

Democratization



Year 1, Issue 2

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of the rule of law in Venezuela

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Anomie, State and Law in Venezuela

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Introduction

On May 20, 2018, the Bolivarian Revolution carried out the largest official fraud in the history of Venezuela. Failing to comply with minimum fair electoral conditions, a process was executed and its results were unknown by the country's democratic forces¹, paving the way to the political crisis that broke out the following year.

In January 2019, Nicolás Maduro's presidency ended and Venezuela did not have an elected president to assume the Executive Power for the new period. Following the constitutional mandates, it was then up to the President of the National Assembly to assume said power. On January 23, 2019, deputy Juan Guaidó swore in as President in charge of the Bolivarian Republic of Venezuela. Ten months have passed since that milestone in the recent political history of our country. What we have lived up to now calls to reflection and, among other things, confirms the unpredictable nature of the critical junctures and their possible outcomes.

This issue is the second installment of the advances of the project *Political change in the 21st century: the Venezuelan case*, where we intend to understand the phenomenon that concerns us with the intention of finding ways towards a transition to democracy. In this edition, we continue to deepen the nature of the Bolivarian

1 "Acuerdo reiterando el desconocimiento de la farsa realizada el 20 de mayo de 2018 para la supuesta elección del Presidente de la República" approved on the 22nd of May of 2018 in an ordinary session of the National Assembly.

Revolution. We reaffirm the need to understand the autocratic rule, as this might help build new paths of liberation.

Our publication includes four articles: “The gradual nature of the dismantling of the rule of law in Venezuela” by Juan Miguel Matheus, “Anomie, State and Law” by Rogelio Pérez Perdomo, “Three features of the gangster State in Venezuela” by Paola Bautista de Alemán and “Economic structure in Venezuela and its path to democracy” by Ángel Alvarado. Here is a brief summary of each one:

The paper by deputy Juan Miguel Matheus studies the gradual character of the dismantling of the rule of law in Venezuela since 1999. In addition to specifying some milestones that allow us to know the phenomenon, it offers clues about the autocratic progress and the installation of a non-democratic system in our nation. From the precise and documented diagnosis, we can extract the scope of the transformation that the future will demand. Without a doubt, it is a political and intellectual contribution that nurtures studies on the dynamics of democratic erosion and populist advancement in the world.

“Anomie, State and Law” by Rogelio Pérez Perdomo, is an essay that seeks to open doors to deep and honest reflection. The author intends to contribute with the understanding of the country inviting to a conversation among those who feel at the bottom of the abyss and want to leave and, especially, those who think that the reconstruction of the legal system has an important place in that task. Professor Pérez Perdomo testifies to the work of intellectuals who endure within the country and find in their labor an opportunity to contribute to Venezuela’s liberation.

“Three features of the gangster State in Venezuela” follows up on a research line from our first issue. Paola Bautista de Alemán

dissects the concept of the gangster State and identifies three defining characteristics: (i) the expansive dynamics advanced by those who are part of the State and by individuals who are associated with it but not formally, (ii) the diversity of illicit activities throughout national and/or State structures, and (iii) the propensity to collapse and their capacity for regeneration. This intellectual exercise allows us to propose a study methodology that seeks to order the phenomenon in order to make it understandable and find alternatives for political action.

Deputy Ángel Alvarado contributes with his paper “Economic structure in Venezuela and its path to democracy”. In his article we find the reflection of a man of action who approaches reality with the purpose of modifying it. It describes the evolution of the Venezuelan economy during the last twenty years and analyzes the mutation of the system: from oil to illegal activities. Their findings nurture studies on gangster status and explain the configuration of the current national structural collapse.

We hope the four articles in this second issue contribute to the understanding of the political moment that we’ve experienced and encourage the transformative action of all. Study and reflection give us the ability to open ourselves to reality. This approach seeks to sow responsible hope in those who read us and find in these pages ways to further contribute to our democratic struggle.

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

Juan Miguel Matheus

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/RoLI_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 is 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.

Anomie, State and Law in Venezuela¹

Rogelio Pérez Perdomo

Venezuelan academics are currently split between trying to understand what is happening in the country and feeling indignant about it. For those of us who have been instructed in Law, the situation we live in is painful, since in the face of the violation of fundamental principles and the most elementary human rights, including the execution of crimes against humanity, outrage is justified. Nevertheless, analyzing how the actions of the regime oppose the Law and the massive violations of human rights is both obvious and has been so many times repeated that we feel that it does not help the understanding of what happens and that it almost trivializes a much more vicious reality.

In this essay, the literature that sheds light on the failed or gangster State is taken seriously and driven to its consequences. The failed State is not really a State; the gangster State is contrary to Law and, thus, is not a State either. St. Augustine² compared the kingdoms void of justice with gangs of thieves. Our analysis begins there. We will argue that the gangster State is not just any criminal gang, so its structure and functions must be analyzed. Its consequences which weigh on society can be very different from those of any ordinary criminal gang.

1 I thank Elsa Cardozo, Miriam Rodríguez, Paola de Alemán and Juan M. Matheus for their comments and corrections in the preliminary version of this article.

2 *The City of God* IV.4

This study is presented from the perspective of Law and tries to understand the situation from the theoretical foundations of Law. To do so, we resort to philosophy, politics, and sociology, and try to observe reality from a perhaps-outdated perspective of 17th-century philosophers and 19th-century sociologists. Appealing to these thinkers is not escapism, because what we propose is to analyze what is happening in Venezuela today: situations which are so anomalous that we believe have questioned not only the rule of law but the State and the Law as such. For this reason, the most relevant literature probably belongs to those who laid out the foundations of Law, the State, and society.

When Venezuela is well argued as a failed State³ or a gangster State⁴, fundamental questions arise to those of us who work with Law: What becomes of the Law that pre-existed or the one that survives the destruction of the State? What type of criminal gang is the gangster State? What becomes of the apparatus of political power? What happens in society when the State disappears and perhaps the Law loses its foreseeable coercion character? Does it become an anomic society? And, finally, once the State has disappeared, is there any force or path that allows it to be rebuilt and do so as a Rule of Law?

These are the questions that this essay will try to answer by looking at the situation in Venezuela and drawing from philosophy, sociology, and law to reflect upon it. As it is an essay, the reader should not expect a detailed treatise of the situation in the country. For this, there is an abundant bibliography that will be mentioned briefly. It also does not intend to pose serious prob-

3 Moisés Naím and F. Toro, "Venezuela's suicide: lessons from a failed state" in *Foreign Affairs*. (Issue 6. Nov-Dec, 2018).

4 Paola Bautista de Alemán, "Bolivarian revolution and the development of the gangster state in Venezuela" in *Democratization*. (year 1, # 1, 2019).

lems of interpretation of philosophers and sociologists that are mentioned. It is something much more modest than an investigation of Political Philosophy or Sociology of Law, and is not considered as an ethnographic investigation. The purpose is to understand the country in order to start the conversation between those of us who feel at the bottom of the abyss and who want to get out of it and, especially, those who think that the reconstruction of the legal system plays an important role in that task.

In the first part, we will analyze how Venezuela has reached its current situation and the consequences of the State's failure, or its conversion into a kind of criminal organization, involving the Law and the citizens. In the second part, we will analyze what the Law or legal system becomes in the situation described above, if it can be said that it has survived. In the final and concluding part, we will speculate on the possibility of building a rule of law on the ruins of what we have at the time or the greatest destruction that we will have as long as the regime prolongs its agony.

From the rule of law to the state of nature?

In the 17th century, Thomas Hobbes analyzed the insecure and miserable life that men (and women, as should be added today) have in the state of nature and how, supported by their rationality, they decide to constitute a State⁵. Hobbes does not propose a historical hypothesis –in the sense that we would have lived first in a state of nature and then we would have constituted the State–, but instead established models to understand society and politics. Just as we must disassemble a clock and assemble it again in order to understand how it works, Hobbes imagines the

5 All references to Hobbes are to his works *The Citizen* (1642/1966) and *Leviathan* (1651/1968). A first approach to this issue can be seen in Pérez Perdomo, 2017.

dissolution of the State, its consequences, and the incentives we have to rebuild it.

Hobbes did not think about emptiness; he lived in convulsive times in England and it was the observation of the dangers that English society faced from an extremely rational perspective, and a pessimistic or realistic conception of human nature that led to the formulation of the theory that is at the root of the modern conception of the State and of a way of thinking about the Law that we call legal positivism: Law is established by the State and is made coercible by sanctioning.

In Venezuela, we have inverted the equation: we have demolished the rule of law or the State, or we have built a gangster State that is not really a State. What we propose is ratified, expanded or nuanced in numerous studies. Now, we must specify a few details.

The metaphor of the demolition of the rule of law is not entirely accurate since it implies the pre-existence of the rule of law. The history of Venezuela teaches us, in turn, that the State consolidated itself in the country in the 20th century under the regime of Juan Vicente Gómez, which managed to unify the nation, impose peace and monopolize the use of violence, which is characteristic of the modern State. But under Gómez and his successors, the rule of law was not consolidated. The serious social inequality, poverty and ignorance of a very large part of the population made the constitutional provisions and the declared rights purely theoretical. The democratic party regime (1958-1998) had many benefits and made significant social progress, but functioning according to the law was not one of its strengths. The justice apparatus was penetrated by clientelistic and semi-criminal networks called judicial tribes. The police were abusive, especially with the most

vulnerable people, and this situation, although known to all and analyzed by academics, did not seem to matter to those who had the power to mend it. In particular, judges and prosecutors had the institutional obligation to act and did not. Frequent corruption scandals showed that many officials and politicians lacked the ethos of what is public. The legal system as a whole did not provide the legal certainty that the State must grant and that a modern economy requires. In short, as a rule of law it was very weak, and as a democratic political system it was far from having the loyalty of the population⁶.

The weaknesses of the rule of law, surely an erroneous economic policy and the neglect of civic education, which is at least co-responsibility of the government, led to economic stagnation since the 1980s and to the severe political crisis of the 1990s. The result was the election of an outsider who promised to re-found the republic, eliminate corruption and fry the heads of the corrupt in oil. Using socialist and anti-imperialist rhetoric, Chávez's government vigorously undertook the destruction of companies and private production of goods, armed groups of civilians to support the revolution and generated a climate of corruption and violence as was unknown in the Venezuelan history of the 20th century. He also called on the Cuban dictatorship to co-govern in Venezuela. High oil prices and external indebtedness made it possible to replace much of the loss of national production with imported products⁷. By lowering prices and becoming indebted, the country is at the center of an extreme economic crisis and Nicolás Maduro's government has only responded with repression⁸. The situation is so severe that more than 10% of the population has emigrated, including many of the doctors, nurses and

6 Pérez Perdomo, 2003, 2015

7 Naim & Toro, 2018.

8 Pérez Perdomo, 2015; Capriles, Pérez Perdomo & Santacruz, 2020.

professional and technical staff of companies of all kinds. That is why today Venezuela is called a failed State. The association of rulers with drug trafficking, gold smuggling, the looting of the main companies of the State and, in general, generalization of corruption, makes Venezuela qualify as a gangster State. It is a multidimensional crisis or a humanitarian catastrophe⁹.

Strictly analyzed, neither the failed State nor the gangster State can be called States. We are rather facing a disappearance of the State, which has been transformed into a kleptocratic tyranny. The objective of those who wield power is to enrich and satisfy personal passions, not very different from Plato's description of tyranny¹⁰. A coercive apparatus that does not intend to guarantee the personal integrity and prosperity of citizens, but rather make them flee from the danger of starvation or simply dwindle, cannot be called a State because it does not fulfill its functions.

