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**COMMENTS TO OSVALDO GUARIGLIA'S  
"DEMOCRACY UNDER SIEGE"**

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## COMMENTS TO OSVALDO GUARIGLIA'S "DEMOCRACY UNDER SIEGE"

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### RESUMEN

Estos comentarios examinan las instituciones democráticas transnacionales que, en un artículo publicado en este mismo volumen de la RLFP, Osvaldo Guariglia defiende como forma de limitar a los dos grupos oligárquicos que amenazan a las democracias contemporáneas. Este examen plantea dudas sobre dos aspectos de esa defensa. En primer lugar, sobre su fundamento conceptual –el derecho humano a la democracia– y, en segundo lugar, sobre su carácter democrático, especialmente cuando es evaluada desde una perspectiva de democracia radical.

**Palabras clave:** Democracia – Justicia global – Participación política

### ABSTRACT

These comments analyze the transnational democratic institutions that, in an article published in this volume of RLFP, Guariglia defends as a limit to the two oligarchic groups that menace the contemporary democracies. This analysis raises doubts concerning two features of Guariglia's defense. First, it questions his conceptual foundations –the human right to democracy– and, second, it questions its democratic nature, which is problematic when it is assessed from the viewpoint of radical democrat views.

**Key words:** Democracy – Global justice – Political participation

In an article published in this volume of RLFP, Osvaldo Guariglia begins with an acute diagnosis of the threats to democracy posed by two oligarchic groups. On the one hand, decentralized economic groups which have the immediate capacity to endanger the stability of the policies chosen from a democratic government. On the other hand, populist sectors and political parties which combine political realism, dogmatism and a direct and confessional relation between the Leader and the masses, in order to destroy the checks and balances that limit the permanent accumulation of power.

Facing this dismal diagnosis, Guariglia proposes that “the cure for democracy is more democracy”. I agree with that. However, I have some doubts that I would like to explore here concerning this solution. First, I will analyze if the solution is duly justified and second I will explore if that solution is really democratic.

Concerning the conceptual issues, the argument is mainly supported on the existence of a human right to democracy. That human right is, according to the author, more demanding and more enforceable in societies which already have a democratic constitution. The reasons for the validity of this human right are elements contained in the articles 1, 19 and 21 of the Declaration of Human Rights enacted by United Nations and in a growing tendency to defend the priority of the International Law over the domestic law.

Nevertheless, the issue is not so simple. The immediate question after this argument is how this priority is justified. Guariglia would not be able to answer to this question by claiming that International Law affirms a set of rights which better protects human rights as this would be question begging. I think that Guariglia would argue, instead, that a human right to democracy is a precondition for assuring human rights in general. If this is his more fundamental argument, he would confer a privileged status to the human right to democracy but that would have to be more fully justified.

Another conceptual doubt arises from the distinction posed

by Joshua Cohen between the right to democracy as an element of a just society and a right to democracy as a human right. If this distinction is plausible, which I think it is, I would like to ask what difference this premise makes in terms of his argument. In other words, my question is: how could Guariglia defend democracy as a solution to the two oligarchic menaces mentioned without endorsing Cohen’s view?

If Guariglia followed Cohen’s strategy, he could not defend the solution he opposes to the attack of economic and populist oligarchies and his diagnosis would be even more obscure. The solution that the author argues for is to create transnational democratic institutions, proposed initially for regional blocs such as Mercosur, Unasur, the European Community, and so on, that should not become mere business clubs and political leaders assemblies but remain bounded to common deliberative spaces and civic participation.

The human right to democracy premise seems to be necessary in order to exert democratic control on these transnational institutions which should also be responsive to the citizens’ claims. In other words, if the human right to democracy did not exist, these transnational institutions would neither need to be responsive to democratic inputs nor to their democratically elected leaders. The explicit problem with this is that even if the limitation to oligarchic powers were one of the main public and explicit goals of these institutions, nothing would assure that that goal would be achieved without an extensive political participation and especially without a genuine interest in deliberative interaction. I think this argument that Guariglia could potentially formulate is interesting but at the same time it sounds too instrumental. So, his foundation of the human right to democracy seems to be incomplete.

