

The “Right of the People”: Plebeian Uprising in the Age of Its Technical Irreproducibility

Fernando Muñoz Leon^{*}

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles ... [I]t is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

The unanimous Declaration of the thirteen united States of America, July 4, 1776.

The epigraph at the head of this paper condenses an important thesis characteristic of Western political thought: the idea that a people has the right to rebel against illegitimate regimes, overthrowing it through direct action. I will refer to this thesis in summary fashion throughout this piece as ‘the right of the people’. The idea can be found with differing degrees of emphasis in the great moments of Western political thinking: Aristotle, Thomas Aquinas, Marsilius of Padua, William of Ockham, Machiavelli, and Locke all included this thesis in their reflections on state legitimacy.

When Jefferson wrote those lines, however, technological transformations were already underway that would significantly affect the applicability of the thesis and, as a result, the very validity of the thesis as a principle for popular political action. Ever more accurate but also ever more expensive weaponry would put realistic chances of success for plebeian uprisings out of reach, while other forms of technology employed as “riot control agents” would drastically circumscribe the possibilities of violent protest. This erosion of its plausibility affected the notion

^{*} JSD, Yale Law School. Assistant Professor, Faculty of Legal and Social Sciences, Universidad Austral de Chile. Many thanks to Brad Hayes for his invaluable help translating this paper.

of rebellion to the point of annulling it as a myth, in the sense given to this term by Sorel; that is, as an archetype that structures a struggle in the minds of those who undertake it. The tribunes of the plebs, thus, can no longer aspire to emulate Cola di Rienzi or Jack Cade, leaders who in the Middle Ages led plebeians to military victory over noblemen and kings; rather, they have no other recourse but to seek inspiration from the active non-violence of Gandhi and Martin Luther King Jr. Their responsibility becomes controlling or restraining the destruction that accompanies direct actions of commoners and carrying out public relation campaigns.¹

These changes reflect the reality that the people, and more specifically the plebs, can no longer hope to exercise their right by themselves. This leads to an increased need to rely on heteronomous mechanisms for protecting the people, who autonomously can only hope to move their fellows by sacrifice and martyrdom. All of this implies, of course, a transfer of effective power to the courts, the press, international organisms and other ‘stakeholders’ in possession of ‘soft power.’ Because of all these factors, the plebs suffers a loss in terms of its pretensions to sovereignty, although this attribute does not pass to other actors; sovereignty, following the beautiful expression of Marx, melts into air. As for the masses, they find themselves neutralized, depoliticized.

Before continuing, I will briefly describe the circumstances surrounding this essay. The piece began as an examination of the right to protest in liberal democracies in a desire to find in the regulation of that right a contemporary, juridical expression of the right of the people.²

¹ In Chile, the leaders of the most successful recent social movements have been, consequently, the most “charming” and “authentic” figures of the movements, be it for their candor or for their humility and charisma. I am thinking here of the ex-President of the Student Federation of the University of Chile, Camila Vallejo, and of the small-scale fisherman Iván Fuentes who was the spokesman for the protest in Coyhaique. Their principal achievement was capturing the attention of the mass media and the sympathy of public opinion.

² A review of the constitutional foundations and legal regulation in Latin America of the right to protest, inasmuch as the right to publicly manifest discontent with government measures, reveals a fairly homogenous panorama.

Shortly after starting, however, new questions arose that shifted my attention. Might not rebellion be the most authentic expression of the right of the people? From this perspective, would not protest simply represent the precursor to rebellion? In this case, what happens politically when rebellion ceases to be feasible or realistic because of technological changes?

This paper comprises, consequently, a response to those questions. They become more intense for someone, like myself, who tries to answer them in the shadow of an effective exercise of the right to rebellion, one whose effectiveness derives precisely from the fact that it was not exerted by the masses but rather by a certain sector of the institutional order. I refer, obviously, to the Chilean coup d'état of 1973. The ability of the masses to act on their own paled in the face of the efficacy of the rebellious military, whose potency revived aspirations for popular sovereignty, but at a price: the recognition that the identity of the people was now to be determined by force.

The Theory of the Right of the People

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Second Amendment to the Constitution of the United States (1791)

Although explicit, specific recognition of a 'right to protest' is rarely found in the constitutions of these societies – an exceptional example being that of Colombia, whose constitution affirms in Article 37 that “[a]ny group of individuals may gather and demonstrate publicly and peacefully” – it is also the case that they always recognize other rights that provide a normative foundation for the act of protest itself. Freedom of expression and assembly in particular, and in similar fashion the right to strike and its analogs, comprise the public liberties from which the right to protest is configured in liberal democracies. The statutory regulation of the right tends to hover between permit requirements – as was the case in Chile for gatherings “in squares, streets, and other places of public use,” according to Supreme Decree No. 1086 from 1983 – and simply giving advance notice – as in the case in Spain with Organic Law 9/1983, whose scope is defined by Article 21 of their constitution and permits the prohibition of meetings and protests only “when there are reasons grounded in the disturbance of public order.” These dispositions express the limits established by positive legal orders on the right to protest; protests must be unarmed and respect private property and public order.