The disappearance of the State would lead us to the state of nature according to Hobbes. Do we live in Venezuela in a state of nature such as the one described by Hobbes? It is true that the State no longer has a monopoly on violence, partly because it has armed groups that tend to act on their own behalf and for their own benefit, and because it has allowed irregular Colombian forces to penetrate deep into Venezuelan territory. The renunciation of the monopoly of violence, which destroys the State, is actually a policy of rulers to avoid being left at the hands of the professional army and to maintain a political power that does not submit to the constitution and laws. The state of nature in which we would live is not made up of individuals who could be encouraged by reason to build a State that would protect them. There are groups with huge interests and willingness to maintain

9 Legler et al., 2018.

10 *República* 565c ss.

the status quo, even if it leads to catastrophe. The gangster State is not just another criminal gang. It has an enormous power that, as in the case of Venezuela, can paralyze society.

It is true that the Venezuelan situation has a certain resemblance to the Hobbesian state of nature. We live in fear of violence, suffer shortages, life expectancy has been reduced. To put it in Hobbes' words: we are subject to "continuall feare, and danger of violent death. And the life of man (is) solitary, poor, nasty, brutish, and short"¹¹. But it would not be true that we are in an all-against-all war. I live in a building where we respect the property of the neighbors whom we greet politely every day; we do not attack each other and we keep the common spaces clean and safe. I work at a university where I observe that students respect each other and their professors. If we are well provided with cornmeal or rice, and a relative, friend or neighbor needs it, we share it. In the subway, I see that pregnant women or people with small children are offered seats. I am not always offered the position despite my age, but I am comforted thinking that the young people who remain seated consider me strong enough to travel while standing.

It is true that the violent death rate can reach 90 per 100,000 inhabitants, although it varies according to how it is counted or who is counting¹². It is one of the highest rates in the world, but, even so, it implies that more than 90,000 out of every 100,000 inhabitants have not been killed that year. The vast majority can aspire to die of some disease, perhaps due to the lack of medication. We are certainly not in a state of law, and collectively we are

11 Thomas Hobbes, *Leviathan*, (Harmondsworth: Pelican, (1651-1968), 186.

12 Briceño-León et al. 2009, 2015.

poorer and more limited, but we are not in the state of nature that Hobbes describes.

Law in a denatured state

Does Law disappear when the State disappears or is the State denatured? The answer depends on what we look at. Law schools are maintained in Venezuela, universities graduate lawyers. Some legal journals survive and others have begun to be published digitally¹³. This implies that many law professors continue to write and that many have noticed what occurs in the country and write critically about what is happening to the legal system. Others have not noticed and continue to speculate on the correct interpretation of a given article of the Civil Code or on the concept of validity. At least a part of the graduates practice law professionally and there are a number of law firms, although most have reduced their size. NGOs that deal with the functioning of justice, human rights, prisoners and the politically persecuted have proliferated. In other words, Law has not died and many lawyers, in different ways, are part of the resistance to tyranny¹⁴.

Of course, in a more normative perspective, the answer to the question may be another. Positivists, who associate Law with the State and who think that only the norms provided by the State's coercion are Law, would surely respond that Law has disappeared. There are courts and the Supreme Court of Justice, but judges lack independence and are not impartial. Certain authors have shown that the government systematically wins all judicial battles in the Supreme Court¹⁵. In the courts, the criminal judges act by order of the government and when someone who has not

13 Pérez Perdomo, 2015.

14 Gómez and Pérez Perdomo, 2020.

15 Canova González et al, 2014.v

gotten the message properly releases an indicted politician, the police chief may choose not to obey, without bearing down the consequences. In purely private matters, it is not advisable to resort to a court because the outcome of the trial will depend on extra-legal factors.

The regime has not only affected legislation and the judiciary. It has also distorted the legal profession. In universities controlled by the regime, lawyers are not prepared in Law, but rather receive superficial political education and training as political operators¹⁶. Nevertheless, there are universities that continue to take professional education seriously.

If the State's coercive apparatus has no relation to Law, what do lawyers do? In fact, they continue to do what they know how to do: they write contracts, even though they know that remedies cannot be requested for non-compliance; they defend political prisoners who know will be condemned; they introduce administrative resources that they know are not going to be taken care of. This forces us to analyze how the meaning of Law changes.

Lawyers and their clients sign contracts knowing that their compliance cannot be demanded in court. I have seen leases in dollars. Given Venezuelan regulations, said contract is invalid and, ultimately, the tenant will only pay if they want to do so. The chances of evicting them are minimal. Such contract has no more legal value than a conversation, but written, signed by the parties and signed and sealed by a lawyer and perhaps by a notary, the promise acquires a solemnity that the conversation would lack. There is a symbolic value and the parties will feel more obliged than if it were an oral agreement. The Law provides the solemnization of the promise.

16 Pérez Perdomo, 2018.

I have asked the lawyers who defend political prisoners why they defend them if they know in advance that they will be convicted. The answers vary: in some cases, they explain that relatives and friends want to do everything they can and they feel that legally protesting and claiming freedom is the least, and perhaps the only thing, they can do. Lawyers are generally aware of these circumstances and are quite moderate in fixing the price of their services. Other answers are more sophisticated: they want to exhaust the national jurisdiction, where they know they will not be heard, in order to go to international instances. The hope that the government will give in to international pressures is weak, but sometimes it works. Finally, there are those who say that the purpose is for their testimony to echo. The positivist jurist will deny that we are talking about Law, but if they were ever imprisoned, they will call a criminal lawyer to defend them.

Of course, it would be much better for the State to respect the rules of Law, to conduct it according to the Constitution, for the courts to fulfill their own functions, for the rules to be clear and not to give great discretion in their application. That is part of the civilization process that we have disregarded. But the point is that Law can exist without the State¹⁷. Classic Roman Law also worked without State and the jurists of the time developed some efforts that we still admire. The jurist who has faith that the Law is a coercible norm and cannot exist without the State should begin by denying Roman Law as a Law as well as seeking another occupation.

17 Dedek & Van Praagh, 2015; Helfand, 2015.

Anomie, ethical strength and reconstruction of the rule of law

Émile Durkheim studied a social phenomenon which he called *anomie*¹⁸. The Hobbesian state of nature would be an extreme case of *anomie* because the proper legal rules have disappeared and the moral standards that remain are barely enough to enter into the contract that would constitute the State. Durkheim did not consider such an extreme position and in relation to the entire society. He studied situations, such as suicide or homicide, in which moral rules have failed not necessarily because they have ceased to exist but because there is a plurality of norms that send opposite messages. *Anomie* does not have to affect all the society but rather certain groups or even individuals. Contemporary sociologists have elaborated on these ideas¹⁹. Merton, in particular, developed a typology distinguishing degrees of conformity with what is normative²⁰.

Theorists and researchers who have studied Latin America have stressed that in our region there is a weak appreciation for legal regulations. They have paid special attention to the lack of respect for traffic regulations²¹. As we know, they have a legal and ethical dimension, as the transgressive driver endangers the life, bodily integrity, and property of others. Buenos Aires and Bogotá suffer frequently from the transgression of traffic rules. Caracas does too. However, if we look carefully, crashes and other traffic accidents do not have the frequency that one would expect from a society that does not respect rules. In Caracas, traffic is relatively orderly, especially since the Chavista Revolution solved the

18 Durkheim, 1969.

19 Passas, 1993.

20 Merton, 1968.

21 Nino, 1992; García Villegas, 2009.

problem of congestion by achieving a radical decrease in cars in circulation, a secondary consequence of economic paralysis. This indicates that there are rules, although they are not necessarily the formal ones established in the law and the regulation of land transit. Law is not the only computer in society and social order often occurs outside the law in any society. Ellickson²² has evidenced this in Northern California. Even in communities that are ‘outside the law’, there are social norms that allow society to function in a relatively orderly manner, as Gómez analyzes with respect to a ‘vertical slum’: the Tower of David²³.

Much more worrying are demonstrations such as lynchings or death squads called OLPs (Operation for the Liberation of the People), or more cynically OHLPs (Humanitarian Operations for the Liberation of the People²⁴). Lynchings are popular reactions without a clear organizing group: a slum criminal (*‘azote’* or *‘chigüire’*²⁵) is apprehended by the local people themselves and is beaten or stabbed to death. The police and the justice system generally avoid intervening. OLPs or OHLPs are organized by the government and are a response to crime and violence in slums.

22 Ellickson, 1991.

23 Gómez, 2014.

24 Operaciones Humanitarias para la Liberación del Pueblo.

25 The traditional social norm is that *‘malandros’* –or slum criminals– do not commit crimes in their own neighborhood or slum, and consider themselves space defenders of the incursion of other *malandros*. That is why they have the appreciation of the people of the neighborhood. The *‘chigüires’* are generally young people who have not internalized that social norm and commit crimes in their own slum. *‘Azote de barrio’* is a more general term: a person who frequently commits crimes in a neighborhood regardless of their home base. The neighbors do not have the police to apprehend the *azotes* and *chigüires*, and in case the neighbors themselves apprehend them and hand them over to the police, the perception is that they would be released shortly after. This is why lynching is the option.

A special police brigade, the FAES, is responsible for visiting the slums and killing offenders in their homes. These deaths are officially recognized as ‘clashes’ and are not considered homicides. The number of homicides has thus dropped significantly. Even if we add the homicide figures with that of confrontations, the result is a lower figure than in the years before the start of the OLPs. The Interior Minister annually reports the success of the OLPs. The greater number of deaths in clashes is a sign of the government's commitment and the effectiveness of these operations²⁶. The figures report several thousands per year. The effectiveness of the operations is plausible, as the OLPs would eliminate ‘independent’ criminals and provide a monopoly to criminals who work for the government. By eliminating rivalries, the number of homicides also decreases. It is a mechanism that has a certain parallel with the reduction of automotive congestion in Caracas: it produces a certain order causing greater damage.

The way FAES proceeds responds to information from government activists in the slums so that the squad knows who they are looking for and where they are. Of course, there are no trials or proof. It is likely that in a certain number of cases there are errors or that personal revenge plays an important role. At least, the families of the victims frequently point to the media that the victim was a young and responsible worker. In some cases, they have operated for political repression. Given the methodology, errors and uses with different purposes are possible.

Even assuming that there have not been errors nor abuses, the institutionalization of what Romero Salazar and Rujano Roque²⁷ have called a “culture of death” is worrisome. The lynchings, which the State probably tolerates due to its own bad conscience,

26 Avila, 2017a, 2017b.

27 Romero Salazar and Rujano Roque, 2007.

are equally worrisome for the same reasons. OLPs and lynchings imply the absolute denial of Law and human rights. It is therefore not surprising that the regime turned out so badly in the report of the UN High Commissioner for Human Rights of 2019.

In short, the government and the judicial apparatus itself, completely controlled by the government, are the great violators of basic legal and ethical principles. In these circumstances, it is impressive and a reason to remain optimistic that, in general, the population has not plunged into a more generalized anomie and that the interest in Law and, in short, the vitality of Law is maintained in a part of legal education, between Law professionals and in the activity of professors, researchers, and human rights activists. On the other hand, it can be estimated that there is a generalized awareness of respect for the basic principles of coexistence reflected in respect to the basic rights contained in the Constitution and in international declarations. You can walk in Caracas without being constantly besieged by thieves or murderers. There are reports that at certain times there have been looting and situations of violence in cities other than the capital, but I do not believe that a Hobbesian situation is experienced anywhere. Respect for the basic rules of ethics and Law for the majority of the population allows us to anticipate that a kinder way of living together and also a recovery of the economy can be reconstructed. The road to a rule of law can be recovered.

