

Towards a conceptualization of populist rights

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Is there a particular set of rights that can be regarded as “populist” in the same sense that we speak about liberal democratic rights and, if so, what are these rights and how do they relate to populism? There is a long list of arguments against any notion of populist rights. These arguments concern, among other matters, to questions about the definition of populism, to the many different types and varieties of populism, to populism’s attachment to both extreme right and left wing ideologies, to populism’s anti-institutional nature and alleged authoritarian bias and to the personalist and *decisionist* nature of populist politics, all of which leave little space for autonomous rights. My goal in this paper is to discuss a theoretical framework for the conceptualisation of populist rights. In doing so, I argue that (democratic) populism can be associated to a notion of rights normatively centred in the exercise of sovereignty and empirically centred in the denunciation of asymmetries of power embedded in liberal democratic institutions. I conclude that populism’s antagonistic divide between the people and its Other presents significant challenges to notions of democratic populist rights that, in order to be truly democratic, would require the incorporation of some notion of citizenship to populism’s people – centred appeal.

Let me start then with the definition of populism upon which the question of populist rights naturally depends. Perhaps the currently most quoted definition of populism is Cass Mudde’s and Cristobal Rovira K. definition of populism as “a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘the pure people’ and ‘the corrupt elite’, and that argues that politics should be an expression of the *volonté générale* (the general will) of the people” (Mudde & Kaltwasser, 2012: 8).

I agree with the core elements of the definition with some important reservations. The first one is that populism is not an ideology, not even a thin one (Moffit and Tormey, 2013). Ideologies are complex ideational constructs. For example, while there may be no final agreement about what is meant by democracy or by liberalism, they both share a conceptual core (Freedman, 2017) that makes reference to a recognised intellectual genealogy, a canon of principles and a body of thought, even if the precise meaning of these principles remains essentially contested (Gallie, 1956). In contrast, there is not such a canon or genealogy in populism, which is an external attribution frequently contested by the very same actors that are characterised as such. The non-ideological nature of populism makes a significant difference with liberal-democratic notions of rights, which are grounded in the articulation of two distinct, intellectually sophisticated ideologies, liberalism and democracy.

Secondly, Mudde and Rovira are right in centring the definition of populism in the divide between the people and the elite. But “the people” in populist discourse is not necessarily

“pure” of for that matter “homogeneous” and the elite not always, necessarily, corrupt. The divide between the people and its other is political rather than moral. The people of populism are the plebs and nowhere in the long history of plebeianism have the plebs been regarded as particularly pure or virtuous and not even the plebs consider themselves as such (Green, Ostiguy 2017). This fact does not mean that certain conceptions of the people that define it in racial ethnic or national terms, don’t include an element of ethnic or racial purity in the identity of the people and so does populist appeals that identify the people in quasi- religious terms as the long- term, historically suffering people . But whether the people are pure or not is rather an empirical matter to be elucidated by the analysis of varieties of populist discourse rather than a conceptual one. The people is not necessarily homogeneous either. In many cases of populist identification in Latin America, the people are racially and ethnically diverse, in contrast to the much more culturally and ethnically homogenous white/creole elite. Conversely, popular support for populist leaders such as Silvio Berlusconi or Cristina Kirchner against whom serious allegations of corruption have been raised, show that corruption, at least in conventional understanding of the term, is not necessarily regarded as constitutive of the divide between the people and the elite. True, many populist appeals identify the political class as corrupt but, again, the particular attribute of the Other that differentiates it from the people is subject to considerable empirical variations. There is also an argument to be made that the corruption of the elite lays in its betrayal of the people’s interests and in the elite’s siding with its enemies but this is not what most studies of populism understand by the term “corrupt”.

Thirdly, the notion that in populist politics, politics should be the expression of the *volonté générale* (the general will) should also be challenged or at least qualified. As Pierre Ostiguy (2017) has astutely noted, in populist politics what matters is the will of the people rather than the general will. Taking to the extreme, the general will is meaningless in populist politics, as it would imply the need to considering the will of Other as legitimate part of the will of the people. The distinction is perfectly illustrated by the Brexit argument that Britain should leave the EU regardless of its consequences because it was the will of the people, even if this means ignoring the will of the 48% that voted remain.

