

BRINGING THE JUDICIARY BACK IN: AN ANALYSIS OF THE IMPACT OF  
EXECUTIVE-JUDICIAL RELATIONS ON DEMOCRATIC INSTITUTIONAL STABILITY  
IN VENEZUELA

by

Lesley Martina Burns

B.A. (Honours), University of Guelph, 1999  
M.A., University of Guelph, 2001

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

in

The Faculty of Graduate Studies

(Political Science)

THE UNIVERSITY OF BRITISH COLUMBIA  
(Vancouver)

August 2009

© Lesley Martina Burns, 2009

# ABSTRACT

Using a method of process tracing based on in-depth elite interviews, this dissertation examines the relationship between presidentialism and the rule of law in Venezuela. It finds that the perils of presidentialism—minority government, coalitions, deadlock, term limits and fixed terms—lead to institutional instability when they interact with low rule of law.

Institutional instability occurs when one branch of government threatens or attacks another. Instead of exploring regime level stability this dissertation argues that state level factors more accurately capture problems associated with democracy. Rather than focusing on executive-legislative relationships, as much of the literature does, I argue that the judiciary is an important determinant of democratic governance. This dissertation shows how an examination of executive-judicial relationships helps explain dynamics leading to institutional instability in presidential systems.

Interviews revealed that institutional instability was associated with judicial non-independence in three periods of Venezuela's democratic history. During the Punto Fijo era political parties supplanted state institutions that are necessary foundations for democracy; in the transition period the gravity of the problems of a non-independent judiciary became evident; and during the Bolivarian period, the interaction between a low rule of law and presidentialism led to institutional instability.

An examination of the precarious executive-judicial relationship in Venezuela builds on previous studies of instability to provide a more complete account for the decline of a seemingly stable democracy. Specifically, it provides a case study of an unstable presidential democracy to show how presidentialism contributes to institutional instability when the rule of law is weak. Finally, the dissertation contributes to shifting the analytical focus of the democratization literature from regime to state. This shift in analysis shows that satisfying the minimal regime criteria for democracy, such as elections, is insufficient to ensure institutional stability, and perhaps continued democracy. For free and fair elections to be meaningful state institutions must be capable of restraining executive power.

# CONTENTS

ABSTRACT.....	ii
CONTENTS.....	iii
LIST OF TABLES.....	v
LIST OF FIGURES.....	vi
ACKNOWLEDGEMENTS.....	vii
LIST OF ABBREVIATIONS.....	ix
CHAPTER ONE.....	1
Introduction.....	1
1.2 Key Hypotheses.....	5
1.3 Data and Methodology.....	7
1.4 Method of Investigation.....	8
1.5 Selection of the Case Study.....	10
1.6 Sources of Evidence.....	18
1.7 Plan of the Dissertation.....	20
CHAPTER TWO.....	24
2.1 Evaluating Democratic Stability.....	24
2.2 The Regime State Distinction.....	25
2.3 Democracy Defined.....	28
2.4 The Various Meanings of Instability in the Democratization Literature.....	33
2.5 How the State Upholds Fair Elections.....	38
2.6 Stability in Parliamentary versus Presidential Systems.....	42
2.7 Quality of Democracy.....	52
2.8 Conclusion.....	58
CHAPTER THREE.....	60
3.1 The Rule of Law and Democratic Stability.....	60
3.2 The Rule of Law.....	61
3.3 Existing Measures Related to the Rule of Law.....	63
3.4 Judicial Independence.....	72
3.5 The Formal – Informal Divide.....	83
3.6 Conclusion.....	85
CHAPTER FOUR.....	87
4.1 Institutional Sources of Instability in Venezuelan Democracy.....	87
4.2 Venezuela’s Pacted Democracy: 1958-1988.....	92
4.3 The Functioning of the Judicial System 1958 to 1988.....	97
4.4 Decade of Transition: 1989-1998.....	107
4.5 The Judiciary in the Transition Years 1989-1998.....	108
4.6 Judicial Reform Attempts in the Transition Years.....	114
4.7 Chávez as a Consequence of Dissatisfaction with the Previous System: 1999-2007... ..	118
4.8 The Bolivarian Revolution.....	120
4.9 Conclusion.....	121
CHAPTER FIVE.....	123
5.1 Using a Popular Mandate to Reinvent Political Institutions.....	123
5.2 Referendum Circumvents Congressional Minority.....	125

