

Populism and human rights: Oil and Water?¹

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1. Introduction. Populism and Human Rights, a difficult relationship.

The relationship between populist movements and human rights oscillates between confluence and conflict. On the one hand, there are points of agreement, from the shared focus on remembrance of the victims of massive human rights violations, to the frequent use of street mobilizations as a method of political action. In addition, populism claims to be a promoter of an important subset of human rights--social, economic and cultural rights, while strongly denies being a threat to the classic, civil and political, rights. In Argentina, in particular, the relationship between human rights activism and populism activism is almost symbiotic. The dominant discourse on human rights is the populist one, and populism holds human rights as its most prized flag.

But on the other hand, the record of populism in the field of human rights is inauspicious. With respect to civil and political rights, populist governments often restrict freedom of expression, raising the costs of being in the opposition or becoming a dissident, and weaken controls on the state, whether the judiciary or other regulatory agencies, including international controls, with the attendant risk to the protection of human rights. Given that populist

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governments, moreover, are not particularly successful in terms of economic and social rights, there seems to be not enough reasons to support populism from a human rights perspective.

This text attempts to evaluate certain elements of the populist discourse and mode of government (centrally Manichaeism, personalism and short-termism) along four dimensions in which the legal and political phenomenon of human rights operates. These four dimensions are inspired by four theoretical currents (the naturalistic, the political, the global and the attitudinal) that are frequently understood as conflicting. I prefer to see them, as I said, as pointing to various dimensions in which human rights are manifested. I understand that each of them answers a different question, and therefore must they should not necessarily be read as contradicting approaches.

My suspicion is that populism, considered from the four dimensions or perspectives, appears at best as a weak support for a view of human rights. Populism, at most, can support a minimalist vision of human rights. Along my exposition I will illustrate the problematic relations between populism and human rights with different cases, and I will expand briefly on two of them, the distortions to the democratic project of transitional justice and the attacks on the inter-American human rights system.

2. Populist Discourse and Action.

Populism is both a discourse and a form of government.² Its defining elements are, in my opinion, Manichaeism, personalism and short-termism . The three elements justify a negative evaluation of populism, even acknowledging that certain defenses of populism have some initial plausibility.

On the one hand, the discourse establishes a strongly antagonist vision of politics, which divides the stage into two irreconcilable camps, characterized in exaggerated form. On the one hand, "The People", concept populists keep in a nebula, and which sometimes means the working class, sometimes the national entrepreneurs, and always the adherents of the populist party. The people is oppressed and exploited by the "anti -people" concept also vague, which may include, according to Latin American populism, the representatives of foreign capital, the agricultural elite, the middle classes misguided by their liberal-democratic whims; or in the case of Le Pen and Trump, the immigrants; and always the dissenting media and opposition parties. Demagoguery defines the populist approach, with the infantilization of the electorate, the poisoning of public debate, and an obsessive hegemonic ambition.

The Eternal Leader

Populism as a form of government is characterized by the exacerbation of personalistic leaderships. In fact, according to the populist theorist Ernesto Laclau,³ the only way to articulate the various conflicting interests of the “people” is through the leader--the leader constitutes the

² See the various essays grouped in the book edited by Carlos de la Torre, *The Promise and Perils of Populism*, Kentucky, 2015.

³ Ernesto Laclau, *On Populist Reason*, Verso, 2005.

people. The “people” is exclusively and fully represented by the leader who embodies the interests of the nation against its enemies. (If “people” is synonymous with “nation”, the members of the “anti-people” are foreigners in their own country). This personalization of power, combined with Latin American hyper-presidentialism, produces dynastic governments seeking to perpetuate in power.

An official hegemonic story.

Two elements in conflict with constitutional democracy that populism uses while in power are the abuse of official propaganda and the harassment of opponents and dissidents. This is aimed to control and shape the public debate (to build a "discursive hegemony" in populist terms) demonizing those who disagree and dramatically raising the disincentives to oppose the government.⁴

“We finally have a homeland”.⁵

A common rhetorical thread to the various populist variants is nationalism, and its associate--militarism, expressed in the permanent remembrance of past military glories, the constant celebration of the military founders of the country, the demonstrations organized by the State to underline the unconditional adherence with the leader, and the military language of blind loyalty (loyalty as “verticality”, the "soldiers of Peron / Cristina", etc).

