

Venezuela: The Emperor Wants New Clothes

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Venezuelans are to vote on December 2 on major constitutional reform proposals of president Hugo Chávez. If they are approved, Chávez will have consolidated his hold on power and will have substantially diminished the chances of success of any future challenges to his leadership. They will also bring about a number of significant changes that are intended to pave the way for a wholesale restructuring of Venezuela's economic and political system.

On December 2, Venezuelans are scheduled to vote on a proposal for constitutional reform presented by president Hugo Chávez and the Venezuelan National Assembly. All in all, the proposal seeks the rewriting of 69 of the current text's 350 articles.

The proposal has a very broad scope, significantly restructuring constitutional provisions on issues ranging from the reach of executive power to the mechanisms for community participation. Nevertheless, considerable confusion exists about what exactly this constitutional change will entail and how it will affect the lives of ordinary Venezuelans.

Term Limits

To this moment, most international discussion – and a great deal of national discussion as well – of the reform has centred on the proposal to abolish term limits on presidential re-election, allowing the president to stand for an unlimited number of seven-year terms. Under the current Constitution, Chávez could not be re-elected to the presidency after the expiration of his second term in 2012. Critics of the reform have assailed this change as permitting the perpetuation of Chávez in power and paving the way for the creation of an undemocratic state, while advocates of the proposals point out that many countries, including a number of western European nations, lack term limits for the office of the national executive.

While the abolition of term limits may be at the root of Chávez's motivation or pushing the reform, the exclusive concentration on this aspect of the proposal is unfortunate. The reform proposal entails a number of significant changes that are intended to pave the way for a wholesale restructuring of Venezuela's economic and political system. If the proposal is approved, Venezuelans will soon be living a reality that differs significantly from anything that they – or the people of any Latin

American country, with the possible exception of Cuba – have experienced in the past.

My objective here is to discuss the key aspects of the constitutional reform proposal, and to show how its approval would allow the wholesale transformation of Venezuelan public life. As we will argue, the reform will significantly change four vital aspects of the political and economic system: it will significantly concentrate power in the hands of the national executive, it will reduce the public accountability of elected officials, it will allow the institution of centrally planned resource allocation, and it will reshape the mechanisms of popular participation.¹

These changes appear to signal the consolidation of the power of radical circles in the government, whose relationship with moderates within the governing coalition has been uneasy since Chávez first reached office in 1999. They may also signal dissatisfaction in the government with economic performance and the lack of significant progress in social indicators combined with the belief that more radical reform attempts are necessary.² As I will argue, the approval of these changes could usher in the rapid consolidation of the extreme left in the Venezuelan government, but an electoral setback for the government in the December 2 elections may significantly threaten its power base.

1 Strengthening of Executive

A large number of the articles in the constitutional reform proposal are aimed at substantially increasing the power of the executive vis-à-vis other branches of government. Indeed, under the proposed changes it is unlikely that any reasonable degree of real separation of powers will continue to exist. The president will also gain the power to significantly restrict individual and civil liberties and will have almost complete control over the military. A foreseeable effect of the new Constitution will thus be to insulate the president from the challenges to his authority that he has faced since reaching power almost nine years ago.

A key component of these changes is the reform of the constitutional articles regarding the mechanisms for naming and removing the heads of the judicial, electoral, and citizens' branches of government.³

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The 1999 Constitution included the provision that the heads of these branches of government could only be removed with the vote of a two-thirds majority of the National Assembly. It also required a similar two-thirds majority for the appointment of the members of the heads of the citizens' and electoral branches. In an apparent omission which would become vital, the 1999 Constitution did not specify the majority threshold for the appointment of Supreme Court justices.

Control of All Branches

The reform proposal establishes that the heads of all of these branches will now be appointed and removed with the vote of a simple majority of the deputies to the National Assembly. In other words, whoever controls the parliament will control the other branches of government. Assuming that the parliament is controlled by the president's supporters – as it has been since 1999 – this change will make it very difficult for any of these branches of government to openly oppose the executive,

This change must be viewed in the context of a country that had enjoyed considerable separation of powers in recent history. As an example, in 1993, Carlos Andrés Pérez was impeached by the Supreme Court after the attorney general accused him of misappropriating public funds. It is generally believed that Chávez came very close to suffering a similar fate in 2002 and 2003, when he briefly lost control of the Supreme Court. *Chavistas* view the ascertaining of control over other branches of government as a key step in maintaining their hold on power.

