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The gradual nature of the dismantling of the rule of law in Venezuela

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This article analyzes the gradual nature of the dismantling of the rule of law in Venezuela since 1999. The disarticulation of the constitutional order that began with the rise to power of the Bolivarian Revolution has taken deep roots in time. Over twenty-one years, the regime inaugurated by Hugo Chávez has dismantled the rule of law through *gradual destruction*¹. Gradualness does not mean teleological shortage, continuity solution, or improvisation. On the contrary, it is an autocratic potential with which the needs arising from the ambition to preserve political power at any cost are efficiently met. It is, therefore, the timely deployment of a perennial will to distort law, to circumvent justice, which is updated with ideological reconfiguration, autocratic learning, and the resilience of the Bolivarian Revolution.

Firstly, the notion of gradualness will be defined and its related concepts will be fixed within the framework of the autocratic nature of the Bolivarian Revolution. Secondly, some refer-

1 It has been a similar process to what happened with the rise and fall of Soviet law in the countries of Eastern Europe, referred to in the classic book by Inga Markovits, *Justice in Lüritz*.

ential milestones will be described to show how the progressive dismantling of the rule of law in Venezuela has settled. And, thirdly, the depth of the damage caused by this gradual dismantling of the rule of law will be addressed, considering it in relation to the dimensions of political change that must be tackled to re-institutionalize Venezuela.

I. Gradualness. Definition, conceptual framework and defining elements

Definition

We understand the gradual nature of the dismantling of the rule of law to be: (i) the principle of action of the Bolivarian Revolution under which (ii) the legally established legal and political institutions are dismantled, (iii) through a logic of destruction by degrees, (iv) in order to preserve power and (v) simulate renewed forms of legitimacy.

As noted, it is a complex definition that must be analyzed in each of its parts. However, before dissecting the elements that make up the definition of gradualness, some comments to provide an informed frame of reference are advised:

Conceptual framework

Firstly, the complexity of this gradualness comes from the tangled autocratic nature of the Bolivarian Revolution. As has been reported in recent literature², the regime inaugurated by Hugo Chávez and continued by Nicolás Maduro has a *sui generis* autocratic nature, derived from its complex ideological configura-

2 Juan Miguel Matheus, "Configuración ideológica de la Revolución Bolivariana", *Democratization*, September 2019, 7-39.

tion. Some of its peculiarities are that it is not a traditional military dictatorship, it is not an entirely orthodox Marxist totalitarianism, it has been erected as a gangster State that exceeds the threshold of kleptocracy, and has the autocratic solidarity of the dictatorial powers of the world. This makes gradualness a progressive revelation, according to its own nature, which mirrors the tectonic movements of the autocratic layers that bring specificity to the Bolivarian Revolution. If, for instance, within the Revolution the military character prevails circumstantially over ideological components and the Marxist language, some action aimed at giving preponderance to militarism or demolishing aspects of the rule of law referring to the order probably arises from within military regime. Thus, gradualness is consequential: it arises as an effect of the configurations and reconfigurations within the walls of the Revolution.

Secondly, gradualness is a consequence of the Revolution's self-understanding of perpetuity. Within its autocratic logic, the Bolivarian regime has a perennial vocation. It is an autocratic network, owner of time and of political power. While Hugo Chávez was alive, the Revolution was perceived as genuinely personal, dependent on the charismatic and unique leader of Sabaneta, Barinas. With the death of Hugo Chávez, however, the Bolivarian movement proved to be a true regime, a network of human relations that exceeds personal leadership and builds on power structures, corruption and international relations, a support that has systemic physiognomy and that can dispense of specific people. Maduro, Diosdado Cabello, Jorge Rodríguez or any other high-ranking officials are disposable, and the Revolution can produce the human type that is required to replace them and stay in power. In this sense, gradualness is an intersection in which the Revolution shows its structural dominance over time

and power. It is a concrete way of managing the power struggle over time.

Thirdly, the Bolivarian Revolution holds an instrumental conception of law. The well-known Thomistic and medieval maxim states that the object of the Law are not the rules, but justice. This means that the fullness of the Law is in the materialization of justice, of which citizens and rulers participate, and not in formal or accidental disquisitions regarding specific legal instruments. However, the opposite can be said of the Chavista regime. In the legal logic of the Revolution, the object of the Law is not justice, but the formal legal appearances that allow it to seize power. And, justice for revolutionaries is, in the terms of the delectable Trasímaco, that stubborn character of the first book of the Republic of Plato, that which suits the strongest, i.e., the Revolution. Therefore, the gradual character in the dismantling of the rule of law is explainable (never justifiable) in the revolutionary ideology. It is the deliberate sacrifice of justice in favor of political power. All of which has led not only to the disruption of the constitutional State and balance in the exercise of power, but to what Rogelio Pérez Perdomo denominates as the denaturation of the State and the Law, and situation reminiscent of nature³.

Defining elements

Now, each of the elements of the definition of gradualness is explained, as essential features of the dismantling of the rule of law in Venezuela since 1999. Partial analyses of the definition will be carried out to better understand the concept's wholeness, and to more clearly appreciate the progressiveness in the milestones

3 See the article by Rogelio Pérez Perdomo, *Anomie, State and Law in Venezuela*, included in this issue, p. 43

of the dismantling of the rule of law that will be brought up in the second section of this article.

i) *Gradualness as an action principle of the Bolivarian Revolution*

The Bolivarian Revolution acts under a certain principle of economics of injustice. It is not as Machiavelli's well-known principle of economy of violence, according to which, when adversaries and enemies must be harmed (committing injustice), it must be done to all and at once. Certainly, Bolivarian revolutionaries are deeply Machiavellian. They know no moral limits when it comes to implementing any means, lawful or not, to maintain power. But the Chavista economy of injustice is the opposite. It does not consist in displaying all the iniquities that are possible in the realm of reality, but in committing as much injustice as necessary to guarantee or satisfy its purposes of preserving power. In this sense, the very nature of this principle of action in the Bolivarian and Caribbean way lies in a staggering in the implementation of injustice.

Note that the phenomenon described includes a criterion of autocratic energy savings. The Bolivarian Revolution is capable of all sorts of atrocities and injustices, as it has shown so many times over the years. But it is also true that they administer their actions over time, contrary to the democratic and legal as well as to human rights. The administration of these energies of potential injustices responds to an "autocratic habit" (vice) of modulation and hierarchy of power needs. Both Chávez and his successor Maduro have been potentially capable of every imaginable outreach. They have led the Revolution to prioritize the injustices that must be perpetrated to remain and stabi-

lize power, and no haste in the amount of injustices has achieved the effect of placing their power at risk. And this is all quite evident in regards to the rule of law, which has been dismantled in accordance with a gradual and sustained prioritization of the power needs of the Chavista regime over time.

ii) *Gradualness as the disarticulation of the judicial and legitimate political institution*

Hugo Chávez was a whirlwind of institutional destruction in Venezuela. And the Bolivarian Revolution still is. From its remote origins, Chavismo aimed at the devastation of democracy's *status quo*. Not surprisingly, Chávez's first public appearance was intended as a coup in 1992, which is trying to dismantle the legal and political institutions legitimately established under the 1961 Constitution in force.

