

FROM THE 'STATUS QUO' PROBLEM TO THE 'FACTIONAL' PROBLEM CONSTITUTION-MAKING IN VENEZUELA, ECUADOR AND BOLIVIA

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Abstract: Constitutions are perceived as emanating from the popular will. Once in force, a constitution becomes a 'derived constituent' power built over an 'original constituent' power exercised by the people. But that is a fiction or a founding myth because there is no successful historical case of a first constitution-making process in a modern state engaging the free and fair participation of all or at least the majority of the people in a given community. Not surprisingly, there is a long-standing debate on the rigidity of constitutions addressed or perceived as addressed to protect the interests of a powerful elite (e.g. with rigid clauses to prevent constitutional replacements, perceived as illegitimate tools to protect such interests). More recently, against this background in some places has been postulated that the 'will of the people' should be above the established legal order (e.g., by installing participatory democracies). Accordingly, major constitutional changes appear as opportunities for rebuilding a 'real democracy', as happened in Venezuela (1999), Bolivia (2006) and Ecuador (2007) under the governments led by Hugo Chávez, Evo Morales and Rafael Correa. In the three cases inequality, social crisis, corruption, and the discrediting of party politics were all evident. The constitutional replacements that took place there sought, in theory, to give citizens back their voice in public affairs. But did they do so? And is it possible to renovate democracy 'only' backed by the majoritarian rule? This work analyses, first, the process of constitutional change in relation to four elements: 1) the legal framework, considering the extent to which it was respected, 2) the dispute between political and institutional actors, or the extent to which problems were resolved by agreement or by imposition, 3) the citizens' voice in the debate,



or the extent to which it was taken into account for drafting the new constitution, and 4) the outcomes of the constitution in terms of the activation of mechanisms of participation regulated, or the extent to which they have contributed to empowering the people. As main findings, it is stressed that what was identified as the ‘problem of the status quo’ (i.e. the use by elites of constitutional law to block democratic expression) was overcome but gave rise to the ‘factional problem’ (i.e. the imposition by a group).

Keywords: Constitutional change, democracy, Venezuela, Bolivia, Ecuador, constituent power, citizens participation

1. Introduction¹

In previous decades, South America has been considered a true scenario on the promotion of participatory democracy (Sintomer, 2008; Cameron et al., 2012). However, by 2021 results are far away from the expected. In the countries where the institutions of participatory democracy were stronger, there are clear signals of democratic backsliding (e.g. Brazil, Ecuador, Bolivia) or they directly have fallen into the category of autocracies (e.g. Venezuela) (see VDem, 2021). It opens room to ask what happened with such promises of citizens empowerment. The ‘political revolutions’ in Venezuela (1999), Bolivia (2006–2009), and Ecuador (2007–2008) are outstanding cases to analyse the topic from the constitutional angle because major institutional changes were advanced by participatory processes in democratic regimes.

The three countries were electoral democracies when constitutional replacements were launched by parties and/or social movements that had arrived to the government winning elections in scenarios of deep inequality, social crisis, corruption and the discrediting of the institutions of representative democracy (i.e., political parties, parliaments, and judicial powers). When the new governments assumed power, the oppositions –made up of the former elites–, maintained a strong presence in other institutions, especially in parliaments, and championed –at least in their rhetoric– the defence of the existing juridical and institutional order. The new governments based its legitimising discourse on being backed by popular support (Massüger and Welp, 2013; Negretto, 2020). This created a conflict between the rule of law and the ‘will of the people’ which was in theory resolved in favour of the people. But, to what extent did these outcomes produce citizen empowerment? To what extent is there a problem between the will

1 I thank Andreas Langenohl and Sophie Schmäing for the opportunity of presenting it at the workshop “Voting over contested issues – Voting as contested issue: Historical and contemporary perspectives on referenda and elections”, at Justus Liebig University, Giessen (20–21 February 2020) and the fruitful exchange we had there.

of people and the law?, or was it just a power struggle between the representatives of the *status quo* and the new faction in power? To answer this question, here the constitution making process is analysed, considering: 1) the legal framework, or the extent to which it was respected, 2) the dispute between political and institutional actors, or the extent to which problems were resolved by agreement or by imposition, 3) the citizens' influence in drafting the new constitution, and 4) the outcomes of the constitution in terms empowering the people's influence on decision making. The paper is structured in three sections: The first section presents the state of the art, the second section focuses on the analysis of the selected cases, and the final one draws conclusions.

