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ORIGINAL ARTICLE

Between authority, dichotomy, and freedom: the private-law evolution of public law

Entre autoridade, dicotomia e liberdade: a evolução privatista do direito público

Ana Cristina Aguilar Viana[1,2]
[1]Université Paris 1 Panthéon-Sorbonne, Paris, France.
[2]Universidade Federal do Paraná, Curitiba, Brazil.

Abstract: This article examines the dynamics of public law, addressing the evolution of the concepts of authority and freedom within the context of modernity. By exploring the historical roots of administrative law as a positive legal discipline, it highlights the influence of rationalism and modern subjectivity on the formation of the dichotomies between the public and private spheres. It argues that public law was structured according to a dichotomous logic that privileges individualism and autonomy, shaped by scientific rationality and the centrality of the individual subject. In analysing the origins of the Modern State and the construction of legal institutions, the text proposes reflection on the need to rethink public law from a perspective that moves beyond traditional dichotomies and incorporates a view that values the interdependencies and complexities of contemporary social relations.

Keywords: Modern State. Supremacy. Bipolarity. Freedom. Public interest.

Resumo: O artigo examina as dinâmicas do direito público, abordando a evolução do conceito de autoridade e liberdade dentro do contexto da modernidade. Explorando as raízes históricas do direito administrativo enquanto disciplina jurídica positivada, destaca-se a influência do racionalismo e da subjetividade moderna na formação das dicotomias entre público e privado. Argumenta-se que o direito público foi estruturado sobre uma lógica dicotômica que privilegia o individualismo e a autonomia, moldada pela racionalidade científica e pela centralidade do sujeito individual. Ao analisar as origens do Estado Moderno e a construção das instituições jurídicas, o texto propõe uma reflexão sobre a necessidade de repensar o direito público a partir de uma perspectiva que vá além das dicotomias tradicionais,

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incorporando uma visão que valorize as interdependências e as complexidades das relações sociais contemporâneas.

Palavras-chave: Estado Moderno. Supremacia. Bipolaridade. Liberdade. Interesse público.

1 INTRODUCTION

Public v. private. State v. Society. Prerogatives v. constraints. Supremacy v. non-disposability. Oppositions are a distinctive feature of the modern legal edifice. Among them, Augustin Gordillo (Gordillo, 2003) teaches that the design of administrative law rests upon the authority v. freedom axis. Its relevance would be such that it has been suggested that its eventual overcoming might even eliminate the discipline itself (Cassese, 2012).

Brazil is not removed from this debate. In national legal scholarship, criticism of an 'authoritarian' understanding of the nature of the State is virtually unanimous.

On the one hand, it is argued that the tension between the two poles is resolved by the order in which the elements are arranged. According to part of the scholarship, the State is legally bound to achieve public purposes, so that authority is exercised in order to attain those purposes, thereby giving rise to a duty-power rather than a power--duty. Thus, the State, as the holder of public purposes, exercises its authority as a duty to further the interests of the community, from which its supremacy derives (Gabardo; Hachem, 2010).

On the other hand, another strand of scholarship rests upon the impossibility of sustaining the authoritarian pillar (Justen Filho, 2016). With the emergence of the risk society, the provision of public services by private sectors, and political democratisation, it is argued that it is impossible to maintain that only the State may determine what constitutes the common good. Accordingly, the idea of power resting upon a 'supremacy of the public interest' would be untenable

in a globalised environment. In a setting in which State sovereignty is challenged from every direction, governance through authoritative power is not merely undesirable, but impossible.

Thus, as may be observed, although criticism of the bipolar model of authority versus freedom is, to a certain extent, settled, the manner in which that tension should be resolved remains under debate.