The theory of the right of the people is a theory about the legitimacy of direct action by the governed directed towards the overthrow of the government, a legitimacy that is the obverse of that government's illegitimacy. Therefore, a necessary element of this theory is the existence of a determinate conception of what constitutes a good government. The theory of the right of the people is in this sense a formal theory whose content is determined by the conception of the good government that one holds. In turn, to the extent that one holds a conception of the good government and, correlatively, of the tyrannical government, one must accept the theory of the right of the people; that is to say, of the legitimacy of popular insurrection.³ Whether this right ought to be exercised against a regime that, for example, *violates* property rights or, vice versa, against a regime that *guarantees* property rights – that is, the direction or sense of the rebel action – is a question whose answer first requires solving the question of the *identity* of the people. Only after defined the identity of a people can we know what are its interests, its ideas of what is good and just, and its decisions over where the political line between friend and enemy is to be drawn.

The right of the people, then, is the right of rebellion; thus has it been historically understood in Western political theory.⁴ Its importance in the configuration of our political imagination cannot be sufficiently emphasized. Historically, the right of the people is the political praxis which shapes both popular sovereignty and the constituent power. The Boston

³ Walter Benjamin would add that this is a natural law affirmation, inasmuch as the thesis of the right of the people accepts the natural law criterion by which violence is considered legitimate to the degree that the ends to which it is employed are legitimate (Benjamin 1986: 277). To which one would have to respond that, natural law being so defined, at least at the level of normative political theory the Western political tradition is overwhelmingly pervaded by natural law.

⁴ Among the thinkers canonically included in this tradition, only Hobbes openly and insistently rejects this right, as he considers that the absence of government is worse than the existence of a bad government. It is however possible to conjecture that, by the teleological grounds he offers for the legitimacy of government consistent with the protection of its subjects, Hobbes approaches the canonical position and admits the possibility that a government may lose its legitimacy were it to fail to protect the safety of and harmony among the governed.

Tea Party, the Attack on the Tuileries, or the *Grito de Dolores* are all acts that marked the initiation of exercises of the right of the people and that led to the foundation of political orders; that is, they become exercises of constituent power. Therein lies the importance of the right of the people in constitutional history; therein lies the interest in the event of this right's enervation and death for constitutional theory.

The right of the people is a myth, in the sense that Georges Sorel gave to this expression. For Sorel, myth – for example, “the general strike of trade unions and the catastrophic revolution of Marx,” or even the “militant Church” waging battle against the devil – makes itself useful to political struggles by providing them with a historical imaginary and horizon. Thus, “men who participate in great social movements represent their immediate action in the form of images of battles assuring the triumph of their cause” (Sorel 1973: 29). The importance of myth in structuring rebellion is fundamental; “[r]evolts can be spoken of indefinitely without ever provoking revolutionary action as long as there are no myths accepted by the masses” (Sorel 1973: 38). This, because “[n]either the quest for justice nor the calculation of costs and benefits will bring us to sacrifice. Only the sacred can do that” (Kahn 2008: 115); and “a political idea for which no one will sacrifice has no place in the world ... [i]t is purely fictional” (Kahn 2008: 99).

The right of the people does not admit any formalization other than its conceptual description: all positive regulation will necessarily be oriented to deny future exercises of the right for the sake of preserving the political order in question. It is inspired precisely in the phenomenology of the right of the people that Sieyès argues that the will of the nation “only requires its reality to be forever legal” since “it is the origin of all legality,” and therefore it would be absurd to suppose “that the nation would be subjected to itself through the formalities or by the Constitution which it has imposed on its subjects” (Sieyès 2008: 145). The right of the

people, accordingly, does not recognize theoretical or doctrinal limits either at the moment of action or in the orientation or instruments of that action. The only limits it might recognize would be the ones emanating from a concrete political situation in which the right could not manifest itself. Now, then, does that mean the right of the people lacks any limitation at all on the theoretical level? Can no immanent criterion of the right of the people be identified by its conceptual description that might guide or even limit its concrete action?

I daresay that there effectively is an immanent limit to the right of the people. I believe that this immanent criterion can be identified through reflection on the purpose of the right of the people, which is none other than replacing a regime held to be tyrannical. The immanent limit on the right of the people, by consequence, is set by the viability of that replacement. Direct popular action must be capable of realistically aspiring to improve the living conditions of the people, without risking its destruction. This is clear from the Catholic perspective; hence, according to Thomas Aquinas, for whom “[t]yrannical rule is not just, because it is not directed to the common good but to the private good of the ruler,” “[d]isruption of such a government therefore does not have the character of sedition, unless perhaps the tyrant’s rule is disrupted so inordinately that the community subject to it suffers greater detriment from the ensuing disorder than it did from the tyrannical government itself” (Aquinas 2002: 250). For the Aquinate, avoiding the “greater detriment” suffered by the “martyred masses” constitutes such an intrinsic limit. Something similar, or at least analogous, can be found in Jacobin revolutionary theory. “If the mainspring of popular government in peacetime is virtue, the mainspring of popular government in revolution is virtue and terror both,” maintains Robespierre, “virtue, without which terror is disastrous; terror, without which virtue is powerless” (Robespierre 2007: 115). Robespierre was consequently referred to as the Incorruptible. His dictatorship was bloody, but

virtuous; the Terror defended, impartially and neutrally, the survival of the Republic. Had it been otherwise, the revolutionary government would not have been any different from the tyranny of Louis Capet.