Two-Thirds Rule

The roots of the government's near-loss of the Supreme Court can be traced back to the need to obey the two-thirds rule for appointment. In 2000, Chávez supporters in the assembly reached an agreement with the opposition to name the new heads of the citizens' and judicial branches. In return for the support of some opposition parties for the appointment of the comptroller, attorney-general and ombudsman, (not all of them joined the agreement) the government party allowed a minority of Supreme Court justices to be chosen by the opposition. The existence of this group

of opposition-friendly justices meant that when the government lost the support of some of its more moderate backers in 2001 and 2002, it also came very near to losing the majority of the Supreme Court. Indeed, in 2002 pro-opposition magistrate Arriechi appeared to have consolidated enough support in the court to be elected its president. Since the president of the Supreme Court has the power to accept an accusation against the nation's president, Arriechi's election could have ushered in a repeat of the Pérez impeachment episode.

At that moment, the government used its majority of the assembly to regain control of the court. It revoked Arriechi's appointment and approved a new law that allowed it to increase the number of magistrates. Using the constitutional omission, government legislators argued that they could name the Supreme Court justices (and thus revoke their appointment) by a simple majority. By the end of 2003, the government had ensured that the court was now under full control of its supporters.

Lesson of Episode

This episode is important for understanding why Chávez considers that maintaining the control of other branches of government is vital to maintaining his hold on power. Indeed, Chávez has made it recently clear that he no longer believes in separation of powers as a principle of political organisation, suggesting that it may be best for these branches not to exist at all. For example, speaking at a June 2 rally in support of his decision not to renew the broadcast licence of the pro-opposition channel RCTV, Chávez said that:

Ideology... consists of the ideas about bourgeois democracy, about division of powers. With these ideas they manipulate; checks and balances, alternation in government positions, representation as the basis of democracy. These are all big lies! But they form the ideological body of that hegemonic philosophy which here in Venezuela has been practised for 100 years. They have also practised it well in a large part of the western world for the last 100 years.⁴

In carrying out the reform, the government is restricted by the 1999 Constitution to preserve the structure of the current text, thus requiring that it maintain the same basic structure of government. This

is probably the reason why it doesn't directly subordinate existing branches to the executive (nevertheless, it has created a new branch, as we will see below).

Other provisions strengthen the direct control of the president over other institutions. For example, the reform of Article 236, which establishes the powers of the presidency, grants the president authority to promote all officers of the armed forces. In contrast, the 1999 Constitution granted him this power only on promotions above the rank of colonel. This change has its roots in the belief that the government must be able to root out opposition in lower ranks of the military, which played a vital role in the 2002 conspiracy.

Similarly, the new Constitution considerably strengthens the control of the presidency over the central bank (Banco Central de Venezuela). In 2003, Chávez experienced a prolonged conflict with the central bank board when he requested the handing over of a fraction of international reserves to the central government. Even though the majority of board members were sympathetic to Chávez, they had significant reservations about the legality of directly transferring international reserves to the government's account. The negotiations produced the creation of the National Development Fund (FONDEN), which would accumulate export earnings before they were sold to the central bank. Even though Chávez later replaced many board members with unconditional loyalists, the reform of the Constitution will give him greater direct power over the central bank's decisions. Among other changes, the new article now will allow the executive to directly set the "optimal" level of reserves, directing any excess reserves to the expenditures that it sees fit.

Article on Emergency

Perhaps one of the most worrying changes to the constitutional text is the reform of the article governing states of emergency, which allows the president to suspend constitutional rights when he claims that there is a substantial external or internal threat to security. Under the 1999 Constitution, states of emergency were limited to a maximum duration of 90 days, renewable for another 90 days by parliamentary approval. Those provisions have been

eliminated, allowing the president to determine the duration of the state of emergency.

Whereas the 1999 Constitution established that the rights to information and due process could not be suspended during the state of emergency, the new text allows the government to restrict those rights and eliminates its commitment to abide by international human rights conventions in those cases. It is not unreasonable to envision scenarios under which the government claims that a considerable threat to national security (e.g., the threat of a US invasion) justifies the suspension of basic human rights for a prolonged period of time.

