

THE COLLAPSE OF THE RULE OF LAW IN VENEZUELA

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The Collapse of the rule of law in Venezuela is the result of a deliberate process developed since 1998, under the guidance of Hugo Chávez, for the implementation of a previously designed plan in order to allow him and a few former military officers to assault power. This, after having failed, seven years before, in 1992, in a military and bloody *coup d'État* attempt against a democratic government. The designed plan allowed them to perform the same assault of power, but this time with an electoral veil.

By assaulting power, they subsequently proceed, from within the democratic institutions, to directly destroy them, demolishing all its essential elements, beginning with the principle of separation of power, eliminating all sort of control or check and balance between the branches of government. In particular, for such purpose, they began by capturing the Judiciary, so, subduing the Supreme Tribunal, they proceed to destroy all the basis of representative democracy with the excuse of establishing a participatory democracy, which eventually resulted in a monumental fraud.

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The consequence of all this process is that after two decades of “*chavismo*,” the once democratic Venezuelan State that still existed in 1999, has been transformed into a Totalitarian State that not only has concentrated and centralized all branches of government, but using them all, has progressively suffocated all private initiatives and institutions, and, from within, has completely dismantled the foundations of democracy, controlling the life of all citizens and carrying on a brutal repression performed by the military and paramilitary forces, not only against dissidents, but in general against the people.

The consequence has been that in twenty years the relatively stable democratic regime that functioned in Venezuela from 1958 until 1999, was systematically destroyed, at open air, in the face of the world democracies.

However, during these past two decades, in this country, the US, as well as in Europe, particularly in the academic world, what many did, particularly a few year ago, is to admire and to clap the former paratrooper commander, the late Hugo Chávez, after being elected President of the Republic in 1998. At that time, it appeared that the world had “discovered” that somebody in the Venezuela— as the populist propaganda spread —for the first time in history began “to take care of the poor,” as if nobody before Chávez did nothing on matters of social justice in the country.

That astonishing and simplistic approach was enough for Chávez to gain admiration from so many people in the United States, to the point that if someone dared to denounce the great farce that was being developed, disguised with a democratic veil, was immediately place as a sort of “dinosaur” in the compartments of academic archeology.

The truth was that following populist ideas embodied in the so-called “new Latin American constitutionalism” proposing to make prevail the supposed will of the

people as interpreted by a leader, over the supremacy of the Constitution, Chávez convened a Constituent Assembly not established in the Constitution. That Assembly, due to the frustration of the people regarding the traditional political parties that did not respond to the need for renewal, resulted completely dominated and conducted by him and by the same group of former militaries that accompanied him in his 1992 *coup d'État* attempt. Those are the same group of government officials that are still abusing power, having achieved the immediate Chavez's goal to militarize the political institutions, dissolving the constituted powers.

For such purpose, in 2000, the Assembly limited and later removed the authorities of all the branches of government; replaced all the Justices of the Supreme Court; dissolved the elected Congress; assumed the legislative functions; intervened the provincial and municipal powers; suspended the municipal elections; and removed the members of the Electoral Council and the General Comptroller of the State. In that process, the first task was to take over the Judiciary, – a fact ignored by so many democrats in the world - , dismissing almost all Judges of the country and the members of the Public Prosecutor's Office, substituting them all with provisional and temporal judges, thus, ending with the autonomy and independence of the Judiciary.

With the assault to the Judiciary, 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 the Constitutional Chamber of the Supreme Tribunal, 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 illegitimate prosecution of members of the new National Assembly elected in 2015, now controlled by the opposition to the Government.

In 2006, after the first reelection Hugo Chávez, he declared himself as Marxist-Leninist, and the Official State Party he managed to created, 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 Councils Law (2006), and in 2007, Chávez proposed a Constitutional Reform in order to create a parallel “State of the Popular Power,” based on a communist economic system, eliminating private property and substituting it by social or communal properties. The reform, unconstitutionally proposed, fortunately was rejected by the people through a referendum held in December 2007, being such the most important political failure suffered by Chávez in his tenure.

