Democratic Self-Limitation: Reexamining "The People" in the Theory of Populism

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If democracy is rule by the people, and populism appeals to the people for legitimacy, how can we distinguish a populist movement from one seeking to establish a liberal democracy? Existing conceptions of populism in political science can distinguish the two within stable electoral systems; but they cannot do so during constitutional crises, or whenever popular movements denounce the illegitimacy of state institutions, as happened in the 2011 popular uprisings in the Middle East, or in several of the last decade's "New Left" movements in South America. This paper offers a new lens for examining populism in crisis situations. I argue that to capture the difference between populism and liberal democracy, scholars must return to the normative core of modern democratic theory: the doctrine of popular sovereignty. By examining recent debates on the nature and composition of the people, the paper proposes a different criterion of demarcation between populism and liberal democracy: self-limitation. Populists, I argue, defend their policies by claiming that the people wants them. By contrast, liberal democrats also appeal to the people, but only to signal that their claims are fallible, and thus to limit the reach of their claims. The paper illustrates the thesis by applying the criterion to the contested 2006 elections in Mexico.

What is the difference between a democratic revolution and a populist uprising? 2011 saw an explosion of popular movements in the United States, Europe, and South America and most notably, in the Maghreb and the Middle East. In all these cases, protesters took to the streets and occupied public squares, but the similarities between these movements seemed to end there. The Arab Spring in Egypt, Libya, and Tunisia was often portrayed as a democratic revolution (Editorial, 2012, Weyland, 2012), but Occupy Wall Street (Lowndes and Warren, 2011, Kohn, 2013) and *Los Indignados* of Spain (Uriarte, 2012), for example, were portrayed as examples of populism. At first glance, the difference seems obvious: the uprisings in the Arab world overturned autocratic regimes, whereas in the United States and Europe the 2011 movements occurred within stable democratic regimes. However, this distinction is not as clear-cut as it may seem, because it tells us more about the type of regime that the movements challenge than about the nature of the movements' ideology. If we examine their ideologies, the comparisons among these movements are more ambiguous. For example, "Occupy Wall Street" sees itself as motivated by a revolutionary ethos inspired by the democratic Arab Spring (Economist, 2011), while others have portrayed the Arab Spring as motivated by populist ideology (Ignatius, 2011, Haas, 2012). So the ambiguity remains: if democracy is rule by the people and all these different movements claim to speak for the people, why do we call some democratic and others populist?

Populism's ambiguity is not only found in the media, it is also central to academic debates. Political scientists have long disputed the nature of populism (Taggart, 2000, Panizza, 2005, Mudde and Rovira Kaltwasser, 2012, Hawkins, 2009, Weyland, 2001,

Knight, 1998). Yet, in the last decade, spurred by the rise of right wing parties in Europe, (Mudde, 2007, Mény and Surel, 2002) and of the "New Left" in South America (Castañeda, 2006, Arditi, 2008, Plot and Semán, 2007), the last round of debates about populism in political science seems to be moving past this difficulty. While there is still controversy over which conditions are necessary and sufficient to define the concept, there is a growing convergence on the view that we can pinpoint populism's central features that allow us to distinguish between populism and liberal democracy.[1] Even if coming from different theoretical perspectives, many scholars of populism hold that populism is an ideology or discourse that adopts a sharp or "manichean" distinction between the people and the elites or foreigners, and appeals to the "general will" of the people to legitimize its claims, refusing to grant authority to constitutionally-established institutions when their decisions conflict with the purported will of the people. Liberal democrats, instead, mediate the people's will through previously established state institutions and thus accept constitutional constraints (Mudde, 2004, de la Torre, 2010, Knight, 1998, Hawkins, 2009, Kazin, 1998).

This "popular-will-trumps-constitutional-constraints" definition or ("popular will trumps" for short) is a welcome development for political scientists because it allows political scientists to produce and test hypotheses (Hawkins, 2009, Mudde and Rovira Kaltwasser, 2012). However, the definition has a blind spot that the 2011 uprisings

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[1] This type of "minimal" definition can be traced back to Worsley, P. (1969) The Concept of Populism. in G. Ionescu and E. Gellner (eds) *Populism: Its Meanings and National Characteristics.* London: Weidenfeld and Nicholson, pp. 212-50.. Those who follow this definitional strategy include Weyland, K. (2001) 'Clarifying a Contested Concept: Populism in the Study of Latin American Politics', *Comparative Politics,* **34(1),** 1-22, Knight, A. (1998) 'Populism and Neo-Populism in Latin America, especially Mexico', *Journal of Latin American Studies,* **30(2),** 223-48, Mudde, C. (2004) 'The Populist Zeitgeist', *Government and Opposition,* **39(4),** 542-63.

highlight: Whenever the legitimacy of a regime is in question—as it is during constitutional crises—liberal democrats may not be able to rely on independent institutions and accept constitutional constraints. When institutions are not widely seen as legitimate, we cannot know whether a movement is populist or liberal-democrat, because in those cases both types of movement must appeal directly to the people to establish their legitimacy. After all, it is "We, the people," who ground a democratic constitution. When state legitimacy is contested throughout society, it is unclear whether appeals to the people will ground a populist non-liberal order,[2] or they are a movement seeking to reform institutions within the existing liberal democracy. It is not surprising, then, that a second group of scholars have claimed that there is an inherent ambiguity in populism such that we cannot distinguish populism from democracy (Canovan, 1999, Arditi, 2007), or indeed, from any other ideology that seeks to establish the hegemony of one group over others and to capture the state (Laclau, 2005).