2. State of the art

Constitutions are expected to incarnate the will of the people but with few exceptions (e.g., Switzerland, where a constitutional replacement can be launched by the people through signature collection²) citizens do not have regular means to influence them. This problem was early discussed during the preparation of the French Constitution of 1793. In a proposal that deserves to be better revised nowadays when talking about 'democratic innovations', Jean Jacques Rousseau not only thought that the constitution-making power had to be exercised on periodic and direct procedures but also proposed it to be legally regulated by law (Levine 1993). Emmanuel-Joseph Sièyes ruled out such possibility of a regular and direct exercise and opposed any attempt to facilitate it (see Colón Ríos, 2020: 33–39). Ratified in a referendum, this French Constitution regulated the direct ratification of laws by primary assemblies, but it never entered into force after being suspended by a state of emergency (Colón Ríos, 2020: 45).

The writing of new constitutions is frequently observed in exceptional, disruptive contexts such as decolonisation processes, military coups, or transitions to democracy (Méndez and Wheatley, 2013; Saati, 2015). On the contrary, the elaboration of new constitutions in democratic contexts is not common. A study by Gabriel Negretto identified only 25 cases between 1900 and 2015³ (Negretto, 2020). One of the reasons explaining this low frequency is that normally constitutions in force either do not regulate its replacement or they put high obstacles

- 2 Chile is an interesting case given that the constitutional replacement was an outcome of the social protests of 2019, deriving in a political agreement which drove to the plebiscite of 2020 in which the constitutional replacement was decided by the electorate.
- 3 A criteria to select cases is that the new constitution is adopted at least five years after the founding election, what is expected to provide a clear replacement of the institutions of the authoritarian regime (Negretto 2020: 3).

that make change very difficult. These difficulties in times of legitimacy crisis add incentives to the clash between the popular will and the status quo, and, at the same time, could open room for the emergence of majoritarian projects non-respectful of the rule of law.

The financial crisis in 2008 accelerated trends related to growing disengagement with institutional politics, dissatisfaction with governments' performance and perception that politicians are part of an elite pursuing their own interests. In Europe, many emerging social movements claimed a 'real democracy'. Parallel to the promotion of democratic innovations in the previous decades, citizen's participation in constitutional changes acquired centrality (Reuchamps and Suiter, 2016; Brandt and Gluck, 2015; Bergmann, 2016.).

Several studies point out that constitutions gain weight when they are developed in extraordinary contexts of popular mobilisation (e.g., a constitutional momentum), which include extra-parliamentary processes of ratification and communication (Ginsburg et al., 2009; Eisenstadt et al., 2017; Contiades and Fotiadou, 2016). However, more in-depth comparative research has shown that not enough evidence exists to show the positive effects of citizen participation on stability or legitimacy (Saati, 2015; Partlett, 2012, 2020). Scholars claim that some conditions need to be fulfilled to consider a process of citizen deliberation fair and meaningful (Welp and Soto, 2019). Others have analysed the extent to which pluralism influences the result of constituent processes and particularly how consensus or imposition play a role when the law is broken to promote the expected change (Bejarano and Segura, 2013, 2020; Negretto, 2020).

One of the main challenges posited to democracy when the rule of law is confronted with the popular will was described by O'Donnell (1994) when proposing the concept of 'delegative democracy', as a more democratic but less liberal than a representative democracy because it is strongly majoritarian (i.e., democracy constitutes, in legitimate elections, a majority that empowers somebody to become, for a given number of years, the embodiment and interpreter of the high interests of the nation). That majority supports the myth of legitimate delegation. This kind of tension is translated into a political struggle when a president acts against the law claiming that he has popular support. How and when this popular support is expressed is also dependent on his will, producing sooner or later an erosion of the whole democratic system if institutions are manipulated to control, allow, or avoid citizen engagement. To what extent does this tension explain the evolution of political regimes in Venezuela, Ecuador, and Bolivia?

3. Analysis

In what follows the constitution-making experiences in Venezuela (1999), Bolivia (2006–2009), and Ecuador (2007–2008) will be analysed,

focusing on the extent to which the legal framework was respected when promoting the constitutional change, the relation among former and new political elites, the role of citizens during the constitution-making and the extent to which the new participatory legal framework empowered the people.

