

THE COLLAPSE OF THE RULE OF LAW IN VENEZUELA 1999–2019

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I. CONCENTRATION OF POWER BY A POPULIST LEADER THROUGH LEGITIMATE MEANS

Venezuela's political system, formerly considered a success story of democracy and the rule of law in Latin America,¹ has been almost completely dismantled over the past twenty years by the populist and authoritarian regime initiated by Hugo Chávez Frías in 1999.

The collapse of the rule of law in Venezuela was not an accident, a sudden constitutional *coup d'état*, or misguided government decisions, but rather the result of a deliberate political process that began with Chávez's 1998 election.

Chávez had unsuccessfully attempted to unseat the democratically elected government of Carlos Andrés Pérez with a bloody *coup* seven years earlier.² After being imprisoned and pardoned for the failed 1992 *coup*,³ Chávez altered his strategy and won the 1998 presidential election against weakened political opponents.⁴

In 1999, Chávez began using the political process to concentrate power amongst himself and a few former military officers, but this time under an electoral veil.⁵ Chávez solidified his power by unconstitutionally convening a Constitutional Assembly that changed the Constitution to favor his plans.⁶

1. See Gregory Wilperly & Dario Azzellini, *Venezuela, Exclusionary Democracy and Resistance, 1958–1998*, in THE INT'L ENCYCLOPEDIA OF REVOLUTION AND PROTEST 1,1 (Immanuel Ness ed., 2009) ("Until 1989 Venezuela was generally considered an exemplary democracy in Latin America.")

2. AP, *Venezuela Crushes Army Coup Attempt*, N.Y. TIMES (Feb. 5, 1992), <https://www.nytimes.com/1992/02/05/world/venezuela-crushes-army-coup-attempt.html>.

3. AP, *Chavez Supporters Rally on 1992 Coup Anniversary*, ECON. TIMES (Feb. 5, 2013), <https://economictimes.indiatimes.com/nation-world/chavez-supporters-rally-on-1992-coup-anniversary/slideshow/18344117.cms>.

4. Wilperly & Azzellini, *supra* note 1, at 7.

5. See generally ALLAN R. BREWER-CARÍAS, PROYECTOS CONSTITUCIONALES DEL CHAVISMO PARA DESMANTELAR LA DEMOCRACIA Y ESTABLECER UN ESTADO SOCIALISTA EN VENEZUELA [CHAVIST CONSTITUTIONAL PROJECTS TO DISMANTLE DEMOCRACY AND ESTABLISH A SOCIALIST STATE IN VENEZUELA] 55–60 (2019) (detailing Chavist Constitutional reform projects since 1999, mediated through the National Constituent Assembly, that played a role in dismantling democratic norms in Venezuela).

6. See generally ALLAN R. BREWER-CARÍAS, ASAMBLEA CONSTITUYENTE Y ORDENAMIENTO CONSTITUCIONAL [CONSTITUENT ASSEMBLY AND CONSTITUTIONAL ORDERING] 229–254 (1999) (commenting on the unconstitutionality of the Assembly); ALLAN R. BREWER-CARÍAS, PODER CONSTITUYENTE

Once elected, Chávez and his cadre carried out their *coup*⁷ by working from within the country's democratic institutions. They aimed to demolish the essential elements of Venezuela's democratic system, beginning with the principle of separation of powers and eliminating checks and balances between the branches of government.⁸ They began capturing the judiciary, subduing the Supreme Court, and destroying all bases of representative democracy under the fraudulent excuse of establishing a "participative democracy."⁹

Following two decades of *chavismo*, the once-democratic Venezuelan state that existed up to 1999 is now a totalitarian state that not only controls most branches of government, but uses them to progressively suffocate the private sector.¹⁰ In this new Venezuela, institutions are destroyed and productive frameworks crushed. Indeed, the very foundations of democracy have been dismantled. The state controls every aspect of life, and citizens' lives are subject to brutal repression by a military and paramilitary that targets not just dissidents, but the population at large.¹¹

ORIGINARIO Y ASAMBLEA NACIONAL CONSTITUYENTE [ORIGINAL CONSTITUENT POWER AND THE NATIONAL CONSTITUENT ASSEMBLY] (1999) 221-252 (surveying the role of the Venezuelan Supreme Court in relation to the National Constituent Assembly).

7. See generally ALLAN R. BREWER-CARÍAS, GOLPE DE ESTADO Y PROCESO CONSTITUYENTE EN VENEZUELA [COUP D'ÉTAT AND CONSTITUENT PROCESS IN VENEZUELA] (2001) 181-238 (arguing that the National Constituent Assembly technically enacted a *coup d'état*).

8. See Mario J. Garcia-Serfa, *The "Enabling Law": The Demise of the Separation of Powers in Hugo Chavez's Venezuela*, 32 U. MIAMI INTER-AM. L. REV. 265, 273 (2001) (describing how Chávez took legislative and judicial powers away from existing institutions and gave them to the Constitutional Assembly).

9. See Allan R. Brewer-Carías, *The Principle of Separation of Powers and the Authoritarian Government in Venezuela*, 47 DUQ. L. REV. 813, 822 (2009) (surveying features of democratic states and contending that such features were missing from Venezuela's "participative democracy," which was, in reality, an authoritarian regime).

10. See ARI CHAPLIN, CHÁVEZ'S LEGACY: THE TRANSFORMATION FROM DEMOCRACY MAFIA STATE 84 (2014) (Arguing that "Chávez is . . . gradually suffocating the private sector" through his expropriation of various industries).

11. *Venezuela*, in HUM. RTS. WATCH, WORLD REPORT 2020 625-34 (2020); *Crackdown on Dissent: Brutality, Torture, and Political Persecution in Venezuela*, HUM. RTS. WATCH (Nov. 29, 2017), <https://www.hrw.org/report/2017/11/29/crackdown-dissent/brutality-torture-and-political-persecution-venezuela>; See generally ALLAN R. BREWER-CARÍAS, LA RUINA DE LA DEMOCRACIA: ALGUNAS CONSECUENCIAS [THE RUIN OF DEMOCRACY: VARIOUS CONSEQUENCES] 515-596

We are now seeing the final act of the tragedy that directed the systematic destruction of Venezuelan democracy, economy, and social institutions. While this destruction was performed with the most fanfare imaginable,¹² it has still not been sufficiently realized by the democratic world.¹³

II. THE DOWNFALL OF ONE OF LATIN AMERICA'S STRONGEST ECONOMIES AND DEMOCRACIES

Decades of authoritarianism culminated in a miraculous social and economic transformation, turning Venezuela from one of the wealthiest countries in Latin America into one of the poorest.¹⁴ As stated in the title of an article published a few years ago by the *Washington Post*: “[t]here has never been a country that should have been so rich but ended up this poor.”¹⁵ The article describes with precision Venezuela’s terrible situation after more than fifteen years of the so-called “pretty revolution,”¹⁶ during which Chávez purported to im-

(2015) (highlighting various facets of the criminalization of the Venezuelan population from 2000–2015).

12. See generally ALLAN R. BREWER-CARÍAS, CRÓNICA CONSTITUCIONAL SOBRE UNA VENEZUELA EN LAS TINIEBLAS 2018–2019 [CONSTITUTIONAL CHRONICLE OF VENEZUELA IN THE DARKNESS 2018–2019] 107–46 (1st ed., 2019) (chronicling the commotion and display of authoritarian Venezuela); BREWER-CARÍAS, LA RUINA DE LA DEMOCRACIA, *supra* note 11 (relating the flagrant criminalization of freedom of expression and other human rights in Venezuela).

13. See Fareed Zakaria, Opinion, *The American Left Needs to Find Its Voice on Venezuela*, WASH. POST (Feb. 7, 2019), https://www.washingtonpost.com/opinions/the-american-left-must-find-its-voice-on-venezuela/2019/02/07/0481f918-2b20-11e9-984d-9b8fba003e81_story.html (noting how “the default position of the left has tended to be inaction.”).

14. See *GDP Per Capita, Current Prices*, INT’L MONETARY FUND, https://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEO_WORLD (last visited Apr. 12, 2020) (comparing GDP per capita of countries around the world and demonstrating the relative poverty of Venezuela).

15. Matt O’Brien, *There Has Never Been a Country that Should Have Been So Rich but Ended Up This Poor*, WASH. POST (May 19, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/05/19/there-has-never-been-a-country-that-should-have-been-so-rich-but-ended-up-this-poor/>.

16. As O’Brien describes,

[a]ccording to the International Monetary Fund’s latest projections, it has the world’s worst economic growth, worst inflation and ninth-worst unemployment rate right now. It also has the second-worst murder rate, and an infant mortality rate at public hospitals that’s gotten 100 times worse itself the past four years. And in case all that wasn’t bad enough, its currency, going by black market

plant what he called “Twenty-First Century Socialism,”¹⁷ but transformed the country into a “failed state,”¹⁸ “narco-state,”¹⁹ “mafia state,”²⁰ or “gangster state.”²¹ Because of the gravity of these results, it is no longer possible to hide the situation behind official propaganda and the support of foreign lobbies paid by the *chavista* government.²²

What was touted as the miracle of the Venezuelan authoritarian regime is actually a man-made disaster resulting from the destructive populist policies designed and deployed by the late President Chávez and continued by the man who currently is usurping the Presidency, Nicolás Maduro.

Chávez’s political process tragically demolished what in the 1990s was still one of the most envied constitutional democracies of Latin America,²³ the Venezuelan state that func-

rates, has lost 99 percent of its value since the start of 2012. It’s what you call a complete social and economic collapse. And it has happened despite the fact that Venezuela has the world’s largest oil reserves. Never has a country that should have been so rich been so poor. *Id.*

17. Juan Forero, *Chávez Restyles Venezuela with ‘21st-Century Socialism,’* N.Y. TIMES (Oct. 30, 2005), <https://www.nytimes.com/2005/10/30/world/americas/chavez-restyles-venezuela-with-21stcentury-socialism.html>

18. See Pedro González Caro, *Venezuela: ¿Un estado fallido? [Venezuela: A Failed State?]*, POLITIKA UCAB (Sept. 4, 2019), <https://politikaucab.net/2019/09/04/venezuela-un-estado-fallido/> (declaring Venezuela a failed state).

19. Ben Evansky, *Trump Administration Praised by Democracy Activists for Calling Venezuela a ‘Narco-State’*, FOX NEWS (Nov. 14, 2017), <https://www.foxnews.com/world/trump-administration-praised-by-democracy-activists-for-calling-venezuela-a-narco-state> (Quoting U.S. Ambassador to the United Nations, Nikki Haley, as saying, “Venezuela is an increasingly violent narco-state that threatens the region, the hemisphere, and the world.”).

20. Opinion, *El Estado Mafioso [The Mafia State]*, EL NACIONAL (June 24, 2018), https://www.elnacional.com/opinion/columnista/estado-mafioso_241217/ (calling Venezuela a “mafioso state”).