In analysing this dispute within academia, the jurist José Vicente de Castro (De Mendonça, 2014) argues that the school which approaches the issue by defending the constitutionalisation of law or relies upon the French-derived notion of public interest is inadequate. In his view, this is a debate within the family: a conceptual discussion grounded in European categories. Pursuing a new line of inquiry, the author proposes that administrative law be examined pragmatically, with the support of law and economics, encouraging the development in Brazil of outcome-oriented United States scholarship.

I understand, however, that an alternative way of perceiving this issue may be found through a more profound shift. That is, rather than reflecting upon the content of these categories, I propose to bring to light the impact of the foundations that gave them material form. In that sense, the proposal is to consider the historical development of the contours of the relationship among authority, supremacy, and freedom from the origins of the Modern State, of law as a positive science, and of the imaginary that shaped them.

On the basis of this shift, this article argues that the legitimacy of State action founded upon the public interest and the regime of authority are not offspring of the Rule of Law, but arise from the articulation between a dichotomous model and the sovereign structure of the modern State. The central hypothesis, therefore, is not confined to an analysis of the bipolarity constitutive of administrative law, but incorporates another, frequently neglected element: the subjectivist bias of modern law.

For the purposes of this study, that subjectivist bias is defined by the centrality of the individual subject in the design and configuration

of modern theories of the State, in their political, philosophical, and legal dimensions. It thus concerns the very ontological root of Western modernity, in which institutions and law are structured from that perspective.

This element, often overlooked in administrative-law scholarship, is then examined as the guiding thread and foundation of the bipolarities already debated within the discipline. The articulation between this subjectivist rationality and the dichotomous structure provides the common thread in the formation of modern public law. The purpose of the article is therefore to describe this process and demonstrate how this dual matrix shaped the fundamental categories of administrative law.

To that end, drawing upon José Vicente's characterisation of the debate as one 'within the family', I revisit the meta-legal origins of the discipline, principally through European literature. I therefore adopt an approach centred on the theory of the State and the analysis of forms of State action. The article first sets out the historical construction of the modern State, highlighting the role of the rationality of the subject, reason, and sovereignty in the formation of State and legal institutions. It then examines the structural dichotomies of modern law, particularly the opposition between the public and private spheres, and the manner in which those categories were consolidated through the individual and reason.

Finally, it is argued that public law and administrative law, as currently conceived, remain rooted in a dichotomous logic that privileges individualism and an autonomous perspective.

2 THE RATIONAL PARADIGM IN THE FORMATION OF STATE ACTION AND MODERN LAW: THE CENTRALITY OF THE INDIVIDUAL SUBJECT

In classical legal theory, Georg Jellinek delineates the notion of the Modern State. Although not univocal, the concept concerns the

correlation between the unity of power and the individual (Jellinek, 1902). In turn, from the standpoint of the institutional structure of the State, Simone Goyard-Fabre cautions that its constituent elements remain incomprehensible without the rational premise upon which it rests (Goyard-Fabre, 2015).

It may thus be said that, in modernity, individualism constitutes its most distinctive value (Villey, 2022), standing in opposition not only to the medieval period but also to classical doctrines (Hespanha; Cabral, 2002). Alongside belief in the individual, modernity has in the belief in reason one of its foundational values. Scientificity follows from it, with the pursuit of order and progress through technical development. Analysis proceeds from isolated objects, rather than through the relations between two objects (Jeuland, 2016).

This imaginary extended to law and was fundamental to its consolidation as a science in modernity. Law would therefore follow the same model. First, individuals as holders of rights vis-à-vis power constitute a foundational element of legal modernity (Chevallier, 1998). This model may be observed in natural-law thought, which likewise separates subject from object (Van den Berge, 2017), moving from what had until then been a practical model to a perspective founded upon inalienable natural rights.

In contrast to the feudal model–which was relational–law became an autonomous science (Van den Berge, 2017). Modern law became an instrument for rationalising social life, itself constituting an element of scientificity (Van Meerbeeck, 2016). This was a new understanding of law, endowed with a secular and subjectivist natural-law rationalism.

