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**DEMOCRACY UNDER SIEGE**  
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## DEMOCRACY UNDER SIEGE<sup>1</sup>

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### RESUMEN

La democracia moderna buscó resolver los dilemas que le presentaban los encontrados elementos provenientes de distintas tradiciones por medio del doble recurso de la representación que permitía incorporar los intereses contrapuestos de la ciudadanía en un cuerpo colegiado reducido, dentro del cual era posible la deliberación y el acuerdo, por un lado, y la elección universal de los representantes y mandatarios por períodos acotados, por el otro. A esta concepción de la democracia dentro del marco de una constitución republicana se opuso desde las primeras décadas del siglo XX otra que rechazaba toda forma de parlamentarismo, de discusión y deliberación pública en nombre de una “democracia” basada en la identidad y homogeneidad de una masa bajo la conducción hegemónica de un partido, centrado en la voluntad y la decisión de una cúpula dirigente y de un líder carismático, que se alzaba como único representante de los intereses de aquella. Ambas formas, la estricta y la desviada, de democracia están bajo el acoso de las fuerzas desencadenadas por la globalización y la transnacionalización y tienden a convertirse en

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oligarquías ajenas y contrarias a la ciudadanía y restrictiva de sus derechos.

En las democracias parlamentarias liberales, el imperativo funcional proveniente del sector financiero se canaliza mediante un gabinete de crisis que metaboliza las demandas y las transforma a través de un manejo presupuestario cambiante, destinado a imponer siempre nuevas penurias al grueso de la población, sin que ésta pueda contrarrestarlas más que por la protesta. Dado el trasfondo constitucional con su profundo entramado democrático que tienen estos regímenes, la paulatina transformación de la Unión Europea en un espacio transnacional regido por un “club de jefes de estado” ha hecho más evidente el desvío oligárquico en su evolución post-crisis.

En las democracias plebiscitarias, el cambio se hizo mediante un repliegue soberanista del poder oligárquico, bajo el pretexto de resistir a la presión de la globalización. Desde los años noventa, existe no sólo en América Latina sino también en otras naciones, como las de Europa del Este, un paulatino desvío hacia formas de “democracias delegativas”, según las designó O’Donnell, o de neo-populismo, según otros autores. Estos regímenes están caracterizados por el encumbramiento de un líder populista que se presenta como un salvador que habrá de pulsar directamente las necesidades y deseos de la masa de individuos, especialmente de los que se sienten excluidos de la corriente central de la democracia institucionalizada. Así se retroalimentan los regímenes populistas sustentados sobre un partido hegemónico, que se nutre con los recursos tanto del estado como de la corrupción protegida por éste para solventar los medios con los que sufraga una base clientelista de marginados del sistema por sus mismas políticas.

*Palabras clave:* Democracia – Oligarquía – Globalización – Capitalismo Financiero – Crisis – Populismo

#### ABSTRACT

Modern democracy attempted to solve the dilemmas posed by opposing features from various traditions through two strategies: representation, which allowed it to incorporate citizens’ conflicting interests within a restricted collegiate group that permitted deliberation and agreement, on one side, and universal choice of representa-

tives and governments for limited periods of time, on the other. Since the first decades of the 20<sup>th</sup> century, this notion of democracy within the framework of a republican constitution was opposed by another one that rejected all forms of parliamentarianism, discussion and public deliberation in the name of a “democracy” based on the identity and homogeneity of a mass of people under the hegemonic leadership of a party, centered around the will and decisions of a managing elite and a charismatic leader, viewed as the sole representative of the people themselves. Both forms of democracy –strict and perverted – are being harassed by the powers unleashed by globalization and transnationalisation that are becoming alien oligarchies, opposed to the notion of citizenship and restrictive of its rights.

In liberal parliamentary democracies the functional imperative issued by the financial sector is channeled through a crisis cabinet that assimilates demands and transforms them by managing an ever-changing budget whose aim is to add new sufferings to the bulk of the population that can only counteract through protest. Given the constitutional backdrop of these societies, with their deep democratic network, the gradual transformation of the European Union into a transnational arena fuelled by “a club of chiefs of state” has only made yet more patent the oligarchic turn of its post-crisis evolution.

In plebiscite democracies the turn was operated through a sovereign entrenchment of the power of the oligarchy on the pretext of resistance to the pressure set by globalization. Since the onset of the 90s, Latin America as well as countries in Eastern Europe have witnessed a gradual turn toward what O’Donnell has termed “delegative democracies”, or neo-populism, according to other authors. These regimes are characterized by exalting a populist leader, upholding him as a savior who will gauge the needs and wishes of the mass of individuals without intermediaries, focusing mainly on those who feel excluded from the mainstream of institutionalized democracy. This ensures feedback to populist regimes supported by a hegemonic political party that lives on State resources and on the rampant corruption it protects in order to finance ‘clientelism’ among those excluded from the system by the policies of the State itself.