Given the current circumstances, it is difficult to imagine how Venezuela can leave the abyss and move towards a democracy that respects the rule of law, but it would not be the first country to shake a tyranny that seems to be well established. It is wrong to think that we are condemned to remain in it, but it is also wrong to think that the change of political regime can be like the swift of a magic wand that turns Venezuela into a rule of law. The

construction of the rule of law is a long-term operation that must set clear objectives and maintain a firm direction for a long time.

Two proposals

The construction of the rule of law is not achieved by changing the Constitution or with the implementation of an electoral system that guarantees that the will of the people is respected. Undoubtedly, it will be necessary to disarm the bands that the government has armed and to whom they have given a license to commit crimes and combat the irregular forces that have risen in the country. This will require a major police and military effort. Aspects that generally seem inescapable and that are related to the people in charge of the operation of the legal system will be highlighted: without adequate work on this part of civil operators of the State any consideration seems to be built on a void. In other words, if a rule of law is desired we have to pay attention to those responsible for building and operating it.

The first aspect or scope of action refers to judges, prosecutors, and police, and I suppose that the reader does not have to be persuaded that it is a very important aspect if a rule of law is to work. This is an area that was neglected in the two previous regimes: the democratic party regime and the authoritarian revolutionaries that replaced it. In both of them, an exaggerated political control was imposed, which prevailed over the technical competence and the ethical competence that must be had by those who work in the delicate functions of control and power that constitute these bodies. This should be a lesson learned.

We currently have two supreme courts operating, both with very debatable legitimacy. One has a good number of magistrates who were irregularly appointed and/or lack the requirements

to be magistrates. Its decisions, especially those of the Constitutional Chamber and the Political-Administrative Chamber, show it as just another office of the regime. Another group of magistrates, appointed according to the constitutional procedure, has been constituted as Supreme Court in Exile because they had to emigrate when the government unleashed persecution against them. Its operation as a supreme court does not have a clear constitutional basis and its decisions, which have had little practical impact, show them very radicalized regarding the government. Article 22 of the Statute governing the Transition to Democracy (National Assembly, 2019) provides for them to join the Supreme Court, but it does not seem possible that a body with politically and radically opposed members can function. Institutional recomposition requires that the Supreme Court be independent of political groups and highly trained professionally.

Almost all of the judges of the different courts have been appointed without complying with the competition and other procedures required by the constitution. The renewal of the judiciary requires a very careful public policy. Given the lack of prestige of the judiciary, one of the difficult tasks will be to attract qualified professionals to attend the position of judge. An indiscriminate disobedience of the judiciary and the mass appointment of improvised judges would be a bad start for a regime that wants to establish a rule of law.

What was said regarding the judges is also valid for other officials of the justice system. The Public Ministry, in particular, requires as much attention as the judiciary. The police are also important because they are the face of the State in the daily relationship with citizens.

The second aspect refers to the educational field. In my opinion, it is very important for the medium and long term if we want a democracy with the rule of law to work. The educational issue has two aspects: civic education or citizens' education and the education of legal professionals.

Civic education refers to the understanding of how a political system works, the importance of political participation and parties, and how the functioning of the legal system is very important for the guarantee of the rights of all. Civic education was banished from secondary education since the 1980s and replaced by 'pre-military education'. In other words, the State resigned from forming citizens: they wanted soldiers. The triumph of the "saviors of the country" and other populists is related to the neglect of civic education in many countries, and, in Venezuela, this seems especially alarming.

The training of legal professionals is also a topic of great interest since those who are going to operate a rule of law must have an understanding of this and must respect human rights. Even before Chávez, there was a worrying inequality in the quality of legal education, but at least those who graduated knew something about Law. This is no longer the case²⁸. We must work with what we have and we must be aware that more than half of Law graduates in the last decade have not studied law and they have been prepared to operate the legal system at the service of the revolution. It may be time to distinguish between law degrees and to implement a status test or verification of competencies. These exams are traditional in several countries and others, such as Spain and Brazil, have implemented it more recently.

²⁸ Pérez Perdomo, 2018.

In summary, the construction of a rule of law is not a matter of pure political change, or even of a sustained ‘political will’, as generally stated. It is necessary to rethink the institutional reconfiguration and, as far as this paper is concerned, to reestablish the justice system.

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Three features of the gangster State in Venezuela

Paola Bautista de Alemán

In the previous publication¹, we laid out the theoretical foundations of our research on the gangster State in Venezuela. We developed the ideas that guide our study and we approached the emergence of the phenomenon in Venezuela. In this article, we will identify the features that characterize it and offer partial conclusions related to the possibility of an eventual process of political change in the country.

First and foremost, we must bear in mind the concept of gangster state offered by Professor Katherine Hirschfeld in *Gangster states: Organized crime, kleptocracy and political collapse*. The author says:

Gangster-states are defined here as chimeric, transitional political economies that temporarily formalize the extractive economic monopolies of racketeering over marked geographic territory. Once territorial boundaries become established, the racket resembles a rudimentary kleptocratic state, with the security forces repurposed beyond monopoly enforcement into activities more typically associated with government. These may include the organization of economic production, conflict resolution and territorial defense. Gangs-

1 Paola Bautista de Alemán, "Revolución Bolivariana y el desarrollo del Estado gangsteril", *Democratización*, (September 2019), 50-75

ter-state territories are not fixed or static, as kleptocratic elites will seek to colonize surrounding territory if conditions are favorable. On the other hand, the extractive core of racketeering creates an impetus for conflict with neighboring groups as well as exhaustive depletion of resources that may ultimately lead to political-economic decline or collapse².

Three features describing the nature of the phenomenon can be found in Hirschfeld's concept: (i) The advanced expansive dynamics by those who are part of the State and by individuals who are associated with it but who do not formally integrate it; (ii) The diversity of illicit activities executed through national and/or regional State structures; (iii) The propensity to collapse and its capacity for regeneration. The dissection of the term sets a study path that helps to sort the information and overcome methodological limitations associated with this type of research³. Each feature in current day Venezuela is discussed below.

I. On the advanced expansive dynamic of the gangster State in Venezuela

In *Organized crime and States: The hidden face of politics*, Briquet & Favarel-Garriges analyze the cases of Pakistan, Turkey, Indo-

2 Katherine Hirschfeld, *Gangster states: organized crime, kleptocracy and political collapse*. (London: Palgrave Macmillan, 2015) 68.

3 In *Gangs in uniforms in Turkey: Politics at the articulation between security institutions and the criminal world*, Elise Massicard highlights the methodological difficulties that science faces when it tries to understand illegal phenomena. The author explains that the main obstacles are information opacity, the sensitive nature of the subject and localism. We reiterate the difficulties highlighted by Massicard and even include the difficulty to validate information that is publicized as true without an official basis. Thus, researchers must be rigorous and systematic. Elise Massicard, "Gangs in uniforms in Turkey: Politics at the articulation between secu-

nesia, Bulgaria, and Belize, as well as others from sub-Saharan African countries⁴. The Science Po (Paris) professors describe the tendency of criminal organizations whose activities are promoted⁵ or protected⁶ by the State to spread. The authors' analysis allows to understand that this expansion can occur in three dimensions: (i) in size, (ii) in extension and (iii) in diversity. The first dimension refers to the number of members of the organization; the second, to the territorial scope that its operations reach; and the third, to the type of illegal activities they carry out.

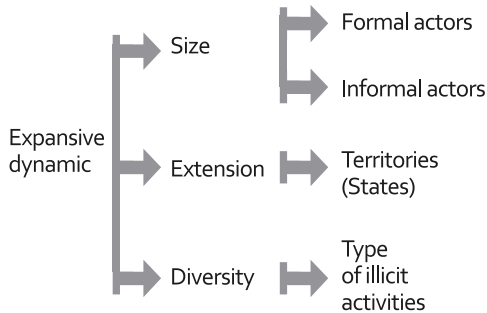
To understand the expansive dynamics, the first dimension specified above is reviewed. We will therefore classify actors involved in the gangster State in Venezuela according to size. We will restrict ourselves to mentioning them; future investigations will have to specify their level of participation and influence. For methodological reasons, particular emphasis will be placed on

rity institutions and the criminal world" in *Organized crime and States: The hidden face of politics* (New York: Palgrave Macmillan, 2010) 41-72.

- 4 Rosaleen Duffy, "Shadow States: Globalization, Criminalization, and Environmental Change" in *Organized crime and States: The hidden face of politics* (New York: Palgrave Macmillan, 2010) 97-116.
- 5 When the State promotes the creation of ilegal organization that are part of its formal structure, it will be identified as an "entropic development" of the gangster State. As is explained in "*Revolución Bolivariana y el desarrollo del Estado gangsteril*", the origin of this phenomenon in Venezuela can be traced back to 1998, and even much more so to 2002.
- 6 When the State protects the actions of criminal organization that are not part of its formal structure, it will be identified as an "extropic development" of the gangster State. At first, it consists of a parasitic relationship between the State and criminal organizations, in which redoubts of the former can resist the advances of the latter. Nevertheless, there is a risk that a gangster State can be installed if criminal organizations colonize all State structures and establish a symbiotic relationship. (Peter Lupsha, "Transnational organized crime versos the Nation-State", in *Transnational Organized Crime*, (Spring 1996). In Latin America, the most relevant cases are Colombia and Mexico.

“extension” (territorial space) and “diversity” (of illicit activities) in the next section of this article.

Figure 1: Expansive dynamic of the gangster State



On the actors of the gangster State in Venezuela

We understand the actors of the gangster State in Venezuela as the individuals who maintain a formal or informal relationship with the illegal activities developed by the criminal organizations that coexist and/or are part of the Venezuelan State. They will be classified into two categories according to their relationship with the State, in order to better comprehend the map of actors:

- 1) *Formal actors*: A formal relationship with the State implies individuals leading or being a part of the national government or local administrations⁷. Peter Lupsha⁸ considers

⁷ The political and territorial division in Venezuela corresponds to states and municipalities. Governors are the maximum authority in the former, while mayors are the maximum authority of the latter. Both charges, as well as the members of the Legislative Councils (state deputies) of each state and the members of the Municipal Councils (councillors), must be elected through popular, free and fair elections.

⁸ Peter Lupsha, “Transnational organized crime versus the Nation-State”, in *Transnational Organized Crime* (Spring, 1996).

that this relationship between these actors and the State is symbiotic.

- 2) *Informal actors*: An informal relationship with the State entails that the individual has no links with State institutions. According to Peter Lupsha⁹, the relationship between these actors and the State is initially parasitic, with a propensity to become symbiotic. Informal actors may get involved in institutional mechanisms (participation in elections or appointments and free removal) to formally insert themselves into the State's structure.

The *formal actors* of the gangster State in Venezuela are hereby named:

Executive power

Title 5 of the Constitution of the Bolivarian Republic of Venezuela (1999) specifies the organization of the National Public Power. Chapter 2 refers to the National Executive Power and establishes that it is composed of the President, Vice-president, Ministers and Attorney General of the Republic¹⁰.

Gaining access to an updated list of the current personnel in the Executive Branch in Venezuela is a challenge: official web pages are not updated and the Official Gazettes are not easily accessible. After researching and validating information, we iden-

9 Peter Lupsha, "Transnational organized crime versus the nation-State", in *Transnational Organized Crime* (Spring, 1996)

10 For the purposes of this investigation, those who hold executive positions of election or by appointment and free removal were considered official actors, regardless of their democratic legitimacy, which would be the subject of another analysis.

tified forty (40) Ministers in the country, of which eight (8) are presided by members of the Armed Forces:

1. General Vladimir Padrino López (Army), Minister of the Popular Power of Defence
2. Coronel Jorge Elieser Márquez (National Guard), Minister of the Presidency and Director of CONATEL
3. General Néstor Reverol (National Guard), Minister of the Popular Power of Interior, Justice and Peace
4. Admiral Gilberto Pinto Blanco (Navy), Minister of the Popular Power for Mining and Ecological Development
5. General Manuel Salazar Quevedo (National Guard), Minister of the Popular Power of Petroleum and President of PDVSA
6. General Raúl Alonso Paredes (National Guard), Minister of the Popular Power of Public Works
7. Comandante Carlos Leal Tellería (Militia), Minister of the Popular Power for Food
8. General Gerardo José Izquierdo (Army), Minister of State for the New Peace Frontier

The offices held by men of arms deal with matters of national security and management of extractive and productive resources. As will be discussed later, *these are sensitive and strategic spaces of power which are related to the development of illegal activities*. It is interesting that none is in the hands of Aviation members.

