

Constitution and Politics in Venezuela: A balance of the contemporary context

Constituição e política na Venezuela: Um balanço da conjuntura contemporânea

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Abstract

This text analyses the relationships between Constitution and Politics in Venezuela, in the contemporary context: from the beginning of Nicolas Maduro govern (2013), until the beginning of the National Constituent Assembly (2017) and the convocation of presidencial elections (2018). Its main goal is to bring and analyse the constitutional dynamics in a troubled and peculiar political process, in which notions as Rule of Law, Constitution and Legality are disputed. The methodology involves interdisciplinary research with the epistemological guidance of Critical Theory, joining theory and praxis, articulating Law and Politics. The text adopts inductive and deductive reasoning, in a qualitative research with the techniques of documentary analysis and bibliographic review. The sources of research are mainly from Venezuela and subsidiary from Latin America and Brazil. The primaries are data from official entities, journals, blogs and magazines. The secondaries are normative documents, academic papers and books.

Keywords: Constitution. Politics. Venezuela. Contemporaneity.

Resumo

O presente texto analisa as relações entre Constituição e política na Venezuela na conjuntura contemporânea: do início do governo do presidente Nicolas Maduro, em 2013, passando pela instalação da Assembleia Nacional Constituinte, em 2017, até a convocação de eleições presidenciais, em 2018. Seu principal objetivo é expor e analisar a dinâmica constitucional em um processo político conturbado e peculiar, no qual são disputadas as noções de Constituição, Estado de Direito e legalidade. A metodologia envolve pesquisa interdisciplinar com orientação epistemológica na teoria crítica, congregando teoria e práxis, articulando Direito e política. O texto adota os raciocínios indutivo e dedutivo, em pesquisa qualitativa, com as técnicas de análise documental e revisão bibliográfica. As fontes de pesquisa são, predominantemente, de origem venezuelana e, subsidiariamente, latino-americanas, em geral, sobretudo brasileiras. As fontes primárias são dados de órgãos oficiais, jornais, blogs e periódicos. As secundárias são documentos normativos, artigos e livros acadêmicos.

Palavras-chave: Constituição. Política. Venezuela. Contemporaneidade.

Introduction

The present text analyzes the relations between Constitution and politics in Venezuela in the contemporary conjuncture, from the beginning of the government of President Nicolas Maduro in 2013, through the convocation and installation, in 2017, of the National Constituent Assembly, until the anticipated call for presidential elections in 2018. Its main objective is to expose and analyze the constitutional dynamics

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in a political process that is troubled and full of peculiarities, with attempts and attainment of legal and political, constitutional and unconstitutional, legal and illegal maneuvers, from opposing political forces, which operate within and outside state institutions. The text also provides and examines current data and analysis, managed by Venezuelan politicians and intellectuals (writers, sociologists and jurists), little known and disclosed in Brazil.

In the first topic, some premises are established for the understanding of Venezuelan political and constitutional conjuncture from Brazil. Next, it presents the main political movements in dispute and the constitutional maneuvers adopted, having as variable the correlation of forces, favorable or unfavorable, in each period. In this context, the political behaviors and (in) constitutional actions of the right-wing political opposition are exposed and analyzed (*Mesa de Unidad Democrática* - MUD)¹ and the Maduro government, both in pursuit of control of state institutions and the political process. As part of the convening and installation of the National Constituent Assembly in 2017, will be presented and analyzed the main interpretations about it from Venezuelan and Brazilian visions. Finally, an analysis is made of the relationship between political disputes and uses of the rule of law and of the Constitution in Venezuela.

Given the nature and characteristics of the research object, the methodology adopted is the interdisciplinary research, with an epistemological orientation based on critical theory (Horkheimer, 1983), congregating theory and praxis, and articulating Law and politics. In terms of research strategies and techniques, the text adopts the inductive and deductive reasoning to promote qualitative research through documentary analysis and bibliographic review. The research sources are predominantly of Venezuelan origin and, in the alternative, Latin American in general, above all, Brazilian. Primary sources are data extracted from official bodies, newspapers, blogs, and periodicals, due to the rapidity of the dynamics of the facts and the analysis formulated in this respect, almost in real time. Secondary sources are normative documents, articles, and academic books.

2 Assumptions for the understanding of Venezuelan political and constitutional conjuncture from Brazil

In order to deal with the situation in Venezuela, it is necessary to establish a starting point: Brazilians generally say about Venezuela without knowing the reality of the country and, worse, do not even bother to look for information by looking at the plurality of sources. In texts and speeches, the tone is the same: the sources adopted (news and even bibliography) are deficient and skewed because they fail to contemplate facts and opinions of reference on the subject. In Brazilian narratives about Venezuela, very few sources are used in Spanish, characterizing itself as the expression of the vision of Brazilian authors regarding a historical, social, political, economic and cultural reality that they do not experience and do not know, but through abstractions and a single point of view, therefore, partial.²