*Key words:* Democracy – Oligarchy – Globalization – Financial Capitalism – Crisis – Populism

1. I shall use the terms “oligarchy” and “democracy” in the strict sense employed by Aristotle in *Pol.* IV, 1290a 14-18: power limited to the few individuals who concentrate all the magistracies within the same group of closely linked persons, on the one hand, and more widely distributed power, on the other, among groups alien to each other who occupy positions in different sectors: administrative, legislative and judicial so as to avoid the various spheres being allotted to the same group of individuals. The choice of this binary classification of constitutional regimes in analyzing the complex political situation witnessed by the world at this point in time is based on a reason. In the course of the first couple of decades of the 21<sup>st</sup> century democracy has been fenced in and shows a defensive attitude in the face of harassment through several means by various dominant groups striving to amass the full range of power, particularly in administrative and judicial spheres, thus turning citizen deliberative participation into a relic of the past.

The two political powers that are sometimes coalesced under the label of an identical system – “democracy” – when discussing “mass democracy” or “plebiscite democracy” are in fact blatantly opposed, both in historical and political terms. Modern democracy attempted to solve the dilemmas posed by opposing features from various traditions through two strategies: representation, which allowed it to incorporate citizens’ conflicting interests within a restricted collegiate group that permitted deliberation and agreement, on one side, and universal choice of representatives and governments for limited periods of time, on the other. Since the first decades of the 20<sup>th</sup> century, this notion of democracy within the framework of a republican constitution was opposed by another one that rejected all forms of parliamentarianism, discussion and public deliberation in the name of a ‘democracy’ based on the identity and homogeneity of a mass of people under the hegemonic leadership of a party, centered around the will and decisions of a managing elite and a charismatic leader, viewed as

the sole representative of the people themselves. Both forms of democracy – strict and perverted – are being harassed by the powers unleashed by globalization and transnationalisation that are becoming alien oligarchies, opposed to the notion of citizenship and restrictive of its rights.

From the very beginning of institutionalization in the international arena in the aftermath of the Great European War there was an opposition between two different conceptions – from both a political and juridical perspective – of the mutual delimitation between the positive law of each State and international law. On one hand, liberal jurists like Hans Kelsen, a clearly relevant name, advocated the continuous line between both laws, since the protection and regulation of rights and freedoms of individual subjects in domestic law should be matched by the mutual acknowledgment of the legitimate representation of all peoples organized within a well ordered state as well as the assurance of the state’s self-determination and peace in its foreign affairs. On the other hand, the authoritarian conception of theorists of realism, such as Carl Schmitt, another conspicuous name, who rejected any close connection between both rights, underscored the absolute supremacy of the right of every sovereign state and deprecated international law as a mere protocol of status quo (Schmitt 1938: 9).

The rift that divides these two notions since then is based on two patently opposite views on the domestic political regime of states. On the side of a robust international law conception, we have the interpretation of modern democracy as the inheritor of two traditions: popular sovereignty, under the structure of representative democracy that takes in the mixed republican constitution model, and that of innate subjective rights –in Kant’s terms. The latter draw from various sources and found their way through several constitutions in America and Europe until they were gathered in, enlarged and universally proclaimed in the Declaration of Human Rights at the 1948 UN General Assembly. On the side of a weak international law conception, we face the ongoing attempt to drastically

alienate the will of the people as the essential core of democracy from the entire liberal tradition of rights and warranties, as well as from parliamentary representation as the site of deliberation and discussion that shapes the opinion of the majority and even from elections as the sum total of individual votes (Schmitt 1996=1926: 30-41).