Among the essential features of this paradigm, Massimo Vogliotti identifies the transformation of legal ontology, in that law would no longer be viewed sub specie relationis (Vogliotti, 2018). In modernity, law becomes a substance, 'created ex nihilo by the auctoritas of the legislature, mechanically applied by judges, and objectively described by science' (Vogliotti, 2018).

Accordingly, the rational and subjectivist model is not confined to the philosophical and political planes; rather, it forms a basis from which law emerges as a modern legal science. The shift from relational law to autonomous law develops through the centralisation of the subject, particularly the individual. This is a central element of a modern rational structure that constitutes the ground upon which political and legal dichotomies would be erected.

3 SOVEREIGN GOVERNMENT AND THE MODEL FOR LEGITIMATING STATE ACTION IN MODERNITY

Alongside subjectivity, sovereignty constitutes the fundamental premise of the modern State. Modern sovereignty, however, has its own particularities. In terms of political theory, the modern form of sovereignty is initially absolutist. Externally, it seeks unity of protection, while internally it emerges as a centralising government that constitutes a unity of will in order to establish order and social cohesion (Supiot, 2005).

In the case of the nation-State, the axis around which its construct turns consists of the correlated ideas of sovereignty and citizenship (Goyard-Fabre, 2015). It is the State that rationalises political organisation, enabling the creation of a compact between the individual and the community. Heteronomous spaces of submission and control are distinguished, but no distinction exists in relation to economic and political power, because that power is absolute.

This rationality is consecrated with the advent of the Rule of Law. For three centuries, the categories, concepts, and processes of the State structure secured the legal architecture of the State around the fundamental axioms of sovereignty, rationality, and–with greater nuance–contractual voluntarism (Goyard-Fabre, 2015).

In the Weberian account, the three basic principles of what he calls the 'Constitutional State'–popular sovereignty, the secularisation

of power, and the functional rationality of its institutions–gave it an institutional design that conferred strength upon it (Goyard-Fabre, 2015). Sovereignty, formerly absolutist, now belongs to the people. Political action proceeds through representation, which allows the principles of rationality and the general will to be conceptually combined. Despite its aristocratic character, parliament is the forum in which popular sovereignty is expressed. Finally, the collective obligation to obey the law is founded upon a moral and methodological principle of legislative rationality (Pitseys, 2010).

Following this design, the legal order, bearing the stamp of modernity, established its basic premises by defining its philosophical, political, and legal principles. Under the Rule of Law, the notion of sovereign government is converted into public action through the power of command. Its characteristic is said to lie in the legitimation of the State to safeguard the general interest of the population. To secure that interest, the State is endowed with a second characteristic–authority–with powers of control and policing for the purpose of requiring the maintenance of order and pursuing progress (Bouillon, 2021).

Within this system, the idea of the State's rational authority under the Rule of Law takes shape. The authority-based model of public action derives from sovereignty-government, as does the function of control for maintaining order and safeguarding the 'general interest'. As Pierre Bourdieu observes, the category is delineated with respect to bureaucrats as a group or as an organ of rational reflection and a rational instrument for attaining that general interest. In other words, sovereignty-power-government is linked to bureaucracy-authority-general interest (Bourdieu; Guibert, 1995), which Brazilian law incorporated through the notion of the 'public interest'.

Within the Brazilian legal order, elements linking sovereignty to the exercise of State legitimacy may already be identified in the earliest public-law scholars. In 1911, the jurist Silva Marques defined sovereignty as the 'right to exercise supreme authority; whatever form

of government is adopted, the rights of sovereignty belong to the people' (Marques Neto, 2015). Sovereignty would thus correspond to the State's power of command, directed towards attaining a general interest of the community.

This trajectory shows that the legitimacy of public action by the State through authority is tied to the political action of sovereign government. Whereas, at an initial stage, authority embodied the figure of the absolutist sovereign, under the Rule of Law it became a power of command. Nevertheless, the basic structure of the modern sovereign conception is the common thread linking both stages.