In this paper I take up the challenge to find a criterion of demarcation between populism and liberal democracy, one that works both in constitutional crises and in periods of constitutional stability. But establishing such a criterion requires that we reexamine the traits required to legitimize a liberal democracy. This is an exercise in normative democratic thinking, and thus it requires a return to democratic theory's normative core: the theory of popular sovereignty. This, exercise can shore up the project of political scientists while building bridges to the literature on populism in political theory and legal theory. Following the leads of Margaret Canovan and Nadia Urbinati, I use a methodological approach that blends normative thinking with illustrations from

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[2] These new orders could be emancipatory or autocratic. The paper is agnostic on the question of how to evaluate non-liberal populist movements.

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current politics to find a criterion of demarcation (Canovan, 1999, Canovan, 2005, Urbinati, 1998). Specifically, I turn to a recent discussion in political theory, which in the last decade has paid renewed attention to the concept of "The People." This discussion deals with the people's nature, (Ochoa Espejo, 2011, Smith, 2004) composition (López-Guerra, 2005), and boundaries (Abizadeh, 2008, Whelan, 1983, Näsström, 2011); and it assesses the consequences that holding a given conception of the people may have for democratic legitimacy (Yack, 2001, Canovan, 2005, Näsström, 2007), particularly when it comes to the people as the constituent power that grounds a state (Frank, 2010, Kalyvas, 2008, Sieyès, 2003). In this debate "openness" is associated with liberal-democracy. Several scholars whose (otherwise very different) theories inform this debate, converge on the view that liberal-democratic legitimacy requires that the people be unbounded and open to change, both in fact, and also in principle (Habermas, 1998, Lefort, 1988, Connolly, 2005, Rosanvallon, 2011, Tully, 2008). In this paper I use this insight about the people to propose a new criterion of demarcation that allows us to distinguish between populism and liberal-democracy: self-limitation. I argue that populists reject any limits on their claims alleging that they embody the will of the people, which they hold to be always right, always the supremely authoritative correct interpretation of the common good. Liberal democratic movements, by contrast, also appeal to the people, but they depict it as the framework that guarantees pluralism, and thus they also frame any particular cause as fallible, including their own. Self-limitation arises from openness: if the people can (and probably will) change, then any appeal to its will is also fallible, temporary, and incomplete.

After presenting the main thesis, the paper offers an empirical illustration: the Mexican elections of 2006, where a movement contesting the result of a very close election put into question the legitimacy of the legal order. This example illustrates the theoretical problem at hand because for a brief period there was genuine ambiguity regarding the movement's populist or liberal democratic credentials.

1.   A Blind Spot in Classical Definitions of Populism

In recent years, several scholars have revisited the concept of populism, seeking to clarify both it and its complex relationship with democracy. Out of these proposals, Cas Mudde's definition stands out because it captures what counts as correct usage of the term in politics and the media, and it synthesizes the core elements that appear in most current scholarly definitions of the term. Moreover, the definition lends itself to use in empirical research, and it helps us to think of the phenomenon comparatively (Mudde and Rovira Kaltwasser, 2012). According to Mudde, "populism is a thin-centered ideology that considers society to be ultimately separated into two homogenous and antagonistic groups, 'the pure people' and 'the corrupt elite' and which argues that politics should be an expression of the *volonté générale* (general will) of the people" (Mudde, 2004, Mudde and Rovira Kaltwasser, 2012).

This is the best example of "popular will trumps" definitions. It succinctly brings together five widely held intuitions about populism. First, that movements and leaders become populist when they sidestep institutional constraints and seek legitimacy by direct appeal to the people. The definition can thus incorporate the fact that populist

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leaders often use plebiscitarian strategies, yet it is more precise than other definitions,

(for example, (Weyland, 2001), because it does not make this trait a necessary condition

for populism. (Róvira Kaltwasser, Forthcoming). Second, that populism draws a sharp

moralized distinction between "us" (the people), and "them" (the elite, the foreigners, or

"the other"). Third, the definition clarifies an obvious difference between populism and

democracy: populism is an ideology (Laclau calls it a "discourse"(Laclau, 2005), Kazin

calls it a "persuasion" (Kazin, 1998), while democracy is a type of regime. Thus "the

people" in populist discourse is a symbolic or normative reference, rather than a concrete

collection of individuals, or a specific form of government. Fourth, the categorization of

the ideology as "thin-centered" explains populism's malleability and accounts for

geographical and temporal variations(Canovan, 2002). Finally, the definition contains a

criterion of demarcation that explains why populism does not sit comfortably with the

ideology and values of liberal democracy. This last trait is the most important for this

paper's purposes: the definition promises to help us distinguish between democratic

mobilizations and populist uprisings.

According to this criterion, which is embedded in "popular will trumps"

definitions, liberal democracy differs from populism because populists hold that politics

should be an expression of the *volonté générale* (general will) of the people, while liberal

democrats believe that a well-organized polity will constrain the people's will and allow

for pluralism (Plattner, 2010). The Rousseauvian language in the definition conveys the

populist idea that the direct, non-represented "people's voice" is equivalent to the

common good; and so the general will trumps liberalism's legal constraints. The

definition thus stresses that, for populists, the popular will has a higher authority than

representative mechanisms and institutions such as constitutional courts, the judiciary, independent electoral courts, or central banks(Mudde, 2004). According to this definition, it is by the degree to which a politician or party ideology favors the imputed people's will over liberal principles and independent institutions, that we are to determine who is a populist and when this position is a threat to liberal democracy (Róvira Kaltwasser, 2012).

