

BOOK REVIEW

On Decision-Making and Arbitrariness in Politics***by Ivo Coser¹**<https://orcid.org/0000-0002-8010-1287>**Roberta Soromenho Nicolete¹**<https://orcid.org/0000-0003-0330-204X>¹Universidade Federal do Rio de Janeiro. Rio de Janeiro/RJ, Brazil.

(FRELLER, Felipe. *Quand il faut décider*: Benjamin Constant et le problème de l'arbitraire. Paris: Classiques Garnier, 2023)

In Felipe Freller's work (2021) titled 'Quando É Preciso Decidir' (When Decisions Must Be Made), the focus is on exploring the complexities involved in decision-making in the context of modern democracy: How to make decisions, if, at times, the executive is faced with situations that were not anticipated by the legislative? How to make decisions when popular sentiment does not support the preservation of an egalitarian regime, and citizens lean toward calls for a reaction? And when the act of making a decision cannot be grounded in any established principle or law? In short, these questions concern the moment when, in the absence of immutable principles or given unique political circumstances, decision-making becomes an unavoidable action.

The matter of arbitrariness takes on a political dimension when we distinguish a decision from the mere whims of a leader or when we move away from the negative connotation of arbitration as a form of regulation emanating from an absolute authority or outside the bounds of the law. Indeed, it is essential to highlight that the decision-making moment lies at the heart of democracies.

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In this regime, the importance of the law is reaffirmed, unlike in regimes where, for example, the exclusive will of the monarch is considered equivalent to a superior rationale or an inviolable divine norm. If the problem is indeed political, as argued by Freller (2021), arbitrariness cannot simply be rejected. Therefore, this work contributes to advancing the debate within the realm of political thought by demonstrating that arbitrariness is a usual problem of the political order, one that should not be disregarded as illegitimate or anti-political.

Derived from Freller's doctoral thesis (2020), defended in the Department of Political Science at the University of São Paulo (USP) and the *École des Hautes Études en Sciences Sociales* (EHESS), this book investigates authors and political actors in post-revolutionary France (FRELLER, 2022, 2015). Benjamin Constant is the central focus of Freller's thesis (2020). Frequently the target of jokes regarding his 'inconstancy' (Constant, *l'inconstant*), Benjamin Constant is an intriguing figure due to the disparity in his political actions. While he sharply criticized arbitrariness in the tradition of political thought, he also defended and justified the Coup of 18 Fructidor. Contradictory? Freller (2020) challenges his readers to understand that it is not.

Indeed, the specific issue addressed by Freller (2023) in Benjamin Constant's trajectory refers to decision-making within a liberal and constitutional order. This is a significant selection from the extensive array of writings by the Franco-Swiss author, who is more prominently recognized in academic circles for his lecture titled 'The Liberty of Ancients Compared with that of Moderns' (1819). The challenges to the widely embraced interpretation of this lecture in the 20th century, that of Isaiah Berlin, sparked a revived interest in Constant's work, a resurgence that started to gain prominence in the 1980s. The renewed interest in Constant's work was driven by the publication of significant political treatises that remained unpublished during the author's lifetime. These texts revealed that the topic of arbitrariness had indeed been a subject of extensive reflection and engagement in particular political circumstances over a span of just over two decades, a period that the book covers.

The book clarifies the author's trajectory in the turbulent decades that unfolded in the aftermath of the French Revolution's upheaval. In Chapter 01, Freller (2023) begins to explore the issue of arbitrariness by drawing insights from modern

political philosophers like Machiavelli, Locke, and Rousseau. Additionally, he considers the perspective of Benjamin Constant's contemporaries, including Roederer, Lezay-Marnesia, and others. Our goal here is not to meticulously reconstruct every aspect of Freller's argument (2023) but rather to underscore that, in his engagement with the philosophical tradition, the author seeks to establish a crucial distinction between an arbitrary act and arbitrariness. The latter should not be conflated with the absence of any limits. The author contends that "By arbitrariness, Constant means everything that cannot be determined or linked to principles, that cannot be theorized, and is not governed by fixed axioms, but rather by vague, indefinable, and variable considerations"¹ (FRELLER, 2021, p. 28 – free translation). On the contrary, the author states, "when I refer to decision-making, I mean the practical determination that cannot be grounded in any fixed principle, not even in a chain of universal and intermediary principles [...] in general, this need for decision-making is linked to the contingent nature of politics, something that cannot be entirely subsumed under general principles"² (FRELLER, 2021, p. 31 - free translation).