4 SOVEREIGN GOVERNMENT AND THE EMERGENCE OF DICHOTOMIES

Although sovereignty forms the basis of the forms of the modern State (absolutist and constitutional), their distinctions lie in their origin, in the formation of legitimacy, and in the very purpose to be achieved. Whereas under absolutism the legitimated entity is the artificial animal, under the Rule of Law it becomes the individual. This, however, required a particular construction of legitimacy, promoted through dichotomous structures.

It is at this point, therefore, that sovereignty and subjectivity operate not merely as conceptual classifications, but as devices that structure legal thought through an organisation erected upon oppositions delineated by reference to the individual.

According to Charles Taylor, the individual has been the focal point since the absolutist model, as a consequence of modern rationality itself. In Thomas Hobbes's Leviathan, for example, the development of the commonwealth through the absolute artificial third party is achieved by the rational agreement of men (Taylor, 2022).

In Leviathan (Hobbes, n.d.), however, vested sovereignty is the power of the community to effect the compact between the individual

and the need to create a collective order. That is, all citizens submit to the absolute authority of a ruler who acts in the interests of the community (Chevalier, 2017).

This configuration, however, was profoundly affected by the Enlightenment revolution. Michael Stolleis observes that, whereas the absolutist State contained a notion of res publica directed towards the community, from 1750 onwards elements of individual freedom were incorporated into the concept of the State. It was increasingly inspired by the process through which the bourgeoisie emancipated itself from absolutism by resisting economic tutelage (Stolleis, 1993).

Thus, with the advent of the Rule of Law and the emerging pursuit of individual rights, the original logic of authority legitimated for the community was reversed, and institutions came to be structured around the individual and the individual's future freedom.

In this environment, the legal world became a legal order directed towards establishing rights, which would become subjective rights. These ideals would therefore establish the modern legal edifice, structured through oppositions. This is an age of dichotomies–a term which, as Norberto Bobbio teaches, refers to opposing fields in which one prevails over the other (Bobbio, 2010). In other words, a natural asymmetry exists in the world of dichotomies.

In Bruno Latour's account, this system of duality constitutes a process of purification, a constitutive mark of modernity (Latour, 2006). It consists of chains of interrelated dichotomies in which one of the poles prevails.

It should be emphasised, as Bruno Latour teaches, that the process of purification comprises two stages–translation and purification–which concern two 'entirely different sets of practices that, in order to remain effective, must remain distinct' (Latour, 2006).

The foundational dichotomy of the rational modern social arrangement lies in the separation between Society and the State. According to Jacques Chevalier, social and political organisation is read and deciphered through that separation, even with distortions

(Chevalier, 2017). Under this design, society is constituted as an order arising from the association of individuals and independent of the State. The State, in turn, is responsible for counterbalancing public authority (Pitseys, 2010).

Freedom is constructed in order to secure individual autonomy (Picard, 2022). From this emerges the principle of duality in the dichotomy between Society and the State. Freedom lies in the former; command in the latter. Thus, while autonomy would be situated and protected within freedom, its counterpoint had to be identified. A justification was also required to maintain the order of domination. As Michel Stolleis observes, from the emergence of a new liberal society, 'there was no way out of the return of rationalist disenchantment other than the creation of a prosaic contract to justify domination' (Stolleis, 1993).

It is through this process that mutually opposed categories are constructed, likewise created with the support of the institution of rights that would subsequently be regarded as subjective. As Charles Taylor recalls, the categories and notions of law that remain with us today were constructed during this transition to modernity. Many legal concepts are categories consolidated in the transition to modern thought, including the very notions of law and freedom (Taylor, 2010).

As dichotomies, these are opposing poles, one of which prevails. In modernity, the prevailing point is the individual. According to Jacques Chevallier, the notion that individuals possess rights vis-à-vis power is fundamental to legal modernity because 'it leads to belief in the benefit of law perceived as a protective device, a means of liberation, and an instrument of Justice and Progress' (Chevalier, 2017).