Eloquently, Chávez used the term "old regime" to refer to the Puntofijo democracy. It is, of course, an expression from the French Revolution. With it, he wished to express his intentions to end in practice with Venezuelan democracy, with the 1961 Constitution, with the party system and, in general terms, with any vestige of the institutions developed during the years of the Civil Republic (1958-1998)⁴.

The first and greatest expression of the gradualness in the disarticulation of the legitimately established legal and political institutions was the irregular and illegal itinerary that led to the 1999 Constitution. Hugo Chávez insisted on a new Constitution, and he obtained it formally after

4 On the idea of civil and democratic life of Venezuelan political culture: Ramón Guillermo Avelledo, *Sobre la vida civil: ¿por qué soy radical? y otros textos humanistas* (Caracas: Editorial Dahbar, 2018).

the approval referendum of December 1999. It was a novel Constitution, substantially different from the 1961 Constitution. It was not a constitutional “replacement”⁵, as cosmetic changes of constitutional texts are known in Comparative Law, which generally occur from one autocratic regime to another, and as has happened so often in our history. The Fundamental Text of 1999 brought with it a new scheme of separation of powers, a broader catalog of human rights, novel principles for the security of the nation and more defined rules for the protection of the Constitution.

By the end of the year 2000, after the “mega elections” held in the month of May, through which all public powers were re-legitimized and the new institutional structure provided for in the 1999 Constitution should emanate, legal institutions and the Puntofijo democracy were broken. The traditions of the civil Republic that informed the State’s operation continued and, more importantly, the people of Venezuela’s prodemocratic learning during the Puntofijo years became evident. However, these customs of the Civil Republic would fade rapidly and the Bolivarian Revolution would soon inculturate its autocratic methods in the political ways of Venezuelans.

iii) Gradualness as a logic of destruction by degrees

Gradualness as a principle of action of the Bolivarian Revolution is a logic of destruction by degrees. In this regard, several ideas must be discussed.

5 Zachary Elkins, Tom Ginsburg & James Melton, *The Endurance of National Constitutions* (Nueva York: Cambridge University Press, 2009 55-59).

Firstly, as has already been said, it is a logic of action that goes against established institutions. Initially it sought to destroy the institutional structure established in the 1961 Constitution; but as the Revolution progressed, that destruction also included the 1999 Constitutional order. Chávez was, in a sense, father and executioner of the 1999 Constitution. In his autocratic psychology, the 1999 Constitution was more a symbol of historical justification and vindication, and it was more a formal “operations manual”⁶ –as described in the scientific literature on the authoritarian use of constitutional texts–, than a component for the realization of justice. Therefore, gradualness is a logic of progressive destruction: it destroys what existed before the Revolution and destroys what was created by the Revolution itself.

Secondly, it is a logic of gradual destruction that dismantles what exists and replaces it with new pseudo institutions that, of course, lie outside the Constitution and laws. As Brewer-Carías would say, it is a sort of institutional development towards consolidating authoritarianism⁷. Moreover, time has led to a further departure from the 1999 Constitution by the Chavista regime. That is, as the autocratic demands and the needs of preserving power within the Revolution grow, the replacement of the existing institutions is more manifestly against the text of the Constitution.

6 Tom Ginsburg y Alberto Simpser, *Constitutions in Authoritarian Regimes* (Nueva York: Cambridge University Press, 2013), 5-10.

7 Allan Brewer-Carías, *Dismantling Democracy in Venezuela: The Chavez Authoritarian Experiment* (Cambridge: Cambridge University Press, 2010), 165-245.

Third, gradual destruction is continuous over time. The destruction of existing institutions is constantly updated; the distance from legal norms is always deepened. However, the rhetoric of supposed respect towards the 1999 Constitution and the justification provided by revolutionary justice, which lies above the entire legal system, remains.

iv) Gradualness as a mean to remain in power

The ultimate goal of the Bolivarian Revolution is the preservation of power. The gradual dismantling of the rule of law is the mechanics through which the entire autocratic Chavista regime is unraveled in order to prevent any lawful constraints, but, most of all, it serves to deepen conditions to stay in the power.

There are three fundamental concepts that give identity to the Bolivarian Revolution:

The first is the *state of revolutionary necessity*, under which all legal or illegal means are activated and justified to ensure the subsistence of the Revolution, and particularly its permanence in power. Some examples of this state of revolutionary need are the events of April 2002, with the brief absence of leader; the December 2007 referendum to submit the constitutional reform to popular consideration, which was lost by the Revolution; the institutional and popular conflict of 2017, which showed the most repressive face of the regime; and the emergence of the parliamentary government and the presidency in charge of Juan Guaidó in 2019. These have all been trying or threatening times for the Revolution, and systematically they've delved into gradual dismantling of the rule of law.

Second, and in connection with the state of revolutionary need, is the *autocratic learning* of the regime. Each time the Revolution has faced a situation of necessity, it has responded with an autocratic cure, a progressive dismantling of the rule of law, and, in general, the conditions that made Chávez's rise to power possible. Thus, gradualness also means autocratic debasement: higher levels of autocratization. Gradualness is a political pathology in itself, where the refinement of autocratic ways of domination and exercise of power are its most cynical expression.

Third, there is *autocratic resilience*, an issue recently addressed by Bautista de Alemán⁸. Resilience is the ability of a system to recover its initial state once the disturbance to which it has been subjected ceases. Autocratic resilience is, then, the ability of a regime to recover its state of initial stability before being subjected to a state of need and after having found the means to rebalance and place their power out of danger through an autocratic learning process.

Thus, in the Bolivarian Revolution: the state of necessity leads to autocratic learning, the latter to gradual dismantling of the rule of law or unfavorable conditions for the regime, and all of these lead to resilience (stability, rebalancing) in the exercise of power and in the consolidation of injustice.

v) *Gradualness as a simulation of renewed sources of legitimacy*

Gradualness in dismantling the rule of law, as has been previously stated, is a destruction logic that leads to the crumbling of legitimately established institutions, and

8 Paola Bautista de Alemán, "Revolución Bolivariana y el desarrollo del Estado gangsteril", *Democratización*, September 2019 52-53.

even the destruction of pseudo institutions built by the Bolivarian Revolution itself. However, one of the definitive aspects of the gradual nature is that the Chavista regime permanently simulates forms of legal and democratic legitimacy. This is what Javier Corrales has called “autocratic legalism” referring to the Revolution’s “judicial” reactions to unstable situations, which transforms it from a hybrid regime to one of a pure autocratic nature⁹. The government will, therefore, use farfetched interpretations of the legal and constitutional norms; assists formal acts of seized Public Power organs, such as the Supreme Court of Justice, the National Electoral Council, or the Citizen Power; and uses state propaganda to justify the actions that crystallize the gradual dismantling of the rule of law.

This does not represent a minor detail in the existence and performance of the Revolution. The chavista regime needs that appearance to meet demands for legitimacy of internal circles, within the Revolution itself, but also in external circles, outside the Bolivarian autocracy. That is why, for example, institutions and, specifically, the Judiciary, seem to be in a permanent restructuring process, which has the simulation of legitimacy in internal and external circles as its ultimate objective¹⁰.

Among the internal circles within which the appearance of legal legitimacy of the regime’s actions is shown are the government parties, the official intelligentsia and, most importantly, the barracks: the National Armed Forces.

9 Javier Corrales, “The Authoritarian Resurgence: Autocratic Legalism in Venezuela”, *The Journal of Democracy*, Vol. 26, Number 2, April 2015 37-51.

