

Democratization



Year 1, Issue 4

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Edited by Instituto FORMA

Introduction

“Democratization” is an initiative conceived by the FORMA Institute to comprehensively study the particularities of the political process in Venezuela and to establish key ideas that can bolster national and international political action. In this issue, we include related articles that refer to fundamental issues of the case at hand. Our fourth issue includes articles by Héctor Briceño, Rogelio Pérez Perdomo, Ángel Alvarado and Juan Miguel Matheus. We offer a brief overview of each one.

Hector Briceño, Venezuelan, is currently studying for a PhD in Political Science at the University of Rostock, in northeast Germany. His article, “The voice of the absent: the Venezuelan migration crisis and its consequences”, is a rigorous analysis of the reasons that explain Venezuelan migration, its dimensions and its immediate political impact. The author identifies three migratory waves during the twenty years of Chavismo and proposes that the fundamental cause of this phenomenon is more related to political despair than to material deficiencies. Finally, Briceño reflects on the challenges imposed by the migratory flow and highlights the potential of this area of study.

“Socialist revolutions and law: perceptions and thoughts” is an article that delves into theoretical and existential sources that can contribute to the study of the nature and dynamics of the Bolivarian Revolution. Rogelio Pérez Perdomo analyzes two books, *Justice in Lüritz: experiencing socialist law in East Germany* by Igna Markovits and *Chavismo y derecho* by Francisco Delgado, and refers to the impact of the destruction of institutions in political culture. His thoughts encourage us to envision the future and

the challenges we will face once autocratic liberation occurs. In his words, referring to the GDR: "The regime disappeared, but people did not disappear with it".

Deputy Ángel Alvarado analyzes the immediate consequences of the economic and financial sanctions imposed on the Chavista regime in 2019. The author uses game theory as a methodology and concludes that those actions, far from negatively affecting the dictatorship, contributed to its economic rebalancing and allowed carrying out urgent economic reforms with a low political cost. It is an interesting study that includes economic and political perspectives. The National Assembly deputy proposes concrete actions to increase the efficiency of international pressure measures.

Finally, the deputy Juan Miguel Matheus introduces "The resilience of the Chavista Revolution". The author asks: "Why has the Chavista Revolution not yet fallen?" and "What are the causes that truly explain the resistance capacity of the Chavista Revolution?" Developing his political and intellectual concerns, Matheus asserts that the Chavista Revolution "not only resists... but is resilient" and identifies six mechanisms that allow it to emerge stronger from adversities: 1. The ideological reconfiguration capacity of the Chavista Revolution; 2. the Gangster State; 3. Autocratic solidarity; 4. Regional political instability; 5. New sources of legitimacy; and 6. Inculcation of the autocratic forms of the Chavista Revolution. This is a study that reveals the dynamics of an autocratic political system that has managed to overcome critical situations for twenty years.

The centipede game: *Chevron vs Rosneft*

Ángel Alvarado

Abstract

In this paper, game theory is used to model Chevron and Rosneft's behavior in the context of the sanctions on the Government of Venezuela. We reached a Nash equilibrium where each player has incentives to cooperate with each other and continue operations in the country by increasing crude oil production.

The “new” Baron Rothchild

Nathan Rothchild began operations in England at the end of the 18th century. He bought fabrics that he then sent to Germany at the beginning of the Industrial Revolution. He entered the financial business in 1811, opened branches in the main European cities and participated in the financial markets with innovative debt instruments.

During the Napoleonic Wars, France imposed a tight commercial blockade on the British crown and its operations in Europe. The British had Rothschild to circumvent these sanctions. The baron's experience in the tissue trade and his financial businesses allowed smuggling gold with the European continent and saving the British from Napoleon. The operation involved

great risks that were naturally compensated with high returns. Thus, he became the greatest banker of the 19th century and perhaps the most influential in history.

History is plagued with examples of entrepreneurs who manage to break through –like Nathan Rothchild– finding new ways of doing business despite significant obstacles. If not, ask the Catholic Monarchs of Spain, who ended up discovering America after the fall of Constantinople in 1453 at the hands of the Turks.

Glasnot and Perestroika

In 2019, American and European sanctions sought to promote the change of political regime in Venezuela. However, after 3 Executive Orders (OE .13,692; OE13,850; OE13,884) and the designation of PDVSA, CVG MINERVEN, BANDES, Banco de Venezuela, Banco Bicentenario, Banco Central de Venezuela and the Government of Venezuela as blocked persons (Specially Designated National, SDN), the odds of reaching their goal in 2020 are low.

After a year of sanctions, the pressure mechanism has achieved a change of *economic regime*. I have identified this as a Venezuelan perestroika¹. The balance of the Venezuelan crisis in 2019 represents an advance in economic freedoms and a setback in political freedoms. Thus, the sanctions have had a mixed effect on the regime: positive in the economic and negative in the political².

1 Ángel Alvarado, “Estructura económica en Venezuela y su camino hacia la democracia”, *Democratización* (Octubre, 2019): 103-121.

2 According to the More Consulting pollster, in a study conducted from January 8 to 10, 2019, 50.6% of Venezuelans think that 2020 will be better than 2019 compared to 44.8% who think it will be the same or worst. This

Historically, economic prosperity in Venezuela tends to reinforce the prevailing economic regime (democracy or autocracy). This has meant that businessmen and Wall Street lobbyist, Texas and Caracas could be beginning to prioritize their individual welfare function in the face of lower probabilities of political change, and thus not miss out on latent business opportunities in such a country endowed with natural resources, human capital and private savings.

During the dictatorship of Juan Vicente Gómez and Marcos Pérez Jiménez, Venezuela offered business opportunities to all who were willing to be far from dissident political sectors, remaining indifferent to political avatars. This made economic prosperity strengthen the political system (lock-on), making regime change more difficult.

A quadrant in which the business sectors assign low probability to political change paves the incentives for a more intense lobby in the Treasury Department so that they are allowed to carry out their operations with greater freedom while the regime changes. It is a survival strategy according to the natural economic interests of the sector and the apparent failure of a path taken in 2019 that has not yielded the expected results.

If the sanctions on PDVSA of January 2019 (called at the time the nuclear option) have not had the expected effect in terms of regime change, it is largely due to the fact that the same sanctions have made the national oil industry more efficient, through the transfer of PDVSA's operations to international private capital, catalyzing the "privatization" of the sector.

feeling of improvement responds to greater economic freedoms and the decrease in inflation from 2,688,870 as of January 2019 to 7374% by the end of the same year.

This has generated incentives for companies operating in Venezuela to want more business participation, with the natural lobbying of the Treasury Department to issue licenses to maintain their operations in the country, so that the Venezuelan “oil niche” remains in the hands of those with interests in the Western Hemisphere. This, in a scenario of prolongation of the conflict, could mean that the world’s largest oil reserves could be at the service of regional destabilization.

Treasury incentives in this scenario (niche preservation) are then oriented to renew the licenses of Chevron and other American companies to continue operating in Venezuela as long as they find no mechanism to exert pressure on Rosneft. This creates a Nash equilibrium where Chevron is the leader and Rosneft follows him, in the style of “oligopolistic model” developed by Stockelberg studied in game theory. We will take a further look at this issue in the next section.

The centipede game

The situation described above can be modeled as **the centipede game** used in game theory, and shown in Figure 1. This is a finite game with perfect information in which there are two players. In the original game each player starts the game with \$1 in his bag. Each player plays after the other saying “I continue” or “stop” starting with player 1.

When player 1 says “I continue” a dollar is taken from his bag by the referee and is placed in the opponent’s bag, adding \$2. A \$3 transfer to the opponent occurs. If player 1 says “stop” the game ends and each player receives whatever they have accumulated. Once player 1 has moved, it is player 2’s turn, who

has the same two options. Each player has incentives to cooperate with the opponent to maximize revenue. The game ends when both players exceed \$100.

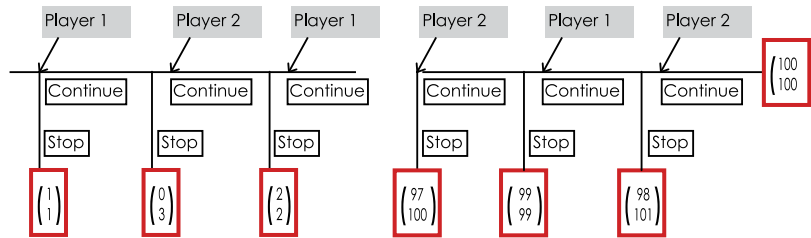


Figure 1: The centipede game

In this game, there are several Nash equilibria, but each of them is abandoned, starting with Player 1 in the first round and followed by Player 2 in the next round. Thus, the game becomes cooperative until they both reach the sum of \$100.

Extrapolating the game to the Venezuelan case allows to model player 1 as PetroPiar (where Chevron is a partner B of PDVSA) and player 2 as PetroMonagas (where Rosneft is partner B of PDVSA). They start the game each producing or raising the same amount of crude to collect outstanding debts (about 130 kbd each³). Once player 1 obtains a US Treasury license to continue operating, it invests more in Venezuela and removes production volume from player 2 as a percentage of total production. Then player 2 decides to continue operating and takes volume from player 1 as a percentage of total production. In this game, each

3 According to the consultant Gas Energy LA, the crude production of each of these companies was 130 kbd for January 2019 when PDVSA was sanctioned by the US Department of the Treasury.

player has incentives to “continue”⁴ and cooperate in their operations, thus raising oil production until the end of the game⁵.

In this game, each company has incentives to cooperate with each other and with the “referees” who can stop the game by not renewing licenses (Treasury and Maduro). The “selfish” incentives of each player are aligned to increase crude oil production. We assume that the increases in production consolidate Maduro and the probability of the low regime change. We do so following the “logic” of the prevailing political and diplomatic rhetoric.

The arbitrators can also cooperate with each other: if the Treasury decides to sanction Rosneft, Maduro could sanction Chevron and vice versa. In this sense, there is a Nash equilibrium between the referees so as not to sanction the players and give licenses to each company to operate. We assume that each players’ and the referees’ incentives are to increase the companies’ production to maintain the niche.

A benevolent referee

At this point, we can suggest changes in the assumptions of the centipede game. We decide to change the assumptions that move one of the arbitrators and change their objectives. For instance, what if the Treasury is not selfish but benevolent, and decides that its objective is to achieve political change in Venezuela?

4 In this variation of the game, continuing implies the lobbying of each player to obtain the respective licenses of the Trump Government and the Maduro Government.

5 PetroPiar has been the leader of this game, except for two months February, March and October where PetroZamora led. By the end of 2019 PetroPiar was producing about 120kbd and PetroZamora about 80Kbd.

Perhaps they could increase the pressure on Rosneft, and their Venezuelan crude oil trading in the Moluccas Islands. Thus, Maduro could withdraw Chevron's licenses, and "stop" the game definitively.

This would cause a drop in crude oil production in the next 6 months, which, as stated, would increase the probability of changing the political regime.

The players are aware of this possibility and will do everything in their power to prevent it (Becker, 1983⁶). This will involve lobbying before each referee to keep their interest on the "production niche", and not stop the game before running out of reserves⁷.

By the end of 2019, Chevron through its joint ventures with PDVSA, PetroPiar and PetroBoscan produced about 180 kbd⁸, while Rosneft with its mixed company PetroMonagas produced

6 "The basic assumption of the analysis is that taxes, subsidies, regulations, and other political instruments are used to raise the welfare of more influential pressure groups. Groups compete within the context of rules that translate expenditures on political pressure into political influence and access to political resources. These rules may be embodied in political constitutions and other political procedures, including perhaps "rules" about the use of force to seize power."

Gary Becker, "A theory of competition among pressure groups for political influence", *The quarterly journal of economics* XCVIII, No 3, (August 1983): 374.

7 "Groups compete for political influence by spending time, energy, and money on the production of political pressure" Gary Becker, "A theory of competition among pressure groups for political influence", *The quarterly journal of economics* XCVIII, No 3, (August 1983): 380.

8 According to Gas Energy LA estimations.

about 80 kbd⁹. The old Gazprom, now called NefteGaz in its joint venture PetroZamora, produces about 80 kbd¹⁰.

China CNPC¹¹ in its mixed Sinovensa produced around 80 kbd by the end of 2019. This renders a total of 430kbd. The rest of Venezuela's production falls to PDVSA's own effort and is at least 500kbd¹². Undoubtedly, the game of the centipede allows to describe the game of interests and incentives behind the production of crude oil in Venezuela and its effect on each country's foreign policy.

The renewal of Chevron licenses by the Treasury, or their option to exert more pressure on Rosneft, is the key element of American foreign policy towards Venezuela. Beyond political and diplomatic rhetoric, this is the true *tour de force* that must be analyzed to know if the international community is willing to cross its Rubicon in the Venezuelan case.

Rosneft has gathered payments from Maduro's government of Maduro grossing about \$5 MM in the last two years (2018-2019) of intense hardships of the Venezuelan people. We wonder what Rosneft's bet will be once the debt is amortized: Withdrawing from Venezuela progressively once the credits have been recovered? Or increase their exposure in the country with oil licenses approved by the illegitimate and spurious National Assembly of Sen. Luis Parra? Will the Treasury increase pressure on Rosneft to support Nicolás Maduro once his debt has been amortized?

9 According to Gas Energy LA estimations.

10 According to Gas Energy LA estimations.

11 CNPC and Total act as *free-riders* of lobbying market leaders.

12 According to Gas Energy LA estimations.

Following the flow of oil investments may provide more information about the probabilities of political change than is said in political and diplomatic forums.

The voice of the absent: the Venezuelan migration crisis and its consequences

Héctor Briceño

“For a while the Ausreiser, the partisans of exit (Wir wollen raus –We want out), and the Bleiber, the partisans of voice (Wir bleiben hier– We’re stay here) form separate, even somewhat antagonistic, groups. Eventually they merge under the slogan “Wir sind das Volk” (We are the people)”¹.

According to the United Nations High Commissioner for Refugees (UNHCR) at the end of 2019, it was estimated that around 4.6 million Venezuelans had left the country as a result of the social, economic and political crisis of recent years. Less than half of these had residence permits or similar issued by the welcoming countries, the rest being divided between various statuses that range from processing paperwork to illegal conditions².

The UNHCR also warned about the possible future of the crisis in a press release: “If current trends continue, 6.5 million

1 Albert Hirschman, “Exit, Voice, and the Fate of the German Democratic Republic: An Essay in Conceptual History”, *World Politics* 45 (1993): 173-202.

2 According to the Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela, jointly led by UNHCR and the International Organization for Migration (IOM).

Venezuelans could be outside the country by the end of 2020”³, a prognosis that, if fulfilled, would displace 20% of all Venezuelan population.

In the following pages, we will address the main social, economic and political causes and consequences of the Venezuelan migration crisis, with special emphasis on its effects on the democratization process.

No single crisis in Venezuela

First, it is necessary to point out that in Venezuela there is no single crisis: there are several simultaneous and mutually intertwined crises that have built a vicious circle, in constant reproduction. The migration crisis is at the center of this circle, fed by and feeding the rest of the gears of the circuit. In this sense, the migratory crisis, as well as the humanitarian, political and economic crisis, have mutually reinforcing consequences that demand (and will demand during the transition process towards democracy) equally comprehensive responses. It is, in short, a complex systemic crisis.