21. See generally *Having Wrecked the Economy, Venezuela’s Rulers See No Reason to Change*, ECONOMIST (Dec. 15, 2018), <https://www.economist.com/the-americas/2018/12/15/having-wrecked-the-economy-venezuelas-rulers-see-no-reason-to-change> (referring to Venezuela as a “gangster state.”).

22. See Juan Forero, *Chávez, Seeking Foreign Allies, Spends Billions*, N.Y. TIMES (Apr. 4, 2006), <https://www.nytimes.com/2006/04/04/world/americas/chavez-seeking-foreign-allies-spends-billions.html> (describing how “upward of 30 countries as far away as Indonesia have received some form of aid or preferential deals.”).

23. See generally ROBERT J. ALEXANDER, *THE VENEZUELAN DEMOCRATIC REVOLUTION: A PROFILE OF THE REGIME OF RÓMULO BETANCOURT* (Rutgers U.

tioned from 1958 to 1998. A democratic system was first implemented in 1958, based on an agreement between the country's main political parties.²⁴ Despite the later criticism of Chávez's followers, the *Pacto de Punto Fijo* must be considered an outstanding and exceptional political pact in Latin American politics. The competing political parties set aside their main differences and achieved the goal of establishing a constitutional democracy in a country that, until 1958, had been one of the least democratic in all of Latin America.²⁵

Even into the late 2000s, many politicians and writers in the United States were admiring and applauding the former paratrooper commander who,²⁶ after failing to seize power by

Press, 1964) (highlighting the democratic norms in Venezuela in the mid-twentieth century); see also DANIEL H. LEVINE, CONFLICT AND POLITICAL CHANGE IN VENEZUELA 3 (1973) (admiring how Venezuela "has built since 1958 one of the few effective, competitive, democratic political orders in Latin America").

24. See Wesley Tomaselli, *The Secret Pact that Launched Venezuela's Democracy*, OZY (May 13, 2018), <https://www.ozy.com/flashback/the-secret-pact-that-launched-venezuelas-democracy/86447/> (detailing the pact that led to the beginning of democracy in Venezuela in 1958).

25. See generally ALLAN R. BREWER-CARÍAS, CAMBIO POLÍTICO Y REFORMA DEL ESTADO EN VENEZUELA [POLITICAL CHANGE AND STATE REFORM IN VENEZUELA] 123–345 (1978) (surveying the changes in Venezuelan institutional politics in the nineteenth and twentieth centuries and noting the antidemocratic nature of Venezuelan government in the early to mid-1900s).

26. Senator Bernie Sanders published an article on his website noting that "incomes are actually more equal today" in Venezuela than they are in the United States. *Close The Gaps: Disparities That Threaten America*, VALLEY NEWS (Aug. 5, 2011), <https://www.sanders.senate.gov/newsroom/must-read/close-the-gaps-disparities-that-threaten-america>. It should be noted that when Sanders was asked if he still endorses the article, his campaign deputy communications director responded that Sen. Sanders "disavows the reference to Venezuela," adding that Sanders "has been critical of the Maduro government's repression of dissent and called for international aid to end the ongoing humanitarian crisis." Julio Rosas, *Sanders Distances Himself from 2011 Editorial on His Senate Website Praising the American Dream in Venezuela*, WASH. EXAMINER (May 1, 2019), <https://www.washingtonexaminer.com/news/campaigns/sanders-distances-himself-from-2011-editorial-on-his-senate-website-praising-the-american-dream-in-venezuela>. Nonetheless, in an interview on February 22, 2019, Senator Sanders said he did not consider Guaidó to be "the legitimate president of Venezuela," implicitly recognizing Nicolás Maduro as such. Kenneth Rapoza, *On Juan Guaidó's Venezuela Status, Bernie Sanders Stands Alone*, FORBES (Feb. 9, 2020), <https://www.forbes.com/sites/kenrapoza/2020/02/09/on-juan-guaidos-venezuela-status-bernie-sanders-stands-alone/#555eac1d3409>. Representatives Alexandria Ocasio-Cortez

military force in 1992, was elected President of the Republic in 1998. The world marveled at how somebody in the country had begun—as repeatedly stated in the populist propaganda²⁷—to take care of the poor, as if nobody before Chávez had fought for social justice in Venezuela.²⁸

This approach, though astonishingly simplistic and blatantly fraudulent, was enough for Chávez to gain the admiration of many in the United States. In fact, support for Chávez was so strong that anyone who dared denounce the democratically disguised farce was immediately labeled a sort of academic dinosaur.²⁹

Since the Second World War, North Americans and Europeans have come to take democracy for granted, generally refusing to admit the possibility that a democratic regime could be transformed into tyranny through its own democratic mechanisms.³⁰ This pro-democracy mindset helps explain why it has been so difficult for North Americans and Europeans in

and Ilhan Omar also expressed reservations about the United States expressing support for Juan Guaidó. Katie Pavlich, *FLASHBACK: When Bernie Sanders Agreed the American Dream Was Easier to Reach in Venezuela than the U.S.*, TOWNHALL (Jan. 25, 2019), <https://townhall.com/tipsheet/katiepavlich/2019/01/25/flashback-when-bernie-sanders-said-america-should-be-like-venezuela-n2540180>.

27. See CRISTINA MARCANO & ALBERTO BARRERA TYSZKA, HUGO CHÁVEZ: THE DEFINITIVE BIOGRAPHY OF VENEZUELA'S CONTROVERSIAL PRESIDENT (2007) (noting how Chávez's "propaganda machine" created the perception that he "brought 'dignity' to the poor and excluded").

28. See RICARDO HAUSMANN & FRANCISCO R. RODRÍGUEZ, VENEZUELA BEFORE CHÁVEZ: ANATOMY OF AN ECONOMIC COLLAPSE 420 (2014) (noting a shift toward "more leftist economic beliefs that favored the view that the poor were not to blame for their predicament and therefore should be helped by the government").

29. See, e.g., FRANCISCO TOFO, *The Useless Old Guard*, NEW REPUBLIC (Jan. 24, 2011), (commenting on ALLAN R. BREWER-CARÍAS, *DISMANTLING DEMOCRACY: THE CHÁVEZ AUTHORITARIAN EXPERIMENT* (2010) and associating the author with an *ancien régime* of Chávez opposition).

30. See, e.g., Eden Collinworth, *A Reminder Not to Take Democracy for Granted*, FIN. TIMES (Sept. 6, 2017), <https://www.ft.com/content/1bf0ec64-9178-11e7-a9e6-11d2f0ebb7f0> (Quoting Kofi Annan: "Democracy is not just about one day every four or five years when elections are held, but a system of government that respects the separation of powers and fundamental freedoms like the freedom of thought, religion, expression, association and assembly, and the rule of law. Any regime that rides roughshod on those principles loses its democratic legitimacy, regardless of whether it initially won an election.").

government and academia to understand what has happened during the past two decades in Venezuela. They have struggled to perceive that democratic institutions have been unmercifully destroyed and removed pursuant to the doctrines of a so-called “new constitutionalism,”³¹ a movement based on a fallacious participatory or populist democracy intended to construct a Twenty-First Century Socialism.

The truth is that Venezuela’s relatively stable democratic system, in place for over 40 years, was gradually replaced with tyranny through the use and misuse of the electoral tools provided by that democratic system itself.

III. USING CONSTITUTIONAL MECHANISMS TO UNDERMINE THE CONSTITUTION

With only naïve political parties who had already been backed into a corner to oppose him, Chávez began his assault on state institutions by following the populist handbook.³² He took over all branches of government, did away with the principle of separation of powers, and eliminated the territorial distribution of State powers, eventually establishing a centralized, militaristic, and authoritarian government in the country.³³

As previously noted, this centralization began in 1999 through the unconstitutional process to adopt a new constitution, a movement that Chávez promoted in his 1998 presiden-

31. See ALLAN R. BREWER-CARÍAS, EL “NUEVO CONSTITUCIONALISMO LATINOAMERICANO” Y LA DESTRUCCIÓN DEL ESTADO DEMOCRÁTICO POR EL JUEZ CONSTITUCIONAL: EL CASO DE VENEZUELA [THE NEW LATIN AMERICAN CONSTITUTIONALISM AND THE DESTRUCTION OF THE DEMOCRATIC STATE BY THE CONSTITUTIONAL JUDGE: THE CASE OF VENEZUELA] 11–38 (2018) (discussing the development of the new constitutionalism at the expense of existing democratic institutions).

32. See generally ÁNGEL RIVERO ET AL., GEOGRAFÍA DEL POPULISMO: UN VIAJE POR EL UNIVERSO DEL POPULISMO DESDE SUS ORÍGENES HASTA TRUMP [GEOGRAPHY OF POPULISM: A JOURNEY THROUGH THE UNIVERSE OF POPULISM FROM ITS ORIGINS TO TRUMP] (2018) (theorizing characteristics of populist regimes, both historical and contemporary).

33. See *Venezuela: Chávez’s Authoritarian Legacy*, HUM. RTS. WATCH (Mar. 5, 2013), <https://www.hrw.org/news/2013/03/05/venezuela-chavezs-authoritarian-legacy> (describing how Chávez centralized power by taking control of the court and restricting fundamental rights).

tial campaign.³⁴ He led the election and convening of a Constituent Assembly that was neither contemplated nor prescribed in the Constitution.³⁵ The Assembly was entirely dominated and directed by the same group of former military officers who had aided Chávez in his 1992 *coup* attempt,³⁶ and they continued to abuse power. That Constituent Assembly, encouraged by the populist promoters of the “new Latin American constitutionalism,”³⁷ was the main tool for Chávez to accomplish his concentration of power, the eventual militarization of political institutions, and the dissolution of the constituted powers.

In order to achieve their anti-democratic goals, the Constituent Assembly supplanted and usurped the sovereignty of the people in assuming full and unlimited powers to transform the institutional framework of the state, thereby imposing Chávez’s authoritarian ideas and interfering with all powers under the Constitution. Chávez faced only a small opposition of four elected members, the author included, out of 131 total.³⁸

34. Diego A. Zambrano, *The Constitutional Path to Dictatorship in Venezuela*, LAWFARE (Mar. 18, 2019, 8:00 AM), <https://www.lawfareblog.com/constitutional-path-dictatorship-venezuela?linkId=64968229> (explaining why campaigning on a platform of constitutional reform was essential to Chávez’s plans).

35. *See Id.* (calling the constitutional convention an “unconstitutional proceeding found nowhere in the 1961 constitution.”).

36. William Partlett, Opinion, *Hugo Chavez’s Constitutional Legacy*, BROOKINGS INSTITUTION (Mar. 14, 2013), <https://www.brookings.edu/opinions/hugo-chavezs-constitutional-legacy/> (noting how Chávez gerrymandered a majority in the Constituent Assembly).