10 On the matter, this text is essential: Rafael Chavero Gazdik, *La justicia revolucionaria. Una década de restructuración (o involución) judicial en Venezuela* (Caracas: Aequitas, 2011).

Among the external circles are general citizenship, which is intended to surprise in their good faith, the media and, above all, 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. As will be further explained, the installation of the fraudulent National Constituent Assembly, and the collapse of the electoral system that it entailed, the usurpation of power by Nicolás Maduro after the electoral scam perpetrated with the false elections of May 20, 2018 are gross events that are hardly explainable in internal or external circles of the Bolivarian Revolution. The dramatic and inexcusable violations of human rights systematized in the Report of the Office of the United Nations High Commissioner for Human Rights, Michelle Bachelet¹¹, are added to this.

II. Some referential milestones of the gradual dismantling of the rule of law in Venezuela

Having defined the gradualness of the dismantling of the rule of law in Venezuela, it will now be exemplified with milestones of peculiar relevance in the collapse of the Venezuelan State and society. These markers are meant to be exemplary, not conclusive. The list does not seek to include all the events that have marked a decline, or even all those that have been mentioned so far. Instead, it attempts to build an idle and non-exhaustive chronological account that demonstrates the gradualness in all its parts, as well as the states of revolutionary need, autocratic learning and auto-

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

cratic resilience. The milestones listed will be approached from a multidisciplinary perspective, combining a broad historical description of the facts with analysis from the legal and political science viewpoint.

The abduction of the Supreme Court of Justice

Hugo Chávez lost power circumstantially in April 2002 (state of revolutionary necessity). These were moments of shock and uncertainty; people took to the streets; business leaders and worker unions, as well as a faction of the National Armed Forces led to a rupture for political change: Pedro Carmona Estanga was ephemerally sworn in as President of the Republic. But a few hours later the situation had reversed. Chavez was back in power...

A few months later, on August 14, 2002, the Supreme Court of Justice issued a controversial judgment in an accidental Plenary Chamber, presented by Judge Franklin Arrieché. It acquitted some of the officers involved in the April events. Some argued that no coup had taken place. Instead, the Supreme Court ratified a power vacuum had been created as Hugo Chávez had resigned, a fact that was notified to the nation by the Minister of Defense, General Lucas Rincón Romero. That is, the Supreme Court of Justice ruled against the revolutionary thesis that interpreted what became known as the “Carmonazo” as a *coup d'état*.

The regime's response was immediate. Hugo Chávez hinted at the sentence with a Venezuelan colloquial expression used to refer to human excrements: *plasta*: “*Lo que pusieron [los magistrados] fue una plasta*”¹², said the then President of the Republic of Vene-

¹² Very colloquial use of language that could roughly translate to: “They [the magistrates] made a muck”.

zuela¹³. As a consequence, the Chávez majority National Assembly reformed the Organic Law of the Supreme Court of Justice in 2004 in order to ensure full control of the highest court of the Republic¹⁴, and that no body of the judiciary should rule against the interests of Revolutionary power (autocratic learning)¹⁵.

The content of the legislative reform aimed to increase the number of Magistrates from fifteen (15) to thirty-two (32), expand the powers of the National Assembly in the process of appointing magistrates, especially through the control of the Committee of Judicial Nominations, and allow the Parliament to designate magistrates with simple majority, which was in clear contravention with what the Constitution established¹⁶.

Since then, the Supreme Court of Justice has been radically prostrated at the foot of the Revolution; and the latter, once the *judicial disturbance* ceased, exceeded the state of necessity and returned to stability in the exercise of power (autocratic resilience).

Reform and constitutional amendments

Hugo Chávez was reelected in 2006 under the 1999 Constitution, which planned for a single and immediate presidential re-election. It was an election marked by the trauma in a faction of the population that had been defeated in the recall referen-

13 <https://www.youtube.com/watch?v=QAaDUx6nd4o>

14 See chapter *Reforma y Revolución* in Rogelio Pérez Perdomo, *Justicia e injusticias: estudios de historia social del Derecho* (Caracas: Academia Nacional de la Historia y Universidad Metropolitana, 2011).

15 *Manipulando el Estado de Derecho: Independencia del Poder Judicial amenazada en Venezuela* (June, 2004). Available in Human Rights Watch: <https://www.hrw.org/es/report/2004/06/16/manipulando-el-estado-de-derecho/independencia-del-poder-judicial-amenazada-en>

16 Laura Louza Scognamiglio, *La revolución judicial en Venezuela* (Caracas: Fundación de Estudios de Derecho Administrativo, 2011 40-47).

dum of August 15, 2004. Despite having a constitutional period to complete, Chávez showed his intention to stay at the head of the Venezuelan state headquarters. The Revolution promoted the constitutional reform of 2007 with the purpose of modifying its text to allow indefinite presidential re-election, among other changes that were to be implemented, such as the creation of the communal State, and of social and economic conditions that deepened socialism.

The momentum of the 2007 constitutional reform was preceded, however, by the first significant wave of protests after the events of April 2002. On December 28, 2006 Hugo Chávez announced that Radio Caracas Televisión's (a renowned local TV channel) concession, would not be renewed due to its conduct in April 2002. "Not renewing the concession" was understood as an euphemism, a legal cover to shut down a private channel that freely informed the public about national events with a sense of democratic criticism. "*No hay más concesión para ese canal golpista*"¹⁷, Chávez said. And indeed, Radio Caracas Televisión was closed on May 27, 2007. However, the closure did not go unnoticed. Citizens mobilized intensely and organized student bodies emerged as leaders, creating what would later be known as the *Movimiento Estudiantil* (Student Movement).

In this sense, the greed to appease the protests and to ensure the indefinite re-election created a special state of revolutionary necessity that would lead to a referendum approving the constitutional reform, which would be held on December 2, 2007. Perhaps the regime tried to update its autocratic learning from August 2004 with the revolutionary triumph in the recall referen-

17 The phrase could roughly be translated to "No more concessions for that insurgent channel". The word "*golpista*" directly refers to a *coup d'état* and has a very negative connotation to it.

dum, through which –as is still stated in revolutionary versions– everything related to the power vacuum of 2002 was politically defeated.

But this time Hugo Chávez lost. A miscalculation in the power of citizen mobilization and in the wishes of the people of Venezuela to defend the Constitution caused the regime to lose the referendum on constitutional reform; which resulted in autocratic incontinence in the verb of Chávez, and he declared almost obscenely, before the high military command of the Republic, that it was a “*victoria de mierda*”¹⁸. Autocratic learning failed and circumstantially it was not possible to achieve the regime’s resilience by overcoming the disturbances of the state of revolutionary need that created citizen mobilization and the impossibility of indefinite presidential re-election.

However, the revolutionary stubbornness to overcome that state of revolutionary need persisted. Hugo Chávez went on to propose a constitutional amendment to modify, among others, article 230 of the Constitution and free himself from the prohibition of being reelected as many times as he wished. The modification of the territorial model and the question of the socialist and communal State, which would be materialized later through the so-called laws of the Popular Power, were excluded from the content of this proposed constitutional amendment. And the possibility of indefinite re-election contained in the proposal, on the other hand, included all the positions of popular election, which was key so that many governors and mayors did not oppose the proposal.