In Venezuela, a deep social and humanitarian crisis has rapidly deteriorated the quality of life, plunging 94% of Venezuelans into poverty⁴ and leaving the most vulnerable populations totally helpless. This has transformed Venezuela into the most unequal

3 <https://www.unhcr.org/news/press/2019/11/5dcdb7284/us135-billion-needed-help-venezuelan-refugees-migrants-host-countries.html>

4 https://www.abc.es/internacional/abci-informe-asegura-94-por-ciento-venezolanos-vive-pobreza-201904101841_noticia.html; <https://elucabista.com/2018/11/30/se-incrementa-la-pobreza-venezuela-segun-resultados-preliminares-encovi-2018/>

country of the most unequal continent in the world⁵. According to the Latinobarometer survey, by 2018 the number of people who said that they did not have enough food to feed themselves reached 61%, while food specialists say that the number of children with malnutrition reached 33% of the child population under 5 years of age in 2019, many of whom accumulated irreversible damage that will affect their physical and mental performance for the rest of their lives⁶.

The shortage of medicines became normal for several years, allowing diseases eradicated in previous centuries such as malaria, paludism⁷, among others, to reappear and condemning the population to suffer from controllable diseases.

Social violence has also increased, led by "death squads", special police forces involved in thousands of extrajudicial executions according to the report published by the United Nations High Commissioner for Human Rights Michelle Bachellet⁸.

The social crisis is intertwined with the profound economic crisis that has destroyed, after each cycle, the low income and consumption capacity of Venezuelan households. Cycles of shortages, inflation, hyperinflation, dollarization, hit one after the other, affecting the already deteriorated quality of life of Venezuelans.

5 <https://prodavinci.com/venezuela-es-el-pais-mas-desigual-del-continente-que-pasara-con-la-desigualdad-social-despues-del-17a/>

6 https://www.abc.es/internacional/abci-alrededor-300000-ninos-podrian-morir-desnutricion-venezuela-segun-caritas-201710250219_noticia.html

7 <http://www.accionsolidaria.info/website/alerta-enfermedades-erradicadas-reaparecen-en-venezuela/>

8 <https://www.ohchr.org/sp/newsevents/pages/DisplayNews.aspx?NewsID=24788&LangID=S>

The dismantling of the country's productive capacity has increased dependence on imports in a country where the external debt represents more than 100% of the GDP⁹ and more than 450% of imports¹⁰, and in an economy that has lost around 65% of production in six years (2014-2019) according to estimates of the International Monetary Fund¹¹.

The Chavista economic model, in its aspiration for total control, transformed the Venezuelan economy into a large black market, in which the goods of greatest need are traded in unequal informal spaces, impervious to state control, characterized by their ambivalent property: clandestine and at the same time known by all.

Finally, the economic crisis deepens and intertwines with the deep political crisis that demolished the minimum consensus that precedes the “political game”, generating a pre-constitutional crisis, of the spirit of the laws or of what the political scientist Robert Dahl (1989) called the “shadow of political theory”: the fundamental assumptions and axioms that without being explicitly formulated are present and are shared by all the actors of a political system. In this sense, the Venezuelan political crisis can be defined as the total absence of institutions, which are

9 <http://www.dinero.com.ve/din/actualidad/la-deuda-externa-de-venezuela-es-229-superior-al-pib-de-este-o>; <https://www.bbc.com/mundo/noticias-america-latina-46147607>

10 <http://especiales.prodavinci.com/deudaexterna/>

11 https://prodavinci.com/tras-seis-anos-de-caida-en-cuanto-se-redujo-el-tamano-de-la-economia-venezolana/?utm_source=Bolet%C3%ADn+diario+Prodavinci&utm_campaign=37c725ca08-EMAIL_CAMPAIGN_2020_01_20_10_45&utm_medium=email&utm_term=0_02b7f11c26-37c725ca08-195304325; <https://www.efe.com/efe/america/economia/el-fmi-estima-que-la-economia-venezolana-se-contraera-mas-de-un-tercio-este-2019/20000011-4087638>

understood in their broad sociological sense as shared norms and values that allow making decisions that have validity and legitimacy for the entire community over which they govern.

Migration waves

In this complicated context, one might think that the migration crisis is only a rational consequence of the adverse Venezuelan scenario, an individual exit from a suffocating reality. However, the migration crisis is both a consequence and a cause: there is a two-way relationship between the migration crisis and the social, economic and political crisis. We do not wish to suggest that the migration crisis is the trigger for everything else, but rather to highlight the dynamic nature of the crisis in order to identify the complexity of the economic, political and social causes and consequences of the migration crisis, as well as its diverse national and international nature.

Although the Venezuelan migration crisis has become more noticeable since 2017, the truth is that migratory movements began shortly after the arrival of Chavism to power. Thus, at least three waves of migration can be identified¹², characterized according to their main causes, the profile of the migrant population and their main destinations, while still understanding the strictly analytical nature of the delimitation of migratory waves, since in reality all overlap one another.

12 This classification of migratory waves is based on the perspective of the country of departure (Venezuela). However, a different grouping can be identified from the point of view of the recipient country. This is reflected, for example, in this analysis of Venezuelan migrants who arrived on Colombia: <https://www.semana.com/nacion/articulo/crisis-en-venezuela-migracion-historica-de-venezolanos-a-colombia/556758>

The first wave began after the arrival of Hugo Chávez to power, being even more intense during the troubled years from 2002 to 2005. This early wave of migration consists of some businessmen who saw Chavism as a threat to their investments. A significant percentage of the 20,000 workers of the state oil company *Petróleos de Venezuela (PDVSA)* who were fired from their jobs after the 2002-2003 oil strike are also registered in this wave –highly qualified human resources out of which most were hired by oil companies from all regions of the world. According to the British news corporation BBC, it was estimated that by 2008 about 500 Venezuelan specialists were working in Colombian oil companies¹³.

Two additional political events affected this first wave. First, the establishment in February 2003 of the exchange control through the creation of the Currency Administration Commission (CADIVI) with the aim, among others, of preventing capital flight. Paradoxically, far from being stopped, it was actually encouraged¹⁴ thanks in part to the low transparency and lack of accountability of the regulatory mechanism, and also reinforced the early fears of the business class.

A second political event of significant impact on this first wave of migration was the institutionalization of the mechanism of political discrimination known as the “Tascón List”. The Tascón List was a database initially published through the website of the

13 http://news.bbc.co.uk/1/hi/spanish/business/newsid_7301000/7301947.stm

14 According to Jorge Giordani, planning minister (Feb-1999 to May-2002/ Apr-2003 to Jan-2008/Feb-2009 to Jun-2014) and one of the promoters of the exchange control “at least 25 billion US \$ had been stolen through the various exchange control mechanisms” <https://www.aporrea.org/actualidad/n225115.html>).

deputy co-founder of the Chavista MVR party¹⁵, Luis Tascón, which contained personal information of the citizens who, in 2003, requested a recall referendum against President Hugo Chávez. These signatures were collected through the National Electoral Council (CNE) and delivered to the government at the request of Hugo Chávez himself¹⁶, and then organized in a database that was used by the different public institutions to fire or prevent the hiring of personnel or services in State agencies who were on the list¹⁷.

After its publication at the beginning of 2004, multiple authorities of public institutions implemented the list. Perhaps the most prominent of all public expressions that supported this discriminatory policy was that of health minister Roger Capella in March 2004: "Signing against Chávez is an act of terrorism"¹⁸ to which he added: "Te only doctors who will provide services in

15 MVR, Movimiento V (Quinta) República, was the party founded by Hugo Chávez, among other political leaders of Chavismo, at the end of 1997 and facing the 1998 presidential elections. The MVR was the predecessor party of the United Socialist Party of Venezuela (PSUV) and was dissolved after the foundation of the latter.

16 "I remember signing several days ago an Office sent to the National Electoral Council (CNE) requesting copies of all the forms submitted by the opposition. We are entitled to that" (own translation). Hugo Chávez, Aló Presidente Program 180, February 1, 2004. See: <http://todochavez.gob.ve/todochavez/4210-alo-presidente-n-180>

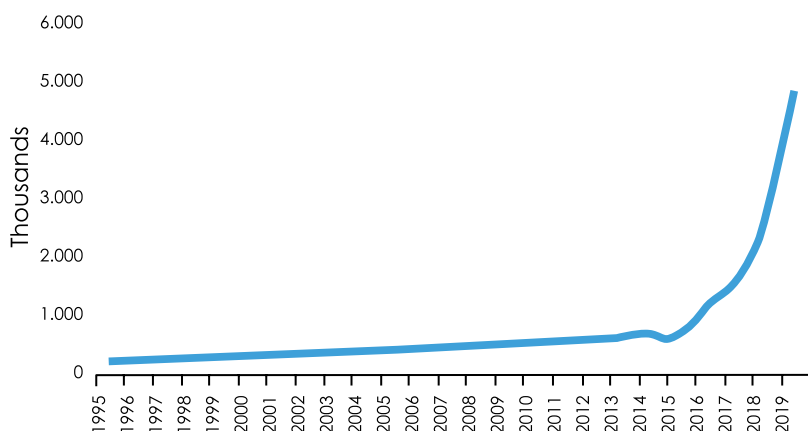
17 In October 2003, before the list was published, President Hugo Chávez himself warned that the information would be used and interpreted: "Those who sign against Chávez are not really signing against Chávez. They will be signing against their homeland" (own translation) (Human Rights Watch; 2008, 18).

18 http://news.bbc.co.uk/hi/spanish/latin_america/newsid_3575000/3575729.stm

the hospital institutions of the country will be doctors committed with the revolutionary process” (Human Rights Watch; 2008, 20).

The first wave of migration was characterized, in addition to its professional nature and large capitals, by its diversity of destinations, which also include Colombia (for its geographical and cultural proximity¹⁹). and the United States (for its traditional commercial ties), as well as other countries geographically further away with high demands for specialized oil personnel.

Graph 1. Venezuelan migrant population 1995 – 2019



Source: International Organization for Migration, Migration Data Portal²⁰.

A second wave of migration is associated with the rise and fall of the “21st century socialism”, a political offer that made a formal

19 https://www.elnacional.com/opinion/columnista/diaspora-venezolana-tres-olas-migratorias-anos_262845/

20 https://migrationdataportal.org/?i=stock_abs_&t=2019

appearance in the Venezuelan context during 2006²¹ shortly before Hugo Chávez presented his candidacy for re-election in the presidential elections of the same year: “We have assumed the commitment to lead the Bolivarian Revolution towards socialism and to contribute (...) with a new socialism –a 21st century socialism”²².

The overwhelming victory of Hugo Chávez in these elections encouraged a new wave of migrants who fled before the imminent turn to socialism and its unquestionable authoritarian dimension, embodied in the constitutional reform proposal rejected in the 2007 referendum.

In this sense (and paradoxically), the electoral defeat of the proposal to constitutionalize the “21st century socialism” only served to reassert its authoritarian character, by imposing itself a short time later and against the will of the electorate through a set of laws promulgated by the president through the legislative powers assigned to him by the National Assembly on January 31, 2007, through an enabling law²³.

This second wave of migration was mainly composed of middle class professionals, but also by a large number of members of the Latin American and European immigrant communities

21 The first official mention of Hugo Chávez of the 21st century socialism was in 2005 in Brazil, during the Fifth World Social Forum (https://www.bbc.com/mundo/noticias/2013/04/130412_venezuela_mexico_heinz_dieterich_chavez_socialismo_siglo_xxi_jcps).

22 Own translation of the statement by President Hugo Chávez on May 13, 2006, at the Vienna City Sports Complex (Stadthalle, Wien), Australia. <http://todochavez.gob.ve/todochavez/3021-intervencion-del-comandante-presidente-hugo-chavez-en-el-acto-enlazando-alternativas-ii>

23 Valid until mid 2008: <https://www.sumate.org/parlamentario/8/gestion.html135>

settled in Venezuela after escaping the various conflicts that shook both continents during different decades of the 20th century. These mainly include the return of the Spanish, Italian, Portuguese, Colombian, Chilean, among others.

The third wave began in 2013 and worsened between 2017-2019. It is preceded by the increase of repression and the deterioration of social and economic conditions, additionally coinciding with the death of Hugo Chávez, the coming to power of Nicolás Maduro, the fall in oil production and the decrease in international oil prices.

Table 1. Distribution of the migrant population and Venezuelan refugees by destination countries 2019

Country	Number of migrants (thousands)	%	Refugee applicants (thousands)	%	GDP (p/c)	Democracy Index (V-Dem)
Venezuela	-	-	-	-	3.410,0	0,09
Colombia	1.600,0	34%	5	0,68%	6.667,8	0,47
Peru	863,6	18%	377	48%	6.941,2	0,62
Ecuador	385	8%	14	2%	6.344,9	0,47
Chile	371,2	8%	4	0,44%	15.923,4	0,77
Brazil	224,1	5%	135	17%	8.920,8	0,56
Argentina	145	3%	3	0,34%	11.683,9	0,68
Panama	94,6	2%	11	1%	15.575,1	0,61
Mexico	71,5	2%	17	2%	9.673,4	0,53
Dominican Republic	30	1%	0,2	0,02%	8.050,6	0,33
Costa Rica	28,9	1%	16	2%	12.027,4	0,83
Trinidad and Tobago	21	0,44%	14	2%	17.129,9	0,68

Country	Number of migrants (thousands)	%	Refugee applicants (thousands)	%	GDP (p/c)	Democracy Index (V-Dem)
Guyana	17	0,36%	-	-	4.979,0	0,42
Curazao	16	0,34%	0,7	0,09%	19.567,9	N/D
Aruba	16	0,34%	0,4	0,05%	25.630,3	N/D
Uruguay	13,7	0,29%	0,5	0,06%	17.278,0	0,78
Paraguay	3,8	0,08%	-	-	5.821,8	0,43
United Stated	309 ^{aa}	7%	105	13%	62.794,6	0,74
Spain	323 ^a	7%	59	8%	30.370,9	0,76
Italy	50 ^a	1%	-	-	34.483,2	0,77
Portugal	25 ^a	0,53%	-	-	23.407,9	0,83
Others**	835,5	18%	184,9	24%	-	-
Total Latinamerica	3.901,4	82%	782,7	100%	-	0,48
Total World	4.736,9	100%	-	-	-	0,4

Notes: ^a See source (below). * 2017 figures. ** The “Other” category also contains the figures for the following countries: United States, Spain, Italy, Portugal, from different sources.

Source: Migrants all countries except the United States, Spain, Italy and Portugal: Map and geographic data, Latin America and the Caribbean, refugees and Venezuelan migrants in the region - December 2019, in PCRMV²⁴; United States (Pew Research Center, 2017); Spain (El País, 2020); Italy and Portugal (Council on Foreign Relations, 2019), own calculations. PIB p/c: World Bank database and IMF DataMapper, year 2018. Democracy index (V-Dem): Varieties of democracy, Liberal Democracy Index, year 2018.

