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## RESEARCH ARTICLE

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# Populism, Constitution Making, and the Rule of Law in Latin America

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**ABSTRACT:** The article explores the effects of populist polarization in creating strong and long-lasting institutions based on the rule of law. It focuses on politics and not on the political economy of populism or of natural resource extraction. The first section briefly explains how we understand the contested notions of populism and the rule of law. The second focuses on the paradigmatic case of Juan Perón's first two administrations (1946-1956) to explore the ambiguous legacies of populist inclusion for the creation of long-lasting democratic institutions. The third section focuses on how Hugo Chávez, Evo Morales and Rafael Correa appealed to the un-bounded will of the people to convene participatory constituent assemblies. The last section focuses on Ecuador's post-populist succession. Different from Evo Morales that was ousted by a coup, or Nicolás Maduro that killed democracy, Lenín Moreno, who was Correa's former vice-president, abandoned populism, ditched his mentor, and used a referendum to clean the state and political institutions from Correa's allies. Appealing to the people directly, his administration assumed exceptional powers to name new authorities of control and accountability. His institutional reforms however might not last because they were based on the exclusion of Correa and his followers. The conclusion explores the reasons why actors continue to use laws instrumentally making it difficult to create long-lasting institutional arrangements based on the rule of law, and hence on the possibility of deepening democracy.

**KEYWORDS:** Chávez, Correa, Latin America, Left populism, Morales, Peronism.

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## 1. Introduction

Hugo Chávez, Evo Morales, and Rafael Correa promised to enhance democracy by abandoning neoliberalism, using the state to bring social justice, and constitution making to transform the relationships between the state and society. They invoked the supremacy of constituent power over the existing institutional arrangements of constituted power. They used votes to take away power from traditional politicians and to create new hegemonic power blocks. They had the fortune to govern under a commodity and mineral resource boom that gave them the resources to reduce poverty, increase the presence of the state in the national territory, and to have an anti-imperialist foreign policy.

Some scholars argued that these experiments were innovative attempts to create not only post-neoliberal economies but also post-liberal political arrangements (Wolff 2016). Others contended that these projects strongly resembled past populist experiences that brought the inclusion of excluded sectors of the population at the cost of pluralism, and the restrictions of the rights of association and information (de la Torre 2010, Burbano de Lara 2019).

The article explores the effects of populist polarization in creating strong and long-lasting institutions based on the rule of law. It focuses on politics and not on the political economy of populism or of natural resource extraction. The first section briefly explains how we understand the contested notions of populism and the rule of law. The second focuses on the paradigmatic case of Juan Perón's first two administrations (1946-1956) to explore the ambiguous legacies of populist inclusion for the creation of long-lasting democratic institutions. Argentineans attained the right to vote in free elections, the franchise was dramatically increased, and they also obtained social rights. Civil rights, however, were given on the condition of accepting the authority of the leader. Those who challenged Perón from the right or the left were branded as enemies of the leader, the people, and the nation. Without institutional channels the opposition called the military to oust Perón, and the military dictatorship aimed to get rid of Peronism. From the 1930s to the 70s in Argentina, as in most of Latin America, politics oscillated between populist administrations, weak and unstable liberal democracies, and military interventions and regimes.

The third section focuses on how Hugo Chávez, Evo Morales and Rafael Correa appealed to the unbounded will of the people to convene participatory constituent assemblies. New constitutions expanded rights, concentrated power in the executive, reduced horizontal accountability, and created plebiscitary democracies. Yet the process of constitution making varied in these nations. Whereas in Bolivia the government was forced to negotiate with the opposition, in Venezuela and Ecuador charismatic presidents led the process of writing the new constitution often marginalizing the opposition. The chapter then studies processes of political polarization provoked by populists and the responses of their adversaries. It focuses on how populist and their foes understood democracy during the failed coup against Hugo Chávez in 2002, and in the events that led to the overthrow of Evo Morales in 2019. Whereas Chávez and Morales claimed that they were the victims of coups, their foes argued that they were defending democracy. In these events polarized citizens used the term democracy to often justify undemocratic actions.

The last section focuses on Ecuador's post-populist succession. Different from Evo Morales who was ousted by a coup, or Nicolás Maduro who killed democracy, Lenín Moreno, who was Correa's former vice-president, abandoned populism, ditched his mentor, and used a referendum to clean the state and political institutions from Correa's allies. Appealing to the people directly, his administration assumed exceptional powers to name new authorities of control and accountability. His institutional reforms however might not last because they were based on the exclusion of Correa and his followers. The conclusion explores the rea-

sons why actors continue to use laws instrumentally making it difficult to create long-lasting institutional arrangements based on the rule of law, and hence on the possibility of deepening democracy.

## 2. Populism and the Rule of law

Populism and the rule of law are highly contentious concepts. Three handbooks of populism illustrate how, despite calls for using a universal definition, scholars continue to draw on different understandings of what populism is, or simply develop their own (Heinisch, Holtz Bacha and Mazzoleni 2017; Rovira Kaltwatzter, Taggart, Ochoa, and Ostiguy 2017; de la Torre 2019). Controversies around definitions of populism are inevitable as it is not just a category used by scholars. Populism is what German scholars consider a basic concept that is deployed in public debates. As such it does not carry a single indisputable meaning, and a variety of conflicting constituencies passionately struggle to make their definitions “authoritative and compelling” (Baehr 2008: 12).