The referendum for the approval of the constitutional amendment was held on February 15, 2009. The option itself (to the

¹⁸ “A shit victory”, <https://www.youtube.com/watch?v=bcCoaBvVtnQ>

amendment) reached 54.86% of the vote. Therefore, Hugo Chávez could be reelected again, as in fact it happened in October 2012. The state of revolutionary necessity most feared by the regime was overcome, which was the impossibility of aspiring to remain in power. Autocratic resilience was achieved by overcoming constitutional disturbance. The regime advanced with the gradual dismantling of the rule of law, this time trying to destroy the elementary republican principle of constitutional alternation in the exercise of power, as has been well described by Brewer-Carías¹⁹.

The siege to the National Assembly

On December 6, 2015, the Venezuelan opposition won the parliamentary elections. Under the symbols of the *Mesa de la Unidad Democrática* (Bureau of Democratic Unity, MUD) the opposition coalition parties obtained 112 seats, that is, the qualified majority of two thirds in the chamber. Leaving aside the constitutional referendum of 2007 and some governorates and mayorships, it was the first electoral setback that could compromise the exercise of central power by the Chavista regime (state of revolutionary necessity).

In this sense, the opposition triumph generated a change in the autocratic nature of the Bolivarian Revolution. It went from behaving as a hybrid regime, or an open competitive authoritarianism with supposed conditions of justice for moderately fair electoral contests, to acting as an autocracy without any vestiges of electoral appearances. The electoral system was, thus, broken. It was demonstrated with the elections to the fraudulent National Constituent Assembly and with the simulation of the presiden-

19 Allan Brewer-Carías, *Reforma constitucional y fraude a la Constitución: el caso Venezuela 1999-2009*, (Caracas: Academia de Ciencias Políticas y Sociales, 2009).

tial election of May 20, 2018 that the Bolivarian revolution would never again expose itself to losing or risking loss of power in elections with possible unexpected and imponderable results (autocratic learning).

But, in addition to the corruption of the electoral system, the regime attacked with other actions to try to besiege and neutralize the National Assembly. The attempt to weaken the Legislative Power began with the imposition of the so-called express magistrates in December 2015, seeking to strengthen the political control of the Supreme Court of Justice and preventing the opposition Parliament from legitimately designating new judges to the highest court of the Republic²⁰.

Then, there was physical and verbal violence. MUD deputies were subjected to all kinds of personal aggressions in the surroundings of the Federal Legislative Palace and other places not adjacent to the Parliament. Acute, hateful language has been used against them, encouraged by Nicolás Maduro himself and by high-ranking officials of the Bolivarian regime.

Institutional violence can also be accounted. The Supreme Court of Justice at the service of the Revolution²¹, especially after 2004, with a record that contains very few decisions against acts of public power before 2016, unleashed unprecedented judicial activism against the National Assembly –a commonality in situations of decomposition and denaturation of jurisdictional bodies

20 On this regard, review the *Informe sobre irregularidades en la designación de magistrados* Acceso a la Justicia. (February 3rd, 2016). Available in: <https://www.accesoalajusticia.org/informe-sobre-irregularidades-en-la-designacion-de-magistrados/>

21 Antonio Canova González, Luis A. Herrera Orellana, Rosa E. Rodríguez Ortega & Giuseppe Graterol Stefanelli, *El TSJ al servicio de la Revolución*, (Caracas: Editorial Episteme, 2015).

in autocratic regimes, and which is well studied in Comparative Constitutional Law- which reached its zenith with the ineffable thesis of “contempt”: a general declaration of invalidity of the performance of the National Assembly that leads to the immediate and full nullity of all acts of Parliament. The Supreme Court of Justice has issued almost eighty sentences –perfectly systematized and criticized by Jesús María Casal²²- with the intention of emptying the powers of the National Assembly, leaving the constitutional prerogatives of the deputies and, in general, prevent Parliament from becoming the epicenter of the democratic struggle and the engine of political change.

Finally, repression and violation of the human rights towards deputies have been registered. Persecution, the claim to unconstitutionally liquidate deputies’ immunity, jail, torture and exile are common procedures in the Revolution to annihilate Parliament, on which the World Interparliamentary Union has drawn attention on multiple occasions²³. In summary, the regime led by Nicolás Maduro devised ways to try to overcome the *parliamentary disturbance* and try to regain its stability of power prior to December 6, 2015 (autocratic resilience).

22 Jesús María Casal Hernández, *Asamblea Nacional. Conquista democrática vs. demolición autoritaria. Elementos de la argumentación y práctica autoritaria de la Sala Constitucional del Tribunal Supremo de Justicia*, (Caracas: Universidad Católica Andrés Bello & Konrad Adenauer, 2015).

23 <https://www.ipu.org/news/press-releases/2017-07/ipu-condemns-attack-parliament-and-mps-in-venezuela>
<https://www.ipu.org/news/press-releases/2018-02/ipu-concerned-about-latest-attempt-undermine-venezuelas-national-assembly>
<https://www.ipu.org/news/statements/2019-05/ipu-concerned-about-further-deterioration-political-crisis-in-venezuela>

Constituent fraud

2017 was a year of deep political and social upheaval. Judgments 155 and 156 of the Constitutional Chamber of the Supreme Court of Justice –which subtracted powers of the National Assembly regarding criminal legislation and parliamentary control over the conclusion of public contracts– deepened the siege of judicial autocracy over Parliament. These unleashed an unexpected response to Maduro’s regime. The then-President of the National Assembly, deputy Julio Borges, appeared before the press to ignore the content of the aforementioned sentences and break them symbolically as a sign of institutional rejection. Immediately, on the same day, a group of deputies mobilized to the headquarters of the Supreme Court of Justice to manifest against the recent sentences, and were physically assaulted by the Bolivarian National Guard. The Board of Directors of the National Assembly then announced that Parliament would initiate the procedure for the removal of the judges of the Constitutional Chamber. The population was called to protest at the Ombudsman’s Office, temporary headquarters of the Republican Moral Council, to request the classification of serious offenses regarding the Constitutional Chamber judges’ actions and proceed to remove them from their functions, in accordance with the provisions of the Constitution. The population accepted the call and mobilized to the Ombudsman’s Office. Thus began a period of six months during which citizens protested intensely in the streets under the leadership of the National Assembly, there would be dissent gaps within the regime –like that of the Attorney General of the Republic, Luisa Ortega Díaz– and the Bolivarian Revolution responded with bloody repression and fatal violations of human rights (a state of revolutionary necessity).

In the midst of conflict, and although it seemed the dictatorship was falling apart on several occasions, Maduro stood. It contained democratic forces and then tried to produce an unexpected political alternative, a rudder that changed the course of events. The Bolivarian Revolution had to find ways to resist and surprise (autocratic learning). And so the constituent fraud arose..

On Saturday, April 22, 2017, a video of Nicolás Maduro and Diosdado Cabello was broadcast. They made baseball pitches. They expressed the coming of constituent times, times of peace. Suddenly, the fraudulent National Constituent Assembly was “elected” on July 30, 2017. Only three months after the first constituent threat, Maduro surprised by changing the course of events.