This is a more extensive and diverse wave than the previous ones, mainly composed of broad popular sectors, impoverished

²⁴ <https://r4v.info/es/documents/download/72763>

middle classes and vulnerable populations including women traveling alone or with minors, unaccompanied minors, older adults and indigenous populations²⁵. It is also diverse in regard to the destinations, which now include almost all Latin American countries, with Colombia, Peru, Chile, Argentina, Ecuador, Brazil and Panama being the main recipients according to the Coordination Platform for Venezuelan Refugees and Migrants (PCRMV)²⁶.

This last migration wave has also been characterized by the diversification of the means used to leave the country. While the flow of migrants from the first two was mobilized through international commercial airlines, the last wave has mobilized by land: private vehicles, buses and even on foot.

There has been, however, an addition: the temporary closure of the borders in the years 2018 and 2019 encouraged the use of clandestine roads (trails) devoid of any type of control and/or supervision by law enforcement, and with it the increase in crimes, among which the increase in the rates of people trafficking, forced labor, servitude and prostitution can be highlighted. These increased by 300% in the last four years²⁷, also considering the helplessness of these migrants.

Graph 1 illustrates the growth of the Venezuelan migrant population, segmented from the three migratory waves that have been defined. During the first wave, the migrant population

25 Muñoz-Pogossian, Betilde (2018). *Diáspora venezolana: tres olas en 20 años*. El Nacional. https://www.elnacional.com/opinion/columnista/diaspora-venezolana-tres-olas-migratorias-anos_262845/

26 <https://r4v.info/es/situations/platform>

27 <https://www.elpais.com.uy/mundo/victimas-venezolanas-trata-personas-aumentaron-cuatro-anos.html>

increased by 38% from approximately 319,000 in the year 2000 to 439,000 towards the end of 2005, while the second wave reproduced a similar growth rate (37%) from approximately 439,000 to 600,000 Venezuelan migrants. Finally, the third wave represents an increase of 700% of the migrant population, the vast majority concentrated in the last three years (2017, 2018 and 2019).

Regarding its geographical distribution, Table 1 shows that around 82% of migrants remain in the region: Colombia is the country with the largest number of Venezuelans (34% of the total amount), followed by Peru (18%), Ecuador (8%), Chile (8%) and Brazil (5%).

The number of Venezuelans in the United States was 421,000 in 2017, according to the Pew Research Center²⁸, of which 309,000 would have been born in Venezuela while the remaining 112,000 were born in the United States.

Finally, the Spanish case is difficult to analyze due to the historical link and the extensive Spanish community that migrated during the first half of the 20th century. According to data from the Spanish government in January 2019, the number of Venezuelan migrants in Spain reached 323,000 (between Venezuelans and Spaniards born in Venezuela²⁹), a figure that does not reflect the number of returnees (Spaniards who settled in Venezuela and returned to Spain during the crisis).

28 <https://www.pewresearch.org/hispanic/fact-sheet/u-s-hispanics-facts-on-venezuelan-origin-latinos/>

29 https://elpais.com/ccaa/2020/01/08/madrid/1578489160_584792.html

It's not the economy. It's politics

The description of the three migratory waves carried out in the previous section shows the progressive diversification of the profiles of the migrant population, revealing the complexity of a process that extends throughout the period of the Chavista governments, and throughout the social spectrum of Venezuelan society. Based on this description of the migration phenomenon, we will address in this segment the reasons for the migration crisis, guided by the following hypothesis: in spite of the economic and social diversity of migrants, the three migratory waves respond to the same cause: political despair. In this sense, although the vertiginous deterioration of the economic and social conditions experienced since 2013 has become the main trigger behind the increase in migration during the third wave, the fuel that has fed them is the prolonged political crisis.

Having started early on among the economic and social elites of the first wave, despair spread due to the increase and expansion of repression towards all sectors of society as the charm of the "revolutionary" political project faded and, with it, popular support. In simpler terms: the analysis of the migratory phenomenon across the three waves reveals a common denominator among them: the progressive expansion of the authoritarian character of the Chavista regime, first expressed in terms of ideological domination (the hegemony of 21st century socialism), then in physical violence, and finally transformed into a humanitarian crisis. The indicators of authoritarian progress are reflected by three indicators of the quality of democracy in Table 2, showing how political conditions deteriorated in Venezuela year after year until reaching the status of an authoritarian regime in the last three years.

Table 2. Democratic deterioration 1995-2018

Indicator/ year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
EDI (V-Dem)	0,662	0,596	0,532	0,49	0,469	0,484	0,482	0,412	0,384	0,372
LDI (V-Dem)	0,473	0,374	0,326	0,283	0,247	0,259	0,205	0,188	0,17	0,164
FH	4	-	4	4	3,5	3,5	3,5	4	4	4
FH (Status)	PF	PF	PF	PF	PF	PF	PF	PF	PF	PF
Indicator/ year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
EDI (V-Dem)	0,368	0,35	0,384	0,375	0,311	0,279	0,285	0,278	0,24	0,213
LDI (V-Dem)	0,179	0,177	0,175	0,164	0,126	0,107	0,126	0,142	0,125	0,093
FH	4	4,5	5	5	5	5	5	5,5	5,5	6,5
FH (Status)	PF	PF	PF	PF	PF	PF	PF	NF	NF	NF

Source: Freedom House, Scores and status. The Freedom House indicator varies between 1 and 7, the latter indicating the worst political conditions. The PF and NF codes indicate Partly Free and Not Free, respectively. EDI (Electoral Democracy Index) and LDI (Liberal Democracy Index), V-Dem: Varieties of democracy. Both indicators vary between 0 and 1, with 1 being the best democratic conditions.

Along with the spreading of repression towards more social sectors, the expectations of change are lost, obfuscating the possibilities of resolving the political conflict and thus encouraging migration. The relationship between economic and migration crisis is mediated by politics: when political despair is installed, economic and social problems become unbearable because their resolution turns imperceptible and current difficulties are projected into the future. This allows explaining that, within each migratory wave, cycles or micro-waves in which political events

can accelerate or decelerate the migratory tendencies within the same wave can be identified. Therefore, the “failure”³⁰ of a political event that has stimulated the expectations of political change of the population is followed by a migratory micro-wave.

This phenomenon became clearly visible for the first time after the electoral defeat of the opposition during the municipal elections held in December 2013. These elections were presented by the Venezuelan opposition leadership as a plebiscite³¹ that allowed to express the rejection towards the government of Nicolás Maduro, which was perceived as “very fragile” after the narrow and questioned victory (1.49% points of difference according to the data of the CNE³²) obtained in the presidential elections of April of the same year, full of fraud allegations.

The defeat of December 2013 generated a sense of hopelessness among the population which encouraged a micro-wave after the December holidays. In January 2014, the long lines of young people in embassies and consulates of a variety of countries in Caracas, seeking to apply for visas to study abroad³³, became national news. This strategy had long been the escape route preferred by the young people of the middle classes who wished to emigrate, because it allowed them to take advantage of the fact

30 The dynamics of the conflict have turned Venezuelan politics into a zero-sum game, in which there can only be total victory or defeat, therefore, the measure of the success/failure of any oppositional activity is measured from the overthrow of the government.

31 http://www.lainformacion.com/espana/capriles-llama-a-votar-en-municipales-y-construir-una-fuerza-contra-fraude_5jzmzmUWpBuOsmNnwFp6P6/

32 http://www.cne.gob.ve/resultado_presidencial_2013/r/1/reg_000000.html?

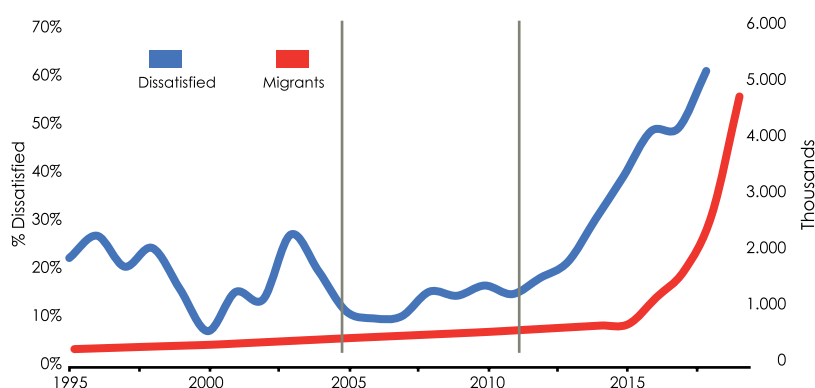
33 <http://www.20minutos.com/noticia/b22089/jovenes-venezolanos-buscan-emigrar-a-irlanda/>

that the government offered dollars at preferential prices, meant for Venezuelan students abroad³⁴. However, after the events of 2013, applications increased significantly.

Similarly, migrations accelerated after the protests of 2014 and 2017, the obstruction to the convening of the presidential recall referendum in 2016 and the election of the National Constituent Assembly in 2017.

Political despair has been expanding in this way over concrete political events, making the deterioration of economic and social conditions intolerable.

Graph 2. Satisfaction with democracy * and migration
1995-2019



Statistics: Pearson's correlation between the number of migrants and satisfaction with democracy is: $r=0,824$, $p<0,001$, $N=24$.

Notes: *The satisfaction indicator reflects the percentage of respondents who ask the question: In general, would you say that you are very satisfied,

34 https://www.bbc.com/mundo/noticias/2014/01/140124_venezuela_interactividad_viajes_en

rather satisfied, not very satisfied or not at all satisfied with the functioning of democracy in Venezuela? They replied: "Not at all satisfied".

Source: Migraciones: International Organization for Migration, Migration Data Portal³⁵. Satisfaction with democracy: Latinobarómetro. Own calculations.

Graph 2 diagrams the number of migrants accumulated for each year together with dissatisfaction with the performance of democracy. In this sense, we interpret the increase in dissatisfaction as a manifestation of hopelessness due to the inability of the democratic political system to meet citizen demands for change. The indicator thus reflects the level of legitimacy of the political system in the conflictive and polarized Venezuelan society (Booth & Seligson, 2009). In this sense, the graph clearly illustrates how the increase in dissatisfaction with democracy precedes and promotes migration, corroborating the hypothesis raised: the political crisis is the variable of greatest weight after the migration crisis.

However, as we have stated at the beginning of this paper, the migration crisis represents a link in a crisis concatenation, so we must also analyze the role played by other links in the systemic crisis, especially the deep economic and humanitarian crisis.

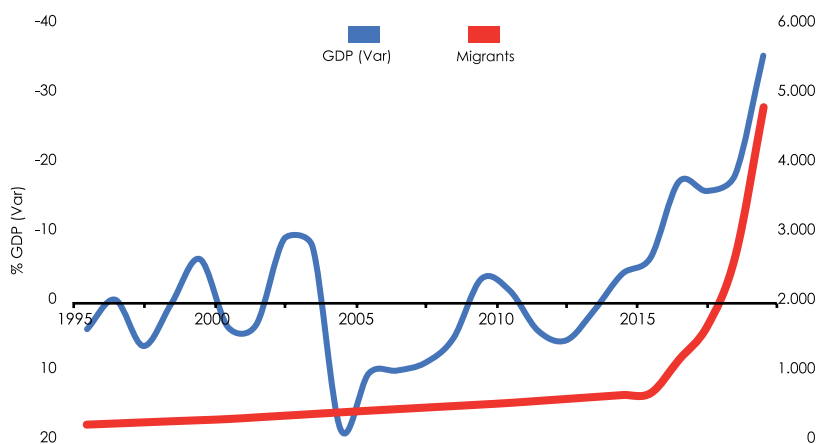
Graph 3 shows the migration figures together with the growth of the economy measured through the annual percentage variation of the Gross Domestic Product (in reverse scale).

The data in this graph confirm that none of the variables of the crisis operate independently, because, although the economic effect is not related to the first two migratory waves, it is clear that

35 https://migrationdataportal.org/?i=stock_abs_&t=2019

as of 2013 the trends are aligned, reinforcing and feeding each other. This phenomenon is repeated with the data of poverty and deterioration of the quality of life in general.

Graph 3. % Variation of GDP * and migrations 1995-2019



Statistics: Pearson's correlation between the number of migrants and the variation in GDP is: $r=-0,792$, $p<0,001$, $N=25$.

Notes: * To highlight the relationship between migration and the percentage variation of GDP, the latter is plotted in reverse, so the upward curve actually shows the indicator's decline.

Fuente: Percentage variation of GDP: IMF. Migraciones: International Organization for Migration, Migration Data Portal³⁶. Own calculations.

Consequences: The voice of the absent

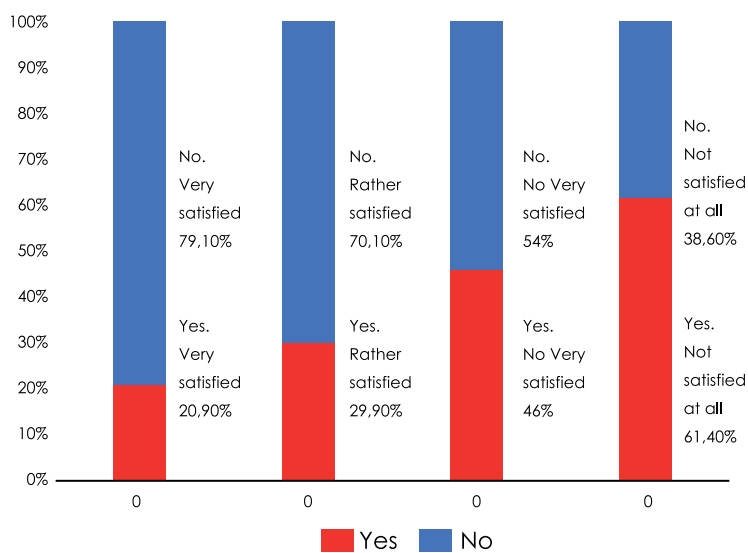
Once the migratory problem is analyzed in its extension and nature, we must research which are its repercussions on the different links of the crisis, with special emphasis on the political consequences in the struggle for democracy, in

³⁶ https://migrationdataportal.org/?i=stock_abs_&t=2019

a scenario of transition and subsequent consolidation. In this sense, it is extremely striking that although the relationship between democracy and migration has played a leading role in the extensive political literature on “the crisis of democracy” that has proliferated in the last two decades, almost all of the studies analyze the migratory effect on the democracy of the recipient country, the consequences for democracy in the country of origin being relegated in the research agenda.

In the structure of the analysis of migration and politics in the country of origin, the classic work of Albert O. Hirschman remains a reference of interest. In this work, the conceptual dyad “Exit” and “Voice” was used, which he used to analyze migrations in the context of the German Democratic Republic between 1949 and 1989. Exit is “the act of simply leaving, generally, because a better good or service or benefit is believed to be provided by another organization”, while Voice is “the act of complaining or of organizing to complain or to protest, with the intent of achieving directly a recovery of the quality that has been impaired” (Hirschman, 1993: 175-176). Concepts that interact in a hypothesis remain almost unquestioned today: “The presence of the exit alternative can (...) atrophy the development of the art of voice” (Hirschman, 1970: 43). Migration weakens the struggle for changing conditions.