When reviewing the profile of civil ministers, the figure of Simón Alejandro Zerpa, who chairs the Ministry of Economy,

stands out. Zerpa’s father has been Ambassador of Venezuela in China since 2013 and maintains a close relationship with the Asian country. This link may be understood as the one which could lead Venezuela towards “authoritarian capitalism”¹¹. The presence of people trained in leftist schools near Cuba, such as Foreign Minister Jorge Arreaza, Vice President Delcy Rodríguez and the Minister of Popular Power of Industries and National Production Tarek El Aissami is also striking.

Judicial Power

Title 5 of the Constitution of the Bolivarian Republic of Venezuela (1999) specifies the organization of the National Public Power. Chapter 3 refers to the judiciary and justice system. Article 253 establishes that the Judicial Power is constituted by the Supreme Court of Justice, other courts determined by law, the Public Prosecutor’s Office, the Public Defender’s Office, criminal investigation organs, the auxiliary and civil servants of justice, the prison system, alternative means of justice, citizens involved in the administration of justice in accordance with the law and authorized lawyers.

The Supreme Justice Court is composed of five (5) chambers. Their directors and members are listed below:

Table 1: Members of the Supreme Justice Court

President to the Supreme Justice Court	Maikel Moreno
First Vice-President to the Supreme Justice Court President to the Electoral Chamber	Indira Maira Alfonzo Izaguirre

11 We recommend to read the article by Deputy Ángel Alvarado included in this issue, p. 94.

Second Vice-President to the Supreme Justice Court President to the Constitutional Chamber	Juan José Mendoza Jover
President to the Administrative Political Court	María Carolina Ameliach Villarroel
President to the Court of Civil Cassation	Yván Darío Bastardo Flores
President to the Court of Social Cassation	Marjorie Calderón Guerrero
President to the Court of Criminal Cassation	Maikel Moreno
Vice-President to the Court of Criminal Cassation	Elsa Janeth Gómez Moreno
Court of Criminal Cassation	Francia Coello González
Court of Criminal Cassation	Juan Luis Ibarra
Court of Criminal Cassation	Yanina Beatriz Karabín de Díaz
Court of Criminal Cassation	Jesús Manuel Jiménez Alfonzo
Court of Criminal Cassation	Edgar Gavidia Rodríguez
Court of Criminal Cassation	Mónica Gioconda Misticchio Tortorella
Court of Criminal Cassation	Danilo Antonio Mojica
Vice-President to the Electoral Court	Malaquías Gil Rodríguez
Electoral Court	Jhannett Madriz Sotillo
Electoral Court	Fanny Márquez Cordero
Vice-President to the Court of Civil Cassation	Francisco Ramón Velazquez Estévez

Court of Civil Cassation	Guillermo Blanco Vázquez
Court of Civil Cassation	Marisel Valentina Godoy Estaba
Court of Civil Cassation	Vilma María Fernández González
Vice-President to the Constitutional Court	Arcadio de Jesús Delgado Rosales
Constitutional Court	Carmen Zuleta de Merchán
Constitutional Court	Gladys María Gutierrez Alvarado
Constitutional Court	Luis Fernando Damiani Bustillos
Constitutional Court	Calixto Ortega Ríos
Constitutional Court	Lourdes Benicia Suárez Anderson
Vice-President to the Administrative Political Court	Marco Antonio Medina Salas
Administrative Political Court	Bárbara Gabriela César Siero
Administrative Political Court	Inocencio Antonio Figueroa Arizaleta
Administrative Political Court	Eulalia Coromoto Guerrero Rivero

Electoral Power

Title 5 of the Constitution of the Bolivarian Republic of Venezuela (1999) specifies the organization of the National Public Power. Chapter 5 encompasses the Electoral Power. Article 292 states that the National Electoral Council exercises the Electoral Power as its governing body. Its directive is listed below:

Table 2: Board of Directors of the National Electoral Council

President to the National Electoral Council	Tibisay Lucena
Vice-President to the National Electoral Council	Sandra Oblitas
Chairman of the Political Participation and Financing Commission	Luis Emilio Rondón
Member of the National Electoral Board	Socorro Hernández Hernández
Member of the Political Participation and Financing Commission	Tania D'Amelio
Secretary General	Xavier Antonio Moreno Reyes

Civil Power

Title 5 of the Constitution of the Bolivarian Republic of Venezuela (1999) specifies the organization of the National Public Power. Chapter 5 refers to the Civil Power and Article 273 states its organs: the Ombudsman's Office, the Public Ministry, and the General Comptroller's Office of the Republic. Their members are listed below:

Table 3: Members of the Civil Power

Ombudsman	Alfredo José Ruiz Angulo
Attorney General of the Republic	Tarek William Saab
General Comptroller of the Republic	Elvis Amoroso

National Bolivarian Armed Forces

Title 7 of the Constitution of the Bolivarian Republic of Venezuela (1999) refers to the Security of the Nation. Chapter 3 refers to the Armed Forces, and Article 328 established that it is made up of the Army, Navy, Aviation and National Guard, which function in an integral way within the framework of their competence and for the fulfillment of their mission, with its own integral social security regime, as determined by each organic law. We must emphasize that, in Venezuela, there is a fifth military force called the “Militia”, which has no constitutional rank and was created via Presidential Decree by Hugo Chávez (Number: 338.084 of April 4, 2005).

The leading members of the National Bolivarian Armed Forces are hereby named:

Table 4: Members of the Military High Command

Minister of the Popular Power for Defense	General Vladimir Padrino López (Army)
Strategic Operational Commander of the Bolivarian National Armed Forces	Admiral Remigio Ceballos Ichaso (Navy)
Army Commander	General Jesús Suarez Chourio (Army)
Navy Commander	Admiral Giuseppe Alessandrello Cimadevilla (Navy)
Aviation Commander	Mayor General Pedro Juliac Lartiguez (Aviation)
Commander of the Bolivarian National Guard	Mayor General Jesús López Vargas (GNB)
Commander of the Militia	Mayor General Carlos Leal Tellería (Militia)

Governors¹²

The Constitution of the Bolivarian Republic of Venezuela (1999) divides the country –territorially and politically– in twenty-four (24) states. As will be further discussed, it is appropriate to list their governors because of the role they play in the operations of the gangster State. Governors and their political party are hereby identified.

Table 5: List of state governors and their political inclination

Amazonas	Miguel Rodríguez (PSUV)
Anzoátegui	Antonio Barreto Sira (AD)
Aragua	Rodolfo Marco Torres (PSUV)
Apure	Ramón Carrizales (PSUV)
Barinas	Argenis Chávez (PSUV)
Bolívar	Justo Noguera Pietri (PSUV)
Carabobo	Rafael Lacava (PSUV)
Cojedes	Margaud Godoy (PSUV)
Delta Amacuro	Lizeta Hernández (PSUV)
Falcón	Víctor Clark (PSUV)

12 Venezuela is made up of 24 states. Twenty governorates are in the hands of the PSUV (United Socialist Party of Venezuela) and four in the hands of AD (Democratic Action). Regional elections were held in 2017. The democratic opposition denounced fraud and its results were controversial. We recommend reading the following article for further insight: https://elpais.com/internacional/2017/10/16/america/1508122348_405331.html

Guárico	José Vázquez (PSUV)
Lara	Carmen Meléndez (PSUV)
Mérida	Ramón Guevara (AD)
Miranda	Héctor Rodríguez (PSUV)
Monagas	Yelitze Santaella (PSUV)
Nueva Esparta	Alfredo Díaz (AD)
Portuguesa	Rafael Calles (PSUV)
Sucre	Edwin Rojas (PSUV)
Táchira	Lady Gómez (AD)
Trujillo	Henry Rangel Silva (PSUV)
Yaracuy	Julio León Heredia (PSUV)
Vargas	Jorge Luis García Carneiro (PSUV)
Zulia	Omar Prieto Fernández (PSUV)

Constituents

The National Constituent Assembly is made up of 503 members. The current board of directors is hereby listed for the purposes of this investigation.

Table 6: Board of Directors of the National Constituent Assembly

President	Diosdado Cabello (PSUV)
First Vice-President	Tania Díaz (PSUV)
Second Vice-President	Gladys Requena (PSUV)

United Socialist Party of Venezuela (PSUV)¹³

The PSUV is the political organization for electoral purposes of the Bolivarian Revolution. Hugo Chávez Frías founded it on December 16, 2006, with the intention of bringing together all the leftist ideologies in the country. Nicolás Maduro currently presides it, while Diosdado Cabello is its first vice president. Its development is associated and leveraged in the national State and in local administrations.

Here forth, the *informal actors*¹⁴ of the gangster State in Venezuela are reviewed.

13 In Spanish: *Partido Socialista Unido de Venezuela*. We have decided to classify PSUV as a formal actor since its national directives occupy national and/or local government positions, and its regional, municipal, parish and zonal cadres distribute food and/or consumer goods of first need in partnership with informal actors such as ELN or FARC. We recommend to read the following articles for further insight: <http://www.psuv.org.ve/psuv/directiva/> and <https://efectocucuyo.com/la-humanidad/guerrilla-colombiana-distribuye-cajas-clap-en-estados-fronterizos-denuncia-la-fundacion-redes/>

14 This classification corresponds to the one proposed by *Insight Crime* (*Centro de Investigación de Crimen Organizado*) in “Venezuela: ¿Un Estado Mafioso?” (Mayo, 2018). Available in: <https://www.insightcrime.org/wp-content/uploads/2018/05/Venezuela-Estado-mafioso-InSight-Crime-Observatorio-de-crimen-organizado.pdf>

Colectivos

The *colectivos* (collectives) are armed paramilitary organizations created after the events of April 11, 2002¹⁵. President Hugo Chávez promoted and strengthened them with the purpose of surveilling and politically intimidating people in urban areas, especially in the Libertador Municipality (Caracas). At first, they were funded by the National Government. Subsequently, the incursion into illegal activities offered them territorial and financial autonomy.

According to *Insight Crime*, there are 18 armed *colectivos* operating in Caracas. Despite having territorial and financial autonomy, these organizations are at the political service of the Bolivarian Revolution. They are responsible for suppressing popular demonstrations with firearms, and they work in coordination with the National Armed Forces to perform this task. This procedure has been consolidated in the country for 18 years and has been extended to different regions in Venezuela. It is estimated that these types of organizations operate in 21 states and fulfill the functions described above.

Pranes¹⁶

Pranes are criminal chiefs in the Venezuelan prison system who in fact have close personal relationships with Iris Varela, Minister of the Popular Power of Prison Affairs. They manage illicit activities (common crime, homicides, extortion, drug traf-

¹⁵ Most *colectivos* were created after April 11. Before 2002, *La Piedrita* and *Tupamaros* were the only ones in Caracas.

¹⁶ *Pran* is a Venezuelan slang referring to a prison leader. There may be one or several in each prison, whether male or female. The population of each sector is accountable to its *pran*.

ficking and mining control) from prisons. It is estimated that in Venezuela there are between 12 and 16 “megabands”, with operation centers within detention centers.