What conclusions can be drawn from the broad prescriptions regarding goodness and virtue? As I have already suggested, a concrete response depends on the existence of a historical subject that claims for itself the title of the people and therefore gives specific content to these two concepts. It does seem to me, however, that there does exist an inviolable limit, one that was correctly identified by Salvador Allende in his most difficult hour: “The people must defend themselves, but not sacrifice themselves. The people must not allow themselves to be destroyed or gunned down, but they cannot let themselves be humiliated either.” The liberation of the people cannot, logically, entail its annihilation; at least from any political, and thereby worldly, perspective. To be sure, Paul Kahn will remind us that there is always “an intimate connection between the two meanings of sacrifice: killing and being killed” (Kahn 2008: 96). That is something that rebel leaders from every age, from every social class, and of every political stripe have always clearly known. What is distinctive of our technological era is that whoever wishes to become a rebel leader and rises to that position from the plebs, and indeed from any social position that cannot secure for itself access to heavy weaponry, knows that the only means open to them of creating political meaning is their own willingness to be killed, as their capacity to kill is no longer viable. This is even clear in the futile resistance of Allende in the face of the coup d’état; sometime in the morning of that September 11th, Allende understood that his military inferiority meant that sacrifice could only be understood as *his* sacrifice. Still, Allende and others who face the same dilemma from clearly subaltern and marginal positions – plebian positions – know that their sacrifice does not possess significance in and of itself, but rather to the degree

that it convinces and inspires others. This is something that the bygone tribune of the plebs could ignore: he only needed to vanquish and reorder by his own force the concrete political order before him. This is the change introduced by technology.

The Plebs

It has been said that the concepts of political theory are essentially contested. The notion of “the people” eminently demonstrates this quality; not only on a philosophical level but also, even more so, on the concrete level of political action. In other words, the question is not *what* the people is, conceptually speaking, but also and more importantly, *who* the people is. The question surrounding the conceptual definition of the people can wait, and can remain permanently unsolved; the question surrounding the political identity of the people, however, requires an answer, and both legitimacy and the effectiveness of state order depend on it.

This is why I have chosen to employ the term *plebs* to clarify the identity of the collective subject that loses with technological development. It is not the term adopted by modern Marxist theory, which theorizes about the vanguard role of the *proletariat* on the basis of sociological presumptions whose specificity constantly make the theory vulnerable to the objection that those presumptions have lost their descriptive validity. Nor is it the term favored by postmodern social theory, which has preferred to speak of *multitude* to emphasize the decentralized, multiform character of the many. The term *plebs* can indeed be confused with or taken for either the *proletariat* or the *multitudes*, yet it goes further than both. When Marx speaks to those who have nothing to lose but their chains, he is addressing a collective that goes beyond the working class; he is addressing all those who suffer prejudice in the distribution of the fruits of social exchange because they do not gain anything from it. The plebs, therefore, amounts to that set of subjects

who do not hold objective interests in the maintenance of the order associated with that social exchange.⁵ Who those are that actually comprise the plebs, to be sure, is a question that will only be possible to answer by examining the specific social order.⁶ The peasants of the paradigmatic revolts of the late Middle Ages without doubt formed part of the masses; as were the *sans-culottes*; Perón's *descamisados*; and present-day social movements: Brazilian *Trabalhadores Rurais Sem Terra*, the Spanish *indignados*, the "Occupy" movement, squatters, mobilized indebted students, the Chilean *deudores habitacionales* and small-scale fishermen.

The dilemma of the plebs, so understood, is that it is defined by what it is deprived of, by what it lacks. Fundamentally, the masses lack access to major sources of capital, which is at the same time a result of and reason for its position in the capitalist class structure. This is of great consequence: as a matter of principle, the masses lack access to the set of instruments that have emerged as a consequence of technologized weaponry. The existence of powers that facilitated such access is the anomaly that determines the specificity of the plebeian 'national liberation' guerillas of the 20th century; once those powers disappear, so too disappears the possibility of the plebs matching the capacity for violence of the establishment. When militarily mobilized sectors of the plebs lose this support, they must obtain resources elsewhere in order to maintain their mobilization. From this arise, on a slope that does not always become slippery, practices such as

⁵ Of course, there might be people who subjectively gain a great deal, people who because of their individual circumstances might obtain benefits and perks in an exclusive, hierarchical system, and might even rise to a higher position within the system by exploiting its hierarchy. Chilean readers might imagine Laurence Golborne nimbly darting from Maipú towards Las Condes.

⁶ A brief observation in consideration of the audience to whom these reflections are destined: professionals do not, objectively speaking, comprise part of the plebs, nor would they wish to. Professionals comprise a social group objectively integrated into the social order; and they do not experience the loss of the potential for direct and violent action by the masses as a loss, but rather as a hopeful development. This does not mean that in previous times there were never professionals and intellectuals who condoned or vindicated the legitimacy of plebeian violence, nor that none of them would do the same should plebeian violence become once again a possibility.

bank ‘expropriations,’ revolutionary kidnappings, narco-guerillas. What this reveals is that the plebs are defined by their incapacity to autonomously access weaponry.

