



“The (un)constitutional (in)justice: The case of Venezuela”

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Seminar report by Andrea Cristina Robles Ustariz*

On Tuesday, November 21st, in the Aula Vitale at the Department of Business and Law, Luis Petit Guerra explained the current state of the constitutional system of Venezuela, focusing on the role played by the Constitutional Chamber of the Supreme Court of Justice (known by its initial in Spanish as TSJ).

The current state of Venezuela is the result of its history and its causes, more than legal, are economic and political. The Venezuelan constitutional system is not in force today, but it is a *de facto* system. There is a crisis of the rule of law, because it has been kidnaped.

Starting from the historical aspects, the venezuelan constitutional system has its roots in the ideas of the Enlightenment and the Liberal revolutions. Great jurists just like Francisco de Miranda and Andrés Bello were from Venezuela and they introduced in their new-born legal system as an independent State the liberal ideas in vogue in Europe and the United States. But those ideas did not materialize in institutions, because the history of Venezuela is a story of military dictatorships, where democracy has been the exception, but not the rule. Hence, it is true to describe the Venezuelan people as a people that fails due the political immaturity.

Although we can find some rule of law theoretical progress, we talk about two paradigmatic constitutions: the constitution of 1961 and the constitution of 1999. Both are excellent examples of the developing on the paper, but not in practice.

The Constitution of 1961 was the main result of the defeat of the dictator Marco Pérez Jiménez, the last president of the 45 years of military dictatorship period. It was the first venezuelan modern

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constitution and the one which had been in force by the longest period, until 1999, when it was replaced by the constitution officially in force today. The Constitution of 1961 established the right to education as a fundamental right, but it hadn't been developed until 1980, when the organic education law was promulgated. The long inactivity toward this fundamental right generated a population with an 80% index without education who was the main source of the human capital to the Marxist-Leninist guerrillas that played a leading role in the last 20th century decades throughout Latin America, reinforced by the victory of the Cuban revolution in 1959. In Venezuela, the main guerrilla group was the Fuerzas Armadas de Liberación Nacional (FALN). As a consequence, the weapons were the fighting tools of a people without education, but with a firm determination to conquer his rights.

However, the weapons were removed with a constitutional-making process in 1999. It was a case of popular sovereignty with universal vote who could conquer a new supreme law, although this process was spontaneous because it had not been established in law, so it was legitimized by itself, being an expression of the primary constituent. In the first consultation, the people were asked if they wanted a constitutional change and in the second they were asked about the constitution text. Both consultation was attended by a huge majority.

From this brilliant beginning, we past so fast to the fall, in 2010. When president Chávez declared a Marxist-Leninist government, and has already captured the legislator, because the majority was pro-government, he sets out to eliminate the independence of the judiciary. The ending's first trace is the resignation of the minister in charge of the competition of judges, who resigns because political pressure. It was the cause of the lack of contests of judges in Venezuela since 2013. The antecedents of this institutional chaos are also the result of the military coup aimed at Chávez on April 11, 2002, two days in which he was deposed by a provisional government that was in turn defeated by the military that remained loyal to Chávez. After this failed coup d'état, Chávez did not become the same and since that year the systematic modification of the laws on the election of judges began. The result of that process is that today all the judges of the Venezuelan Supreme Court of Justice (TSJ) are Marxist militants, in other words, they identify with the official ideology, that is, they are not independent from the Government.

The Justice dependence on the Executive is confirmed by the acts of the Constitutional Chamber of the Supreme Court, who has in charged the constitutional control of the laws. During the presidency of Hugo Chávez, when the parliament was constituted by an officialist majority, the constitutional chamber only partially annulled a law about a tax subject. In contrast, since 2015, when the opposition got a qualified majority in parliament, the constitutional chamber has annulled all the laws except one, regarding the minimum pension, which, although it has been conditioned, has been

annulled in theory, because it will be fulfilled just when the State could get the economic resources to do it.

Today, although the government doesn't obtain a majority at the elections, it continues to monopolize the power through the capture of the institutions. That 80% that supported the constitution-making process at 1999 voting in favor; today it delegitimizes it in the streets, meanwhile the law remains at the service of the minority who rules with the force of the army and one's institutions that have lost their thelos.

The last rape to the Constitutional State was given by the Constitutional Chamber with the approval of the convocation of a Constituent Assembly to replace the current parliament (which have the opposition majority). According to the Constitutional Chamber, the president is the father of democracy; therefore, he can ask for the Constituent Assembly anytime. Besides, an aggravating circumstance consisting in the fact that only those who have a "national identity card" can become part of this Assembly.

Finally, with the suppression of the Parliament and the formation of the Constituent Assembly, the last institutional bastion of the opposition is overthrown, which increases the hopeless of reaching a solution through the institutional path.