But Chávez did not stop there. He responded to such disastrous failure in an aggressive and unconstitutional way, by implementing the rejected constitutional reform, but through ordinary legislation and decree laws enacted between 2008 and 2011. Through them, Chávez created the framework of a Cuban style “State of Popular Power,” or “Communal State,” which the Constitutional Judge refused to control.

After his death in 2012, he was substituted since 2013 by Nicolas Maduro, who assumed the Presidency disregarding the Constitution. The result was that by 2015, the political, economic and social destruction of the country was already completed, provoking then a sort of “popular rebellion,” which was expressed through voting in the parliamentary election held in December 2015; an election that, because its results, surprised everybody, including the controlled Electoral body that could not managed to manipulate the results.

With such election, the government lost control on the majority in the National Assembly, being its reaction, to systematically strip the Legislative body of all its

powers and functions – yes, all of them - ; thanks to the evil and depraved collusion established between the Executive Branch and the Supreme Tribunal of Justice.

For such purpose the Supreme Tribunal already packed with members of the governing party, immediately began to prevent the Assembly from exercising its functions, issuing, during 2016 and 2017 more than 100 rulings that transformed the political system into what I called a “judicial dictatorship” or “judicial tyranny,” in which the Executive used, at his will, the subdue Supreme Tribunal as its main instrument to neutralized the National Assembly, absolutely eliminating all its functions in order to consolidate authoritarianism.

The result was that the Constitutional Chamber of the Supreme Tribunal, acting as constitutional judge, for instance, declared the unconstitutionality of practically all – yes, all – the laws or statutes sanctioned by the National Assembly elected on December 2015; reformed the *interna corporis* 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 democratic 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 wave 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 Bills, Resolutions and Declarations that the Assembly has adopted.

Finally, in a few decisions issued in 2017, based on an alleged but absurd “contempt of court” regarding a ruling by the Electoral Chamber of the same Supreme Tribunal, the Constitutional Chamber has systematically – up to this date - declared null and void all – yes all – “ present and future decisions” of the National Assembly, even in some occasions, 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 2017 (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; and assumed in an arbitrary way all – yes, all - the parliamentary powers of the National Assembly.

With all these decisions a permanent and continued, a permanent and continuous *coup d'État* has been given, originating a new model of authoritarian government, which did not began with 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 stage of all this institutional Tragedy that is currently affecting the county, began in 2017 with the unconstitutional convening and

functioning of another Constituent Assembly with unlimited powers and duration, which was installed in July 2017 by President Nicolás Maduro, also violating the provisions of the Constitution, because only the people by means of a referendum can convene such Assembly.

In any case, the purpose of such Assembly, again, was to supposedly transform the State in order to try again to insert in it the Socialist, Popular or Communal State framework; that is, the same constitutional framework that in 2007 was rejected by the people; and the same that was unconstitutionally implemented through ordinary legislation since 2010.

Since 2017, such Constituent Assembly has acted as a sort of a Caribbean reincarnation of the 1792 *Comité de Salut Public* of the Terror Regime in revolutionary France, persecuting any dissidence, and the members of the National Assembly ordering in collusion with the Supreme Tribunal their incarceration and apprehension, eliminating their parliamentary immunity and even provoking in many cases their exile.

All the aforementioned is not science fiction. All has happened and is currently happening in Venezuela, being today, nevertheless, the most important factor in all this process, the fact that nobody can pretend to be cheated. That is to say, 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, both using the democratic veil in order to transform the former Venezuelan democracy into tyranny.

One of the last acts of this tragedy, was the fraudulent and unconstitutional “re-election” in May 2018, of Nicolas Maduro in an electoral process unconstitutionally convened by the Constituent Assembly, which did not meet any of national and

international standards set for democratic, free, fair and transparent election processes. Such reelection way formally rejected by the National Assembly, the only political and legislative body democratically elected in the country, considering it as a “farce,” declaring it as “non-existent,” and considering Maduro as an usurper of the Presidency of the Republic.

