

**TRANSITION FROM DEMOCRACY TO TYRANNY
THROUGH THE FRAUDULENT USE OF DEMOCRATIC
INSTITUTIONS: THE CASE OF VENEZUELA***

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The honor is for me to be here. So I want to begin expressing my thanks to the *Clough Center for the Study of Constitutional Democracy*, to its Director Professor Vlad Perju, and particularly to Daniela Urosa, my very distinguish Student many years ago, for insisting me to give this lecture today.

Being the main goal of the Center to promote and develop studies in order to reinvigorate and reimagine constitutional democracy in the twenty-first century, I thought it was necessary, and even more, indispensable for me, to refer to the process of demolition of one of the most envied constitutional democracies of Latin America during the second half of last century, the Venezuelan democracy that functioned between 1958 and 1998.

After one intent in 1945 of establishing a democratic regime in Venezuela, and after paying the consequences of the lack of compromise between the political parties of the country, democracy began to be implemented based on an agreement they eventually reached in 1958, the so-called *Pacto de Punto Fijo*. That outstanding and exceptional political Pact, setting aside their main interparty differences, had the purpose of consolidating a constitutional democ-

* Text of the Presentation at the *Clough Center for the Study of Constitutional Democracy*, Boston College, Boston, September 25, 2018.

racy in the country that in contrast, in 1958, was the one with less democratic traditions in all Latin America.

That democratic regime, which functioned during forty years, was the one that was systematically destroyed by the authoritarian regime that assaulted power in 1999.

Of course, this is not the first time I am referring to this matter. I renounced many years ago to the “right to be silent” on these matters, and instead, since 1998, I assumed the duty to speak out denouncing what was happening and has happened in my country, having published many articles, Papers and books on the matter. I have to mention the book I published in 2010, with the title “*Dismantling Democracy: The Chavez Authoritarian Experiment*,” published by Cambridge University, a time – not so far away - when still many academic and writers on these matters in this country, were admiring the former paratrooper commander that after failing in his assault of power by military force violating the Constitution, he was later released from detention and elected President of the Republic, beginning, – as the populist propaganda said – “to take care of the poor,” as is nobody before him has done nothing on matters of social justice in the country. That astonishing and simplistic approach was enough for Chávez to gain admiration from so many in this country, so anybody who dare to denounce the great farce that was being developed in my country, disguised with a democratic veil, was immediately place as a sort of “dinosaur” in the academic archeology.

Of course, this has not been the first time that a democratic regime has been destroyed from within using its own democratic tools, being enough to remember the processes that occurred in Europe before the Second World War

in the cases of the Fascist regimes, when a transition from democracy to tyranny occurred, achieved by using in a populist and fraudulent way, the democratic institutions.

Nonetheless, what it is true is that since then, no other experiment of such kind fortunately as taken shape in Europe – although it has begun to flourish in some relatively new commers to the European Union, like Poland-, being of extremely importance the Democratic Clause included in the old Treaties of the European Union. The provision has not only prevented such unwanted sort of transition, but has imposed upon the countries as a condition to be admitted and to remain in the Union, the need for democratization and for having stable democratic institutions.

In any case, seventy years after the Second World War, North Americans and Europeans have fortunately gotten used to democracy, refusing in general to the idea of the possibility for a democratic regime to be transformed into a tyranny through its own democratic means.

And that has being precisely one of the reason that explains how difficult has been for the North American and European people and governments to understand what has exactly happened during the past two decades in some Latin American countries, and in particular, in Venezuela, where the democratic institutions have been unmercifully destroyed and removed, be means of a so-called “ new constitutionalism,” based on a “participatory” or populist democracy, in order to construct an also so called “socialism of the XXI Century.”

The fact is that the relatively stable democratic regime that we had in Venezuela for 40 years, from 1958 and up to 1999, has been progressively trans-

formed into a Tyranny, following a process that was conceived and conducted by Lieutenant General Hugo Chávez, after failing in his military *coup d'état* attempt of 1992. Seven years later, in 1999, he achieved the same goal of assaulting power, but through an election, beginning the process of using democratic tools in order to destroy the constitutional democracy we had. At that time, in 1998, I was the President of the National Academy of Political and Social Sciences, and as such, I began to denounce and oppose his undemocratic actions.