⁴ Gabriel Albiac, in his column titled "Caudillo" in the Spanish newspaper El País of 23/02/2016, draws attention to the typically populist double nonnegotiable requirement of the PODEMOS party to integrate a government with other forces: the control of the intelligence agencies and of the state-owned media. Albiac concludes: "Political image and the police. Nothing else matters. Welcome caudillo [leader]. Available at http://www.abc.es/opinion/abci-caudillo-201602231630_noticia.html. I thank my UBA colleague José Said for this reference.

⁵ Kirchnerista slogan.

The open society and its populist enemies.

Populism rebels against liberal rationalism, through the use of a closed, quasi-religious concept of "the people". Thus, populism has been questioned by Paulina Ochoa Espejo for favoring a closed reading of the concept of "people" as an infallible entity, something that "will always be a problem for liberal democracy."⁶ In a similar direction, Andrew Arato⁷ focuses his criticism of populism on its being an instance of political theology (I wrote about the risks of political theology for modern democracy in my last contribution to this seminar).⁸ According to Arato, irrational manipulation of the concept of "people" leads to mystify the idea (in terms of Laclau, it becomes an empty signifier, apt to be filled with multiple and contradictory ways) and to place the leader in the center of the scene, as the only genuine interpreter of the "people", a mysterious entity without a testable empirical reference. The "Theology of the People", to which the current Pope adhered, a reactionary alternative to the Liberation Theology, is a more explicitly religious version of this move.

Populism and socio-economic equality.

Nicolas Maduro, Rafael Correa, Fujimori, Donald Trump, Marine Le Pen, Carlos Menem, Cristina Kirchner, are all populists. Not all of these leaders share the same government program. The populist discourse is used to dress a wide variety of public policies. The populist leader can lead neo-liberal or supposedly progressive policies--the format that has dominated Latin America in this century--for example in Venezuela, Ecuador, and Argentina during the 12

⁶ Paulina Ochoa Espejo, "Power to Whom?" Carlos de la Torre (ed.), *The Promise and Perils of Populism*, Kentucky, 2015.

⁷ Andrew Arato, "Populism and Political Theology", *op. cit.*

⁸ M. Alegre "Laicismo, Ateísmo y Democracia," SELA 2012.

years of Kirchnerismo. A feature of Latin American populism is its redistributive claim. That claim is not supported by the achievements of populism in government. Latin American populism is not particularly redistributive and egalitarian. As Safón and González Bertomeu ⁹ show the decline in inequality in the first decade of this century was widespread in Latin America, favoring countries with populist and non-populist regimes alike. A common theme in the criticism of populism is the short-term nature of their distributive policies, which for example are aimed at boosting consumption instead of strengthening the most solid paths for social progress, such as education, health or progressive tax reforms.¹⁰

The lack of a "competitive advantage" of populism in terms of economic redistribution weakens a possible Rawlsian defense of populism. This defense could hope to present populism as a variant of progressive liberalism which, without denying the special importance of the first principle of justice, would nonetheless resist, against Rawls, first, to assign to the first principle of justice a strict precedence over the second principle; and secondly, to be as inclusive as Rawls regarding the freedoms and rights of the first principle. But if populism does not bring greater equality of opportunity or of results, then the reduction in the content and scope of civil and political rights that populism proposes seem to be gratuitous, nothing more than a useless sacrifice. Why should we accept a regimen with less freedom without minimum guarantees - which populism cannot offer- of an advance in economic justice?

⁹ Maria Paula Saffon Sanin and Juan F. Gonzalez Bertomeu, "Populism and Redistribution in Latin America. Conceptualizing a Threshold of Acceptance", manuscript. The authors propose certain restrictions (linked to the protection of rights and to set a time limit to the populist experience) for populism to be acceptable if it were true that it has redistributive benefits. But as their text begins denying these benefits, we do not need to rule on whether these restrictions would make populism more acceptable.

¹⁰ I thank Gabriel Bouzat for underscoring to me this populist feature.

Populism in its best light.