Graph 4. Satisfaction with democracy and willingness to emigrate * 2018



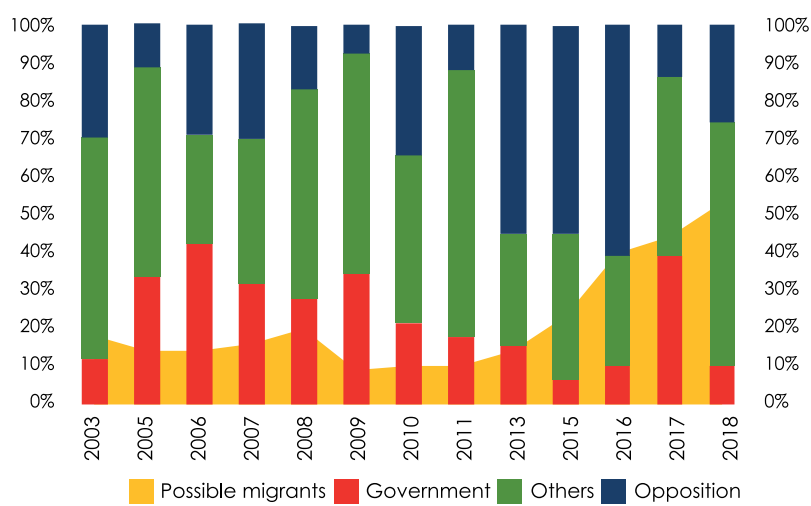
Note: * The question asked by Latinobarómetro is the following: "Have you and your family thought about the concrete possibility of going to live in another country?".

Source: Latinobarómetro. Own calculations.

Analyzing the Venezuelan crisis allows us to state that, in a context where the quality of democracy is constantly diminishing and will eventually lead to its disappearance (transition to an authoritarian government), migrations decrease the political pressure towards the regime, by expelling the most dissatisfied and politically disenchanted populations, the potential protesters who could raise their voice more radically against the government to demand changes.

Knowing the limitations presented by data from public opinion studies, which do not directly describe the migrant population but rather the potential migrants who claim to have evaluated the possibility of migrating³⁷, the data in Graph 4 confirm the hypothesis: those who are most dissatisfied with democracy have a willingness to emigrate twice as much to those who are "rather satisfied" and three times greater to those who are "very satisfied" with the functioning of the political system.

Graph 5. Political identification and possible migrants 2018



Note: * The question asked by Latinobarómetro is the following: "Have you and your family thought about the concrete possibility of going to live in another country?".

Source: Latinobarómetro. Own calculations.

37 The question asked by Latinobarómetro is: "Have you and your family thought about the possibility of moving to another country?"

However, those who claim to have considered migrating are not exclusively adversaries of the regime. On the contrary, Figure 5 shows that the willingness to migrate is distributed through various political identities. In fact, most Venezuelans who consider migration come from sectors that do not feel identified with either the government or the opposition, that is, precisely those who feel that their voice will not be heard in a polarized political scenario. As stated in the previous section, political despair is the main fuel after migration, and those who have less hope in the political system are those who feel excluded by not feeling represented, without identifying someone who can raise their voice or summon them to raise their voice to demand the satisfaction of their needs.

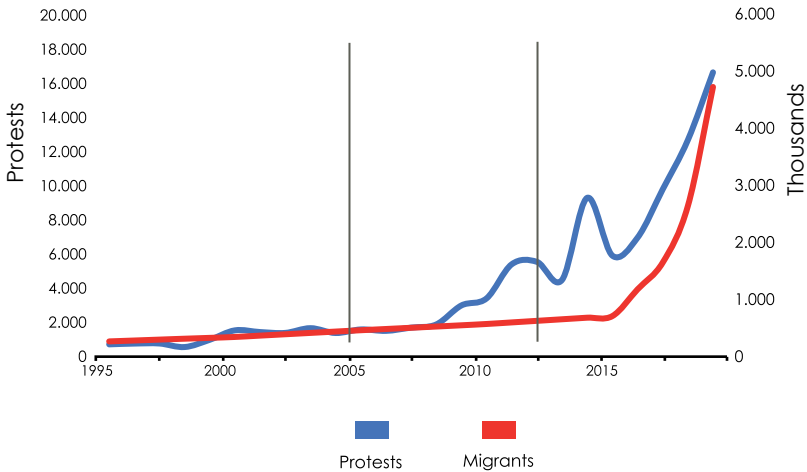
On the other hand, the sectors identified with the opposition also represent a significant portion of the potential migrants, a sector that becomes the majority of potential migrants in times of greater expansion of repression by the government, especially since 2013. Both groups (opponents and independents) together represent for every year (except in 2006 and 2017) two thirds or more of the population willing to migrate.

However, a proportion of migrants also comes from those who identify with the Chavista government, showing that the deterioration of political and social conditions also weakens loyalty to the regime.

A final piece of information invites us to make the hypothesis presented here a more complex one. Figure 6 reflects the number of demonstrations between 1995 and 2019 together with the number of migrants, showing that, contrary to expectations, the protest, far from weakening as a result of migration, is strengthened. Nor

does it diminish as a result of the deterioration of the quality of democracy, but instead, it intensifies. This data invites to adjust the hypothesis and its unidirectional character (migrations weaken the demands of change) because migrations also strengthen the internal demands of change.

Graph 6. Migrations and protests 1995-2019



Source: Migraciones: International Organization for Migration, Migration Data Portal³⁸. Protestas: 1995-2010, Provea (2010). 2011-2019, Observatorio venezolano de la conflictividad social (2019). Own calculations.

In this sense, the role of the absent, those who despairingly decided to leave their country, remains and strengthens the struggle for change among those who remain in the country. Hirschman (1993) states that, during the fall of 1989, migrations in the German Democratic Republic (GDR), instead of undermining protests, stimulated them: “[T] here was something particularly devastating about these [exits] - they drove some of the more

³⁸ https://migrationdataportal.org/?i=stock_abs_&t=2019

conscientious remaining citizens (...) to a passionate voicing of their concern and despair” Hirschman (1993: 196).

Migrations not only transform those who leave but also those who stay. The voice of the absent and their unsatisfied demands become flags of struggle and are appropriate for those who decide to stay, incorporating them into their speeches, giving them new meaning, broadening the spectrum of the political struggle of the opposing forces.

From this point of view, migrations can produce an articulation of social and political demands, elevating them to demand system change.

Political challenges and transition to democracy

The migration crisis presents several challenges for the democratic struggle, and the first is to converge the void of absence and despair with the demands of those who remain. In the last 20 years, there has been a rupture between the social and political protest that has been impossible to overcome for the political sectors that oppose Chavism. Therefore, perhaps the main challenge of the opposition is to internally turn migrations into a flag of struggle and incorporate the voice of the absent: why did those who left leave? What can we do to get them back?

At the same time, Venezuelan communities abroad also play a role in the democratic struggle. On the one hand, Venezuelan communities with greater resources have become important mediators between Venezuelan society and the different economic, social and political sectors in other countries. In this sense, the Venezuelan diaspora has built an extensive network of relations in a relatively short time that has helped to diffuse the

magnitude of the Venezuelan crisis. However, these communities also tend to divide in terms of politics, also promoting the division of the opposition sectors in Venezuela and a competition for the resources it can offer.

On the other hand, the large masses of immigrants also represent an incentive for cooperation among Latin American political leaders, where at least 80% of Venezuelan migrants are concentrated.

This geographical distribution of migrants also facilitates the possibility that they do not lose their voice completely as long as they are allowed to participate electorally. The challenge is not insignificant: it represents perhaps 20% of the electoral population, equivalent to any of the largest electoral circuits in the country: Zulia, Miranda and Capital District with 2.4 million, 2.1 million and 1.6 million voters respectively.

However, there are currently various remote voting mechanisms that could allow migrants to participate in the reconstruction of political, economic and social conditions for their return³⁹.

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39 The main voting mechanisms abroad meet in four types: vote by mail, electronic vote, vote through delegates and physical vote.

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Socialist revolutions and law: Perceptions and thoughts

Rogelio Pérez Perdomo

The last century has seen several collective experiences that have been called revolutions and that have been inspired by socialist ideas. They are called revolutions because they had or have the ambition to radically change society in a predetermined sense, to turn it into a more cooperative, less selfish society, in which all members share what is collectively or individually achieved: a planned society, where the governing group distributes tasks and rewards equitably. The project is 'revolutionary' also because it tries to become that society not through small steps, but with fast movements or, so to speak, with a great leap forward.

The idea of revolution generates tension with the modern idea of law. Law regulates social life and guarantees areas of freedom ('rights') that we consider inalienable. These are human rights that States must respect that include rights to life and bodily integrity, personal freedom and expression, property, periodically elect our rulers. The list is generally longer and enshrined in declarations since the end of the 18th century. These rights are associated with the liberal thought that broke absolute monarchies and established constitutional governments. The liberal regimes that were developed in capitalist societies were new in the 19th century. They were presented as constitutional

governments or rule of law because the branches of public power distinguish one another ('separation of powers') and also control each other as a way for the rights of people (especially property rights) to be respected. These regimes were entrenched in Europe and North America in the second half of the 20th century in a moderate version that was called welfare state or social state of law, because it had compensatory measures to guarantee a vital minimum for all and avoid the excessive exploitation of workers.

The socialist revolution is based on a different idea, an image of society or a social and political project that must be carried out through decisive actions. The socialist project is meant lead everyone to happiness and therefore has supreme value. If necessary, violence must be used, since individuals attached to their petty rights and interests cannot be allowed to balk the great purpose of the revolution. Since the ideas of law, justice, freedom, democracy, human rights, constitution, rule of law, have a positive meaning in our time, revolutionaries cannot do without them. The law can also offer useful tools to control society. Thus, socialist revolutions have reformulated the concepts to make them compatible with radical social change and the construction of the 'new man'. The exercise of law and the courts will have important differences in societies where the socialist revolution has worked regarding capitalist societies' operation.

Ideas also have an important plasticity. For instance, justice can evoke the idea of equality and of a better distribution of social goods, which may be compatible with socialism. In a sense, a socialist society would be fairer (in the sense of egalitarianism) than a capitalist society. The idea of democracy can also be rethought. In its traditional sense, it is the government of the representatives chosen by the majority via elections, but it can be

thought of as a direct democracy in which the people, organized in communes and assembled, or a ruler who directly represents the people decides. This would be a leading democracy, where the people have more direct access to decisions, whereas in that perspective representative democracy can be considered false because the people can be deceived about their true interests. Human rights can also be rethought by emphasizing social rights such as health and education, rather than property and individual rights.

In this paper, we wonder how can this happen specifically in certain societies and what happens to the law when a society enters the path of the socialist revolution. Two books that address this issue by offering information and analyses will be referenced, both relevant, although very different from each other. They will serve as a guide not only to explain the relationship between the socialist revolution and the law, but also because the analysis of their approach and methodology can illustrate the limits of the approaches and methodologies they use.

The author of the first book is Inga Markovits, a professor at the University of Texas, who studied Law in Germany and later furthered her studies in the United States. She has taught in both countries and has worked in various jobs in socialist countries, in particular, in the German Democratic Republic, perhaps better known as East Germany. Between 1945 and 1989, it was a socialist country of the Soviet orbit. Markovits studied the operation of law in a small city in that country during that time in what I consider to be one of the best written and entertaining academic books: *Justice in Lüritz/Experiencing socialist law in East Germany* (2010). Among us, it would be considered legal anthropology or social history of law. Markovits has also studied the transition process

that occurred afterwards, the integration process of East Germany into the German Federal Republic.

The author of the second book is Francisco J. Delgado, professor of philosophy of law at the Central University of Venezuela. His opus *Chavismo y derecho* (2017) concerns us directly because it is about Venezuela today. Delgado's writing is accurate and orderly, which makes it a highly recommended text. This short book (180 octavo pages, with large typography) is a good academic essay or, more properly, a set of essays with the common theme of the idea of law developed under Chavismo. It is classifiable as philosophy of law. It is, undoubtedly, an important work that deserves our attention, not only because it deals with the Chavista revolution still in progress in Venezuela, but because it insists upon pressing issues about the possible practical consequences of adopting certain conceptions of law. Delgado (2008) also has a substantial study of the idea of law in the Venezuelan constitution of 1999, where it analyzes judicial ideas.

It is convenient to note that this paper does not intend to be a comprehensive analysis of the socialist revolution and law; they are annotations of the works indicated, accompanied by some thoughts.

Justice in Lüritz

As the author indicates at the beginning of the book, Lüritz does not exist. What exists is a city in East Germany on the Baltic Sea coast whose name was changed by the author for reasons that will be explained later. The German Democratic Republic court that the author studied does not exist either. The fall of the Berlin Wall and the great changes that took place in Europe in 1989-1990

caused the communist regime that had controlled that portion of the territory to collapse and the country to integrate into the German Federal Republic. As is well known, Germany had been under the national-socialist regime (better known as the Nazi) since the mid-1930s, and in 1945 the Soviet troops occupied the territory of what later became the German Democratic Republic. Thus came the socialist revolution with Russian soldiers' boots, although there were a significant number of Communist Party militants in the country who had been persecuted by the Nazis and were put in power by the Russians when they won the war.

What interest lies behind studying the law and the functioning of justice in a society that no longer exists? It is intellectual: to understand what the role of law was and its relationship with that society. This book can be considered very relevant for comparative law because it shows how law was lived and used in a society that differs from the experience of most capitalist countries. Furthermore, the regime disappeared, but people did not. What did the regime change mean for people, particularly those who had the role of judges or lawyers? These are the research interests of Markovits. Her careful study is considered a most significant contribution to comparative law. Since people exist and are mostly still living in the city, or at least by the time researcher collected the information, Markovits changed the name of the city and people to protect their identity.

The choice of this city was not random. The researcher was looking for a more or less medium-sized city with a judicial file as complete as possible, and she found it in this provincial city. The file of the local court was quite complete from 1945 onwards, which allowed her to analyze what kind of conflicts were litigated, what relationship existed between the litigants, how and what the

judges decided. This recounts a lot about how law is conceived and for what it is used in a given society, in addition to who the judges are, what they know, and what their role in society is.

The characteristic of Markovits research is the use of social sciences for the study of law. In addition to reviewing the case files, the author was able to read papers that were not part of any judicial file, but which are important because they record minutes of meetings between judges and political instances, or instructions they received on how to handle the cases. The conversations with judges and other local people allowed her to complement the documentary information with more experiential and personal information.

The study of what the court of a provincial city decides is very different from the study of what the supreme court may decide. Great political decisions are not made in that city, just like politically important cases. The studied court judges necessarily had to be registered in the Communist Party and should act according to the ideology of the party and also attend to the indications of their political bosses, but were not involved in political persecution, nor did they supervise torturers. They were modest people working on something that the communist hierarchs considered unimportant.

In general, the people of East Germany had a difficult time in the 20th century. The Germany of 1945 was a country destroyed by war and the socialist production system never managed to provide the consumer goods that its inhabitants needed or desired. The repression against people suspected of having collaborated with the Nazis and against those who disagreed with the socialist project was severe. This is why many East Germans

migrated westward. The persistent emigration caused problems to society, so the communist chiefs decided to seal the borders and even plant mines to make escaping practically impossible. Berlin, the capital of Germany, remained in the Eastern part, but since there were occupation forces of the different powers that won the war, the city was also divided by a wall that became the symbol of the division of Germany into an Eastern, socialist side, and the Western, capitalist side. The confinement and repression did not increase prosperity or happiness, and when the socialist regime weakened in the Soviet Union and in neighboring Poland, the East German government practically disintegrated in 1989, beset by gigantic protests and a kind of generalized rebellion. The destruction of the wall also became the symbol of the end of the socialist regime.