4.1 The case of Venezuela

The victory of Hugo Chávez in the 1998 elections opened the door to the long-postponed constitutional replacement, which has been a claim from social movements since the 80's (Maingon et al., 2000). However, according to the 1961 Constitution, in force at that time, the reform had to be conducted by derived constituent power, exercised by the Congress. The government opted for direct confrontation with the Congress until the Supreme Court of Justice (CSJ) allowed the President to call for a referendum (decree of February 3, 1999).⁴ The first question was whether to accept or reject the creation of the National Constituent Assembly (NCA). The second question, related to the process of changing the constitution, was understood as a mechanism to grant Chávez with a discretionary power to manage it (Massüger and Welp, 2013). After several unsuccessful appeals for annulment, the Supreme Court of Justice forced the National Electoral Council to rephrase that question. The consultative referendum held on 25 April 1999 enabled the National Constituent Assembly (NCA) to be convened. With a low turnout (37.6%), the two questions were approved by more than 80% of the voters.

During the campaign to select representatives, people were engaged in public discussions all around the country, through hundreds of forums, seminars, and events, organised by various actors (Maingon et al., 2000; García-Guadilla and Hurtado, 2000), producing a novel and intensive participatory experience. However, the electoral system produced a low level of representativeness in the Convention. The election gave a clear victory to the government's allies (92.3% of the total number of seats), although the level of abstention (53.7%) was again remarkable. Shortly after, the NCA declared in its own by-laws that it was an 'original constituent power', and therefore empowered to control, change, limit or dissolve the other branches of government. This was contrary not only to the decision of the Supreme Court but also to the referendum results.

The NCA had a fixed term of 180 days but in only 120 the draft, reforming the state and creating the Fifth Republic, was finished. It was ratified on 15 December 1999 within a referendum (with 72% in favour and the abstention of the 55%). Paradoxically, during the

4 Based on Article 181 of the Organic Law of Suffrage and Political Participation (LOSP)

constitution-making process, there were no formal procedures to engage with citizen participation and the process was fully controlled by the government. The new constitution regulated many mechanisms of participation for the subnational and national level, including being the first in regulating the possibility of the direct recall of the president (Welp and Whitehead, 2020).

The constitution did introduce several mechanisms of participation at all levels, some intensively activated such as the local *Juntas Comunales* and different types of national referendums (mandatory, abrogative, initiated by citizens as well as by the authorities). But while the first were instrumentalised and increasingly controlled by the government (see Goldfrank, 2011; Hawkins 2010; Balderachi, 2015), the second were mainly activated from the top (Breuer, 2009).

The mechanisms of direct democracy (MDDs) at the national level were increasingly manipulated and finally prevented by the government (Welp and Ruth, 2017). There were nine bills submitted to referendum in Venezuela since the *chavismo* arrived to power. Four were mandatory (one to ratify the constitution in 1999 and the others to modify the constitution; two in 2007 and one in 2009), three top-down (two in 1999 to call for a constitutional convention and one in 2002, to change the labour unions internal regulations), and one bottom-up (2004), when the opposition collected signatures to activate a recall referendum oriented to remove the president from office. The recall activated against President Hugo Chávez by the Democratic Coordinator in 2004 had the support of the business sector as well as of several opposition parties. After a long and controversial process the referendum took place and Chávez was ratified with 59% of the votes (see Kornblith, 2005). Except for the 2007 bill oriented to reform the constitution (which despite being rejected did not prevent the introduction of most of the proposed reforms), the government's position did win in all these calls. Once the coalition in power consolidated control over the institutions, no more calls had been made while citizens attempts were prevented by default. This was particularly evident when the recall attempt against current president Nicolás Maduro was blocked despite having fulfilled all the criteria to be called (see Welp and Whitehead, 2020).

3.2 The case of Bolivia

The transition to democracy in Bolivia in 1982 had little effect on improving living conditions or generating institutional stability. Three presidents failed to complete their terms between 1985 and 2005 as a result of popular rejection. This led to a demand for a reform of the state that would involve the indigenous peoples in a country in which 62% of the population identifies itself as indigenous and 36 nationalities co-exist. Different to what happened in Venezuela and Ecuador, in Bolivia the constitutional replacement by a Constitutional Assembly had

been legally introduced when resolving the ‘gas war’ in 2003 (Massüger and Welp, 2013).

