

EFFECTIVE PARTICIPATION IN LATIN AMERICA: FROM EXTRALEGAL TO LEGAL MOBILIZATION. THE CHALLENGES AHEAD.

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“For the scream to grow in strength, there must be a recuperation of doing, a development of power-to” (Holloway, 2002:208)

“The dilemma of the new Latin American democracies is how to transfer the new elements within the public culture to the political level in situations in which communication between the public sphere and political society seems to be blocked” (Arvitzter, 2002:136)

During the last decades, Latin America has witnessed the appearance of new forms of social participation that have pushed for further democratization². In general these movements have helped improve the quality of democracy because of its intrinsic meaning and because they are the essence of the public sphere. In particular, we can distinguish between two different types of these new forms of expression and participation (legal³ and extralegal⁴) that have, each in its own way, and by different means, contributed to democracy. Legal movements have contributed to democracy by exercising freedom of expression, assembly and speech, by enriching the debate about public affairs and by achieving democratic changes within public institutions and practices. Extralegal movements (that have come into being by the lack of effective channels of participation, under representation and lack of trust in political institutions) have helped democracy by evidencing the institutional deficit for processing citizens' demands and by putting pressure on governments to open more channels of participation for the population. However, there is the impression that only extralegal movements are really effective and have more chances of being successful. This essay will argue that, although extralegal movements have been paid more attention to by the authorities because they are more visible, it is in fact legal movements which are really successful and thus contribute more to democracy; this will be done through 4 different examples in Argentina, Brazil and Mexico. This essay will also state that the use of extralegal methods of participation has increased in recent times, becoming a risk to democracy itself⁵, and that therefore there is the need to bridge the gap between civil society and the government by the creation and improvement of new and existing channels of participation.

Since the 70's and 80's Latin American countries have experienced new forms of grass-root social movements that have pushed to end military dictatorships and authoritarian regimes. Later on, with the democratic transition that swept across the region during the 80's and 90's, these same forms of collective action have struggled to attain further democratization through political reform and economic policy change⁶. Movements such as AMLO⁷'s post-electoral resistance movement and "Alianza Cívica" in Mexico, the neighborhood associations in Brazil and the "puebladas" in Argentina, amongst other groups of peasants, middle class, workers and indigenous communities, are evidence of this. These movements, respectively pushing for free and fair elections (first two cases), for more participation in the assignment of public goods or for a more just socio-economic system have, directly or indirectly, advanced the democratic effort.

Intrinsically these forms of social and political mobilization have improved the quality of democracy because of its dual and dynamic nature and because of what it entails (equality and participation) and second of all because of the role the public sphere⁸ plays in it. First of all democracy is both a normative and a descriptive concept, which, means that "in every democratic country a substantial gap exists between actual and ideal democracy" (Dahl, 2000: 31). Therefore, democracy and its institutions have to be in constant change and improvement for reaching that ideal, and one way to do this is through the sustained participation of those involved in it; hence the contribution of these new social movements. Also, democracies must have broad political equality, which according to Dahl "involves three different dimensions: the capacity of individuals to formulate their preferences; to signify their preferences to their fellow citizens and the government by individual and collective action; and to have their preferences weighed equally in the conduct of government" (Dahl, in Arvizter, 2002: 37-38). The effort of these movements through collective action for influencing the decisions, institutions and practices of the government is useful by itself.

Finally, these movements constitute the essence of the public sphere, an autonomous place located between state and market from where civil society acts to influence political decision-making. The public sphere is crucial for democracy since it is the forum where, through debate, the citizenship can participate freely and equally in public affairs and express its concerns and interests through organized collective action. The

public sphere is a place, “where new issues are thematized, new identities are presented, and institutional innovation emerges” (Arvitzter, 2002:39). Civil society can improve the quality of democracy by bringing new issues and alternatives to the agenda, by promoting transparency, accountability, free elections, checks and balances, etc, “this sphere can provide the political realm with actors and deliberative processes that can further democratize political practice” (Arvitzter, 2002:39). This is the principal role of new social movements in a democratic context.

Democracy is not just about voting every other year, democracy is not a static or temporal system, it's an interactive and dynamic system that grows and improves through constant civic participation. Elections are only periodic episodes and therefore are not as effective as constant participation to voice the demands of citizens or to influence governments. Therefore, the intrinsic contribution that these movements bring to democracy lies in their potential participation and their ability to “change the world without taking power” (Holloway, 2002:20). However, there are two different types of movements that contribute, and affect, democracy in different ways.