5.3 Using the Judiciary to Introduce a Constitutional Assembly.....	131
5.4 Structure of the Venezuelan Government under the 1999 Constitution .....	150
5.5 The Venezuelan Judicial System .....	151
5.6 Stronger Executive, Weaker Judiciary.....	154
5.7 The 2000 Elections .....	160
5.8 Conclusion .....	162
CHAPTER SIX.....	165
6.1 From Polyarchy to Boliarchy.....	165
6.2 Centralizing the Administration of Justice into the Supreme Court .....	168
6.3 The Derailement of Constitutional Order .....	176
6.4 Political Deadlock Provokes Court Expansion .....	181
6.5 Court Decision Revises Electoral Rules Retrospectively .....	185
6.6 Popular Mandate Used to Override Institutional Framework.....	190
6.7 Irregularities in the Supreme Court Expansion.....	196
6.8 The Government Builds Support Prior to Recall Referendum .....	201
6.9 Conclusion .....	205
CHAPTER SEVEN .....	207
7.1 Discontent with the Ruling Government .....	207
7.2 Alienation of the Opposition.....	209
7.3 Political Persecution of Opponents .....	213
7.4 The Electoral System and How to Access Power .....	219
7.5 The Presidential Election 2006 .....	233
7.6 The Five Motors of the Revolution.....	235
7.8 Surmounting Term Limits.....	240
7.9 The Referendum on Constitutional Change 2007.....	244
7.10 Conclusion .....	247
CHAPTER EIGHT .....	249
8.1 Conclusion .....	249
8.2 Rule of Law and Judicial Independence .....	250
8.3 The Perils of Presidentialism .....	252
8.4 Democratic Regime and Democratic State .....	257
References.....	260
Glossary of Key Concepts .....	287

## LIST OF TABLES

Table 1: Relationship between the Perils of Presidentialism and Rule of Law .....	7
Table 2: Rule of Law and Stability for Latin American Countries 1996-2002: Compared with Global Averages.....	12
Table 3: Rule of Law and Stability for Latin American Countries 1996-2002: Comparison with Latin American Averages. ....	12
Table 4: Public Perception of Institutions in Latin America .....	67
Table 5: Concentration of MVR Candidates Elected in the Constituent Assembly Election 1999 .....	140
Table 6: Deputies of National Assembly 2006-2011.....	226

## LIST OF FIGURES

Figure 1: Venezuela Freedom in the World Scores 1973-2007.....	15
Figure 2: Rule of Law in Venezuela 1996-2007.....	16
Figure 3: Instability of Presidentialism.....	50
Figure 4: Perception of the Venezuelan Supreme Court 1999 – 2006 .....	68
Figure 5: Constellation of Presidential Powers in Relation to the Judiciary in Latin America. ...	83
Figure 6: Paths from Minority Government to Constitutional Assembly.....	131
Figure 7: Government of the Bolivarian Republic of Venezuela .....	151
Figure 8: Venezuelan Judicial System.....	153
Figure 9: Supreme Court Case Loads by Chamber 2000-2006 .....	197
Figure 10: MaiSanta Database.....	211

## ACKNOWLEDGEMENTS

This dissertation would not have been possible without the help of many people. I would like to start by thanking my supervisory committee. My research supervisor Maxwell A. Cameron was a source of constant attention to detail his ability to maintain a focus on the big picture is worthy of praise. Lisa MacIntosh Sundstrom for her constant reassurance and encouragement and Mark Warren for his ability to formulate seemingly disjointed ideas into concrete concepts. Also, Campbell Sharman provided great legal insight and deserves special thanks for his ability to break things down into manageable parts. I thank Brian Job, Mark Zacher, for providing much needed encouragement and direction throughout my entire time at UBC. I also greatly appreciate encouragement from Barbara Arneil, Kathryn Harrison, Diane Mauzy, and Benjamin Nyblade.

Stephanie Keane, Tania Keefe, Philip Orchard, Raul Pancheco-Vega and Glenn Wagner deserve particular recognition for their dedication as friends; for their constant support and encouragement; and for their editing skills. Without them this project would never have been completed. I would also like to thank Colin Green, Tessa Matsuzaki, Ashish Misquith and Keith Powell who provided endless encouragement in the final stages of the project.

I benefitted greatly from insights and direction from Andres Mejia Acosta and Pablo Policzer both during their post-doctoral fellowships at UBC and beyond. My colleagues at UBC in the early years, Michael Bluman Schroeder, Rita Dhamoon, Peter Ferguson, Jamie Gillies, Scott Matthews, Fiona MacDonald and Karin Yueng. And the later years, Shane Barter, Amanda Benjamin, Nicolas Dragojlovic, Catherine Hecht, Royce Koop, Clare McGovern, Rebecca Alegría Monnerat McPartlin, Freddy Osorio-Ramirez, and Netina Tan all provided many insightful comments on drafts of the dissertation. Peter Loewen provided valuable advice in my preparation for the final defense.

My work benefitted greatly from my experience working with Tom Legler. I had the pleasure of working with Tom on a Social Sciences and Humanities Research Council funded project on transnational dimensions of democracy. Through this project I had the honour of meeting an inspirational group of young scholars. Additionally, through his previous network of contacts Tom helped me get oriented in Venezuela. I would also like to thank Daniel Hellinger for sharing his experience in Venezuela with me.