As I have said, this definition is useful when distinguishing among party ideologies within settled electoral systems. But it has a blind spot when dealing with popular mobilizations that challenge the constitutional order. During such mobilizations and uprisings, especially when they successfully create constitutional crises, the distinction between populism and liberal democracy breaks down.[3] The breakdown occurs because these mobilizations occur outside the legal and recognized channels of an established political system: legislatures, courts, bureaucracies, or ombudsmen. In those circumstances, the sharp distinction between liberal institutions and the populist appeal to the "general will" collapses, because the movement in question challenges the legitimacy of those institutions that judge whether a movement complies with constitutional guarantees. So, for example, during periods of constitutional stability we could confidently say that a movement is populist if its spokesperson appeals to electoral mandates or majoritarian sentiment to undermine the rights of individuals or minorities. In such periods, we can spot a populist when she appeals to the moral superiority of the

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[3] By constitutional crisis I understand the (temporary or definitive) incapacity of state institutions to mediate conflict among political elites due to a widespread loss of legitimacy of the legal process. The source of the legitimation crisis is often related to a democratic deficit see Habermas, J. (1996) *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy,* Cambridge MA, The MIT Press.

common people as a reason for questioning constitutional constraints, the decisions of the judiciary, or other independent institutions whose in-principle legitimacy she nevertheless accepts. However, during constitutional crises this criterion is not helpful, because a liberal movement would behave in exactly the same way. Imagine a constitutional system in crisis: a country where a large part of society actively challenges the legitimacy of current institutions. These challengers may be suspicious of institutions because they believe that they are substantively or procedurally unjust. They may believe that judicial decisions are constantly biased against one group in society, that the police and judiciary are easily corrupted, or that the constitutionally enshrined rights of minorities protect a system of privilege for the elite, while effectively disenfranchising large swathes of the population. In such cases, there is a movement that does not accept the authority of those institutions which they think are causing harm, and thus it does not accept the authority of institutional constraints. Hence in such cases, a liberal democratic movement would have to appeal to the people, and against the established institutions, in order to gain the legitimacy required to enact liberal reforms. We would be talking of a moment of "higher" or "exceptional" lawmaking (Kalyvas, 2008, Schmitt, 2008, Ackerman, 1991). By proposing a new order in the name of what is right for all, a liberal democratic movement would also claim "that politics should be an expression of the *volonté générale* (general will) of the people." That is, according to the first part of the "popular will trumps" definition, in such cases, a liberal democratic movement would *also* be a populist movement. When a liberal democratic movement is extra-institutional, this definition cannot help us distinguish between liberal democracy and populism.

A liberal critic of the view I am putting forward could object that the entanglement of populism and liberal democracy in such cases is easy to resolve. If liberal principles are universal and thus independent of the uprising's concrete circumstances, an impartial judge could distinguish a liberal leader from a non-liberal. However, the reply to this objection is straightforward: when the coin of legitimacy is in the air, there is no authoritative impartial judge available. Unlike philosophical debate, which allows direct or hypothetical appeals to truth, when it comes to ideological challenges there is no higher authority than the people to judge and decide who has the right reasons. So during a constitutional crisis, there will be appeals to the people, and the relation between populism and liberal democracy will always be ambiguous in this respect (Canovan, 2005).

However, the appeal to the "general will" is only one aspect of the "popular will trumps" definition of populism. What about the definition's Manichean distinction between the pure people and the corrupt elite? Upon examination, we can see that in times of crisis this criterion cannot help us to distinguish liberals from populists either. If, during normal electoral periods, a politician claimed that society is separated into two antagonistic groups, ("the pure people" versus "the corrupt elite,") and only the people deserves to be heard, then she would be threatening liberal principles. Her views would probably be unacceptable within the liberal political system and it would be easy to recognize her as a populist; for liberalism requires the equal recognition of rights and protections for all, and does not accept the exclusion of minorities on the basis of non-liberal criteria. However, in times of crisis, a liberal movement must also make sharp distinctions and exclusions: it must clearly distinguish those who are entitled to

participate as equals in the polity from those who should be excluded. For on those occasions, in order to preserve pluralism, a liberal movement must also exclude those who do not accept the terms of the liberal constitutional arrangement, and have both the power and the will to overthrow it. This is the rationale behind banning the Nazi party in Germany, for example. Liberal institutions also require and allow for a militant defense (Kirshner, 2010) . Moreover, those excluded may in fact be a corrupt elite: given that liberal democracy seeks to establish equal rights for all, the supporters of the old non-liberal regime (i.e., the old elite) must either accept the new terms, or leave. So, during constitutional crises, liberal democrats also establish sharp distinctions between "us" and "them." They too visualize a pure people (which has the right to establish new institutions) and a corrupt elite (which supports the old ways). This tendency was at work in the streets of Cairo during Hosni Mubarak's 2012 trial: the establishment of new liberal democratic institutions moralized the relation between the (pure) people and the (corrupt) elite. In fact, this tendency may also be seen at work during periods of liberal stability: in such periods, liberal democrats often seek to exclude populists and non-liberals from the polity (Mouffe, 2005).[4]

A second critic could dismiss the ambiguity between liberalism and democracy as an anomaly, a problem that only arises so rarely that it does not really challenge the "popular will trumps" definition of populism. However, even though constitutional crises are called "exceptional" or "extraordinary" in theoretical debates (Schmitt, 2008, Kalyvas, 2008), they are much more common than they may seem. In fact, such crises

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[4] Mudde also notices populism's "similarity with much of the anti-right-wing populist discourse, which opposes in biological terms any compromise or cooperation because 'the populist virus' will 'contaminate' the democratic 'body'. Mudde, C. (2004) 'The Populist Zeitgeist', *Government and Opposition, ***39(4),** 542-63.

preceded most revolutions that instituted the liberal democratic orders in the Western world. At their inception, all current democracies had to appeal to the popular principle to establish their legitimacy. (Kalyvas, 2008, Arendt, 1990, Ackerman, 1991) The people, after all, is the constituent power in a democratic state (Yack, 2001). Moreover, even if it is true that revolutions and the foundings of new regimes occur very seldom, claims that appeal to the people to challenge or re-found existing orders are quite common.