The fraudulent National Constituent Assembly was unconstitutional in its convocation, in its commission bases, in its election and, of course, it is unconstitutional in its *de facto* performance. It has tried to create a new supposed legal order, as it has been revealed by Professor Miguel Mónaco²⁴, which is the superlative degree of the dismantling of the rule of law in Venezuela. All the elements of the definition of gradualness explained above reach their worst expression of unlawfulness in the existence of the fraudulent National Constituent Assembly. This has meant (i) a principle of action of the Bolivarian Revolution under which (ii) the legal and political institutions established by the Revolution itself have been dismantled, (iii) through a logic of gradual destruction, (iv) in order to preserve power and (v) simulate renewed forms of legitimacy. The regime has thus wanted to stop *street disturbances and internal dissidence* to return to the stability in the exercise of power it enjoyed before 2017 (autocratic resilience).

24 Miguel Mónaco, “El problema del nacimiento y desarrollo de dos ordenamientos jurídicos nacionales separados en Venezuela”, *Democratización*, September 2019 42-49.

The fraud of May 20, 2018 and the usurpation of the executive branch

The tensions of 2017 led to a new attempt at dialogue between the Maduro regime and the Venezuelan opposition in early 2018. The Gordian knot of the negotiations was to establish a certain date of presidential elections with conditions of electoral justice. But in February 2018 it was clear that there was no understanding between the parties. No agreements would be signed, as deputy Julio Borges, head of the opposition delegation, stated. He refused to do so and was forced to leave Venezuela to be isolated in Colombia. On March 1, the National Electoral Council dominated by the Revolution announced that the alleged presidential elections initially set for April 22, would be held on May 20, 2018. The regime then entered into electoral agreements with the Progressive Advanced parties, from whose ranks emerged Henri Falcón as opponent to Nicolás Maduro in the electoral simulation, and with the *Movimiento al Socialismo* (Movement to Socialism, MAS) party. Subsequently, Javier Bertucci, an evangelical pastor who appeared before public opinion with independent aspirations would be added as a candidate. Everything was placed for an apparent electoral party, and as expected, Nicolás Maduro turned out to be the uncontested winner with 6,248,864 votes, equivalent to 67.84% of the participation, which was estimated at 46.07%.

The National Assembly immediately ignored the electoral results and, therefore, did not recognize Maduro as the legitimate President-elect to exercise the Presidency of the Republic in the 2019-2025 period. In the *Acuerdo reiterando el desconocimiento de la farsa realizada el 20 de mayo de 2018 para la supuesta elección del Presi-*

*dente de la República*²⁵, approved on May 22, 2018, it is read that the National Assembly agreed to:

1. Declare the farce from May 20, 2018 as nonexistent, having been carried out completely outside the provisions of Human Rights Treaties, the Constitution and the Laws of the Republic.
2. Ignore the alleged results announced by the National Electoral Council and especially the alleged election of Nicolás Maduro Moros as President of the Republic, who should be considered as a usurper of the office of the Presidency of the Republic.
3. Ignore any illegal and illegitimate acts of proclamation and swearing under which it is intended to constitutionally name Nicolás Maduro Moros as alleged President of the Bolivarian Republic of Venezuela during 2019-2025.

2018 concluded as a year of citizen resistance, difficult for the democratic struggle. But a critical climax would take place on January 10, 2019, the date established, in accordance with the Constitution, for the President-elect of the Republic to take possession for the 2019-2025 period. According to the Regime's purposes, Maduro had to take possession that day. On the other hand, according to the National Assembly, Venezuelan public opinion, the free world and, most importantly, in consonance with the Constitution, in Venezuela there was no -nor is there still- President-elect for the 2019-2025 constitutional period. Therefore,

25 "Agreement reiterating the ignorance of the farce made on May 20, 2018 for the alleged election of the President of the Republic", <http://www.asambleanacional.gob.ve/actos/detalle/acuerdo-reiterando-el-desconocimiento-de-la-farsa-realizada-el-20-de-mayo-de-2018-para-la-supuesta-eleccion-del-presidente-de-la-republica-275>

the National Assembly would not place Nicolás Maduro under oath. Maduro went on to stage a pretend oath before the Supreme Court of Justice, consuming the usurpation of powers of the National Executive Power.

The National Assembly responded by clinging to the Constitution to deepen the critical situation of the Revolution. On January 5, 2019 the deputy Juan Guaidó, of the *Voluntad Popular* (Popular Will, VP) party, the then president of the Parliament, according to the parliamentary governance agreement signed by all MUD parties on January 4, 2016, lent oath as President of the National Assembly. On January 8, the National Assembly began discussions on the *El Estatuto que rige la transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela*²⁶, which was finally and unanimously approved on February 5²⁷. On January 23, Juan Guaidó took an oath as President in charge of the Republic, in strict observation of article 233 of the Constitution –which provides that, in the absence of President-elect to take office of executive functions, the President of the National Assembly must assume as President in charge of the Republic. And this oath of Juan Guaidó as President-in-charge– which from the Venezuelan technical-constitutional point of view is defined as a full-fledged assumption of competence within the framework of a government of parliamentary nature²⁸– was recognized by more than fifty countries of the free world, the Orga-

26 The Statute that governs the transition to democracy to restore the validity of the Constitution of the Bolivarian Republic of Venezuela.

27 https://asambleanacional-media.s3.amazonaws.com/documentos/gaceta/gaceta_1570546878.pdf

28 Juan Miguel Matheus, “Notas sobre la naturaleza parlamentaria de la Presidencia encargada de Juan Guaidó”, *Blog de la Revista Derecho y Sociedad*, October 2019. Available in: <http://www.derysoc.com/blog/notas-sobre-la-naturaleza-parlamentaria-de-la-presidencia-encargada-de-juan-guaido/>

nization of American States, the Lima Group and the European Parliament.

This long account is to show that 2019 has been, perhaps, the year of greatest state of revolutionary need. And at the time this article is written, Nicolás Maduro tries to implement ways to resist and surprise with unexpected actions to change the course of events (autocratic learning). For now it seems that the Revolution tries to repeat the Dominican Republic scheme and unleash non-presidential, but parliamentary elections. However, it is too early to foresee where events will settle and it does not seem that Maduro can overcome the *disturbance that is Presidency in charge of Juan Guaidó* and reconsolidate in the illegitimate exercise of power (autocratic resilience).

III. The gradual dismantling of the rule of law and the dimensions of political change for the re-institutionalization of Venezuela

This section will attempt to gauge the depth of the damage caused by the Chavista regime in the pillars of the coexistence of Venezuelans. Then, practical ideas on the re-institutionalization of Venezuela will be outlined. And, finally, inputs will be provided for the execution of the tasks that the need to redo the rule of law entails. This will be approached from an emergency perspective, assuming that destructive gradual effects should be reversed in the shortest possible time.

The depth of the damage caused by the gradual
dismantling of the rule of law

The World Justice Project publishes an index on the quality of the rule of law in the world every year. This is an individual-

ized analysis by country that includes nine indicators: separation of powers and limited government, absence of corruption, open government, fundamental rights, internal security and public order, effective compliance with the regulatory and administrative framework, 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 Index²⁹. In 2019, for example, Venezuela appears as number 126/126 in each of the indicators of the study, surpassing countries such as Cambodia, Afghanistan and Mauritania³⁰.