“A strong tradition of peaceful and violent collective action for social justice exists in the region” (Pearce, 2004: 485) tradition which is expressed by legal and extralegal forms of resistance. The former encompass actions like “law suits, peaceful demonstrations and marches, electoral activity, strikes, street demonstrations, people’s parliaments” and so on (Harris, 2003: 373). These types of movements are characterized because are peaceful and respect the rules of their countries as well as the rights of others, in sum, the rule of law. On the other hand, however, extralegal movements are typified by occurrences that range from “the blockage of roads and highways to land occupations, urban riots, bombings, guerilla warfare and even popular insurrections” (Harris, 2003:373). These extralegal movements have employed less democratic means (disrespect for the rule of law) to achieve their goals. In general, the main difference between these two types of participation rests in that, in spite of having democratic goals, the first employ democratic means and the second employ undemocratic means.

It is not the same to protest through popular assemblies, debates and peaceful rallies than to protest through road blocks, “puebladas”, riots, and destruction of property. In fact, one would think that only the peaceful, law-abiding, civil society mobilizations

contribute to democracy. Theoretically, only movements which have democratic methods can further democracy, so then how can the use of intimidation and the violation of third party rights be democratic? Actually, in practical terms, both types of movements contribute to democracy. While legal movements complement democracy by exercising democratic rights and duties, extralegal movements do it by evidencing the institutional deficit for processing citizen's demands.

Legal movements complement democracy by exercising freedom of expression and, assembly, by respecting the rule of law, by enriching the debate about public affairs, by widening the range of available political options and by achieving democratic changes within public institutions and practices. On the other hand, extralegal movements, although employing undemocratic means for achieving democratic goals, help democracy because they evidence the institutional deficit and the lack of effective channels of participation. At the same time these movements are, although unwillingly and indirectly, pressuring the government to open and improve channels of participation for the population.

These movements, originated from the lack of channels of participation and because of the under representation in politico-electoral structures (Pearce, 2004), are now evidencing this same phenomenon. "Most political systems in the region are still characterized by a significant democratic deficit, entailing a dearth of effective mechanisms of accountability, public mistrust of political parties and a failure by governments to address voter's grievances" (Panizza, 2005:720).

Therefore, there has been a recent increase in the number and frequency of extralegal movements in the region. With no effective institutional channels to voice their concerns and influence the government, the citizens turn to other forms of expression. With weak political parties that don't articulate and represent the interests of many (Pearce, 2004: 496), individuals and groups look elsewhere. If citizens want to be heard but their screams don't turn into accepted proposals they will recur to channels which are more available to them (extra legal). If I organize a peaceful rally no one is going to listen to me... "Effective participation requires a positive interplay between government commitment, civic virtues, and supportive institutional design" (Schönleitner, 2006:35). Since Latin American political systems present 'democratic deficits' and lack

‘supportive institutional designs’ “There has (...) been an increasing incidence of extralegal and at times violent manifestations of popular resistance” (Harris, 2003:373).

Although extralegal movements have been paid more attention to by authorities because they are more visible (and thus this partially explains their recent increase), in reality they have only been relatively successful. Throughout the region there is the impression that many times these are the only effective and successful movements. Since these forms of expression tend to disturb the public peace, interrupt the markets and/or the regular day to day of other citizen’s, they are normally more visible, they have more media coverage and usually are paid more attention to by the authorities. However the governmental responses these movements get are only partial.

The cases of AMLO’s post electoral resistance movement in Mexico City and the “puebladas” case in Argentina evidence the greater visibility but partial success of these extralegal movements. In the former case, after being defeated in the 2006 presidential election, the main opposition party’s candidate, arguing the existence of electoral fraud, installed a road blockage in one of Mexico City’s main arteries. This extralegal resistance movement (although carried out by a political party and other several civil society organizations) demanded a full ballot recount, even when Mexico’s electoral laws don’t contemplate it. The three month blockage got the attention of every media in the country and directly impacted the lives of hundreds of thousands which used that avenue to get to their jobs, homes, etc. However, the response given by the government was partial: the Congress introduced an electoral reform that only opened the possibility of vote recount in very specific and unlikely circumstances (Diario Oficial de la Federación, 2008: 96). In the case of Argentina, in 1997, after the issuing of presidential decrees to liberalize the country’s labor laws, the central labor confederation started several strikes and after more decrees and more strikes the puebladas spread all over the country (Harris, 2003: 380). These popular uprisings consisted of riots, property destruction and the use of violence which made them very visible. In spite of this visibility the government’s response was weak; a temporary low paying job scheme was introduced. As we can see these two cases demonstrate that even though these movements had a lot of exposure and received a governmental response, in reality that echo was partial and didn’t resolve the core issues the movements were after (full vote recount and a stop to labor law liberalization).