According to Kalyvas, just such claims are made by spontaneous informal movements and extra-constitutional assemblies, which are part of the fabric of contemporary democracy; moreover, such claims may be desirable to revitalize democratic politics(Kalyvas, 2008). Even during periods of liberal stability, these claims generate what Frank has called "dilemmas of authorization." These dilemmas occur whenever popular mobilizations threaten the liberal order by not playing by established rules; or when those who call themselves liberal democrats seek to reform the liberal order from outside to make it better comply with its own rules. According to Frank, "these dilemmas appear and reappear not simply at moments of constitutional crisis but in the fabric of everyday political speech and action" (Frank, 2010). So ambiguity is present every time the legitimacy of the existing order is put into question, and this may happen on a daily basis in democratic orders. In fact, such ambiguities seem to support the view that it is impossible to tell populism apart from revolutionary politics, that "populism becomes synonymous with the political," as Laclau has famously proposed (Laclau, 2005).

So, if the ambiguity between populism and liberal democracy in this type of situation is so deep, why should we try to disentangle the terms? First, without some

clarity regarding the object of study, we cannot understand populism in specific circumstances, for example, the diffusion of and relations between popular mobilizations in 2011. But, second, and most importantly, the ambiguity poses a problem of political morality for liberal democrats. Given that many today hold that liberal democracy is the best form of political organization, describing a movement as populist rather than liberal democratic is a way of smuggling a negative normative judgment into a supposedly neutral description. Conversely, for critics of existing liberal democratic regimes, not distinguishing between types of movements gives give a free pass to any movement challenging the current order. Yet to determine whether a movement is worthy of support from a liberal-democratic perspective we can't shirk from making a distinction and an explicit normative claim. To do this, I hold, we should return to the normative core of democratic theory and ask when must a liberal democracy appeal to the people, and how this appeal differs from the appeal made by the populists. The answer to these questions should help us find a normative criterion to distinguish a populist from a liberal democratic mobilization.

2. Popular Indeterminacy and Self-Limitation in liberal democratic theory

The criterion of demarcation that I propose is self-limitation. We can see the criterion in action when a popular movement justifies its aims by appealing to the people, but depicts the people as open. That is, self-limitation is at work when the movement depicts the people as the framework that guarantees pluralism, but also frames any particular cause as fallible, including its own. Self-limitation arises from the implicit

acceptance that the people can (and probably will) change, and for this reason the appeal to the people's will is fallible, temporary, and incomplete. Such a movement acknowledges that its claims may be wrong, and it accepts temporary political defeats. This attitude opens a window for institutionalizing individual rights and creating a working multi-party democracy. By contrast, a populist depicts his movement as necessarily right, claims that the legitimating ground of government lays in the direct appeal to the people's will, and holds that the voice of the people is always indefeasible. In sum, a populist claims to speak in the name of the people, and holds that this justifies refusing any limits on her claims; while a liberal democrat, *in the name of the people,* accepts limits on her claims.

It is clear that this criterion can help us describe the differences between liberalism and populism in normal times, but its main attraction comes from its ability to tell apart movements during times of crisis. The argument for why it can do this is the following: The essence of liberalism is limited government and respect for individual rights. Yet, during crises there are no legitimate, or universally accepted, enforcers of the legal constraints on government. So, to be recognized as liberal, a movement that wishes to re-establish or reform liberal government must impose these limits on its own: It must exercise self-limitation.

However, this last point needs an independent defense. One could object that it may be easy to see that a movement is not liberal when it abuses individual rights, but it is much harder to judge whether a movement is liberal when it is trying to establish a new regime. How can such a movement claim that it represents the people and also limit its reach at the same time? How can a movement claim to be the bearer of the general will of

the people, to be the highest source of authority, and also say that these claims should be limited? My argument is that it is possible to do both simultaneously, but this requires that the movement portray the people as open, or unbounded. Moreover, I argue that openness is normative. Conceiving the people as open is required for all democrats because openness is the best response to the paradoxes in the theory of popular sovereignty, which, in turn, is a necessary part of democratic government. For these reasons self-limitation is possible and it is also a better criterion of demarcation than that offered by the popular will trumps definition.

But what precisely are the paradoxes that arise when democracies of all stripes appeal to the people to legitimize the state? Populism presents an interesting challenge to democracy. When populists claim to speak for the people they force democratic theorists to clarify what they mean by such technical terms as *demos*, and explain how the liberal democratic appeal to the people differs from the populist's. In the last decades, pressed in part by debates related to immigration, political theorists have begun to ask again who are, and who should be, the people who govern themselves in a democracy (Abizadeh, 2008, Goodin, 2007, Smith, 2008, Frank, 2010, Näsström, 2007, Ochoa Espejo, 2011). This question matters in the debate about populism because unless we answer it we cannot know who are the people that ground the legitimacy of the liberal democratic state, or understand why a liberal movement can claim that it embodies the popular will and also limit its reach at the same time.

The dominant response today is that in liberal democracies the people's boundaries are indeterminate. This conclusion follows from confronting a difficult and persistent logical problem of self-reference that arises when you try to define the people

according to liberal democratic principles. The problem is that if the question of who to include in the demos is politically important, then, in a democracy, the people should decide it at the polls. But if we need an election to delimit the demos, how do we choose the electors? This question generates an infinite regress known as "the boundary problem" (Whelan, 1983). In the last decades, similar formulations of the problem have been called "the problem of the unit," (Dahl 1989), "the paradox of founding" (Arendt 1990, 161; Connolly 1995, 138-139),," "the democratic paradox", (Mouffe 2000) "the paradox of popular sovereignty", (Yack 2001), "the paradox of democratic legitimacy," (Benhabib 2006), "the paradox of politics," (Honig 2007), and "the problem of constituting the demos." (Goodin 2007) In each of these cases, the theorists find that the principles that justify democracy also lead to the infinite regress, which is the indeterminacy at issue.