Populism operates within the margins of constitutional democracy, although near the limits. It respects electoral rules and those related to fundamental rights. This democratic component is sufficient to separate the contemporary populism from other bloodiest forms of demagoguery, as the totalitarianisms of the twentieth century. Contemporary populism, and particularly Latin American one, pays tribute to free elections as the only valid method of access to power and accepts the results even if they are adverse. What else can be said in its favor? At the risk of repeating some ideas, let me summarize some of the current or possible defenses of populism, with a brief reply. The following considerations could be voiced in favor of populism:

i) Populism is a creation of its opponents, especially more liberal parties and governments, but ineffective regarding social inclusion. It is after the social failure of demo-liberal governments that populism reacts. Its emergence, as in the case of other anti-liberal phenomena, is often linked with deficits of inclusion of the democratic system and the traditional parties. Populism thrives from the failures of the demo-liberal options to provide sound economic, social and / or political responses. In the words of Kenneth Roberts "Populism is a specific type of response to crises of political representation ... a natural--though hardly an inevitable or exclusive— political strategy to appealing to mass constituencies where representative institutions are weak or discredited, and where various forms of social exclusion or political marginalization leave citizens alienated from such institutions."¹¹

¹¹ "Populism, Political Mobilizations, and Crises of Political Representation" in Carlos de la Torre (Ed.) *The Promise and Perils of Populism*. The University Press of Kentucky, 2014, p. 141.

ii) The “Friend-enemy” discourse is not so impertinent in contexts of acute social and economic polarization. In other words, it should not be surprising that historically excluded and discriminated sectors see the wealthier as their enemies;

iii) Populism raises the tension of democracy, becoming visible the important things at stake in democratic politics, awakening society from its apathy and indifference;

iv) Strengthening the figure of the populist President is a prerequisite to successfully confront concentrated powers, especially the economic ones. Institutional scruples make it impossible to carry out the transformations that the majorities need;

v) Populism does not repudiate controls, but emphasizes the primacy of the democratic control par excellence--the vote. In fact other controls (v.g. judicial review) may distort the directions of the popular vote, and for that reason should be minimized.

With respect to these pro-populism ideas, I think, in general- that the negative aspects of populism (the divisive impact of its Manichean conception of "friend or foe" that among other effects unacceptably raises the costs of disagreeing with the government; the institutional excesses arising from the explosive combination of the populist cult of the leader with the Latin American hyper-presidentialism, and the disdain for structural changes in favor of unsustainable policies, such as artificially boosting consumption) appear to be critical defects. From a philosophical and political perspective they cannot be weighted against other alleged benefits.

In particular, as to the defenses listed above I understand that:

i) that populism arises as a reaction to socially exclusive experiences explains its emergence but does not mean it is a better alternative in terms of social inclusion. Populist experiments usually have a period of prosperity for the most disadvantaged sectors, which coincides with economic good times (a common thread between mid-twentieth century and early twenty-first century populisms). But given that the socio-economic policies of populism are not sustainable, these experiments end in crisis and increased poverty. Populism leaves behind not only divided societies, but also impoverished ones, with their social infrastructure (education, health) in ruins;

ii) Even in contexts of deep injustices it is necessary, following the example of Nelson Mandela, to articulate a comprehensive view that emphasizes justice and equality as a project that the whole community should embrace. The friend-enemy division also arbitrarily freezes discrepant factions, but in all societies there are different configurations of the public opinion, so anyone is part of various "sides". The division into the good and the bad ignores the fluid nature of public debate;

iii) Mobilization in its various forms is not a positive phenomenon in itself. This depends on its aims. Populism rarely mobilizes society towards structural reforms. Overall populist mobilizations are organized to support the leader and his or her aspirations of eternal power. It could even be argued that populism hides the important issues (the need for deep reforms to make the tax system more equitable and towards more effective and universally accessible education, health and housing) behind factional slogans.

iv) It is not obvious that the personalization of power and the assumption of extraordinary powers in the executive is the best way to counterbalance the power of the economic elite. One consequence of the concentration of power at the top of government is the weakening of control mechanisms and the creation of an obsequious court that isolates the leader from reality. The likely result is a state that gradually ceases to function effectively and to manage reliable information about the economy and society, confirming the thesis of Stephen Holmes, whereby unlimited states are weaker than limited ones;¹²

v) While it is true that populism formally respects electoral rules, as shown by Carlos De la Torre¹³ populist governments tend to produce an imbalance of power in favor of the ruling party, which makes it very difficult for the opposition to compete in the elections on an equal footing.