During my time in Venezuela Ambassador Renate Wielgosz, and Vicken Koundakijan from the Canadian Embassy in Caracas provided great support, assistance making contacts and above all encouragement. This dissertation would not have been possible with the inspiration and mentorship of Paula Fedeski-Koundajian.

Many people provide endless sources of encouragement, advice and guidance in Venezuela. I am unable to name several of these people directly, but their support and encouragement have not gone unnoticed. Of those who have agreed to be recognized, Gerardo Gonzales was source of great encouragement, friendship and inspiration. His dedication to democracy in Venezuela is nothing short of admirable. I am indebted to Daniel Mogollón Muñoz, for his help in orienting

me politically, and helping me to understand the more complicated aspects of Venezuelan democracy and to Maggi Dilena for her help me navigate the Venezuelan legal system and make valuable contacts. Dani and Maggi not only supported my research and helped me make contacts they were also wonderful friends who enriched my time in Venezuela. I greatly benefited from Graham Dick's generosity. He opened many doors and shared his years of experience working in Venezuela. I would also like to thank Henry Larrarte, Milko Luis González, Heidi Russell, Alfredo Toro and Luis Quintana for their assistance and for the many debates which kept me thinking and constantly sharpening my understanding.

Several institutions in Venezuela provided helpful assistance. The Instituto de Estudios Superiores de Administración kindly granted me visiting research status and provided me with an incredible working environment. The faculty and staff were a great assistance at many stages of my research. Through my research affiliation with IESA I met many students who helped me to understand their country, many of whom also assisted me in making valuable research contacts.

My understanding of the Venezuelan constitution was greatly improved through my participation in the Constitutional Law course taught by Hermann Escarrá at Universidad de Santa María. Professor Escarrá and my classmates were very helpful. They contributed to my understanding the both the constitution and on how the judicial system functioned. I also learned a great deal in a course on the Bolivarian Constitution at the Universidad Bolivarian de Venezuela. I am grateful to both universities for allowing me to participate in these courses.

Last, but certainly not least, I am grateful to the members of the Venezuelan judicial system who went out of their way to explain the Venezuelan judicial system to me and for sharing their thoughts and insights on the changes occurring in their country, for sharing their emotionally charged experiences. Those who seek a more equitable system based on the equal application of the law have been a constant source of inspiration.



## LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Spanish</b>	<b>English</b>
AD	Acción Democrática	Democratic Action Party
CEJ	Comisión de Emergencia Judicial	Judicial Emergency Committee
CNE	Consejo Nacional Electoral	National Electoral Council
CONATEL	Comisión National de Telecomunicaciones	National Telecommunication Commission
COPEI	Comité de Organización Política Electoral Independiente--Partido Social Cristiano	Committee of Independent Electoral Political Organization—Social Christian Party
COFAVIC	El Comité de Familiares de las Víctimas del 27 de febrero	The committee of Families of the Victims of 27 February
CJ	Consejo de la Judicatura	Judicial Council
COPRE	Comisión Presidencial para la Reforma del Estado	Presidential Commission for State Reform
CSJ	Consejo Supremo Judicial	Supreme Court, Prior to 1999
CTV	Confederación de Trabajadores de Venezuela	Federation of Trade Unions of Venezuela
DEM	Dirección Ejecutiva de la Magistratura	Executive Director of the Magistrate
FEDECAMARAS	Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela	Federation of Chambers of Commerce and Production of Venezuela
GC	Grupo Convergencia	Convergence Group
IESA	Instituto de Estudios Superiores de Administración	Institute for Graduate Studies in Administration
IPCN	Independientes para la Comunidad Nacional	Independents for the National Community
LOTSJ	Ley Orgánica del Tribunal Supremo de Justicia	Organic Law of the Supreme Court
MAS	Movimiento al Socialismo	Movement Toward Socialism
MB-200	Movimiento Bolivariano Revolucionario 200	Bolivarian Revolutionary Movement 200
MVR	Movimiento Quinta República	Fifth Republic Movement
OEA/OAS	Organización de los Estados Americanos	Organization of American States
PCV	Partido Comunista de Venezuela	Venezuelan Communist Party
PDVSA	Petróleos de Venezuela Sociedad Anónima	Venezuela Oil Company, Incorporated
PP	Polo Patriótico	Patriotic Pole
PPT	Patria Para Todos	Homeland for All

PROVEA	Programa Venezolano de Educación-Acción en Derechos Humanos	Venezuelan Education Program for Action in Human Rights
RCTV	Radio Caracas Televisión	Caracas Radio and Television
TSJ	Tribunal Supremo de Justicia	Supreme Court
URD	Unión Republicana Democrática	Democratic Republican Union

# CHAPTER ONE<sup>1</sup>

## 1.1 Introduction

When leaders undermine the institutions intended to act as checks on their power, they may compromise the quality, stability or survival of democracy. Although the threat of a full regime breakdown from democracy to dictatorship has become less common among third wave democracies, threats to the continuation of quality democratic governance<sup>2</sup> come from political instability,<sup>3</sup> institutional instability,<sup>4</sup> democratic crises<sup>5</sup> and presidential interruptions.<sup>6</sup> In Latin

---

<sup>1</sup> Primary research for this dissertation was collected while I was a visiting Research Fellow at the Instituto de Estudios Superiores de Administración (IESA) in Caracas, Venezuela in 2005–2006. To protect the identity of the interviewees, in compliance with the University of British Columbia’s ethics guidelines, all interviews are identified by a sequence of numbers, the order of which has been assigned randomly.