The author emphasises that the process of subjectivisation of law derives from the natural-law school (Chevallier, 1998). The Declaration of the Rights of Man and of the Citizen demonstrates the public/private division of law in the dichotomy marked by the primacy of the private sphere (Picard, 2022). If freedom is secured on one side, artificial power on the other comes to belong to the 'citizens'. Along

similar lines, Etienne Picard notes that, as legal personae, individuality given positive form as freedom is secured by the idea of the legal subject and private autonomy. At the other pole stands the citizen, whose rights are facets of public function (Picard, 2022).

In summary, the Rule of Law shifts political power to the State-power-law triad–placing the authority-submission relationship within the sphere of political power–and creates the structure of the self-regulating market for individual autonomy (Polanyi, 1980). It is therefore under the Rule of Law that the great dichotomies, which accord primacy to individual freedom, take effect. This is the 'age of rights', as Norberto Bobbio put it. Yet it is also a dichotomous structure that places authority in opposition to freedom, an opposition previously unknown, in order to protect the latter. The remaining structures, including the private and public spheres, follow the same logic.

The resulting dichotomies are not contingent or superficial; they are a corollary of the structuring of modern law as a positive discipline. They therefore embody the reconciliation of sovereignty with a legal order founded upon the primacy of the individual, revealing the private-law character upon which public law was founded.

5 THE GREAT DICHOTOMY OF MODERN LAW: PRIVATE AND PUBLIC

In their modern form, private and public initially refer to a distinction between social relations: relations among equals and relations among unequals. The public sphere involves a relationship of subordination between rulers and the governed, of command and subordination, within an unequal relationship. The private sphere, in turn, consists of relations among equals and relations of coordination (Bobbio, 2010).

The liberal construction of the modern dichotomy, in which the private sphere prevails over the public sphere, is nevertheless

original. As Alain Supiot observes, the distinction between public and private, with the latter prevailing, is the product of the socio-political arrangements of the Enlightenment. Thereafter, prohibitions based on 'self-evident truths' that are the source of 'inalienable and sacred rights' were relegated to 'religious sentiment', leaving a purely instrumental conception of law (Supiot, 2013).

In the legal world, Immanuel Kant is credited with endorsing this dichotomy by establishing a comparative parameter between private and public law and natural and positive law. Private or natural law concerns the state of nature, with property and contract as its elementary institutions. Public or positive law first constitutes the suppression of the state of nature through a legally binding force coercively exercised by the sovereign (Bobbio, 2010; Habermas, 2003). For Kant, the private precedes the public and is also more important than it.

Benoît Plessix explains that, in Kantian logic, although private law precedes public law, the former is nothing without the latter: it presupposes the latter as a guarantee of realisation, such that, according to Kant, private law is founded upon public law (Plessix, 2022).

It is from this rationality that the summa divisio of law–public law and private law–is erected. At the end of a process of purification, this dichotomy establishes public law as the law of the State and private law as the law of private autonomy.

Accordingly, the sphere of private law contains the body of rules governing reciprocal relations among private persons, particularly proprietary relations and bilateral and synallagmatic agreements, founded upon a principle of reciprocity. The sphere of public law and command, in turn, is heteronomous and superior and may coerce, thereby constituting an unequal relationship (Bobbio, 2010).

The advent of political economy is of fundamental importance in this field because it inaugurates the distinction between the sphere of economic relations and the sphere of political relations: the primacy of equality in the former and inequality in the latter (Bobbio, 2010).

As noted above, two crucial themes in the construction of the structures of the Rule of Law, both of central importance to public and private law, are individualism and the market. Modern disenchantment promotes an ever-increasing and progressive pursuit of the subject's individuality. This means that a new cycle also begins in the legal sphere, juxtaposing the State and the individual, as well as the State and the market. This gives rise to the dichotomy between public and private and, consequently, to the opposition between State/public and market/private.