Now the regress arises because in order to sustain the principle of equality that animates democracy, all individuals ruled should be able to participate in the creation of the main institutions of rule in the polity. But if the demos is one such institution, then the very group of individuals that sustains the citizenry and the democratic state must be democratically defined. This is, of course, impossible. The individuals of a group cannot all have a say in the making of the group unless the group already exists. For that reason, a people, as an association of individuals, cannot sustain democratic legitimacy. Hence, if democracy depends on the people conceived as a collection of individuals, then democratic theory cannot tell us who are the people without getting into fatal problems, and we embark on the regress. According to some theorists of populism, there is no way out of this indeterminacy. They say that democracy requires a determined group of

individuals, even though making the determination means drawing arbitrary lines of exclusion, and giving up on universalistic liberal principles (Mouffe, 2000, Schmitt, 1985).

The upshot of this view is that democracy is structurally identical to populism: both ideologies use the name of the people to institutionalize a political order and draw a sharp moralized distinction between those who belong (the people) and those who do not (elites or foreigners). (Laclau, 2005) Yet, a different approach to the indeterminacy is available. In this approach, we can retain liberal democratic practices of legitimization and governance by keeping the people open, even though this admits indeterminacy into the democratic process.

3.   Openness: Popular sovereignty beyond unification

Openness is the main response made by contemporary democratic theory to the paradoxes of popular sovereignty. *Openness can be interpreted as an "open space" (Lefort, 1988)or as an ongoing process open to the future(Habermas, 2001), or as an activity not bounded by set rules(Tully, 2008), or a process of pluralization(Connolly, 2005).* In traditional 18th century social contract theory, the sovereign people's being open-ended was seen as a problem, but in recent years democratic theorists have argued that this is in fact a requirement for establishing liberal democratic legitimacy. The requirement for openness allows us to see why a liberal democratic appeal to the people must be self-limited, and how this liberal-democratic account of the people and its sovereignty differs from a populist view of the general will.

In the last two decades, several legal scholars have tried to address the paradoxes of popular sovereignty by conceiving the people that grounds a constitution as a diffused procedure involving institutions and citizens' interactions, rather than by equating the people with electoral majorities, or as the definite will of a group of individuals. (Habermas, 1998, Ackerman, 1991) On this conception, which is most strongly associated with Habermas's constitutional theory, the appeal to the people is not an appeal to electoral majorities or an appeal to the pre-institutional masses; instead, such appeals to popular sovereignty invoke "subjectless forms of communication that regulate the flow of discursive opinion and will formation in such a way that their fallible outcomes have the presumption of practical reason on their side." (Habermas, 1998) So the conception holds that the interplay of hypothetical principles embedded in the constitution, and the continuous challenge of popular opinion together ground the legitimacy of the liberal democratic state. We do not need to give up on democratic legitimacy if we acknowledge that the people is not constituted by a unified community, but rather by a community that changes over time, lacks a unified voice, and whose democratic institutions are never completely settled. Moreover, this constitutional process need not be seen under the lens of an ideal rational consensus, or an agreement closed at a frontier. Popular politics thus conceived "will always be open to question, to an element of non-consensus, and to reciprocal question and answer, demand and response and negotiation." (Tully, 2008)

To elaborate: "openness" can help democratic theory if it is understood as unboundedness, pluralization, and change.

a) Unboundedness

The advocates of openness argue that the people's being in principle open means, first, that it is unbounded. For these theorists, this unboundedness follows from the problem laid down in the previous section. Those who are ruled should be able to participate in creating and governing of the institutions that rule them. Yet, it is impossible that those who are ruled, or those over whom power is exercised, get to define who they are before they are ruled. This logical problem, however, does not prevent individuals from participating in changing and governing institutions that affect them now. We can thus amend the theory of popular sovereignty such that each individual is considered part of the popular sovereign by participating in an ongoing (and unfinished, or open) process. This amendment to the theory of popular sovereignty makes democratic theory coherent again, but it has a radical conclusion: given that current institutions affect (or could affect) almost everyone in the world, the people could potentially include everyone. (Goodin, 2007) As Abizadeh has argued, even if we circumscribed this radical argument, and accepted that only those who can claim that the state coerces them now are part of the demos, we would still have a potentially unbounded demos because borders coerce those outside them. (Abizadeh, 2008) This means that democracy cannot delimit in advance the precise extent of the demos: The demos is in principle unbounded. In fact, as formulated by Abizadeh, this thesis provocatively implies that a state has no right to unilaterally control its own borders, but also that, in general, democracy should be practiced in each state with a potentially unbound demos in mind. (Goodin, 2007)

b) Pluralization

The people that makes democracy coherent is also open in a second sense: it is plural, rather than homogenous, or unified in one voice. However, this pluralism is not

restricted to the usual sense of the term "pluralism," namely a legal umbrella covering the rights of groups and minorities within a state. Pluralism in the sense at issue here encompasses traditional pluralism and extends beyond it. Traditional pluralism is insufficient when it faces popular indeterminacy, because, as I argued above, it presupposes a bounded background (the precisely limited shadow of the legal umbrella), for which democratic theory cannot vouch. On the conception of pluralism that arises from an open people then, pluralism can only be guaranteed to the extent that we conceive of the people as embedded in a process of pluralization: where the limits of pluralism are open to contestation. As a result, popular sovereignty (the ground of pluralism in the state) is also open to contestation, (Connolly, 2005) and the people itself changing, fragmented and open. This view then, requires that we acknowledge that pluralism's limits are shifting and the principles that unify and exclude cannot be drawn once and for all. Hence a view that is consistent with this kind of pluralism cannot equate the people solely with the electoral majority.