2. The fall of real socialism and the swift global spread of capitalist economy, particularly that concentrated in the financial sector, as from 1990, has systematically undermined the social foundations and, consequently, democratic policies and has proceeded to replace them by novel political regimes. According to renowned economists, the most important landmarks of this evolution of the global economy that converged in the recent USA economic crisis, closely followed by Europe and the rest of the world are:

a) The repeal of the 1933 law known as the Glass-Steagall Act by the US Congress in 1999. It was passed in a harsh period of the Great Depression (1933) and created a Federal Deposit Insurance Corporation (FDIC) for bank deposits up to a given amount and sharply separated commercial banks from investment banks, forbidding the former to gamble with bonds and other financial instruments with the funds of their clients. In the early 1960s it was weakened under the de-regulatory pressure of large banks, its repeal left the entire financial sector in the hands of the alleged “self regulation of the market”. As a result, the largest commercial banks doubled their scope through purchase of or affiliation with investment banks and by increasing their operations through ever-riskier securities activities. They finally became immune to an eventual bankruptcy due to the dramatic consequences it would cause in domestic and global economy. One of the highest risk operations was the securitization of mortgages, turning them into bundles that were subsequently sold as bonds to

third party investors; the so called ‘sub-prime mortgages’, that amounted to trillions of dollars. The bankruptcy of Lehman-Brothers spelt the fall of the entire financial structure paving the way to the worst economic crisis (2007-2008) since the Great Depression. The crisis manifestly showed the colossal detrimental influence played in its onset by the unfettered growth of a non-regulated financial sector ever more avid of obtaining gains at the cost of the rest of the economy, despite which the steps taken to regulate its operation through new regulations have been scarce and lukewarm (Stiglitz 2010: 13-37).

b) The World Trade Organisation came into being in 1995 after protracted negotiations. Its purpose was to replace and expand the Bretton Woods agreements. As part of new regulations on international transactions involving services, the most developed countries obtained the suppression of controls and barriers for transnational financial operations, particularly liquid capital that might thereafter be simultaneously negotiated in distant markets. The novel regulation was coupled by the corresponding policy sponsored by the International Monetary Fund whose loans to developing countries would depend on the latter’s liberalization of their financial markets. The new economic policy was most extensively applied in South East Asia, Latin America and Eastern Europe, recently converted to capitalism. It enjoyed some initial success as it channeled substantial otiose funds to economies in obvious need of them to expand their investments and promote development. Success, however, was illusory: between 1997 and 2001 there was a chain of successive crises that began in South East Asia, followed by Russia, Brazil and finally Argentina. In its wake, countries were left with a huge external debt and enormous difficulties to obtain new credit, which led to massive depression. Just as it had flocked in, financial capital also left *en masse* at the first signs of hardship –real or imaginary– in indebted countries (Rodrik 2011: 89-111). The

same phenomenon has been replicated in euro-countries in the South of Europe and Ireland and threatens the very existence of the Euro zone.

c) As a result of this protracted crisis, economic growth has been slackening in developed countries, leaving large numbers of unemployed that comprise one quarter of the active population in some countries in Southern Europe, especially young people just arrived in the labor market. Latin American countries have gradually overcome the deep crisis of the end of the 20<sup>th</sup> and beginnings of the 21<sup>st</sup> centuries, Brazil and Argentina in particular, although a considerable percentage of the population is still barely above the poverty line. The income gap between the wealthiest sector of the population and the medium or low-medium sectors has deepened within each country and between countries, both in developed and developing countries. Briefly, the legacy of over a decade of global financial and economic crisis is a tighter concentration of wealth and increased inequality, within as well as among countries.

The persistent threat of a huge floating mass of funds ready to invest in speculative operations against sovereign bonds and currency that can lead relatively indebted countries to default within a brief period of time has become a powerful lever to subdue democratic governments that oppose them. This has resulted in limiting political decisions to an ever more restricted circle of persons who work under the unflinching extortive pressure of financial markets. The latter also refer to international or regional agencies –such as the European Commission– as official intermediaries. The immediate effect is the undermining of the representation of the interests of citizens as a whole that have been increasingly encroached by the agents of a concentrated and powerful minority that sets its own interests above the needs of the majority. The rise of a new oligarchy is patently manifest in the appalling pressure endured by crucial institutions of the welfare state in all developed countries.

In liberal parliamentary democracies the functional imperative issued by the financial sector is channeled through a crisis cabinet that assimilates demands and transforms them by managing an ever-changing budget whose aim is to add new sufferings to the bulk of the population that can only counteract through protest. Given the constitutional backdrop of these societies, with their deep democratic network, the gradual transformation of the European Union into a transnational arena fuelled by “a club of chiefs of state” has only made yet more patent the oligarchic turn of its post-crisis evolution (Habermas 2011: 49-55).