In the academic field, these texts adopt the so-called “judgmental” (NOBRE, 2003), according to which a text is written on the basis of preconceived convictions, thus not open to the formation of opinions, during the elaboration of the research, by contrasting different points of view. There is a lack of fundamental Venezuelan authors - regardless of their positions, favorable or contrary to “chavismo”, “madurista”, or

¹ The right-wing institutional opposition to the Maduro government is led by the electoral coalition Mesa de la Unidad Democrática de Venezuela (MUD), created in January 2008 to unite the right-wing opposition against Hugo Chavez, and articulate right-wing political parties), in addition to social movements and business organizations. Its main contemporary exponents are: Primero Justicia, Acción Democrática, Un Nuevo Tiempo, Popular Will, in addition to COPEI (Committee of Independent Political Electoral Organization) - currently denominated Social Christian Party

² In this sense: Pompeu and Aguiar, (2016); Pompeu, Freitas e Souza (2016); Pompeu and Viana (2009); Feloniuk (2014); Saldanha, Pereira and Velho (2007). Among the writings of Brazilian authors found in the research and that support the present text, the article by José Alberto Antunes de Miranda (2014) is an exception to this ignorance and / or non-citation of Venezuelan authors. Even arguing from European references (Max Weber and Luigi Ferrajoli) and Americans (Samuel Huntington and Robert Dahl), he presents a multidisciplinary approach, drawing on several Venezuelan thinkers, including Hugo Chávez, and presenting official data from Venezuelan public agencies and the NGO Latinobarómetro.

not - in the debate on the contemporary political conjuncture in Venezuela. For example, Edgardo Lander³ and Jesús Silva R.⁴, who, incidentally, are oppositionists⁵ to Maduro. There is no plurality of points of view, especially in the narratives of the great Brazilian business media, as will be seen below.

“Chavismo” does not appear in Brazil, but by means of derogatory visions and caricatures, which do not even consider the arguments and actors of the Chavista field, leaving their positive points absent. It is invoked the controversial expression “populism” with support in the plebiscitary democracy of Max Weber (MIRANDA, 2014) or in a colloquial way (POMPEU, VIANA, 2009). However, approaches could be made from Latin America, for example, based on the Argentinean Ernesto Laclau (2013), who gives populism a historical scientific view free from such prejudices and that made reference to the study of the phenomenon as inherent in any form of government, whether left or right.

The texts of Brazilians in the area of Law on Venezuela approach the concept of democracy solely on the basis of liberal institutional and theoretical arguments (Robert Dahl’s polyarchy, Norberto Bobbio’s liberal democracy, and Friedrich August Von Hayek’s free-market democracy, Milton Friedman, Francis Fukuyama, and even Margaret Thatcher)⁶, which do not conform to the ideological and theoretical frameworks of countries and governments in other contexts, such as “Chavismo”, and vice versa. Therefore, an object is analyzed through lenses previously incompatible with it, which, of course, leads to conclusions of inadequacy between the two. Another tonic is the little or no presentation of concrete data that convey the perception of the Venezuelan people, being restricted, most Brazilian narratives, to rely on foreign authors or newspaper news to substantiate their views.

That said, it is clearer the scenario in which the contemporary conjuncture in Venezuela can be exposed and analyzed, in particular, the constitutional process started in 2017 and the electoral contest for the presidency in 2018.

3 Political movements and constitutional maneuvers: the correlation of forces as a variable

Due to Hugo Chávez’s license to treat cancer in Cuba in December 2012, his vice president took office temporarily, Nicolas Maduro, who was a train driver in Caracas, a trade unionist, deputy, and minister of state. With the death of Chávez, on March 5, 2013, elections were held. Maduro was elected and took office for the full term, from April 19, 2013, to March 2019, with a closer vote: 50.66% against 49.07% of the oppositionist Henrique Capriles.

3.1 The political behavior and (in) (constitutional) actions of the right-wing political opposition (MUD)

Just as it happened with Chavez, there is a constant dynamic of the right-wing opposition to try to overthrow the Maduro government. After the frustrated attempt of military coup against Chavez, on April 11, 2002, the right-wing Venezuelan opposition has been behaving like its Latin American cousins (e.g. recently Paraguayan, Brazilian and Honduran), that is, it seeks to overthrow democratically elected governments no longer by the use of military force, but through institutional channels in articulation with actors and institutional (judicial), non institutional (media and market) and foreign (governments of other countries and community blocks).

³ Edgardo Lander is a Venezuelan, sociologist and professor at the Universidad Central de Venezuela (UCV), an associate researcher at the Transnational Institute. Integrates the Citizen Platform in Defense of the Constitution in Venezuela. He was one of the main organizers of the 2006 World Social Forum in Caracas. He organized a very popular book in Brazil in recent years: *The coloniality of knowledge: Eurocentrism and social sciences. Latin American Perspectives*. Buenos Aires: CLACSO, 2005. Available in: https://www.clacso.org.ar/libreria-latinoamericana/buscar_libro_detalle.php?id_libro=164.

⁴ Jesús Silva R. is Venezuelan, criminal lawyer, Marxist writer, Doctor of Constitutional Law and professor at the Central University of Venezuela (UCV).