Drawing on the vast literature on populism and our ongoing research we have developed a synthetic ideal type of populism as encompassing these traits: populists polarize citizens into friend and enemy, use a part pro parte dynamic, and construct a leader as the embodiment of the people. Yet populist seeking power are not the same as populist governments or populist regimes.

Populists do not face political rivals with whom one could disagree, they confront existential enemies. When seeking office their antagonists are broadly casted as the establishment (Urbinati 2019). Once in power their enemies become particular political, economic, and cultural elites that supposedly hold real power. Populists differ on whom they construct as their enemies. Rightwing populist often face two types of enemies: cosmopolitan elites above, and dependents of color below. They use racist tropes to cast populations of colonial origin not only as inferior but as inherently culturally different and inassimilable. If the right politicized fears to the danger of contamination of culture, religion, and race, the left focuses on the angers and resentments produce by socioeconomic and political exclusions, and by systemic inequalities. They politicize anger, indignation, resentment, and envy to cast the elites as servants of imperialism and the IMF.

Populists do not aim to give power back to all the population. They do not appeal to Rousseau’ general will either. They aim to empower only a section of the population, those excluded that represent the right and truthful people. For populism to be successful it needs a leader, otherwise it remains at the margins of the political system (Urbinati 2019). A leader is built as the embodiment or personification of the right people. Populist inclusion is on the condition of accepting the guidance of the leader.

Populists attempting to get to power, populist in office, and populist regimes are not the same. When challenging power populists politicize issues that other politicians ignore to see or do not address. Once in office they follow surprisingly similar playbooks: (1) Capturing the referees such as the judicial system, law enforcement, intelligence agencies, tax authorities, regulatory agencies, and institutions in charge of horizontal accountability. (2) Using the law instrumentally to try to make critics quiet, and to regulate the activities of organizations of civil society. (3) Changing the rules of the game by reforming the constitution and changing electoral rules. (4) Fabricating or taking advantage of crises to concentrate power and crack down the opposition (Levitsky and Ziblath 2018: 78-96).

When populists are able to change constitutions, to regulate the public sphere, and control civil society they become regimes. These are based on the predominance of the executive over other branches of power, and by the charismatic leader’s control of the state apparatus. Populist regimes are legitimized by a combina-

tion of the democratic commitment to elections as the only legal tool to elect and remove politicians with undemocratic views of political rivals as enemies, and conceptions of the people as unitary actors.

According to Guillermo O'Donnell (1999: 321) democracy is not just a political regime, it is also a mode of "relationship between state and citizens, and among citizens themselves, under a kind of rule of law that, in addition to political citizenship, upholds civil citizenship and a full network of accountability". The rule of law sustains political freedoms and guarantees the civil rights of the whole population. It "establishes networks of responsibility and accountability that entails that all agents, public and private, including the highest placed officials of the regime, are subject to the appropriate, legally established controls of the lawfulness of their acts" (Ibid.: 318). Democracy, O'Donnell sustains, is not a static regime but a moving horizon where the acquisition of rights triggers new demands, and the acquired rights need to be protected and strengthened.

As we will show in the paper in Latin America political rights are often effective, whereas civil rights that support the pluralism and diversity of society are weak or absent. Moreover, elites can violate formal rules and laws without sanctions. The rich evade paying taxes, and politicians use laws at will to marginalize rivals and to favor their friends. The continuous low enforcement of laws or the "un-rule of law" leads to institutional weakness and hence to the continuous breakdown and replacement of institutions, laws, and constitutions (Levistky and Murillo 2009).

### **3. Populist Incorporation: the Legacies of the Past**

Populism emerged in Latin America in the 1930s when the oligarchical order entered into crises, and common people demanded political participation rebelling against electoral fraud, as well as against class and ethnic exclusions. The Latin American hierarchical pattern of capitalist development is based on highly segmented labor markets. There is a small formal sector of the economy with limited access to social security, stable work and benefits, and a large sector of the population is employed in the informal sector with "uncertain hours, short-term contracts, and restricted access to social programs" (Roberts 2019: 651). Not surprisingly, Latin America is one of the most unequal regions of the world, and the poor, as Guillermo O'Donnell (1999) wrote, are not only materially deprived but they are equally legally dispossessed. The legal system functions and is perceived as a tool of class domination and exploitation. Common people know that whereas the rich and powerful, when convenient, could escape from the law, the disadvantaged are at the mercy of the agents of the law. The state was weak and unable to protect the poor from the powerful and from the abuses of state officials.