Samantha Besson explains that, through this opposition, power is controlled by means of the great dichotomy. Within this structure, horizontal relations fall within the domain of autonomy, while in the domain of power the political is intertwined with the legal and crystallised in the Rule of Law (Besson, 2026).

The difficulty, however, is that this perspective derives from a liberal and anthropomorphic theory. In its modern liberal conception, private law takes precedence over public law. Public law is fashioned to prioritise the private sector, endowing it with technical superiority. Private law is primary and may operate even in the absence of public law. Consequently, legal duality is inherently unequal, rooted in dissimilarity and unbalanced dissociation. Public law becomes 'another law' in relation to private law (Besson, 2026).

At its origin, therefore, the public sphere was residual to the private sphere, the latter being the domain of freedom and the former that of authority (Breus, 2007). Whereas private law was assigned the rules concerning the individual within the individual's autonomy of will, the newly born public law was to develop by drawing inspiration from private-law institutions and was to be established not to secure the rights of the community, but to protect individualities.

In Brazilian law, Eros Roberto Grau summarises this architecture by observing that 'republican virtues are immanent in the social order, but cannot be realised among us because that order is, here, privatised' (Grau, 2002).

This subjectivist reading, however, concerns not only the configuration centred upon the individual, but also the autonomous scientific rationality of law: positive law is subjective, static, and focused upon individual autonomy in all its forms, legally embodied in the figure of freedom.

Indeed, the dichotomous form was incorporated into the scientific strand, thereby consolidating the subjectivist rationality of law as a positive legal science. As Emmanuel Jeuland cautions, positive law, together with the modern State model, brought about a forgetting of 'legal relations' (Jeuland, 2011). From this perspective, modern Western public law was designed in a 'positive, mandatory, and individualistically structured' manner (Habermas, 2000).

In this sense, the summa divisio endorses this opposition, which would become unquestionable and which, as may be seen, derives from the separation of elements each possessing its own nature (Van Meerbeeck et al., 2019). It is precisely in order to secure a dichotomous scheme without intermediaries that the State acquires its status as guarantor of the public interest. In other words, to preserve command-authority, public authority holds the general interest through imperative law and coercion (Bouillon, 2021).

Public law and its great categories–authority, command, and public interest–thus possess a particular common core, as a corollary of a modern scheme in which the private sphere, together with all the elements situated within it, prevails. Public law is not merely autonomous from private law; it is founded upon private law and upon the freedom of the individual, the leading element of modern rationality.

6 FINAL CONSIDERATIONS

The foregoing account reveals several matters that warrant examination. First, the oppositional separation between State and society (Meunier, 2021) marks the construction of the dichotomies

and, consequently, the development of forms of State legitimation, while also leading to the very establishment of public law as a discipline. Modern positive public law therefore does not exist without this arrangement, for it was this arrangement that gave it form and conferred its architecture upon it.

A second issue concerns the arrangement of political power within this sphere. State authority is vested through the sovereign-State structure of a centralised and authoritative model of government, which confers powers of command and control within a vertical space in order to safeguard the public interest (a relationship of submission and inequality). The framework of the State remains sovereign, authoritarian, and unitary, even if this authoritarianism refers only to political power.

The consequence of these two points is that the categories of authority, legality, and public interest are constructed under two highly particular schemes that cannot be disregarded. The first corresponds to the systematisation and construction of opposing categories (Latour, 2006), fashioned so that the interests and autonomy of the individual prevail. Mutually opposed categories are thus created as counterpoints in a manner that privileges the private pole. In his study of the public sphere, Jürgen Habermas aptly summarises this bipolarity within the legal domain. As he explains, the guarantee of freedom was instituted in opposition to private law, individual private autonomy, and the market. As regards the State, the public law that emerged was therefore charged with securing that guarantee negatively, while public authority was granted the prerogative of authority (Habermas, 2000).