Let us return to the question of the identity of the people: Who constitutes the people in a concrete political situation? Are the plebs the people? This has indeed always been the belief of every movement that has attempted to change a given order in the name of those who are excluded and marginalized by it. From the perspective of the theory of the State, however, things look differently. For this discipline, the people is an existence assumption of every political order. For its part, political history disaggregates the concept of the people, transforming it into a succession of interactions between diverse actors, each of which is conditioned by concrete historical circumstances. What both perspectives have in common is that they maintain the indefinite character of the signifier “people,” allowing its content to be factually determined according to the circumstances.

Let us again return to the question of the identity of the people. Who comprises the people in a concrete political situation? “The voice of the people,” observes Fernando Atria, “(or that of the constituent power in general) can only be identified retrospectively” (Atria 2006: 58). So, are the plebs the people? The answer depends on the judgment of history; and even more so on the capacity of the plebs to make history, and therefore build an order which would retroactively validate the legitimacy of their intervention. For good or for evil, this involves having triumphed, or at least surviving in the hope of one day triumphing; and when it comes to rebellion, this means attaining military victory.

The Technological Destruction of the Myth

The modern partisan expects neither justice nor mercy from his enemy. He has turned away from the

conventional enmity of the contained war and given himself up to another –the real– enmity that rises through terror and counter-terror, up to annihilation.

Carl Schmitt, *Theory of the Partisan* (1963)

The originalist interpretation of the Second Amendment to the United States Constitution, which is as we know held sway in *District of Columbia v. Heller*, poses a particular problem of intertemporality that is replicated in other cases in which technological developments have affected existing social power relations. The Second Amendment was conceived at a time when the right of the people had produced one of its most surprising results: the establishment of a government based uniquely and exclusively on popular sovereignty. The right of the people had borne its most precious fruit. It is not surprising, consequently, that the revolutionary leaders would have sought to constitutionally entrench one of the actions that made that intervention possible: that is, the ability to keep and bear arms. Protecting the right to bear arms for the purpose of hunting for entertainment would have seemed in that context a trifle without any constitutional importance or relevance.⁷

Subsequent technological development, however, transformed firearms into a dangerous issue for everyone, not only for tyrants. Obviously, it enabled individuals to become efficaciously dangerous to their surroundings, as the mass killings from Columbine to Sandy Hook sadly remind us. But it also enabled state institutions to become efficaciously dangerous to rebels, as the 1907 massacre of striking workers in the Chilean town of Santa María de Iquique reminds us. The mass killing of plebeians is of course a politically costly matter. Yet technology has taken it upon itself to solve this as well, by developing effective ‘riot control agents’ in the

⁷ Contemporary protection of this right, however, represents a negation of the right of the people equivalent to privatizing public interest. *Heller* is one more expression of the destruction of political unity sought by neoliberalism, which wants to dissolve the notion of the people into a mass of consumers.

form of tear gases that temporarily incapacitate people through physical pain and sensory deprivation.⁸ The State sought to legally protect its capacity to wage war by banning the production, acquisition, and possession of these instruments;⁹ yet a more effective means of maintaining its monopoly is the elevated cost of producing or acquiring such instruments of war.

All of this has contributed to the elimination of insurgent violence as a means of popular political action; or at least as a means of plebeian popular action. Carl Schmitt makes reference to the following quote from Che Guevara in his study of the partisan: “guerilla warfare is a phase of war that lacks the chance to achieve victory on its own, it is also one of the initial phases of war that will continue to evolve and develop until the guerilla army, through constant growth, acquires the characteristics of a regular army” (Guevara, 1977: 39). In the age of technology, direct popular action without military strategy leads directly to defeat and annihilation. This is why direct popular action has vanished as a myth.

⁸ German reports suggest that the French police used cartridges of ethyl bromoacetate starting in 1912, while starting in 1914 the French Army began using grenades with the same substance in World War I. In parallel, the Chemical Warfare Service, a unit of the United States Army, was formed in 1918 and, following the war, promoted the use of these instruments for controlling civil disturbances. Although the Secretary of War in the Wilson administration prohibited such use at first, this policy changed under the Harding administration. Finally, despite a reestablished prohibition that basically applied to federal troops in the National Guard, several ex-officers of the CWS opened their own companies dedicated to the production and supply of tear gas for state police, following which this instrument became generalized, spreading to the rest of the world. Research into the most efficient forms of dispersion and the most effective compounds continued over the decades to come until the use for this purpose of 2-chlorobenzalmalononitrile was consolidated in the 1950s and 60s.

⁹ In the case of Chile, the law in question is Law No. 17,798 on Arms Control. See Article III of the law: “No person may possess or be in possession of arms whose barrels have been cut down, small weapons of any caliber that operate fully automatically, disguised weapons, meaning any weapon hidden under an inoffensive appearance; weapons whose serial numbers have been altered or erased; machine and submachine guns; submachine guns or any other automatic or semiautomatic gun of great destructive or effective power, be it by its force, by the caliber of its projectiles, or by its mechanisms for accuracy.

Likewise, no person may possess or be in possession of artifacts fabricated on the basis of asphyxiate, paralytic, or venomous gases, of corrosive substances, or of metals that splinter from gas expansion producing shrapnel, nor implements designed for their launch or activation.

In addition, no person may possess or be in possession of weapons of artisanal fabrication nor of weapons transformed from their original condition, without authorization of the office of the General Director of National Mobilization.”