With these qualifications in mind we can focus on a leaner conceptualization of populism in order to discuss its implications for populist rights. According to this criterion, in populist discourse the socio-political field is structured as a polarised, antagonistic relation between two socio-political blocks: *Us* (the marginalized, the underdog, the damaged, ‘the excluded’) and *Them* (the establishment, the 1%, the oligarchy, the political and economic elite, the political order etc.). The criterion also implies that populist actors (leaders, parties etc.) take sides by claiming to represent the will of the excluded, repressed or marginalized side (the will of the people). So, the main criteria highlighted by the minimalist definition are: a) People-centrism. The signifier “the people” operates here as a nodal point around which other peripheral and often antithetical signifiers and ideas can be articulated; and (b) the antagonistic divide with a certain Other. While the divide means that the people can never be identified with the whole of the community, the nature and depth of the divide and the identity of the Other varies significantly (Stavrakakis 2017). I will centre on these two criteria for discussing the notion of populist rights.

In the populist mode of identification the signifier *the people* refers to the people both as an underdog (the plebs) and as the holder of sovereignty (the demos). It refers to an oppressed or excluded part of the political community whose claim to be identified as the demos is denied by the power holders. According to the definition above, the first feature of a conceptualisation of populist rights is that rights are (or should be) the rights of the plebs or popular rights, rather than universal rights. But why or in the name of what should the people

have a special set of rights? There are a number of answers to this question that revolve around issues of exclusion and asymmetries of power. Some scholars have used Jacques Ranciere's idea of the plebs as the part of society that has "no part" or no place in the institutional order; a part that goes unheard and un-counted in the ordinary course of democratic politics. This notion traces its roots to the twofold Aristotelian notion of the people as both the demos and the poor or popular classes who are un-represented or excluded from taking part in government. The challenge for the unseen and un-heard is thus how to make the domination they endure visible and be recognised as the true holders of sovereignty (Aitchinson 2017, Ranciere 2004) .

Jeffrey Green (2019, 1) develops this idea in his plebeian theory of liberal democracy. He refers to: "[T]he inescapable sense citizens in any imaginable liberal democracy have that (...) no matter how much the idea of free and equal citizenship might inform the institutions and practices of a well-functioning liberal-democratic state, this ideal does not, and can never, fully describe political life in even the most advanced and enlightened liberal democracy." Thus, at the heart of this state of affairs are asymmetries of power that can never be fully eradicated. In his book "The Populist Persuasion: An American History", Michael Kazin (1995) argues that what he calls the populist persuasion is available to any political actor operating in a politico-discursive field in which the notion of the sovereignty of the people and its inevitable corollary, the conflict between the powerful and the powerless, are core elements of its political imaginary.

So, the first element of a theory of populist rights is the unbridgeable gap between the plebs, as holders of sovereign rights, and the rulers that exercise it in practice. That is why loss of trust and crises of representation are at the core of the rise of populism. In a book appropriately titled "Inventing the People. The Rise of Popular Sovereignty in England and America", Edmund S. Morgan (1988, 38) recalls Lincoln's dedication to "government of the people, by the people, and for the people," only to note that all governments are of the people, that all profess to be for the people, and that none can literally be of the people. Morgan's book is not about populism but as the title suggests, about what he calls the fiction that replaced the divine right of kings, the notion of the sovereign people. As he put it: "The people are the governed; they are also, at least fictionally, the governors, at once subjects and rulers. How such a contradiction could win acceptance among a governing elite as well as among the many whom they governed is logically puzzling but historical explicable" (38).