German-eastern society was poor. There were difficulties in producing food and other consumer goods and distributing them properly, nothing unfamiliar for Venezuelans today. It was not considered that judges and courts had much importance in the construction of socialism. In fact, Markovits shows the poverty of the court in the paper they used: it was grayish, of lower quality than the one used by State-owned companies or by sectors of the State more important than the court.

One of the most visible virtues of Markovits' research, published prior to the book (Markovits, 2002), is the diachronic (or historical) approach which distinguishes periods. A new regime, which wants to change society, which includes the mentality of the people who integrate it, does not work the same all the time, although there are traits that are maintained throughout the period: it is a poor society due to low productivity, the regime

is authoritarian, and law and individual rights must yield to the political necessity of the socialist revolution.

In the first stage, the socialist regime decided to dispense of judges and other officials stained with Nazism. All the judges members of the National Socialist Party were thus dismissed. Who could replace them? Retired judges and lawyers who had been persecuted by the Nazis were called to the judiciary. In this first stage of transformation, the law moves in confusion and the problems are not easy to solve. For example, Russian soldiers would take a horse from a farmer and, after using it, would render it to another in order to pay for other services. When the first farmer claims, what should the court decide? Who is the owner? The old judges called from retirement realized that the articles of the Civil Code can no longer operate in the new circumstances and have to find an appropriate solution. In another case, the owner of a shed rents it to a fishing cooperative. The cooperative receives a shipment of salted fish bought by the central authorities, but the planners miscalculated and the fish does not find an easy way out. Salt corrodes the walls of the building and the neighbors complain about the bad smell. The owner –party member– claims and asks for unemployment and damages. The cooperative has no other premises to take the fish or funds to make repairs. Political authorities have to intervene. How to solve? The political authority gets the owner to withdraw the claim and, in compensation, they give him an old car to work as a taxi driver. The man thrives and has a well-maintained house with an unoccupied room. The municipal authority, overwhelmed by the lack of housing, orders to give the room to a family in need. New lawsuit in court. What does a case like this mean? In a socialist regime, property ceases to be a right and becomes a burden.

The functioning of justice was complicated in the early years because emigration was strong. Lawyers and the courts often disappeared, usually because they went to Berlin, took the subway and were already in the West, or they crossed the border anywhere else. This is why the wall was built and borders were fortified: by keeping citizens within borders, society would stabilize. At least those were the wishes of the regime's leaders.

The description of the transformation of the judges is remarkable. In the following period, of relative stabilization, people of proletarian origin and true believers in the benefits of socialism are turned into judges. First, they were to be trained in a six-month course, then it extended to a year and, finally, two. The conception is that judges must have a more active role and act more as educators. Problems must be solved collectively: the neighbors of a couple in difficulty are called and solutions are sought. The judges visit factories and neighborhoods, as direct contact with the people (the countrymen) will make a more humane and committed justice. For example, a woman who was tied with a married man is expelled from the community so that the marriage can be reconstituted and, of course, neighbors and judges teach the husband how to behave. This period of construction of the 'new man' (or woman) dies. There are too many cases to serve each one with all these educational purposes, and the results are fragile: the reconciled couples fight again and so on.

To the extent that the regime is consolidated and law studies revive, justice becomes professional and more formalistic but, naturally, there are political needs, interference by party bosses. Judges are criticized for being too severe or too permissive. It is not always easy to guess the thoughts of the powerful.

A very interesting area is labor law. In capitalist societies, it is often workers who protest because employers have unfairly dismissed them or do not want to pay certain benefits. In East Germany, it was the other way around: employers demanded workers because they did not render accounts properly. The account keeping systems were manual and inaccurate. Thus, when inventories were made, they were discovered missing. The employers, generally bureaucrats, sued the workers, those who were in charge of the registry box or served the public. The cashier position was thus very dangerous. Actually, the responsibility was systemic. They were very centralized systems in which nobody was the owner and, additionally, the control mechanisms were very rudimentary. Employers demanded workers as a way to pass responsibility to them. He was not going to recover much, but the intermediate bureaucrat saved his responsibility for the poor administration. Of course, this way of solving the problem caused enormous hardship to workers who were deducted part of their wages to pay for debts that could be very large. The situation did not go unnoticed by the Supreme Court that warned judges to avoid over-exploitation of workers and limited their responsibility to a month's salary. All of this was ironic to a regime that was supposed to end the exploitation of workers.

Another case is interesting: a butcher who was discovered to be using his position to keep some of the merchandise. He was prosecuted and sanctioned with a few months in prison and dismissal. The case was appealed and the higher court then saw the matter differently. How to replace the butcher in a society of labor shortage? Moreover, leaving someone out of work was contrary to the idea that the collective requires everyone's effort. As a result, the butcher's reclosure was ordered. The effort had to be to re-educate him.

The final stage is disintegration because the system stopped working. For example, very few cars were manufactured and only those politically privileged could obtain them. This caused a market for used cars to emerge. To avoid speculation, prices were regulated, but nobody wanted to sell their car for the regulated price. The mechanism was then to formally sell the car at the regulated price, while the buyer would still privately pay an additional amount to obtain the car. If the car had defects, the buyer went to court and protested. The system was too paternalistic to abandon these negligent buyers to their fate and the court accepted the case and initiated the inquiries. The commitment was sought for a certain justice to be reestablished. But what does all this mean? The limits of legality-illegality disappear and contracts cannot be taken too seriously.

It cannot surprise us that the economic system worked very badly, that productivity was very low, and that claiming rights and fulfilling obligations would weaken until practically disappearing. While this society moved with such difficulties and only remained severely repressing the discontented, the other Germany was at its side, full of objects of desire offered by consumerism and prosperity. This explains that there was a time when no one believed in the promises of socialism and the regime succumbed.

One of the characteristics of Markovits' book is the sympathy with which she looks at the subjects. The old judges called from retirement who had to decide cases according to a different law than the one they knew were not useful, nor the judges convinced of the socialist ideas but who did not know very well how to conduct themselves and could end up admonished for their excessive severity or permissiveness. Also, the behavior of close

relatives could cause difficulties with the hierarchs on whom they depended. It was not easy nor was it much appreciated to be a judge in East Germany. Markovits shows how some judges tried to perform their best in such adverse circumstances while others were more or less irresponsible. Few lawyers appear in the minutes, because the justiciables tended to act directly. A few lawyers were defiant and bitter to the judges. These are provincial judges, who do not know about the important cases, but they will not be affected as the criminals themselves by the disappearance of their world. Capitalism gives more opportunities for personal development, but it also protects less. The socialist revolution is very severe with dissidents and critics, very disrespectful of rights, but it is more paternalistic and protective than capitalist society, as the case of dissatisfied car buyers in the black market reveals.

Markovits's book was published in German and English. She was especially criticized in Germany for the sympathy with which she treats the judges of the communist regime who, after all, were complicit in a repressive regime, which massively violated citizens' rights. This issue will be addressed further on, yet let us state that the criticism seems unjustified because an investigation must be judged by the research problem it poses. When defining her research object, Markovits ruled out dealing with the properly repressive apparatus of East Germany and concentrated on looking at the small problems and other miseries of the common people, which was the field of action of the provincial court she studied. The ethnographic method that follows highlights the human aspect of the subjects studied.

Chavismo y derecho¹

Venezuela has lived its own socialist revolution thanks to Hugo Chávez, who was elected president of the Republic in December 1998. He called his movement Bolivarian revolution. Undoubtedly, Chavez had revolutionary purposes because he intended to refound the republic and to change society. The changes that took place can also be called revolutionaries because they shook Venezuelan society and, of course, politics and law. The adjective 'Bolivarian' was not so justified because he did not have much contact with Simón Bolívar's ideology², although Chávez introduced himself, as did Bolívar, as a hero fighting a hegemonic empire. In the end, as he could not change Bolívar's thoughts, he changed his face and now we have a Bolívar that looks like Chávez. In any case, the adjective declined and is rarely used. By 2002, "21st century socialism" was used to describe the revolution. More recently, the qualification of 'chavista' has been imposed, which we think is fully justified by the protagonist character that Chávez had and because his thoughts continue to inspire his followers. For the Chavistas, Chavez is the Eternal Commander and, as the slogan points out, *Chávez vive y la lucha sigue*³. Chavismo is a movement that is considered socialist. The party that Chavez founded under the model of the communist parties of Cuba and the Soviet Union is called the United Socialist Party of Venezuela (PSUV). A now less used motto was *Patria, socialismo o muerte* (nation, socialism or death).

Should we study Chavista thinking, the law that has been produced under its influence and the impact it has had on

1 The book title would translate to *Chavismo and law*.

2 Juan Carlos Rey. *Mito y política. El caso de Chávez en Venezuela*. Caracas: Cuaderno de la Fundación Manuel García Pelayo, 2009.

3 Chavez lives and the fight continues.

Venezuelan society? For Venezuelans, the affirmative answer seems obvious, because we should try to understand what we are living. And we should also study what has happened to other socialist countries, their law and how that right has been experienced in everyday life. The studies have been carried out and we have an extensive bibliography produced by Venezuelans in the political and legal field about Chávez and the Chavista revolution. This paper refers to one of them.

Francisco Delgado's book begins by pointing out the 'original sin' of Chavismo. In 1999, Chávez achieved the convening of the National Constituent Assembly that prepared a draft constitution that was submitted to a popular referendum in December of that year and approved. The text was published in March 2000 and officially became the constitution, but there are important differences between the text approved in the referendum and the text published. The Attorney General and a lawyer who was a member of the Constituent requested clarification, but the Constitutional Chamber refused to hear the case. In other words, unknown people who were surely at the top of the political power, modified the text of the constitution approved by the population. Delgado calls it original sin because it shows contempt for the text of the law and its formality since the beginning of the regime.

The book is constructed by several topics that show the conception of law as entirely subordinate to the changing needs of politics, which Delgado sees in connection with Marxism. Marx saw in the law the expression of a class domination and when the proletarian class (whose vanguard is the Communist Party) takes power it will also serve instrumentally for political domination. That is why the law, respect for it, or rights, have a purely instrumental value for the socialist revolution.

Another case analyzed by Delgado was the attempt to reform the constitution in 2006. The regime submitted an extensive reform project that, among other matters, eliminated the limit of permanence in the power of the President of the Republic for two consecutive periods to referendum. The population rejected the reform. Chavez ignored the constitutional provision that prohibits submitting a rejected reform to a referendum and submitted a constitutional amendment that allowed re-election. The argument was formalistic: a reform was rejected, but what was submitted now was an amendment, although the content of the amendment was part of the rejected reform. Chavez took all precautions this time and the amendment was approved. Furthermore, the content of the rejected reform was approved in the different organic laws that shaped the communal state. Delgado uses these examples to show that what matters to Chavismo are political goals. The constitutional norms and the opinion of the population expressed in referendum must yield to the political project.

According to Delgado, these conceptual abuses have antecedents in Venezuelan thought and have had their consecration in the same constitutional text that has defined the Venezuelan State as a democratic and social State of law and justice. Adding *justice* to the definition is a concession to anti-formalistic thinking. The anti-formalist thought that introduces extra-legal values and considerations in the interpretation of law destroys the norm as such or at least its legal purity. The anti-formalists would be supporters of judicial activism, that is, that the judges attend social requirements and interpret the legal norms in a flexible way to meet those requirements. According to Delgado, these anti-formalist aspects are what have legitimized the serious lawlessness imposed by chavistas. Delgado cites few authors, but quotes expressions of Brewer-Carías and Duque Corredor to place

them in the field of anti-formalism. It is surprising that, according to Delgado's argument, these well-known jurists, who opposed Chavez from the beginning and have been consistent in opposing Chavism, have intellectually sponsored, perhaps unintentionally, the abuses that the chavistas have committed against the law.

Several observations can be made to Delgado's analysis. Note that it is very different from Markovits's analysis. While she is interested in everyday life under socialism and how it affects the functioning of justice, Delgado reconstructs Chavismo's conception of the law and does so based on the decisions of those who hold political power. They are very different analyses, one from a sociologist or anthropologist and the other from a philosopher of law. Both analyses show societies in which the law has a secondary role and where attention is not paid to the rights of citizens or the principles of law. Both could be criticized for not highlighting the serious violations of rights and the use of the right to repression, but as we have already pointed out, this was not part of their investigation problem and the purposes with which they wrote their respective books. Delgado is very explicitly critical of the socialist conception of law. Markovits's book is rather descriptive although the reader may perceive that it takes distance from the law it describes, despite the effort to understand those who operated it.

As can be seen, Delgado's book is controversial. Beyond criticism of the conception of Chavismo law, Delgado attacks anti-formalist thinking. This thought, by including values and reference to the social aspects of law, would weaken the yield of the legal text. Delgado is a strong defender of legal formalism, which opposes the thought of important philosophers of law such as Dworkin, Rawls, Atienza, Perelman, Ferrajoli and many

others. In fact, formalism has few defenders today because its critics point out there are no univocal interpretations and that the value and political dimension of law is inevitable. Delgado does not dialogue with philosophers of law. He barely quotes Kelsen and, rather incidentally, Fuller on the anti-formalist side. Neither does he realize that formalistic authors of the past in Venezuela and other Latin American countries did not oppose dictators, but rather collaborated with them. Kelsen himself –an Austrian Jew who was persecuted by the Nazis– defended the legal character of the law of Nazi Germany (Kelsen, 2012). But let's not recriminate him for this. As a professor of philosophy of law, Delgado is surely familiar with this bibliography and if he does not quote it and has not wanted to enter this discussion, it is probably because he wanted to write an essay where he wanted to explain certain basic thoughts to enter into the dialogue and analysis that is academic life. A more detailed discussion about formalism and anti-formalism would surely have made the book more dense and cause readers to turn away.

It is more surprising that Delgado does not cite Venezuelan literature on the impact of Chavismo on law and justice. He refers to Canova et al.'s⁴ paper, yet disregards many others, e.g., Brewer-Carías⁵, Chavero⁶, Louza⁷, Casal Hernández⁸, Sánchez

4 Canova, G, Orellana, H, Ortega, R and Graterol, S. *El TSJ al servicio de la revolución*. Caracas: Editorial Galipán, 2014.

5 Brewer-Carías, Allan R. *El desmantelamiento de la democracia y el estado totalitario*. Caracas: Editorial Jurídica Venezolana, 2017.

6 Chavero Gazdik, Rafael. *La justicia revolucionaria: una década de reestructuración (o involución) judicial en Venezuela*. Caracas: Aequitas, 2011.

7 Louza Sconamiglio, Laura. *La revolución judicial en Venezuela*. Caracas: Fundación Estudios de Derecho Administrativo, 2011.