<sup>2</sup> I have intentionally used the term quality of democratic governance to avoid conceptual confusion with the phrase quality of democracy. This dissertation contributes to the quality of democracy literature, but seeks to conceptually differentiate from the existing literature on quality of democracy. It does so to avoid the normative assumptions inherent in this body of literature. A more comprehensive explanation of how this research relates to the quality of democracy literature is provided in chapter two.

<sup>3</sup> These terms are interrelated and the conceptual overlap makes them difficult to measure as separate variables. For the sake of consistency, every attempt is made to clearly define their exact meaning. Political instability is used in different ways in the literature. It can mean the presence of violence and protest (Schneider and Frey, 1995; Karl, 1997); or, political instability can also refer to the perceptions of the likelihood that the regime will break down, including the presence of protests, as it is measured by the World Bank Institute (World Bank, 2002; World Bank, 2007). It is used throughout this dissertation to refer to political protests, violence and riots.

<sup>4</sup> Democratic institutional instability is present when “one or more branches of government issued a threat or carries out an attack against another branch or branches” (Helmke, 2008, p.10). There is blurring of categories between how scholars evaluate different forms of instability. For example, a threat or attack by one branch on another could lead to regime breakdown (as in a transition between democracy and dictatorship). Likewise, such a threat or attack could either be the result of political instability, or it could cause political instability in the form of protests and violence. In part, this overlap between concepts comes from a tendency to confuse a contributing factor with the variable we seek to evaluate. To avoid conceptual confusion I have made every attempt to clarify the exact meaning.

<sup>5</sup> A democratic crisis is said to occur when there has been “unconstitutional alteration of the constitutional regime,” autogolpes and the suspension of constitutions. See for example: (Articles 19 and 20, section IV, “Strengthening and Preservation of Democratic Institutions” Lima, Peru September 11, 2001; and Cooper & Legler, 2001, Boniface, 2007).

<sup>6</sup> Presidential interruptions occur when a president “leaves or is forced to leave, the presidency before the end of the constitutional term” (Marsteintredet & Berntzen, 2008, p83). Examples of attempts to remove presidents from office before their terms have ended include: Argentina (1989, 2003); Bolivia (1984, 2001, 2003, 2005-Mesa & Rodríguez) Hati (1991, 2004); Ecuador (1997, 2000, 2005); Brazil (1992); Colombia (1996); Paraguay (1996, 1999, 2003); Peru (1991, 2000); Guatemala (1993); Venezuela (February 1992, November 1992, 1993, 2002, 2004).

America presidents have been prematurely removed from office through coups, forced resignations, and court rulings. The early termination of a president's term in office is often the result of the above mentioned threats and these methods tend to be more destabilizing than the parliamentary equivalent of a vote of no confidence. In other cases, presidents have successfully changed term limits to extend their time in office. The extension of term limits can be problematic when the methods used to do so weaken the institutions that are designed to keep democracy in check. For example, Venezuela's Hugo Chávez relied on popular support for change, demonstrated through elections, to dismantle the existing political institutions. He claimed to be representing the will of the people while simultaneously diminishing the ability of institutions to check his power. Although his revolutionary agenda offers the promise of greater participation, governing institutions have not been institutionalized. When the democratic institutional structure in place to ensure that leaders abide by the rules is destroyed, how do societies keep their leaders' power in check? This situation presents a tension between the popular will of citizens and the institutions intended to ensure continued democracy.

Until recently the literature on democratic stability focused on regime breakdown—or on the transition between democracy and non-democracy (most often dictatorship) (Linz, 1978; 1990; Stepan & Skach, 1993; Cheibub & Limongi, 2002; Cheibub, 2002; 2007; Przeworski et. al. 2000; and Mainwaring, 1997). In adopting a regime focus, this body of literature is unable to explain the emergence of presidents who once elected, systematically undermine democratic institutions. In an attempt to explain how political instability and breakdown emerge numerous studies have found that presidential systems are more prone to such problems than parliamentary systems (Bunce, 2000; Stepan & Skach, 1993; Cheibub & Limongi 2002; Cheibub, 2002; Przeworski, 2000; Lijphart, 2000). There is no clear explanation why this is the case: some

scholars attribute the difference in regime survival to systemic factors present in parliamentary democracies and absent in presidential democracies (Stepan & Skach, 1993). Others have stated either that the correlation between regime type and survival is spurious (Mainwaring, 1997); that it has nothing to do with constitutional principles; or that it is based on the conditions under which presidentialism was adopted (for example the legacy of military interventions) (Cheibub, 2007).