⁵ Also worth mentioning is Lolita Aniyar de Castro, who died in 2015: Venezuelan, lawyer, criminologist and professor at the University of Zulia.

⁶ (MIRANDA, 2014; POMPEU, VIANA, 2009; SALDANHA, PEREIRA, VELHO, 2007).

In the institutional vias, the MUD - integrated and financed by the economic groups that governed the country between 1958 and 1999 (VAL; ALVAREZ, 2016, p. 91-93) and, currently, against the government of Maduro - mobilizes constantly, adopting measures that undermine the country political and socioeconomic stability, which is measured, among others, by popularity indices and satisfaction with the government, gradually more decreasing. The institutional opposition had the parliamentary majority in the *Asamblea Nacional* (AN) since the legislative elections of December 2015.

In January 2017, MUD invoked article 233 of the 1999 Constitution⁸ to declare Maduro's "resignation" and remove him from the presidency, claiming that he would not be adequately fulfilling his mandate ("constitutional obligations") for allegedly failing to control economic crises. In turn, the Tribunal Supremo de Justicia (TSJ) declared that the Parliament does not have constitutional powers to extinguish the presidential mandate.

According to the Venezuelan constitutionalist Pedro Afonso del Pino⁹, "the abandonment of office does not proceed. The abandonment is when the president stops exercising his function. If he performs it badly or unconstitutionally, it is not an abandonment of office" (MARCO, 2017). Therefore, it is a subjective argument of a parliamentary majority of opposition to overthrow a president who dislikes, identical to the one invoked in 2016 when the grounds for the request for impeachment that led to the removal of Dilma Rousseff from the presidency of Brazil. The difference is that the Supremo Tribunal Federal - STF did not intervene and consented to what can be considered as a coup d'état, articulated by the legal, parliamentary, media and business sectors.

For these, and others, objective elements, it is clear that the above-mentioned provision has been common: the search for institutional channels, hoping to legitimize a political action against the Constitution, even though homologated by the same official channels, such as supervisory bodies, judiciary and parliament. The question that strikes the eye is precisely: why, in Venezuela, this strategy has not worked so far, unlike Brazil, Honduras and Paraguay? One of the possible answers is the preparation organized since the government of Hugo Chávez: to know what was and is the capacity of political action of the opposition sectors to act inside and outside the institutions, against and in favor of the Constitution.

In non-institutional via, business and the press are the main political and socioeconomic instability, which is flaunted at the international level by ostensive media political advertisements¹⁰, which project partial views as if they were free and neutral.

Although economic oscillations have been a recurrent issue in the country's history¹¹, since 2014, the so-called "economic war" has intensified in Venezuela, characterized by, among other reasons, the fall in the price of oil in the international market, the rise in inflation and cuts by large companies in the supply of inputs not supplied by the State, such as food and medicines¹². About half of these basic inputs consumed in the country are imported products; therefore, the suspension of its entry or the reduction of its supply due

⁷ "Article 72. All positions and magistrates of popular election are revocable. After half the period for which the official or official has been elected, a number not less than twenty percent of the voters registered in the corresponding constituency may request the convening of a referendum to revoke their mandate. When the greatest number of voters who elected the official or official has voted in favor of revocation, whenever a number of voters and voters have been equal to or greater than twenty-five percent of the registered voters, his term of office shall be deemed revoked and the absolute absence shall be effected in accordance with the provisions of this Constitution and the law. The revocation of the mandate for the collegiate bodies shall be carried out in accordance with the law. During the period for which the official or official has been elected, no more than one request for revocation of his mandate may be made." (Free translation).

⁸ "Article 233. The President or President of the Republic shall be absent: death, resignation, dismissal ordered by judgment of the Supreme Court of Justice, the permanent physical or mental incapacity certified by a medical board designated by the Supreme Court of Justice and with the approval of the National Assembly, the resignation of the position declared by the National Assembly, as well as the popular revocation of his mandate. When there is an absolute lack of the President-elect or President-elect before taking office, a new universal, direct and secret election shall be held within the next thirty consecutive days. While the new President is elected and takes office, the President of the Republic will be in charge of the President or President of the National Assembly. When there is an absolute lack of the President of the Republic during the first four years of the constitutional period, a new universal and direct election shall be held within the following thirty consecutive days. While the new President is elected and takes office, the Executive Vice-President or Executive Vice-President will be in charge of the Presidency of the Republic. In the previous cases, the new President shall complete the corresponding constitutional period. If the absolute lack occurs during the last two years of the constitutional period, the Executive Vice-President or Executive Vice-President will assume the Presidency of the Republic until completing it". (Free translation).

⁹ Pedro Afonso del Pino is Venezuelan, professor of Constitutional Law at the Law School of the Faculty of Legal and Political Sciences of the Central University of Venezuela.

to sabotage in the supply immediately and seriously affects the situation of millions of people. Faced with this scenario, the Maduro government reacted by decreeing a “state of emergency” in February 2016, which gave him special powers, but he was unable to react by giving way to some problems, including humanitarian ones, such as emigration, especially to neighboring countries such as Brazil.