FARC, ELN and FBL

Initially, the Revolutionary Armed Forces of Colombia (FARC¹⁷), the National Liberation Army (ELN¹⁸), and the Bolivarian Liberation Front (FBL¹⁹) were located on the Colombian-Venezuelan border. Over time, its operations have expanded into the Venezuelan territory, where they have diversified their illegal activities and now participate in illegal exploitation of gold.

State security forces responsible for border protection allow them to travel freely throughout the country. The relationship between the Bolivarian Revolution, the FARC and the ELN dates back to the early 2000s, when Hugo Chávez publicly claimed their nature and recognized them as “true armies”²⁰.

On August 30, 2019, the Colombian magazine *Semana* published the report “El vecino peligroso: así se mueven las disidencias y el ELN en Venezuela”. The publication stated the presence of FARC and ELN camps across the Venezuelan territory, where military trainings in guerrilla war tactics and strategies for the militias and *colectivos* take place. They signal Nicolás Maduro’s *laissez-faire* politics, which allows them to derive millions

17 In Spanish: *Fuerzas Armadas Revolucionarias de Colombia*.

18 In Spanish: *Ejército de Liberación Nacional*.

19 In Spanish: *Frente Bolivariano de Liberación*.

20 Hugo Chávez Frías claimed that the FARC and the ELN were not terrorist groups, but rather armies: true armies that occupied Colombia, a space in Colombia, who had to be acknowledged. He also said they were insurgent forces with a respected Bolivarian political project (January 11, 2008). See: <https://www.youtube.com/watch?v=czGWXpK67ww>

of dollars from activities that range from drug trafficking to the illegal exploitation of minerals by collecting fees extortion and kidnapping, as proven by more than a few articles with real evidence²¹.

Venezuela has become a refuge for irregular Colombian groups who find there a safety net to further and diversify their illegal activities. “Gold and grief in Venezuela’s violent south”²² (Crisis Group) describes the territorial and criminal expansion of the FARC and the ELN in Venezuela under the protection of the National Armed Forces. These groups have expanded their activities. Now, they participate in illegal mining in addition to drug trafficking. The information of Crisis Group coincides with the complaint made by Deputy Carlos Paparoni on October 4, 2019. The representative of the state of Mérida said that Nicolás Maduro gave \$1,357,266,000 to the Colombian guerrillas. He declared:

*Esta cifra (1.357.276.000 dólares) va al financiamiento de grupos narcoterroristas, solamente en el ejercicio del arco minero venezolano. Recordemos que se han extraído cerca de 168 toneladas de oro, de ellas, 33.190 kilogramos han sido destinados a los grupos disidentes de las FARC, ELN, para el financiamiento del terror no solo en Venezuela y Colombia, sino en toda la región*²³.

21 Full article available in: <https://www.semana.com/nacion/articulo/venezuela-refugio-del-eln-y-disidentes-de-las-farc/629946>

22 Full article available in: <https://www.crisisgroup.org/latin-america-caribbean/andes/venezuela/073-gold-and-grief-venezuelas-violent-south>

23 “This amount finances narco-terrorist groups, and only in the Venezuelan mining arc. Remember that about 168 tons of gold have been extracted, of which 33,190 kilograms have been allocated to the dissident groups of the FARC, ELN, for terrorist financing not only in Venezuela and Colombia, but across the region”. Deputy Carlos Paparoni’s full statement is

Hezbollah

Colin P. Clarke, from *Foreign Policy*, states:

Hezbollah is well-entrenched in Venezuela, where the Shiite terrorist group has long worked to establish a vast infrastructure for its criminal activities, including drug trafficking, money laundering, and illicit smuggling. For example, Margarita Island, located off the coast of Venezuela, is a well-known criminal hotbed where Hezbollah members have established a safe haven. Under the regime of former Venezuelan President Hugo Chavez, the government took a more active approach to offering sanctuary to Venezuela-based supporters of Hezbollah²⁴.

According to research conducted by Nicholas Casey for the *New York Times*, the presence of the Hezbollah terrorist group in Venezuela is associated with drug trafficking and the efforts of Tarek El Aissami (current Minister of Popular Power of Industries and National Production) and his father, a Syrian immigrant close to the organization²⁵.

available in: <http://www.somostuvoz.net/asamblea-nacional-venezuela/carlos-paparoni-maduro-financia-con-oro-a-las-farc-y-el-eln/>

24 Colin P. Clarke in "Hezbollah Is in Venezuela to Stay". Available in: <https://foreignpolicy.com/2019/02/09/hezbollah-is-in-venezuela-to-stay/>

25 We recommend to read the following article for further insight: "Secret Venezuela Files Warns About Maduro Confidant". Available in: <https://www.nytimes.com/2019/05/02/world/americas/venezuela-maduro-hezbollah-drugs.html>

Table 7: Approach to the formal and informal actors of the gangster State in Venezuela

Formal actors	Executive Power Judicial Power Electoral Power Civil Power High Military Command Governors Constituents PSUV
Informal actors	Colectivos Pranes FARC, ELN and FBL Hezbollah

II. On the diversity of illegal activities and their territorial extension

The actors that could execute or contribute to the expansion of the gangster State activities in Venezuela have been specified and classified as *formal or informal actors*. Now, the dimensions of (i) diversity and (ii) expansion will be explained. “Diversity” refers to the illegal activities that nourish the system, while “expansion” refers to the territorial space where formal and informal actors operate.

Arcay & Oliveros²⁶ point out that “black economies” arose in Venezuela as a result of the destruction of the oil industry and

26 Guillermo Arcay & Asdrúbal Oliveros. *Impactos de los incentivos de la corrupción. Análisis cuantitativo de las principales actividades económicas ilícitas en Venezuela. Informe corrupción 2018*. (Caracas: Transparencia Internacional Venezuela, 2019). Available in: <https://transparencia.org.ve/>

the drop in oil prices²⁷. There certainly is a temporary coincidence between both events, yet the emergence of illegal activities is also related to politics.

Based on the reviewed studies and researches out by Non-Governmental Organizations (Fundaredes, Transparencia Internacional Venezuela, Observatorio de Delito Organizado and Paz Activa), media, and unofficial sources seven illegal activities that take place in Venezuela can be identified:

1. Drug trafficking
2. Illegal exploitation of gold
3. Oil smuggling
4. Human trafficking
5. Homicides
6. Extortion and kidnapping
7. Money laundering

Research on the development of these activities show that those that offer the greatest profits are drug trafficking, oil smuggling and illegal exploitation of gold. The chart below summarizes the type of activity, the states in which they are developed, and its related informal actors.

project/impactos-de-los-incentivos-de-la-corrupcion-analisis-cuantitativos-de-las-principales-actividades-economicas-ilicitas-en-venezuela/

- 27 Arcay & Oliveros state that, given the partial disappearance of the main source of income in the country, groups that profited from the sector, whether directly or indirectly, were forced to migrate to other sources of illegal income. Thus, black economies such as illegal mining and gasoline smuggling have flourished. Their report quantitatively analyzes both sectors. *Impactos de los incentivos de la corrupción. Análisis cuantitativo de las principales actividades económicas ilícitas en Venezuela. Informe corrupción 2018*. (Caracas: Transparencia Internacional Venezuela, 2019) 3.

Table 8: Illicit activities, territorial location and presence of informal actors

State	Activity	Informal actors
Amazonas	Drug trafficking Presence of clandestine tracks Oil trafficking Homicides Extortion and kidnapping	ELN FARC
Anzoátegui	Homicides Extortion and kidnapping Money laundering	FBL <i>Colectivos</i> <i>Pranes</i>
Aragua	Drug cultivation and processing Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>
Apure	Drug trafficking Presence of clandestine tracks Drug cultivation and processing Oil trafficking Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>
Barinas	Drug trafficking Presence of clandestine tracks Drug cultivation and processing Oil trafficking Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>
Bolívar	Drug trafficking Presence of clandestine tracks Homicides Extortion and kidnapping Illegal exploitation of gold	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>

Carabobo	Drug cultivation and processing Homicides Extortion and kidnapping	ELN FARC <i>Colectivos</i> <i>Pranes</i>
Cojedes	Homicides Extortion and kidnapping	FBL <i>Colectivos</i> <i>Pranes</i>
Delta Amacuro	Drug trafficking Oil trafficking Homicides Extortion and kidnapping	ELN FARC
Falcón	Homicides Extortion and kidnapping	ELN <i>Colectivos</i> <i>Pranes</i>
Guárico	Presence of clandestine tracks Drug cultivation and processing Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>
Lara	Homicides Extortion and kidnapping	FBL ELN <i>Colectivos</i> <i>Pranes</i>
Mérida	Drug cultivation and processing Homicides Extortion and kidnapping	FBL ELN <i>Colectivos</i> <i>Pranes</i>
Miranda	Drug cultivation and processing Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>
Monagas	Presence of clandestine tracks Homicides Extortion and kidnapping	ELN FARC <i>Colectivos</i> <i>Pranes</i>

Nueva Esparta	Homicides Extortion and kidnapping Money laundering	ELN Hezbollah <i>Colectivos</i> <i>Pranes</i>
Portuguesa	Homicides Extortion and kidnapping	FBL ELN <i>Colectivos</i> <i>Pranes</i>
Sucre	Homicides Extortion and kidnapping Drug trafficking Human trafficking	FBL <i>Colectivos</i> <i>Pranes</i>
Táchira	Drug trafficking Drug cultivation and processing Oil Trafficking Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>
Trujillo	Homicides Extortion and kidnapping	FBL ELN <i>Colectivos</i> <i>Pranes</i>
Yaracuy	Homicides Extortion and kidnapping	FBL ELN <i>Colectivos</i> <i>Pranes</i>
Vargas	Homicides Extortion and kidnapping	ELN <i>Colectivos</i> <i>Pranes</i>
Zulia	Drug trafficking Presence of clandestine tracks Drug cultivation and processing Oil trafficking Homicides Extortion and kidnapping	FBL ELN FARC <i>Colectivos</i> <i>Pranes</i>

Source: Fundaredes, Insight Crime, and own sources

Informal actors in 24 states of the country were identified, most located in Aragua, Apure, Barinas, Bolívar, Guárico, Miranda, Nueva Esparta, Táchira, Trujillo, Yaracuy, Sucre and Zulia. The states with more diversity of illegal activities, or “black economies”, are Amazonas, Apure, Barinas, Bolívar, Sucre, Táchira and Zulia.

During the course of this research, we were able to observe that the behavior and interaction between formal and informal actors as well as their illegal activities varies by location. *It is a decentralized and autonomous power dynamic that maintains a formal and informal relationship with the central power and with the world through State institutions.*

III. On the propensity to collapse and the capacity for autocratic regeneration

Hirschfeld²⁸ relates the decline of gangster States with the corrosive nature of their economic activities, and indicates that their extractive performance inevitably leads them to collapse. These are unstable political systems that are not sustainable over time. In the cases studies by Hirschfeld, “chaos”, far from paving the way for democratization, offered conditions for autocratic rebalancing. Rosaleen Duffy²⁹ reaches the same conclusion when referring to the case of Belize.

As Ángel Alvarado explains in the article included in this issue, Venezuela is currently in a situation of collapse. The Obser-

28 Katherine Hirschfeld, *Gangster states: organized crime, kleptocracy and political collapse*. (London: Palgrave Macmillan, 2015).