37. *See generally* ALLAN R. BREWER-CARÍAS, LA JUSTICIA CONSTITUCIONAL, LA DEMOLICIÓN DEL ESTADO DEMOCRÁTICO EN VENEZUELA EN NOMBRE DE UN “NUEVO CONSTITUCIONALISMO”, Y UNA TESIS “SECRETA” DE DOCTORADO EN LA UNIVERSIDAD DE ZARAGOZA [CONSTITUTIONAL JUSTICE, THE DEMOLITION OF THE DEMOCRATIC STATE IN VENEZUELA IN THE NAME OF A “NEW CONSTITUTIONALISM,” AND A SECRET DOCTORATE THESIS IN THE UNIVERISTY OF ZARAGOZA] (2018) (explaining the role of the Constituent Assembly in dismantling Venezuela’s democratic institutions).

38. *See* Allan R. Brewer-Carías, *Asamblea Constituyente y Proceso Constituyente 1999 [Constituent Assembly and Constituent Process 1999]*, in 6 TRATADO DE DERECHO CONSTITUCIONAL 1060 (2013) (“De los 131 miembros que tuvo la Asamblea, sólo cuatro puede decirse que conformaron una ‘oposición,’ ante la abrumadora mayoría de los que fueron electos con el apoyo electoral del Presidente de la República, Hugo Chávez Frías.” [Of the 131 members of the Assembly, only four can be said to have formed an ‘opposition’ to the over-

In 1999, the Assembly replaced the authorities of all branches of government, including all Justices of the Supreme Court and most lower court judges, all members of the Electoral Council, the Comptroller General, and most members of the Public Prosecutor's office.³⁹ The Assembly then dissolved the elected Congress, thereby assuming all legislative functions, intervened in provincial and municipal governments, and suspended municipal elections.⁴⁰

Following the 1999 Constituent Assembly, the collapse of the rule of law and the transition from democracy to tyranny gradually began to take shape. All the while, the world in general, and North American and European countries in particular, viewed the former Lieutenant Colonel Chávez with some sympathy,⁴¹ due in part to his false promises, while ignoring his fraudulent use of democratic institutions. Many countries profited from his *nouveau riche* performance, as Chávez depleted the country's wealth and used public money to finance politicians all over the world.⁴² Chávez garnered the support of many important local politicians through his generous social contributions, such as when he financed the supply of heating oil for homes in poor neighborhoods in New York City and subsidized public transportation in London.⁴³ Although

whelming majority of those who were elected with the electoral support of the President of the Republic, Hugo Chávez Frías.]

39. See Zambrano, *supra* note 34 (noting how the Constituent Assembly barred the exercise of legislative, judicial, and other public organs of power).

40. See generally GOLPE DE ESTADO, *supra* note 7 (relating the *coup d'état* mediated by the Assembly); ALLAN R. BREWER-CARÍAS, 1 DEBATE CONSTITUYENTE [CONSTITUENT DEBATE] 43–114 (1999) (tracking the Assembly's actions usurping these powers).

41. See generally RICHARD GOTT, IN THE SHADOW OF THE LIBERATOR: THE IMPACT OF HUGO CHÁVEZ ON VENEZUELA AND LATIN AMERICA (2000) (describing Chávez as a pragmatic utopian).

42. See Juan Forero, *Chávez Using Oil Money to Buy Influence Abroad*, N.Y. TIMES (Apr. 4, 2006), <https://www.nytimes.com/2006/04/04/world/americas/04iht-venezuela.html> (citing an estimate that Chávez had spent more than \$25 billion abroad since becoming President in 1999).

43. See, e.g., Rebekah Kebede, *Venezuela Brings Free Heating Oil to Poor in NY*, REUTERS, Dec. 14, 2007, <https://www.reuters.com/article/citgo-energy-bronx-assistance/venezuela-brings-free-heating-oil-to-poor-in-ny-idUSN1425588920071214> (referencing former U.S. Congressman Joe Kennedy acting together with the former President of Citgo Petroleum Alejandro Granado); Lee Glendinning, *Chávez Deal to Aid Low-Income Londoners*, GUARD-

erratic, he enjoyed the sympathies of many, all delighted and captivated by the military leader who acted as a sort of a twenty-first century Robin Hood.⁴⁴

Simply put, Chávez was perceived as a leader elected by the people. He sold himself as Venezuela's first caretaker of the poor, falsely pretending that it had never happened before in what was formerly the richest Latin American state. His twenty-first century Robin Hood antics distracted people from the fact that he was illegally encouraging corruption at home and financing politicians and political parties abroad with Venezuelan oil resources.⁴⁵

Combining his charisma and misuse of the country's immense wealth due to the boom in oil prices, he and his appointed successor Nicolás Maduro solidified, after twenty years of authoritarian government, the transformation of a formerly democratic country into a tyrannical dictatorship.

To maintain a veneer of respectability during this process, occasional elections took place, always controlled by a partisan electoral authority within a centralized power and a militarized public administration.⁴⁶ Chávez thereby used the tools of democracy to destroy its very essence.

As stated above, the first task assumed by the 1999 Constituent Assembly, besides giving deliberative political rights and participation to the military, was to assault the judiciary.⁴⁷ To this end, the Assembly dismissed almost all of the country's judges and replaced them with provisional and temporary judges, thus ending the autonomy and independence of the

IAN (Aug. 21, 2007), <https://www.theguardian.com/uk/2007/aug/21/london.venezuela>.

44. See generally Alexandra Ulmer, 'Loyal to My Revolution': Despite Venezuela Woes, Maduro Has Diehard Fans, REUTERS, May 18, 2018, <https://www.reuters.com/article/us-venezuela-election-chavismo/loyal-to-my-revolution-despite-venezuela-woes-maduro-has-diehard-fans-idUSKCN1IJ26M> (describing the apparently contradictory devotion some Venezuelans felt for Chávez).

45. Forero, *supra* note 42.

46. See generally Zeeshan Aleem, *How Venezuela Went from a Rich Democracy to a Dictatorship on the Brink of Collapse*, Vox (Sept. 19, 2017), <https://www.vox.com/world/2017/9/19/16189742/venezuela-maduro-dictator-chavez-collapse> (quoting Francisco Toro, editor of Caracas Chronicles, as saying, "Chávez was always careful to maintain electoral legitimacy.").

47. Partlett, *supra* note 36 ("The Constituent Assembly fired a number of judges for 'corruption' and replaced them with pliant new ones.").

judiciary.⁴⁸ A democracy cannot exist without judicial independence, but foreign governments and academics ignored these occurrences until recently, when violations of human rights became so evident that they could no longer be covered up.⁴⁹

The Constitutional Assembly began to define its new judicial framework by controlling the Supreme Tribunal, beginning to pack it with government supporters, a process that continued in 2004, 2010, and 2015, even including former representatives of the official party in the National Assembly.⁵⁰ Chavez and his successor, Maduro, with this composition of the Supreme Tribunal, used it as an instrument for consolidating authoritarianism in the country.

This change explains why the Constitutional Chamber of the Supreme Tribunal, instead of protecting the Constitution, has become the authoritarian government's main tool to illegitimately change the Constitution, demolish the rule of law,⁵¹

48. See Allan R. Brewer-Carías, *The Government of Judges and Democracy. The Tragic Situation of the Venezuelan Judiciary*, in FAIR REFLECTION OF SOCIETY IN JUDICIAL SYSTEMS—A COMPARATIVE STUDY 205, (Sophie Turenne ed., 2015) (writing that “[S]ince 1999, the Venezuelan Judiciary has been composed by temporal and provisional judges, lacking stability and being subjected to the political manipulation, altering the people’s right to an adequate administration of justice”) (internal citations omitted).

49. See generally VENEZUELA: INFORMES SOBRE VIOLACIONES GRAVES DE DERECHOS HUMANOS [VENEZUELA: REPORTS ABOUT THE GRAVE HUMAN RIGHTS VIOLATIONS] 47–87 (Allan R. Brewer-Carías & Asdrúbal Aguiar eds., 2019) (providing examples of human rights atrocities in contemporary Venezuela).

50. See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, Dec. 30, 1999, art. 264 (stating that the National Assembly has final selection power for nominees to the Supreme Tribunal); see also Allan R. Brewer-Carías, *La Participación Ciudadana en la Designación de los Titulares de los Órganos No Electos de los Poderes Públicos en Venezuela y sus Vicisitudes Políticas* [Citizen Participation in the Appointment of the Heads of the Non-Elected Bodies of Public Power in Venezuela and Its Political Vicissitudes], 5 REVISTA IBEROAMERICANA DE DERECHO PÚBLICO Y ADMINISTRATIVO 76 (2004) (underscoring that, since 2000, the National Assembly has essentially blocked citizen participation in nominating Supreme Tribunal magistrates).

51. See, e.g., ALLAN R. BREWER-CARIÁS, CRÓNICA SOBRE LA “IN” JUSTICIA CONSTITUCIONAL: LA SALA CONSTITUCIONAL Y EL AUTORITARISMO EN VENEZUELA [CHRONICLE OF CONSTITUTIONAL “IN” JUSTICE: THE CONSTITUTIONAL CHAMBER AND AUTHORITARIANISM IN VENEZUELA] 17 (2007) (Determining that the executive control of the Supreme Tribunal and Constitutional Chamber was part of a systematic process meant to destroy judicial power in Venezuela).

and even to persecute and illegitimately prosecute members of the new National Assembly elected in 2015. In December of that year, the opposition effectively gained absolute control over the National Assembly, which consequently has been systematically attacked by the Executive and the Supreme Tribunal in efforts to neutralize and diminish its powers.⁵² Nonetheless, after a new National Constituent Assembly was fraudulently convened in 2017, it organized the illegitimate and unconstitutional election of Nicolás Maduro in 2018.⁵³ Within this institutional framework, the National Assembly elected in December 2015, is currently the only legitimate elected institution in the country and the only hope Venezuelans have for the restoration of democracy in the country.⁵⁴

Years before, the concentration of power of the other branches of government was complete after 2005, when the government took complete control of the National Assembly following the opposition's decision to not participate in the parliamentary elections of December that year.⁵⁵ This control lasted for 10 years, and during this time the government packed the other branches with loyalists, including the Electoral Authority, the Public Prosecutor's Office and the Comptroller General's Office.⁵⁶

52. Rafael Romo, *Venezuela's High Court Dissolves National Assembly*, CNN (Mar. 30, 2017), <https://www.cnn.com/2017/03/30/americas/venezuela-dissolves-national-assembly/index.html> (reporting how the Supreme Tribunal transferred the National Assembly's powers to itself).

53. See Ana Vanessa Herrero & Megan Specia, *Venezuela Is in Crisis. So How Did Maduro Secure a Second Term?*, N.Y. TIMES (Jan. 10, 2019), <https://www.nytimes.com/2019/01/10/world/americas/venezuela-maduro-inauguration.html> (mentioning reports of "coercion, fraud and electoral rigging" in the 2018 election).