Populism and the nature of politics.

A few words about “agonist” defenses of populism. Some authors defend the potentially positive nature of the disruptions that populism produces.¹⁴ Chantal Mouffe defended populism because it peacefully channels antagonistic human tendencies which are ineradicable. Humans can’t imagine a “we” without an “other”, and populism is at this respect superior to liberalism, because it frankly admits the inevitable conflict between interests and political views, conflict to be resolved in accordance with the rules and limits of liberal democracy. Liberalism, although it

¹² Stephen Holmes, "The Liberal Idea" in *The American Prospect*, Fall 1991, available at <http://prospect.org/article/liberal-idea>.

¹³ "Introduction" in Carlos de la Torre (Ed.) *The Promise and Perils of Populism*. The University Press of Kentucky, 2014, pp. 13-14.

¹⁴ Benjamin Arditi, "Insurgencies Do not Have a Plan-They are the Plan," Carlos de la Torre, op. cit.

sounds paradoxical, is to Mouffe a threat to liberal democracy (in the sense of contemporary constitutional democracies) because it moralizes this antagonism, transforming it into a struggle between the right and the wrong, dangerously raising the tone of the discrepancies. In this defense of populism support for liberal democracy is assumed, marking a break with a precedent of this thought, Herr Carl Schmitt, who also defended an agonistic view but disparaged liberal democracy.

I don't feel attracted to this unusual anti-liberal path to liberal democracy proposed by Mouffe. First, nothing referring to an alleged antagonistic human nature seems obvious. Indeed, the most noble and sophisticated concepts of a "we" is "humanity", a concept that does not seem, to be workable, to require an "other" at all (Who would the "other" be? The rest of the animal kingdom? The aliens?). And second, it seems uncharitable to picture liberals as moral crusaders who ethically disqualify their opponents. The most developed liberal political philosophy, on the contrary, rests on a demand of respect and pluralism-whether in the form of civic friendship, or interpretive good faith, or civility- away from Mouffe's cartoon. (Finally, this characterization of liberalism as "excessively" antagonist seems rather ad-hoc, since it frontally contradicts more frequent descriptions that Mouffe makes of liberalism as a romantically conciliatory, dialogical, and consensual view).

Does Populism deserve our attention, after all?

Finally, it could be objected that I am putting the magnifying glass on the wrong phenomenon, or rather on a secondary variable. I am open to the possibility that populism does not amount to a political movement, or type of government, model. It could be that it is just a

style, a way of doing things in politics. This style of action and speech could, first, be combined with different ideologies, such as Marxism, neoliberalism or social democracy. Maybe these should be the main categories to illuminate our political analysis and populism would remain as a secondary attribute. Second, populism as a style admits a gradation, which would allow us to speak of more or less populist leaders, movements, and governments. In the latter case we could also refer to particular actions or comments as being populist. In this sense populism would have a universal scope. Anyway, I understand that populism even seen as a feature common to various political currents, still deserves to be studied, given its deleterious effects.

3. Human rights. Four aspects.

I will clarify my understanding of the phenomenon of human rights before exposing some ways in which populism can threaten its foundations and scope. Regarding the concept and the grounds of human rights, there are four visions that sometimes are presented as incompatible. The four try to solve the problem of the demarcation between human rights and other rights: What are human rights? Instead of taking those as conflicting theories, what interests me about them is that they highlight four important dimensions to understand the phenomenon of human rights.

i. The “naturalistic” view: human rights as institutionalized moral rights.

The first outlook is the naturalist one, which understands human rights as the institutionalization of preexisting moral demands. According to this view, human rights are a subcategory of moral rights--the most important ones. The basic feature of this approach is the anti-positivist affirmation of the independence of the foundations of human rights from social conventions.

Two basic assumptions of human rights are individualism and universality. Individualism, in the sense that Carlos Nino¹⁵ differentiates it from holism, is the need to protect the interests of the people one by one, considering individuals as the basic cell of society. Holism, on the contrary, assigns moral status to supra-individual entities, as the people, the nation, the class, the race, etc. Universalism is the claim to validity in all places of the moral statements expressed through human rights. The rejection of one or both assumptions would lead us to repudiate the notion of human rights or to reinterpret them in implausible ways.