2 Reduction of Accountability

One of the most novel aspects of the 1999 Constitution was the inclusion of a number of rules that strengthened the possibility of public participation in national decisions through referenda that allowed the public to abrogate laws, initiate constitutional reforms and revoke the mandate of elected officials. At the time, these new provisions were presented as an example of the new Constitution's commitment towards a true "participatory democracy" that would contrast with the discredited institutions of representative democracy.

It probably came as a surprise to the government's supporters that these were precisely the legal mechanisms that were adopted by the Venezuelan opposition to attempt to drive Chávez from power. In 2002 and 2003, the electoral authorities received several petitions to hold a referendum that would consult public opinion on whether Chávez would remain in power. These petitions ranged from a non-binding referendum asking him to resign, a proposal for constitutional reform shortening his term in power, and a proposal to hold a binding recall referendum.

Thresholds

Despite the fact that all of these petitions were accompanied by signatures exceeding the thresholds established in the corresponding constitutional provisions, the authorities established that they were invalid. In particular, the government accused opposition supporters of forging millions of signatures and established a set of mechanisms that were supposed to

eliminate the possibility of fraud. Electoral authorities established that the signatures for the recall referendum petition would be collected in a four-day period in public signing booths. Even after this event, it decided to ask more than one million signers to publicly revalidate their signatures before declaring valid the petition to hold the referendum, which was finally held in August 2004.

Together with the 2002 coup attempt, the recall referendum was one of the most significant threats faced by Chávez to his stability in power. Up until early 2004, opinion surveys suggested that the government would lose the referendum, leading the government to do all it could to stop or delay it. By August 2004, the Venezuelan economy was strongly recovering from the 2002-03 recession – due in great part to a significant increase in oil prices – and the tide of popular opinion had started to shift. The ability to delay the referendum thus appears to have been vital in allowing Chávez to successfully beat back the opposition's challenge.⁵

The rules of the 1999 Constitution already set significant thresholds on the minimum proportion of people that had to support the initiative in order for it to be considered valid. For example, in the US the California electoral law invoked in 2003 recall election of Gray Davis allowed a referendum to be initiated with the signatures

of 12 per cent of *votes cast* in the previous election (equivalent to 6.1 per cent of registered voters in 2003) and gave petitioners 160 days to collect the signatures. In contrast, the Venezuelan rules required that the signatures of 20 per cent of registered voters be collected in a space of only four days. Invoking the recall petition in 2003 required an unprecedented degree of political mobilisation: 3.5 million persons (28 per cent of registered voters) subscribed to the opposition's petition.

Making Recall Difficult

The new rules are designed to ensure that calling a recall referendum will be much harder, if not impossible. The threshold of signatures has now been raised from 20 to 30 per cent. Thresholds for calling a constituent assembly and abrogating a law have been also raised to 30 per cent (respectively from 10 and 15 per cent), while those for invoking a constitutional reform and holding a non-binding consultative referendum have been raised significantly (from 15 to 25 and from 10 to 20 per cent respectively).

The reform of these mechanisms must also be interpreted in light of the systematic use of mechanisms of political repression to punish signers of the recall referendum petition. Shortly after the first petition was signed, government deputy Luis Tascón published the list of signers on his web page, allowing any Venezuelan to

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check whether anyone else had signed the petition. There is considerable anecdotal and statistical evidence that the publication of the list generated led to job losses and income declines for those who subscribed the petition [Jatar 2006; Hsieh Miguel, Ortega and Rodríguez 2006]. The combination of the uses of mechanisms of political repression to blacklist signers and the increase of the thresholds for participation makes it extremely unlikely that this mechanism will be invoked by Venezuelans in the future.

3 Centrally Planned Economy

One of the key objectives of the reform proposal is to give the government the capacity to transform the mechanisms of resource allocation in Venezuela in order to construct an economic system alternative to market capitalism. This is significant because in the past there has been considerable uncertainty about how radical a transformation is indeed being carried out in Venezuela.