54. See ALLAN R. BREWER-CARÍAS, TRANSICIÓN HACIA LA DEMOCRACIA EN VENEZUELA: BASES CONSTITUCIONALES Y OBSTÁCULOS USURPADORES [TRANSITION TO DEMOCRACY IN VENEZUELA: CONSTITUTIONAL BASES AND USURPER OBSTACLES] 242 (2019) (determining that the National Assembly is the only political and legislative representative of popular sovereignty and is the primary interpreter of the Constitution for the Venezuelan people).

55. JENNIFER CYR, THE FATES OF POLITICAL PARTIES: INSTITUTIONAL CRISIS, CONTINUITY, AND CHANGE IN LATIN AMERICA 169 (2017).

56. Allan R. Brewer-Carías, *Sobre el nombramiento irregular por la Asamblea Nacional de los titulares de los órganos del poder ciudadano en 2007* [On the Irregular Appointment by the National Assembly of the Holders of the Organs of Citizen Power in 2007], 113 REVISTA DE DERECHO PÚBLICO, 85 (2008).

After President Chávez was re-elected in 2006, he revealed himself to be a Marxist-Leninist. Under his leadership, the newly created official state party adopted Marxism as its official ideology, proposing to permanently change Venezuela from a democratic state based on the rule of law, as it was still formally defined in the Constitution, into a popular or communal State.⁵⁷

New laws were approved for this purpose, such as the 2006 Communal Council Law.⁵⁸ In 2007, the President proposed a constitutional reform in order to create a “State of Popular Power” in parallel with the constitutional state.⁵⁹ The State of Popular Power was to be based on a communist economic system, decreasing private property and substituting it with social or communal properties.⁶⁰ Although those reforms could only be introduced through a duly-convened Constituent Assembly, the Supreme Tribunal, already co-opted by the executive branch, refused to even receive the complaints filed alleging that the wrong constitutional review procedure that was chosen.⁶¹

57. See Allan R. Brewer-Carías, *The Process of “Deconstitutionalization” of the Venezuelan Constitutional State as the Most Important Current Constitutional Issue in Venezuela*, 51 DUQ. L. REV. 349, 378-384 (2013) (describing the deconstitutionalization process of the Venezuelan state and its replacement with a communal state of popular power).

58. See generally Dario Azzellini, *The Communal State: Communal Councils, Communes, and Workplace Democracy*, NACLA (June 25, 2013), <https://nacla.org/article/communal-state-communal-councils-communes-and-workplace-democracy> (explaining communal councils as local, non-representative mechanisms of direct democracy).

59. See ALLAN R. BREWER-CARIÁS, LA REFORMA CONSTITUCIONAL DE 2007 (COMENTARIOS AL PROYECTO INCONSTITUCIONALMENTE SANCIONADO POR LA ASAMBLEA NACIONAL EL 2 DE NOVIEMBRE DE 2007) [THE 2007 CONSTITUTIONAL REFORM (COMMENTS ON THE DRAFT UNCONSTITUTIONALLY SANCTIONED BY THE NATIONAL ASSEMBLY ON NOVEMBER 2, 2007)] (2007) (Concluding that the constitutional reform would leave no room for dissidence). See generally Editorial, *Mr. Chávez’s Power Grab*, N.Y. TIMES (Aug. 22, 2007), <https://www.nytimes.com/2007/08/22/opinion/22wed3.html> (denouncing Chávez’s proposed 2007 reforms as undemocratic).

60. See *Private Property Will Stay, Says Venezuela’s Chavez*, LIVEMINT (Feb. 25, 2007), <https://www.livemint.com/Politics/3qK55YnWTJJCvBq5EIR02M/Private-property-will-stay-says-Venezuelas-Chavez.html> (reporting that Chávez’s proposed constitutional changes would “designate more property as ‘communal.’”).

61. See Allan R. Brewer-Carías, *El juez constitucional vs. la supremacía constitucional* [The Constitutional Judge vs. The Constitutional Supremacy], in EDUARDO

Fortunately, the people rejected the proposed constitutional reform through a referendum held in December 2007.⁶² This was the most important political defeat Chávez suffered during his tenure.

Unfortunately, that defeat was met with a disastrous response: Chávez reacted aggressively against the will of the people, breaching the Constitution and imposing the rejected constitutional reform by means of ordinary legislation.⁶³ He enacted several decrees between 2008 and 2011 that created the framework for a Cuban-style communal state.⁶⁴ Claims for judicial review were raised in vain and ended up hidden in the files of a Supreme Tribunal that never processed the requests.⁶⁵ As a result, the government was able to implement unconstitutional laws with total impunity, without any sort of control or judicial review.⁶⁶

FERRER MAC-GREGOR & CÉSAR DE JESÚS MOLINA SUÁREZ, 1 EL JUEZ CONSTITUCIONAL EN EL SIGLO XXI [THE CONSTITUTIONAL JUDGE IN THE TWENTY-FIRST CENTURY], 385 (2009) (noting that, in all of the attempted actions, the Supreme Tribunal claimed that the claimants did not have standing to bring a case or, absurdly, that the reforms would not have legal effects on the rights of citizens).

62. Simon Romero, *Venezuela Hands Narrow Defeat to Chávez Plan*, N.Y. TIMES (Dec. 3, 2007), <https://www.nytimes.com/2007/12/03/world/americas/03venezuela.html>.

63. Allan R. Brewer-Carías, *Introducción General al Régimen del Poder Popular y del Estado Comunal* [General Introduction to the Popular Power Regime and the Communal State], in ALLAN R. BREWER-CARIÁS ET AL., *LEYES ORGÁNICAS SOBRE EL PODER POPULAR Y EL ESTADO COMUNAL* [ORGANIC LAWS ON POPULAR POWER AND THE COMMUNAL STATE] 11 (2011).

64. See Brewer-Carías, *supra* note 56 (issue dedicated statutory decrees containing multiple articles discussing laws passed in the summer of 2008 that attempt to establish a socialist dictatorship).

65. See BREWER-CARIÁS, *LEYES ORGÁNICAS SOBRE EL PODER POPULAR Y EL ESTADO COMUNAL*, *supra* note 63, at 509–96 (discussing the text of one such claim that the Constitutional Chamber never considered).

66. See ALLAN R. BREWER-CARIÁS, *ESTADO TOTALITARIO Y DESPRECIO A LA LEY: LA DESCONSTITUCIONALIZACIÓN, DESJURIDIFICACIÓN, DESJUDICIALIZACIÓN Y DESDEMOCRATIZACIÓN DE VENEZUELA* [TOTALITARIAN STATE AND CONTEMPT OF THE LAW: THE UNCONSTITUTIONALIZATION, UNJURIDIFICATION, UNJUDICIALIZATION, AND UNDEMOCRATIZATION OF VENEZUELA] 152–53 (2015) (declaring that the judicial power in Venezuela was captured by authoritarianism).

IV. RECENT POPULAR CHALLENGES TO THE CHÁVEZ-MADURO REGIME

By 2015, the political, economic and social destruction of Venezuela was complete, provoking a popular rebellion through the parliamentary election held in December of that year. The results of this election surprised everybody, including the controlled electoral body, which could not manipulate the overwhelming results.⁶⁷

After the 2015 election, the government lost control of the majority it held in the National Assembly, and the opposition obtained a qualified majority of representatives.⁶⁸ This reversal was the second most important political setback of the authoritarian regime since 1999, after the defeat of the 2007 constitutional reform.

However, the regime had become accustomed to exercising absolute power without any sort of checks and balances, and therefore an autonomous National Assembly was intolerable. The government began to systematically obstruct the opposition from carrying out its legislative agenda and gradually began to strip the legislature of all its powers and functions.⁶⁹ As previously explained, this retaliation was possible because of the cooperation between the executive branch and the Supreme Tribunal of Justice.⁷⁰

In only two days (December 29th and 30th, 2015), the outgoing National Assembly enacted more than 30 statutes stripping away all legal powers from the new Assembly and appointing new Supreme Tribunal justices, packing it entirely

67. See AP, *Venezuela Election: Opposition Coalition Secures 'Supermajority'*, GUARDIAN (Dec. 8, 2015), <https://www.theguardian.com/world/2015/dec/09/venezuela-election-opposition-coalition-secures-supermajority> (noting that the election exceeded the opposition's predictions and that Maduro was unlikely to resist the results).

68. *Id.* (reporting that the opposition had won 112 out of 167 seats in the National Assembly, with Maduro's party winning only fifty-five).

69. See Aleem, *supra* note 46 ("In late March [Maduro's] loyalist-stacked Supreme Court made a ruling that effectively dissolved the opposition-controlled legislative branch and took all of its power for itself. . .").

70. See generally ALLAN R. BREWER-CARÍAS, *EL GOLPE A LA DEMOCRACIA DADO POR LA SALA CONSTITUCIONAL* [THE BLOW TO DEMOCRACY GIVEN BY THE CONSTITUTIONAL CHAMBER] 35–53 (2015) (chronicling the conversion of the Supreme Tribunal, in coordination with the executive, into a tool for the annihilation of Venezuelan democracy).

with members of the governing party.⁷¹ All this happened even before the newly elected National Assembly could hold its first session on January 5, 2016.

Filled with members of the governing party, the Tribunal acted to prevent the Assembly from exercising its functions, issuing more than 100 rulings that transformed the political system into a judicial dictatorship.⁷² The new system was characterized by the ability of the executive to use the subdued Supreme Tribunal as his main instrument to neutralize the National Assembly, eliminating all its functions in order to consolidate power.⁷³

The Constitutional Chamber of the Supreme Tribunal declared unconstitutional practically all the laws and statutes sanctioned by the new National Assembly.⁷⁴ The Chamber

71. See Daniel Lansberg-Rodríguez, *President Maduro and His Imaginary Parliament*, FOREIGN POLICY (Dec. 22, 2015), <https://foreignpolicy.com/2015/12/22/president-maduro-and-his-imaginary-parliament-venezuela-elections/> (describing various measures Maduro took immediately after the election to limit the power of the incoming opposition).

72. See CARLOS M. AYALA CORAO & RAFAEL J. CHAVERO GAZDIK, *EL LIBRO NEGRO DEL TSJ DE VENEZUELA: DEL SECUESTRO DE LA DEMOCRACIA Y LA USURPACIÓN DE LA SOBERANÍA POPULAR A LA RUPTURA DEL ORDEN CONSTITUCIONAL (2015–2017)* [THE BLACK BOOK OF THE SUPREME TRIBUNAL OF JUSTICE OF VENEZUELA: FROM THE ABDUCTION OF DEMOCRACY AND THE USURPATION OF POPULAR SOVEREIGNTY TO THE BREAKDOWN OF CONSTITUTIONAL ORDER (2015–2017)] (2017) (analyzing the decisions of the Constitutional Chamber of the Supreme Tribunal against the National Assembly); PODER JUDICIAL, *MEMORIAL DE AGRAVIOS 2016* [JUDICIAL POWER, MEMORIAL OF GRIEVANCES 2016] (2016) (analyzing the Constitutional Chamber decisions issued in 2016 to neutralize the functions of the National Assembly); José Vicente Haro, *Las 111 decisiones inconstitucionales del TSJ ilegítimo desde el 6D-2015 contra la Asamblea Nacional, los partidos políticos, la soberanía popular y los DDHH* [The 111 Unconstitutional Decisions of the Illegitimate Supreme Tribunal of Justice from 6D-2015 Against the National Assembly, the Political Parties, Popular Sovereignty, and Human Rights], BUSCANDO EL NORTE (July 10, 2017), <http://josevicenteharogarcia.blogspot.com/2016/10/las-33-decisiones-del-tsj.html> (listing all the rulings of the Constitutional Chamber against the National Assembly).