29 Rosaleen Duffy, “Shadow States: Globalization, Criminalization, and Environmental Change” in *Organized Crime and States: The hidden face of Politics*. (New York: Palgrave Macmillan, 2010), 97-116.

vatorio Venezolano de Servicios Públicos³⁰ conducted a study in June 2019 which estimated the quality of water, electricity, gas, Internet, and cell phone service in 7 cities in the country. Their results are shown in the table below:

Table 9: Quality of water, electricity, gas, Internet, and cell phone service in Caracas, Maracaibo, Valencia, Barquisimeto, San Cristóbal and Ciudad Bolívar (June 2019).

	Water	Electricity	Gas	Internet	Cell phone service
	<i>Percentage of people without water service</i>	<i>Percentage of people with daily blackouts</i>	<i>Percentage of people without gas cylinders in their community</i>	<i>Percentage of people who report service failures every day</i>	<i>Percentage of people who report service failures every day</i>
Caracas <i>Distrito Capital</i>	9 %	8 %	21,2 %	55,1 %	34,4 %
Maracaibo <i>Estado Zulia</i>	30 %	89 %	83,3 %	52,2 %	53,6 %
Valencia <i>Estado Carabobo</i>	8 %	93 %	60,7 %	49,8 %	45,9 %
Barquisimeto <i>Estado Lara</i>	11 %	81 %	56,4 %	46,2 %	27,2 %
Barcelona <i>Estado Anzoátegui</i>	8 %	52 %	65,1 %	56,6 %	46,2 %

30 Venezuelan Public Services Observatory. We recommend visiting their webpage: <http://www.asoesda.org/>

San Cristóbal <i>Estado Táchira</i>	20 %	93 %	72,7 %	47,6 %	30,4 %
Ciudad Bolívar <i>Estado Bolívar</i>	27 %	27 %	70,1 %	48,3 %	48,4 %

Source: Observatorio Venezolano de Servicios Públicos (June, 2019)³¹

These results show a significant *territorial inequality of the collapse, and its distance from the center of power, the capital*. The deterioration of public services in Caracas is significantly less than in the rest of the country, which seems to be a strategic decision to avoid social conflict in the city.

The situation of collapse in each State is specific. The depth of the decline can be related to the distance that separates each locality from Caracas, and to the decentralized dynamics that we refer to in the previous section. That is to say: *the farther a city is from Caracas, the greater the collapse and the lower the political cost for autocracy*³².

In the Venezuelan collapse, the propensity to decline that Hirschfeld proposes is partially validated. Moreover, *the decline can encourage a critical juncture only as it is close to the center of power*.

³¹ Results from the research date from 6 months back. To date, the collapse in public services has worsened.

³² This situation may explain the phenomenon of internal migration in the country. Entire families are moving to Caracas fleeing the collapse in their places of origin. Quantitative data is not yet available, however, for Caracas inhabitants it is clear that the city's population has significantly grown in recent months. The most notable indicator is the increase in traffic, which had decreased as a result of the exodus. We recommend consulting the following report on the matter: <https://talcualdigital.com/index.php/2019/10/21/tuve-que-mudarme-a-caracas-la-forzosa-migracion-interna-crece-en-venezuela/>

While the autocracy continues to isolate the collapse in territories which are farther away, it will be able to keep its domain, as it will not be forced to make relevant changes that allow its rebalancing.

IV. Three considerations and future research

This article intends to identify the features that characterize the gangster State in Venezuela and to offer ideas about an eventual political change. It is an approach that seeks to offer methodological tools for future research in order to further fathom on each of the features described previously. As a conclusion, we will share three reflections:

- *The gangster State is a structure of domination that is imposed on those who inhabit it.* This investigation identified a network of formal and informal actors that participate in activities in which the border between the lawful and the illegal is blurred. Three types of relationship between the State and illicit activities were found: (i) The State as a promoter and executor of illicit activities (exploitation of gold); (ii) The bureaucracy at the service of illicit activities (drug trafficking and money laundering); and (iii) Criminal organizations that carry out illegal activities with the complicity of the State (oil trafficking). These activities create favorable scenarios for political and economic domination. Those who live in the territories colonized by these dynamics submit to the mandates of the gangster State and its allies to survive. In Locke's terms: there is consent. It is a structure of evil that nobody can evade. In this sense, it is important to emphasize that these are not neglected spaces in which the State lost territorial control and the monopoly of violence nor a "no-man's land"; on the contrary, they are spaces controlled by State security forces and their

criminal allies, where the former abandoned their constitutional commitments and now operate as mercenaries in the service of kleptocratic interests.

It is necessary to complement our findings with exhaustive studies that describe the interaction and evolution of the actors that make up the gangster State in Venezuela. Knowing the dependency relationships between them and the level of state bureaucracy would enrich the analysis and offer ideas that could explain the autocratic resistance of the Bolivarian Revolution. This information would also shine a light on the dimensions of the transformation that eventual democratization will require. Studies on political change from situations similar to Venezuela's today reveal that critical junctures, far from opening doors to democracy, tend to benefit autocratic rebalancing. This "resilience" is associated with the incompatibility between the activities carried out by the actors that sustain the gangster State and liberal democracy.

- *The gangster State in Venezuela has a decentralized dynamic.* The approach to the actors involved in the execution of illegal activities in Venezuela reveals the decentralized and autonomous dynamics of each region. This reality limits the generalization of our findings and becomes an invitation for us to conduct studies on each state, especially those that are part of the electoral corridor. Actors of different political inclinations inside and outside the country have proposed legislative elections in the short term (2020) as an instrument of autocratic liberation for the country. It is possible to achieve democracy progressively, building electoral majorities that become a legitimate political power capable of institutionally defeating the dictatorship. This

option is not addressed on this paper, yet we suggest that political, economic and institutional collapse of the states -or municipalities- with greater electoral weight should be included in the analysis, together with the traditional demands of electoral justice. We must remember that studies on elections in collapse situations reveal that decline favors autocratic forces.

- *Collapse, sense of urgency and liberation.* The complex humanitarian crisis manifests itself unevenly in the national territory. Caracas remains relatively isolated from the decline, while the rest of the country is severely affected by the lack of electricity, water, medicines, and food. This inequality in the distribution of misery partially explains the apparent “tranquility” in the capital, and the crystallized “tension” elsewhere. The sense of urgency towards a political change diminishes in places closer to Miraflores³³. Therefore, we raise two questions regarding the possibility of an autocratic liberation associated with social mobilizations: Is it necessary for the complex humanitarian crisis to reach the capital in order to equalize the sense of urgency amongst the population and to promote mobilizations that contribute to a political change in the country? Are opposition forces able to operate in a situation of chaos in Caracas and articulate social mobilizations that channel the desire for change?

As we advance, our research shows the complexity and particularity of the phenomenon under study. The relevance and

33 Miraflores is the seat of the Executive Power in Venezuela. It is located in the center of the city of Caracas, bordering on popular sectors. *Insight crime* points out that 18 armed groups make life around it, fulfilling duties in coordination with State Security Forces.

clarity of Hirschfeld's gangster State concept is also confirmed. For those of us who live in Venezuela, the installation of a "rudimentary kleptocratic state" which reuses "security forces beyond the application of a monopoly in activities that concern it" and ensures an economy that produces "resource exhaustion" is evident. It is therefore necessary to overcome intuitive and existential knowledge: information must be systematized in order to reveal what we face in reality. And that is our task.

Economic structure in Venezuela and its path to democracy

Ángel Alvarado

The road to democracy in Venezuela in the last 100 years cannot be understood without understanding oil and the economic structure it generates. The “exceptionality”¹ of the Venezuelan political phenomenon in the twentieth century is the “exceptionality” of the immense mineral resources and the type of economic institutions that organize such activity. Analyzing the economic structure allows shedding light on the “convoluted” transit from nineteenth-century authoritarianism, characterized by *caudillismo*², to democracy (1936-1958); as well as the democratic reversal and resurgence of authoritarian leadership in 1998.

As has been described in other studies³, it is not Venezuela’s income that has weakened democracy but the changes in the economic structure that have originated over time (1975 and 2007). This recent history will be reviewed to describe the democratiza-

1 “Después de una centenaria sucesión de dictaduras, se ha podido lograr la permanencia de un régimen de democracia pluralista y abierta excepcional en América Latina” Arturo Uslar Pietri *Medio Milenio de Venezuela* (Caracas, 1986), 250.

2 *Caudillismo*: despotic leadership in which the armed group is used as an element of power.

3 See Ronald Balza and Humberto García Larralde (Coordinadores), *Fragmentos de Venezuela* (Caracas, 2017): *Elementos para la Narrativa venezolana*.

tion process and the Venezuelan democratic reversal, as well as its relationship with economic and political institutions. The way in which the autocratic resurgence at the end of the 20th century has originated not only extractive but predatory and gangster economic institutions that have generated an unprecedented economic collapse will also be explained. Finally, the course of the economy today and the possibilities of democratization that it offers will be analyzed.

A little history

Venezuela was democratized in the second wave during the twentieth century between 1943-1962⁴. This process began at the end of the 20s, coinciding with the oil exploitation and the important income that the Venezuelan State received during those years.

From the 1930s Venezuela became an exceptional oil actor, which allowed the State to significantly expand access to education and health among the population, as well as to develop modern national infrastructure. While society grew economically, political actors pressed for free and democratic elections⁵.

4 In what Samuel Huntington called the second wave of democratization. Samuel Huntington, *The third wave* (Norman: University of Oklahoma Press, 1991).

5 This process began in February 1928 with student protests. It strengthened again in February 1936 with street protests and the oil strike organized by the unions. Political parties began to form. In 1945 a democratic revolution was organized by *Acción Democrática* and the young leaders of the Armed Forces that promoted the creation of a new Constitution and free elections in 1948. Despite the mistakes of said period and a new organization in the Armed Forces this process was delayed until January 1958.

In 1949 Venezuela was the 2nd richest country in the world⁶. The sustained accumulation of wealth (1928-1983), the successful distribution of agricultural land⁷, and the growth of an educated and modern middle class allowed to consolidate a stable democracy in Latin America. The exceptional level of wealth that the country had during this period was due to oil exploitation.

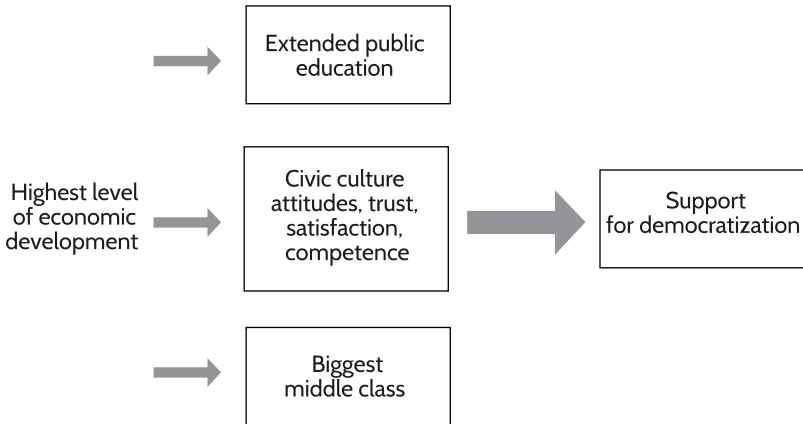


Figure 1: Influence of economic development on democratization

Figure 1 shows a democratizing scheme developed by Huntington. It shows how the economic structure influences democratization through access to education and the consolida-

6 See Data by Angus Maddison <https://www.rug.nl/ggdc/historical-development/maddison/original-maddison> for a time series of Gross Domestic Product by countries.

7 "In Venezuela in the 1960s, democratically elected government redistributed a tenth of the country's farmland-half from expropriation and half from state land-to a quarter of the landless poor. At the time, the country was transitioning from largely agricultural economy to an urban economy based on oil exports" Walter Scheidel, *The Great Leveller* (Princeton, 2017), 353.

tion of a middle class that, combined with certain cultural and civil values, make democracy possible. Therefore, democratization⁸ is the result of various factors.