This miserable reality is not 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 damages and moral damages that affect all citizens and represent problems not only related to people in 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, an accountable government, and respect for fundamental rights. Traditionally, the rule of law has been viewed as the domain of lawyers and judges. But every-

29 https://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf;
https://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf;
https://worldjusticeproject.org/sites/default/files/documents/RoLL_Final-Digital_0.pdf;
https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdfnotas-sobre-la-naturaleza-parlamentaria-de-la-presidencia-encargada-de-juan-guaido/

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

day issues of safety, rights, justice, and governance affect us all; everyone is a stakeholder in the rule of law ”(p. 7).

In this sense, it is urgent to return justice to Venezuela, because the dismantling of the rule of law is a major problem, but unfortunately it is not an isolated problem, rather it involves other equally burdensome problems for Venezuelans. It is, in a sense, cause of other problems.

Some of the problems caused by the dismantling of the rule of law in Venezuela are: (i) the configuration of organized crime as a gangster State, (ii) the advent of a failed State, (iii) the loss of the democratic system, (iv) the enculturation of autocracy, and, finally, (v) the influence of the Venezuelan situation on the erosion of the rule of law and the systems of freedoms in the world. Next, the cause-effect relationship between the dismantling of the rule of law and each of the aforementioned problems will be briefly analyzed.

i) From kleptocracy to the configuration of organized crime as a Gangster State

The gradual dismantling of the rule of law has allowed a total departure from justice within the structures of the Venezuelan state.

First, there is the matter of public finances. The corruption structure of the Bolivarian Revolution is, without a doubt, the greatest robbery in the history of Venezuela. Furthermore, it is an unpunished crime, since there is no institutional framework to combat administrative corruption in any of its forms. Therefore, some have cataloged the Bolivarian regime as a kleptocracy.

Second, the most severe of the problems regards organized crime. The progressive loss of the rule of law has left the Venezuelan state defenseless against organized crime. It is a reality systematically studied by Bautista de Alemán and Democratization Magazine. This lack of defenses has operated in two directions: a *centripetal direction*, which pulls organized crime from outside its borders, colonizing the Venezuelan territory. On the other hand, the *centrifugal direction* is perhaps the most complex, anomalous and defining of the Chavista regime. It consists of State mutation, where its structures are subjected to a phenomenon of internal transformation that leads to the assumption of criminal nature. In this way, organized crime instrumentalizes State power to expand existentially from the inside out (centrifugal effect) in a process of submitting society to gangster forms. Centripetal and centrifugal directions are two ways to connote what authoritative literature has coined under the expressions *extropic* and *entropic* development of the gangster State³¹.

The *centripetal direction* was typical of the state-organized crime relationship in the early stages of the Bolivarian Revolution until 2003, as Bautista de Alemán explains³². *Centrifugal direction* as a manifestation of the state-organized crime relationship is, perhaps, the element that brings more specificity to the autocratic nature of the regime nowadays. Therefore, as will be explained later, the

31 Paola Bautista de Alemán, "Revolución Bolivariana y el desarrollo del Estado gangsteril", *Democratización*, September 2019 65-66.

32 Paola Bautista de Alemán, "Revolución Bolivariana y el desarrollo del Estado gangsteril", *Democratización*, Septiembre 2019 65-71.

political change in Venezuela must include a very important dimension of decriminalization of the State and society.

For now, it is enough to say that the dismantling of the rule of law in Venezuela has made the following progressive mutation/denaturalization of the State possible: starting from high levels of administrative corruption, it became a kleptocracy, from whence the centripetal direction turned it gangster, and then moved towards a centrifugal relationship in the criminalization process of society.

ii) The advent of a failed State

The gradual dismantling of the rule of law has also contributed to making Venezuela a failed state today. The disarticulation of the legally and politically established institutions has not only favored the conditions of injustice in which the Revolution takes place. It has also weakened State structures to such an extent that it is impossible to fulfill the any of its functions. The Venezuelan State is not capable of exercising the monopoly of legitimate violence, since organized crime and irregular groups are everywhere. It is not able to control the territory of the Republic or safeguard national sovereignty. And, finally, it is not able to create conditions to efficiently provide public services. In this sense, the deinstitutionalization of Venezuela is so profound that the gradual dismantling of the rule of law has been followed, and perhaps accompanied, by a process of de-stateization.

Several comments can be made on this regard. First, a failed state does not mean the absence of factual power or real power structures. These structures exist, yet they are separate from the former apparatus of the Venezuelan

State and, of course, its legal system (formal and material). And at the top of these non-state structures is the high command of the Revolution led by Nicolás Maduro, such as an autocratic power cartel or an autocratic federation. Secondly, there is a relationship between the gangster State and the failed State where the former cannot be erected if the latter has not been consolidated. The institutional disarticulation and the failed character are a breeding ground for the emergence of the gangster State. Thirdly, the failed State results in the atomization of the territory of the Republic into multiple segments, which, as has been said, are controlled by *de facto* and informal powers such as guerrillas, paramilitary, organized crime, anarchist National Armed Forces factions, etc. Finally, the relationship between the State and the citizen is denatured. The State is degraded to the condition of mere power, and citizens lose status to be considered in the most elementary sense of “man”. There is a return to nature and the content of the relationship between power and man is fear, within the framework of uncertainties of human relationships that exist outside justice. In other words: the current relationship between Venezuelans and power is of pre-political character.

iii) The loss of the democratic system

The Democratic State is legally protected. There are institutional mechanisms that guarantee it and ensure the validity of the democratic order. Fundamental rights, including political rights, must be freely exercised and effectively protected by all organs of public power. And the latter, meanwhile, must channel the exercise of their powers in a framework that respects the law, and above all, of insti-

tutional weights and balances that allow the verification of Montesquieu's idea of power by detaining power. In short, democracy is only possible if the rule of law guarantees it.

Gradual dismantling of the rule of law is, in turn, the gradual dismantling of democracy. The relationship between democracy and the rule of law is so essential that sometimes the distinction between one and the other seems artificial; and the erosion of one affects the other. The loss of the rule of law and, in general, of the prevalence of justice, leads to losing the guarantees of the Democratic State. It also leads to the violation of fundamental rights, including political rights. And, of course, it makes the dynamics of weights and counterweights of a democratic order impossible. As the legitimate institutions of the rule of law are dismantled, there is no control of political power in democracy.

Political change in Venezuela must, therefore, be conceived as a much broader process than mere democratization. This is not, by far, detracting from democracy as a substantive idea, rather to understand that democracy requires preconditions that make it possible (existence of the State, rule of law, decriminalization of society, etc.). Otherwise, it would be a fragile democracy, much more prone to breaks and regressions, as will be explained later.

iv) The enculturation of the autocracy of the Bolivarian Revolution

The worst of the effects of the gradual dismantling of the rule of law is, in a reflex way, the dismantling of the legal and political culture of democracy. The destruction of the State and the Law is grave in itself. Yet, it much more alarming that the governing Revolution has tried to destroy all the democratic spaces available to the people of Venezuela

overtime, and trained a specific type of human –not a citizen– that, while fighting for freedom and justice, and intuitively confronting the autocratic regime, has been turning, little by little and by force, to an autocratic and democratic anti-culture. The most pernicious consequence of gradualness is, therefore, the enculturation of the autocracy of the Bolivarian Revolution, which thus aspires to keep the hegemony of the Chávez regime.