The naturalistic view could be deployed to produce more narrow or more ambitious visions of human rights, depending on the underlying moral or political philosophy (for example libertarian or egalitarian conceptions).

ii. The “political” view: Human rights as limits to state sovereignty.

The second perspective is the “political” that understands human rights as standards whose violation justifies exempting the background requirement of respect for the sovereignty of states. In other words, a state that violates human rights may be subject to intervention (including military) from other states or international organizations such as the United Nations.

This perspective can lead, too, and as I will show soon, to more or to less ambitious visions of human rights.

¹⁵ Carlos Santiago Nino, *The Ethics of Human Rights*, Oxford: Clarendon Press, 1991.

iii. The global perspective: human rights as a global political movement.

A third distinctive element of human rights is the global nature of the concern regarding their respect and protection. This component supplements the previous one in two ways. First, in the same sense in which the transnational supplements the international, opening up to a broader set of dynamics, actors and actions. Second, it emphasizes the political, not only legal, nature of human rights. The violation of human rights is sufficient cause for legitimate mobilization on a global scale, which transcends not only, and obviously, the framework of the nation state, but also international relations. Samuel Moyn,¹⁶ emphasizes this global aspect when describing human rights as a global political movement, which occupies the role of mobilizing utopia previously occupied by other flags as anti-colonialism or Marxism.

The violation of human rights is a global issue that transcends not only, and obviously, the framework of the nation state, but also international relations. This global dimension also leads to more restrictive or more ambitious interpretation of the scope of human rights. The prism of globality can be applied to the question of authorized advocate for the rights violated agents: the answer is that each and every human being has this authorization. The global can also refer to the issue of forced respect for human rights agents. A broad answer is that these agents are not only national states. For example, also multinational corporations, international and transnational organizations or terrorist groups can violate human rights.

¹⁶ Samuel Moyn, *The Last Utopia*, Harvard, 2010

Samuel Moyn, ¹⁵ emphasizes this global aspect when he describes human rights as a global political movement, which occupies the role of a mobilizing utopia previously occupied by other currents such as anti-colonialism or Marxism.¹⁷

This global dimension also admits of more restrictive or more ambitious views about the scope of human rights. The global prism can be applied to the question of who are the authorized advocates for violated human rights: the ambitious answer is that each and every human is authorized. The global perspective can also refer to the issue of who are the agents obliged by human rights standards. A strong answer would be that these agents are not only national states. For example, also multinational corporations, international and transnational organizations or terrorist groups can violate human rights.

A restrictive view of human rights would recognize this global dimension of human rights, but admitting that only a small number of violations, for example, those close to be described as genocide reach the threshold of genuine global concern. A broader conception would be open to an increasingly demanding interpretation of state obligations regarding human rights, illuminated by an open and in good faith deliberation open to the national and the global public opinion. Thus, violations less grave than genocide or crimes against humanity could be the subject of global mobilization, such as lack of access to water for a significant portion of society or the implementation of xenophobic immigration policies.

¹⁷ The anti-colonialist movements are precursors of today's populism, at least in Latin America, where the populists present their grievances in the old anti-imperialist language. Moyn stresses that those movements did not embrace the cause of human rights, beyond their emphasis on the principle of self-determination. But it is likely that some anti-colonialist components survive in the current populist movements, mainly the Manichean vision of the emancipatory struggles between the end of WWII and the seventies.

iv. Human rights as requirements arising from respect for the equal dignity.

The fourth perspective on human rights is the "attitudinal" (Dworkin,¹⁸ Tasioulas¹⁹) which identifies as the key to understanding human rights their being correlative with an attitude of respect from the state. Thus, a state policy or course of action violates human rights when we are enabled to attribute to the state an attitude of contempt for human dignity. Transgressions of rights not attributable to hatred or contempt by the state would not amount to human rights violations.

Competing visions?

These three approaches may come into tension (and some of their supporters have made a great effort to show this). The naturalistic perspective may be in trouble explaining the centrality of national states as agents bound to respect and promote human rights. In its favor, we can point out that it is not obvious why victims of terrorist attacks (11/9/01 in the US, victims of the 1994 AMIA bomb in Buenos Aires) cannot claim that their human rights have been violated. More generally, the naturalist approach reflects a crucial element of the practice of human rights, which is to be based on grounds independent of moral conventions or positive norms.