In the realm of political theory, let us consider the paradigmatic example of Machiavelli (1974), who reexamines the role of dictators in Rome in his work 'The Discourses', Book I, Chapters 33 and 34. In this work, Machiavelli (1974) argues in favor of instituting the role of the dictator, someone who could employ ordinary means in extraordinary situations, such as internal conflicts (factional disputes) and external threats. However, what is notable in Machiavelli's perspective on the role of the dictator is that he views it as a 'preservation tool' for the political order. This means that, according to Machiavelli's conception (1974), the role of the dictator is not intended to introduce new laws to reform existing ones, as exemplified by the Gracchi brothers' efforts to address the conflicts between plebeians and the Senate. It is important to highlight that, in the history of political thought, there is a nuance in the Machiavellian model that seems to have been

¹In the original: "Constant définit l'arbitraire comme tout ce qui ne peut pas être déterminé ou renvoyé à des principes, qui n'est pas susceptible de théorisation, qui n'est pas régulé par des axiomes fixes, mais plutôt par des considérations « vagues, indéfinissables, ondoyantes »" (FRELLER, 2023, p. 23).

²In the original: "Par décision, je comprends la détermination pratique qui ne peut être fondée sur aucun principe fixe, pas même sur un enchaînement des principes universels et intermédiaires [...] Cette nécessité de décider est mise en général en relation avec le caractère contingent de la politique, impossible à subsumer sous des principes généraux" (FRELLER, 2023, p. 26-27).

overlooked by Constant. This nuance holds substantial implications for the theoretical reconstruction of the discretionary notion.

This nuance takes on a crucial significance in Chapter 02, where Freller (2023) discusses the issues of the coup of 18 Fructidor. In this context, the coup was not aimed at preservation but rather the ‘establishment’ of a new political order. The French experience illuminates precisely the predicaments of forging a new political order, which can only emerge if the entire society embraces new values. On the contrary, post-revolutionary France witnessed the establishment of a representative liberal system that faced contestation from a non-liberal society. This directly addresses a central question in political theory: What serves as the basis for political decision-making? This seems to be the question that directly leads to the other core theme of Freller’s book: the response formulated in the aftermath of the coup of 18 Brumaire, explored in conversation with contemporary political theory.

Throughout the book, Freller (2023) engages in a productive dialogue with contemporary political theory. Indeed, the book highlights the interpretative approach provided by Carl Schmitt and Chantal Mouffe as relevant. Despite their differences, both authors start with a critique of liberalism. They contend that liberalism sought to eliminate the agonistic dimension of politics, replacing it with institutional rationalism. Within this critical context, the Belgian theorist strives to reclaim the moment when decisions are made, the very act of making a decision, as a central component of what she refers to as ‘the political’. However, as Freller (2023) observes, this effort can also be identified in Constant, whose reflections fit within the context of liberal thought. In other words, Freller’s thesis (2023) challenges Mouffe by demonstrating that a liberal thinker like Constant did not evade the moment of decision-making. This combination of liberalism and decisionism indicates to the reader that Freller’s journey is groundbreaking.

In the context of the coup of 18 Brumaire, Constant’s notion of decisionism foresaw a neutral power that would not interfere with legislative, executive, and judicial functions. This would be an occasional arbitrariness capable of making decisions to quickly resolve crises. According to Freller’s (2023) meticulous theoretical and historical reconstruction, the neutral power may dismiss the

executive without issuing a formal judgment against it (*idem*), and it may dissolve the legislative assemblies (*idem*). In addition, the author argues that this neutral power is an “entity for executing extraordinary, discretionary measures – neither authoritarian in nature nor a symbol of the state’s impartiality”³ (FRELLER, 2021, p. 163 – free translation). Indeed, this would be a power that does not aim to reconcile the groups within society – the one associated with the ‘Old Regime’ and the one seeking the new order. It can be argued that the neutral power can act upon the constitutional order to preserve the new in the face of the old. In this regard, the neutral power differs from the figure of the dictator praised by Machiavelli (1974), which serves more as a balancing element. With this conclusion in mind, we can now shift our focus to Chapters 03 and 04, where the conversation with contemporary political theory becomes more prominent. According to Chantal Mouffe (2005), there is a need to reclaim the moment of decision, as previously mentioned, when actors must make decisions on “an undecidable terrain”, so that “what antagonism reveals is the very limit of any rational consensus” (MOUFFE, 2005, p. 12), thus instigating agonistic conflicts in both formal and informal spaces.