A number of corollaries follow from the argument that the full exercise of sovereignty, as a right that is promised and not just unfulfilled but unfulfillable, is at the centre of a populist theory of rights. Firstly, the antagonism between the people and its other that is constitutive of populism is not the product of an abstract logic empty of normative principles. Ernesto Laclau (2005), on whose theory of populism the definition adopted in this paper draws, argues that populism should be understood as pure political logic devoid of any content, for all its defining features are exclusively related to the logic of antagonism independently of the actual ideological contents to which they are articulated. Yet, while relations of antagonism can be formulated in purely logical terms, as constituted by the articulation of chains of equivalences, populist rights cannot be understood as purely logical constructions. Rather, they are grounded on normative claims based on the right to sovereignty and on the denunciation of asymmetries of power embedded in existing political and economic institutions. As the work of Kazin's (1995) about the changing political incarnations of populist identities in the US shows, the conflict between the powerful and the power-less always makes reference to a rich semantic discourse of rights to justice, identity, representation, socio-economic equality and nationhood that are being re-claimed by both

the populist left and the populist right on very different ideological combinations as part of the exercise of the right to sovereignty.

Secondly, populist rights are not about inclusion but about disruption and dislocation. Populism disrupts institutional politics by introducing ways of being and acting that transgress currently acceptable political grammars and institutional rules. (Norval 2012, Ostiguy 2017). In common, populist politics involve a range of politico-cultural interventions aimed at the staging of a wrong that by being brought into the political domain seeks to redraw the boundaries of inclusion and exclusion of the political order (Norval 2012, 824). As Guy Atchinson wrote: “Where injustice is entrenched, forms of political action that embrace struggle and antagonism may be necessary. This requires a set of political virtues markedly different from the institutionalised forms of deliberation, negotiation and compromise characteristics of official citizenship”. It is the disruptive dimension of populist struggles that characterises populist rights as an “excess” that cannot be bounded by procedural and institutional definitions of democracy, or constrained by the principles of good governance as enforced by a supposedly neutral public administration.

Thirdly, the “excess” that typifies populist rights takes different forms in different political contexts, as it does the extent to which it challenges the status quo. For example, the relation between the dislocation of the existing order by the antagonistic articulation of unmet demands, the moment of populist rupture, and their institutionalisation and expansion into other areas of social and political life by populists in office, is expressed in the history of the social and political rights (the so-called “*conquistas sociales*”) originally granted by national-popular (populist) regimes in Latin America in the 1950s and 1960s. This was an historical period in which the new industrial working class was incorporated to the political system in a number of countries of the region by national-popular (populist) political regimes that granted workers social and labour rights as well as political recognition.

During this historical period, rights were institutionalised as laws, codes and regulations managed and monitored by bureaucratic state institutions. In many cases, legal institutions were also used by populist governments to control the working class organizations and to repress dissent (Crabtree 2013). Yet, the institutionalisation of the social rights constitutive of populist rule, did not convert the original demands from heterogeneous to the political system into pure administrative matters. Rather, the discourse of social and political rights became part of a political imaginary that functioned as the surface of inscription of populist identities in the countries in question. Populist struggles reproduced and activated old antagonisms that took place both within and outside constitutional structures against attempts, not least by the military regimes of the 1970s and the neoliberal reformers of the 1990s, to erode or abolish the socio-economic rights of the previous period. Moreover, the imagining of the people did not remain frozen in time. It was re-signified and articulated to new demands for rights by new social actors, such as ethnic groups and the unemployed (Ferraro 2014), in struggles that took place both within and outside political institutions structures to constitute the popular identities that defined left-leaning 21st century populisms in the region.

Bolivia’s 21st century populist rupture under Evo Morales’ MAS is a case in point. As Laurence Whitehead put it, Bolivia has a long tradition of legal formalism reflected in a complex system of constitutional rules and precedents. On the other hand, it boasted an equally strong tradition of direct political participation that breaks in upon elites games and defies their constraints in the name of an excluded people (Whitehead 2001; Philip and Panizza 2011 57). The history of social mobilizations created two parallel political arenas in an almost permanent cycle of conflict and negotiation that culminated in the populist rupture

of 2005. Populist contestation in Bolivia in the early years of the 21st century was rooted in the so-called National Revolution of 1952 that marked the first wave of incorporation of the popular sectors into the country's political system. As John Crabtree (2013,292) put it, although the rise of the MAS was due to much more proximate factors, there can be little doubt that the National Revolution exerted considerable influence. "For some, the MAS has picked up the agenda that the MNR failed to pursue in the 1950s in translating the promise of citizenship into reality and in creating a nation in which the principles of popular sovereignty prevail. At the same time, however, the project of the MAS differed considerable from that of the MNR, particularly with respect to ethnic affirmation: The MAS sees itself not just picking up from where the MNR left off but as pursuing a project of transforming a neo-colonial state that was based on ethnic exclusion."