73. See Lansberg-Rodríguez, *supra* note 71 (“Maduro . . . moved to pack the 32-member Supreme Court with 12 new judges, following their predecessors’ suspicious ‘early retirement.’ For good measure president Maduro has also declared that he will ‘not accept’ any legislation passed by the new parliament to free political prisoners, virtually guaranteeing that such an initiative would end up at the mercy of the supreme court.”).

74. See Daniel Lansberg-Rodríguez, *Venezuela’s Supreme Court Suspends the Opposition-Dominated Parliament*, FOREIGN POLICY (Jan. 13, 2016), <https://>

even went so far as to reform the Assembly's internal regulations of functioning and debates in order to subject the exercise of its legislative functions to prior approval by the Executive branch,⁷⁵ an unthinkable abuse of executive power in any democratic state. Further reducing the Assembly's political power to control the government and the public administration, the Chamber imposed a rule that requires prior approval by the Executive Vice-President before a Minister can be questioned by the Assembly; eliminated the possibility for the Assembly to oppose and disapprove the states of emergency that the executive has successively decreed; prohibited the National Assembly from approving votes of no-confidence against the Ministers; ignored the constitutional obligation of the President to submit his Annual Address on the State of the Nation before the National Assembly, deciding instead for the President to deliver it before the same Supreme Tribunal; did away with the requirement of legislative approval of the national budget law, transforming it into a mere executive decree to be approved by the Tribunal; abolished the Assembly's power to review its own decisions and repeal them, as it would have been able to do for the unconstitutional appointment of the justices of the Supreme Tribunal made in December 2015; prevented the National Assembly from expressing its political opinion during debates; and annulled all major bills, resolutions and declarations adopted by the Assembly.⁷⁶

foreignpolicy.com/2016/01/13/venezuelas-supreme-court-suspends-the-opposition-dominated-parliament/ ("On Monday, the Constitutional Chamber of Venezuela's Supreme Court . . . suspended the Assembly and declared its leadership to be 'in contempt' of the court's authority.").

75. Allan R. Brewer-Carías, *El fin del Poder Legislativo: la regulación por el Juez Constitucional del régimen interior y de debates de la Asamblea Nacional, y la sujeción de la función legislativa de la Asamblea a la aprobación previa por parte del Poder Ejecutivo* [*The End of the Legislative Power: The Constitutional Court's Regulation of the Interior Regime and National Assembly Debates, and the Subjection of the Legislative Function of the Assembly to Prior Executive Approval*], 145–46 *REVISTA DE DERECHO PÚBLICO*, 428, 428 (2016).

76. See generally ALLAN R. BREWER-CARIÁS, *DICTADURA JUDICIAL Y PERVERSIÓN DEL ESTADO DE DERECHO: LA SALA CONSTITUCIONAL Y LA DESTRUCCIÓN DE LA DEMOCRACIA EN VENEZUELA* [JUDICIAL DICTATORSHIP AND PERVERSION OF THE RULE OF LAW: THE CONSTITUTIONAL CHAMBER AND THE DESTRUCTION OF DEMOCRACY IN VENEZUELA] 195–213; 259–313 (2016) (analyzing a series of Constitutional Chamber decisions removing power from Venezuela's legislative branch and leading to a blurring of the country's executive and judicial branches).

Finally, based on decisions issued in 2017 and following an alleged contempt of court ruling by the Electoral Chamber of the same Supreme Tribunal,⁷⁷ the Constitutional Chamber systematically declared null and void all “present and future decisions” of the National Assembly, in some occasions even threatening to revoke the popular mandate of its members and to imprison them.⁷⁸

However, the process did not end here. In one of its most notorious actions, the Constitutional Chamber issued two decisions in March 2017 (No. 155 of March 27, 2017, and No. 156 of March 29, 2017), wherein it unconstitutionally declared a state of emergency, eliminated the parliamentary immunity of the representatives, and arbitrarily assumed all parliamentary powers of the National Assembly.⁷⁹ Further, the Tribunal went so far as to delegate legislative powers to the President of the Republic, allowing him to reform laws and codes, including the Criminal Code and the Organic Code of Criminal Procedure, at his own discretion.⁸⁰ It was these decisions that finally

77. On December 30, 2015, in order to prevent the opposition gaining control of the qualified majority of the National Assembly, the Electoral Chamber of the Supreme Tribunal issued a precautionary measure suspending the proclamation of the four elected representatives of the Amazon State. Notwithstanding, the Assembly, having the power to qualify its own members, decided to incorporate the elected representatives. Instead of sending the case to the criminal courts in order to declare the representatives that disobeyed the judicial order in contempt, the Constitutional Chamber directly declared the whole Assembly, as an institution, in contempt, declaring the nullity of all its past and future decisions in an unconstitutional way. *See id.* at 33 (elaborating on this declaration).

78. *See* ALLAN R. BREWER-CARÍAS, LA CONSOLIDACIÓN DE LA TIRANÍA JUDICIAL: EL JUEZ CONSTITUCIONAL CONTROLADO POR EL PODER EJECUTIVO ASUMIENDO EL PODER ABSOLUTO [THE CONSOLIDATION OF JUDICIAL TYRANNY: THE CONSTITUTIONAL JUDGE CONTROLLED BY AN EXECUTIVE ASSUMING ABSOLUTE POWER] 131–45 (2017) (detailing the Supreme Tribunal’s decision to begin indictment proceedings and jail National Assembly members for “disrespect,” without due process).

79. ALEJANDRO SALINAS RIVERA & FEDERICO ANDREU-GUZMÁN, INT’L COMM’N OF JURISTS, THE SUPREME COURT OF JUSTICE OF VENEZUELA: AN INSTRUMENT OF THE EXECUTIVE BRANCH 37–38 (Leslie Carmichael trans.) (2017) (describing decisions 155 and 156).

80. BREWER-CARÍAS, LA CONSOLIDACIÓN DE LA TIRANÍA JUDICIAL, *supra* note 78, at 215–216.

triggered Venezuela's application to the Inter-American Democratic Charter by the Organization of American States.⁸¹

These decisions gave birth to a new model of authoritarian government that did not have its origin in a military *coup*, as was common in Latin America, but rather in the manipulation of popular elections, the degradation of judicial review processes, and the abuse of democratic tools. The result of this model was to ultimately give de facto control of the country to the military and destroy the rule of law and democratic principles, all under the convenient camouflage of constitutional and elective processes.

After all these developments, the 1999 Venezuelan Constitution today is a tragic example of a Constitution that was violated even before it was published. There is no other way to explain how a federal state was transformed into a centralized system of power. The separation between five branches of government has been replaced by a political system of total concentration of power and the principle of representativeness has been neglected. Political participation has been denied and ignored, economic liberty has been engulfed by strict nationalization of all activities, and a state capitalism has emerged a result of indiscriminate expropriation and confiscation.⁸²

One of the last acts of this institutional tragedy began in July 2017, with the unconstitutional convening and functioning of a new Constituent Assembly with unlimited powers and

81. The Organization of American States decided in 2017, at the proposal of its Secretary General, that Venezuela had violated its Constitutional order and thus violated the Inter-American Democratic Charter of September 2001. LA CRISIS DE LA DEMOCRACIA EN VENEZUELA, LA OEA Y LA CARTA DEMOCRÁTICA INTERAMERICANA: DOCUMENTOS DE LUIS ALMAGRO [THE CRISIS OF DEMOCRACY IN VENEZUELA, THE OAS AND THE INTER-AMERICAN DEMOCRATIC CHARTER: DOCUMENTS OF LUIS ALMAGRO] 27 (2015-2017) (Allan R. Brewer-Carías ed., 2d ed., 2017).

82. In relation to the oil industry, *see, e.g.*, ALLAN R. BREWER-CARIÁS, CRÓNICA DE UNA DESTRUCCIÓN: CONCESIÓN, NACIONALIZACIÓN, APERTURA, CONSTITUCIONALIZACIÓN, DESNACIONALIZACIÓN, ESTATIZACIÓN, ENTREGA Y DEGRADACIÓN DE LA INDUSTRIA PETROLERA [CHRONICLE OF DESTRUCTION: CONCESSION, NATIONALIZATION, OPENING, CONSTITUTIONALIZATION, DENATIONALIZATION, ESTABLISHMENT, DELIVERY, AND DEGRADATION OF THE OIL INDUSTRY] 251-77 (2018) (recounting the Constitutional and legal bases that mediated a state-driven process of destruction of the Venezuelan petroleum industry).

duration.⁸³ President Nicolás Maduro installed the Assembly in breach of the provisions of the Constitution that entrust the power to convene such an Assembly to the people only by means of a referendum.⁸⁴ The new Constituent Assembly, composed of more than 500 members, was elected through an ad hoc electoral system contrary to the universal and direct suffrage guaranteed in the Constitution, based on a territorial (municipal) and corporate vote exercised by chosen sectors of the society, thus institutionalizing discrimination and exclusion.⁸⁵

The purpose of the Assembly was supposedly to construct a socialist, populist, or communal state framework. This was the same constitutional framework that had been rejected by the people in 2007, and the same that has been unconstitutionally implemented through ordinary legislation since 2010.⁸⁶

The unconstitutional convening of this fraudulent Constituent Assembly was again challenged before the Constitutional Chamber of the Supreme Tribunal. However, the result of this challenge is best illustrated by the joke that resulted

83. See Joey Payne, *Elections for National Constituent Assembly Kicks Off in Venezuela*, DREW U. ACORN, July 31, 2017 (explaining the scope of the new Assembly and international and domestic disapproval).

84. See Allan R. Brewer-Carías, Speech at La Asamblea de Ciudadanos en Nueva York: La Inconstitucional e Insolente Convocatoria de una Asamblea Nacional Constituyente en Fraude a la Voluntad Popular [Speech at the Assembly of Citizens in New York: The Unconstitutional and Insolent Convocation of a National Constituent Assembly Against the Popular Will] (June 5, 2017) (analyzing and discussing Decree No. 2.830, through which President Maduro convoked the Assembly).