3.2 *The political groups in dispute and the scenario of the correlation of forces*

With episodes like these, the tension of social protests in the streets, divided among governors, mostly members of the popular strata, and oppositionists, mainly coming from the middle and upper classes. Beyond the control of political institutions, the fundamental question that distinguishes these two sectors lies on the one hand in the defense of “Chavismo” as a means of promoting the Bolivarian Revolution or Socialism of the 21st century, and, on the other hand, towards the liberalization of the economy and the end of State intervention in the fixing of prices and the provision of social services. But the correlation of political forces is not limited to the polarization of these two strands. There are important internal ramifications.

On the right side, (i) the pro-imperialist old bourgeoisie, servile to US interests, organized in the following political forces: *Acción Democrática*, historical political party of economic elites, and *Voluntad Popular* and *Primero Justicia*, most recent political parties, currently barred from submitting nominations, led by Leopoldo López and Henrique Capriles respectively; and (ii) a new bourgeoisie, grouped around the *Resistencia*, an extremist politician group who acts in social networks, and the so-called *boliburguesía*, a sector composed of chauvinist bureaucrats and entrepreneurs. With the exception of the *boliburguesía*, all these rightist sectors promoted and / or supported the use of violence in the streets, including by paramilitary groups (TERUGGI, 2017; AGRELA, 2017).

On the left side there is the so-called “critical *chavismo*” (or “critical and democratic *chavismo*”), political field independent of the ruling party and which aims to conduit the numerous citizens and social groups identified with Chavismo and opposed to the current polarization between the Maduro government and the right-wing opposition. Critical Chavismo is composed of “non-maduro chauvinists,” ranging from former militants of the United Socialist Party of Venezuela (PSUV) and anti-capitalist left intellectuals to members of the Public Prosecutor’s Office¹³.

It aims to rescue the principles of Chavez’s Bolivarianism and build a pragmatic and programmatic alternative to organize those who defend the Bolivarian Revolution, but it does not accept alliances with the right (MUD) nor with the authoritarian capitalism of Maduro, both seen like partners of the imperialism of the financial capital.

In the international scenario, the Maduro government currently has some support and is strongly opposed. On the one hand, it has support from countries such as Cuba, Bolivia and Russia, and transnational

¹⁰ The main private media outlets opposing the Maduro government are El Nacional (<http://www.el-nacional.com/>) and El Universal (<http://www.eluniversal.com/>). In addition to the largest privately-owned radio and television station, RCTV (Radio Caracas Televisión), founded in 1953, strongly opposed Hugo Chávez, culminating in his notorious support for the coup of 11 April 2002, which kidnapped Chávez and took him out of the Presidency of the Republic for 48 hours. RCTV did not have its concession renewed on May 27, 2007, currently transmitting in partnership on a paid channel. The second largest broadcaster, Venevisión, also backed the 2002 coup by showing manipulated video of Chavez forces firing on demonstrators. The video received the King of Spain award for Journalism. Later, it was proved the manipulation of the video, evidencing that it would be impossible, by its locations that the chavistas forces shot against the demonstrators. The video shows Chavez’s supporters firing, but not at whom. The shots were directed against the Metropolitan Police of Caracas, under the command of Alfredo Peña, Metropolitan Mayor of Caracas and opponent of Chávez (JONES, 2008, p. 340-347; BARTLEY; O’BRIAN, 2003).

¹¹ For an understanding of the history of oscillations in the Venezuelan economy (GDP, inflation, growth, inequalities, etc.), from the 1960s through Chavez’s governments to the context of the Maduro government, see: Paiva (2017).

¹² In the words of Gladstone Leonel Jr. and Raphael Lana Seabra (2017, [sp]): “The economic war, deepened since mid-2012, is structured by the use of hoarding, the stock of goods in great quantity in order to provoke its scarcity, as well as the use of the parallel market at exorbitant prices, stimulating the illegal activity of *bachaqueros*; the induction of inflation by the attack on the currency, whose main speculators are the exchange house *Dolar Today* in Miami and the exchange offices located in the Colombian city of Cucuta; the boycott of the supply of industrial products and inputs for the production of certain essential goods, as well as medical and hospital supplies by national and foreign monopoly companies; and finally, the international financial blockade, evident by the manipulation of the Venezuelan country risk, the highest in the world, surpassing the “bankrupt” Greece and the “conflictive” Syria. Such a tactic was aimed at undermining the purchasing power of wages, reducing domestic productivity, and reducing confidence in the efficiency of state intervention in the economy.”

social movements, such as the Alba Social (Bolivarian Alliance of Peoples of Our America). On the other hand, there is a strong opposition (i) in the international community, by the European Union and right-wing governments of imperialist countries (USA) and colonizers (Spain and France); (ii) at the Latin American level, by members of Mercosul, who suspended Venezuela from the entity on August 5, 2017, by the OAS and by countries previously allied to Chavismo, which are now led by conservative governments (Argentina and Brazil), besides Mexico and Colombia, which have withdrawn their ambassadors from Venezuela or threatened to do so. Not to mention the bravado to support foreign military interventions in the country. In Brazil, in particular, the main business media is united in treating the Maduro government as a dictatorship¹⁴ while explicitly supporting social movements and political parties such as the Socialist and Freedom Party (PSOL), the Communist Party of Brazil (PCdoB) and the Workers' Party (PT).