These studies approach the question from a variety of methodological perspectives; despite this diversity they focus almost exclusively on executive-legislative relationships within presidential and parliamentary systems. This focus is justified by an important difference between the two systems and how these systems derive their legitimacy. Presidential systems are based on dual legitimacy because the legislature and the executive are elected separately, while in parliamentary systems the executive requires the support of, and is selected by, the legislature.<sup>7</sup> With the dual claim to legitimacy, when conflicts arise between the executive and legislature in presidential systems, the conflicts tend more often to lead to constitutional crisis, institutional challenges or to severe breakdown in government.

The infrequency of full regime breakdown and the tendency for leaders to erode institutions once elected has led some scholars to consider other factors, short of full breakdown, that impact the quality of democracy. Some examples of studies that look at this new form of instability focus on interrupted presidencies through coups, impeachment, incapacity and resignation (Marsteintredet & Berntzen, 2008; Pérez-Liñán, 2007; Valenzuela, 2004), democratic crises (Cooper & Legler, 2001; Boniface, 2007), and broader measures of instability (Przeworski et al. 2000; Kaufmann, Kraay & Matsuzzi, 2007; Helmke, 2008). Scholars mean a variety of

---

<sup>7</sup> For an elaboration of the relationship between the legislature and the president and their ability to remove one another see: (Pérez-Liñán, 2005; Baumgarner & Kada, 2003; and Stepan & Skach, 1993).

different things when they look at instability; these range from protests and general unrest to attempts to overthrow elected leaders or entire political regimes, the various uses of this term are fully elaborated on in Chapter Two.

Briefly, when focusing on the state level, instability comes predominantly from institutional instability (Helmke, 2008; Pérez-Liñán; 2007; and Valenzuela, 2004). For the purpose of this dissertation institutional instability means a threat or attack by one branch of government on another. It offers a word of caution on the more general notion of political instability because protests, which have been used as a sign of instability, can be a signal of the electorate's ability to express dissatisfaction, and therefore, as an indicator of a healthy democracy.<sup>8</sup> A full explanation of how instability is operationalized and how this definition differs from others used in the discipline is provided in Chapter Two. The most important distinction to be made is that rather than focusing on the complete transition from democracy to dictatorship, I am more interested in forms of institutional instability, or the ability of one branch of government to threaten or attack another.

The literature that looks at the interaction between different branches of government has tended to focus on executive-legislative relations and has tended to overlook the importance of the third branch of government: the judiciary. A number of recent studies of democratic instability point to the important role that the rule of law plays (Alexander, 2002; Bunce, 2000; Carothers, 1998; Chávez, 2005; Diamond, 1999; Domingo, 2005; Hartlyn, 1994; Larkins, 1996, 1998; O'Donnell, 1994, 1999, 2001; and Zakaria, 2004). Although these studies employ different ways to measure and evaluate the rule of law, put simply, the rule of law is

---

<sup>8</sup> This does not dismiss the fact that high levels of violence are less likely to occur in democratic countries.

characterized by the supremacy of law over the will of individuals. In related research,<sup>9</sup> other scholars look specifically at the importance of and the capacity of independent judiciaries to uphold the rule of law, and thus, at how judicial independence contributes directly to upholding democracy (Larkins, 1996, 1998; Weingast, 1997; Smithey & Ishmiyama, 2000; Helmke, 2002; Iaryczower, Spiller & Tommasi, 2002; Maravall & Przeworski, 2003).<sup>10</sup>

This body of research suggests that the judiciary may play a unique role in presidential regimes. As recent Latin American events have shown, executive attempts to control the judiciary can also lead to institutional or political instability: for example, a questionable court expansion led to Lucio Gutierrez's demise in Ecuador (2005); Hugo Chávez's (2004) Supreme Court expansion provoked accusations of politicization in Venezuela; and likewise Carlos Menem's (1990) questionable expansion of the Argentinean Supreme Court invited unrest. These events point to the critical role that the rule of law and judicial independence play in ensuring many forms of democratic stability, a role that we ignore if we study only the executive and the legislature.

## 1.2 Key Hypotheses

I hypothesize that in presidential systems a low respect for the rule of law undermines institutional stability. The dissertation explores how presidentialism and judicial non independence contribute to institutional instability in Venezuela between 1958 and 2007?

---

<sup>9</sup> In the next chapter I posit that the two concepts are interrelated and justify my choice to focus on judicial independence as the main component of the rule of law.

<sup>10</sup> As Helmke (2000) highlights, over one-hundred and fifty years ago Alexis de Tocqueville noted the importance of the judiciary for the American democratic system "there is hardly a political question in the United States which does not sooner or later turn into a judicial one" ([1835] 1969, p. 270 quoted in Helmke, 2000, p.1).