The first wave of populist leaders known as classical populists, like Juan Perón in Argentina, fought against electoral fraud and expanded the franchise. Even though male universal suffrage existed since 1912, women were excluded and in the 1930s elites stayed in power using electoral fraud. Under Perón elections were clean, and women were given the right to vote in 1947. As a result, voter turnout under Perón's first two terms in office dramatically grew from 18 percent of the population in 1946 to 50 percent in 1955 (Schamis 2013: 155). Populism was also understood as the redistribution of material resources. Perón's government reallocated wealth and increased the share of wages of the national GDP from 37 in 1946 to 47 percent in 1955. Workers won labor rights and received other material benefits such as access to social and medical services, and paid vacations (Plotkin 2010: 273).

The populist pact of domination was based on accepting the unquestionable wisdom of the leader and his superior capacity to liberate and protect the people. Organizations of civil society were not autonomous or independent from the leader. Because for populist's politics is based on antagonistic confrontations against

enemies, they have difficulties accepting dissent, pluralism, and a critical public sphere. Perón's government expropriated newspapers *La Prensa*, and *La Nueva Provincia*, and created a chain of radio stations and newspapers. His propaganda machinery "published more than 2.5 million pamphlets of various types and more than 3 million posters, in addition to producing movies and other propaganda materials" (Plotkin 2003: 31). Perón saw rivals as enemies and claimed that when political adversaries became "enemies of the nation", they were not longer "gentlemen that one should fight fairly but snakes that one can kill in any way" (Finchelstein 2014: 86).

Perón replaced the constitution with a Peronist or Justicialist Charter in 1950. Instead of following established amendment procedures, the government used a plebiscitarian strategy that resulted in an unbound conventional assembly, which imposed the views of Perón and his cadres. Enrique Peruzzotti (2019: 12) argues that Perón's constitution dismantled the "representative instances of political intermediation: parliament and the public sphere". The legislature was weakened as the presidency gained power, and the public sphere was regulated and supervised by the state.

Without democratic spaces, the opposition conspired with the military and Perón was ousted in 1955. The aim of the military junta was to de-Peronise Argentina, and even mentioning the word Perón became a crime. Worker's and other followers of Perón resisted and kept alive his memory (James 1988), and democracy became a game of permanent confrontation between Peronists and their enemies.

#### Populist Constitution Making and Discriminatory Legalism

Constitution making is not new in Latin America. It has been used in Bolivia, Ecuador and Venezuela as instruments to enact social and political change, and to dismantle existing institutions seen as exclusionary. Since independence Bolivia had 16 constitutions, Ecuador 20, and Venezuela 26. What was new about the constitution making cycle in the late 1990s and early 2000s is that radical populists used participatory constitution making to bring re-foundational change. This meant that leftist populist abandoned the old revolutionary strategy of armed struggle and used constitutional change with the aim to deepen and radicalize democracy.

Social movements and intellectuals in Venezuela, Bolivia, and Ecuador demanded constitutional assemblies to get rid of neoliberal elites, to improve the quality of democracy, and to include the excluded. Inspired by the work of Antonio Negri, whose book *Constituent Power* Chávez claimed to have read over and over again, he invoked the constituent power of the people to refound his nation (Azellini 2010: 113). Constituent power was understood as a revolutionary force that ought to be permanently activated to revamp all the corrupt political institutions that served the interests of foreign powers and local elites. Bolivia under Morales and Ecuador under Correa followed Chávez path with the support of social movements. Since 2002, indigenous social movements from the lowlands of Bolivia demanded a constituent assembly as the mechanism to radically reform the state and to include indigenous peoples and their cultures (Postero 2015: 404-405). Ecuadorian social movements and the left were dissatisfied with the Constituent Assembly of 1997, which they perceived as exclusionary and dominated by traditional rightwing parties. Despite the inclusion of indigenous and Afro-Ecuadorean collective rights, and the transformation of the national identity from mestizo to multicultural, the indigenous and other social movements branded the Constitution of 1998 as neoliberal. They demanded a new constituent assembly that would be truly participatory.

Left-wing populists emerged as a result of widespread popular resistance to neoliberalism. On 27 February 1989, the Venezuelan Caracazo, a massive insurrection against a hike in the price of gasoline that was brutally repressed with at least 400 people killed, undermined and ultimately destroyed the legitimacy of Venezuela's two-party system. The two dominant political parties, the Democratic Action Party (AD) and the Social

Christian Party (COPEI), became perceived as closed cartel parties that monopolized the political arena and whose policies led to economic decline and impoverishment of the middle and working classes (López Maya and Panzarelli 2013). Between 1997 and 2005, the three elected presidents of Ecuador could not finish their terms in office. Popular protest against neoliberalism and corruption allowed Congress to oust them using the law instrumentally. For example, Congress claimed that president Abdalá Bucaram was crazy and unfit to govern without medical proofs of his alleged insanity. Jamil Mahuad and Lucio Gutierrez were removed by Congress with the false allegation that they had abandoned office (de la Torre 2010: 177-180). Bolivia underwent a cycle of protest and political turmoil that resulted in the collapse of both the party system established in 1985 and the neoliberal economic model in the country. Coalitions of rural and urban indigenous organizations, coca growers, and middleclass sectors fought against water privatization, increasing taxation, the forced eradication of coca leaves, and surrendering gas reserves to multinational interests. The state increasingly relied on repression, which in turn radicalized protestors (de la Torre 2010).