3.3 The political behavior and the reactions of the Maduro government: the constituent as strategy

As a strategy to reverse the adverse scenario, on the domestic and international levels, on May 1, 2017, President Nicolas Maduro convened a National Constituent Assembly (ANC), based on articles 347 and 348 of the 1999 Constitution¹⁵. Maduro's strategy is allegedly to prevent a new *coup d'état*, to retake the parliamentary majority of the opposition and, consequently, to control institutional political channels. His speech justified the convening of the ANC to reverse the crisis in Venezuela and improve the living conditions of the population achieving the following objectives:

I call a constituent citizen, not a constituent of parties or elites, a constituent citizen, worker, communal, peasant, feminist constituent, youth, students, an indigenous constituent, especially brothers, a deeply working, decisively worker, deeply communal constituent. I call the '*comuneros*', the '*misiones*'.

[...]build a post-oil economic system, setting the stage for a new economic model; to build a welfare state from the so-called '*misiones*', giving this constitutional *status*; to promote new forms of participative democracy and protagonist, also giving constitutional *status* to the Communal Councils and Communes; guarantee a foreign policy of national sovereignty.

On July 30, 2017, there was a voting that elected 545 constituent deputies: 364 elected by territorial criteria (one deputy for each Venezuelan municipality, and two for each capital, observing proportionality by states) and 181 by social criteria (79 workers, 28 retirees, 24 students, 24 indicated by communal councils and communes, 8 indigenous, 8 peasants and fishermen, 5 businessmen and 4 people with disabilities) (AGRELA, 2017).

The opposition considered the elections unconstitutional¹⁶ and, once again, adopted the boycott tactic, inciting the population to empty the state voting and organizing a parallel informal plebiscite. Chavismo's followers decided by way of participation, which placed them as the only competing political force (55,000 registered candidates) and elected (545 deputies) by the 8,089,320 voters (41.53% of Venezuelan voters) informed by the CNE.¹⁷ After the dissemination of the results, the MUD was centered on allegations of fraud in the procedure and number of voters, and on the deaths of more than a dozen protesters in the streets of Caracas. The MUD strategy thus remained in the regional elections for governors, held on October 16, 2017, when the PSUV won in 19 of the 23 Venezuelan states, and also in the municipal elections held on December 10, 2017, when the PSUV won in 295 of the 335 *municipalities* (MARTINEZ; VASQUEZ, 2017).

¹³ Gonzalo Gomez (Socialist Marea Party), Miguel Rodríguez Torres (Movimiento Amplio Desafío de Todos), Eustoquio Contreras (Vanguardia Bicentenario) and Nicomé Evans (recently left the Socialist Tide Party and founder of the Inclusive Democratic Movement) Republican - VBR), Germán Ferrer (former PSUV member), Gabriela Ramírez (former Defensora del Pueblo), Luisa Ortega Díaz (current Attorney General of the Republic), among others (thes).

¹⁴ As an example, national newspapers, Folha de São Paulo and O Estado de São Paulo. The same happens in the sectors of the Brazilian Judiciary that manifest themselves on the subject, like the controversial STF minister, Gilmar Ferreira Mendes, who spoke in plenary (and even more in the press) that the STF should not be to become a "Bolivarian court" (CRUZ; MOTTA, 2014).

¹⁵ "Article 347. The people of Venezuela are the depositary of the original constituent power. In the exercise of this power, it may convene a National Constituent Assembly with the purpose of transforming the State, creating a new legal system and drafting a new Constitution." (Free translation). "Article 348. The initiative of convening the National Constituent Assembly may be made by the President of the Republic in the Council of Ministers; the National Assembly, by agreement of two-thirds of its members; the Municipal Councils in cabildos, by means of the vote of two thirds of the same ones; and fifteen percent of the voters enrolled in the Civil and Electoral Registry." (Free translation).

After insisting on strategies that did not lead to its victory, MUD lost ground in the political dispute and its fraud argument proved to be fallacious, as it won 5 state governments. If there was fraud, it would not have expired in any state.

4 Interpretations of the Venezuelan constituent of 2017: visions from Venezuela and Brazil

There are many and different interpretations of the Venezuelan constituency of 2017. Next, the main ones, published by Venezuelan and Brazilian writers, are listed.¹⁶ In addition to the ruling discourse, among the Venezuelan politicians, sociologists and intellectuals consulted are the arguments about illegitimacy and/or illegality of the convocation of the ANC.