Thus, the last and highest stage of the reversal of the dismantling of the rule of law is the creation of a political culture that makes Venezuelans human citizens, lovers of justice and democracy. The cultural dimension of the revolutionary transformation must be overcome³³.

v) The influence of Venezuela on the erosion of the rule of law and freedom systems in the world

The gradual nature of the dismantling of the rule of law in Venezuela is expansive. It expands to countries of the American continent and challenges the institutions of Public International Law to protect human rights and to guarantee international conditions that make democracy possible.

American countries are experiencing democratic regressions. The levels of institutional instability and fragility of these countries today are enhanced in a renewed way by populism, populist constitutionalism³⁴, and an antidemo-

33 Manuel A. Gómez & 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).

34 Mark Tushnet, "The New Bolivarian Constitutions: A Textual Analysis", *Comparative Constitutional Law in Latinamerica* (Cheltenham, UK-Northampton, USA: Elgar, 2017 126-152).

cratic logic that aims to be justified in social inequalities and in the low standards of economic and institutional performance of the democratic systems of the region. The institutional crises recently experienced in Peru, Ecuador and Chile, just to mention a few, show that there are communicating vessels between the Bolivarian Revolution and the rest of the nations –recognized by Maduro himself, who declared that everything was going according to plan by the Forum of Sao Paulo³⁵–, which urge to assume the problems of democracy not as merely national, but regional concerns. The gradual dismantling of the rule of law is a highly contagious disease.

Regarding how the Public International Law is challenged to protect human rights and to create democratic international conditions, two matters should be addressed:

First, the Venezuelan experience shows that the isolation and autarchy of a regime that has dismantled the rule of law within the framework of the inter-American democratic system are possible. In spite of the firm action of the OAS, the Lima Group and a good part of the countries of the region, the Bolivarian Revolution allows us to see in a diaphanous way that the problem is a lack of pro-democratic institutions of International Public Law, but the absence of mechanisms for effective execution.

The second issue exceeds the inter-American democratic sphere and it has worse impact: the incidence and performance of a regime that has dismantled the rule of law in the institutional framework of the United Nations system. In the inter-American democratic sphere, the Bolivar-

35 <https://www.youtube.com/watch?v=2xPpBw1XbkY>

ian Revolution is rejected institutionally and, therefore, proceeds to isolate itself autonomously. In the United Nations system, on the other hand, the Bolivarian regime is not entirely institutionally rejected and, therefore, does not proceed to isolate itself, rather it keeps finding autocratic solidarity from the dictatorial powers of the world and to gather apparent legitimacy from their support. This was fully evident when, after the harsh report of the Office of the United Nations High Commissioner for Human Rights, Michelle Bachelet, the Venezuelan State of Nicolás Maduro was elected member of the Human Rights Council of the United Nations system.

The dimensions of political change for the
re-institutionalization of Venezuela

The Venezuelan crisis is a tangle of problems of multiple natures; much more than a democratic transition is yet to happen to rescue freedom and justice in Venezuela. A comprehensive political change must be promoted, where it is possible to reverse the vicissitudes described in the previous section and which are, partially caused by the gradual dismantling of the rule of law. Next, ideas for practical action in various areas of such political change will be suggested, as well as for the re-institutionalization of Venezuela.

i) Decriminalization of society - Dismantling of the gangster State

The first task of political change is the decriminalization of society and the State. The criminalization of society and the State are two forms of political injustice absolutely incompatible with democracy. A political change that does not include the dismantling of the gangster State and the struc-

tures of organized crime would be hurt by fragility. The risks of regressions propitiated by the interests of organized crime and not consolidating a genuine democratic system, but end up swimming in the waters of a Russian-style illiberal democracy would always be present.

In this sense, the decriminalization of the State and society is a joint responsibility for the political leadership, the National Armed Forces, the international community - which should increase cooperation mechanisms in all areas (economic, military, intelligence, etc.) - and, in general, for citizenship.

ii) Rebuilding the Venezuelan State - Rescue of sovereignty

Ensuring the fight against organized crime, Venezuelan society must be reestatized. The construction of the rule of law requires the precondition of the existence of a State. It is necessary to rebuild the Venezuelan State, making it capable of exercising the monopoly of legitimate violence, controlling the territory of the Republic and responding to critical situations in providing public services. This means disrupting the atomization of real power, in the form of a cartel, which characterizes the Bolivarian Revolution and under which it shares power with irregular entities. This will also require international cooperation and active constitutional integration of the Armed Forces in the process of political change. Therefore, perhaps from now on, the channels for the reconstruction of the Armed Forces, as a *sine qua non* condition of the rescue of state sovereignty, must be woven together.

iii) *Democratization*

To fight against organized crime and being able to reshape the Venezuelan State, proper progress must be made in democratization. The action guide is summarized in article 3 of the *Statute governing the transition to democracy*, which reads that the aims of the democratic transition are the full restoration of the constitutional order, the rescue of popular sovereignty through free elections and the reversal of the complex humanitarian emergency, with the purpose of rescuing the system of freedoms, constitutional guarantees and human rights. This must take place with the liberation of the Electoral Power, so that it is an independent public power at the service of the political rights of Venezuelans.

iv) *Transitional justice vs. transformational justice*

Unfortunately, Venezuela enters the list of countries that, after an autocratic crossing, require a transitional justice system. In this regard, the following ideas should be considered:

- Transitional justice is always an *a posteriori* realization, never *a priori*. The intensities and accommodations of transitional justice will depend, fundamentally, on the gender of democratic liberation produced by the political change in Venezuela (rupture or reform).
- Regardless of the gender of democratic liberation, the regulatory framework for transitional justice is, together with the Constitution, article 18 of the Statute governing the transition. This includes: democratizing incentives for State officials and regime officials, amnesties, the transitional justice system in the strict sense to fully

repair victims of human rights violations, and the administration of historical memory through a Commission of Truth, as a cultural aspect of transitional justice.

- The realistic coordinates for the transitional justice system should arise, as the specialized literature suggests³⁶, from the answer to two questions: What is the autocratic nature of the regime left in the past? What kind of division characterizes the society in which transitional justice is necessary? The first question is answered in consistency with what is stated in this article: the Bolivarian Revolution is not a traditional dictatorship, but a failed, gangster State of Marxist rhetoric. And to the second question, the answer is that Venezuela is a society deeply divided by political reasons, not ethnic, religious, etc.
- Finally, bear in mind that the cultural injury caused by the Bolivarian Revolution to Venezuela is so profound that it may be useful to talk about transformational justice, following the example of Germany and German political science, as well as South Africa and other African countries, *in lieu* of conventional transitional justice^{37,38}.

v) Legal education and enculturation of the State of Law

The ultimate guarantee for the new rule of law in Venezuela must be the legal and political education of citizenship. The transitional-transformational justice system must point to it. It is necessary to eliminate the autocratic ways of the Bolivarian Revo-

36 Arend Lijphart, "Constitutional Design for Divided Societies", *The Journal of Democracy*, Vol. 15, Number 2, April 2004 96-109.

37 Paul Gready (Ed.), *From Transitional to Transformative Justice*, (New York: Cambridge University Press 2019).

38 Matthew Evans, *Transformative Justice: Remediating Human Rights Violations Beyond Transition*, (New York: Routledge 2018).

lution from the Venezuelan people and prepare democratic elites to promptly warn the erosions of the systems so that they can exercise their (reformist) role quickly³⁹. The political change in Venezuela is a horizon of citizen pedagogy. The return to justice what Fukuyama has called transition to the rule of law⁴⁰ will depend on that, and nothing more.