By using and misusing the electoral tools, Chávez in effect, began his assault to the State institutions – in presence of the already cornered and naïve political parties - , taking over all the branches of government, erasing the principle of separation of powers and eliminating the territorial distribution of State powers, eventually beginning the process of establishing a centralized and militaristic an authoritarian government in the country.

It all began, as I said, in 1999, through the unconstitutional constitution-making process that he promoted, based on the convening and election of a Constituent Assembly that was not established nor regulated in the Constitution, which resulted completely dominated and conducted by the same group of former militaries that accompanied Chávez in his *coup d'État* attempt, and that still are abusing power. That Constituent Assembly encouraged by the promoters of the “new constitutionalism” ideas, was its main tool in order to accomplish his assault of power, and eventually militarized the political institutions, dissolving the constituted powers.

For such purpose, and according to the already mentioned new constitutional gospel called as “the new constitutionalism” that began to be spread in

Latin America by some Cuban-trained Spanish scholars, many of which later participated in the creation of the party *Podemos* in Spain, - a process that was also followed in Ecuador and Bolivia -, that Constituent Assembly, supplanting and usurping the sovereignty of the people, assumed full and unlimited powers to supposedly transform the institutional framework of the State, imposing the Chávez authoritarian ideas.

For such purpose, the Assembly intervened all the constituted powers – with my isolated opposition (I was elected member of the Assembly and with other three we were the only opposition members in an Assembly of 161 members). The Assembly removed and limited their authorities; replaced all the Justices of the Supreme Court; dissolved the elected Congress, and assumed the legislative functions; intervened the provincial and municipal powers; suspended the municipal elections; removed the members of the Electoral Council and the General Comptroller of the State, and in general, intervened the Judiciary, dismissing almost all the judges and the members of the Public Prosecutor’s Office.

As I mentioned, I was a direct witness of that process as an independent elected member of that Constituent Assembly, having opposed to the authoritarian program that marked its activities, which since those times I have continued to denounce; reason for which I was eventually persecuted for political reasons, and forced to remain since 2005 in the U.S., without any possibility to return to my country.

Since that constituent process of 1999, the transition from democracy to tyranny began to take shape in a progressive way, while the world in general, and the North America and the European countries in particular, viewed the

former Lieutenant General with some sort of sympathy, due in part to his illusionist promises, but ignoring his fraudulent use of the democratic institutions.

In that context we also have to remember how so many countries profited from his performance as a typical and extravagant Caribbean *nouveau rich*, when he dilapidated the country's wealth, even using public money to finance politicians all over the world.

We must not forget, for instance, how he even financed the supply of heating oil for homes in supposedly poor neighborhood here in Boston and in South Bronx, in New York, supported by many important local politicians, and even arrived to subsidized public transport in London supported by the Mayor of the City, all delightedly captivated by the sympathetic but erratic military acting as a sort of a XXI Century Robbin Hood.

In a simple way, he was considered as somebody that being elected by the people began, to sell himself as someone that promised to take care of the poor – falsely pretending that that had never happened before in the then richest State of Latin America –, illegally encouraging corruption in the country and financing political parties in many countries in Latin America and Europe with Venezuelan oil resources.

With all his charisma, and misusing the immense wealth the country had due to the boom of the oil prices and income, after eighteen years of authoritarian government, he and his appointed successor Nicolás Maduro, managed to transform the then very envied Venezuelan constitutional democracy, into a dictatorship or tyranny; producing the exceptional miracle of transforming the then prosperous county into the more miserable, violent and corrupt one in the

whole world, as it is unfortunately shown in all the known International Indexes.

And the worst of all, is that all those records were achieved violating and distorting the Constitution, with elections that took place now and then, but always controlled by a controlled electoral authority within a centralized power, and a militarized Public Administration; that used democratic tools only to destroy the very essence of democracy. As was recently explained by Ricardo Hausman (Professor at the Harvard Kennedy School in his article “The Venality of Evil,” 31 July 2018), all done in an evil way, that is, with the intend to do harm, not being possible to find “other plausible explanation for what has happened in Venezuela.”

The first task that was assumed by the 1999 Constituent Assembly, besides giving the military deliberative political rights and participation, was to assault the Judiciary – a fact ignored by so many democrats in the world - , dismissing almost all Judges of the country, substituting them all with provisional and temporal judges, thus, ending with the autonomy and independence of the Judiciary.