On the other hand, in plebiscite democracies the turn was operated through a sovereign entrenchment of the power of the oligarchy on the pretext of resistance to the pressure set by globalization. Since the onset of the 90s, Latin America as well as countries in Eastern Europe have witnessed a gradual turn toward what O’Donnell (2009) has termed “delegative democracies”, or neo-populism, according to other authors (Weyland 2001; De la Torre 2009; Guariglia 2011). These regimes are characterized by exalting a populist leader, upholding him as a savior who will gauge the needs and wishes of the mass of individuals without intermediaries, focusing mainly on those who feel excluded from the mainstream of institutionalized democracy. This feature of redemption has always characterized both traditions: extreme and popular republican democracy, inherited from the representative republic. Consequently, it is no surprise that the masses stirred by hopes of salvation, spurred by the leader’s charisma, should feel that their power added to that of the leader who represents them directly is above the other powers –legislative and judicial– as well as above and beyond constitutional and even international regulations, such as the Conventions that ratified the Universal Declaration on Human Rights: civil and political and economic and social (on Chavez, Correa and Morales, cf. De la Torre 2009: 25ff). This zeal, exhibited as a rejection of the liberal tradition in ethics and politics, is emphatically defen-

ded by the most zealous champions of populism as an enduring bipolar political system (Mouffe 2000: 13-17; Laclau 2005: 150-161, 199 ff).

**3.** In view of a continuous chain of financial crises in developing countries, economist Dani Rodrik put forward a hypothesis related to the insurmountable obstacles that prevent globalization and democracy in national states from functioning harmoniously. He suggests what he terms “the political trilemma of the world economy”: it spells a triangle that cannot be closed because the union of two of its angles excludes the third. The three angles are: hyperglobalization –the nation-state – democratic policies. In order to attain full integration into the global economy, a country must submit to a golden straightjacket that dramatically restricts its choices: general reduction of goods and services import fees to subdue its industrial sector and services to the pressure of competition in the world market; elimination of any barrier that may stop the free flow of financial capital; strong cuts in public expenditure to avoid incurring in deficit above a low percentage of the gross domestic product that would cause mistrust among speculative investors; consequently, an ongoing pressure to lower salaries, pensions and welfare state services, etc. All these measures eventually stir citizens’ rejection. The latter may be voiced directly, as was the case with the protests that shook Argentina in December 2001, or by the surge of populist movements that promise to carry out opposite policies, or both, as was the end result of the frustrated Argentine experience. Briefly put, hyperglobalization and domestic democracy are incompatible.

The alternative left, namely: each state would have the space to carry out policies to keep the benefits of the welfare state, protect their industry –particularly the most promising ones, even if still in their initial stages– and services to guarantee low levels of unemployment, necessarily requires set-

ting up barriers to protect countries from an indiscriminate opening to global markets or, in other words, to shield them from abrupt changes in capital flows caused by globalization (Rodrik 2011: 184-205). In brief, nation-states wishing to enact their own policies and respond to the domestic demands of their citizens should not submit to the rules of hyperglobalization.

At the same time, this isolation has been deeply detrimental for democracy as an economy enclosed by high tariff barriers requires a large bureaucracy that will hold a wide discretionary control of all commercial transactions on one hand and, on the other, it brings about crony capitalism within the country that will swiftly slide to a corrupt oligarchy headed by a dominant elite formed by a network of political agents and privileged businessmen. This ensures feedback to populist regimes supported by a hegemonic political party that lives on State resources and on the rampant corruption it protects in order to finance ‘clientelism’ among those excluded from the system by the policies of the State itself (Guariglia 2010b: 183-215). Consequently, preventing the other two powers –legislative and judicial- from honoring their tasks of control and debate of public affairs proves crucial for the survival of populist styles of government.

**4.** Let us go back to the most relevant issue raised by Rodrik: the incompatibility between globalization in a wide sense and constitutional democracy. Several stances have been put forward. We will divide them into two groups: I) full incompatibility and II) several degrees of incompatibility, from a full sense to a very restricted one.

I) There are two groups that support full incompatibility, each supporting opposite policies. Both hold a traditional realist skepticism that admits hyperglobalization of the media as well as of financial markets and those of international trade

as an irreversible fact of the current phase of capitalism. In view of the unavoidable pressure of competition, it requires to jettison the welfare state from national democracies. Two diametrically opposite policies ensue from this thesis: one of them promotes strict protectionism within domestic frontiers, dualist parochialism in the judicial sector that demeans international law to mere temporary treaties and relativizes human rights within its field of action, selecting those that serve their own purposes and rejecting all others. The other policy admits hyperglobalization, the agenda of a minimal state, gradual dismantling of the welfare state, curtailing human rights exclusively to those protecting civil and political rights and rejecting any normative commitment to solidarity, development and global justice (Nagel 2005: 113-147; Keohane-Macedo-Moravcsik 2009: 1-31).