39 Tom Ginsburg & aAziz Huq, "Democracy's Near Misses", *The Journal of Democracy*, Vol. 29, Number 4, October 2018 16-30.

40 Francys Fukuyama, "Democracy's Past and Future: Transitions to the Rule of Law", *The Journal of Democracy*, Vol. 21, Number 1, January 2010 33-44.

Conclusions

The second issue of the magazine *Democratización* concludes with these ideas. In this edition, we deepen the objective we set out in the previous one: to determine the autocratic nature of the dictatorship of Nicolás Maduro¹. We understand that knowledge itself leads to action, and scholars' duty goes beyond study, they must intervene². We seek to encourage our practical disposition and that of those who read us. This chapter is divided into two parts: (i) Summary of the findings, and (ii) challenges for democratic liberation.

I.

The articles by Juan Miguel Matheus, Rogelio Pérez Perdomo, Ángel Alvarado and Paola Bautista de Alemán –together with those published on our first issue– delve into essential features that shape the current regime and offer a definition of its autocratic nature. We find that the *dictatorship of Nicolás Maduro is a gangster, failed State, and of Marxist rhetoric*.

The efforts to find a true diagnosis for the political illness we suffer allowed us to identify one of its essential components: *Gradualness*, a concept developed by Juan Miguel Matheus in his

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- 1 Just as was explained in the first issue of this magazine “...Following the contributions of Samuel Huntington, it is understood that there may be a relationship between the autocratic nature of political systems and the possible development of a democratization process. In this sense, typifying the Bolivarian Revolution is an indispensable task to advance in the analysis of the process of political change and evaluate the possible outcomes”. “Introduction”, *Democratización*, (septiembre 2019), 3.
 - 2 Tzvetan Todorov, *La experiencia totalitaria* (Mexico: Galaxia Gutenberg, 2014), 68.

article, “The gradual nature of the dismantling of the rule of law in Venezuela”. The term refers to the progressive development of a destruction logic and the autocratic potential of the Bolivarian Revolution, who seek to preserve –or rather abuse– power, simulating renewed forms of legitimacy.

Matheus identifies five elements that define gradualness: (i) as the principle of action of the Bolivarian Revolution, (ii) as disarticulation of the legitimately established legal and political institutions, (iii) as a logic of destruction by degrees, (iv) as a means to preserve power, and (v) as a simulation of renewed sources of legitimacy.

The installation of a *gangster, failed and Marxist rhetoric State* in Venezuela has brought devastating consequences for the country and the continent. The articles by Rogelio Pérez Perdomo and Ángel Alvarado describe this from two complementary perspectives. The former emphasizes the impact on political and institutional culture. Pérez Perdomo offers clues to reflect on the consequences of the dismantling of the State and the emergence of autocracy. The testimony of those who grew up in democracy and have seen the installation of the dictatorship are interesting and enriching. The essay rescues the cultural foundations that can contribute to the reconstruction of the State and the Law in the country. His contribution is hopeful.

Ángel Alvarado's findings in “Economic structure in Venezuela and its path to democracy” are in tune with the concept of *gradualness* and with the identification of a “black economy”. The article accurately describes the Venezuelan economic system prior to 1999 and tidily synthesizes the destruction of the oil economy, a fact that opened doors to the predominance of illicit dynamics. Deputy Alvarado points out that the complex human-

itarian emergency Venezuela is currently experiencing, far from being a consequence of economic sanctions, is a product of the destruction of the economic system.

Paola Bautista de Alemán continues the line of research from the first issue of *Democratización*. The author makes efforts to identify the features that define the *gangster State* with the purpose of discovering its dynamics and rebalancing tools of the autocracy. Its main contribution is the preparation of a methodology that allows ordering the data and identifying the relationship between actors, illegal activities and territories that serve as input for political analysis.

The relationship she proposes between the decentralized efforts of power and how this condition generates inequality in the structural collapse of the country, affecting the sense of urgency of political change, is interesting. This finding, together with the concept of *gradualness* and the regime's repressive capacity –official and unofficial–, can help understand why the complex humanitarian crisis has not triggered a social commotion to pursue regime change.

II.

We wonder how the traits identified in our investigation affect the process of democratic liberation in our country. When studying the itinerary of the struggle for democracy in Venezuela in the last two decades, we find that all roads have been traveled and all internal and external means have been used. If we recourse to the studies on the fall and survival of regimes, we find that a dictatorship without popular support, with low economic performance and internationally fenced, should tend either to break or to its internal reform, but not towards stability. However, the Bolivar-

ian Revolution has managed to overcome each crisis and emerge even stronger from the junctures.

The publications that our research accumulates can help understand the capacity of autocratic resilience that the dictatorship has in Venezuela. Thus, two concepts must be highlighted: (i) *gangster State*, and (ii) *gradualness*.

The identification of the gangster State, its bureaucratic structure and the normative preference of its members (Marxist rhetoric) can explain the stubbornness of those currently leading the Bolivarian Revolution. We propose, as a hypothesis, that the dictatorship grant historical and existential dimensions to their political project. They cling to power for reasons that transcend economic benefits and cyclical power. We do not mean to downplay their lucrative advantage, which is the product of corruption and illegal operations. Certainly, in the map of actors of the dictatorship, the degrees of commitment to non-material matters may vary. But we must warn that the *strength* that the system has shown so far may be associated with the non-material values (maybe ideological) of the actors and the *resilience capacity* may be related to the complex bureaucracy that they have developed from within the State to channel the sources of illicit enrichment.

On the other hand, *gradualness* enlightens a pattern of action that has allowed the autocracy to firmly advance despite resistance from society. In Venezuela, this dynamic allowed political actors with autocratic potential to advance their projects without igniting national and international democratic alerts. They propagated with a veil of legality that allowed them to hide their regulatory preferences and simulate renewed forms of legality. It was the *long agony* of institutions and individual freedoms. Our

exhaustion has been so long that it is difficult to determine when democracy died and when we woke up in dictatorship.

The elements pointed out by the author can also explain the difficulties faced by academic, intellectual and political environments to understand and timely identify the autocratic nature of the Bolivarian Revolution. We believe that these findings are of special relevance for the international community –especially for Chile, Colombia, Mexico and Spain– where populist and/or rupturist phenomena threaten to come to power with electoral support in order to gradually dismantle the democratic systems that gave them access to decision-making positions.

The concept identified by Juan Miguel Matheus also specifies the dynamics that allow the dictatorship to adjust to adversities and set the means to achieve its ends. It is what we have called *autocratic resilience*. Under these operating schemes, time tends to play in favor of those who have the ability to strengthen themselves in the face of clockwise progress. Autocracies that progress gradually are like the blades of a well-forged sword: they can bend without breaking. Undoubtedly, this quality represents a challenge for the forces that resist it.

Identifying and describing the gangster State and its gradualness impose challenges on democratic forces. Both phenomena feed the resilience of the regime. Our findings seem to indicate that medium or long-term liberation strategies tend to benefit the dictatorship because they could deplete opposition forces and offer opportunities to rebalance the regime. The challenge is, therefore, to find ways of autocratic liberation that limit the

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regime's resilience and protect the democratic forces from fatigue, not sacrifice, which seems inevitable.