Within that framework, the Supreme Tribunal was transformed into the most ominous instrument for consolidating authoritarianism in the country, having been completely packed with government supporters. That explains why its Constitutional Chamber, instead of being the guardian of the Constitution, has been the main tool of the authoritarian government for the illegitimate mutation of the Constitution, for the demolition of the rule of law, and even for the persecution and illegitimate prosecution of members of the National Assembly, which has being almost extinguished.

Regarding the other branches of government, the assault was completed in 2005 when due to the decision adopted by the opposition to not to participate in the parliamentary election of December that year, the government took complete control of the National Assembly, finishing the process of packing all the branches of government with government loyalist, including the Electoral Authority, the Public Prosecutor Office and the Audit General Office.

The following year, in 2006, after the reelection of President Chávez took place, he declared himself Marxist-Leninist and the Official State Party he managed to create, adopted Marxism as its official ideology, proposing then to definitively change the Democratic Rule of Law State, converting it into a Popular or Communal State.

For such purpose new Laws were approved, like the Communal Council Law (2006), and in 2007, the President took the initiative of proposing a Constitutional Reform in order to create in parallel to the Constitutional State, a “State of the Popular Power,” based on a communist economic system, eliminating private property and substituting it by social or communal properties. Although those reforms could not be introduced through the procedure of “constitutional reform” but only by convening a Constituent Assembly, the Supreme Tribunal already coopted by the Executive Power, renounced to even receive the judicial review complaints that were filed.

Nonetheless, fortunately, the proposed reform was rejected by the people through a referendum, being such the most important political failure suffered by Chávez.

So important, that then he aggressively reacted against the people will, of course violating the Constitution, and proceeded to impose the rejected constitutional reform by mean of ordinary legislation and decree laws enacted between 2008 and 2011, creating the framework of a Cuban style “State of Popular Power.” The claims for judicial review against such laws, also remained in the dead files of the Supreme Tribunal, which never processed the requests; being such unconstitutional laws implemented by the government in total impunity without any sort of control or judicial review.

In any case, after sixteen years of authoritarian rule and after the failure of the erroneous economic and social policies that were imposed, the destruction of all the productive forces of the country was achieved through indiscriminate confiscations and expropriations of private land, industries and property. The consequence was that the political, economic and social destruction of the country by 2016 was already completed, provoking a sort of popular rebellion which was expressed through voting in the parliamentary election held in December 2015. In it, the government lost control on the majority in the National Assembly, the opposition obtaining a qualified majority of representatives, being that fact, without doubt, after the failure of the 2007 constitutional reform, the most important political setback of the authoritarian regime since 1999.

But the regime was already used to exercise absolute control of power, and therefore, an autonomous Legislature could not be tolerated. The Government then, soon after such election, began to obstruct the opposition from developing its legislative agenda, and gradually striped the Legislative body of all its powers and functions – yes, all of them - ; and all that, thanks to an all evil and

depraved collusion between the Executive Branch and the Supreme Tribunal of Justice.

That happened even before the new elected National Assembly could had its first session on January 5th 2016, when the former National Assembly enacted I just two days (December 29th and 30th) more than 30 statutes striping off the new Assembly of its all legal powers; proceeding then to appoint new Supreme Tribunal justices, packing it entirely with members of the governing party.

Once the Tribunal was completely controlled, it immediately began to prevent the Assembly from exercising its functions, issuing, during the following years more than 100 rulings that have transformed the political system into what I called, a “Judicial Dictatorship or Judicial Tyranny,” characterized by the fact that the Executive has used, at his will, the subdue Supreme Tribunal as its main instrument to neutralized the National Assembly, absolutely eliminating all its functions.

The result has been that the Constitutional Chamber of the Supreme Tribunal, acting as constitutional judge, declared the unconstitutionality of practically all – yes, all – the statutes that up to now have been sanctioned by the National Assembly elected on December 2015; reformed the *interna copris* of the Assembly in order to subject the exercise of its legislative functions to the prior approval by the Executive Branch, something never seen in any State; eliminated the Assembly’s political power of controlling the government and the Public Administration; imposed the prior approval by the Executive Vice-President for a Minister to 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; eliminated the possibility for the National Assembly to approve votes of non-confidence against the Ministers; canceled the constitutional obligation of the President to submit its Annual State of the Nation before the National Assembly, deciding instead that it was to be submitted before the same Supreme Tribunal; eliminated the legislative approval of the national budget law, transforming the Budget Law into a mere executive decree to be approved by the Tribunal; eliminated the Assembly's power to review its own decisions and repeal them, as was the case regarding the unconstitutional appointment of the justices of the Supreme Tribunal made in December 2015; eliminated the power of the National Assembly even to express political opinion as a result of its debates, having annulled all the major political Resolutions and Declarations that it has adopted; and in a few decisions issued last year, based on an alleged contempt of court regarding a ruling by the Electoral Chamber of the same Supreme Tribunal, the Constitutional Chamber declared null and void all – yes all present and future decisions of the National Assembly, threatening to revoke the popular mandate of its members and to imprison them.