Members of the conservative field, such as Allan Brewer-Cárias (2017) and Humberto Briceño León (2017), and the progressive field like Edgardo Lander (2017), support the political-social illegitimacy and the illegality of the ANC due to the absence of the popular referendum for its installation. Strangely, points are common to both views of popular sovereignty, democratic principle and political pluralism, defended by legal arguments based on legality and constitutional interpretation that distinguishes the “initiative” from the “convocation”. In a systematic reading of articles 5, 70, 347 and 348 of the 1999 Constitution, the argument is that it is up to the president of the republic and other authorities the ANC’s “convocation initiative”, and that it is up to the people to call it, in the exercise of the original constituent power. As Maduro, by decree, exercised the initiative and directed the deputies’ elections for the installation of the ANC, would lack democratic and procedural support in terms of representativeness of citizens and political groups.

Another line of argument, manifested only by the progressive field, resorts to political arguments and considers that, regardless of whether the procedure is lawful or not, the convening of the ANC is illegitimate, because it is a maneuver that does not solve the social problems of the economic crisis, but strengthens the government institutionally in the face of successive coup attempts MUD (PAEZ, 2017; GÓMEZ, 2017). Important Venezuelan social movement, the *Liga de Trabajadores por el Socialismo* (LTS) defended an “active abstention” for understanding the constituent as a farce, different from a “truly radical democratic process”. It identifies the government as Bonapartist because it does not have popular support as it relies on the Armed Forces and for surviving in a state of permanent exception, with violation of rights, such as protest and strike.

The LTS cries out for a stand of working-class independence from the government and the right-wing opposition (MUD), because they represent the same social class and its system, capitalism, which imposes imperialist sanctions through hegemonic countries and supranational entities. By proposing an alternative to the realization or not of the ANC, the LTS claims a workers’ own agenda for a popular exit, without military and bureaucrats: elaboration of a workers and popular emergency economic plan; review of external debt repayment; repatriation of oil resources sent abroad; control of prices directly by workers; and struggles for a true *Asamblea Constituyente Libre y Soberana* (ACLyS).

Gladstone Leonel Jr. and Raphael Lana Seabra are both relevant and correct among the Brazilian writers, disregarded here by the large corporate media, who already have a lot of space on the news (2017). Teachers contextualize the conjuncture of the Venezuelan crisis historically and stress that in revolutionary processes, the question of power is central and should focus on the process, rather than on the person. They recognize the pertinence of left criticism of the Maduro government and present little or no democratic practices of the right, which uses strokes. They conclude that the complexity of a historical, social, economic and political process is not captured by uniquely formal analyzes of the Law, based on legal norms and

¹⁶ Among the most renowned Venezuelan opposition jurists are Luis Pedro España Navarro (Sociologist and Venezuelan political scientist, professor at Universidad Católica Andrés Bello - UCAB) and Allan Brewer-Cárias. The latter is of a traditional Venezuelan family and lives in self-exile in the United States..

¹⁷ This is the largest vote in the parliamentary elections in Venezuela since the promulgation of the 1999 Constitution.

¹⁸ The Brazilian newspaper Brasil de Fato sent representatives to Caracas and covered in person the constituent process, producing the special “People to the Urns: popular constituency in Venezuela” (BRASIL DE FATO, 2017).

constitutional interpretations that traditionally have foundations and liberal procedures; but historically they are not respected by the right to ensure their supremacy by using immoral/illegal, civil/military and peaceful/violent means, whether or not in government.

In this sense, on June 21, 2017, led by MUD, the AN appointed 33 allies to join the Tribunal Supremo de Justicia (TSJ) for 12 years, replacing the magistrates legally sworn in by the same AN, in December 2015, then led by the PSUV. One day before that act, the TSJ decided by the nullity of the investiture of a new composition, considering the mandates of the magistrates in 2015 as legitimate, legal and valid, and stating that it would be a crime of usurpation of functions to assume such a position improperly. The episode was known as a “parallel court” and was even disapproved by the head of the Public Ministry, Luísa Ortega Díaz, who is critical to Maduro. The composition of the court was not altered and the “magistrates” indicated by the AN commanded by the MUD requested asylum in the embassy of Chile in Caracas.

On August 4, 2017, the ANC was installed without complications. The then deputies of the AN, members of MUD, handed over their positions and, on the same day, participated in a march against the constituent, without major repercussions. The ANC is chaired by the former Minister of Foreign Affairs, Delcy Rodríguez, and held its first session the following day, with all the powers of the State recognized her “full powers”.

The most recent episode in the contemporary Venezuelan conjuncture was the call by Maduro of presidential elections for April 22, 2018 (COSTA, 2018), later postponed, with validation by the CNE, for May 20, 2018, and prediction of tenure for January 2019. Maduro was re-elected with 68% of the valid (there was a turnout of 46.06% of the active electorate) and “opposition, international media, and governments aligned to the United States delegitimized it, on the grounds of victory of abstention” (VALENÇA, 2018), having been sworn in on January 10, 2019, for the second consecutive term. Simultaneously, elections were called for regional assemblies and municipal councils. This decision was made after agreement between the government and Henri Falcon, MUD’s dissident candidate, and has as electoral guarantees “the reopening of the electoral registry, the monitoring of the UN, equity in access to the media and good intentions of the government not to abuse the mandatory radio and television channels during the campaign”¹⁹ (LA NACIÓN, 2018).