Indeed, many of Chávez's supporters have claimed that in practice he has been essentially an economic moderate who has increased redistribution while maintaining a market system and marginally increasing the state's control over some vital enterprises.⁶ The Chávez-as-moderate vision is very difficult to square with the direction of the changes in the proposed reform.

Perhaps the most vital reform in this case is that of Article 112, which previously guaranteed the freedom of individuals to choose their own occupation. The article currently states that "all persons can devote themselves freely to the economic activity of their preference". This phrase has been taken out. It is now replaced by a set of vague general statements about the state's responsibility to promote a "productive, intermediate, diversified and independent" economic model.

Different Forms of Property

The meaning that private property has in the constitutional text is the source of considerable confusion. While Article 115 in the current version explicitly guaranteed the right to private property, the proposal's text now replaces that article with a recognition of different forms of property. In addition to private property, these now

include "social", "collective", and "mixed" property. While defenders of the reform have claimed that the right to private property is still guaranteed, what is striking about the new text is that it grants the state the right to "assign social property". At least one possible interpretation of the proposal is that the government will be able to reassign property from private to "social".

Furthermore, the article now states that private property is "that which is recognised as such [by the State]". The reform of another article (98) eliminates the guarantee to intellectual property rights.

Even if we put aside the uncertainties about the definition of private property, the new constitutional text decidedly strengthens the capacity of the government to expropriate private property. In particular, the previous Constitution allowed the government to expropriate goods only in cases of public utility or social interest. The word "only" has now been struck from the corresponding article, allowing the government to expropriate even when these justifications are absent. Furthermore, the government will now be able to take control of the expropriated goods before a court decides whether the expropriation decision is valid.

One very interesting change is the reduction of the maximum workday from eight to six hours. Political commentators have interpreted this article as part of the government's last minute attempt to make the constitutional reform more appealing to voters, and – not surprisingly – most opinion surveys coincide in attributing to this component of the reform one of the highest levels of support among potential voters.⁷ However, it is unclear that it has been enough to sway many voters to vote in favour of the whole reform. It is important to note that since approximately half of the Venezuelan labour force is occupied in the informal sector, this reform is unlikely to be binding for a majority of potential voters.

In sum, these articles pave the way for a significant refashioning of how resources are allocated in the Venezuelan economy. If approved, the Venezuelan government will have the legal capacity to determine the occupations to be held by Venezuelans, to expropriate private property rapidly

and at will even in the absence of a public utility consideration, and may even be able to decree the immediate conversion of private property into social property. It is difficult to come up for a rationale for these changes that does not imply a plan to carry out a substantial reallocation of the mechanisms for resource allocation in Venezuelan society.

4 Rise of the *Poder Popular*

The fourth key component of the reform is the complete restructuring of political divisions to be compatible with what the proposal now labels "the new geometry of power". The articles that established that the nation was subdivided into states and municipalities have been replaced by a text in which the primary unit of social organisation is the commune. Communes and communities are defined as "the social cells of the territory...the basic and indivisible territorial nucleus of the Venezuelan Socialist State, where citizens will have the power to construct their own geography and their own history".

The meaning of this text is again vague and borders on the incomprehensible. But its intent becomes clearer once one realises that these communes and communities will become the basic components of a new institution called the "Popular Power" (*Poder Popular*), which has the rank of a branch of government. The communes that form part of the *Poder Popular* will assume a set of attributions that are now carried out by state and municipal governments. In particular, they will have control over the provision of public services, the administration of social programmes, the prevention of crime, and the management of local public enterprises.

Local Governments

In other words, the *Poder Popular* will replace local government in most of its functions. But this is not simply a name change. The key difference between local governments and the communes is that the latter will be ruled by a Citizens' Assembly, appointed in open town meetings without the privilege of a secret ballot. Thus the vital aspect of this reform is that it replaces local officials that are elected with a secret ballot with representatives who are elected in a public act. Furthermore,

the communes will be funded directly by a "National Fund for Popular Power" that will be managed by the national government. Thus, even if non-government loyalists can win control of some of these assemblies, the government will always have the option of cutting their funding.

While the communes will take up most of the role of municipal governments, the president will now have the faculty of naming as many regional vice-presidents as he decides, diminishing the role of elected state governors. It is not coincidental that the reform, while eliminating term limits on the presidency, maintains term limits on the heads of subnational governments. Most of the effective challenges to Chávez's leadership have come from state governors. The aim of the reform is to significantly diminish the power of elected local and state level officials in order to make sure that the government does not have to contend with these alternative sources of power.