However, Venezuelan “exceptionalism” must be pointed out: *oil revenues allowed us to exceed the threshold of Latin American democratization faster than neighboring countries*⁹. Just as oil is often conceived as a lever of economic development, it should also be seen as a lever for the democratization of a country¹⁰ when there is a certain level of social pluralism, intermediate societies, political questioning and social homogeneity¹¹.

Democratic reversal

In 1999, Venezuelan faced a crisis¹². What looked like a consolidated democracy¹³ began its dismantling with the National Constituent Assembly that replaced the 1961 Constitution¹⁴ by

8 “Democratization is a way of transferring political power to the majority of the citizens” Daron Acemoglu & James Robinson *Economic Origins of Dictatorship and Democracy* (Cambridge, 2000), 174.

9 Samuel Huntington, *The third wave* (Norman: University of Oklahoma Press, 1991).

10 “Romulo Betancourt and others design a type of pacted democracy that depended on oil rents and thus reinforced petrolization” Terry Lynn Karl *The Paradox of plenty* (Los Angeles, California), 225.

11 Samuel Huntington, *The third wave* (Norman: University of Oklahoma Press, 1991).

12 Precisely at a time when the world lived in democracy “The 1990-2015 is easily the most democratic quarter in world history” Steven Levitsky and Daniel Ziblath, *How Democracies Die* (New York, 2018), 205.

13 “More specifically, Linz (1978, p.50) proposed that democracy collapses because a failure of democratic politicians to solve political problems” Daron Acemoglu and James Robinson *Economic Origins of Dictatorship and Democracy* (Cambridge, 2000), 76.

14 “For demagogues hemmed in by constitutional constraints, a crisis represents an opportunity to begin to dismantle the inconvenient and sometimes threatening checks and balances that come with democratic

unconstitutional mechanisms. Hugo Chávez, commanding his Bolivarian Revolution, made a new Magna Carta to suit him¹⁵.

Many pages could be written on how Venezuela came to this situation. This analysis will be circumscribed to the economic perspective. The virtuous circle that oil exerted on the economic and political development of the country was truncated 1975¹⁶. The level of economic development stagnated¹⁷ and reversed from that moment on¹⁸.

In 1975 Venezuela changed its economic structure¹⁹. In the first presidency of Carlos Andrés Pérez, the State took control of the oil industry and the exploitation and exclusive monopoly of oil were abrogated. This shift in the institutional framework shook

policies. Crisis allow autocrats to expand their space to maneuver and protect themselves from perceived enemies" Steven Levitsky & Daniel Ziblath, *How Democracies Die* (New York, 2018), 3.

15 "More often, though, democracies erode slowly, in barely visible steps" Steven Levitsky & Daniel Ziblath, *How Democracies Die* (New York, 2018), 3

16 "Between 1929 and 1976, it had the highest per capita income on the continent" Terry Lynn Karl *The Paradox of plenty* (Los Angeles, California), 234.

17 "Most death of democracy are accompanied by some economic crises" Przeworski, Adam; Michel Alvarez, José A Cheibub y Fernando Limongi, *Democracy and Development: Political Institutions and Material Well-Being in the World: 1950-1990*, Nueva York (2000).

18 This change in property rights had a great impact on the economic performance of the national oil industry. North et al. state that "Success has been a consequence of the reorganization of **property rights** in those countries (Netherland and England). The failures-the Iberian Peninsula in the history of the western world, and much of Latin America, Asia and Africa in our times-have been a consequence on inefficient economic orrganization" Douglass North and Robert Paul Thomas, *The Rise of the Western World, A new Economic History* (Cambridge, 1973), 157.

19 "Growth wil simply not occur unless the existing economic organization is efficient" Douglass North & Robert Paul Thomas, *The Rise of the Western World, A nwe Economic History* (Cambridge, 1973), 2.

society. The level of investment did not recover the successes of previous decades. The economic growth rate was declining, the quality of the currency was lost, the public debt and the fiscal deficit became unsustainable and the country experienced the first maxi devaluation of its currency in February 1983.

In 1973 a Venezuelan university professor earned US\$ 9,722 per month²⁰. A decade later, their income dropped to US\$ 2,000 on average. The accelerated impoverishment of the population diminished the middle class. Then, in February 1989, the country experienced a social outbreak and political instability from 1992 to 1993. Democracy had to be saved and the process of democratic reversal had begun.

Although oil remained abundant in the Venezuelan subsoil, the economic structure had changed in 1975²¹, and the right to private property in the most productive sector was not provided for in the new institutional framework. The economic performance derived from the new institutional structure was far from its previous performance (1930-1975).

Aristotle said that democracy requires a large middle class to stand. An economic structure that exacerbates inequalities leaves society at the mercy of demagogues, populists, and revolutionaries who find fertile ground in such a situation to subvert the democratic order. *The distance that time offers allows us to affirm that the institutionality inaugurated by President Pérez in 1975 did not*

20 Francisco Contreras data in his article *El exterminio de la Condición Humana y docente del profesor y profesor universitario en Venezuela*, Mérida, 2019.

21 The increase in oil prices induced changes in the previous notions of property rights, in the relative power of groups and organizations and in the role of the State (...) This institutional change subsequently affected State income, especially tax structure (...) A new trajectory of diverse development began. Terry Lyn Karl.

provide incentives for the acquisition of knowledge, learning, innovation or taking risks in creative activities. On the contrary, it exacerbated the Petro State²² and its despotic potentialities that weaken society.

Bolivarian Revolution and the populist advance

In 1996, President Caldera initiated an oil opening process for private equity companies that survived the first years of the Bolivarian Revolution and extended until 2006. However, that year Hugo Chávez managed to reverse the reforms in the energy sector and monopolized the sector in the hands of the State yet again.

The effects on the economy were swift. However, high oil prices and an aggressive indebtedness policy hid the collapse that had begun since expropriations in 2007²³.

The expropriations²⁴ soon spread to all sectors of the economy. Banks, industries, agricultural land, and urban real estate, among others, passed into the hands of the State for “strategic reasons”. *It*

22 “In the maner of a Petro-State, rent-seeking had become the central organizing principle of its political and economic life, and the ossified political institutions in existence operated primarily to perpetuate an entrenched spoils system” ” Terry Lynn Karl *The Paradox of plenty* (Los Angeles, California), 184.

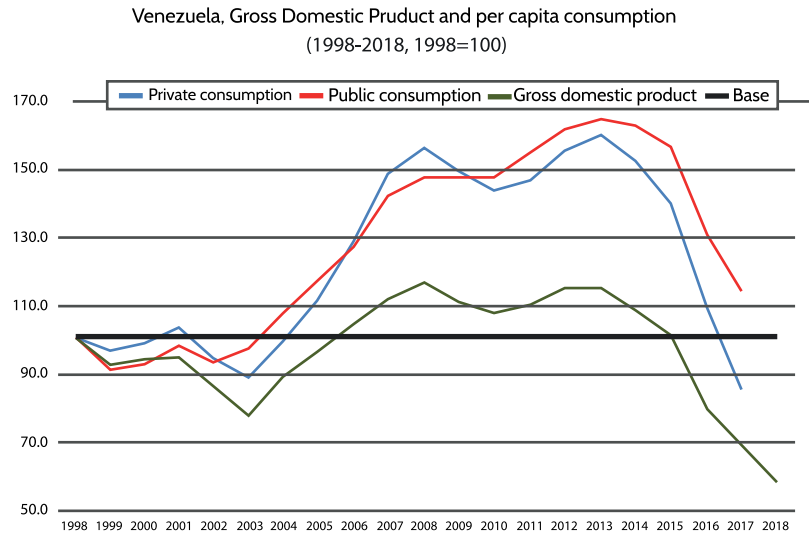
23 By the time Hugo Chávez came into power, the Venezuelan External Debt was about \$ 22MM. When Maduro arrived to power, it amounted to about \$ 150MM and continued to grow.

24 This process, although called “expropriations”, were mostly illegal, irrespected the procedural legal limits, and failed to comply with fair payment for the assets to previous owners. Technically, yet unofficially, these were illegal occupations of private property by the Venezuelan State.

is estimated that more than 5 million hectares of agricultural land were affected and more than 1600 assets.

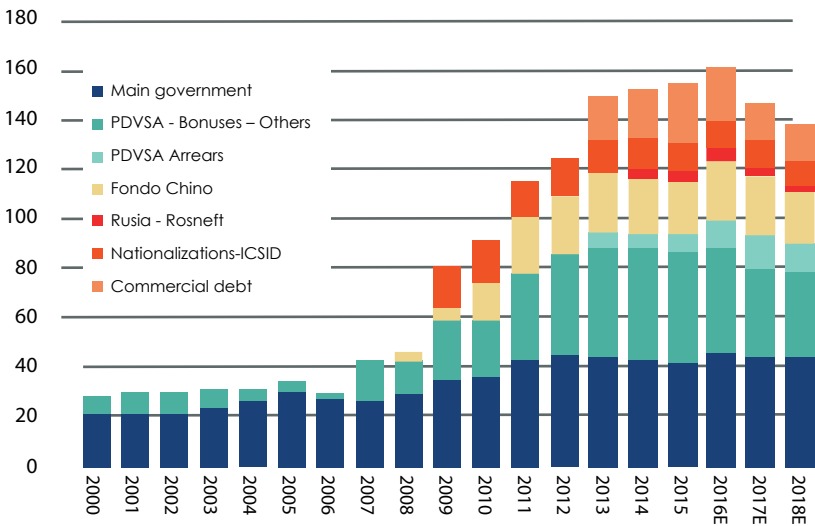
As a consequence of this policy, there was a significant fall in the agricultural, industrial and energy sector, although GDP continued to grow (Graph 1). This peculiar phenomenon is explained by the large increase in oil prices that the economy experienced and by the massive indebtedness contracted by the State (Graph 2). Both variables –high oil prices and indebtedness– allowed Venezuela to import goods and services at subsidized prices. It was a Ponzi scheme that sooner or later revealed a collapsed and ruined the economy. Consumption was unsustainable once the indebtedness was transformed into spending and corruption rather than productive assets.

This unleashed a collapse that could managed to be “disguised” until 2013. That year the economy was marked by back to back trimesters of sustained economic contraction. The illusion of bonanza and stability fell: *between 2013 and 2018 the Venezuelan economy lost 50% of its production*, according to the Central Bank of Venezuela itself. Estimates from the Finance and Economic Development Commission of the National Assembly offer a more devastating scenario: *64% of GDP had fallen in the first half of 2019.*



Graph 1: GDP, Private and Public Consumption.

Sources: Central Bank of Venezuela (1950-2015), International Monetary Fund (2016-2018), Harvard Kenney School.



Graph 2: External Public Debt.

Sources: Econalítica

Economic collapse: socialism and corruption

Our economic catastrophe is unprecedented in the region. This economic cataclysm is only overcome by Liberia, Georgia, and Tajikistan, which experienced the collapse of the Soviet socialist regime (Georgia and Tajikistan), or a long and cruel civil war (Liberia) of more than 20 years.

The destruction of wealth and capabilities of the Venezuelan economy is only attributable to those who, from positions of power, have been determined to impose an unsustainable socialist model. Oil production collapsed as a result of corruption, mismanagement, and politicization of the industry. The Bolivarian revolution destroyed the main source of wealth for Venezuelans.

Between 1999 and 2018, the Bolivarian Revolution gathered more than US\$ 1,500,000,000,000.00 in oil revenues and more than US\$ 120,000,000,000.00 through public debt. These resources were destined for the maintenance of an inefficient system of public companies, clientelistic social programs, corrupt exchange control, and public works of infrastructures with high embezzled commissions.