However, we want to emphasize and place at the heart of the problem the following argument: In this conception of the political and perhaps of democracy, when a decision is made, no political actor or institution is free of objectives and values. All of them harbor partial objectives and values that cannot be amalgamated into a common foundation, one that would elevate them to the public interest, the prevailing spirit of the time, or a superior way of life.

When Freller states (2021) that “in the case of a political judgment, all precise laws would be displaced: The Chamber of Deputies accuses the minister according to a political balance of power; the Chamber of Peers judges him using a moral latitude characteristic of jurors; and the King has the prerogative to annul the act of decision according to the preference of his heart”⁴ (FRELLER, 2021, p. 267 -

³The French version states: “J’interprète donc le pouvoir neutre comme l’instance par excellence de réalisation des mesures découlant de décisions discrétionnaires, non déterminées par des formes légales, plutôt que comme un symbole de l’impartialité de l’État” (FRELLER, 2023, p. 143).

⁴In the original: “s’agissant d’un jugement politique, toute loi précise serait déplacée: la Chambre des députés porte l’accusation contre un ministre selon un rapport de forces politique, la Chambre des pairs le juge avec une latitude morale propre aux jurés, et le Roi a la prérogative d’annuler la condamnation selon les préférences de son cœur” (FRELLER, 2023, p. 231).

free translation). Without getting into the question of grace, it is worth noting that Constant, according to Freller (2021), attributed to the king a non-passive stance but makes him “the primary body of political decision, distinct from the government, legislation, and judicial activity”⁵ (FRELLER, 2021, p. 279).

In the perspective that highlights the contentious nature of politics, political action inevitably involves objectives and values that will lead to conflicts, acknowledged as partial interests. Neutral power, as emphasized by Freller (2023) drawing on Constant, does not distance itself from values. In the exercise of this power, Constant conceives a form of discretion that does not allow for contestation. This seems to be an unrealistic expectation or a transitional phase because this action is evidently partial and, as such, open to debate.

In our perspective, reintroducing the element of contestation is inevitable. This detailed analysis allows us to understand Freller’s statement that Constant would primarily be a revealer of the inherent contradictions of the modern state (FRELLER, 2021, p. 293)⁶.

One of the merits of the book, as previously mentioned, is to engage in a conversation with the normative issues of political theory within the French political historical context. Continuing on this fruitful path, we pose two questions that we believe are pertinent. First, let us examine the question of the historical-political context in France.

We question the use of the term ‘liberalism of order’ to describe Constant’s thought. We understand that by using this terminology, Freller (2023) is engaging in a dialogue with Jainchill, the author of ‘Reimagining Politics After the Terror’ (2008), who used the term ‘liberal authoritarianism’ to describe a group of authors contemporary to Constant who, to some extent, relaxed the legal centrism that defined the actions of deputies in the early years of the Revolution. These authors/actors would be deemed authoritarian because they advocated for the idea of a strong executive. However, in doing so, they ended up providing arguments that were used in the Coup of the 18 Brumaire. We consider this to be an anachronistic critique though. This is because advocating a strengthened and independent

⁵In the original: “l’organe par excellence de la décision politique, distincte à la fois du gouvernement, de la législation et de la fonction judiciaire” (FRELLER, 2023, p. 242).

⁶Cf. FRELLER, 2023, p. 256.

executive in contrast to a powerful legislative does not necessarily result in authoritarianism. The trajectory of the Revolution followed this course, culminating in the Coup of the 18 Brumaire. Consequently, these critiques imply a teleological perspective in which the defense of a strong and independent executive would inevitably lead to authoritarianism. We believe that challenging this teleological interpretation is a valid correction to the term used by Jainchill (2008).