In practical terms, the difficulties of conjuring a unified people lead to a pluralized conception of the people, but also to a concomitant effort to pluralize the forms of representation, and the relations that constitute society and citizens. According to Pierrre Rosanvallon, within existing states, "openness" can be understood as avoiding oversimplification. This means avoiding the equation of the people and electoral majority, but also pluralizing or multiplying the people into a "complex sovereign" that occupies different spaces of the political culture and institutions. Thus, the people remains the constituent power in the state, but given that it does not speak with one voice it can challenge the institutions without completely rejecting them. If the constitution of

the state is not thought of in terms of unification, the challenges to the state are also crosscutting and multiple. (Rosanvallon, 2011)

c) Change.

Another aspect of openness is open-endedness. This translates in practice as understanding and accepting change in democratic politics. The people and the institutions that it legitimizes are constantly changing, and this seems to challenge any claim to represent the people. Yet, this mobility, can help legitimize liberal democratic politics and distinguish them from populist appeals. We can do this if we think of the people as an ongoing process: an unfinished series of institutional events in which individuals partake, rather than a well-defined group of individuals. (Ochoa Espejo, 2011)

If we think of the people as a process, it is not only the institutions that change over time; rather, we can incorporate the fact that populations themselves are constructed over time and never completely finished. Thus, we can claim that there is a people, even if it is never fully determinate and complete. We can also conceive of the people as the subject of civil disobedience and revolutions without falling into contradictions. If the people are ever-changing, the claims to speak in the people's name must themselves be unfinished. This provisional quality of democratic claims distinguishes them from the categorical pretensions of populist claims and practices. Populists claim that they are absolutely and permanently right; liberal democrats, by contrast, acknowledge that their claims may be wrong and thus welcome future challengers and accept temporary defeats.

In sum, thinking of the people as open (unbounded, pluralizing, and changing), allows us to define the subject of popular sovereignty without falling into the

indeterminacy problem. Seeing the people as open would help us to differentiate democracy from populism by introducing a specific criterion as a litmus test: self-limitation. If a popular movement acknowledges the unbounded, plural, and changing nature of the people, it will appeal to the people, but only in a negative sense. Given that the people is not complete, its decisions and its will cannot be absolute and unchallenged. A movement that acknowledges an open people does not claim to know the content of the people's will, and it does not claim to be the final authority regarding the truth or correctness of democratic principles. It offers an admittedly partisan and temporary view of what a group of people within the polity holds to be the common good.

In conclusion, self-limitation works as a criterion of demarcation between populism and liberal democracy because it does not undermine the justifying principles of democracy, and it expresses more clearly than current definitions of populism the concern with the misrepresentation of the popular will.

4. "To hell with your institutions!": Mediation or self-limitation?

According to the "popular will trumps" criterion of demarcation proposed by Mudde's conception of populism and others, we can distinguish a populist from a liberal democrat because (i) populists moralize the antagonism between the people and the elites, and (ii) hold that politics should express the general will of the people. In practice this can be seen in a populist's claim to have an unmediated popular mandate (in the form of plebiscites and one-sided interpretations of public opinion) and a tendency to bypass institutions and constitutional constraints. However, I have argued that during

constitutional crises these features do not help us differentiate between liberals and populists. By contrast, I claim, a better way to tell whether a leader or a movement has either populist or liberal-democratic tendencies is to look for signs of self-limitation. Populists think that there is no limit to what can be justified in the name of the people. Liberal democrats, instead, also appeal to the people and may even moralize it, but they use it as a way to put a brake on claims, most importantly, their own claims. Here I illustrate the point with a recent example of popular mobilization in times of crisis: the movement contesting the 2006 presidential elections in Mexico.

In 2006, Andrés Manuel López Obrador (AMLO), the candidate of the leftist PRD party, and leader of the Coalición por el Bien de Todos (CPBT), lost the Mexican presidential elections by about one half of one percent, and refused to accept the electoral tribunal's ruling to this effect(Tribunal Electoral del Poder Judicial de la Federación, 2006). Between the first week of July, when the first tally of votes was made public, and the first week of September, when the official results were ratified by the independent Electoral Tribunal, AMLO and his supporters engaged in acts of civil disobedience. For 50 days in July and August they blockaded the center of Mexico City, symbolically and physically. AMLO's supporters set up a tent city in Paseo de la Reforma, which is simultaneously the historic avenue that houses the city's and the country's most recognizable monuments, the main avenue of the city's financial district, and the direct path between the president's official residence and the seat of the federal executive power in the city's Zócalo or central square. In September, after refusing to accept the tribunal's final ruling, AMLO took an alternative oath of office during a rally in Mexico City, and

assumed the title of "Legitimate President." (Ramos and Herrera, 2006). He went on to

organize a "shadow" government. (Reséndiz and Gómez 2006).