8 Casal Hernández, Jesús M. *Sobre la justicia constitucional y la instrumentalización del derecho*. Caracas: Fundación Manuel García Pelayo, 2010. Y Casal Hernández, Jesús M. *Asamblea Nacional, conquista democrática*

Uribarri⁹. Even more surprising is the lack of mention to Arias Castillo (2012), who analyzed the opening speeches of the judicial year that explain the Supreme Court magistrates' thought, not always philosophically rigorous. It is true that Chavismo has not produced philosophers of law, but there is one notable exception: José Manuel Delgado Ocando. This was a philosopher of law with an extensive work, founder of the Institute of Philosophy of Law of the University of Zulia, a convinced Marxist who wrote about revolution and law long before Chávez appeared on the scene ¹⁰. Between 1999 and 2005, he was a magistrate of the Constitutional Chamber with a key role in sustaining the Chavista regime. The reference to his work seems to me to be an important absence in Delgado's book.

vs demolición autoritaria. Elementos de la argumentación y práctica autoritaria de la Sala Constitucional del Tribunal Supremo de Justicia. Caracas: Universidad Católica Andrés Bello, 2017.

9 Sánchez Uribarri, Raúl. "A submissive constitutional court, the Venezuela Sala Constitucional". En R. Dixon & T. Ginsburg, eds., *Comparative constitutional law in Latin America*. Cheltenham. Edward Elgar, 2017.

10 Delgado Ocando, José Manuel. *Hipótesis para una filosofía anti-hegemónica del derecho y del estado*. Maracaibo: Instituto de Filosofía del Derecho. Universidad del Zulia, 1978.

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Final thoughts

These two approaches analyzed are not the only ones possible. There are classics such as Berman's¹¹ about the Soviet Union. In his comparative law work, David¹² offers an analysis of law in the Soviet Union and in the countries of Eastern Europe. Naturally, everyone has a particular perspective. In Venezuela, aside from the texts of Chavero, Louza, Canova et al., and Sánchez Uribarri cited, there are those by Alguíndigue & Pérez Perdomo¹³, Pérez Perdomo¹⁴, Ávila¹⁵, Pérez Perdomo & Santacruz addressing both the functioning of justice and repression. Gómez's articles¹⁶ address the regulation of missions as instruments of political patronage or phenomena such as the Tower of David. Both aspects say a lot about Venezuelan society and legal culture. Gómez & Pérez Perdomo¹⁷ analyze how the Chavista revolution has affected the

11 Berman, Harold. *Justice in the USSR/An interpretation of Soviet law*. Cambridge: Harvard University Press, 1963.

12 David, René. *Les grands systèmes de droit contemporains*. París : Dalloz, 1966.

13 Alguíndigue, Carmen & Rogelio Pérez Perdomo. "Revolución y proceso penal en Venezuela 1999-2012". *Anales de la Universidad Metropolitana* 13, no. 2 (2013).

14 Pérez Perdomo, Rogelio. "Represión y justicia en tiempos de protesta". *Debates /Revista de Ciencias Políticas*. Vol 8, n 3. Porto Alegre, (2014)

15 Ávila, Keymer. "Las Operaciones de Liberación del Pueblo (OLP): entre las ausencias y los excesos del sistema penal en Venezuela". *Misión Jurídica. Revista de Derecho y Ciencias Sociales*, no 13 (2017).

16 Gómez, Manuel A. "The Tower of David: social order in a vertical community". *10 FIU Law Review* (2014), 215.

Gómez, Manuel A. "La manipulación del derecho a través de la agenda social: el caso de dos misiones bolivarianas". En M. Gómez & R. Pérez Perdomo, eds, *Cultura jurídica y política en Venezuela contemporánea (1999-2013)*. Caracas: Universidad Metropolitana, 2015.

17 Gómez, Manuel A. & R. Pérez-Perdomo. "Big law in Venezuela. From globalization to revolution". En M. Gómez & R. Pérez-Perdomo, eds, *Big*

legal profession, or how in Pérez Perdomo¹⁸ there is an analysis of the revolution's impact on academic production reflected in Venezuelan legal journals. More recently, Abadí & García Soto¹⁹ analyzed property and expropriations under Chavismo. These are just some examples of the impact of the Chavista revolution on the law, and are not complete or anthological.

Two final thoughts on the sense of comparative law and the philosophy of law as instruments of analysis: Philosophy of law looks at the more general aspects of law and the ideas behind them. Much of what Delgado says about the idea of law in Chavismo may be applicable to East Germany, although the cases Delgado uses to construct his reasoning are very specific to the Venezuelan situation. Ideas circulate with some ease in the world and the visions of society and the law of Chavismo surely have a connection with the revolutionary socialism of the Soviet Union and Eastern Europe. The understanding of the law in revolutionary socialism comes from an interpretation of Marxism developed in these latitudes. Cuba surely took it from there and we know that the Chavistas took Cuba as a model and have given it a very significant presence in Venezuela. But the philosophy of law can lead to abusive conclusions if not considered carefully. I believe that the association of Chavism with anti-formalist

law in Latin America & Spain. Globalization and adjustments in the provision of high-end legal services. Palgrave Macmillan, 2018.

Gómez, Manuel A & R. Pérez Perdomo. "A dyspatch from the abyss: Venezuelan lawyers 1988-2018)". En R. Abel, O.Hammerslev, U.Schultz, & H.Sommerlad, eds, *Lawyers in the twenty-first century*. Hart. Oxford. 2020. (En prensa)

18 Pérez Perdomo, Rogelio. "Las revistas jurídicas venezolanas en tiempo de revolución". *Boletín Mexicano de Derecho Comparado* 142, (2015).

19 Abadí, Anabella & Carlos García Soto. *Expropiése. La política expropiatoria del socialismo del siglo XXI*. Caracas: CEDICE, UCAB, Universidad Monteávil, 2019.

thinking is excessive, because although anti-formalist reasoning can be detected in Chavism, not all anti-formalism would lead to Chavism or revolutionary socialism. The association of law to a secondary place in revolutionary socialism is not necessarily associated with anti-formalism, but is meant to prioritize the revolutionary political project over the values of law, something that Delgado Ocando leaves explicit (1979, 2004). Otherwise, if the values of law (personal freedom, justice, legal certainty and peace) are accentuated, the policy will be limited by law. That has become the central idea of the rule of law in the evaluation of legal and political systems today, which is accepted even by another sector of the socialists, generally called social democrats. Those who feel imbued with the revolutionary flame pejoratively call them “reformers”. Anti-formalism does not have to lead to arbitrariness and authoritarianism but to a material rationality that can give law a power much greater than formalism. In short, formalism is just a way to justify decisions. Chavista judges have used formalistic reasoning when this has aligned with their political interests.

The socio-legal approach offers a completely different type of analysis, which relates the law to a specific society. We have not found an opus similar to that of Markovits in the Venezuelan case, but we suspect that the effort to turn law into an instrument of social pedagogy –evident in her book– is absent in Venezuela. Naturally, this has to do with tradition. The use of law and courts in social life in East and West Germany is much more intense than in Venezuela. The socialist regime in East Germany did not need electoral support and, consequently, was closer to paternalism than to the populism we have lived in Venezuela. Because of this very direct relationship with society and tradition, the socio-legal approach can enrich comparative law much more than the

analysis focused on ideas. Comparative law as a comparison of legal cultures thus offers a perspective of great interest.

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The resilience of the Chavista Revolution

Juan Miguel Matheus

At the end of September 2019, Diosdado Cabello –second in command of the Chavista Revolution and active Captain of the Army– returned to Venezuela after making a “state visit” to the Democratic People’s Republic of Korea. During his stay, he held an official meeting with Choe Ryong-hae (President of the Supreme People’s Assembly), visited Pyongyang children’s food factory, met with the high hierarchy of the Worker’s Party of Korea (WPK), and went to the Grand Monument on Mansu Hill to participate in a floral offering before the statues of Kim Il-sung and Kim Jong Il. After his return to Caracas, Cabello explained the details of his trip through Asia in his weekly television program called *Con el mazo dando*. He said: In North Korea, they have managed to resist and move on. We have to do the same; we have to learn. How many lies are told about North Korea! What we saw is extraordinary: people in resistance.

Diosdado Cabello’s words are eloquent. They express the admiration produced by the triumph of autocracy. But, above all, they reflect the intentions of domination of the Chavista Revolution. The XXI Century Socialism is an autocratic project that aspires to perpetually hold power¹. The internal or external conditions

1 Francisco Plaza, “Beyond Tyranny: The Totalitarian Spirit of the Venezuelan Regime”, *The Political Science Reviewer* 42, No 1, (2018): 1-33.

that threaten the Revolution do not matter. Revolutionaries must prevail permanently. Nicolás Maduro, Diosdado Cabello, and the men and women of the Chavista regime are able to react with any measure -legal or illegal- to safeguard the inherited power of Hugo Chávez. *Resisting* means -in the Chavista order- preserving power at all costs. *Resisting* is the operation through which conditions to remain uninterruptedly in power are deepened.

But in the field of politics, wishes do not always come true. Throughout history, hundreds of autocrats have wanted to resist in the exercise of power until they die. And yet, they have been defeated by forces of freedom. Therefore, the permanence of *Chavismo* in power generates some questions that challenge the understanding of both social science scholars and politicians: why has the Chavista Revolution not yet fallen? What are the causes that truly explain the “resistance” capacity of the Chavista Revolution? What are the autocratic peculiarities that, until now, have allowed the regime inaugurated by Hugo Chávez to remain in power for more than two decades, amid circumstances that seem radically adverse?

The purpose of this article is to explore the causes that make the permanence of *Chavismo* in power possible. For this, the following premise is taken: the resistance of the Revolution led by Nicolás Maduro exceeds the ability to rebalance of a traditional autocracy. On the contrary, it is a conglomerate of factors that, as a whole, I have called *autocratic resilience*.

In the first part of this article, I will analyze the concept of autocratic resilience, as well as other concepts connected with it. In the second part -the most extensive- I will describe the mechanisms through which the autocratic resilience of the

Chavista Revolution materializes. And finally, I will briefly refer to some ideas as a conclusion.

The Autocratic Resilience of the Chavista Revolution

The answers to the questions stated in the previous section are complex. However, Diosdado Cabello's words provide an important clue that, although insufficient to explain the whole reality, allows us to better understand how Chavismo's resilience mechanisms operate to preserve power. In a sense, Cabello points out that the Revolution (i) resists threats, (ii) learns from threats and (iii) reconsolidates itself to continue exercising power. And that is precisely the political process that in this article is called *autocratic resilience*. As Trinkunas² and Bautista de Alemán³ pointed out, the Venezuelan opposition and the international community frequently underestimate the fact that the Chavista Revolution not only resists, the Chavista Revolution is resilient.

The statement above involves four interrelated concepts: (i) *state of revolutionary need*, (ii) *autocratic learning*, (iii) *autocratic gradualness* and, finally, (iv) *autocratic resilience*.

(i) *State of revolutionary need* is understood as the set of economic, political, social, international, and military circumstances under which all measures (legal or illegal) are activated and justified to ensure the subsistence of the Revolution; and, particularly, its permanence in power. Examples of a state of revolutionary need are the power vacuum that occurred in April 2002, when Chávez

2 Harold Trinkunas, "The Tragedy of the Venezuelan Opposition. Why It's Been Unable to Effectively Challenge Maduro", *Foreign Affairs*, (January 5, 2018).

3 Paola Bautista de Alemán, "Bolivarian Revolution and the Development of the Gangster State in Venezuela", *Democratization*, (September 2019).

resigned from the Presidency of the Republic and lost power for a few hours; the referendum to submit the constitutional reform of December 2007 to popular consideration, which was lost by the Revolution and won by the democratic forces; the institutional and street conflict of 2017, which showed the most repressive and brutal face of the Chavista regime; and the emergence of the parliamentary government and the interim Presidency of Juan Guaidó in 2019. All of which have been critical junctures for the Revolution, in which it has been threatened existentially and, therefore, has deepened its processes of autocratization in order to last in power.

(ii) Secondly, and in connection with the state of revolutionary need, there is what is referred to as the *autocratic learning* capacity of the Chavista regime. From each situation of need faced by the Revolution, an “autocratic cure” emerges to reverse the circumstances that put the power of Chavism at risk. In this sense, learning higher levels of autocratization. Therefore, autocratic learning is a political pathology in itself. It is a skill of perverse and Machiavellian character that has as its most cynical expression the refinement of the modes of domination and authoritarian exercise of power with very high levels of impunity.

(iii) As a third concept, the *autocratic gradualness* or the *gradual nature of the autocratic operation of Chavismo*⁴ is addressed. The Chavista Revolution acts on a principle of *economy of injustice*. It is not about the well-known principle of economy of violence by Niccolò Machiavelli⁵, according to which, when adversaries and enemies must be harmed (committing injustice), it must be done

4 Juan Miguel Matheus, “The Gradual Nature of the Dismantling of the Rule of Law in Venezuela”, *Democratization*, (October 2019).

5 Sheldon S. Wolin, “The Economy of Violence”, *The Prince, Niccolò Machiavelli* (New York: W.W. Norton & Company, 1992), 169-177.

regarding all and all at once. Certainly, Bolivarian revolutionaries are deeply Machiavellian. They know no moral limits when it comes to implementing any means, lawful or not, that allows them to maintain power. But the principle of economy of injustice of the Chavista regime is the opposite. It does not consist of displaying all the iniquities that are possible in reality, but in *undertaking as much injustice as necessary to guarantee or satisfy its purposes of preservation of power*, after verification of a state of revolutionary need and an autocratic learning lesson. In this sense, the very nature of this principle of action in the Chavista and Caribbean way lies in a consequent implementation of injustice⁶.

(iv) Finally, *autocratic resilience* is addressed. Resilience is the ability a system has to recover its initial state once the disturbance to which it has been subjected ceases. Autocratic resilience is, therefore, the ability of an authoritarian regime to regain its initial state of stability before being subjected to a state of need, and after going through an autocratic learning process to find ways to rebalance itself by putting the exercise and maintenance of power out of danger. *Mutatis mutandi*, and turning to a simile from

6 Note that the phenomenon described includes within itself a criterion of autocratic energy savings. The Chavista Revolution is capable, as it has shown in so many opportunities over the years, of all kinds of atrocities and injustices. But it is also true that it administers over time its actions contrary to the democratic and legal order, and human rights. The administration of these energies of potential injustices responds to an “autocratic habit” (vice) of modulation and hierarchy of power needs. In that way, both Chávez and his successor Maduro have been potentially capable of every imaginable outrage. But they have led the Revolution to prioritize the injustices that must be perpetrated to remain in power without a rush in the number of injustices producing the opposite effect of putting power at risk.

the health sciences, autocratic resilience is the power to create antibodies against democratizing forces.

Thus, the dynamics of subsistence and preservation of the power of the Chavista regime occurs as follows:

- The state of revolutionary need leads to autocratic learning.
- Autocratic learning leads to autocratic gradualness to devise and implement the means that are necessary to safeguard political power.
- Autocratic gradualness allows resilience (stability, rebalancing) in the exercise of power and in the consolidation of injustice.

This has been the proceeding of the Chavista Revolution since the beginning of its exercise in power, in February 1999, to sustain itself in time.