But that was not the end. In one of the most notorious and shameful decisions of the Constitutional Chamber issued in March last year (No. 155 of March 27, 2017, and No. 156 of March 29, 2017), it simply decreed in an unconstitutional way a state of emergency; eliminated the parliamentary immunity of the representatives; assumed in an arbitrary way all – yes, all - the parliamentary powers of the National Assembly; and even the Tribunal delegated legislative powers upon the President of the Republic, ordering him to

reform laws and Codes at his discretion, among them, the Criminal Code and the Organic Code of Criminal Procedure.

All these decisions cannot be considered or qualified in another way but as a permanent and continued *coup d'État*, which gave birth to a new model of authoritarian government – resulting from the implementation of the “new constitutionalism” doctrine - , which did not originate itself in a military coup as was the Latin America tradition, but through the manipulation of popular elections, the degradation of judicial review processes and the abuse of all democratic tools, in order to eventually give to the military the factual control of the country; and all this, with the purpose of destroying the rule of law and the democratic principles, using for such purpose a very convenient camouflage of “constitutional” and “elective” masks.

One of the last act or scene of all this institutional tragedy that is currently overwhelming the county, is the unconstitutional convening and functioning of a new Constituent Assembly with unlimited powers and duration, which was installed last year by President Nicolás Maduro violating the provisions of the 1999 Constitution, with the purpose, again, of transforming the State in order to try again to insert in it the Socialist, Popular or Communal State framework; that is, the same that in 2007 was rejected by the people; and the same that was unconstitutionally implemented through ordinary legislation since 2010.

The fact is that violating the Constitution, a Constituent Assembly, composed by more than 500 members was elected through an *ad hoc* electoral system contrary to the universal and direct suffrage guaranteed in the Constitu-

tion, based on a territorial (municipal) and corporate or fascist vote established by sectors of the society, institutionalizing discrimination and exclusions.

Although the unconstitutional covenant of such fraudulent Constituent Assembly was challenged before the Constitutional Chamber of the Supreme Tribunal, eventually the response was that contrary to the provisions of the Constitution, a referendum is needed in order to change a “comma” of one phrase in an article of the Constitution, but to change all the Constitution it was not necessary to request the people’s approval. As simple as that: eight individuals (the President of the Republic and seven justices of the Tribunal) imposed their will to the people without limits.

Based on such unconstitutional decision, the members of the Constituent Assembly were finally elected on July last year (2017), being all its members, affiliates of the official party, which explains why all its decisions are only adopted with in a unanimous vote. The Assembly assumed an original constituent power, substituting the people’s will and sovereignty, acting with supposedly supra-constitutional powers, imposing its will to all constituted powers, including the Supreme Tribunal.

The fraudulent Constituent Assembly, as mentioned, assume total power, subjecting all the branches of government to its rule, in particular the Legislative body, assuming the facto all the parliamentary powers of the National Assembly. Regarding the Supreme Tribunal, all its Justices appeared before the Assembly prostrating themselves before it. Thus, since last year, the Judicial Tyranny was transformed into a Constituent Tyranny, beginning the Supreme Tribunal to be relatively useless.

In addition, during the past year the Assembly has acted as sort Caribbean reincarnation of the 1792 *Comité de Salut Public* of the Terror Regime in revolutionary France established in order to persecute any dissidence, declaring for instance the elected members of the National Assembly that refused to prostrate themselves before it, as traitors to the motherland, in particular after they met, for instance, with Senators and officials of the United States and other European countries in order to explain the situation of the country. Having obtained the rejection of the unconstitutional Constituent Assembly.

This persecution against members of the National Assembly last August 2018 arrived to an extreme situation, when the Supreme Tribunal in collusion with the Constituent Assembly, ordered the incarceration and apprehension of two representatives, unjustly indicting them of magnicide and other graves crimes against the State.