A second factor in the rise of left-wing populism was the perception that politicians and neoliberal elites had surrendered national sovereignty to the IMF, the World Bank, and the U.S. government. For example, in the 1980s and 1990s, Venezuela became an advocate of U.S.-sponsored policies of neoliberal reform and free trade in the Americas. In a desperate move to stop hyperinflation in 2000, Ecuador gave up its national currency, the Sucre, for the U.S. dollar, as President Jamil Mahuad's administration compromised national sovereignty by allowing the United States to establish a military base to monitor illegal immigration and drug trafficking in Ecuador. Bolivia underwent social strife and human rights abuses as the military unsuccessfully followed U.S. policies of military eradication of coca leaf production.

As a consequence, these nations underwent major crises of political representation regarding the legitimacy of democratic institutions. Political parties were perceived as instruments of local and foreign elites that implemented neoliberal policies and thereby increased social inequality. Traditional parties collapsed as political outsiders rose to power on platforms that promised to eliminate corrupt politicians, experiment with participatory forms of democracy, and implement policies to redistribute wealth.

The main innovation of left-wing populists was their appeal to the re-foundational role of constituent power. Constitution-making became the utopia for the construction of a more participatory and equal society, and the main strategy to change the institutional framework of society. The processes to draft the new constitutions in these nations were participatory and involved social movements. Yet, they diverged in the mechanisms used to summon their constituent assemblies. The Bolivian congress followed the existing constitution and enacted a special law to convene a constitutional assembly in 2006. Correa followed Venezuela's model of using a referendum to authorize whether or not to convene a constitutional assembly. As in Venezuela, the reasoning was that even though the existing constitution did not allow for such a mechanism, the people's constituent power had primacy over constituted power. In Venezuela, a Supreme Court ruling allowed for calling the referendum. In Ecuador, Congress, which was controlled by traditional parties and lacked a single representative of Correa's movement, threatened to halt the proposed referendum. After securing key institutional support from the Electoral Tribunal Board (TSE) and the Constitutional Tribunal (TC), Correa managed to push his project through, disqualifying 57 legislators opposed to the unconstitutional mechanism used to call for an assembly (de la Torre and Ortiz 2016).

The Bolivian constituent assembly, where Evo Morales's coalition had a majority, coexisted with opposition political parties that controlled congress, and a powerful regionalist movement in the lowlands (Burbano de Lara 2014). Morales's coalition was forced to negotiate the content of the constitution. Moreover, strong social movements forced him to negotiate policies. By contrast, in Venezuela and Ecuador charismatic presidents controlled the processes for elaborating new charters. Although the Venezuelan national assembly did

not close congress, it substantially diminished its power and intervened in the judicial system (Combellas 2010: 155). Correa and his supporters radicalized Chávez's example of controlling the constituent process: the Ecuadorean assembly sent the recently elected congress into a recess and arbitrarily assumed all legislative powers.

The new constitutions were approved in referenda. These constitutions had a structural tension between the expansion of social, economic, cultural, and multicultural rights, and "power structures that are politically concentrated and territorially centralized" (Gargarella 2017: 222). A different kind of democracy based on elections, but also on a new institutional order that concentrates power in the hands of the president and the executive branch was established. Majoritarian mobilization led by a personalistic leader took precedence over the checks and balances and respect for basic civil rights inherent in liberal democracy. Mechanisms of horizontal accountability by other branches of government and an independent press were replaced by a variant of vertical accountability involving frequent elections, referenda, and plebiscites.

A second innovation of radical populist presidents was their use of discriminatory legalism to punish critics while performing an appearance of legality. In the past populist presidents did not have qualms about not respecting laws and institutional procedures to regulate the media or civil society. Perón for example closed newspapers, and replaced the leadership of worker's unions with cronies, while jailing those who did not accept to be coopted. The novelty of Chávez, Correa and Morales was to use the legal system to punish critics with an aura of lawfulness (Weyland 2013).

In order to use laws discretionarily, populist presidents packed the courts and institutions of accountability with loyal followers hence getting rid of the institutional mechanisms for horizontal accountability. After drafting the new constitution, the Venezuelan Assembly created a transitory council that governed legislative affairs between the approval of the constitution in December 1999 and the election of the new congress in August 2000. By controlling this council, Chávez put trustworthy authorities in charge of the National Electoral Council. In 2004, Chávez put the highest judicial authority, the Supreme Tribunal of Justice, in the hands of loyal judges. By 2006, hundreds of lower court judges were fired and replaced by unconditional supporters (Hawkins 2016). Correa followed Chávez's model of convening a transitory council after the assembly drafted the new constitution. The "congresillo" was tasked with naming the new judicial authorities and the people in charge of the institutions of accountability, such as the ombudsman and the controller. In 2011, Correa created an ad hoc Consejo de la Judicatura charged with appointing the members of the National Court, the highest judicial authority. Gustavo Jalkh, who was Correa's personal secretary, was named head of the Consejo. Similarly, Morales gained control of the Supreme Electoral Tribunal. Between 2006 and 2009, his administration dismantled the Supreme Court and the Constitutional Tribunal, gaining control of the courts after 2010.