85. See Venice Comm'n, *Venezuelan President's Bid for New Constitution Lacks "Credibility"*, COUNCIL OF EUR. (July 21, 2017), https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/venezuelan-president-s-bid-for-new-constitution-lacks-credibility-venice-commission?_101_INSTANCE_StEVosr24HJ2_languageId=EN_GB (finding that Maduro did not have the power under the Constitution to determine the rules for the election, and that "the rules which he has decided in his decree—a combination of territorial and sectoral representation—grossly violate the democratic principle of equality of vote.").

86. See ALLAN R. BREWER-CARIÁS, *USURPACIÓN CONSTITUYENTE 1999, 2017: LA HISTORIA SE REPITE: UNAS VECES COMO COMEDIA Y OTRAS COMO TRAGEDIA [CONSTITUENT USURPATION 1999, 2017: HISTORY REPEATS ITSELF: SOMETIMES AS COMEDY, OTHER TIMES AS TRAGEDY]* 30–31 (2018) (discussing the failure of the Constitutional reform of 2007 and subsequent legal violations).

from the Chamber's decisions: a referendum is indeed needed in order to change a comma, word, or phrase in an article of the Constitution, but to change the entire Constitution, as it was intended, it is not necessary to ask for the people's approval.⁸⁷ With this nonsensical opinion, eight individuals (the President of the Republic and seven Justices of the Tribunal) imposed their will upon the people.

Based on this unconstitutional decision, the members of the Constituent Assembly were elected in July 2017, all of them affiliated with the official party.⁸⁸ The Assembly assumed an original constituent power, substituting the people's will and sovereignty, acting with supra-constitutional powers, and imposing its will on all constituted powers, including the Supreme Tribunal. The judicial tyranny of the previous years was thus in part transformed into a constituent tyranny, whereby the Supreme Tribunal became completely subordinated to the Executive.⁸⁹

Additionally, since 2017 the Constituent Assembly has acted as a sort of Caribbean reincarnation of the 1793 *Comité de salut public* of the Terror Regime in revolutionary France, which was established in order to prosecute any dissidence.⁹⁰

87. See Allan R. Brewer-Carías, *El Juez Constitucional vs. El pueblo como poder constituyente originario* [*The Constitutional Judge vs. The People as Originating Constituent Power*], in ESTUDIOS SOBRE LA ASAMBLEA NACIONAL CONSTITUYENTE Y SU INCONSTITUCIONAL CONVOCATORIA EN 2017 [STUDIES ON THE NATIONAL CONSTITUENT ASSEMBLY AND ITS UNCONSTITUTIONAL CONVENING IN 2017] 481 (Allan R. Brewer-Carías and Carlos García Soto eds., 2017) (discussing decision No. 378 of May 31, 2017, and decision No. 455 of June 12, 2017 and how the Constitutional Chamber overrode the people in convening a Constitutional Assembly).

88. See Nicholas Casey, *Venezuela's New, Powerful Assembly Takes Over Legislature's Duty*, N.Y. TIMES (Aug. 18, 2017), <https://www.nytimes.com/2017/08/18/world/americas/venezuela-constituent-assembly-maduro.html> (noting how all the candidates for the July 30, 2017 election were "party stalwarts").

89. See BREWER-CARIÁS, USURPACIÓN CONSTITUYENTE 1999, 2017, *supra* note 86, at 609–15 (reflecting on the shift to "Constituent Tyranny"). See generally CARLOS AYALA CORAO & RAFAEL CHAVERO GAZDIK, LA ASAMBLEA NACIONAL CONSTITUYENTE DE VENEZUELA (2017–2019): EL LEVIATÁN DE LA DEMOCRACIA [THE NATIONAL CONSTITUENT ASSEMBLY OF VENEZUELA (2017–2019): THE LEVIATHAN OF DEMOCRACY] (2019) (writing about how the judiciary has become a tool of the executive).

90. See generally *Committee of Public Safety*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/Committee-of-Public-Safety> (last visited

The Assembly has declared, for instance, that elected members of the National Assembly were traitors to the motherland, particularly after they met with public officials and representatives in foreign countries in order to explain the situation in Venezuela.⁹¹ The persecution of members of the National Assembly reached new heights in August 2018 when the Supreme Tribunal, in collaboration with the Constituent Assembly, ordered the apprehension and incarceration of two representatives, unjustly indicting them of magnicide and other grave crimes against the state.⁹²

V. AN UNCONSTITUTIONAL PRESIDENTIAL ELECTION AND SUBSEQUENT YEAR OF THE TWO PRESIDENTS: ONE AS USURPER AND THE OTHER AS LEGITIMATE

The authoritarian picture has been made ever clearer thanks to unconstitutional actions taken by the regime since 2017, beginning with the National Constituent Assembly's decision to supplant the National Electoral Council and illegitimately convene an advanced presidential election in order to reelect Nicolás Maduro for a new term (2019–25).⁹³

That fraudulent reelection of Nicolás Maduro was held on May 20, 2018, through a process that did not meet the national and international standards set for democratic, free, fair, and transparent elections.⁹⁴ Consequently, the National Assembly, as a political and legislative body that represents the

Apr. 13, 2020) (noting how the Committee used harsh measures against enemies of the Revolution).

91. *Venezuela's Top Court Accuses More Lawmakers of Treason; Congress Building Closed*, REUTERS, May 14, 2019, <https://www.reuters.com/article/us-venezuela-politics/venezuelas-top-court-accuses-more-lawmakers-of-treason-congress-building-closed-idUSKCN1SK288>.

92. Holly K. Sonneland, *The Pressure on Venezuela's National Assembly*, AM. SOC'Y COUNCIL AM. (Jan. 15, 2020), <https://www.as-coa.org/articles/pressure-venezuelas-national-assembly> (identifying Juan Requesens and Gilber Caro as the National Assembly representatives in detention).

93. See Allan R. Brewer-Carías, *Reflexiones sobre la dictadura en Venezuela, después de la fraudulenta "reelección" presidencial de mayo de 2018* [*Reflections on the Dictatorship in Venezuela, After the Fraudulent Presidential "Reelection" of May 2018*], 153–54 REVISTA DE DERECHO PÚBLICO, 177 (2018) (explaining how the National Constituent Assembly arranged the fraudulent election).

94. See William Neuman & Nicholas Casey, *Venezuela Election Won by Maduro Amid Widespread Disillusionment*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/2018/05/20/world/americas/venezuela-election.html>

sovereign will of the people and as the primary interpreter of the Constitution, approved a Resolution (May 22, 2018) denouncing the farce of the elections process, stating that it violated all the electoral guaranties recognized in human rights treaties and agreements, and in the Constitution of the Bolivarian Republic of Venezuela and the Organic Law of Electoral Processes, considering the effective absence of the rule of law; the partiality of the electoral arbiter; the violation of the effective guaranties for exercising the right to vote and the right to be elected to office by popular vote; the lack of effective controls against acts of electoral corruption perpetrated by the government; the systematic breach of the freedom of expression, together with the partiality of mass media controlled by the government; and the absence of effective and transparent mechanisms of electoral oversight.⁹⁵

The National Assembly also stated that if the majority of the people of Venezuela refrained from participating in the illegitimate elections process,⁹⁶ in which 68% of the Registered electors abstained,⁹⁷ it was the people who, “in defense of our Constitution and invoking Articles 333 and 350 sanctioned by the Constitution, decided to reject, disavow and not

(citing various undemocratic measures Maduro’s party undertook to ensure his victory).

95. Acuerdo reiterando el desconocimiento de la farsa realizada el 20 de mayo de 2018 para la supuesta elección del Presidente de la República [Resolution Reiterating the Rejection of the Farce Carried Out for the Supposed Election of the President of the Republic] Asamblea Nacional de la República Bolivariana de Venezuela (May 22, 2018). See also ntn24.com, *Asamblea Nacional Desconoce Resultados del 20M y Declara a Maduro “usurpador”* [National Assembly Does Not Recognize Results from May 20th and Declares Maduro a “Usurper”], NTN24 (May 22, 2018), <https://www.ntn24.com/america-latina/la-tarde/venezuela/asamblea-nacional-desconoce-resultados-del-20m-y-declara-maduro> (writing about the Resolution that declared Nicolás Maduro “usurper” of the presidency of the Republic).

96. See Neuman & Casey, *supra* note 94 (discussing low voter turnout and lack of enthusiasm).

97. See Alonso Moleiro, *Las presidenciales registran la abstención más alta en la historia de Venezuela* [Presidential Election Registers the Highest Abstention in the History of Venezuela], EL PAÍS (May 25, 2018), https://elpais.com/internacional/2018/05/25/america/1527256527_940452.html

validate the farce called for on May 20, in spite of the government's pressure through mediums of social control."⁹⁸

By virtue of the foregoing, the National Assembly resolved "to declare as 'non-existent' the farce that took place on May 20, 2018;"⁹⁹ "to disavow the alleged outcome announced by the National Electoral Council, especially the alleged election of Nicolás Maduro Moros as President of the Republic, who must heretofore be deemed a usurper of said office;"¹⁰⁰ and to "disavow any illegal and illegitimate acts of proclamation and swearing in of Nicolas Maduro for the 2019–2025 term."¹⁰¹

The National Assembly had also issued a resolution on November 13, 2018, "to promote a political solution for the national crisis," declaring that "as of January 10, 2019, Nicolas Maduro continues to usurp the office of President of the Republic, in spite of not being the president-elect," and deeming "all the decisions of the National Executive Branch ineffective as of that date, pursuant to the terms of Article 138 of the Constitution."¹⁰²

This resolution must be perceived as a manifestation of civil disobedience and of resistance against illegitimacy. It disavowed the results of a fraudulent election, declaring it non-existent, and ignored the proclamation of the supposedly elected official.¹⁰³

98. Acuerdo reiterando el desconocimiento de la farsa realizada el 20 de mayo de 2018 para la supuesta elección del Presidente de la República, *supra* note 95.

99. *Id.*

100. *Id.*

101. *Id.*

102. Acuerdo con el objeto de impulsar una solución política a la crisis nacional, fortaleciendo las fuerzas democráticas del pueblo de Venezuela con el respaldo de la comunidad internacional [Resolution to Propel a Political Solution to the National Crisis, Strengthening the Democratic Force of the People of Venezuela with the Support of the International Community], Asamblea Nacional de la República Bolivariana de Venezuela (Nov. 13, 2018).

103. See ALLAN R. BREWER-CARÍAS, EL DERECHO CONSTITUCIONAL A LA DESOBEDIENCIA CIVIL: ESTUDIOS: APLICACIÓN E INTERPRETACIÓN DEL ARTÍCULO 350 DE LA CONSTITUCIÓN DE VENEZUELA DE 1999 [THE CONSTITUTIONAL RIGHT TO CIVIL DISOBEDIENCE: STUDIES: APPLICATION AND INTERPRETATION OF ARTICLE 350 OF THE 1999 VENEZUELAN CONSTITUTION] 183–98 (2019) (explaining how the resistance to Maduro's 2018 reelection is an example of contemporary constitutional civil disobedience).