These events very nearly precipitated a constitutional breakdown. As (Bruhn, 2012)

argues "If López Obrador failed to create a constitutional crisis, it was not for lack of

trying." 98 The country's institutions were not able to solve the standoff between the

different factions within the state. A coalition of parties and the acting government of the

country's most populous region (the Federal District where Mexico City is located)

refused to accept the legitimacy of the court that had jurisdiction in these matters, and

claimed that the people's legitimacy gave it a higher authority than did the legality of

institutions. To those camped out in Reforma, there was no higher court of appeal than

the people and this view seemed to the best response to the continuation of the liberal

democratic order. Yet, most others (particularly in the media) did not see this as a

democratic revolution; instead, they saw it as an imminent threat to Mexico's budding

democracy: a textbook example of populism. How do the criteria at our disposal work

when seeking to determine whether the movement was a case of populism, or a liberal

democratic cry for electoral justice?

According to many analysts, López Obrador's actions were a clear-cut case of

populist leadership. Even before the events surrounding the election, his speeches and his

politics had been described as examples of populist politicking. However, the reasons

why he was deemed a populist varied widely. Some held that AMLO was populist

because his party and his movement inherited the clientelistic structure and mass political

dynamics of the old hegemonic catch-all party: the PRI. (Loaeza, 2007) This

characterization fits well with the definitions of populism as a mass movement, rather

than an ideology see (Roberts, 2006) He also inherited the strategy of the deficit-spending nationalist movements that dominated Mexican politics from the 1940's to the 1960's, a trait that put him in the same class with other populist New Left movements in Latin America. (Castañeda, 2006) According to other analysts, it was not the movement, but López Obrador himself, that was populist. They analyzed his "charismatic" rhetoric and "messianic" personality to conclude that it was his personal traits that made him a naturally populist leader(Grayson, 2007, Krauze, 2006). However, after the elections, most of those who believed that AMLO was a populist characterized him using a metric that fits the "popular will trumps" definition: He was considered a populist because of his ideology, which presents politics as a contest between ordinary Mexicans and a corrupt elite, and because he appealed to the "popular will" to establish the legitimacy of his movement and his claims to power. He rejected the limitations that independent liberal institutions put on the mass movement, and he directly challenged the authority of electoral authorities and the state(Bruhn, 2012). This tendency towards populism, in this sense, reached its highest point in September when, during a rally in Mexico's City's main square, he uttered the phrase that has become most closely associated with the crisis: *¡Al diablo con sus instituciones!* (To hell with their institutions!) (López Obrador, 2006)

According to Bruhn, who uses the "Popular-will-trumps" metric, it was the outright rejection of institutions, coupled with Manichean discourse, which made AMLO a populist. However, these traits alone would not have allowed us to distinguish AMLO from a liberal democrat, given that the state's legitimacy was widely contested after the razor-thin elections. This became obvious in the period of near-constitutional breakdown.

In these months, AMLO appealed for his movement's authority to the "people" of Mexico as represented in the public square, contrasting them with the corrupt elites who, he claimed, stole the elections on behalf of the incumbent's party. This division of society into two homogenous and antagonistic groups is, on the "popular will trumps" definition, a sure sign of populism. Yet, in this situation, to appeal to the people was to have recourse to a higher source of legitimacy where no other judge was available, something any liberal democrat under the same circumstances would have done. In such situations, referring to the higher moral standing of "the people" qua electorate, would be required by democrats of all stripes. Moreover, appealing to the moral superiority of one's supporters is a typical campaign strategy, not uncommon among liberal democrats. AMLO's appeal to the poor during the campaign is also a normal development of electoral politics in the context of economic inequality(Castañeda, 2006, Loaeza, 2007, Arditi, 2008). Moreover, the references to the people and its corrupt antagonists are not entirely misplaced in a country where a history of electoral fraud could objectively allow voters and PRD supporters to talk about a corrupt elite(Langston 2009, 183; Morris and Klesner 2010. In these crisis circumstances, the rhetorical use of the people and the elite do not help us decide whether AMLO was a populist, and thus part (i) of the "popular will trumps" definition would not have been able to determine the movement's character as it was unfolding.

Part (ii) of "popular will trumps" definition (the claim that politics should express the people's general will) seems to hold more promise at first. AMLO appealed directly to the people and scoffed at the alleged independence of key institutions, notably, the independent electoral tribunal. Yet, his reliance on plebiscitary acclamation rather than

the official electoral results, his preference for "legitimacy" over "legality," and his open rejection (his cursing!) of institutions, cannot be used to tell him apart from a liberal democrat. For according to Bruhn: "Any candidate who loses a presidential election by less than one per cent of the vote may be tempted to challenge the results, all the more in a country like Mexico where electoral fraud has been common." (Bruhn, 2012) It is by no means obvious that under the circumstances of constitutional crisis a liberal democrat would have acted differently.

There are good reasons and ample evidence to believe that the 2006 elections were in fact clean and fair. See the TRIFE ruling. For analysis (Grayson, 2007, Loaeza, 2007, Eisenstadt and Poiré, 2006, Dominguez, 2009, Klesner, 2007) However, at the time, it was plausible that there had been irregularities in the election, or that the electoral tribunal may have harbored illegal biases. Moreover, even though the elections were organized by independent electoral authorities, to his supporters, AMLO's allegations of corruption were credible because of the long history of electoral fraud supported by the state. (Bruhn, 2009) According to Eisenstadt, AMLO's refusal to comply was rational in the context of the prior decade's *concertacesiones* or "gentlemen's agreements" among the PRI and its opposition, by which electoral irregularities had been overlooked and election results decided in the back room and with complete disregard for the ballots. (Eisenstadt, 2007)

Most importantly, however, AMLO's strategy and demands were credible to large swathes of the population, not because his supporters believed that the unmediated people is the true fountain of legitimacy, but because of a deep-seated suspicion of any existing authorities. (Ochoa Espejo, 2011). In sum, AMLO's moralizing view of the people and

his appeal to the general will does not give us enough evidence to prove that his position was not liberal during the crisis. According to other scholars it was precisely his opposition to less-than-perfect institutions that allowed us to recognize him as a true democrat (Ackerman, 2010).