It is within this logic that the legal notions of legality and public interest are constructed. Authority, in this sense, is the opposite of freedom. Freedom is the paramount good to be preserved, which led to the construction of private-law-oriented positive law and subsequently to the construction of a theory of public law. As the means of legitimation of a government still described as sovereign, the power of command inherent in authority was employed, and legitimacy was constructed through the public interest.

Thus, the construction of legality and of the legitimacy of public action by the State is dichotomous in nature. This entire design, however, is assembled within the great modern Western values of reason and subjectivity, employed in shaping the dichotomous structure.

Take legality as an example. Traditionally, administrative legality is subordinate to the lawmaker. Yet legality is also a direct product of the power of command and sovereignty. As Massimo Vogliotti observes, the mythologies of legality often prevent us from seeing the facets of legality itself, which lies not only in the embodiment of liberal values but also in the manifestation of the absolutist root that animates it–that is, the paradigm of the modern pyramid (Vogliotti, 2005).

A further relevant point follows from this, concerning the manner of incorporation into political power. As a counterpoint to freedom, public action was structured from the perspective of sovereign authority (Habermas, 2000). The same structure was employed, while its legitimacy (from the sovereign to the people) and its purpose (from the common good to safeguarding individual freedom) were altered.

As has been seen, within this dichotomy individual autonomy and freedom take precedence over public considerations. Public law was therefore given positive form and shaped on the basis of an authoritative configuration for the purpose of protecting individual autonomy. Consequently, not only authoritative power, but modern public law itself emerges as a domain created to safeguard the individual's freedoms and fundamental rights[1].

Public law will not be able to escape this configuration. Accordingly, the crisis of the sovereign-government model will not result in a reconfiguration directed towards the common good. Instead, it will lead to a deepening of the values situated on the side of society, whether individuality and freedom or democracy, through mechanisms for society's direct or indirect participation.

This clarification is crucial because it highlights that Western public law was originally designed to safeguard the domain of personal freedom on the basis of the preferential status of private law over public law and of freedom over authority.

In this sense, the attempt to overcome authority through freedom results in hyper-individualisation rather than the protection of freedoms. In other words, it produces the reverse effect. As Alain Supiot reminds us, the decline of State sovereignty is not reflected in an increase in freedoms but, on the contrary, in their subordination to the pursuit of objectives that are all the more imposing because they are decided by no one (Supiot, 2005).

Conversely, the dichotomous scheme likewise rests upon its own ontological structure, shaped according to the architecture of the subject. This is understood to be a fundamental issue of modern law that remains neglected. The issue is not bipolarity or authority in itself.

It is the mantle of the subject encompassing the legal discipline as a field of science that warrants reconsideration. In this sense, both the idea of the individual subject and its framework are relevant to re-examination, as is the autonomous perspective of the subject.

That is, the questions concerning the limitations of the categories of modern public law do not lie in overcoming those categories, but rather in rereading the very ontology of public law as a positive science, so that mechanisms may be considered through which subjectivist and dichotomous logic itself can be rethought and relational models recovered.

An alternative may be found by charting a path that disregards neither the public nor the private sphere, but recognises them as distinct positions rather than opposites. The evolution of public law could envisage overcoming neither bipolarity itself nor the protection of individual freedom, but instead recovering the pre-modern meaning of public law, which rests upon the interests of the community.

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ANA CRISTINA AGUILAR VIANA

PhD in Law from Université Paris 1 Panthéon-Sorbonne and from the Universidade Federal do Paraná. Lawyer admitted to the Paris Bar and to the Paraná Bar.

Professional address: 117 Boulevard Saint Michel, 75005, Paris.

ORCID ID: https://orcid.org/0000-0003-3837-8589

E-MAIL: Anacristina_av@hotmail.com

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Data Availability

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