However, the meaning of the term 'liberalism' for Constant remains an open question. For Constant, the Revolution was not completed because the spirit of reaction persisted in society. Indeed, while Freller (2023) corrected Jainchill's term (2008), the expression 'liberalism of order' used by Freller (2023) does not seem to adequately clarify the fundamental issue of this era, which revolves around the relationship between the republican government and the national will. Does this expression not obscure the fact that the inclination of the will could potentially be reactionary and endanger all the progress achieved by the Revolution, the very reason why decision-making is necessary? It is the reaction that keeps Constant sensitive to arbitrariness, even though he not only rejects but vehemently condemns any arbitrary solution at this moment. Would Freller's (2023) expression not be an excessive concession to Jainchill's concept (2008) of liberalism? Or is the term 'liberalism' being used in the sense of opposing any kind of tyranny? (This seems to be more evident in Chapters 01 and 02).

Our second question concerns the final chapter of the book. Throughout Freller's (2023) book, one might suppose that there is a shift in how Constant approaches the issue of arbitrariness. Initially, he proposes that preventing tyranny involves centralizing decision-making in a neutral power distinct from other institutions. Later on, he suggests that the solution is to rely on individual moral judgment to define the limits of laws. His reasoning culminates in the establishment of the role of arbitrariness in the constitutional framework, particularly within the Monarchy, through his interpretation of the Constitutional Charter of 1814. The Bourbon Restoration symbolizes the return of Fortune. Louis XVI's brother ascends to the throne. Two principles of constitutional monarchy defended by Constant come into scene: 'discretionary decision-making' and 'inviolability'.

The principle of inviolability refers to a transcendent element of legitimacy. In the French political debate, any attempt to transfer principles of the Old Regime to a post-regicide monarchy would revive the trauma caused by the Revolution. According to Freller: No available monarchical version of legitimacy was sufficient (FRELLER, 2021, pp. 241 and 246)⁷. Indeed, the idea of putting a king on trial is part of the trauma left by the Revolution, given that the concept of royal inviolability had to be destroyed to allow for the execution of Louis XVI. In ‘Reflexions’ (1814), Constant proposes a solution in which the ministers are responsible, while the king remains inviolable. This is partly attributed to his dual nature: a human being anointed by God, therefore a sacred body. The symbolic authority of the king, who demonstrates the superiority of his rationale over the ordinary condition, would be capable of solving the issue of ‘coups d’état’. This defense seeks to preserve order and freedom. However, considering that the argument that no interest outweighs the king’s — since his interest is in ‘public happiness’ — was also used to discredit this symbolic elevation and, consequently, dismantle the royal inviolability thesis, we ask: After all, who was it that led society into war and famine? Who exhibited extravagant behavior if not the king? Who remained distant from the people if not the royal family? We get the impression that Freller (2023) highlights this symbolic elevation of royalty without conflicting with another approach outlined in the book, the one that transfers political judgment to society. According to Constant, moral judgment transfers to the ordinary individual the responsibility of determining the insufficiency or boundaries of laws. Does this mean, then, that a society grappling with war and famine could overcome its trauma by decentralizing arbitrariness? In our perspective, this position does not seem adequate.

Freller’s book (2023) is a successful result of the convergence of two perspectives. The first one emerges from modern and contemporary political theory. The second one comes from modern history. The first perspective gives rise to questions concerning the concept of neutral power and the agonistic dimension of politics. The second perspective focuses on the concern surrounding the French political discourse in the post-French Revolution era. Both interact in an integrated

⁷Cf. FRELLER, 2023, pp. 210 and 213.

manner. Thus, readers can delve into both the historical reconstruction of the 19th-century French political discourse and the theoretical concepts developed by political theory. In this regard, historical reconstruction and political theory are intertwined. Readers do not need to choose between an analysis of the historical context or political theory; they can benefit from the intersection of both approaches.

At the same time, in the book, readers will find the efforts of an interpreter who does not expect that his research subject can resolve the tensions generated by political reflection. The challenges that emerged in the post-Revolution historical context, related to the development of liberalism in a society still retaining old structures, and the need to establish an extraordinary power devoid of tyranny in a society still marked by royal power symbolism, persist as ongoing and evolving questions. Freller (2023) reconstructs these tensions and refrains from artificially suppressing them, unlike an approach that would seek to find a perfect solution through Constant.

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