The central goal of this dissertation is to analyze how the rule of law interacts with the perils of presidentialism—minority government, deadlock, coalitions, term limits, and fixed terms—to cause institutional instability in Venezuela. Although these perils were introduced in the context of a study on regime breakdown, this dissertation seeks to determine if these five perils also affect state level variables such as institutional instability, a concept that is explored in greater depth in Chapter Two.<sup>11</sup>

The perils of presidentialism are interrelated and will have different outcomes depending on the level of rule of law. Table 1 provides the hypothesized relationship between these five perils at high and low levels of rule of law. Whereas at high levels of rule of law these perils can be ameliorated, at low levels of rule of law they contribute to institutional instability. The stability of presidential institutions is compromised by minority governments, which can easily lead to a condition of political deadlock. Deadlock can be overcome legally through the formation of coalitions or illicitly through negotiation or pork barrel deals. When rule of law is high, the government is likely to find peaceful and legal means of resolving deadlock. When the rule of law is low, however, there is a tendency to form questionable or secret coalitions, or governments can use force to get their way. Such behaviour can result in institutional instability.

The propensity for institutional instability increases when fixed terms and term limits complicate the removal of leaders. Therefore, to end unpopular presidencies, actors have often been pushed to unconstitutional measures. The reverse of this is also true and when the rule of law is low, leaders can try to overcome barriers to their leadership by extending their terms. Although not inherently undemocratic, there is a tendency for this to occur through the threat or

---

<sup>11</sup> Not all of these perils will contribute to instability in the same way. To be specific, coalitions can instead be the answer to potential problems of stability when minority governments use them to overcome deadlock situations.



attack on another state institution. In this way, this dissertation hypothesizes that the perils of presidentialism can contribute to institutional instability.

**Table 1: Relationship between the Perils of Presidentialism and Rule of Law**

	<b>Minority Government</b>	<b>Coalition</b>	<b>Deadlock</b>	<b>Fixed Terms</b>	<b>Term Limits</b>
<b>High rule of Law</b>	Coalitions can be formed or governments can rule with a minority.	Successful coalitions built on respected agreements.	Often avoided through coalitions.	To end a president's term early, impeachment is more likely when there is a respectable and functioning judicial system.	Terms are respected and presidents rule until the end of their terms.
<b>Low rule of Law</b>	Institutional instability can emerge when governments seek legally questionable means to pass their agendas with minority governments, or to overcome minorities in legally questionable ways.	Coalition agreements can be informal or based on legally questionable deals, enforced by violence and other non-legal mechanisms.	With few consequences for actions, deadlock can be overcome through legally questionable means or through force.	When the law is not respected, presidents can misuse their power with few consequences. There are limited means of removing unpopular presidents, even when they are not serving the public interest. Attempts to remove presidents unconstitutionally have led to institutional instability.	Leaders have resorted to questionable methods of extending term limits. They have abused their time in office because they cannot be awarded with reelection.

### 1.3 Data and Methodology

Of the many methods available in political science, from large-n quantitative to small-n or single case studies, the most effective way to determine the relationship between low rule of law and institutional stability in presidential democracies is through a single case study. Large-n quantitative studies are useful to determine patterns and correlations, but such studies do not allow for in-depth analysis of relationships between variables. Therefore, it is inappropriate to

use this method to shed greater light on a causal relationship. Qualitative indicators are used here to establish a trend and to develop the hypothesized relationship between variables. Previous quantitative work has established the empirical irregularity that presidential democracies are more unstable when rule of law is low; this dissertation takes the next step toward determining why this discrepancy exists, and toward understanding the ways in which presidential systems are more unstable. Although quantitative data is suggestive in many ways, process tracing gives a better illumination of the true relationship between different concepts.

Case studies are a useful means of determining why a hypothesis is supported because they expose the mechanisms at work (Van Evera, 1997) and they help to build in-depth knowledge and give insight into causal processes (Collier 1999). Specifically, Van Evera (1997) states, “inferring and testing explanations that define *how* the independent causes the dependent variable are often easier with case-study than large-*n* methods” (1997, p. 54 emphasis in original). Case studies not only allow for the development of valuable descriptive insight into political phenomena, but, in conditions where researchers have little prior knowledge, case studies help suggest important missing variables (Munck, 2004). Quantitative methods cannot account for spurious causation, therefore, what appears to be a causal relationship between two variables could be caused by an unrelated or unaccounted for variable. Case study methodology, in contrast, eliminates doubt that causality exists through its detailed account of interrelationships. The cost of such detailed analysis is that the finding may be unique to the case being studied.