The excess that defines populist rights is more evident in cases of grassroots populist struggles. Arguably, grassroots struggles in the US are not characterised by their radical heterogeneity in relation to the political order that defined popular struggles in Bolivia and other Latin American countries. For all its rich history of grassroots political mobilisation the US remains a highly institutionalised liberal democracy. Laura Grattan (2016) draws on the American tradition of so-called radical democratic populism to draw attention to the importance of grassroots popular struggles in forging horizontal relations of trust and mutual recognition among the people (36). In doing so, Grattan makes an important point. As she put it, populism's dangerous excess begins with its ability to animate the usually dormant ideal of popular sovereignty by mobilizing the aspirations of ordinary people to exert a degree of power over their everyday lives and their collective fate. "Returning power to the people begins with the more modest, behind the scenes work of developing civic capacities and rebuilding local institutions and spaces for democracy" (p.40).

Yet, it would be a simplification to conclude that grassroots populism is always necessarily democratic or that only grassroots populism can generate populist rights. Civil society organisations and grassroots mobilisations are not the monopoly of progressive causes. Much has been written about right-wing populist leaders' appeal to the alienated, atomised citizens that constitute the social bases of right wing populism in Europe and the US. But supporters of right wing populism are not always as voiceless or as atomised as they have been portrayed. Joe Lowndes (2017) maps the close relations between Trump and conservative social movements before, during and after the 2016 electoral campaign and traces the roots of Trumpism to the cultural wars of the 1970s and to the emergence of the Tea Party as a response both to the Great Recession and the election of Barrack Obama as the first black president of the USA.

Similar processes of right-wing civil society organisations' engagement in socio-political wars of positions (Gramsci 1971) and grassroots mobilisation are evident in the rise of right wing populism elsewhere. In South America, right wing social organizations have played a significant part in the backlash against the so-called pink tide of leftist movements that dominated most countries of the region in the first decade and a half of the current century. The role of these groups has been particularly effective in the events that lead to the impeachment of centre-left president Dilma Rousseff in August 2016 and the election of the far-right candidate Jair Bolsonaro in October 2018. In her study of conservative civil society groups in Brazil, Marisa von Bülow (2018) shows how during the cycle of protests that rocked the country in 2013 right wing social actors mobilised around the so-called "patriotic repertoire", characterised by the use of symbols such as the national flag and anthem, nationalist slogans and the occupation of canonical spaces. Two years later, during the campaign for the impeachment of Rousseff, right-wing social movements combined the patriotic repertoire with anti-corruption rhetoric that pitted "we the people" against "the

Workers' Party", "Dilma", "Lula" and "corrupt politicians" (p.14-25). In 2018, the political antagonism constituted by mobilised right-wing demonstrators in the previous years was adopted by the electoral campaign of right-wing populist candidate Jair Bolsonaro and contributed to his election as president.

Conversely, while the distinction between grassroots and top-down populism has clear implications for the relation between populism, rights and democracy, it does not follow that top-down populism is incompatible with any notion of rights. Populist appeals must resonate with the values and identities of those it seeks to interpellate (Mouffe 2018). Thus, a genealogical (Foucault, 1970) account of populist rights is fundamental for understanding the leader's appeal. Elaborating on the performative and relational dimensions of populism, Moffit and Tormey (2013) note that identification is not merely a one-sided relationship in which a politician 'performs' for a passive audience, but rather a feedback loop whereby the performance can actually change or create the audience's subjectivity, and this in turn can change the context and efficacy of the performance. Populist rights, even under the form of top-down "concessions", are particularly relevant for constituting and reproducing in time relations of identification between the leader and the people. The symbiotic relation between the material and the symbolic in the constitution of popular identities is captured by an Argentinean trade union leader's reflection on the impact of the social and economic rights granted by the late Argentinean president Juan Domingo Perón on his fellow workers.