Populists argued that the private media acted as an opposition political party. Morales, for example, on several occasions said that the media was his "number one enemy." Control and regulation of the media by the state was at the center of the populist struggle for hegemony. Chávez led the path in enacting laws to control the privately-owned media. In 2000, the Organic Law of Telecommunication allowed the government to suspend or revoke broadcasting concessions to private outlets when it was "convenient for the interest of the nation." The Law of Social Responsibility of 2004 banned "the broadcasting of material that could promote hatred and violence" (Corrales 2015: 39). These laws were ambiguous, and the government could interpret their content according to its interests. Correa's government emulated Chávez. In 2013, the National Assembly controlled by his party approved a communication law that created a state institution tasked with moni-

toring and regulating the content of what the media could publish. In Bolivia, a well-intentioned yet vaguely drafted law against racial discrimination in the media was used to intimidate the private media.

To challenge the power of the private media, Chávez's government took away radio and television frequencies from critics. The state became the main communicator, controlling 64% of television channels. Correa created a state media conglomerate, and under Morales 90 percent of the media was under his control (Archondo 2020: 250). Chávez and Correa suffocated the private media by reducing government advertisements on critical media venues and by manipulating the subsidies for the price of paper. They used discriminatory legalism to intimidate and harass journalists and private media owners. Correa sued the owners of newspapers and journalists who uncovered cases of corruption or were critical to his administration. The most notorious cases that were reported worldwide involved an editor and three board members of the largest privately-owned newspaper, *El Universo*, who were convicted of defamation and sentenced to three-year terms for publishing an editorial entitled, "No to Lies"; the paper was also fined US\$40 million. Subsequently, president Correa pardoned them (de la Torre and Ortiz 2016).

In addition, leftwing populist enacted legislation that used ambiguous language to control and regulate the work of non-governmental organizations (NGOs). In 2010, the Law for the Defense of Political Sovereignty and National Self-Determination in Venezuela barred non-governmental organizations that defended political rights or monitored the performance of public bodies from receiving international assistance (Corrales 2015: 39). Three years later, in 2013, Correa enacted Executive Decree 16. This decree gave the government authority to sanction NGOs for deviating from the objectives for which they were constituted, for engaging in politics, and for interfering in public policies in a way that contravenes internal and external security or disturbs public peace. To set an example, the teacher's union and the environmental organization Pachama Alliance were closed for deviating from the original organization's goals, and for interfering with public policy and security. Morales followed suit by passing legislation in 2013 to revoke an organization's permit to operate if it performs activities different from those listed in its statutes, or if the organization's representative is criminally sanctioned for carrying out activities that undermine security or public order.

In Bolivia and Ecuador, the right to participate was restricted to groups that were recognized and authorized by the state. In Venezuela and Ecuador, social movements were created from the top down to counteract the power of workers' unions, unionized teachers, students and indigenous groups. At the same time, these organizations distributed resources to loyal followers that promoted the interest of their governments. Protest was criminalized in these nations. Union leaders and striking workers, even when they were sympathizers of Chávez, were charged with terrorism. Hundreds of peasant and indigenous activists were accused of terrorism and sabotage in Ecuador. Laws were used discretionally to arrest and harass leading figures of the opposition in these nations.

In sum, Chávez, Correa, and Morales forged populist regimes. At the institutional level, power was concentrated in the presidency reducing the power of congress and of institutions of horizontal accountability such as the ombudsman, the general prosecutor, and the controller. Populist regimes combine the democratic logic of elections with anti-pluralist practices based on the notion of the 'people as one', and views of the leader as the people's savior. Even though elections give legitimacy, populists cannot conceive that the people could vote for any other candidate but for them: the true representatives of the people (Ochoa Espejo 2014). When populists do not win elections, they cry electoral fraud. When in power, populists hold elections but make it difficult for the opposition to participate in a level playing field. They used the legal system to restrict rights of free association and expression. The people are not constructed as a pluralistic population, but as a single entity with one will and interest, which corresponds with the one articulated by the leader. The unity of the people is achieved with a logic of antagonistic confrontation against an enemy. Inclusion and

protection are given on the condition of subordination to the leader. The leader is transformed into a charismatic redeemer tasked with the mission of liberating the people.

#### 4. In the Name of Democracy

The polarizing logic of populism often led the opposition to use any means necessary to get rid of populists. As we will show using the 2002 coup attempt against Chávez and the 2019 coup d'état against Morales, populists and their adversaries often appealed to democracy to justify undemocratic practices. During the first years of Chávez's administration Venezuelans participated in massive demonstrations either in support of or against him. The hegemonic struggle was articulated around the term "democracy" (Cannon 2004: 294). Chávez was represented as the essence or the denial of the democratic ideal. For his supporters, Chávez had protected the nation from a privileged few, and was carrying out a project to bring social justice. For the opposition he was an autocrat who had concentrated power threatening the wellbeing of the nation with ill-fated policies especially on petroleum.