## **1.4 Method of Investigation**

The most effective way to trace out causal relationships within case study methodology is to use process-tracing. In general, process-tracing is used to “identify the intervening causal process—

the causal chain and causal mechanism—between an independent variable (or variables) and the outcome of the dependent variable” (George & Bennett, 2005, p. 206). This dissertation started by pointing to a correlation, which established quantitatively that presidential systems not only had higher levels of instability and lower respect for the rule of law, but also tended to be more unstable than parliamentary systems even at equally low levels of rule of law. From this data, a modification of previous theories is offered.<sup>12</sup> Although previously collected data identified when a country was classified as unstable, or had a low rule of law, it tells us little about the exact circumstances that cause different forms of instability and low rule of law or the relationship between them.

Having established the notion of correlation between system type and instability, we can use process tracing to test whether the theoretically proposed explanation is consistent with the quantitative evidence presented. This combination of qualitative and quantitative evidence will allow for the further specification of the theory (Hall, 2003; Dessler, 1991). Process tracing does this because it allows us to “search for evidence about the causal mechanism that would give plausibility to the hypotheses they are testing. If this evidence suggests that a similar mechanism produced or prevented the outcome in each case, this constitutes evidence for causal homogeneity” (Munck, 2004, p. 110). Therefore, if the same causal mechanism is identified as a catalyst of an outcome in different cases, this mechanism is likely to be the cause of the outcome. Furthermore, this method “enables the analyst to identify causal links within the context of a *single case*” (Elman & Elman, 2001 p. 30, emphasis in original). Process tracing is most commonly used to track how “initial conditions are translated into outcomes...” (Van Evera,

---

<sup>12</sup> As Munck (2004, p.199) asserts, we need ongoing interaction with the data for theory reformulation and development. Additionally, Munck notes that to test a claim we must go beyond the data used to generate the correlation (Munck, 2004, p. 119).

1997, p. 52). In the context of the present study, this method is used to illuminate how the rule of law contributes to democratic stability in presidential regimes. After determining the causal mechanisms in the case of Venezuela, future research can apply these findings to other countries to test their generalizability.

## 1.5 Selection of the Case Study

Having established that a case study is the best means of answering the theoretical puzzle, the choice of case was based on the country that offers the best laboratory within which to study the relationship between low rule of law and institutional instability. When studying democracies, the methods for evaluating the rule of law and institutional stability are interrelated although they measure two distinct phenomena. Indicators used to evaluate the rule of law, defined as the supremacy of law over the will of individuals, generally seek to evaluate if leaders follow the legal codes set out in their countries. Institutional stability indicators look at threats or attack by one branch of government on another.<sup>13</sup> These concepts will be further developed in the next chapters.

To determine the best case to evaluate the relationship between the rule of law and stability, this dissertation began with the country rankings from the World Bank Institute's measures of rule of law and political stability.<sup>14</sup> Since breakdowns occur less frequently some scholars have used political stability as a proxy, other scholars have sought to refine the

---

<sup>13</sup> As a study of threats and attacks on other branches, institutional instability is related to the notion of horizontal accountability—defined as “the controls that state agencies are supposed to exercise over other state agencies” (O’Donnell, 1999, p. 185). Horizontal accountability can prevent or defend against the likelihood that one government body will encroach on another, and in that sense could fortify against executive encroachments on the judiciary. A full explanation of stability and the rule of law are provided in chapters two and three respectively.

<sup>14</sup> Although the World Bank Institute’s measures are not void of subjectivity they are considered adequate for social science inference (See: Cameron, Blararu and Burns, 2008; Kunicová and Rose-Ackerman 2006; Kunicová 2005; Gerring and Thacker 2004; Andrews and Montinola 2004).

identification of this concept through the development of quantitative indicators to measure institutional instability, but to date there is little research in this area;<sup>15</sup> therefore, for the purpose of comparing cases political stability can be used as a proxy indicator. Accepting that there is skepticism surrounding the World Bank Institute's indicators, they are used here as a means of comparing different countries in order to provide context.<sup>16</sup>

To compare across cases political stability and rule of law scores were considered separately and averaged for the entire sample of 84 countries. Then the region was isolated and only the scores of Latin American countries were evaluated. In Latin America the issue of presidential abuse of power has a major impact on democratic stability at the regime and state levels. The countries were divided based on whether they fell above or below the average. In Latin America, Chile, Uruguay, Panama and Costa Rica have above average rule of law and stability scores (Table 2). Argentina has a high rule of law score but a low stability score. Brazil, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua and Venezuela score low on both rule of law and political stability. When region is controlled for, and only the scores for Latin American countries are considered (Table 3), the same calculations yield only a few minor changes. Specifically, Brazil switches from below to above average on both indicators; Argentina moves from low to high stability, and El Salvador moves to high stability while maintaining low rule of law. In comparison to the global average, the Latin American region has a lower score on both democratic stability and the rule of law.<sup>17</sup>

---

<sup>15</sup> One notable exception is the work of Gretchen Helmke (2008) who is in the process of developing one such database.

<sup>16</sup> A more complete analysis of the World Bank Institute's indicators is provided in Chapter Three along with a justification for why they are not being adopted outright.

