convening of a national constituent assembly: it reveals itself when the social

reconfigures the ontology of institutions (Negri, 1999, p. 326). The insurgent constituent subject is, therefore, a temporal power: “man, in his imagination and in his passion, intermediaries of knowledge and will – man as activity” (Negri, 1993, p. 182). Given the characteristic of continuity, Negri understands that the apparent cooling of the manifestation of insurgent power, subsequent to “hot” events (such as the advent of a constitution), is merely a result of the mystification created by the power that was subsequently constituted. Therefore, he is against the idea of the exhaustion or endpoint of this insurgent power, because the formal obstacles created by the constituted power do not imply that the insurgent power has reached its limit.

The dispersion of the multitude, in such moments of prevalence of established power, can be historically overcome with the recomposition of the sociability of subjects, depending on the political opportunity, restoring “that collective intelligence that raises potential against power, that makes power increasingly subordinate and transitory in the face of human, inter-subjective productivity, of the mature composition of subjectivity” (Negri, 1993, pp. 285-286). Therefore, the insurgent principle is the precariousness of power open to the countless horizons of the multitude that do not need to be coherently articulated, and this places the constitution in the cross-hairs of its revolutionary potential, since insurgent power is the expression of the infinite human capacity to dystopically write new histories, even over the text that legitimizes established power.

3.4 Limits of the concept of insurgent power in Antonio Negri

In any case, it is important to note some reservations about this revolutionary potential. Even recognizing the distinction of Negri’s work in describing the implications of capitalist society on the masses, Dipesh Chakrabarty sees in this work an attempt to find in the multitude a substitute for the organized proletariat to be the “historical-world revolutionary subject” (Chakrabarty, 2008, p. 158), that is, a paradoxical direction (or bias) regarding the result of the creative, innovative and unpredictable action that Negri himself observes.

On the one hand, Étienne Balibar points out that Negri chose not to acknowledge the ambivalent action of the multitude, although present in Spinoza’s readings (Balibar, 1997, p. 58). Slavoj Žižek, in turn, believes that such bias stems from the fact that Negri is “very Marxist,” since he incorporates, in

an unconfessed way, the assumption of historical progress (Zizek, 2006, p. 266), and thus disregards the possibility that the action of the multitude may end up reinforcing the capitalist organization from which it emerges. Alain Badiou, for example, opposes the idea that the multitude⁵ depicted by Negri has an insurgent power capable of creating spaces of freedom not permitted by the established power (Badiou, 2003, p. 125).

Based on these divergences, one can notice some weaknesses and biases when attempting to define *a priori* the result of the insurgent power of the multitude's action; it is necessary to analyze the political context concretely to see to what extent the constitutional state of affairs is influenced by the dystopian manifestation of insurgent power, concluding with the modification of the constitutional text or practices by a "para-state" constituent power.

4. Conclusion

Ulysses Guimarães' memorable speech at the promulgation of the 1988 Federal Constitution asserted that "the title that consecrates it has popular and Christian substance: 'the citizen Constitution'" (Guimarães, 1988, p. 3). Although known for its significant advancement in terms of substantive citizenship, especially for its menu of social rights, this article has demonstrated that the 1988 Charter did not relinquish mechanisms to contain the political capacity of the masses with regard to the possibilities of altering its normative pillars.

To acknowledge that all power emanates from the people, while the exercise of that power remains substantially restricted to a segment that wields it for *reasons of state*⁶ during times of crisis, justifies the discussion about the real role of the masses in shaping constitutional frameworks. According to the consulted bibliography, especially the teachings of Antonio Negri, it was possible to note that the attempt to dominate the insurgent power of the masses by the constituted power has a contextual threshold, and the emergence of this insurgent potential manifests itself independently of the forms of popular participation foreseen in a constitutional charter. At certain moments, the masses shed the label of "people" and unite as a powerful multitude to violently challenge the texts and practices of the existing constitution.

5 Multitude, for the author, is a "pedantic word for mass movements (in particular small bourgeois mass movements)" (Badiou, 2003, p. 125).

6 Regarding the doctrine of reasons of state, see Carvalho Netto (1992).

It remains for the established power, especially Parliament, as a substitute for direct political representation, to be more sensitive to social flows in order to keep the constitutional framework updated in response to the disruptive impulse of the nomads of the present, so as to respect Ulysses Guimarães's statement that "the Constitution intends to be the voice, the letter, the political will of society towards change" (Guimarães, 1988, p. 9).

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