A coalition of business, labor, and civil society organizations, with the active support of the privately-owned media, took to the streets to protest against what they perceived as the undermining of democracy. They focused on changes to the educational law, agrarian reform, and the dismissal of technical personnel in the state petroleum company PDVSA and their replacement with Chávez's loyalists. April 11, 2002 hundreds of thousands took the streets of Caracas to protest the changes of top managers in the state petroleum company. Labor leader Carlos Ortega urged the crowd to go to the presidential palace to "oust Chávez". They marched for about seven miles to the seat of government at the Miraflores Palace chanting, "The people united will never be defeated". On their way more people joined in. "The extraordinary size of the march strengthened the opposition's perception that the whole country was with them and that history was in their side" (Coronil 2011: 35).

The television showed images of Chávez's loyalist firing upon the crowd. 19 people died, and even though it was later shown that those images were fabricated by the media, the general perception at that time was that the president was repressing the people. The massive protests against Chávez, and the manufactured images of chavistas firing at demonstrators were used as a pretext to give a coup. Arguing a power vacuum and that Chávez had abandoned power, Pedro Carmona took power with the support of the high military officers and the U.S. and Spanish governments. He dismissed all elected officials of Chávez's regime, and named conservatives as ministers without including other members of the anti-Chávez coalition. He changed the name of Venezuela back to its original name, symbolically abolishing all of the legacies of the Bolivarian Revolution.

Chávez's followers organized in the Bolivarian Circles, urban land committees, and other associations had responded to the opposition's protests with counter demonstrations. After knowing that Chávez was overthrown thousand marched risking their lives demanding to see their leader. Popular protest led to Chávez's triumphant return to power Sunday April 14. He became the embodiment of the democratic ideal, and a figure larger than life who overcame a coup d'état.

Shortly after the events, the National Assembly as congress is named in Venezuela could not agree on one account of these episodes. For the opposition it was a "constitutional rebellion". They argued,

Only Chávez was to blame for the situation, as he had created a context of ungovernability due to his repeated infringements of the Constitution... The huge march on April 11 was peaceful, unarmed, and hence

was not insurrectional, as the government maintained... The President had permitted and/or ordered the Bolivarian Circles, Armed Forces, and the National Guard to open fire on the demonstration, and hence he was the only person responsible for their deaths. This left the Armed Forces no choice but to defend the Venezuelan people by seeking the president's resignation in support of the civic insurrection (Cannon 2004: 295).

The government and its supporters labeled it as a coup d'état. They argued that the opposition was responsible for the deaths. The march of the opposition "became insurrectional when it changed its route to the Presidential Palace of Miraflores... The events could only be termed a coup as they were planned conspiratorially with sectors of the military, business, opposition, and media involved" (Ibid.). Chávez subsequently adopted 21 Century Socialism as a new model of direct democracy, and of state-led development. It took several years for the opposition to use democratic means like elections to unsuccessfully try to replace Chávez and Maduro.

The Bolivian constitution approved under Morales limited the reelection of the president and vice-president to two terms. In 2016 Morales lost a referendum to change the constitution to allow for his reelection. In 2017 the Constitutional Tribunal ruled that Morales could run because according to international law that has priority over domestic law no person could be banned from his human right to run for office. The opposition took the streets to protest against what they considered to be Morales' manipulation of the system of justice to remain in power illegally (Paz Gonzales 2020: 233). Elections were held on October 2019, and the counting of votes was abruptly interrupted. Hours later Morales was proclaimed as the winner.

After 21 days of protest Morales resigned and left to exile in Mexico. Protesters were mostly of middle class and urban origin, yet some organizations of coca growers that were marginalized by Morales and even the Bolivian Central Workers Union COB asked for his resignation in order to bring peace. Morales had to leave office because the police rebelled and stop controlling demonstrators, and the armed forces suggested Morales to step down. Whereas the opposition argued that their movement was a democratic resistance to electoral fraud, Morales and his followers argued that it was a coup.

The opposition is correct in arguing that Morales bended laws to try to stay in power beyond clearly established term limits. Even though Morales started his government with the Zapatista motto of ruling by obeying the Bolivian people, over time his government became personalistic. The leadership of his movement argued that he was indispensable to assure the continuity of the process of change and hence needed to be re-elected (Tórrez and Lascano 2020: 269). Morales had ruled for 13 years, longer than any other sitting president of Bolivia. According to the opposition he was in control of two thirds of congress, the system of justice, and the media (Archondo 2020: 250).