In respect to the democratic character of Guariglia’s proposal, I would like to explore now some tensions in it, but let me first use a real example of a transnational institution. Let us consider, for instance, the newest transnational institution in Latin America which Guariglia generously qualifies as empty:

Unasur. The 14<sup>th</sup> article of its Constitutive Treaty states: “Political consultation and coordination among the Member States of UNASUR will be based on harmony and mutual respect, strengthening regional stability and supporting the preservation of democratic values and the promotion of human rights.”

As we all know, one of leaders and founders of Unasur, Venezuela, has recently initiated the process of withdrawal from the Inter-American Court of Human Rights, one of the institutions that had more ample and beneficial effects in the history of the fight against the bloodiest dictatorships in the continent and the effective exercise of human rights. No critical public declarations have been made so far regarding this issue, neither by Unasur itself, nor by the Member States or their presidents.

This constitutes, then, an example of a transnational institution which publicly recognizes human rights as well as democratic values but in practice allows a state member to free itself from an important and recognized instrument for the effective and transnational protection of human rights.

No doubt, we have to be prudent on this evaluation: Unasur is a rising institution with little influence and political impact except for some political declarations and for the expulsion of Paraguay after the unfair and speed trial to ex-president Lugo. Venezuela’s decision can still be reversed and we still do not know if it is not just a way of putting political pressure on the Inter-American Court of Human Rights rather than a move to free the country from its surveillance.

Guariglia could obviously say that this example confirms his argument: when transnational institutions are not responsive to open and egalitarian deliberations from citizenship, they are free to interpret the protection and promotion of human rights in any way they want, even if these are clearly opposed to a real protection.

However, an important tension arises in this argument and I would like to explore it in some depth. Guariglia firmly believes in the republican principle of separation of powers as a

way to limit the accumulation of power. Thus, answering to the factual existence of huge and concentrated powers –the populist leader who formally or informally concentrates full public and economic power– Guariglia believes that the creation of new political agents is enough to control these powers. Since most traditional nation-states are incapable of performing this task, these new agents should have enough power and should also be transnational.

The problem illustrated by the UNASUR affair is, nevertheless, that the creation of transnational entities is not sufficient to defend a plural, fair and deliberatively arranged domestic democracy, nor to build a transnational communicative power developed from deliberative and inclusive processes or to secure the fulfillment of human rights.

If this is so, the creation of these new transnational institutions may entail serious risks. The reason for this is that the creation of these bureaucratic-political authorities may interpose even larger barriers to citizen inputs. It is known that as long as political power concentrates in an institution, an egalitarian distribution of power decreases; bigger institutions amount to a decrease in democratic control. Is it not this the field for populist leaders who pretend to speak in the name of those excluded from institutions? Isn’t it the same risk foreseen by Kant when he condemned a world government as necessarily despotic? In other words, I think this solution to the menaces to democracy rightly identified by Guariglia may show clear deficits in terms of democratic control. In view of these considerations, let me ask: Who would be in charge of controlling and monitoring these transnational institutions?

Although Guariglia acknowledges that these institutions should be responsive enough to the claims of citizens and to their interests and that they should create the conditions to the generation of a communicative transnational power, his main solution is essentially institutional. But he never explains how to build more powerful channels of interaction

between citizens and these institutions and how to empower citizens.

Perhaps Guariglia could reply to this worry in the following way: it is much more realistic to build new transnational institutions than to build, maintain and be confident in the correct functioning of spread transnational channels for communicative power. It is much more realistic to create new institutions than to change the citizens' public practices. How could anyone, Guariglia may ask, realistically believe in the communicative power of sincerely concerned citizens and in their capacity to control and limit the faceless corporative and economic power or the single, unique and dogmatic populist leader? Be this as it may, I would like to point out some radical democrat proposals which I am sympathetic to and then consider if they are compatible with Guariglia's solution.