This boosted a corrupt elite that enriched itself with public wealth in intricate schemes of import corruption, allocation of public works and equipment purchases, financing to state-owned companies using disadvantageous exchange differentials for the State while extremely profitable for lenders that left large commissions to the officials who assigned them the contracts.

It is estimated that more than US\$ 450,000,000,000.00²⁵ of these active corruption products are tax havens, on behalf of third parties or that have been laundered around the world and in Venezuela.

This hatched into a kleptocracy that has lived on income and pillage and has also organized politically around power. This economy around oil income is a predatory economy in which private businessmen, compliant with the guidelines from the high rankings of the State, participate.

Predatory economy

The factors that led to the collapse of the Venezuelan economy can be summarized in

- i) The destruction of the economic rights of Venezuelans: property rights and the right to free initiative;
- ii) The over-indebtedness of the State, in which the funds were used to feed corruption schemes and unsustainable social programs; and
- iii) The destruction of the national oil industry through its politicization, mismanagement and corruption.

The transformation of the former income hunter elite into a new “predatory” elite is a commonplace among those three factors.

25 Only for the Control of Change (CADIVI) plus 220,000,000,000, see Ecoanalítica work for Transparency International. <https://transparencia.org.ve/project/impactos-de-los-incentivos-de-la-corrupcion-analisis-cuantitativos-de-las-principales-actividades-economicas-ilicitas-en-venezuela/>

The absence of institutional controls and the colonization of all instances of the State since 1999 allowed Chavism to act on State Enterprises without restrictions. *Thus emerged a predatory economy.*

This economy is characterized by the devastation of a sector that produces nothing at the expense of another that produces everything and is progressively annihilated. This corrosive process began with the socialist model that destroyed economic rights with the confiscation of 5 million hectares of land and 1,600 productive enterprises, as well as with the imposition of controls on the economy to strangle it (exchange and price controls) and extract the “surplus value” of the “bourgeoisie”.

The predatory voracity of kleptocracy has been insatiable. So much so that it had to resort to monetary financing from the Central Bank due to the unsustainable fiscal deficit caused by the depredation of state companies. This has generated a hyperinflation or inflationary tax that has brought the minimum wage of the Venezuelan to less than two dollars a month, and whose most perverse expression is a “working class” sheared by predators who act in their name and defense.

As consequences of this phenomenon, the life of the population has become extreme with the following manifestations:

- **Hyperinflation:** The collapse of the State relaxed controls on fiscal accounts leading the government to contract debts of its public companies with the BCV, violating constitutional norms and parliamentary controls. This source of financing expanded the money supply above

200% year-on-year in March 2017²⁶. This generated a currency collapse until reaching a price variation of 2,600,000% year-on-year at the beginning of 2019.

- Migration crisis: This situation triggered a massive migration of Venezuelans who saw their lives radically impoverished: no social protection system and at risk of dying due to lack of food. This has triggered a flow of more than 5 million Venezuelans refugees.
- Complex humanitarian emergency: According to the 2018 Living Conditions Survey, 92% of Venezuelans live in poverty, 80% of children in popular areas suffer from malnutrition risk; 92% of mothers stop eating to feed their children and 74% of Venezuelans lost 8.4 kilos on average in 2018 (Caritas Venezuela 2017 Report²⁷).
- Inequity: According to the National Survey of Living Conditions 2018, this has generated the most unequal society in the world. The Gini index is 0.68. Such income differences are due to the fact that one population has access to healthy currencies while others continue to live with monthly salaries of \$2 in bolívars.

The economic devastation has created the conditions for inexpensive social control mechanisms: the CLAP food bag (valued at \$5-10), or money transfers “not conditioned” by political fidelity (\$2-4), or a bottle of subsidized gas (\$15)²⁸. Moreover, death

²⁶ It should be noted that the sanctions affecting the use of the financial system began in August 2019. The monetary collapse had already begun long ago.

²⁷ Nutritional Status Monitoring of Children Under 5. Abril-Agosto 2017.

²⁸ The article: “La tecnología como mecanismo de control social y opresión en Venezuela” by Edward Pérez, published in the magazine *Democratización* (Septiembre 2019) is recommended.

squads (FAES) were created to suppress protests in poor areas of the country.

Transition to an Authoritarian "Capitalism"

The Bolivarian Revolution began a process of economic easing (Venezuelan perestroika) after a year in hyperinflation and contraction of 50% of Gross Domestic Product. Four measures are identified that account for this measure:

1. The rigid exchange control was lifted and the dollarization of the economy was promoted.
2. Price control was lifted.
3. Oil contracts were made more flexible. Partners in joint ventures were allowed to operate their businesses and market their products duty free.
4. Product imports with fixed tariffs at 8% were allowed through door-to-door customs schemes.

These reforms occurred silently so as not to injure certain sectors of Chavismo that sadly see the dismantling of the socialist model. This has not implied a shift towards greater legal certainty or clarity in the rules of the game. It is a process that advances in hiding, with little government propaganda and perceived as reversible by some economic actors.

The reformist will, forced by the economic collapse, is a tactical withdrawal to reach higher levels of governance. It cannot be ensured that they are sustainable over time. Far from seeking the empowerment of society, the "predators" opened space for their commercial operations of which the rest of society participates by accident.

Such an approach to reforms makes it clear that kleptocracy is not intended to be abandoned, rather it is sought to make it more efficient. Once the traditional economy has been plundered, looters must become productive agents to make their operations sustainable and maintain governance.

In this sense, any electoral process must be seen as a threat to pillage, which should be assumed as a controlled risk, especially the presidential election that risks “all” its commercial or financial operation.

It seems that the model in the mind of the elite that usurps Venezuelan power is a system of economic efficiency and a single political party. A model that could generate economic growth and alleviate poverty, but that does not guarantee human rights, freedom of expression, or political rights.

Both the Chinese and the Vietnamese model emerge after the failure of the classic socialist model of price controls and socialization of the means of production. Both countries, without democratic precedents and obtaining the consent of the international community, open their economies after their own failure on private operations, as long as these actors are “obedient” to the party’s guidelines.

Venezuela is hardly in a similar situation. The long democratic tradition of the twentieth century makes a model with these characteristics unacceptable to society. Similarly, the international community considers a transition with such attributes inappropriate due to the destabilizing potential that it could have in the region.

The main obstacle Maduro faces in his “reforms” are the international sanctions that the free world has imposed on kleptocracy

in order to avoid the looting and pillage to which Venezuela has been subjected. Sanctions prevent this economic transition sought by Maduro and his people.

This implies that an isolated economy has little chance of developing its potential or returning to its previous income levels. It prevents the development of a strong private sector, but it does not have to completely annihilate the underground, informal and illegal economy to which the kleptocracy has migrated.

Maduro and his people have migrated to illegal activities (smuggling of gold, oil and narcotics) reporting an income of US\$ 8,000,000,000.00 per year in 2019²⁹. This figure is similar to or greater than the oil bill of 2019 if it is assumed that only 450k bbl of it generates income for the State.

This shows the ability to adapt to generate an economic structure that serves to sustain the system. Although the pool size is reduced for the country, it is kept wide enough for kleptocracy actors through illicit activities.

The actors in these activities are those who have the possibility of changing the *status quo*: the elite (military, intelligence agents, governors, mayors, ministers, *colectivos*, irregular groups) to which a gold mine is assigned, or a trail of smuggling oil as payment to its faithful services for maintaining the *status quo*.

It is difficult to know how long the “predators” will take to deplete the exploited sectors: smuggling gold and oil³⁰ until

29 See study by Ecoanalítica for Transparencia Internacional. <https://transparencia.org.ve/project/impactos-de-los-incentivos-de-la-corrupcion-analisis-cuantitativos-de-las-principales-actividades-economicas-ilicidas-en-venezuela/>

30 One of the reasons why the increase in gasoline has not materialized in Venezuela, which costs Venezuelans billions of dollars, is the impossi-

resources are completely exploited. It should also be determined how much they profit from narcotics traffic routes³¹. Actors' loyalty depends on that, and it might not be enough to sustain Maduro in power, and the breakdown or need for reform may be more imminent.

Movings towards a more efficient model³² is only possible when the predatory economy can be significantly reduced and political rights are restored. As long as this does not happen, the collapse will continue to deepen until the resources are dilapidated.

Repression or democratization

The big challenge is how to democratize an economic structure with extractive institutions, in the presence of great social inequalities (between the elite and the people)³³, with a (gangster) State that profits from the exploitation of primary activities with little intensive use of human capital³⁴. The incentives are aligned for the development of illicit activities among the most unscrupulous in society, where the most successful ones are those willing

bility of losing an important source of income for the groups that hold Maduro in power.

31 Achieving higher incomes would imply moving from charging taxes for narcotics traffic to taking over the routes to North America and Europe. This would imply entering into dispute with the Mexican and Colombian cartels. This looks difficult to achieve given the weakening of the Armed Forces.

32 See Sameul Finer, *The Man on Horseback: The Role of the Military in Politics* (Baltimore, 1976).

33 Democratization only occurs for intermediate levels of inequality. Daron Acemoglu & James Robinson, *Economic Origins of Dictatorship and Democracy* (Cambridge, 2000), 190.

34 The research by Dr. Paola Bautista de Alemán on this subject is recommended. It can be found in this magazine's first and second edition.

to work with international drug trafficking, money laundering, and/or terrorist networks.

The inequalities in this model are exacerbated between those who have access to income, and the majority who live in poverty, in material misery close to starvation, making mass mobilization impossible to generate political pressure for political change.

These predatory economic groups survive in the shadow of the State, are mistaken for it and have all the incentives to maintain the *status quo* by forming a gangster State that exerts social pressure through fear and the threat of starvation.

The chances of democratizing through a social revolt are unfortunately precarious when the costs of repression are low for the *status quo*. The credible threat is therefore unlikely once this game becomes repetitive.

It is then necessary to seek *status quo* breakdown by depleting the sources of predation³⁵ or income³⁶ of the gangster State that, together with a certain level of internal and external pressure, generates a democratic opening.

To achieve this goal, work must be carried out in the short term in the fight against drug trafficking and smuggling of gold and oil to close all sources of illicit financing and thus weaken the gangster State, increasing the probability of an internal break-

35 "Creation of democracy in these countries may have coincided with important changes in the elites' assets". Daron Acemoglu & James Robinson *Economic Origins of Dictatorship and Democracy* (Cambridge, 2000), 192.

36 "The ability of the citizens to challenge the system (...) that damages the economic and social interest of the elites who control (...) political power". Daron Acemoglu & James Robinson *Economic Origins of Dictatorship and Democracy* (Cambridge, 2000), 174.

down that will generate a political change³⁷. Similarly, society must be further empowered to achieve higher levels of organization and mobilization, making repression more difficult³⁸.

In the long run, it is essential to return to an economic structure that guarantees property rights that really empower society, effective control of the executive branch and those who exercise it and recover the institutional path that democratized the country in the twentieth century.

37 "No transition can ever be forced by opponents against a regime which maintains the cohesion, capacity and disposition to apply repression". Guillermo O'Donnell & Philippe Schmitter *Transition from Authoritarian Rule: Tentative conclusions about Uncertain Democracies* (Baltimore, 1986), 21.

38 "If civil society is disorganized and ineffective, then it may be difficult to solve the collective action problema to form threats to the existing regime, and any such attempt may be easier to repress". Daron Acemoglu & James Robinson. *Economic Origins of Dictatorship and Democracy* (Cambridge, 2000), 191.

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

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 Bolívar-

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

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

Autors

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