Morales is also right in charging a coup d'état as the police stop obeying the president, and the military asked him to step down. Yet instead of taking power the military allowed civilians to follow constitutional procedures to replace Morales. Because the legislators of Morales party did not attend the session of Congress tasked to name a replacement, senator Jeanine Añez was elected temporary president with the task of calling for new elections. She assumed the presidency holding a bible, and some politicians of the opposition desecrated the whipala, the indigenous flag symbol of plurinational Bolivia made up of several nationalities. They vowed to free Bolivia from Indian paganism. Morales's followers took to the streets to reject Añez and to defend the conquest of plurinationality. They were repressed and at least 36 people were killed in the city of El Alto and thousands were arbitrarily arrested (Torréz and Lascano 2020: 271). President Añez and the media stigmatized Morales followers as uncivilized hordes, profoundly different from the citizens that had resisted electoral fraud. Morales followers were also depicted as narcotraffickers because many are coca growers. Añez's government used laws instrumentally to persecute top leaders of the MAS and former government officials. Evo Morales was accused of terrorism and treason.

These murky events illustrate how under conditions of polarization and when politics becomes a zero-sum game, actors in Bolivia used all means available to stay or to conquer power. Morales actions systematically undermined democracy, and he tried to stay in power although he had lost a referendum. At the end he was toppled. Añez's provisional government is overstepping its responsibility to call for new elections attempting to stop Morales from ever returning to office. In Venezuela Chávez and his followers were the ones that defended democracy from a coup. Yet he had systematically excluded the opposition ruling by majoritarianism and some of his policies were of dubious legality. Hence people demonstrating against Chávez claimed that they were defending democracy and were not aware of Carmona's plot to destroy democracy. Under conditions of profound polarization and institutional weakness political change took the form of breakdown and replacement. Populist took over the courts and institutions of accountability to displace and control the opposition. Without legal institutional channels the opposition used destabilization. When they were successful in overthrowing the populist as in Bolivia, anti-populist forces used laws instrumentally to cast the populist leader and his coalition as outsiders to the rule of law. Morales and his followers who are for the most part indigenous were labeled as hordes and drug traffickers.

## 5. The Aftermath of a Democratic Populist Succession

Whereas allegations of electoral fraud and violations to the Constitution led to Evo Morales' dramatic overthrow and exile, elite fights and rivalries within Correa's political movement Alianza País provoked the transition to post-populism in Ecuador (Burbano and de la Torre 2020). Rafael Correa (2007-2017) made sure that his party ticket made up of his trusted former vice presidents Lenín Moreno and Jorge Glass won the elections in 2017. Yet Moreno abandoned a populist language and entered into dialogue with Correa's enemies with the aim of re-institutionalizing democracy.

Correa and his close collaborators were charged on accounts of corruption or abuse of power. Vice president Jorge Glass is in jail for taking US\$ 13.5 millions in bribes from the construction firm Odebrecht. Correa who is living in Brussels could go to prison if he sets foot in Ecuador with charges of abuse of power in the failed kidnapping attempt of an oppositional politician and for using public funds and money from Odebrecht and other private firms for his party's campaign.

After breaking with Correa, Moreno promised to re-establish democracy and to dismantle Correa's hold over institutions of justice and accountability. In February 2018, Moreno won a referendum to amend the constitution with 67 percent of the vote. Citizens were asked to abolish Correa's constitutional reform of 2015 that allowed for permanent re-election. The original limit of two terms was reinstated, meaning that Correa would never again ascend to the presidency. In a second major result, voters agreed to cease the existing Council of Citizens' Participation and Social Control (CCPSC) and to name a temporary and transitional council. According to the Constitution, the CPCCS was tasked to name the ombudsman, the attorney general, the electoral council, the judiciary council, and other key authorities in charge of horizontal accountability.

The temporary CCPSC claimed to operate under conditions of exceptionality, with a mandate given to them by means of a consultation that expressed the will of the people. Therefore, the council could act above the rule of law, as, for instance, when the previous council was terminated without following the existing procedures which indicate that the members of the council serve for five years and could only be censored by the legislative. The council evaluated, ceased, and replaced 28 high-ranking officials designated by the Correa administration and loyal to the former president. The council overstepped its powers. Even though the

constitutional court was not included among the bodies that fall under the purview of the CCPSC, the nine constitutional-court judges, three of whom were investigated for money laundering, were removed.

Moreno's strategy of using a popular consultation had the advantage of allowing for rapid institutional change to expel Correa's loyalists from the system of justice and accountability. Yet the danger is that transformations might last only as long as the political conjuncture favors Moreno. Hence, institutional changes could be reversed if there are changes in the perception of Correa's image. The former president still has about 20 percent of popular support, and differently from Moreno who had to reduce social spending and to shrink the size of the state, he ruled under an economic bonanza. Moreno was almost overthrown in October 2019 when he raised the price of gasoline in order to comply with the IMF conditions for bailout loans. Instead of solving political instability, consultations made in the name of the unitary will of the people create uncertainty and arbitrariness in the political game. The voice of the people and the popularity of presidents and elected officials are unstable. The popular leader of today might become the hated politician of tomorrow.

## 6. Conclusions

This article has demonstrated that, whereas when seeking office populist promise to improve democracy, their practices in power are more ambiguous as they include the excluded on the condition of loyalty to the leader. The logic of populism transforms politics into an antagonistic confrontation between friends and enemies politicizing almost all social and political spheres and reducing institutional democratic spaces to the opposition. Without institutional spaces, political and economic elites had resisted populism by all means including coups d'état. When they did not call the military to solve civilian problems, they instrumentally used laws to stop populists from ever coming back to office. Populists and their opponents invoked the term democracy to often justify unconstitutional actions. Therefore, one can seriously question whether populists or their rivals can be seen as pristine "democrats". It is more fruitful to explore their actions in particular historical conjunctures when the meanings of democracy were at stake.