5 Looking Forward

If the constitutional reform proposal is approved, Hugo Chávez will have consolidated his hold on power in Venezuela and will have substantially diminished the chances of success of any future challenges to his leadership. He will also have secured a mandate for a set of radical changes that will allow him to significantly reorient the Venezuelan economy towards a centrally planned model with authority and effective power concentrated in the hands of the executive.

The timing of the proposal is not surprising, as it rides on last December's landslide re-election of Chávez for a second term. However, the government has met considerable resistance both from groups who traditionally formed part of the opposition as well as from some groups who were previously loyal to the government. Furthermore, the reform has only counted with the lukewarm support of many *chavista* regional leaders who see that their power base runs the risk of being significantly endangered.

Growing Opposition

The recent surge of a student movement that has organised large demonstrations to protest against the reform and a

number of high-level defections have placed the government in a difficult political situation. Even though many pollsters still believe that the government can win the referendum, they are predicting a much closer election than previous contests.

While a government victory – even if by a small margin – would once again improve Chávez's legitimacy both nationally and internationally, allowing him to carry on unhindered in his plan to create a socialist economy, the possibility of an opposition victory generates a set of uncertain and volatile scenarios.


If the government is forced to recognise an electoral defeat, then political actors will recognise that another defeat for *chavismo* in future elections – including next year's regional elections and the vital 2010 legislative elections – is a distinct possibility. This perception is likely to provoke multiple realignments, not only among political parties but also among members of the military and judicial branches who are unlikely to want to cohabitate with a hostile executive. The uncertainty of that scenario implies that the government may have a significant incentive not to recognise the electoral results if they are adverse.

NOTES

- 1 The discussion below follows the official texts in República Bolivariana de Venezuela (1999, 2007)
- 2 Despite very high economic growth Venezuela has been plagued in recent months by chronic scarcities in basic foodstuffs and rapid increases in black market prices [Romero 2007]. As I have argued elsewhere [Rodríguez 2007], there are few signs that the government has seen significant progress in health or literacy outcomes as a result of its revamping of social policies.
- 3 The 1999 Constitution recognises five branches of government: executive, legislative, judicial, electoral and citizens (*Poder Ciudadano*). The latter is formed by the attorney general, ombudsman and comptroller general.
- 4 Maira (2007).
- 5 For an in-depth discussion of the 2004 referendum, see Hsieh, Miguel, Ortega and Rodríguez (2006).
- 6 This is essentially the case laid out by Weisbrot (2007).
- 7 Mercanálisis (2007).

REFERENCES

- Hsieh, Chang-Tai, Edward Miguel, Daniel Ortega and Francisco Rodríguez (2007): 'The Price of Political Opposition: Evidence from Venezuela's *Matsanta*', Reproduced: Wesleyan University.
- Jatar, Ana Julia (2006): 'Apartheid del siglo XXI: La informática al servicio de la discriminación política en Venezuela', *Súmate*, Caracas.
- Maira, Antonio (2007): 'Hugo Chavez Presents Gramsci to Hundreds of Thousands of People: A Beautiful Revolution', Tlaxcala: The Translator's Network for Linguistic Diversity, <http://www.tlaxcala.es/pp.asp?reference=3143&lg=en>. Accessed November 23, 2007.
- Mercanálisis (2007): *Monitor de tendencia de opinión sobre la reforma constitucional*, Reproduced, November, Caracas, Mercanálisis.
- República Bolivariana de Venezuela (1999): *Constitución de la República Bolivariana de Venezuela*, Caracas, Asamblea Nacional.
- (2007): *Proyecto de Reforma Constitucional*, Caracas, Asamblea Nacional.
- Rodríguez, Francisco (2007): 'Economic Policies of the New Radical Left Have Failed', *Americas Quarterly*, Fall 2007.
- Romero, Simon (2007): 'Chávez Threatens to Jail Price Control Violators', *The New York Times*, February 17.
- Weisbrot, Mark (2007): 'Neoliberalism Has Failed', *Americas Quarterly*, Fall 2007.



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