ii) On the other side, compatibilists include several groups according to the degree of compatibility they will admit. I shall only refer to the most representative ones. Those that admit full compatibility between a liberal constitutional democracy and a system of international law based on multilateral treaties and the Universal Declaration and Conventions on human rights, hold that every human person has a duty toward another individual who is in need within an institutional structure that lies beyond national frontiers and includes the entire planet (Pogge 2002, 2007: 11-54; Caney 2007: 275-302; etc.). The second group acknowledges some reasonable difficulties to reconcile the normative structure of a republican constitutional democracy and the requirements of adapting to a “robust international right”, that includes both multilateral treaties and the Universal Declaration and Conventions on human rights, civil and political as well as economic and social (Buchanan – Powell 2008: 344-349; Sengupta 2007: 323-344; Guariglia 2007: 345-357; 2010: 123-140).

In what follows, I shall summarize my own proposal, in line with the second group. The first point is a general specification

of domestic and international law which, from the perspective I support, are seen as a continuum, despite the hindrances that some conflicts may cause to certain norms in particular. Naturally, in order to guarantee that it is actually a continuous system, we must first establish a hierarchy between norms from various sources and differing in content. Over the past three quarters of a century there has been growing consensus on the existence of *jus cogens* that no treaty can oppose because it lies at the very root of every law of peoples (Charney 1993: 529-551; Shelton 2006: 291-323). Since the start, the validity of human rights was always at the top in the hierarchy of regulations. It was reinforced after the creation of the UN through its clear mention in Art. 1 (3) of the Charter as one of the main aims to be furthered; its contents and reach were subsequently stated in the Universal Declaration, 1948. Therefore, the protection of these rights *in toto* is a central aim that limits the reach of any other regulation or treaty regulating specific political, economic or social aspects.

Applying this principle within the structure of a constitutional democracy may often require its dynamic adaptation to the requirements of prior international law, not only among declarations but also in law-making and the administration of justice. On the other hand, the only sure way to honor this requirement is through the consolidation, expansion and extension –regardless of frontiers– of the methods and procedures pertaining to democracy: warranty of equality among citizens, which includes the right of equal access to and participation in public service (Art. 1 & 21 DHR), the right to freedom of opinion and expression and to receive and impart information and opinions through any media available (art. 19, DHR); the right to enjoy a standard of living adequate for health and well-being of himself and his family (art 25, DHR), etc.

How is it possible to match respect for this set of rights with the huge pressure of economic globalization and financial markets, in particular, with the open or underhand support of



international institutions such as the International Monetary Fund, at least during the shameful period of the “Washington Consensus”? (Williamson 2004; Rodrik 2011: 164-73). How is it possible to counter that pressure and balance the opportunities offered by the new stage of international trade for the development of developing countries with the required protection of the work force and domestic industry that may succeed and grow in competitiveness against distant and more highly favored producers, without falling into a situation where citizens are compulsively locked within national frontiers with an actual prohibition to cross them (against art. 13, DHR). It is impossible to go into the details of a complex proposal to overcome, at least in Latin America, the double menace of an oligarchic turn, on one side, toward a substitution of the entire range of citizens’ interests through the conquest of power by the representatives of a potent and concentrated minority that sets its own financial interests ahead of the needs of the majority, as in the case of republican democracies, for example. And on the other side, toward the concentration of all power in the hands of a populist leader and a hegemonic party that strives to discretionally control and fulfill all the functions of the state. The cure for democracy is more democracy. In other words, if a democracy is locked within the frontiers of a national state and regularly weakened by the ongoing harassment of financial speculation or the political imbalances of international organizations, no way out is more promising than to extend democracy to regional international organizations, with common interests and aims in connection with their defense and to set up ends that are shared by all. Expanding democracy implies far more than creating exclusive clubs for chiefs and bureaucrats who meet once a year and strive to outdo each other with hollow presentations and pompous speeches. It requires to create common arenas for deliberation and discussion, open to citizens from all the nations involved, where specific problems can be presented and analyzed, issues that somehow or other all present must face, and suggest alternati-

ve solutions that will be studied and developed by expert committees and eventually approved to be defended in common in international forums. Mercosur, the Andean Community and the recent –albeit still vacant– Unasur might be a first step toward the creation of this international arena for effective publicity and communications, toward the creation of public opinion rooted in deliberation and reasonable debate whose liberating sap may feed a future transnational democracy. No doubt, this opening toward an extension of democratic procedures beyond national frontiers will require a profound analysis of those very procedures within frontiers, limiting the intolerable discretionary, secretive and self-interested power, both of oligarchies based on their financial power as well as those that, under a pretense of protecting the needy, increasingly infringe the human and constitutional rights warranted by democracy.

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