In 2005, Evo Morales (Movimiento al Socialismo, MAS) – first president of indigenous origin – obtained sufficient support to reach the presidency without the necessity of an intervention from Congress and the establishment of inter-party pacts and negotiations (also different to the lack of parliamentary support in Venezuela and Ecuador). The Convocation Law of the Constituent Assembly established that the goal of the assembly was to draft a new constitutional text and that the CA would not depend on or be subject to the constituted powers but at the same time would not interfere with their work. As well as determining the electoral process, this law established the majority required to pass the new constitution (two thirds of members present) and ruled that it must also be ratified by the people.

The election of assembly members was set for 2 July 2006. A referendum on the territorial autonomy was voted on the same day. Morales had begun by supporting the demand but later he and the MAS campaigned for a ‘no’ vote. The popularity of the demand for autonomy and the electoral system explains why, contrary to its expectations, MAS obtained only 51% of the vote (137 of 255 seats).⁵ In the Eastern regions, corporate interests represented by the conservative bloc PO-DEMOS dominated (de la Fuente Jeria 2010). In the rest of the country, candidates from the right were members of their respective parties, while candidates for MAS were determined by negotiations between the movement itself and associated social, rural, farmers and indigenous organizations. Another fourteen political entities, including minor parties and citizens’ groups, nominated candidates, typically the leaders of the respective organization.

The Constituent Assembly began a heated debate on the general rules. By mid-February 2007, when half the time allowed for drafting the constitution had elapsed, an agreement was reached: the full constitutional text would need to be approved by an absolute majority, while individual articles would be approved by two-thirds of all members present. Once running, the participation of different social groups in its vicinity was intense, but not in the recint. The Catholic Church, the police, the armed forces as well as international cooperation and the miners joined. However, several authors criticize the lack of debate within the Assembly and the overt racism (de la Fuente Jeria 2010). The territorial meetings, which saw the 255 assembly members

5 The referendum on autonomy exacerbated the problem of polarization. Despite the provisions of Article 2 of the law on convocation and the fact that the “yes” vote obtained a majority in the provinces of the eastern crescent (62.2% of the vote on average), opponents of autonomy, i.e. the MAS, argued that the “no” vote had prevailed because it had not only won in the west (with 63.3% of the vote on average), but – as the west is more highly populated – at national level as well (53.5% of valid votes) (Data from the CNE).

travel across the country to listen and present proposals, contributed to disseminate the work of the assembly but had little impact on the draft (Lazarte, 2008; de la Fuente Jeria, 2010). By the early summer of 2007 it was obvious that the AC was not going to approve the new constitution within the year's deadline that was established by the Convocation Law, so it decided on its own initiative to extend the deadline until mid-December (assuming the plenipotentiary powers it had rejected to assume in a previous agreement).

In August the old demand of moving the capital of the country from La Paz to Sucre re-emerged with force. The issue divided the MAS, which refused to introduce it into the Assembly, and this provoked a violent reaction from the people of Sucre (hitherto largely supportive of MAS), which had been hosting the AC. The Assembly was moved twice until finally, in December, the constitution was approved in a session that lasted for seventeen hours and in which only members from MAS were present. Even worse, the approved Constitution was later subject to revision by the executive and by congressional commissions, which changed 144 articles behind closed doors, without having the consensus or mandate to do so. After a year marked by conflicts over the issue of autonomy and a recall referendum in which Morales was re-endorsed as president by majority, the Constitution was ratified by referendum on January 25, 2009.

Amongst its innovations, the constitution defined Bolivia as a Plurinational state, introduced the full recognition of cultural diversity, the creation of indigenous autonomy, the defence of natural resources, and included many mechanisms of citizen's participation, including the direct recall of the president. Since then, at the national level five referenda were registered. Three were mandatory referenda and one a top-down initiative to ratify or remove the president and executives of departments (Breuer, 2009; Tuesta and Welp, 2020). When the indigenous movement mobilised to avoid the construction of a highway in the middle of a natural park (TIPNIS) the government answered with repression.

In 2016 Morales (in power since 2005) wanted to promote another re-election. His party had the majority in Congress but the constitution forced for a mandatory referendum if the constitution was to be changed. In a referendum, Morales proposition was defeated. However, he asked for an interpretation of the Human Rights charter claiming for his right to be re-elected. The Court, controlled by the government, accepted it. He run again in 2019 in an election that ended with social violence. (After one year of a controversial interim government, a new election took place in October 2020 and the MAS won, with a new candidate leader, Luis Arce, opening a new opportunity for Bolivian democracy).