The Resolution of May 22, 2018, specifically mentioned a Declaration of the *Grupo de Lima* issued on May 21, 2018,¹⁰⁴ which was followed by other declarations of a similar tone expressed by more than 44 governments of the Americas and Europe, all rejecting the legitimacy of the election.¹⁰⁵ The *Grupo de Lima*, made up of representatives of the governments of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Guyana, Honduras, México, Panamá, Paraguay, Perú, and Saint Lucia, agreed to contribute to “preserve the attributions of the National Assembly,” expressing that they “[d]o not recognize the legitimacy of the electoral process that took place in Venezuela and that ended on May 20, 2019, for failure to meet the international standards of a democratic, free, just and transparent electoral process.”¹⁰⁶

The same day, Mike Pompeo, Secretary of State of the United States, said simply that “[t]he United States condemns the fraudulent election that took place in Venezuela on May 20. This so-called ‘election’ is an attack on constitutional order and an affront to Venezuela’s tradition of democracy.”¹⁰⁷

On May 23, the G7, which gathers the leaders of Germany, Canada, the United States, France, Italy, Japan, and the United Kingdom, denounced the presidential election because it failed to “meet accepted international standards” and did not safeguard “basic guarantees for an inclusive, fair and democratic election.”¹⁰⁸ The statement rejected the “Venezue-

104. Acuerdo reiterando el desconocimiento de la farsa realizada el 20 de mayo de 2018 para la supuesta elección del Presidente de la República, *supra* note 95.

105. Moises Rendon, *Venezuela’s Presidency in Jeopardy*, CTR. FOR STRATEGIC & INT’L STUD. (Oct. 22, 2018), <https://www.csis.org/analysis/venezuelas-presidency-jeopardy> (reporting that more than 50 countries did not recognize the results of the election).

106. Grupo de Lima, *Declaración del Grupo de Lima sobre el fraudulento proceso electoral del 20 de mayo* [Declaration of the Grupo de Lima on the Fraudulent Electoral Process of May 20], PROVEA (May 21, 2018), <https://derechos.org.ve/actualidad/declaracion-del-grupo-de-lima-sobre-el-fraudulento-proceso-electoral-del-20-de-mayo>.

107. Press Statement, Michael R. Pompeo, Secretary of State, U.S. Dep’t of State, An Unfair, Unfree Vote in Venezuela, (May 21, 2018), <https://www.state.gov/an-unfair-unfree-vote-in-venezuela/>.

108. Press Release, European Council, G7 Leaders’ Statement on Venezuela (May 23, 2018), <https://www.consilium.europa.eu/en/press/press-releases/2018/05/23/g7-leaders-statement-on-venezuela/>.

lan presidential election, and its results, as it is not representative of the democratic will of the citizens of Venezuela.”¹⁰⁹

The consequence of this rejection of Maduro’s reelection was the lack of a legitimately elected president who could be sworn in on January 10, 2019. As a result, on January 4, 2019, the National Academy of Political and Social Sciences, Venezuela’s highest consultative entity on institutional matters, issued a proclamation highlighting that due to “the non-existence of the conditions necessary to hold free and fair elections,”¹¹⁰ the illegitimate presidential reelection of May 2018 placed the country in an “unprecedented situation.”¹¹¹ This conclusion was due to the fact that according to the Academy, “the coming January 10th 2019, the date on which, as established in article 231 of the Constitution, the President of the Republic for the term 2019–2025 is to be sworn, [Venezuela does] not have a president legitimately elected by means of free and just election.”¹¹²

Consequently, the Academy, facing the grave situation confirmed by those facts, demanded that “the different Branches of Government respect the Constitution,” and take actions to achieve “the full reestablishment of the constitutional and democratic order of the country.”¹¹³ This message was addressed to the National Assembly, the only state organ with democratic legitimacy in the country as all the other branches of government had been overcome by the executive.

The National Assembly, as the people’s representative and the primary interpreter of the Constitution, had no choice but

109. *Id.*; *El G7 Denunció las Elecciones en Venezuela por “no Cumplir los Estándares Internacionales” ni Asegurar “Garantías Básicas”* [The G7 Denounced the Elections in Venezuela for “Failing to Comply with International Standards” and Ensure “Basic Guarantees”], INFOBAE (May 23, 2018), <https://www.infobae.com/america/venezuela/2018/05/23/el-g7-denuncio-las-elecciones-en-venezuela-por-no-cumplir-los-estandares-internacionales-ni-asegurar-garantias-basicas/>.

110. Press Release, La Academia de Ciencias Políticas y Sociales [The Academy of Political and Social Sciences], *Ante el Diez de Enero de 2019: Fecha en la que ha de Juramentarse al Presidente de la República Conforme a la Constitución* [Before January 10, 2019: The Date on Which the President of the Republic Must Be Sworn in, According to the Constitution] (Jan. 4, 2019), http://www.constitucionalucv.com/pronunciamientos/acienpol_ene_2019.pdf.

111. *Id.*

112. *Id.*

113. *Id.*

to interpret the Constitution in such a way as to bring about a resolution of the political crisis. To fulfill the Article 231 requirement of having a legitimately elected president to fill the office for the 2019–2025 term, the Assembly analogized to Article 233 of the Constitution, which refers to cases of absolute absence of the president prior to taking office. In such instances, Article 233 provides the following:

When an elected President is permanently unavailable to serve prior to his inauguration, a new election by universal suffrage and direct ballot shall be held within 30 consecutive days. Pending election and inauguration of the new President, the President of the National Assembly shall take charge of the Presidency of the Republic.¹¹⁴

Interpreting the Constitution and applying this rule by analogy, the National Assembly determined that because there was no legitimately elected president that could be constitutionally sworn in for the upcoming term, Article 233 of the Constitution required that the president of the National Assembly had the duty to take charge of the presidency of the Republic.¹¹⁵ Because assuming the presidency of the Republic under such circumstances was one of the functions inherent in the President of the Assembly's duties, it was fully within the regular operation of law. There was no need for any additional swearing in before the Assembly, for he had already done this when accepting the position as President of the Assembly on January 5, 2019.¹¹⁶

114. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, Dec. 30, 1999, art. 233.

115. Graciela Rodriguez-Ferrand, *Venezuela: President of the National Assembly Cites Constitutional Basis for Assuming Office of the Presidency on an Interim Basis*, GLOBAL LEGAL MONITOR (Jan. 30, 2019), <https://www.loc.gov/law/foreign-news/article/venezuela-president-of-the-national-assembly-cites-constitutional-basis-for-assuming-office-the-presidency-on-an-interim-basis/>.

116. TRANSICIÓN HACIA LA DEMOCRACIA EN VENEZUELA, *supra* note 54 at 160; Allan R. Brewer-Carías, Presentation at the Launch of the N.Y. Chapter of the Inter-Am. B. Ass'n, *Some Constitutional and Legal Challenges Posed by the Process of Transition Towards Democracy Decried by the National Assembly of Venezuela Since January 2019* (July 17, 2019) http://www.iaba.org/pdfs/LIBROS_ENSAYOS/1232_Brewer_Constitutional_challenges_Process_Transition_towards_Democracy_FIA_2019.pdf.

The National Assembly issued a Bill of Resolution explaining its interpretation of the Constitution on the same day as the swearing in ceremony, which decreed that there was an “emergency due to the total disruption of constitutional continuity,” setting the path for the “ceasing of the usurpation.”¹¹⁷ As the president of the National Assembly stated on that same day, “Today there is no Chief of State, today there is no commander in chief of the Armed Forces, today there is a National Assembly that represents the people of Venezuela.”¹¹⁸

A few days later, on January 15, 2019, the National Assembly completed its interpretation of the Constitution and issued another resolution, reaffirming “the usurpation of the Presidency of the Republic” by Nicolás Maduro Moros and the need to “reestablish the Constitutional order,” and adopting a set of “decisions to proceed to restore the force of the constitutional order, on the basis of Articles 5, 187, 233, 333 and 350 of the Constitution.”¹¹⁹

The National Assembly specifically decided to restore the constitutional order based on Article 333, which give citizens the right to take necessary action to establish the validity of the constitution, and Article 350, which sanctions civil disobedience against Maduro’s usurpations.¹²⁰ The Assembly resolved to effectively form a transition government that could proceed to organize free and transparent elections.¹²¹

In the same resolution, the Assembly decided “to formally declare the usurpation of the Presidency of the Republic by Nicolás Maduro Moros and, consequently, assume as legally ineffective the de facto status of Nicolás Maduro and declare all

117. *Venezuela: Asamblea Nacional Se Declara “En Emergencia” Por Jura de Nicolás Maduro* [Venezuela: National Assembly Declares “an Emergency” Over the Swearing-In of Nicolás Maduro], T13 (Jan. 10, 2019), <https://www.t13.cl/noticia/mundo/venezuela-asamblea-nacional-se-declara-emergencia-jura-nicolas-maduro>.

118. Juan Guaidó (@jguaido), TWITTER (Jan. 10, 2019, 2:44 PM), <https://twitter.com/jguaido/status/1083449585232736256?lang=EN>.

119. *See* Acuerdo sobre la declaratoria de usurpación de la Presidencia de la República por parte de Nicolás Maduro Moros y el restablecimiento de la vigencia de la Constitución [Resolution on the Declaration of Usurpation of the Presidency of the Republic by Nicolás Maduro Moros and the Reestablishment of the Validity of the Constitution] Asamblea Nacional de la República Bolivariana de Venezuela (Jan. 15, 2019).

120. *Id.*

121. *Id.*

the alleged actions of the Executive Branch to be null and void, pursuant to Article 138 of the Constitution.”¹²² The Assembly explained its plan:

to adopt, within the framework of the application of Article 233, the measures that allow restoring the conditions of electoral integrity so that, once the usurpation ceases and a Transition Government is formed and installed, it will call and hold free and transparent elections within the shortest time possible, as provided in the Constitution and other Laws of the Republic and applicable treaties.¹²³

For this transition process, the National Assembly also enacted a law on February 5, 2019, titled the “Statute that Governs the Transition to Democracy in Order to Reinstate the Constitution,” which confirmed that “the president of the National Assembly is the legitimate acting president of the Bolivarian Republic of Venezuela in accordance with Article 233 of the Constitution.”¹²⁴

The National Assembly’s constitutional interpretation in its January 15 Resolution and in the Statute for the Transition created an implicit understanding that, as of January 10, 2019, representative Juan Guaidó, in his capacity as President of the National Assembly, by mandate of the Constitution was the interim President of the Republic.¹²⁵ Juan Guaidó himself expressed the same message in various public statements, including a public rally held on January 23, 2019.¹²⁶

In assuming the interim presidency of the Republic in his capacity as President of the National Assembly, Guaidó merely

122. *Id.*

123. *Id.*

124. Estatuto que rige la transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela [Statute Governing the Transition to Democracy to Reestablish the Validity of the Constitution of the Bolivarian Republic of Venezuela], Asamblea Nacional de la República Bolivariana de Venezuela (Feb. 5, 2019); BREWER-CARÍAS, TRANSICIÓN HACIA LA DEMOCRACIA EN VENEZUELA, *supra* note 54, at 249.