This is the most important political movement of the government after the installation of the ANC, which anticipates the end of the term, which would end in April 2019, to try to make possible reelection in a different, now favorable, electoral situation, with the correlation of forces, reversed at the institutional level. This is the reading of the political table: with the dominion of Parliament (ANC with full powers and filled of members of the PSUV), the absolute majority of state governors (19/23) and municipal alcaldes (295/335), the PSUV has more electoral weight, while the MUD is fractional and practically out of the institutional game because of its contradictions and choice for boycotts.

5 Constitution and politics in Venezuela: a balance of the relationship between political disputes and uses of the rule of law and the Constitution

In theory, in the paradigm of the Rule of Law, the debate “Constitution *versus* Democracy” (Law and / or Politics) was placed in European and American constitutionalism, supposedly settled by the traditional constitutional theory, which, from the liberal point of view, considers not to be opposing elements, since the Constitution, as a legal norm, on the one hand, ensures the will of the people; on the other hand, it cannot implement it, otherwise the democratic regime will be violated (SANÍN RESTREPO, 2011, p. 52 e ss.).

¹⁹ “The reopening of the electoral register, UN support, equity in access to the media and the good intentions of the government not to abuse the mandatory radio and television channels during the campaign.” At the beginning of March 2018, six candidates applied for the candidacy: “Maduro, Falcón, a retired general who participated in the coup against Chávez, two evangelicals and an engineer,” five of whom were from the Chavista camp (LA NACIÓN, 2018).

In practice, as Karl Marx (2002) demonstrated in analyzing the political and constitutional dynamics of France in the mid-nineteenth century, the Constitution is a strategic piece in the historical cogency of the class struggle process, adopted by democratic and authoritarian regimes.²⁰ As a rule, it reflects the interests of the hegemonic social class and is used for the preservation of the established social order. Exceptionally, it can incorporate partial conquests of the counter-hegemonic social class and be managed for material transformations, without rupture with the capitalist mode of production.

In the case of Venezuela, in fact, there was a lack of popular consultation in ANC convocation in 2017. The anticipation of presidential elections calls on the population to decide on the future of the government, even though the latter still has a year of mandate to fulfill. The traditional constitutional theory teaches that, in different conjunctures, in thesis, the same constitutional-democratic rules must be applied. Who defines them? The Constitution. Who respects them? Not all, on both sides of the political spectrum. The dispute, in fact, is beyond the abstract management of constitutional norms that are, in particular, convenient or inconvenient for the situation or the opposition, depending on the historical, social, political and, above all, economic context. For this reason, constitutions are historically created, recreated and revoked, including in the European context (MIRANDA, 2002).

In the case of Venezuela, although there is a democratic deficit in the convocation of the ANC, analyzing the same political process more broadly, Maduro and the PSUV act strategically to stay in office for another term, with the management of constitutional and electoral rules. Even with the constant changes of circumstances, they act according to the rules of the game of the powers constituted in the Constitution of 1999 much more than the right opposition (MUD), that was against its promulgation and, at the moment, it defends.

On the one hand, considering the fact that MUD does not respect constitutional institutionalism and is used, at all times, of maneuvers (licit and illicit) to alter the composition of the Executive, Legislative and Judiciary, the political movement of the PSUV is explained in the material conditions of the dispute, even when it could / should convoke the people to decide and did not do it. On the other hand, the arguments of critical *chavismo* are pertinent, especially in two themes: the lack of concrete actions of the Maduro government to advance the construction of the Bolivarian Revolution as an alternative to capitalism; and the use of popular participation and respect for democratic procedures, not so much for the procedural aspect (an end in itself for constitutionalist theorists or a convenient means here and there for certain political forces), but for the material aspect of a popular government to function in direct and perennial contact from its social base and in conjunction with this.

These premises are the same as those of Hugo Chavez, who, in his 14 years of government, even amidst contradictions and adversities, fulfilled the central objectives of the Bolivarian project (SEABRA; SILVA, 2013) in procedural and material aspects: he held more than a dozen popular consultations and respected their results, even when adverse;²¹ reduced socioeconomic inequalities; eliminated illiteracy; redistributed income; increased GDP; nationalized the collection of oil royalties, among other relevant achievements.²²

In relation to these premises and achievements of Hugo Chávez at the head of the Bolivarian revolutionary process, this is the position of the main political forces of Venezuela today: even though, in 2017, the MUD defended the Constitution of 1999, its objectives are opposite, and so it always behaved in search of these; even though a constitutional process had started in 2017, the Maduro government's speech was to deepen the goals of the 1999 Constitution and to rescue the original elements of Bolivarianism, as far as the material conditions of possibilities; and being opposed both to alliances with the right (MUD) and to the way Maduro

²⁰ As with the Constitution, the concept of the Rule of Law also has diverse appropriations in the dispute for the state institutionalism, depending on the project of society of the political groups in dispute. Such a notion is not usually problematized by constitutional theory and is taken only as an advance in relation to the Absolutist State. In a critical sense, Ugo Mattei and Laura Nader (2013) approach from the experience in the USA, which characterizes the Rule of Law as looting, exposing constant practices of illegality by the State itself in the desire to promote interests not foreseen or prohibited by normativity legal basis. As an example, in the recent context of the international sports mega events promoted in Brazil, the state and municipality of Rio de Janeiro acted against the Law (administrative acts and state and municipal laws and judicial decisions) by promoting, as a public policy, forced removals of thousands of citizens of poor communities.

leads the ruling party, the left opposition (critical *Chavismo*) is currently playing a relevant role in pointing out the mistakes of the government and offering alternatives, pulling it to the left, but still does not have the conditions to become electorally viable and acquire the leading role of the political process, which is open and permanently in dispute.