The political perspective can adopt a minimalist way, for example in the case of Rawls, understanding the violation of human rights as exceptions to the prohibition of foreign

¹⁸ Ronald Dworkin, *Justice for Hedgehogs*, Harvard, 2010.

¹⁹ John Tasioulas, "Towards a Philosophy of Human Rights", en *Current Legal Problems*, Vol. 65 (2012), pp. 1–30.

intervention. From justifying a course of action as extreme as military intervention as a legitimate consequence of human rights violations one, it follows an extremely meager list of human rights—only those limited to protect us against the most egregious and massive abuses. But we could reformulate the political perspective so as to make it more ambitious and less rigid: the violation of human rights *weakens* (not necessarily *suppresses*) sovereignty, in favor of various forms of intervention, with the military being the most extreme but not the only one. Thus, the list of human rights can be wide without implying endorsing military intervention as an automatic consequence of its violation. The violation of certain rights justifies less drastic measures, such as economic sanctions or condemnations in front of the global public opinion. This latter form of intervention, global criticism in the voice of global actors and governments, is perhaps the most typical form of intervention in the field of human rights, and one that at least in Latin America was quite successful in eroding the national and international support for military dictatorships.

Similarly, it is unclear why we could not integrate the attitudinal approach to the rest. At the end of the day, anyone who claims the naturalist or the political model could not easily deny that behind the violation of human rights there is a state that has unforgivably neglected, or was indifferent to, the basic equality of persons or their inherent dignity. But nothing in the naturalistic or the political models force them to deny that. Dworkin²⁰ claims that this approach is more clear and precise than the political, but he is not convincing: all the approaches allow for a wide margin of interpretation and therefore, of reasonable

²⁰ Ronald Dworkin, *Justice for Hedgehogs*, Harvard, 2010, pp. 335-9.

disagreement. This is not a fault, unless we are in search of a criterial concept²¹ of human rights, one referring exclusively to empirical elements to mark the boundary between human and other rights. A criterial approach is bound to fail, for the simple reason that will not account for the persistent expansion of the list of human rights. Any "criterion" may become obsolete sooner or later.

No conflicting theories, but compatible perspectives.

I would like to follow the path of Joseph Raz,²² Julio Montero²³ and others, and try to understand these perspectives as being potentially consistent. Thus, human rights are *those interests which warrant a special protection because of their importance, put in play the international responsibility of states, are genuine object of concern and mobilization by global public opinion, and whose violation weakens the states claim to non-interference in internal affairs, while displaying a gross official disdain for the equal dignity of the persons subject to its dominion.*

I will now try to show how populism is equipped to embody, at best, a minimalist view of human rights. In other words, populism does not mix well with a robust reading of human rights in any of the four described dimensions.

²¹ For Dworkin's criticism of criterial approaches to political concepts see pp. 344-5 of *Justice for Hedgehogs*.

²² Raz, Joseph (2010) "Human rights without foundations" in J. Tasioulas & S. Besson (eds.), *The Philosophy of International Law*, Oxford University Press.

²³ Julio Montero, "Derechos humanos: estatistas, no cosmopolitas", en ISEGORÍA. Revista de Filosofía Moral y Política N.º 49, julio-diciembre, 2013, 459-480; "Human rights, international human rights, and sovereign political authority: a draft model for under-standing contemporary human rights", *Ethics & Global Politics*, Vol. 7, No. 4, 2014, pp. 143-162.

4. Elements to understand the tension between populism and human rights.

The return of the old ghosts of holism and anti-universalism.

If the liberal root of human rights is individualism and universality, denial of these elements will produce a distorted notion of human rights. On the one hand, the abandonment of individualism will lead populists to drop the concern for the inviolability of every single person, one by one. Populism rests on a holistic vision, which revolves around the concept of "people", an entity not reducible to any specific group of people but concentrating all imaginable virtues. Being the people an ideal and elusive moral subject, it must incarnate in a particular agent, the populist leader. This picture -a ("holistic") supra-individual moral subject trumping individual claims and preferences- should be a chilling one for any supporter of human rights,

On the other hand, abandoning the aspiration of universality will lead to a relativistic and therefore inconsistent reading of human rights. There are several roads that lead to relativism in the populist culture. On the one hand Manichaeism blurs the universality of human dignity. How much dignity can we recognize to the "enemies of the popular project", aligned with the forces that oppress the nation? How often do populist leaders denounce the violations of the human rights of the opponents to his or her partners in power in other countries? Moreover, since populism is always nationalistic the aspiration of universality of human rights will be relegated by the systematic reaffirmation of the principle of "non-interference" ["no injerencia"]. Populism at least implies a weakened notion about the scope of the international system of protection of human rights.