On the other hand, the Mexican experience of Alianza Cívica and the ensuing electoral reform, and Brazil's Participatory Budget (PB) scheme prove that legal and really democratic collective action are even more successful in bringing change to public institutions and for complementing democracy. During the early 1990's in Mexico, the persistence of electoral frauds brought about the emergence of social movements (later headed by Alianza Cívica) that dedicated themselves to electoral observation projects. Besides these activities, these movements organized forums, debates and conferences with specialists, academia and government representatives in order to reform Mexico's electoral system and make it independent from the Government. After this struggle, negotiations took place throughout 1995 and 1996 and the outcome was a new and autonomous electoral institution that "incorporated these positive elements which emerged in the fight against fraud, at the institutional level" (Arvizter: 2002, 143)

In Brazil the introduction of the PB concept also comes from the efforts of the civil society to become more connected in the political decision-making processes. Drawing from the 1970's and 1980's peaceful neighborhood movements and their will to participate in public decisions that concerned their day to day lives, the PB was created (e.g. in Porto Alegre). This consists in the participation of local citizens (through assemblies) in deliberating and deciding on the allocation of municipal budgets in their communities. (Arvizter, 2002: 137-142). These movements and the reforms they brought about prove that, when the appropriate channels exist, legal forms of participation in fact can bring change to public institutions and to democracy. Visibility and exposure must not be the only variables to take into account.

Extralegal movements, in spite of their above stated contribution to democracy, can also represent a risk for it if sustained in the long run. Many of these movements have resorted to protests that bypass institutions and the rule of law of their countries in order to be heard; thus sends a negative signal to the political system as a whole. These movements, besides creating political and social instability and employing undemocratic means, are not as effective as legal ones. In the long run they can set a bad example and set the message that that is the only way to speak up. Extralegal participation shouldn't be constant; it only works as a first step for pressuring the government to open new channels of participation. "A democracy in which a significant number of citizens decide not to exercise their rights or to fulfill their duties is a

democracy that is in trouble.” (UNDP, 2004:145). Participation, within a democratic context, implies the acceptance of certain duties, primarily the upholding and respect for the rule of law. While these movements are useful as pressure, they don't help democracy in its broader sense.

The institutionalization of more, better and stronger participation mechanisms is required. Democracy needs participation and participation needs democracy, “However, while democratic deficits must be challenged by collective action, collective action needs democracy if it is to do more than shout from the periphery every so often” (Pearce, 2004: 502). For a scream to be *really* heard it needs some doing; it needs the real translation of popular concerns into public policy. The problem is not an absence of citizen participation⁹ but a deficit in the type of participation; the next step is to bridge the gap between civil society and the government by creating effective and trustworthy channels of participation. “Participatory democracy can only prosper within an institutional setting that strengthens rather than undermines representative bodies” (Panizza, 2005: 730). Latin America faces a problem of democratic consolidation, and if we really want to ‘democratize’ democracy, participation is the way to go, “as long as the democratic impulses in Latin America remain insulated at the societal level, democratization strategies are bound to fail” (Arvitzter, 2002: 170). Citizens participate through those channels they have available and think are more effective, let's not give extralegal movements the opportunity to become a regular pattern in Latin American life.

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² For practical purposes, this essay will only focus on those movements that have democratic ends (transparency guarantees, more accountability, free and fair elections, equality, alternatives to the economic model, etc.). Movements without these type objectives don't contribute or complement democracy.

³ Respectful of the rules of their countries and the rights of others.

⁴ Disrespectful of the rule of law.

⁵ In case people view them as the only possible means of expression and participation.

⁶ Although there seems to be no apparent relationship between democracy and the search of new economic models, there is. Democracy is about plurality and having a wide range of options; therefore the movements that criticize and present alternatives to neoliberalism, strengthen democracy by multiplying its options.

⁷ Former presidential candidate for Mexico's 2006 elections: Andrés Manuel López Obrador.

⁸ These movements as part of the civil society are also part of the public sphere.

⁹ "Approximately one in five people in Latin America (18.9 percent) may be classified as participative democrats" (UNDP, 2004: 145) These means that they do more than vote, but intervene in public life through lobbying public officials on behalf of their communities, attending demonstrations, giving voluntary time for their communities, etc.

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