In the face of this, someone might point out that we are not dealing with an unfortunate historical development; that, to the degree to which we measure a civilization's advancement as a process of containing and reducing violence, the technical irreproducibility of plebeian rebellion should be seen as a very positive phenomenon since it removes one source of violence. Two points in response to such an observation are necessary. The first is that the disappearance of plebeian violence is equivalent, analytically speaking, to the disappearance of one form of plebeian action, and that is precisely what it is: a reduction in the possible forms of plebeian action. The second point, one which is quite clear in reference to Chile, is that the technical irreproducibility of plebeian rebellion is not equivalent to the disappearance of all forms of rebellion or direct action.

The subtitle of this essay, as is fairly obvious, provides a reference to the writings of Walter Benjamin about the effects of technological development upon aesthetic experience. The justification for this reference lies in the analogy that exists between the effects of those developments on both aesthetics and politics: the atrophy of *aura*. Benjamin imports this concept from religious discourse to describe “the unrepeatable manifestation of distance” that, by consequence of the human eagerness to “take possession of the closest objects in one’s surroundings,” an eagerness facilitated by the technical reproducibility of artistic objects, ceases to constitute a dimension of artistic experience. Technical reproducibility banalizes the work of art. What transpires in the field of politics and plebeian attempts to incarnate the people represents the opposite phenomenon, as its prospect of realizing that intention becomes infinitely remote; the end result is the same, however, since technological development ultimately renders the “right of the people”, and possibly even popular sovereignty, something quite banal. In their place arises the discourse of international humanitarian law and human rights, inspired by the

Universal Declaration of Human Rights according to which it is “essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

In conclusion, I maintain that technological development has made plebeian rebellion unfeasible, as that option leads to defeat and sacrifice. Therewith rebellion loses its mythical status in contemporary political conflicts. As is well known, however, on the basis of pure sacrifice some have managed to build another myth. I am thinking, of course, of the active non-violence of Gandhi and Martin Luther King Jr. The question is whether active non-violence has managed to occupy the space that the right of the people had held in the Western political imaginary. I intuit that, despite the popularity of non-violence, inferred from the “good press” it receives, it has not managed to replace the right of the people. Invoking the right to rebel enabled the people to autonomously establish limits upon the authorities. Active non-violence, however, constitutes a resource that is part of a process of persuasion; the people do not autonomously act through it, but rather they attempt to influence other people. That is why the right of the people represented the historical praxis upon which the notion of popular sovereignty was constructed, while active non-violence only appears once the death of popular sovereignty has been announced.

*Rebellion or Sedition?
The Life and Death of the People's Chile*

Come what may, Chile will remain the country in which class consciousness and confrontation will have found their strongest, most direct expression. The weakness of the State, the absence of a revolutionary party and the collapse of the foreign interests that dominated the countries came in conjunction such that the opposition of the social classes was left naked. Great revolutions combine military and political struggle with social conflict. That is what constitutes their savage greatness. For over two years now in Chile, social struggles have continued to unfold, yet without losing their

purity, without succumbing to or serving as proxies for causes in other fights.

Alain Touraine, 29 July 1973

Up until this point I have attempted to outline the theory of the right of the people, the immanent limits that it establishes for direct popular action, and the consequences on this ‘structure of belief’ stemming from technological development. Now I want to tell a story in which that analysis takes on existential significance.

On the night of 4 September 1970, Salvador Allende saluted an enthusiastic crowd of his supporters from a balcony at the headquarters of the Chilean Students’ Federation (*FECH*). After years of fruitless competition, the until-then Senator Allende obtained 36.2% of the votes cast that day, defeating by a slim 1.9% his closest competitor, the ex-President Jorge Alessandri. This was an important victory for the Left in Chile: Allende became the first Socialist president elected democratically, symbolizing a new conceptual approach to gaining power different from that of other Marxist projects; that is, through the bourgeois legality itself. The question of legality and its malleability in the face of social change – the potential, as well as the conditions and limitations, of the relation between the two – would come up time and again during the thousand days that the Allende presidency lasted. In fact, the very question of whether the Popular Unity administration truly operated within that legality became the most controversial theme of the period, constituting the node where each and every of the other points in contention met.

A long list of topics breaks down the conflictive relationship of the Allende presidency with legality. Among them was a constitutional reform, the Statute of Constitutional Guarantees, whose promulgation by the Left was required by the Christian Democrat Party in exchange for

its support in obtaining congressional ratification of Allende's presidential victory. This reform, which Allende qualified as a "tactical necessity" in an interview after he had been sworn in, was described by the opposition as a ruse employed to attain power. Another example was the expropriation of businesses by the Executive by means of presidential decrees issued on the basis of an authorization conferred by an old law passed by a *de facto* government, Law Decree No. 520 from 1932, and the naming of presidential inspectors in the businesses now occupied by trade unions on the basis of labor laws that authorized intervention in conflicts between employers and employees. One more instance was the piecemeal application by the government of the 1967 Law for Agricultural Reform with the aim of creating collective settlements instead of distributing land to individual owners. Lastly, one more example was the transfer of cabinet members from one post to another in order to prevent them from risking removal from office through impeachment.