3.3 The case of Ecuador

As in Bolivia, the convening of a Constituent Assembly in Ecuador was preceded by a period of deep crisis that involved all aspects of political life, including institutional fragility and instability. It also involved an economic crisis that was especially severe in the early years of the new century. These inauspicious circumstances were exacerbated by the tight control exerted by the so-called ‘partidocracy’ (*partidocracia*). The indigenous movement was organised and active and its political influence was on the rise (see Ortiz Crespo, 2008).⁶ In 2006, Rafael Correa (PAIS Alliance, Alianza País) won the presidency but his coalition did not present candidates for the parliament. Like Chavez, during the election campaign Correa promised far-reaching reforms by means of a constituent assembly activated by popular consultation.

Like in Venezuela, as the ruling constitution did not envisage its replacement by a constitutional assembly, a legal and political struggle between the former elite and the new government exploded. Following, Correa proposed a referendum. The Constitution granted the President the power to put matters that were, in his view, of vital importance to the country to a referendum but this explicitly excluded constitutional reforms. Despite the lack of a legal basis, the Congress, upon the request of the TSE called for an urgent consultation, suggesting a number of amendments to be made to the statute governing the establishment of a Constituent Assembly. The TSE, in contrast to its ruling of 2005⁷, resolved in favour of the president. Then, a majority of deputies decided to remove four of the seven members of the TSE from office. In response, the members of the TSE dismissed 57 deputies from the opposition parties, calling for them to be replaced by their “surrogates”. Finally, the President sent the police to prevent the dismissed members from accessing the Congress building, so their substitutes took their posts (see Massüger and Welp, 2013).

On 15 April 2007, the referendum gave resounding victory to the “Yes” camp, with 81.7 % of votes in favour of electing a constituent assembly and a turnout of 71%. But the institutional struggle did not end. A second question in the referendum had approved the statute to

6 CONAIE (the Confederation of Indigenous Nationalities of Ecuador, in Spanish the Confederación de Nacionalidades Indígenas del Ecuador) had become prominent in the political scene in the 1990s, becoming the mouthpiece of a popular political revival that rejected the neoliberal agenda.

7 On 20 April 2005, the new president, Alfredo Palacio, following the dismissal of Lucio Gutierrez during the so-called “outlaws rebellion” (*rebelión de los forajidos*), issued an executive order (No. 705 of October 26, 2005) calling for a referendum on the establishment of an AC. But on that occasion the Supreme Electoral Tribunal (TSE) declared the decree inapplicable (Resolution of November 1, 2005), noting that the 1998 Constitution does not empower the President to convene a CA. The Congress, whom the president had requested to issue an urgent decree, did not enter the debate.

conduct the CA, vested with “full powers”. In its ruling of June 15th, the TC had stated that the attribution of “full powers” to the AC did not grant it the power to assume the competences of constituted powers, however, this was disregarded later.

In the election for constituents the victory of Correa’s supporters exceeded the most optimistic expectations, giving the PAIS Alliance a large majority (80 out of the 130 seats, with high levels of participation). On 29 November 2007, the CA assumed the powers and duties of the legislative branch of government and declared members of the existing Congress elected on 15 October 2006 to be in recess. All this was not only in violation of the ruling of the Constitutional Tribunal, but also of the Statute approved by citizens in the referendum. It also explains why the Assembly devoted a part of its work to drafting laws that are normally the remit of a regular legislature (such as a tax law, a law on the remuneration of public employees or draft laws on road traffic) (Conaghan, 2008).

As for citizen participation in the constitution-making process, a Social Participation Unit was created and three people were given the mandate to organise and systematise all the proposals and comments received. The number of participants and suggestions exceeded the expectations: some 170,000 visits were registered. Workshops and discussion groups with experts were also organised (Ortiz Lemos, 2013). The lack of resources and methods, on the one hand, and the tight control of President Correa on the other, meant there was limited pluralism within the assembly and the citizens participation had no major incidence in the draft (Welp and Soto, 2019).