"Perón gave us the right to argue,[he] gave us the right to own a fridge, [the right to] own a house. He made us realise that we could be *gente*,ⁱ that we could send our kids to school wearing a pair of shoes, that we could own a good radio like the one of the local lawyer. Perón awoke the people, he made us [politically] aware [conscious]" (Barros 2013, 47-48).ⁱⁱ

What the quote above shows is how political recognition and economic redistribution merged under the shape of populist rights. And while there is a clear top-down dimension in the union leader's assertion that "Perón gave us..." that feeds the myth of Peronismo as the ground zero of the incorporation of the working class to Argentina's social and political life, it also highlights how the leader's initiatives turned subjects into right-bearing actors ("gave us the right to argue", "awoke the people") that sustained relations of identification long after Perón was president no more. Yet, in top down populism, rights are at the gift of the leader and can be withheld if the authority of the leader is challenged or support not openly manifested.

Conclusion: Populism and citizenship rights.

I have started by criticising some elements of Mudde and Rovira's (2012) definition of populism that should be regarded as ancillary to the concept of populism in order to brush off some standard criticisms of populism and advance a minimalist definition of the concept. The definition used in this paper focusses on the antagonistic divide between the people and its Other and on the grounding of the populist divide on normative claims to sovereignty and on the empirical reality of asymmetries of power that make the promise of equal sovereign rights unfulfilled and un-fulfillable. I will now conclude by examining the nature of populist antagonism and its impact on democracy and on notions of populist rights.

The antagonistic divide provides the foundation and limits to populists' notion of rights. But what is the nature of this divide? This is a question that Laclau(2005, 86), perhaps the most sophisticated advocate of the democratic nature of populism, does not elaborate very much, except to state that the chasm between the plebs lived condition as *deficient beings* and those

who are responsible for it is *irretrievable*. Political antagonisms polarising effects opens an important flank to critics of populism that argue it is a threat to democratic pluralism and that the setting up of a ‘non-people’ on the other side of the divide is always, necessarily undemocratic. However, antagonism and polarisation are a condition for democracy, as well as a potential threat to it. Simply put, already from Greek antiquity, antagonism and polarization have been seen as the unavoidable predicament of a democratic polity—indeed as a challenge to be actively assumed and not as a symptom of a political pathology to be eliminated. The *polis*, for example, undoubtedly knows that division and antagonism are central and have to be safeguarded and sustained. On the other hand, the unity of the polis also had to be protected against extreme forms of political struggle, stasis and civil war (Stavrakakis, 2018).

Mouffe’s (2009) concept of *agonism* offers a conceptual lens for exploring the conditions of possibility for a conception of democratic populism on which a theory of populist rights should be grounded. Mouffe shares the pluralist argument that the democratic character of a society can only be given by the fact that no limited social actor can exclusively retain for himself or herself the representation of the totality. However, against Habermans and Rawls, she rejects the very possibility of a public sphere in which a non-coercive, non-exclusionary, consensus can be achieved through rational argumentation (22). She argues that the post-structuralist notion of the constitutive outside forces us to come to terms with the reality that true pluralism implies the permanence of conflict and antagonism: ‘Instead of trying to efface the traces of power and exclusion (as sought by liberalism), democratic politics requires us to bring them to the fore and make them visible so that they can enter the terrain of contestation’ (33).