In that situation, in January this year, in the absence of a legitimately elect president that could be sworn in and take the office of President of the Republic for the 2019-2025, the National Assembly assumed the task of leading a process of democratic transition, interpreting, according to the Constitution, that the president of the National Assembly Juan Guaidó, based on his own constitutional functions, had the duty to take charge of the Presidency of the Republic.

So, there was no “self-proclamation” as was erroneously affirmed, but the assuming of one of the functions that have been constitutionally vested on him as president of the National Assembly.

This was understood by the country, represented by the majority of its citizens in rallies and demonstrations; and was understood by the international community, recognizing him as the legitimate acting president of the Republic, as well as the National Assembly as the only legitimately elected body in the country.

In parallel the *the facto* government controlled by Nicolás Maduro, acting within a Totalitarian State has continued its repressive actions, being the situation nowadays, one in which mass media are closed; people are murdered indiscriminately with impunity; electoral fraud is committed; the economy and the productive apparatus is destroyed; opponents are deprived of their liberty; students are repressed; demonstrators are brutalized and tortured; all unchecked and uncontrolled; but all supposedly accomplished “legally” because supported by the branches of government – excluding the National Assembly - , and in particular by

the Judiciary. All this has recently been documented by the High Commissioner on Human Rights of the UN (*Bachelet Report*, July 2019); a situation that among other effects, has provoked the most important exodus in the Western Hemisphere history.

Facing this situation of a usurped government conducting a State that is not a rule of law State nor a democracy, the permanent question that everybody raises is: How did we, Venezuelans, arrive at this unfortunate situation? Particularly if we bear in mind, that throughout the second half of last century, Venezuela had the most envied democracy in Latin America, due to its continuity and stability, with alternation in the exercise of power, separation of powers, free elections, strong political parties, civil liberties, freedom of speech, and open discussion of ideologies. What happened? How did we get here?

Nothing comes from nothing, and in the case of Venezuela, authoritarianism - as in many other cases in history – resulted to be the product of the crisis of the democratic party system; which facilitated the assault to power perpetrated by Chávez and his companions in 1999, in order to deliberately end with representative democracy and with the rule of law.

That is why, in November 1999, as an independent member of the Constituent Assembly, to which I was elected opposing the Chávez project, I opposed to the popular approval of the Constitution warning that the:

“institutional framework contained in it, was designed for authoritarianism, which derived from the combination for the organization of State, of state centralism, exacerbated presidential power, party power and militarism.”

Unfortunately, time gave me the reason, which then, twenty years ago, nobody wanted to listen, being the result of the enforcement of the Constitution by a populist leader, that all branches of government have ended at the service of authoritarianism,

except from 2016, in the case of the National Assembly, although it has been drowned.

In any case, in this situation, the leaders of the Totalitarian State - who are the responsible of all these institutional violence - , are now in the definitive process of realizing that they are running out of time, and even that their time is near an end. That is why, in a recurrent way, they have made appeals to establish some sort of supposed Dialogue with opposition leaders, which of course all have failed; because for such Dialogues to produce some results, above all, it is for the Government to change and to concede, accepting the full application of the democratic principles and the guaranty of human rights established in the Constitution, that is, to accept democratic rules and pluralism.

Unfortunately, it is difficult to think that they would accept to do this peacefully; so we will continue to witness higher popular rebellion, with people rejecting, in all the imaginable ways the functioning of a Bandit State or of a Mafia State, and to accept to be ruled by a Government that has reduced its action to conduct a criminal organization.

In all this process, without doubts, the help and attention of the international community has been crucial in order to understand about our real situation.

Future will show us what is going to happen; and of course, from my part, I am not a futurologist. Nonetheless, I am confident that the will of the people cannot forever be ignored, and eventually the government that has turned his back to the people, sooner or later, inevitably will disappear.

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