The Mechanisms of Resilience of the Chavista Revolution

Next, six mechanisms that make the resilience of the Chavista Revolution possible will be explained. They are aspects of reality in which Chavismo acts in a complementary and coherent way to consolidate its power:

- 1. Capacity of Ideological Reconfiguration of the Chavista Revolution.** On December 6, 1998, Hugo Chávez was elected President of the Republic of Venezuela. His immediate antecedent before being a presidential candidate was a military uprising against constitutional democracy: the well-known February 4, 1992, which is the iconic date of the Revolution. This is how he became known by national

and international public opinion. After the failure of the coup attempt, Chávez was arrested. He was subsequently released through the procedural institution of the dismissal of criminal cases and immediately began his rise to power...

Since then, the Chavista Revolution has boasted of being a highly ideological political reality. But the most important element to explain the resilience of the Chavista Revolution is not that it has a specific *ideological configuration*, but that the Revolution has a very high capacity for *ideological reconfiguration*.

Ideological configuration of an autocratic regime is understood as the articulation of a set of ideas that acquire a system, worldview, and key character for the interpretation of all reality, which becomes the guide of action that historically justifies the operation of a power structure that is far from justice, and which tends to impose itself -even through violence and lies- on every human person and on all the components of the social body.

And, *ideological reconfiguration of an autocratic regime* is understood, instead, as a readjustment, rearrangement or partial mutation in the basement of ideas that encourage an autocratic regime, which allows zigzags in historical performance. It is an ability to “adapt”⁷ that preserves the final redoubt of the initial ideological configuration of the autocratic regime while allowing flexibility of action and adjustment to new circumstances⁸.

7 Günther Maihold, “¿Por qué no aprenden las élites políticas? El caso de Venezuela”, en *Venezuela en retrospectiva. Los pasos hacia el régimen chavista*, ed. Günther Maihold (Madrid: Iberoamericana -Vervuert, 2007), 113-129.

8 As an example of *ideological reconfiguration of an autocratic regime*, Cuban castrism could be referred to, which continues to be essentially Marxist /

In this sense, the Chavista Revolution was ideologically configured in its origins as a (i) militarist regime, (ii) of Marxist rhetoric, (iii) that aims to achieve the civic-military union of the people and the Armed Forces, (iv) inspired by the doctrine of Simón Bolívar, (v) that has an expansive profile in international relations under the influence of Cuban Castro-communism, (vi) that instrumentally uses simulation of democratic and electoral figures, and (vii) that is sheltered by a populist constitutionalism⁹.

It is worth highlighting that this is an ideological configuration in the Venezuelan way. An ideological combination that is typical of Venezuelan political culture that leaves margins of heterodoxy in the operation on the ground of concrete politics. And it is also true that, among the revolutionaries, a great pragmatism and an uncontroverted chrematistic sense prevail, which has been enhanced with the development of the Gangster State in Venezuela. But each of the elements of the original ideological configuration of Chavismo remains in force. The Revolution has not lost its original ideological identity. In fact, this was reiterated by Nicolás Maduro in 2013 when the second edition of Hugo Chávez's "*El Libro Azul*" was published, which in practice is considered a kind of

communist. It has preserved the ultimate redoubt of its initial ideological configuration, but subsisting with flexibility of action and adaptation to new circumstances, especially after the decline of the Soviet empire. For an overview of the topic see Max Azicri and Elsie Deal, *Cuban Socialism in a New Century: Adversity, Survival, and Renewal*, (Gainesville: University of Florida Press, 2004).

9 Juan Miguel Matheus, "Ideological Configuration of the Bolivarian Revolution", *Democratization*, (September 2019) 5-39.

ideological compendium of Chavismo¹⁰. And yet, there is no doubt that Chavismo has been reconfigured to face new circumstances that threaten it, which began to become clearer in 2007 with the “ignition” of the so-called *Cinco Motores de la Revolución*, that has as most relevant feature the claim to educate all Venezuelan citizens in “socialist values”, that is, the inculturation of 21st Century Socialism as a long-term strategy.

In summary: the capacity for ideological reconfiguration brings resilience to the Chavista Revolution.

2. **Gangster State.** Venezuela is today a gangster, failed¹¹ and partially collapsed State¹². The Gangster element, however, has primacy within this characterization of the Venezuelan State. The gangster produces black and corrosive economies that weaken or annihilate the formal State¹³. Therefore, in the Venezuelan case, the failed State

10 Hugo Chávez Frías, *El Libro Azul* (Caracas: Ediciones Correo del Orinoco, 2013).

11 Moisés Naím and Francisco Toro, “Venezuela’s Suicide. Lessons From a Failed State”, *Foreign Affairs* 97, No 6, (November/December 2018): 76-85.

12 Paola Bautista de Alemán, “Venezuela: perspectivas político electorales para un Estado Gangsteril, fallido y parcialmente colapsado”, *Democratization*, (November 2019).

13 The loss of the rule of law has left the Venezuelan state without institutional defenses against organized crime. And this lack of defenses has operated in two directions. Firstly, there is the *centripetal direction*. That is, the push of organized crime from the outside to colonize the Venezuelan State. And the second, the *centrifugal direction* -which is perhaps the most complex, anomalous and defining of the Chavista regime-. It consists of the mutation of the State because the state structures are subjected to a phenomenon of internal transformation that leads to the assumption of criminal nature. In this way, organized crime instrumentalizes the power of the State to expand existentially from the inside out (centrifugal effect) in a process of submitting society to the gangster forms. *Centripetal and*

is a consequence of the Gangster State; which, in addition, generates conditions conducive to political domination through social inequalities and the complex humanitarian crisis.

To better illustrate this, I will resort to three facts that seem anecdotal, but reflect the consubstantiation of the Chavista Revolution with organized crime.

(i) In January 2011, Hugo Chávez asked the European Union and the countries of Latin America to eliminate the Colombian guerrillas from the list of terrorist groups in the world. He said, in the context of his annual address to the National Assembly of Venezuela, that both the Revolutionary Armed Forces of Colombia and the National Liberation Army represent legitimate political projects, which must be respected.

(ii) Years later, in 2019, the National Assembly of Venezuela has denounced that the illegal exploitation and commercialization of gold by the Revolution, that has Turkish distribution networks as final destination, takes place under the military custody of the National Liberation Army, which carries out terrorist activities in Venezuelan territory, especially in the Bolivar State. Moreover, Nicolás

centrifugal directions are two ways to connote what authoritative literature has coined under the expressions extropic development and entropic development of the Gangster State. Paola Bautista de Alemán, “Bolivarian Revolution and the development of the Gangster State”, *Democratization*, (September 2019): 65- 71.

The *centripetal leadership* was typical of the state-organized crime relationship in the early stages of the Bolivarian Revolution until 2003. The centrifugal leadership as a manifestation of the state-organized crime relationship is, perhaps, the element that today brings more specificity to the autocratic nature of the Chavista regime.

Maduro granted the administration of a gold mine to each Governor of State belonging to the United Socialist Party of Venezuela (PSUV)¹⁴. It is a gold exploitation with which Maduro has perfectly linked the formal power structure of the State with the criminal power structure. That is the Gangster State...

(iii) On July 31, 2019, the Department of Homeland Security of the United States of America reported that Tarek El Aissami -Economic Vice President of the Chavista Regime, and whom some consider as the third in command of the Revolution- was incorporated into the most-wanted list by the Government of the United States of America, under the reward of ten million dollars for those who collaborate with his capture¹⁵. El Aissami also has links to Islamic terrorism and his close relationship with the Recep Tayyip Erdoğan regime is publicly known.

As noted, these three facts demonstrate the Gangster nature of the Venezuelan regime led by Nicolás Maduro. Therefore, Venezuelans do not fight alone against Maduro or against the ruling party. We fight against the whole plot of organized crime worldwide: terrorism, drug trafficking, money laundering, etc. It is not a mere matter of democratic struggle. It is, I insist, a fight against the most sophisticated forms of organized crime.

14 Asamblea Nacional de la República Bolivariana de Venezuela, *ACUERDO EN RECHAZO A LAS PRETENSIONES DEL USURPADOR NICOLÁS MADURO MOROS DE OTORGAR MINAS DE ORO A LAS GOBERNACIONES*, 22 de octubre de 2019, <http://www.asamblea.nacional.gob.ve/actos/detalle/acuerdo-en-rechazo-a-las-pretensiones-del-usurpador-nicolas-maduro-moros-de-otorgar-minas-de-oro-a-las-gobernaciones>

15 <https://www.ice.gov/most-wanted/tareckZaidanElAissamiMaddah>

On the other hand, but not less importantly, organized crime helps the Revolution, and men and women who support Chavismo, to obtain almost unlimited sources of unconventional financing and to evade the personal sanctions imposed by the United States of America and the European Union.

In summary: organized crime, being highly resilient, gives a great capacity for resilience to Chavismo.

3. Autocratic Solidarity of the Dictatorial Powers of the World. Specialized literature has noted that authoritarianism is a phenomenon that tends to globalization in the 21st century¹⁶. This translates to the development of autocratic solidarity between the dictatorial powers of the world. Russia, China, Turkey, North Korea, Iran, Cuba, and Venezuela form an autocratic framework of mutual support. Among them, autocratic know-how and political support are transferred in multilateral organizations. These are relationships that exceed the traditional schemes of the aligned and not aligned with the United States of America and with the dynamics of military dissuasion and threats. It is an autocratic network that puts together the worst enemies of liberal democracy: organized crime and populism.

The issue becomes more relevant because -in addition to military, economic and intelligence services implications- this autocratic solidarity is transformed into a legitimacy front before institutions of Public International Law that are marketed through propaganda devices as victories

16 Larry Diamond, Marc F. Plattner, and Christopher Walker, eds., *Authoritarianism Goes Global: The Challenge to Democracy. A Journal of Democracy Book* (Baltimore: Johns Hopkins University Press, 2016).

of the dictatorial powers. In the Venezuelan case, this becomes evident. I will try to illustrate it with an example.

On July 4, 2019, the Office of the United Nations High Commissioner for Human Rights, Michelle Bachelet, issued a report in which she gathered the conclusions and recommendations arising from the visit by this Office to Venezuela. The report was severely critical against the Chavista regime:

“(...) 76. For over a decade, Venezuela has adopted and implemented a series of laws, policies and practices, which have restricted the democratic space, weakened public institutions, and affected the independence of the judiciary. Although these measures have been adopted with the declared aim of preserving public order and national security against alleged internal and external threats, they have increased the militarization of State institutions and the use of the civilian population in intelligence gathering and defence tasks.

77. This context has enabled the Government to commit numerous human rights violations. The authorities have particularly targeted certain individuals and groups, including members of the political opposition and those perceived as threats to the Government due to their capacity to articulate critical positions and to mobilize others. This targeted repression manifests itself in a multitude of human rights violations, which may amount to persecution on political grounds. These violations

require further investigation to determine relevant State and individual criminal responsibility”¹⁷.

But despite the content of the report, the dictatorial powers of the world exercised their autocratic solidarity to downplay the matter. On October 17, 2019, the Venezuelan State headed by Nicolás Maduro was elected member of the Human Rights Council of the United Nations system.

In summary: the solidarity of the dictatorial powers of the world endows the Chavista Revolution with resilience.

- 4. Regional political instability.** Despite efforts to neutralize populism, it erodes constitutional democracy all over the world¹⁸. The “populist signs of democratic deconsolidation”¹⁹ easily become “the death of democracy”²⁰. This reality especially threatens Latin America today. The last quarter of 2019 was marked by the social and economic upheaval of several South American countries. The democratic encouragement that marked the region after the death of Chávez²¹ threatens to fade away. Even consolidated democracies

17 Office of the United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the situation of Human rights in the Bolivarian Republic of Venezuela* (4 de julio, 2019). Available in <https://www.ohchr.org/sp/newsevents/pages/DisplayNews.aspx?NewsID=24788&LangID=5>

18 Larry Diamond, *Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency* (New York: Penguin Press, 2019).

19 Roberto Stefan Foa and Yascha Mounk, “The Signs of Desconsolidation”, *The Journal of Democracy* 28, No 1, (January 2017): 5-16.

20 Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018).

21 Miriam Kornblith, “Latin America’s Authoritarian Drift: Chavismo After Chávez?”, *The Journal of Democracy* 25, Issue 3, (July 2013): 47-61.

such as Chile are jeopardized by large waves of protests and growing popular demands for political and social vindications, under the menacing ghost of Bolivarian constitutionalism²². Signs of democratic deconsolidation appear in Colombia, Peru, Ecuador, and Argentina. And although in Bolivia President Evo Morales resigned after a questioned presidential election, it seems that Latin America is placed in the prelude of new times similar to those of the victorious diplomacy of Hugo Chávez²³.

Given that situation, Nicolás Maduro claimed the paternity of regional political instability. On October 20, 2019, he declared the following at the closing of the *First Congress of Communes, Social Movements and Popular Power*, organized by the parties related to the São Paulo Forum: “I can tell the São Paulo Forum, from Venezuela: we are fulfilling the plan, São Paulo Forum. The plan goes as we made it. The plan is perfect. You understand me, Sao Paulo Forum, the plan is in full swing”.

The above has some practical implications, which should be noted. The first is that the focus of the free world countries that want to combat populism is blurred in the Latin American map. Until a few months ago attention was focused on Venezuela. But today attention should be paid to countries such as Colombia and Chile.

The second is the loss of operation and effectiveness of international bodies created *ad hoc* in the region to face

22 Mark Tushnet, “The New Bolivarian Constitutions: A Textual Analysis”, en *Comperative Constitutional Law in Latinamerica* (Cheltenham, Uk-Northampton, USA: Elgar, 2017), 126-152.

23 Javier Corrales, “Hugo Boss”, *Foreign Policy*, No 152, (February 2006): 32-40.

Chavismo. The Lima Group, for example, has been limited in its recent initiatives. The countries that comprise it must address their own domestic problems. In addition, the United States of America and the European Union lose interlocutors in the region to address the Venezuelan problem.

The third implication is the success of the Chavista regime in isolating itself from the inter-American system in the context of a region that begins to be threatened by populism with renewed intensity. The Chavista autocracy expands to countries of the American continent and challenges the institutionality of Public International Law to protect human rights and to guarantee international conditions that make democracy possible. Venezuelan experience shows that isolation and autarchy of a regime that has dismantled the rule of law within the framework of the inter-American democratic system are possible²⁴.

In summary: regional political instability is a nutrient of populism that brings resilience to the Chavista Revolution.

5. **New Sources of Appearance of Legitimacy.** One of the defining aspects of the Chavista Revolution is its ability to permanently simulate new forms of legal and democratic

24 As has been said before, in the context of the institutionality of the United Nations system things happen differently. While in the inter-American democratic sphere the Chavista Revolution is rejected institutionally and, therefore, proceeds to be isolated autonomously, in the United Nations system, on the other hand, the Chavista regime is not entirely institutionally rejected and, therefore, does not proceed to be isolated, but to act to obtain autocratic solidarity from the dictatorial powers of the world and to get the appearance of legitimacy of said system. This was fully evident when, as I have already mentioned, after the harsh Report of the United Nations High Commissioner for Human Rights, Michelle Bachelet, the Venezuelan

legitimacy. This is what Javier Corrales has called “autocratic legalism” to punctuate the “legal” reaction of the Revolution to situations of instability, and that leads it to mutate internally, going from being a hybrid regime to a regime of absolute autocratic nature²⁵. For this purpose, it uses entangled interpretations of the legal norms –also the constitutional ones–, it goes to formal acts of organs of the Public Power that are hijacked by the Revolution, such as the Supreme Court of Justice, the National Electoral Council, or the Citizen Power, and uses the State propaganda apparatus to justify the actions through which the dismantling of the rule of law is specified.