Human rights in the populist moral.

The populist conception looks seriously flawed along all of the dimensions in which the practice of human rights operates. Let us begin with the first dimension, that of morality. Populism fails to provide the minimum requirements of deliberation that make it possible for a culture of human rights to flourish. If the naturalistic approach allows more restrictive or more ambitious human rights interpretations, it is clear that populism is identified with a narrow vision, which scorns at least some civil and political rights (such as freedom of expression) and some institutional guarantees aimed to protect those rights (such as the independence of the judiciary) as bourgeois rationalizations or elitist instruments to destabilize the transformation processes.

Mind your own business.

Regarding the political dimension of human rights, which correlates the violation of human rights with a decrease (which can reach the elimination) of the claim of national sovereignty, populism is also in trouble sponsoring a robust notion of human rights, which could constrain the leeway of national states. Being populism a tributary of, among other anti-liberal traditions, nationalism, it will always be refractory to accept criticisms about "internal affairs", as is customary to categorize human rights violations.

Populism against globalization.

Populism also looks like an attractive worldview regarding the global dimension of human rights. First, populism usually assumes a paranoid vision of globalization, which is not the best advisor to operate transnationally. Second, nationalist and relativist trends also make it more

difficult to take seriously populist global dynamics. The anti-modern populist instincts make it difficult to understand, and operate in, a global modernity. Finally, the same constant appeal to the principle of non - interference that blocks the scope of international rights protection systems used to discredit criticism of extra-state global actors such as global media or NGOs.

What human rights do enemies of the people have?

Regarding the attitudinal dimension of human rights –positing that an adequate human rights protection correlates with an attitude of respect for the equal dignity of persons- populism has serious disadvantages. Populist states an official manifest disdain for opponents, dissidents, and unfriendly judges, publicly casting doubt on their good faith, their patriotism, the legitimacy of the interests they represent, etc. This attitude is contrary to the required by even a minimalist notion of human rights.

5. The conflict between populism and human rights. Some cases.

I mentioned different practical consequences of the tensions between populism and human rights, such as the threats to civil and political rights, its negative effects on the efficacy of the State, and the disdain for all checks and balances. Let me focus on a couple of cases.

i. Populism distorts the understanding of the violent past.

Manichaeism in facing the past favors the spread of a distorted historical view, as in the case of political violence in Argentina of the 70s. In the last decade, a revision of the dominant approach during the democratic spring of the '80s prevailed. That vision, promoted by President

Raúl Alfonsín, firstly remarked the special gravity of state terrorism, but also condemned the guerrilla violence. In fact, the same day that Alfonsín, hours after taking office, ordered the trial of the military juntas, also commanded to take legal action against top guerrilla leaders. I emphasize that condemning both forms of violence never involved putting them on an equal footing, for the simple reason that the violence from the state is carried out by the entity acting on behalf of the society, and is directed against that same society that the state is supposed to protect.

The position that equates both types of violence is known as the "theory of the two demons" because of a controversial speech by Interior Minister Antonio Tróccoli, which preceded the television presentation of a harsh report of the historic National Commission on Disappeared People (CONADEP) about the atrocities committed by the dictatorship. At that time, and to appease advocates of the dictatorship calling for the cancellation of the program (in fact, a bomb exploded at the gates of the channel during the broadcast) Tróccoli said the documentary was limited to telling half the story, the other half being the history of guerrilla violence.²⁴ It is now a common place to identify "alfonsinismo" with that position, although the very name of the CONADEP and the Juntas Trial make it crystal clear that the main of focus retroactive justice was on state terrorism.

