

Democratization



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Socialist revolutions and law: Perceptions and thoughts

Rogelio Pérez Perdomo

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

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

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

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

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

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

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

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

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

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

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

Justice in Lüritz

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chavismo y derecho¹

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

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

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

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

3 Chavez lives and the fight continues.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Delgado Ocando, José Manuel. "Revolución y derecho". En *Estudios sobre la constitución. Libro homenaje a Rafael Caldera*. Caracas: Universidad Central de Venezuela, 1979.

Delgado Ocando, José Manuel. *Problemas de filosofía del derecho y del estado: hipótesis para una filosofía anti-hegemónica del derecho y del estado*. Valencia: Vadell Hermanos, 2004.

Final thoughts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Conclusions

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

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

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

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

1 “Ooh, ah, Chavez will not leave”.

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

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

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

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