The foregoing does not represent a minor detail in the existence and performance of the Revolution. The Chavista regime needs that appearance to meet the demands of legitimacy of internal circles, within the Revolution itself, but also demands of external circles, outside the Chavista autocracy. That is why, for instance, the institutionality and, specifically, the Judiciary, appear to be in a permanent process of restructuring²⁶.

Among the internal circles, within which the appearance of legal legitimacy of the regime’s actions is shown, are the government parties, the regime’s intelligentsia and, above all, the barracks: the National Armed Forces, which is the strongest force that sustains Nicolás Maduro today; and

State of Nicolás Maduro was elected as a member of the Human Rights Council of the United Nations system.

25 Javier Corrales, “The Authoritarian Resurgence: Autocratic Legalism in Venezuela”, *The Journal of Democracy* 26, Issue 2, (Abril 2015): 37-51.

26 On this subject, we recommend consulting Rafael Chavero Gazdik, *La justicia revolucionaria. Una década de restructuración (o involución) judicial en Venezuela* (Caracas: Aequitas, 2011).

this to such an extent that the defeat of Maduro and the holding of free and competitive elections would not seem possible if the civil-military union that holds the regime in power is not broken²⁷. Among the external circles are general citizenship, which they intend to surprise in their good faith, the media and, especially, the diplomatic corps and the international community.

However, it seems increasingly difficult to explain and justify the deepening of the gradual dismantling of the rule of law by the Revolution. The installation of the fraudulent National Constituent Assembly, with the collapse of the electoral system that this entailed, coupled with the usurpation of power by Nicolás Maduro by virtue of the electoral scam carried out with the false presidential elections of May 20, 2018, are opaque facts that are hardly explainable in the internal circles and in the external circles of the Revolution. And all this without counting the dramatic and inexcusable violations of human rights that, as I said before, are systematized in the Report of the United Nations High Commissioner for Human Rights, Michelle Bachelet.

In summary: the ability to devise renewed sources of appearance of legitimacy gives resilience to the Chavista Revolution.

6. Inculturation of the Autocratic Forms of the Chavista Revolution. *The World Justice Project* publishes an index on the quality of the rule of law in the world every year. This is an individualized analysis by country that includes nine

27 Laura Gamboa Gutiérrez, "Why Venezuela's Regime Hasn't Collapsed. Guaidó and What Army", *Foreign Affairs*, (May 30, 2019).

indicators: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, criminal justice, and, finally, informal justice (for places where the formal justice system is weak). Since 2014 Venezuela has consistently held the last place in the Rule of Law Index. In 2019, Venezuela appears as number 126/126 in each of the indicators of the study, surpassing countries such as Cambodia, Afghanistan and Mauritania.

This sad reality is not just a set of cold or merely descriptive data. It is, on the contrary, an expression of the worst living conditions to which an entire population may be subjected. The demolition of the rule of law -the absolute absence of justice among human beings- involves material and moral damages that affect all citizens and do not represent problems only related to people linked to the field of Law. As the rule of law index in 2019 refers:

“(...) Effective rule of law reduces corruption, combats poverty and disease, and protects people from injustices large and small. It is the foundation for communities of justice, opportunity, and peace –underpinning development, accountable government, and respect for fundamental rights. Traditionally, the rule of law has been viewed as the domain of lawyers and judges. But everyday issues of safety, rights, justice, and governance affect us all; everyone is a stakeholder in the rule of law”²⁸.

In this sense, it is urgent to return justice to Venezuela, because the demolishing of the rule of law is a major

28 <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>

problem, but unfortunately it is not an isolated problem. It is related to other equally burdensome problems for Venezuelans. It is, in a sense, the cause of other problems.

The worst effect of the dismantling of the rule of law is the dismantling of the legal and political culture of democracy. The destruction of the State and the Law is serious in itself. But much more serious is that the Revolution has tried, with the passage of time, to tear down all the democratic containment dikes present in the people of Venezuela and to train a human type -not a citizen anymore- that, although fights for freedom and justice, and intuitively confronts the autocratic regime, has gradually and by force been driven to an autocratic culture. The most pernicious of the dismantling of the rule of law is, therefore, the inculturation of the autocracy of the Revolution, which thus aspires to keep the hegemony of the Chávez regime standing over time.

Thus, the last and highest stage of the reversal of the damage caused by Chavism is the creation of a political culture that makes Venezuelans a human type, citizens, lovers of justice and democracy. The cultural dimension of the revolutionary transformation must be overcome²⁹. It is a challenge of turning justice into a culture of rule of law, typical of countries that have suffered repressive regimes³⁰. Otherwise, the Revolution will continue to have resilience of a cultural nature. Unfortunately, history teaches that

29 Manuel A. Gómez y Rogelio Pérez Perdomo, *Cultura jurídica y políticas en Venezuela revolucionaria (1999-2013)* (Caracas: Academia de Ciencias Políticas y Sociales y Universidad Metropolitana, 2015), 21-22.

30 Office of the United Nations High Commissioner for Human Rights, *Rule-of-law Tools for Post-conflict States: Maximizing the Legacy of Hybrid Courts* (New York: United Nations, 2008), 17-21.

societies afflicted by Marxism have a harder time healing the wounds of totalitarianism³¹.

In summary: the inculturation of the Chavista autocracy in Venezuelan society endows the Revolution with resilience.

Conclusions

The resilience of the Chavista Revolution is an issue that will remain open for new theoretical debates and for new factual findings. Undoubtedly, it is a matter of practical interest for Venezuela and Latin America. But at the same time, it is a crucial issue for the entire world because the problem of autocratic resilience is a universal obstacle to the consolidation of liberal democracy.

Perhaps the Venezuelan case especially calls attention because of the noise caused by the Chavista Revolution today, and also because it is an enclave of encrusted autocratic resilience in the western hemisphere. However, autocratic resilience has freely campaigned for decades in countries such as Russia, China, Iran, and North Korea. And it keeps on going...

The challenge for the world's democrats is to undertake a double task. On the one hand, to better understand the interaction of the mechanisms through which autocratic resilience operates as an essential aspect of authoritarian nature and, therefore, as a global reality. And, on the other hand, provide constitutional democracy with institutional components that allow dismantling autocratic resilience to defend freedom.

31 Vladimir Tismaneanu, "The Legacies of 1989. The Moving Ruins", *The Journal of Democracy* 25, Issue 1, (January 2014): 59-70.

In this sense, I take the Venezuelan case to suggest five conclusions:

1. **Regarding the Interaction of Autocratic Resilience Mechanisms:** the mechanisms through which autocratic resilience operates share feedback and sustain each other. In fact, they complement each other and are fully compatible. Venezuelan experience shows that, for example, the Gangster State is perfectly susceptible of ideologization and can be coated with new appearances of legitimacy. And it also states that the Gangster State is capable of taking deep cultural roots in the core of societies.
2. **Regarding the Universal Scope of Autocratic Resilience:** autocratic resilience is essential. It belongs to the intrinsic way of being of autocracies. This means that every authoritarian regime internally harbors the potential to develop autocratic resilience mechanisms. That is why it is a constant threat on all continents. The resilience of the Chavista Revolution is not due solely to a particular political ingenuity of Hugo Chávez and his heirs. It is, I insist, a consubstantial part of unjust regimes all over the world.
3. **Regarding the Insufficiency of the Democratic Institutionalility to Dismantle Autocratic Resilience:** democratic systems are not prepared to defend themselves against the effects of autocratic resilience, neither at the domestic level nor at the international level. This is demonstrated by the Venezuelan case.

As for the domestic level, the Venezuelan experience shows that the domination of the people is possible to the

point where they cannot free themselves. In other words, the influence of the Chavista Revolution -gangster and depositary of the autocratic solidarity of the dictatorial powers of the world- turns the struggle for the democratic liberation of Venezuela into something asymmetrical: while the Chavistas have the whole apparatus of organized crime on the planet to sustain themselves in power, and also the support of Russia, China, North Korea, Turkey and Cuba, the people of Venezuela have the valuable, but weak and limited support of the world's democracies and Public International Law mechanisms.

Thus, at the international level, the free world must observe the Venezuelan process to build new mechanisms of Public International Law that allow safeguarding nations from emerging autocracies. No country -no matter how strong its institutions are and how mature its political culture is- is vaccinated against autocracy or against populism.

The fight against autocratic resilience must be joint (all countries of the free world) and more effective. For this, new constitutional (domestic) and Public International Law (international) mechanisms must be created to stop organized crime and populism, without the latter hiding with impunity under the disguise of "respect for national sovereignty". Unfortunately, the crusade against organized crime and populism is global. Just as there is autocratic learning, there is also pro-democratic learning... and the free world must develop it more quickly.

- 4. Regarding Autocratic Resilience and Political Change:** the autocratic resilience of the Chavista Revolution makes this a structure not very prone to internal democratizing reforms. The exit and democratization costs of the regime's

officials are higher than in a traditional dictatorship. It is not only about the interest of safeguarding personal freedom from possible punishments for human rights violations, or of preserving fortunes resulting from corruption. The resilience of the Chavista Revolution leads to adding ideological obstinacy to those interests, that is, the firm determination to die in power. This also leads the dictatorial powers of the world and organized crime to, due to their dark interests, spare no effort to keep Chavismo on its feet.

In this sense, autocratic resilience –also in the case of the Chavista Revolution– is an expression of strength. And this means that the antidote to autocratic resilience involves, to some extent, a force component to achieve an internal breakdown in the regime or a real negotiation: popular mobilization, adherence of the Armed Forces to the restoration of the constitutional order, etc.

- 5. Regarding the Armed Forces and the Resilience of the Chavista Revolution:** the Armed Forces play a decisive role in the autocratic resilience of the Chavista Revolution. Nicolás Maduro reigns on a throne of bayonets. But the recent Bolivian experience –of Evo Morales’s resignation to the Presidency of the Republic with the consequent call for free elections– makes it clear that the constitutional action of the military components plays an indispensable democratizing role. In the Venezuelan case, although much more complex than the Bolivian one, the Armed Forces can disrupt the autocratic resilience of the Chavista Revolution and tip the balance of history towards democratization.

Therefore, the *Statute that governs the Transition to Democracy*, approved by the National Assembly on February 5, 2019, to

legally channel the process of political change led by Juan Guaidó, provides in article 18 the possibility of initiating the reinstitutionalization of the Armed Forces³², which aims to constitutionally integrate the military components in the rescue of the sovereignty and control of the territory of the Republic, in the reconstruction of the Venezuelan State (failed/partially collapsed), and in the dismantling of the Gangster state.

32 “(...) The National Assembly will issue laws that promote political transition in accordance with article 333 of the Constitution. Such laws shall meet the following objectives: (...) 4. Define policies aimed at effective compliance with article 328 of the Constitution and the constitutional integration of the National Armed Forces in the process of democratic transition” (own translation).

Conclusions

On Friday, January 31st, Nicolás Maduro attended the Supreme Court of Justice and led the inauguration of the 2020 judicial year. In front of the magistrates of the dictatorship, heirs of those who more than a decade ago shouted “*Uh, ah, Chávez no se va*”¹, announced the installation of a special commission for the reform of the judiciary power. With this proposal, the dictator expressed his intention to deepen the construction of a justice system at the service of the political project led by himself.

The discursive reality and the actions of the regime seem to show its autocratic progress. In recent months, the dictatorship has not offered signs of flexibility or openness towards democracy. On the contrary, it seems that we are witnessing a process of autocratic perfection based on the consolidation of procedures far from a system of freedoms.

The issue that hereby concludes included articles by Héctor Briceño, Rogelio Pérez Perdomo, Ángel Alvarado and Juan Miguel Matheus, who delved into four topics of special importance for the understanding of the moment previously described: migration, political culture, economic reform and autocratic resilience. To conclude, we can offer three thoughts that stress the dimensions of the transformation that our country will demand in the future:

- 1) *On political culture*: Political culture is a fundamental issue to study political processes. The German author Dieter Nohlen emphasizes its importance and proposes

1 “Ooh, ah, Chavez will not leave”.

that analyzing contexts can explain how phenomena are developed. The destruction of the democratic culture in Venezuela after twenty years of the Chavista Revolution is remarkable. As Rogelio Pérez Perdomo describes it in his article “Socialist revolutions and law: perceptions and thoughts”, political change is not limited to the fall of one regime and the rise of another. It is a more complex issue that demands years of effort and transformation. Sometimes, those who are immersed in the Venezuelan tragedy lose sight of the dimensions of the damage we have suffered. It is hard for us to understand that Chavismo has entailed a historical leap that separated us from the 21st and threw us back into the 19th century. We fell back more than a century and into the rudimentary Venezuela that had not yet formed the basis for the development of a modern state, the foundations of a professional army nor the democratic mechanisms of citizen participation. We believe it is essential to identify this historical and cultural setback to move forward, with realism and hope, towards democratic transformation.

- 2) *On the autocratic dynamic*: Perhaps one of the most complex aspects of the Venezuelan political process was the identification of the autocratic nature of the Chavista Revolution. Identifying it and cataloging it as a dictatorship took years of struggle. When Hugo Chávez appeared on the political stage at the end of the 20th century, he attracted and enticed curiosity among the national and international public opinion. Populism had not yet emerged as a problem in the world, and many were optimistic while watching the rise to power by electoral means of a military coup that was close to Fidel Castro. An autopsy of the murder of our democracy could allow

identifying populism's mechanisms of political action with the purpose of creating institutional and social antibodies that stop their progress in other latitudes. In this sense, the articles of the deputies Juan Miguel Matheus and Ángel Alvarado serve as a guide that can be used by democratic forces to anticipate the survival of autocracies in the 21st century. Alvarado explains the economic reform capacity of the regime and Matheus, the resilience mechanisms of the Chavista Revolution. Both articles reveal the versatility of those who cling to power without putting limits on the means that allow them to maintain it.

- 3) *On the challenges of democratic liberation*: The particularities of the Chavista dictatorship impose uncertainties and opacities that hinder its understanding. As a new disease that affects the political body, we must reflect on the mechanisms that must be activated to overcome it. In the four editions of *Democratization*, we have identified dimensions that support its structure of injustice. In future research, we hope to ponder upon them and identify their interaction with the aim of promoting actions that could allow an eventual autocratic liberation.

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Index

Introduction	2
The centipede game: Chevron vs Rosneft <i>Ángel Alvarado</i>	4
The voice of the absent: the Venezuelan migration crisis and its consequences <i>Héctor Briceño</i>	13
Socialist revolutions and law: Perceptions and thoughts <i>Rogelio Pérez Perdomo</i>	40
The resilience of the Chavista Revolution <i>Juan Miguel Matheus</i>	65
Conclusions	90
Autores	93