We have argued that under populist regimes in Latin America political and social rights have had priority over civil rights. Classical populists like Perón enlarged the franchise and used the vote to bestow legitimacy onto their presidencies but restricting the rights of his opponents. His followers obtained political and social rights, whereas civil rights were given on the condition of loyalty to the leader. The populist logic of polarization provoked the antagonist struggle between two camps. In their zeal to exclude their enemies, populists used laws to punish critics and to limit their rights. After removing the populist coalition their rivals also twisted laws to try to stop the populists from returning to office and to erase their legacies. Democracy hence became a very conflictive game and the history of Latin America was marked by the cycles of populism-liberal democracy-military regime.

At the turn of the twenty first century radical populists invoked the unitary will of the people to convene constituent assemblies to enact change. In the name of the people, plebiscitarian democracies were created. Even though rights were expanded, power was concentrated in the executive and in the central administration, accountability was reduced, and the rights of association and information were curtailed. The logic of antagonism between friend and enemy transformed politics into existentialist struggles between two camps, forcing bystanders to choose sides. These nations lived process of democratic erosion, yet the outcomes of populism were different.

Under Maduro Venezuela became a tyranny. After losing congress to the opposition, Maduro took away powers from the legislature, called for elections for a new constituent assembly, and used brutal repression against the opposition (López Maya 2018). Morales was overthrown after massive mobilizations against his attempt to stay in power indefinitely. In Ecuador the transition to post populism had an aura of legality. Moreno called for a consultation arguing that it expressed the unitary will of the people to clean the state from Correa's cronies. Unfortunately, instead of strengthening institutions and the rule of law, their actions contribute to uncertainty and arbitrariness, jeopardizing their efforts to reconstitute democratic institutions and coexistence.

Political confrontations between two antagonist camps weakened pluralism, constrained free and open debates in the public sphere, and led to institutional weakness. Under these conditions, institutions cannot effectively shape behavior, but are commonly disrespected with impunity; if enforcement is lax and actors simply fail to follow the official rules, formal institutions lack relevance. Second, institutional weakness also prevails where institutions can be changed at will. Malleable institutions do not constrain current power holders; instead, they turn into instruments that incumbents can use to pursue their goals, including the concentration of power and curtailment of the opposition. The law then serves not as essential scaffolding of democracy, but as a building block for authoritarianism (Weyland 2020: 392).

Under populist polarization it is difficult to forge strong institutions that last over time and whose rules are obeyed at the risk of sanctions (Levitsky and Murillo 2009: 123). Hence, it is important to differentiate populist inclusion from democratization. Whereas Latin American populists often included the politically, economically and culturally excluded, they do not guarantee that institutions would work to recognize political and civil rights for all the population. Populist inclusion was giving on the condition of surrendering to the leader and any divergence could transform critics, even former travelers, into enemies of the leader, the people, and the nation. The leader was constructed and acted as the embodiment of the unitary people and was unbounded by formal procedures including constitutional provisions.

Differentiating inclusion for democratization allows to correct two common misconceptions about the relationship between populism and democracy. The first is the empiricist assertion that populism could be the friend or foe of democracy (Mudde and Rovira Kaltwasser 2012). Our review of the most inclusionary types of populism such as Peronism or Chavismo illustrated that they were inclusionary but not democratic. The second is based on the two strands theory of democracy that argues that liberal democracy is the result of the historical conjunction of the liberal component that protects rights, and the democratic side based on equality and popular sovereignty (Mouffe 2018: 14). Perón and Chávez according to this interpretation could be label as promoting an anti-liberal path of democratization.

We disagree because without fundamental liberal freedoms, and the possibility that all citizens have to appeal to the rule of law against state functionaries and elites there is no democracy. Civil liberties allow the self-organization of people in civil society and protect the public sphere from interference by the government, while treating all persons as equals under the law. Without rights that safeguard the independence of civil society and the public sphere democracy could not flourish. Under populism open debates among citizens protected by the rule of law are replaced with the idea that the leader is the mouth and the voice of the authentic people, "opinions and decisions that counter the populist people are constantly chastised, mocked, and rejected as a conspiracy among elites" (Urbinati 2019: 168).

Recognizing the importance of liberal freedoms is not the same as having a static view of democracy. As O'Donnell (1999) argued democracy is a moving horizon and an unfinished project that depends in great part on the freedoms and rights that citizens have to collectively deliberate in the public sphere and to form or-

ganizations in civil society. Populism provokes a catastrophic stalemate between two antagonistic camps. It could only be resolved if one side --either the populists or its enemies-- defeat the other. Historically both forces have been unable to permanently defeat each other, and hence those temporarily defeated have become in time the new victors that overthrow the institutions created by their foes to marginalize them.

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