The inheritance of Hugo Chávez is relevant in several aspects. Heiner Fechner conducted an interesting study on the Venezuelan case in a doctoral thesis defended at the University of Bremen, Germany. The first aspect reminded by Fechner is that, despite the Latin American intellectual prominence of Argentina, Brazil, Colombia, and Mexico, it was not in those countries that the most radical constitutional and political changes took place. These were effectively implemented in Bolivia, Ecuador and Venezuela (FECHNER, 2016, p. 29). This fact comes to the fore when it is observed that Argentina and Brazil, later with Bolivia, Ecuador and Venezuela, also, at the beginning of the twenty-first century, carried out their experiences of center-left governments, qualified as populists - merely on their poor side negative - by much of the press and the intellectuals of their respective countries.

What stands out from Fechner's analysis, however, is the demonstration of Venezuela's mishaps as an attempt to produce another space for constitutional experience. Following the neoliberal agenda of the late 1990s and the "Washington Consensus", the vision on Venezuela coincided with the recommended reform for Latin America: Rule of law, business-friendly environment, ruptures as to the protectionist mentality, cuts in social spending and withdrawal from the state of the economy. According to the "Reform Program of 1989" (FECHNER, 2016, p. 57), the rule of law must be understood as an environment of access to justice, which meant to involvement of the entire legal system" (p. 61).

Of course, reforms based solely on this conception of the rule of law could not solve the enormous challenge of "including the subalternized classes" (p. 129 e ss.) in the processes of the Law itself, which caused the political forces of Chavez to unleash their own quest: nor the traditional version of European social law (the "state capitalism", to promise "social welfare for all") - which already showed signs of exhaustion with the end of labor guarantees and the reduction of the provision of public services -, nor the system of real socialism were sufficient for the problems of a society of the South, which sought the "involvement of subalternized classes" (FECHNER, 2016, p. 26 e ss.).

6 Conclusion

In the colonial and post-colonial periods, the history of Latin America is full of coups d'état. In the twentieth century, attention is drawn to the frequent alternation of democratic and authoritarian political regimes, as well as the numerous constitutions promulgated and granted. Even after the last cycle of military dictatorships in the 1980s, and with the cooler global geopolitics ever since democratic stability is something that Latin American oligarchies do not promote or respect.

Therefore, it is a very different scenario from the European one, where the concepts, theories, and institutions applied in Latin America today were created. This difference is due to many factors, especially in terms of institutional ruptures, which have served and serve to continue and deepen historical problems,

²¹ As a comparison, there is no culture or practice of popular consultations in Brazil. In almost 30 years of validity of the Federal Constitution of 1988, Brazilian constitutional democracy held only two popular consultations (plebiscite on forms of state and government in 1993, and referendum on the prohibition of the commercialization of firearms and ammunition in 2005), even with the so-called "alternation of power" in the Executive and Legislative. As in Venezuela, in Brazil, the theory of constituent power is also adopted and, since the people are its holder, it could / should be consulted for the convocation of the 1987/88 National Constituent Assembly, to refer to the text prepared and approved by the constituent parliamentarians (some not elected) and to give an opinion or decide on matters of relevant interest to the country. However, this was not the case, despite the lack of opportunities in almost 30 years: impeachment of Collor (1992) and Dilma (2016); Reform of the State, which changed the heart of the Constitution (1990s); institution of reelection for Executive positions (1997); Social Security Reforms (1998, 2003 and 2018); decision to host the World Cup and the Olympics (2000s); Labor Reform (2017), etc.

²² For an overview on before and after the Chavez governments, in terms of socioeconomic achievements, see: ZERO, 2017.

such as poverty and social inequalities, guaranteeing the historical dominance of certain social sectors in the control of public and private institutions.

As mentioned, it is neither novelty nor peculiarity of Latin America to claim the rule of law and the use of the Constitution and its norms with political connotations according to the convenience of those who are or are not in the control of the State. The abstract plan of concepts, theories, and institutional models is an ideal that does not always follow reality and vice versa. Hence the relevance of reflecting on the role of Law as a political element and part of politics, with ambiguous functionality of conservation or transformation of the social order, so that one does not take on the usual misunderstandings of taking sides on one side of the dispute by idealizing abstract elements and without comprehensive knowledge of concrete reality.

The case of Venezuela demonstrates the need to go beyond the appearance of constitutional disputes for the proper understanding of the essence of political conflicts in the flow of their historical process.

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