The CA was given eight months to draw up the new constitution. After seven months, only 57 articles had been adopted in their final form, which led the president of the CA to extend the deadline by two months. But president Correa rejected the request, leading to the resignation of the CA’s president. With a new president of the assembly, 387 articles were approved within three weeks. On 28 September 2008 almost 76% of citizens with the right to vote came to the polling stations and approved the new Basic Law with 64% of votes in favour.

The new regulatory framework provided several mechanisms for citizens’ participation and had also expanded the rights of indigenous communities, as well as created a “fourth power” of control by society. During Correa’s government, in Ecuador 12 bills were submitted to referendum. One in 2007, to call for a Constitutional Assembly (top down), a second in 2008 to ratify the new constitution (decided by the assembly) and a third call included 9 questions in 2011, (some questions there were aimed at controlling the media and were internationally criticised). A last referendum took place during the elections of 2017, addressed to impede public servants from hiding money in fiscal paradises (as an attack on the opposition candidate). In all the cases the government’s position won, even though in some of the questions voted in 2011 the margin was quite narrow. Parallel to these top-down calls,

the bottom-up activations were prevented (one of the most remarkable was the initiative to avoid oil extraction near the YASUNI national park, however dozens of other proposals were also blocked, [see Tuesta and Welp, 2020]). Like in Venezuela, during Correa's government the calls have been mainly promoted top-down, from the President, and addressed to change institutions to increase his power. In 2018, with new president Lenin Moreno a new referendum was called to change the legal framework created by correism.

5. Conclusions

Through the overview of the constitution-making process in Venezuela 1999, Ecuador 2008 and Bolivia 2009, it is possible to observe that these constitutional processes included the direct ratification by popular referendum, the constitution-making bodies were directly elected by citizens and in two of the three cases (Venezuela and Ecuador) the decision to elect a constituent assembly was also decided by referendum. However, all three processes were marked by violations of the law, characterised by strong political struggles (including the intervention of the police and the military in Bolivia and Ecuador) and on several occasions even violated the regulations that were established ad hoc to manage the constitution-making process itself (the rules to conduct the assembly, in the three cases; the limits to the powers assumed by the CA). In theory, the assembly could not be sovereign. It is the people that transfer the exercise of sovereignty to their representatives. For this reason, the assembly had to respect the framework that the people established. The appeal to citizenry was clearly part of a strategy to resolve the power struggle and to overcome institutional constraints ("delegative democracy" in O'Donnell's terms).

Even if the three constitutions recognised second and third generation rights, e.g., with new notions of cultural and ethnic recognition, a wide range of participatory institutions and environmental protection, they also granted more powers to the executive and a reduction in the powers of the legislature, diminishing checks and balances.

Key for my argument is, that even though the discourse in favour of introducing participatory democracy was at the core of the original electoral campaigns, once initiated, the three constitution-making processes did not create mechanisms for these citizens' participation to have an influence on the draft. Finally, while presidents have made relatively frequent use of top-down referenda, citizens have rarely made use of these mechanisms (there is only one case in which they exercised their right to vote: The, quite controversial, recall referendum against Chávez in 2004.).

What can be concluded is that once these new coalitions consolidate their power, despite the institutionalisation of a wide range of mechanisms of participation, the most powerful ones were limited or

perverted, which shows that the problem of the status quo was replaced by the problem of a faction which appeals to the will of the people when instrumentally useful but ignores or prevents it when it is not in agreement with the government's options.

What I have try to show throughout these pages is that in societies with deep social divisions, observance of the law is weak. This does not relate specifically or only to Chávez, Correa or Morales, but is part of a long-running political game in which those who win change its rules in their favour. The defining feature in these cases is the support of citizens for a process of radical transformation. At the same time, once they had been initiated, the three constitution-making processes relegated citizens to the role of observers, while decisions were made by force of numbers (without attempting to seek agreement), the rules that had been agreed with public consent were modified and presidents became the main protagonists. I end by proposing that pluralism is crucial for democracy and can only be protected when there is a combination of autonomous citizens' participation and the rule of law, but also politics should allow to change things. It locates the argument at the borders of the primacy of the rule of law to understand that in some cases the status quo plays against the necessary renovation of democracy, but it does never justify the imposition by a faction in power.