This set of controversies revolved around a central theme in legal theory and practice: legal instrumentalism; that is, the possibility of using law as a mechanism to attain political ends, which in this case was the redistribution of wealth. Rendering the situation even more complex, the resource employed for this purpose consisted of the authority of the Executive to reinterpret law using arguments about presidential powers similar to those taken up, in different contexts, by Carl Schmitt and John Yoo. The legal interpretations and reinterpretations made by the Executive, however, fell far short of obtaining general recognition in society, or even within relevant institutions. Congress, the Supreme Court, and the General Comptroller clashed over and over with the President in discussions over the range of the attributed powers of each; this multiplication of interpretations became the axis of the political conflict as the enmity among them intensified.

The debate over legal instrumentalism, redistributionism, and the expansion of presidential power was at the center of a controversy that, starting in March 1973 heightened the mutual distrust between the government and the opposition and led to intensified partisan mobilization in the streets: the Unified National School project (ENU). The ENU immediately became a hot topic, provoking hostility not only from political parties in the opposition but also from other social actors such as the Catholic Church and even the Armed Forces.

At its core, the Unified National School Report, made public by the Education Ministry on 9 March 1973, proposed changes in both the orientation and the organization of the Chilean school education system. With regards to the first aspect, the report set as an objective to be pursued through education “the building of a humanist, socialist society, based on the development of productive forces, on overcoming economic, technological, and cultural dependence, on establishing new property relations, and on authentic democracy and social justice protected by the effective exercise of the power of the people.” Regarding the organizational change, the plan called for the creation of a new institutional framework for the education system, the Executive Complex, which would comprise all of the public schools in the jurisdictions determined by law and decreed that private schools, “by virtue of the constitutional and legal dispositions in force, [would] have to adopt the curricular content and structure of the ENU.”

The substantive proposals of the ENU Report were not necessarily destined to provoke controversy. Yet in the context of the polarization at the moment in which it was issued, with its calls for creating “a humanist socialist society,” it is not surprising that the report immediately became the object of protest and mobilization.

The battle surrounding the ENU was short but intense. Let us observe the first reactions against the ENU Report. The first came from the students associated with the *Movimiento Gremial de la Universidad Católica* (MGUC). This movement tended to be “corporative and ultra-conservative [...], fiercely anti-Marxist, and inspired by the traditional elements in the social doctrine of the Catholic Church” (Pollack 1999: 31) and had been founded a few years earlier in the Catholic University in response to the surge of the reformist student movement that led the Catholic University Students’ Association (FEUC) from 1959 to 1968. The split in the electorate between Christian Democrats and leftist students that occurred that year enabled the MGUC to capture and maintain leadership of the FEUC all the way through 1973.¹⁰

The unionist FEUC thus became an important element in the strategy of opposition mobilization and combat against the Allende administration. This was the situation when the *gremialista* president of the FEUC Javier Leturia became the first person to publicly attack the ENU Report on 16 March 1973, barely a week after its release. In declarations made to the daily newspaper *La Prensa*, Leturia accused the government of attempting “to place Chileans – from babies still in the crib to the elderly – under the brainwashing monopoly of a dogmatic State built upon the concepts, values, and categories taken from Marxist thought” (Fontaine & González 1997: 601). Leturia closed his declaration by calling for the construction of “a great national authority to *define educational freedom* and fight against the governmental model of the Unified National School system.”

The second reaction against the ENU Report came from the most conservative sector of the Catholic Church. On 21 April, the Bishop of Valparaíso Emilio Tagle made an appearance on the television station run by the Catholic University of Valparaíso in order to declare that “the

¹⁰ After the coup d’état, the leadership of the FEUC was appointed by university authorities for a full decade.

Church does not accept the imposition of a type of politics in education,” an appearance that the daily newspaper *La Tercera* described as an “unexpected intervention” (Fontaine & González 1997: 607). In defense of the autonomy of Catholic educational institutions, Tagle stated that “we are operating in our domain and our education cannot be transformed into an instrument left in the hands of the State.” What is even more interesting is Tagle’s declaration that the ENU project would violate “the freedom that every parent has to choose for their children the education that they prefer.”

This criticism was accompanied by others that were less expected. One of these was the criticism of the ENU offered by Cardinal Raúl Silva Henríquez, a politically moderate clergyman who incessantly attempted to promote dialogue between Popular Unity and the opposition. On 29 March 1973, Silva Henríquez told the press that “the incorporation of all Chileans into an educational system that would not discriminate against anyone on the basis of economic capacity, social condition, or ideological position” was an objective worthy of approval; yet that the ENU report represented an “imposition” and an “improvisation” (Fontaine & González 1997: 613). In the opinion of Silva Henríquez, its application had to be postponed in order “to permit a broad, national debate to take place, one both serious and constructive, truly democratic and pluralist.” Until then, Tagle’s criticism might have been seen as the personal position of a priest identified with the Right, who shortly afterwards would greet the Junta as emissaries sent by God to liberate Chile. Silva Henriquez, however, would go on to collaborate in the protection of victims of persecution by the dictatorship. His critical positing regarding the ENU, by consequence, represented a politically significant event as it demonstrated the irreparable rupture between the Center and the Left.