James Bohman distinguishes two kinds of reactions to hyper-globalized societies (2007: 19-57). The first, named *gradualist*, seeks the creation of institutions analogous to nation-states and attempts to give them sufficient power to enforce the required laws. In last stance, gradualists pretend to expand the demos constitutive of democracy. The second, deemed *transformationalist*, sees the challenges posed by democracy as requiring a deeper and structural transformation of democracy, one which includes replacing the political subject of demos for the more decentralized and transnational *demos*.

James Bohman rejects gradualist proposals –I think Bohman would include Guariglia's proposals within this class of conceptions– on the basis that a deep social, structural and cultural modification in the nature of the public sphere is taking place. This modification in terms of the public sphere allows new forms of publicity and the transnationalization of communicative and deliberative power. While in the past the public sphere was defined by national frontiers, now multiple public and decentralized spaces seem to exist. This decentralized public spheres are not unified by a nation but agents who engage in reflexive and democratic activity; in being respon-

sive to others, participants must first actively constitute and maintain it as a public sphere. Bohman's fundamental claim is that these transnational *demos* should have enough capacity to include subjects and concerns in the international political agenda or –according to the conception defended by Dryzek– to contest decisions the decisions of transnational institutions, such as European Community and World Trade Organization (Dryzek 2005, 2006). In short, although this radical democrat solution may allow and promote vigorous interactions among new transnational *demos* and formal institutions, Guariglia does not take this solution into account unless it is mediated by his preferred transnational institutions.

In the same spirit, Regina Kreide (2012: 25-6) gives more concrete steps in the specification of this kind of radical and transnational democracy, arguing that the mere concept of popular sovereignty should be redefined to include effectively all the affected by a decision taken by transnational and international organisms and, at the same time, avoid its confinement to national borders. I just mention the three reforms proposed by Kreide: to increase the formal participation of citizens in international organizations in order to convert them into effectively representative organizations; to promote institutional efforts to force institutions acting at the international level (such as the WTO and the NATO) to be responsive to democratic decisions taken by nation-states; and, lastly, to transnationally expand the existing legal guarantees of rights, through which the equality of the deliberating partners can be achieved independently of economic and political bargaining power.

Given this very basic reconstruction of the radical approach, I would now like to explore its compatibility with Guariglia's proposal. Let me first distinguish among several radical democratic positions. A demanding radical democratic position would defend a strong connection between formal institutions and informal spheres of communicative power. To this end it could, for example, demand an equal vote for every affected citizen

in decisions taken by transnational institutions, or demand effective and egalitarian participation of every affected person in the deliberative transnational forums, or demand that the leaders of transnational institutions (WTO, NATO, WHO, etc.) be elected by every citizen in the world. Another radical –albeit weaker– democrat proposal would require connecting formal institutions and informal spheres of communication by demanding a more direct interaction between citizens, groups of interests, etc., and transnational institutions, and a more inclusive and plural input to take political decisions. This proposal is weaker in so far as it preserves the actual priority of transnational institutions over informal publics; transnational institutions and public transnational spheres remain different, the former not limiting the latter.

Would any of these radical democratic strategies be compatible with Guariglia's proposal? I think that, given his concerns regarding populism, he would find the demanding position too dangerous. After all, what would preserve these transnational institutions from the menaces registered in domestic politics? If this reasoning is correct, then Guariglia should be explicit about which sense of the polysemous term “democracy” he is using.

In conclusion, unless Guariglia provides an additional argument to reject the stronger radical position, it is doubtful that his transnational position could achieve the desired balance between oligarchic and populist menaces. On one side, if real participation from citizens is not secured in that transnational institutions, nothing prevents the creation of a new transnational oligarchy, different but oligarchic at last. On the other side, if that transnational institutions are not responsive to democratic input, new fields for populist claims are built.

In this comment, I have made two main points. First, I raised some doubts about the justification of the human right to democracy and how Guariglia used it to defend transnational institutions. Second, I have proven that the transnational

solution proposed by Guariglia in response to oligarchic and populist menaces could be criticized by a demanding radical democrat position.

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