This caricature of the position of alfonsinismo facilitated the installation of another vision, which we may call "the theory of the angels and the demons" a vision that reached the status of official account during the Kirchners. Under this approach, the military faced the best of a

²⁴ The program with the introductory speech Tróccoli can be accessed here: <http://www.archivoprisma.com.ar/registro/television-abierta-nunca-mas-1984/>

generation, young idealists who fought, in one way or another, for a better future. The origin of the violence is, in the words of Chamber Judge José Pérez Villalobos in a case pending for violations of human rights, "the military hatred of a youthful population that sought their way to transform an unjust order."²⁵ In this way, the atrocities of the military are used to dilute the undeniable responsibility of the guerrilla organizations, who committed murders, kidnappings and bombings even during the constitutional government of President Peron, voted by more than 60% of the electorate.

Transitional justice has been one of the areas where the construction of a populist discursive hegemony was more successful. Thus, four decades after the facts, it is a taboo in Argentina to question the number of 30,000 disappeared (the documented cases are about 10,000), or to question the characterization of the authoritarian regime as a "civic-military" dictatorship, or to criticize the blind militarism of the guerrilla groups. Populism has captured the public discourse on transitional justice and who dares to deviate one millimeter from the official script will be exposed as a defender of the theory of the two demons, or one who legitimizes the horror of the dictatorship. Populism aims to transform human rights, from the shared basis for a democratic community of equal, to the political capital of a faction.²⁶

ii. Populism, a threat to the inter-American human rights system.

Populist governments of Ecuador and Venezuela have led very front attacks against the inter-American system of human rights protection. The classic format of the "friend or foe"

²⁵ His opinion in re: "AGÜERO, Osvaldo y otros" (Expte. N° 35022594/2012) de la CAMARA FEDERAL DE CORDOBA - SALA B, 10/3/2014.

²⁶ "Nobody from human rights may have voted Macri," wrote Luis Bruchstein ("Bipolar") in the newspaper *Página 12* of 11.07.2015, between the first and second round of the presidential election.

discourse has been applied here to disqualify the system for allegedly serve the empire and align with the enemies of Venezuela and Ecuador, who wish to destabilize these popular governments. This clash between the populist governments and the inter-American system was predictable, and not only because of the Manichean matrix of populism, which does not admit the existence of something like an honest critique or a reasonable limit to the power of the leader.

The key to understanding the contentious relationship between populist states and international monitoring bodies, such as human rights courts, is the dynamic that tends to escalate the actions of opposing forces. The starting point is the populist quest for total power. Populist governments turn off all internal institutional control, which predictably increases the violation of rights. Faced with the sealing of internal control channels, only the external ones remain available. The inter-American system, then, becomes overloaded with cases against populist states, which react threatening to leave the system or disqualifying its organs. The conflict is not contingent but inevitable--it responds to the power concentrating logic of populist governments, and the predictable reaction of the victims of abuses of populism.

As Javier Couso showed in this same forum last year,²⁷ the countries that adopted a model of "radical constitutionalism" have reclaimed the old principle of "non-interference in internal affairs" to put it at the service of a profound challenge to the inter-American system human rights. If my analysis is correct, the problem of radical constitutionalism is populism, with its Manichean and nationalistic arguments, hostile to international law and external bodies,

²⁷ Javier Couso, "Las Democracias Radicales y el "Nuevo Constitucionalismo Latinoamericano"", SELA 2015.

on the one hand, and with its unitary conception of power, contrary to all controls, whether internal or external.

6. Conclusion.

Populism and human rights respond to not easily reconcilable philosophical premises. Populism is pre-modern, holistic and anti-universalist worldview. Human rights are a product of modernity, aiming at protecting concrete people against claims based on the interests of ungraspable entities such as the national identity or the people, and with a universal breadth, regardless of cultures, political systems and religions.

In any of the relevant dimensions in which the practice of human rights operates, populism is shown as a sub-optimal support of human rights.

The sharp discrepancy between the grounds of populism and of human rights explains the high frequency of populist actions that threaten human rights and their underlying culture-- dialogic, egalitarian and tolerant. Populism weakens the civil and political rights without strengthening, in return, socio-economic or cultural rights. In particular, populism is an obstacle to an understanding of our violent past which -in the best tradition of human rights- vindicates pacifism, rejects all militarism and sincerely embraces the rule of law.

Populism has been moving us away from modernity and legality, always on behalf of the People. Let us at least aspire that it ceases to do so also on behalf of human rights.