So, given these difficulties in the popular will trumps criterion of demarcation, how can we tell whether AMLO was a populist rather than a radical liberal democrat? According to my self-limitation criterion, AMLO could have been recognized as populist during the crisis because his claims to legitimacy were not self-limited. In fact, they were *unlimitable.* By portraying the people as bounded, unified, and unchanging, he consolidated the fount of legitimacy into an indivisible, inalienable, eternal source of legitimacy. By appealing to the people as unlimitable, he claimed the moral superiority of his cause, and made his claims unquestionable within the frame of his discourse. Pluralistic dialogue became impossible, and with this closure, the possibility of electoral democracy and liberal rights were also shut down. On my view, it was not his denunciation of existing institutions that made him a populist; it was his failure to set self-imposed limits or constraints. We can see this in the way he appealed to a people imagined as bound, unified, and unchanging.

"The people" was bounded in López Obrador's characterization because he used it to refer to the unified nation (*ethnos)* rather than to the open liberal *demos*. According to Hoyo, Lopez Obrador's dismissal of institutions was only possible in the context of a nationalistic discourse of renovation and refounding. (Hoyo Prohuber, 2009) According to Loaeza, the success of AMLO's discourse hinged on his ability to promise "integration and coherence in a society whose relations to the state had been destabilized by

democratization." This promise required the revival of Revolutionary Nationalism, "the ideology associated with the goals and traditions of the Mexican Revolution." (Loaeza, 2007) That ideology provided the foundation of national identity (it was ripe with myths, rituals, and symbols) but it did not encourage active citizenship (Loaeza, 2007). So AMLO appealed to the people as an equivalent of the cultural nation: by so doing, he made his claims irrefutable within his own discourse. For unlike the *demos* as the citizenry, or the electorate, which is a changing group of individuals whose will shifts over time, the nation is an organic whole whose will cannot be established by an aggregative decision procedure: the national will can only be interpreted and channeled by the leader.

Second, López Obrador's characterization of the people was unified because he portrayed it as one voice, which is always right. This had weighty consequences, because according to the terms of his discourse he could not have accepted defeat. According to Bruhn, "López Obrador sought to overturn the election not on the basis of solid proof of irregularities, but on the 'basis' that the people could not have lost an election to the elite." (Bruhn, 2012) This reaction was populist not because he rejected the tribunal's decision or appealed to the people. In fact, these could be seen as antics distracting from his main strategy centered on the recount and the legal challenge to the elections; acts that sat firmly within the bounds of electoral institutions. Instead, it was populist because of the *type* of people it invoked. The hidden premise in this argument is that the people is always right. In his September 6th speech, AMLO portrayed the people as the classical unified popular sovereign who "will set aside the fake institutions and create an authentic, true Republic." (López Obrador, 2006) In his view the people is always right, and thus it

can have only one unified voice and will. This means that, in his view, it was "morally impossible" that the opposition could win.

Finally he portrayed the people as unchanging. In his view, Mexico's political institutions should have molded themselves to accommodate the people, a fixed referent. As a populist, AMLO claimed that the only legitimate institutions were those backing "the people's" rule. A liberal democrat, instead, would invoke the people, but only to show that any particular claim to speak in its voice must be partial and incomplete, if only because the people's composition changes together with the population, and its opinion may shift from one election to the next. For AMLO, the people was always an unchanging referent: the static crowd cheering in front of him, rather than a changing process, the interplay of different claims, institutions and grass roots movements over time.

In sum, what would have allowed us to recognize Lopez Obrador as a populist during the electoral crisis is not that he appealed to the people or that he cursed Mexico's institutions, but rather that he could not have conceded the election or accepted his defeat without contradicting himself.

5.   Conclusion

Populism goes hand in hand with democratic politics: it is its underside, as Arditi has argued. (Arditi, 2007) The pervasiveness of populism can be explained by the fact that the legitimacy of democracy does not, and cannot, rest only on electoral procedures. The requirement of a people as the foundational ground of legitimacy in the state, and the vicious circle that this requirement begets, creates a perennial deficit of legitimacy in

constituted states. This means that democracy will always have a legitimization deficit that expresses itself in extra-electoral appeals to the people, often in the form of mass mobilizations and exchanges in the public sphere. However, this does not mean that democracy and populism are the same, nor that all popular mobilizations are desirable, or that every appeal to the people absolves a popular uprising from moral scrutiny. If populism is the underside of democracy, a normative criterion for identifying populism will not help us banish populism from politics, but it will allow us to figure out which side is up.

In this paper, I have argued for a criterion of demarcation between populism and liberal democracy: self-limitation. Popular movements who visualize the people as open will limit their claims; popular movements who visualize the people as closed will refuse any limits on the authority of what they claim is the people's will. Hence liberals use the people as an ideal referent that reminds them that they cannot use a part in the name of the whole. The people of the populists, instead, is defined as unified, unchanging, and bounded, and it will always be a problem for pluralism and liberal democratic politics.

Self-limitation can be easily recognized, even when politicians invoke the people against a corrupt elite or make references to the general will. When a politician or movement is self-limiting, she or they envision the people as in principle unbounded, its identity diffused, its institutions changing, its will fallible, and the popular sovereign as not unified, either in time or space. Liberals invoke the people to point out the limitations of the leaders and the political system, and most importantly to limit the reach of their own powers and their own claims. Hence self-limitation could be useful in understanding

and judging movements in times of crisis, such as the unfolding uprisings in the Middle

East and the mobilizations it inspired throughout the world in 2011 and 2012.

A paragraph on Occupy and arab Spring

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