References

- Balderacchi, C. (2015) Participatory Mechanisms in Bolivia, Ecuador and Venezuela: Deepening Or Undermining Democracy?. *Government And Opposition*, Vol. 52, no. 1, pp. 131-161.
- Bejarano, A.M. and Segura, R. (2020) The Difference Power Diffusion Makes: Explaining Divergent Outcomes In Colombia (1990-1991) and Venezuela (1998-1999). In: Negretto, G., ed. *Redrafting Constitutions In Democratic Regimes*. Cambridge: Cambridge University Press. p. 131.
- Bejarano, A. M. and Segura, R. (2013) Constituent Assemblies And Democracy: a Critical Reading Of The New Constitutionalism In The Andes. *Colombia Internacional*, Vol. 79, pp. 19-48.
- Bergmann, E. (2016) Participatory Constitutional Deliberation In The Wake Of Crisis: The Case Of Iceland. In: Reuchamps, M. and Suiter, J., eds. *Constitutional Deliberative Democracy in Europe*. London: ECPR Press, pp. 15-32.
- Brandt, M. and Gluck, J. (2015) *Participatory And Inclusive Constitutional making. Giving Voice To The Demands Of Citizens In The Wake Of The Arab Spring*. Washington: Peaceworks, 38 p.
- Breuer, A. (2009) The Use Of Government-Initiated Referendums In Latin America. Towards a Theory Of Referendum Causes. *Revista de Ciencia Política*, Vol. 29, no. 1, pp. 23-55.
- Cameron, M. A., Hershberg, E. and Sharpe, K. E. (eds.) (2012) *New Institutions for Participatory Democracy in Latin America: Voice and Consequence*. New York: Palgrave-Macmillan. 263 p.

- Colón Ríos, J. (2020) Constitution Making Through Law. In: Negretto, G., ed. *Redrafting Constitutions In Democratic Regimes*. Cambridge: Cambridge University Press. pp. 33–52.
- Conaghan, C. (2008) Ecuador: Correa's Plebiscitary Presidency. In: Diamond, L., Plattner, M., Abente-Brun, D., eds. *Latin America's Struggle For Democracy*. Baltimore: John Hopkins University Press, pp. 199–213.
- Contiades, X. and Fotiadou, A. (2016) *Participatory Constitutional Change: The People As Amenders Of The Constitution*. New York: Routledge, 224 p.
- Cordero Carraffa, C. (2005) La representación en la asamblea constituyente [Representation in the Constituent Assembly]. In: Corte Nacional Electoral Bolivia, ed. *Cuaderno de Análisis e Investigación N ° 6*. La Paz: Weinberg.
- De la Fuente Jeria, J. (2010) El difícil parto de otra democracia: la Asamblea Constituyente de Bolivia [The difficult birth of another democracy: Bolivia's Constituent Assembly]. *Latin American Research Review, Special issue: Living in Actually Existing Democracies*, Vol. 45, no. 4, pp. 5–26.
- Eisenstadt, T., LeVan, C. and Maboudi, T. (2017) *Constituents Before Assembly*. Cambridge: Cambridge University Press, 200 p.
- García-Guadilla, M. P. and Hurtado, M. (2000) Participation And Constitution Making In Colombia And Venezuela: Enlarging The Scope Of Democracy?, Paper presented at the XXII Congreso internacional de Latin American Studies Association (LASA), Miami, FL, Marzo 16–18.
- Ginsburg, T., Zachary E. and Blount, J. (2009) Does the process of constitution making matter? *Annual Reviews*, 5, pp. 201–223.
- Gómez Calcaño, L. (2000) Sociedad civil y proceso constituyente en Venezuela: encuentros y rivalidades [Civil society and the constituent process in Venezuela: encounters and rivalries]. Paper presented at the XXII Congreso internacional de Latin American Studies Association (LASA), Miami, FL, Marzo 16–18.
- Goldfrank, B. (2011) Los Consejos Comunales: ¿Avance o retroceso para la democracia venezolana? [The Communal Councils: Advance or Setback for Venezuelan Democracy?], *Iconos*, Vol. 40, pp. 41–55.
- Gylfason, T. (2013) From Collapse To Constitution: The Case Of Iceland. In: Paganetto, L., ed. *Public Debt, Global Governance and Economic Dynamism*. Berlin: Springer Verlag, pp. 379–417.
- Hawkins, K (2010) Who Mobilizes? Participatory Democracy In Chávez's Bolivarian Revolution. *Latin American Politics & Society*, Vol. 52, no. 3, pp. 31–66.
- Kornblith, M. (2005) The Referendum In Venezuela: Elections Democracy. *Journal of Democracy*, Vol. 16, pp. 124–137.
- Lazarte, J. (2008) La Asamblea Constituyente de Bolivia: de la oportunidad a la amenaza [The Bolivian Constituent Assembly: from opportunity to threat]. *Nuevo Mundo Mundos Nuevos, Cuestiones del tiempo presente*. Available from: <http://nuevomundo.revues.org/42663>. [Accessed 18 July 2011].
- Levine, Andrew (1993). *The General Will: Rousseau, Marx, Communism*. London and New York: Routledge, 240 p.
- Mainong, T., Pérez Baralt, C. and Sonntag, H. (2000) La batalla por una nueva Constitución para Venezuela [The battle for a new Constitution for Venezuela]. *Revista Mexicana de Sociología*, Vol 62, no. 4, pp. 91–124.
- Massüger, N. and Welp, Y. (2013) Legality and Legitimacy. Constituent power in Venezuela, Bolivia and Ecuador. In: *Constitution-Making and Popular*