Mouffe’s concept of *agonism* involves a reformulation of Schmitt’s category of ‘the political’ so that it makes the institution of a demos compatible with forms of pluralism typical of a liberal democratic society. Against Schmitt’s conception of the identity of the demos as pre-given and homogeneous, she argues that the demos is a political construct whose identity is based on processes of identification: ‘Such an identity, however, can never be fully constituted, and can exist only through multiple and competing forms of *identifications*. Hence, the importance of leaving this space of contestation forever open, instead of trying to fill it through the establishment of a supposedly rational consensus’ (2009, 56). For Mouffe, *agonism* is a requirement for a democratic polity, as it implies considering the other as a legitimate adversary, that is as a holder of certain rights, such as freedom of expression, and of the shared values that underpin these rights. What is not fully elaborated by Mouffe is how her notion of agonism applies to populist antagonism in order to prevent the equivalential logic of populism reaching its antagonistic vortex with the risk of becoming an authoritarian and exclusionary political construct – although anti-populist forces can be equally guilty of producing such an outcome.

A partial response, already advanced in this paper, is that while antagonism can be defined as a pure logic (the logic of equivalences), agonism is not a pure logic, as per Mouffe’s definition it incorporates a set of distinctive pluralist values. However, a set of values with no institutional anchoring are a flimsy guarantee against the potentially pernicious effects of polarisation. For some, liberal-democratic institutions are meant to provide the checks and balances that guarantee that populist antagonism remains agonistic in nature. Thus, strong liberal democratic institutions should be a condition for a democratic populism. But this paradoxical conclusion brings us back to the argument that liberalism effectively domesticated democracy’s Jacobin roots (Laclau and Mouffe 1985) by reducing democracy to a set of institutions and pre-political rights, against which populism reclaims the constitutive power of the sovereign people. This is an argument that cannot be discarded

within a political context that involves the post-democratic and ordoliberal mutations of existing liberal democracy.

Aitchinson's (2017) notion of populist citizenship introduces a dislocatory dimension to liberal democratic notions of citizenship. Populist rights address oversights of republican and liberal conceptions or rights as pre-political (liberal) or a political within the system (republican) that neglect asymmetries of power within political institutions. While acknowledging the importance of legal institutions in securing rights he stresses the contingent and political nature of rights and the role of popular struggles in their defence and expansion to further areas of social life. Populist citizenship references the 'constituent' body of the people acting collectively outside official structures in opposition to its 'constituted' embodiment within state institutions whose legitimacy is called into question(349). Aitchinson further argues that given the limits and exclusions of formal citizenship, populist struggles have a vital role to play in political renewal, creating and securing citizens' rights for excluded political subjects whose claims fall outside the dominant values and procedures of constitutional legitimacy (2017, 352).

Thus one plausible conclusion would be that only by considering *citizenship* as a common, overarching, identity that the complex, often troubled, relation between the people and its adversaries does not become a conflict between enemies and an agonistic space for mutual recognition and negotiation, as well as for conflict and contestation, can be established. It is citizenship, as much as the people, that has been hollowed by neoliberalism and globalization. But citizenship, and the rights and obligations attached to it, does not necessarily mean a liberal-individualistic conception of citizenship. Citizenship is a political construction which has been at the centre of popular-democratic struggles since the advent of democracy. It was interpreted in a Jacobin key during the French revolution, 'domesticated' by liberalism, redefined in social terms by social democratic parties, in egalitarian terms by democratic struggles for gender, ethnic and other forms of equality in the 20th century and as straddling institutional and extra-institutional forms of popular struggles by democratic populists. It has been at the centre of some of the defining struggles for the constitution of a democratic people in modern times, from the civil rights movement in the US to the struggle for the enfranchisement of black people in South Africa. A notion of citizenship that incorporates populist citizenship and the rights claimed by their holders as a dangerous but necessary excess should be an integral part of the negotiating process between different notions of rights.

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ⁱ The Spanish term *ser gente* can be translated as belonging to “the people” but it can also be used to refer members of society that have a minimum level of material comfort and social status that distinguish them from the rabble.

ⁱⁱ “Perón nos dio el derecho a poder discutir, nos dio el derecho a poder tener una heladera, de

poder tener una casa. Nos hizo ver que podíamos ser gente, que podíamos mandar al chico al colegio con un par de zapatos, que podíamos tener una radio buena como el abogado del barrio. Perón despertó a la gente, hizo consciencia.”