More criticism continued to come over following days, including, obviously, from the sectors in the opposition most closely associated with the Church of Silva Henríquez. On 6 April, Senator and President of the Christian Democrat Party Patricio Aylwin qualified the project as unconstitutional, arguing that the constitutional amendments passed in 1970 made it “necessary for any substantial reform of the national education system, whose fundamental bases are established by various laws, to be implemented by a new law” (Fontaine & González 1997: 615). Meanwhile, over 800 military officers met with the government to criticize the proposal as an attempt to indoctrinate their children. Lastly, on 11 April, the Episcopal Conference sent a letter to the Minister of Education declaring its opposition to the ENU project “because of its content, which does not respect fundamental human or Christian values, notwithstanding the pedagogical merits under discussion.”

After this final blow, the Minister of Education announced on 13 April the postponement of the reform in order to allow more time for its discussion. Despite the announcement, massive student protests in favor of and against the reform broke out. The Federation of Secondary School Students had already announced their support for the project and on 26 April carried out a demonstration in the Caupolicán Theater to reiterate that support. For their part, secondary students in private schools convoked a nation-wide strike, in which according to the opposition press more than 200,000 students participated. Massive demonstrations in favor of and against the ENU continued for several days, reaching a culminating point on 27 April, when a communist worker who was taking part in a march was assassinated by a sniper in front of the headquarters of the Christian Democrat Party and a group of student set fire to a bus. Pandora’s Box had been opened.

On 22 August, a majority in the House of Representatives approved the text of a political agreement that put in writing the opposition's narrative:

...the government has not committed isolated violations of the Constitution and the law, but rather has made them a permanent behavioral system, going as far as systematically ignoring and trampling the powers attributed to the other branches of government, habitually violating the guarantees the Constitution secures for all of the inhabitants of the Republic, and enabling and protecting the creation of illegitimate parallel powers that constitute an extremely grave danger for the nation, by all of which it has destroyed essential elements of institutionality and the rule of law.

A few weeks later, on the morning of 11 September 1973, the streets of Santiago witnessed for the first time in the city's history an aerial bombardment, putting a violent end to the historical cycle of participation and democratization on which Chilean society had embarked. The most important target of the missiles fired from the Hawker Hunter aircraft of the Air Force was the *Palacio de la Moneda*. Inside the building, among the flames and broken windows, President Allende spent his last hours trying to counter what he hoped was an uprising of only a group of officers. Soon, however, the radio revealed the truth: in its first joint statement, the so-called *Bando N° 1*, the generals from the three branches of the Armed Forces and the General Director of the *Carabineros*, declared their unity in order to “initiate the historical and sensible mission of fighting for the liberation of the homeland from the yoke of Marxism and the restoration of order and institutionality” and called for Allende to “proceed to the immediate tender of resignation from his high post to the Armed Forces and Border Guards of Chile.” That communication was followed in short succession by *Bando N° 5*, another military declaration that announced that the Popular Unity had “shattered national unity by artificially fomenting a fruitless class struggle” and held that the entire country was suffering from “anarchy, the asphyxiation of freedoms, moral and economic derangement.” Accusing Allende of having damaged the social fabric of the

country and violating the Constitution through “dubious judgments and deliberate, twisted interpretations,” the military Armed Forces had risen up as the guardians of social order and legality. That same day, the military junta began the task of dismantling the social and political pact built over the years around the 1925 Constitution. The juridical means employed to accomplish the task were law decrees, a category of orders issued by the junta whose legal effect was reinforced by military force. On 11 September 1973, the generals of the Army, Navy, Air Force and Carabineros constituted themselves as a *Junta* and assumed “Supreme Command of the Nation” through Law Decree N° 1.

Of course, the military rebellion had not been previously authorized by the legal order. Juridically speaking, it arose *ex nihilo*. Moreover, this occurrence was *contra legem*, specifically against Article 23 of the then-in-force Political Constitution of the State of Chile, also known as the 1925 Constitution, which read as follows : “Any resolution that may be agreed upon by the President of the Republic, the House of Representatives, the Senate, or the Courts of Justice under the presence or requisition of an army, of the leader of an armed force, or of any gathering of the people that, be it armed or unarmed, is in defiance of the authorities, is void and lacks any legal effect.” For this reason, from the perspective of the purely formal validity and logic of norms, we would have to conclude that the legal order that arose from that intervention, an order comprised of a new Constitution and a set of laws, decrees, and regulations all approved by the military junta itself, suffered in terms of public law from legal nullity; a kind of nullity which according to a well-known jurist who supported Pinochet is, paradox of paradoxes, irremediable, imprescriptible, and ipso iure. In other words, it would not be necessary for a tribunal to declare its invalidity, nor would there be any statute of limitations that could repair that invalidity. Nonetheless, the constitutional text approved by the junta has governed the political interactions

of the Chilean people ever since, and the laws it passed continue to govern social interactions as well.

This brings us back to our discussion of the identity of the people and, with it, of the constituent power. Is it possible for a group or faction to claim for itself the representation of the people? To be speaking on behalf of the people? Once more, in the case at hand this possibility was explicitly rejected by the legal order. According to Article 3 of the Political Constitution of the State, “[n]o person or assembly of people can assume the title or representation of the people, claim its rights, or make petitions in its name. Infraction of this article constitutes sedition.” Yet that prohibition cannot, it goes without saying, impede the historical force of whoever may effectively and efficaciously claim for themselves such representation. At the moment rebellion occurs, “(constituent) extra-institutional action by the people will always be carried out by an interposer; it will always be mediated by someone who claims to represent the people” (Atria 2006: 87). By consequence, in this moment when norms are dissolved, “the identification of the people” is “a political, partisan question” (Atria 2006: 87). This remains true regardless of whether such representation is claimed by the Military Junta or by the Movement of the Revolutionary Left. The existence of conflicting narratives brandished by distinct social actors during the entire duration of the Popular Unity government, and particularly during the ENU episode, indicates that, at least potentially, there were other possible claims of representation.