- Participation, Fernando Méndez & Jonathan Wheatley, eds. UK: Ashgate, pp. 103–118.
- Méndez, F. and Wheatley J. (eds.) (2013) *Patterns of Constitutional Design, The Role of Citizens and Elites in Constitution-Making*. Farnham: Ashgate, 202 p.
- Negretto, G. (2020) *Redrafting Constitutions In Democratic Regimes*. Cambridge: Cambridge University Press, 264 p.
- O'Donnell, G. (1994) Delegative Democracy. *Journal of Democracy*, Vol. 5, no. 1, pp. 55–69.
- Ortiz Lemos, A.. (2013) *La sociedad civil ecuatoriana en el laberinto de la revolución ciudadana* [Ecuadorian civil society in the labyrinth of the citizen's revolution]. Quito: FLACSO, 401 p.
- Partlett, W. (2020) Expanding Revision Clauses In Democratic Constitutions. In: Negretto, G., ed. *Redrafting Constitutions in Democratic Regimes*. Cambridge: Cambridge University Press. pp. 53–77
- Partlett, W. (2012) The Dangers Of Popular Constitution-Making. *Brooklyn Journal of International Law*, Vol. 193. Available from: <https://ssrn.com/abstract=1924958>. [Accessed: 25 February 2019].
- Reuchamps, M. and Suiter, J. (2016) *Constitutional Deliberative Democracy In Europe*. Colchester, Essex: ECPR Pres, 196 p.
- Saati, A. (2015) *The Participation Myth, Outcomes of participatory constitution building processes on democracy*. Department of Political Science, Sweden: Umeå University.
- Sintomer, Y. (2008) *Les budgets participatifs en Europe* [Participatory budgets in Europe]. Paris: La Découverte, 360 p.
- VDem (2021) Autocratization turns viral. Democracy Report 2021. Available at: https://www.v-dem.net/media/finder_public/74/8c/748c68ad-f224-4cd7-87f9-8794add5c60f/dr_2021_updated.pdf.
- Welp, Y. and Ruth, S. (2017) The Motivations Behind the Use of Direct Democracy. In: Ruth, S. P.; Welp, Y. and Whitehead, L., eds. *Let The People Rule? Direct Democracy In The Twenty-First Century*. Colchester: ECPR Press, pp. 99–119
- Welp, Y. & Soto, Francisco (2019) Más allá de modas y cortinas de humo: la deliberación ciudadana en cambios constitucionales [Beyond fashion and smokescreens: citizen deliberation on constitutional changes], *Revista Española de Ciencia Política*, Vol. 50, pp. 13–41.
- Tuesta, F. and Welp, Y. (2020) *El diablo está en los detalles. Referéndum y poder político en América Latina*. [The evil is in the details. Referendum and political power in Latin America] Lima: Ediciones PUCP, 332 p.
- Welp, Y. and Whitehead, L. (2020) The Recall Revival And Its Mixed Implications for Democracy: Evidence from Latin America. In Welp, Y, and Whitehead, L., eds. *The Politics of Recall Elections*. Palgrave. pp. 159–178.
- Whitehead, L. (2017) Between The 'Fiction' Of Representation And The 'Faction' Of Direct Democracy. In: Ruth, S. P., Welp, Y. and Whitehead, L., eds. *Let the People Rule? Direct Democracy in the Twenty-First Century*, Colchester: ECPR Press, pp. 7–10.