125. Rodríguez-Ferrand, *supra* note 115.

126. See Ana Vanessa Herrero, *After United States Backs Juan Guaidó as Venezuela’s Leader, Maduro Cuts Ties*, N.Y. TIMES (Jan. 23, 2019), <https://www.nytimes.com/2019/01/23/world/americas/venezuela-protests-guaido-maduro.html> (reporting that Guaidó swore to formally assume executive powers at the January rally).

fulfilled a duty imposed by the Constitution. As such, he did not self-proclaim himself to be the president, as has been erroneously repeated in media reports.¹²⁷ He simply assumed one of the functions that was constitutionally vested in him as president of the National Assembly.¹²⁸ Therefore, the “oath” expressed by Guaidó at a rally on January 23, 2019,¹²⁹ although an important political formality, did not replace the formal oath that he swore when becoming President of the National Assembly on January 5, 2019, which fulfilled, among other duties, that of assumption of the presidency of the Republic.

The subsequent popular rallies and demonstrations within Venezuela indicated that citizens understood what had happened.¹³⁰ The international community, which acknowledged Guaidó as the legitimate acting president of the Republic,¹³¹ also understood. For example, in its Resolution of January 31, 2019, the European Parliament acknowledged Guaidó as “the legitimate and democratically elected president of the national Assembly” and thus recognized him to be “the legitimate interim president of the Bolivarian Republic of Venezuela, in accordance with the Venezuelan Constitution, as stated in Article 233, and express[ed] its full support for his roadmap.”¹³²

But, in spite of all this turmoil, the fact is that the de facto totalitarian government controlled by Nicolás Maduro has continued with its abuses and subjugation of the other branches of government,¹³³ with the one exception being the

127. See, e.g., Daniella Cheslow, *Venezuelan Opposition Leader Guaidó Declares Himself President, with U.S. Backing*, NPR (Jan. 23, 2019), <https://www.npr.org/2019/01/23/687643405/anti-maduro-protesters-march-in-cities-across-venezuela>.

128. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, Dec. 30, 1999, art. 233; BREWER-CARÍAS, *TRANSICIÓN HACIA LA DEMOCRACIA EN VENEZUELA*, *supra* note 54, at 227.

129. Herrero, *supra* note 126.

130. *Id.*

131. Laurence Norman & Ryan Dube, *Global Support Grows for Juan Guaidó as Venezuela's President*, WALL ST. J. (Feb. 4, 2019), <https://www.wsj.com/articles/juan-guaido-recognized-as-venezuelas-president-by-major-eu-countries-11549275207>.

132. Resolution on the Situation in Venezuela, EUR. PARL. DOC. P8_TA(2019)0061.

133. Sam Meredith, *One Year On: The Day Venezuela Became Known as the Country with Two Presidents*, CNBC (Jan. 23, 2020), <https://www.cnbc.com/>

legislative branch that from 2016 has been controlled by the opposition.

The regime has been able to work around the opposition by shrouding its actions in a veil of legality through decisions of the Constitutional Chamber against the National Assembly. Examples of the abuse are plenty: the shutdown of mass media, the indiscriminate murder of Venezuelans with impunity, the committing of electoral fraud, the destruction of the economy and the productive apparatus, the deprivation of opponents' liberty, the repression of students, and the brutalization and torture of demonstrators.¹³⁴ This abuse has gone unchecked and uncontrolled, but it is all supposedly legal because it has been supported by the other branches of government (excluding the National Assembly), the judiciary in particular. The current situation is so bad, it has recently been documented by the U.N. High Commissioner for Human Rights' July 2019 *Bachelet Report*.¹³⁵ Among many other offenses, the report mentions tortures of detainees and the assassination of political prisoners by the police in their detention centers, without any sort of remorse by the government, and with total impunity.¹³⁶

These actions are obviously contrary to the Constitution, and they evidence that the Venezuelan state under the usurped government of Nicolás Maduro is not a democracy or a state that respects the rule of law. Democracy is much more than a system that features elections. Fundamentally, democracy is a system where the separation of powers is guaranteed, because without separation of powers there can be no protection of human rights, free elections, pluralism, or rule of law.

2020/01/23/venezuela-crisis-one-year-on-from-guaidos-challenge-to-maduro.html (discussing Maduro's refusal to cede power).

134. See generally U.N. High Comm'r for Human Rights, *Human Rights in the Bolivarian Republic of Venezuela*, U.N. Doc. A/HRC/41/18 (July 5, 2019) (documenting the multifarious forms of human rights abuses in Venezuela from January 2018 to May 2019).

135. *Id.*

136. *Id.*

VI. THE CONSTITUTIONAL ROAD FROM POPULISM TO AUTHORITARIANISM

How did Venezuelans arrive at this unfortunate situation? How did this happen to the country that throughout the second half of last century had the most envied democracy in Latin America? How did a democracy admired for its continuity and stability, a democracy characterized by separation of powers, free elections, strong political parties, civil liberties, freedom of speech, and open discussion of ideologies become an authoritarian state? What happened? How did we get here?

Nothing comes from nothing, and in the case of Venezuela, authoritarianism was the result of a late 20th century crisis in the democratic party system.¹³⁷ This crisis allowed and facilitated the concentration of power perpetrated in 1998 by Chávez and his populist companions.

As discussed previously, the 1999 *coup* was accomplished through an elective process. Chávez managed to get legitimately elected, despite the fact that he did not propose a specific political project, except the vague idea of seeking a “change,” by convening a National Constituent Assembly.¹³⁸ After his election and subsequent intervention in all branches of government, destroying their autonomy and independence, the final product was the drafting of a Constitution. As the author publicly denounced in 1999, as an independent member of the Constituent Assembly, that draft contained “an institutional framework designed for authoritarianism, which derived from the combination of state centralism, exacerbated presidential power, party power and militarism, for the organization of State.”¹³⁹

Time has sadly proven the author right.

All branches of government are now at the service of authoritarianism, with the exception of the National Assembly in the years after 2016. The judiciary in particular has been completely subdued by the Executive and is now staffed with temporary and provisional judges that are completely dependent

137. Tomaselli, *supra* note 24.

138. Zambrano, *supra* note 34.

139. See, e.g., 3 ALLAN R. BREWER-CARÍAS, DEBATE CONSTITUYENTE: APORTES A LA ASAMBLEA NACIONAL CONSTITUYENTE [CONSTITUENT DEBATE: CONTRIBUTIONS TO THE NATIONAL CONSTITUENT ASSEMBLY] 343 (1999) (showing the author’s disagreement with the draft’s contents).

on the government. The Comptroller General does not control anything, and the People's Defender does not protect nor defend. The General Prosecutor has become the controlled arm for persecuting the opposition, ensuring the total impunity of the military and paramilitary and allowing thousands to be murdered in the street. Finally, the Electoral Branch has become the key instrument for perpetrating electoral fraud and appears to be no more than a political agent for supporting the government's candidates.

The leaders of the totalitarian state, the ones responsible for all this institutional violence, are now realizing that they are running out of time. They have repeatedly made appeals to establish some sort of dialogue with opposition leaders, but these efforts have failed.¹⁴⁰

For any dialogue to produce results, above all it is the government that has to change and become more democratic. It must concede and to accept the full application of the Constitution, commit to democratic principles, and guarantee human rights. In other words, the government must accept democratic rules and pluralism.¹⁴¹

If the government fails to take these steps, there will undoubtedly be increasing popular rebellion. Civil society, including the student movement and the political opposition, which is supported by more than half of the country,¹⁴² will

140. Anatoly Kurmanaev, *Venezuela's Leader Suspends Talks with Opposition*, N.Y. TIMES (Aug. 8, 2019), <https://www.nytimes.com/2019/08/08/world/americas/venezuela-maduro-opposition-talks-barbados.html>.

141. See generally Allan R. Brewer-Carías, Nota de presentación, in INICIATIVA DEMOCRÁTICA DE ESPAÑA Y LAS AMÉRICAS: DOCUMENTOS PARA EL DIÁLOGO EN VENEZUELA [DEMOCRATIC INITIATIVE OF SPAIN AND THE AMERICAS: DOCUMENTS FOR THE DIALOGUE IN VENEZUELA] (Asdrúbal Aguiar ed., 2016) (reiterating calls for the Venezuelan government to respect separation of powers, political pluralism, and human rights while abiding by the Constitution).

142. "El rechazo a la gestión de Nicolás Maduro alcanzó 85,1%, de acuerdo al último sondeo realizado por Datanalisis entre el 13 y el 29 de julio pasado y publicada en el mes de agosto. Según la encuesta nacional Omnibus el gobernante chavista solo cuenta con 12,9% de apoyo en la actualidad." ["The rejection of Nicolás Maduro's management reached 85.1%, according to the latest survey carried out by *Datanalisis* between the thirteenth and twenty-ninth of last July and published in August. According to the national Omnibus survey, the Chavista ruler only has 12.9% support at present"]. 82,2% del país quiere que Maduro abandone el poder antes de que termine 2019 [82.2% of the Country Wants Maduro to Leave Power Before

not continue to accept a government that attempts to rule by force, persecution, intimidation, threats, and criminalization.

Venezuela as a nation has already spoken on this matter. As millions flee the country, we are bearing witness to the greatest exodus in the history of the Western world.¹⁴³ The will of the people cannot be ignored forever, and sooner or later this government that has turned its back on its people will inevitably be forced to answer to them.

One important lesson must be remembered from the tragic political failure Venezuela has endured for the past twenty years: when a political crisis resulting from the malfunctioning of the political parties in a democratic system occurs, provoking a lack of representativeness and participation, if the parties do not assume the task of designing a compromise or agreement to reinforce democracy, they risk of the appearance of new populist leadership promising to reinvent democracy in the name of the people. As Venezuela indicates, these new (anti)democratic heralds can proceed to assault power, and corrupt the democratic system. If left unchecked, they can destroy all the bases of the democratic state from within: representative democracy, pluralism, separation of powers, accountability, free expression, civil rights, and political liberties.

The Venezuelan experience is there.

the End of 2010], TAL CUAL (Aug. 9, 2019), <https://talcualdigital.com/el-rechazo-a-maduro-alcanzo-851-segun-el-ultimo-sondeo-de-datanalisis/>.

143. See Ishaan Tharoor, *Venezuela's Refugee Exodus is the Biggest Crisis in the Hemisphere*, WASH. POST (Aug. 23, 2018), <https://www.washingtonpost.com/world/2018/08/23/venezuelas-refugee-exodus-is-biggest-crisis-hemisphere/> (demonstrating the massive scale of Venezuela's refugee crisis).