The Military Junta claimed for itself the representation of the people of Chile, thereby also determining the identity of the people. The people of Chile would, accordingly, comprise those who felt interpreted by the Military Junta’s representation; everyone else would then be enemies of the people. That in itself, for theory of the State, is sufficient; the theory of the State does not seek to pass judgment on the identity of the people, it only requires a subject that acts

politically and makes decisions regarding the meaning and form of political unity. Political history, however, does track the identity of whoever operates behind the banner of the people, and that information is not forgotten. It holds the knowledge that the set of Chile's constitutional and legal texts, despite the removal of Pinochet's signature, still contain his decisions regarding not only such matters as what the political regime is but also how is education and health supplied, or how the interruption of pregnancies is banned altogether.

What happened during those times in terms of political action? Non-plebeian political movements responded to the tactics of the Junta in varying degrees of acceptance and dissent, generally oriented towards creating conditions for consensual agreement to resolve the conflict; the best expression of this was the National Agreement for Transition to Full Democracy, a manifesto signed by representatives of political movements on both the Right and Left under the urging of the Cardinal Juan Francisco Fresno. The Military Junta, of course, responded with derision. Only the Communist Party adopted a military strategy inspired by national liberation guerilla movements; one which, however, was a failure by its own terms, an illustrative example being the interception at Carrizal Bajo of a shipment of heavy weapons in 1986.¹¹

Plebeian rebellion – or “popular political violence,” to use Salazar's term, who described it as “the social manifestation historically most opposed and antagonistic to the liberal, military regime” – also took place during days of protest that were carried out starting in 1983. In response, “the military dictatorship adopted repressive, clearly militarized courses of action that belied on their part an obvious war mentality.” Salazar maintains that the Junta could respond to this popular political violence in one of two ways: “either it could militarily devastate

¹¹ The weaponry confiscated included 3115 rifles, over 300 rocket launchers, approximately 2000 hand grenades, dozens of heavy machine guns, and tons of explosives.

populations in the capital (massacring the human mass that fueled the ‘ring of fire’ surrounding Santiago) or it could take “advantage and realize the benefits of the dialoguing neutralization that it had imposed on the front of the mesocratic revolt” (Salazar 2006: 302). Salazar, who ascribes victory to the masses for their willingness to lose their lives, holds the middle classes and the political movements that represented them responsible for having allowed the dictatorship to negotiate its departure in a pact that still keeps the legal order of Pinochet in place today. What remains unclear to me, however, is that another alternative might have existed, considering that the masses could not have expected “either justice or clemency” from the junta.

In guise of conclusion

What remains of the right of the people today? Little or nothing. The emergence of highly efficient and high-cost weaponry has taken viability away from rebellion, and the appearance of highly effective high-cast anti-riot agents has allowed to discipline all other forms of discontent. A political theory for the technological era must take into account this reduction in the space for collective action and therefore recognize that, in technologico-political terms, we live in times of subdued political sovereignty. Such a theory must also make note of current and future events that might alter the present situation. Will rebellion make a return, and with it plebeian sovereignty, if new technologies restore the ability of the masses to overthrow governments on their own? Will social networks enable them to do this? Might 3-dimensional printers level the playing field in terms of weaponry between governments and future rebel groups? Only time will tell.

Bibliografía

Aquinas, Thomas (2002) Political Writings. Cambridge University Press, Cambridge.

- Atria, Fernando (2006) “Sobre la soberanía y lo político”. *Derecho y Humanidades*, Vol. 12, pp. 47-93.
- Benjamin, Walter (1986) “Critique of Violence”. *Reflections*, pp. 277-300. Schocken, New York.
- Fontaine, Arturo y González, Miguel eds. (1997) *Los Mil Días de Allende*. Centro de Estudios Públicos, Santiago.
- Guevara, Ernesto (1977) *Escritos y Discursos*, Vol. 1. Editorial de Ciencias Políticas, La Habana.
- Kahn, Paul (2008) *Sacred Violence: Torture, Terror, and Sovereignty*. The University of Michigan Press, Ann Arbor.
- Pollack, Marcelo (1999) *The New Right in Chile 1973-97*. St. Martin’s Press, New York.
- Robespierre, Maximilien (2007) *Virtue and Terror*. Verso, New York.
- Salazar, Gabriel (2006) *La violencia política popular en las “Grandes Alamedas”*. Santiago, Lom.
- Schmitt, Carl (2004) *The Theory of the Partisan: A Commentary/Remark on the Concept of the Political*. Michigan State University Press, East Lansing.
- Sieyès, Emmanuel (2008) *¿Qué es el Tercer Estado? Ensayo sobre los privilegios*. Alianza Editorial, Madrid.
- Touraine, Alain (1974) *Vida y Muerte del Chile Popular*. Siglo XXI Editores, Ciudad de México.