What is important to have clear is that all what I have explained is not science fiction. All has happened and is currently happening in my country, and have only referred to the institutional consequences of the actions of an authoritarian regime that for years has been playing a masquerade pretending to be a democracy. For the economic and social implications, the Venezuelan tragedy is already known all over the World not being possible nowadays to hide the magnitude of the failure of the Chávez-Maduro regime.

The fact is that nowadays, nobody can be pretended to be cheated. Finally, and tragically, the truth has surfaced regarding all the abuses committed by the Venezuelan government against its own people, and of course, not only by the current Maduro regime but beginning with the Chávez hypocrite regime, who

used the democratic veil in order to transform the former Venezuelan democracy into tyranny.

This has allowed the democratic governments of the world to begin to understand the nature of the Chávez-Maduro regime, and in parallel, to understand which are the democratic and material needs of the Venezuelan people.

This is important because in order to overcome the narco-military-dictatorship that has taken over the country, in the future, we Venezuelans not only need a very firm international comprehension of the situation, but also a determined multilateral aid.

In that contexts, it is very important to encourage academic Centers like the Clough Center to continue with the promotion and development of studies in order to reinvigorate and reimagine constitutional democracy in the twenty-first century. The example of what has happened in Venezuela could be, in fact, a very useful subject for in your studies, in order to precisely prevent that anything similar could happen in the future in any other country.

Many thanks.

Boston, September 25th, 2018

Bibliography:

All what I have expressed in this Paper, has been extensively studied and explained in the following books:

Brewer-Carías, Allan R., 1998, *Asamblea Constituyente y ordenamiento constitucional*, Caracas, Academia de Ciencias Políticas y Sociales

Brewer-Carías, Allan R., 1999, *Poder constituyente originario y Asamblea Nacional Constituyente (Comentarios sobre la interpretación jurisprudencial relativa a la*

- naturaleza, la misión y los límites de la Asamblea Nacional Constituyente*), Caracas, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2002 *Golpe de Estado y proceso constituyente en Venezuela*, México: Universidad Nacional Autónoma de México.
- Brewer-Carías, Allan R., 2002, *La crisis de la democracia venezolana. La Carta Democrática Interamericana y los sucesos de abril de 2002*, Caracas: Ediciones El Nacional
- Brewer-Carías, Allan R., 2007, *Crónica sobre la “in” justicia constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Caracas: Colección Instituto de Derecho Público / Universidad Central de Venezuela.
- Brewer-Carías, Allan R., 2009, *Dismantling Democracy. The Chávez’s Authoritarian Experiment*, New York: Cambridge University Press;
- Brewer-Carías, Allan R., 2012, *Práctica y distorsión de la Justicia Constitucional en Venezuela (2008-2012)*, Acceso a la Justicia, Academia de Ciencias Políticas y Sociales, Universidad Metropolitana, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2014, *Authoritarian Government v. The Rule of Law*, Caracas / New York: Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2014/ 2015, *El golpe a la democracia dado por la Sala Constitucional*, Caracas, Editorial Jurídica Venezolana,
- Brewer-Carías, Allan R., 2014:.,*La patología de la Justicia Constitucional*, San José / Caracas, Investigaciones Jurídicas, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2014/2015, *Estado Totalitario y desprecio a la Ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Caracas / New York, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2015, *La mentira como política de Estado. Crónica de una crisis política permanente. Venezuela 1999-2015*, Caracas / New York, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2015, *La ruina de la democracia. Algunas consecuencias. Venezuela 2015*, Caracas / New York, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2016 / 2017, *Dictadura judicial y perversión del Estado de derecho. La Sala Constitucional y la destrucción de la democracia en Venezuela*, Caracas / Madrid, Editorial Jurídica Venezolana International.
- Brewer-Carías, Allan R., 2017, *La consolidación de la tiranía judicial. El Juez Constitucional controlado por el Poder Ejecutivo asumiendo el Poder Absoluto*, Caracas / New York, Editorial Jurídica Venezolana International.
- Brewer-Carías, Allan R., 2017, *La inconstitucional convocatoria de una Asamblea Nacional Constituyente en fraude a la voluntad popular*, Caracas / New York, Editorial Jurídica Venezolana International.
- Brewer-Carías, Allan R., 2018, *Usurpación constituyente 1999, 2017. La historia se repite, unas veces como comedia y otras como tragedia*, Caracas/ New York, Editorial Jurídica Venezolana.