<sup>17</sup> When the global dataset is considered the average rule of law is 54.1 and the average political stability score is 54.4. When Latin America is considered (excluding the Caribbean) the averages become 45.5 and 45.3 respectively. This suggests that Latin America has a lower than average level of political stability when compared with the global dataset. These are crude measurements of stability and rule of law but qualitative analysis will add greater insight

**Table 2: Rule of Law and Stability for Latin American Countries 1996-2002: Compared with Global Averages.<sup>18</sup>**

		Rule of Law	
		High	Low
Stability	High	Panama Chile	Uruguay Costa Rica
	Low	Argentina	No Latin American Cases
			Bolivia El Salvador Ecuador Honduras Brazil
			Nicaragua Peru Venezuela Colombia Guatemala

**Table 3: Rule of Law and Stability for Latin American Countries 1996-2002: Comparison with Latin American Averages.<sup>19</sup>**

		Rule of Law	
		High	Low
Stability	High	Chile Brazil Panama	Uruguay Costa Rica
	Low	No Latin American Cases	El Salvador
			Bolivia El Salvador Ecuador Honduras Guatemala
			Nicaragua Peru Venezuela Colombia

into how they affect democracy. Moreover, this analysis will reveal the components of rule of law important for democratic stability. The use of dichotomous variables can oversimplify the degree of stability or rule of law because, for example, a country that scores only slightly above average is lumped in with the most stable and vice versa. This method identifies that Venezuela is the lowest scoring nation in Latin America on both rule of law and democratic stability.

<sup>18</sup> This table was created by the author. Rule of law and political stability scores were taken from the “Governance Matters III: Governance indicators for 1996-2002” (World Bank, 2002). Scores for each variable were obtained for 1996, 1998, 2000 and 2002 and each country’s score was averaged. Countries were ranked as high on low depending on if they fell above or below the average. At the time of case selection this was the most recent data available. In this context the data was used as a means of establishing the most appropriate case it is not methodologically necessary to update this section to include the data released in 2008.

<sup>19</sup> This table was created by the author. Rule of law and political stability scores were taken from the “Governance Matters III: Governance indicators for 1996-2002” (World Bank, 2002). This table takes the averages of counties in Latin America. Scores for each variable were obtained for 1996, 1998, 2000 and 2002 and each countries score was averaged. Countries were ranked as high on low depending on if they fell above or below the average.

Although this dissertation uses a single country study, it relies on what King, Keohane and Verba call “multiple observations at different levels of analysis” (1994, pp. 208-230). Meaning, the dissertation relies on empirical evidence from different time periods and at different levels of analysis including regime, state and government. The single country study allowed for context sensitive and in-depth qualitative research that led to a deep understanding of the relationship between the judiciary and the executive and how this relationship affected democratic stability.

### **1.5.1 The Choice of Venezuela:**

Venezuela was previously considered to be a text book example of democracy; yet, the exclusionary nature of the Punto Fijo period invoked political instability in the form of social unrest, resulting in the population’s rejection of the Punto Fijo system. This system was accused of having high levels of institutional politicization and societal exclusion. Despite the end of pacted democracy, high levels of institutional politicization and societal exclusion continue. Therefore, this dissertation allows for an examination of the relationship between the executive and the judiciary through pacted democracy and Bolivarian democracy.<sup>20</sup>

Previously a beacon of democracy in a region with a high number of interrupted presidencies and military coups, the survival of Venezuela’s democratic regime, which was established by pact in 1958, became threatened in the late 1980s with the emergence of societal unrest directed at the political system. Existing explanations attribute the high level of instability to the pacted democracy, the economy and to presidentialism. The key question here is: if presidentialism caused instability, why did it not do so in the period 1958 to 1988?

---

<sup>20</sup> Thus, Venezuela can be considered an “extreme case” for example, one that has variation on the outcome of interest. Gerring (2001) stated that, extreme cases are most useful when the phenomenon being examined is difficult to operationalize, and that they serve well to explain a “complex causal relationship at work” (Gerring, 2001, pp. 215 - 217).

This dissertation contributes to our understanding of the instability in presidential systems by tracing the impact of executive-judicial relations on institutional stability in three separate time periods.<sup>21</sup> Whereas between 1958 and 1988 Venezuela had a stable democratic regime, political violence that erupted between 1989 and 1998 led scholars to conclude that economic factors and the fall of the pact that maintained democracy had caused instability. During this time in Venezuela political instability and an erosion of rule of law had a negative impact on democracy.<sup>22</sup>

Freedom House, as shown in Figure 1, ranks Venezuela as almost consistently free in both civil and political categories from 1973 until 1999.<sup>23</sup> While freedom levels in Venezuela began trending downwards in the late 1980s, after 1999 the lowered combined political rights and civil liberties scores meant that the country became classified as ‘partly free’. According to Freedom House’s definition, countries ranked as ‘partly free’ are not democratic. Although

---

<sup>21</sup> These periods were determined based on a qualitative overview of events that will be further explained in Chapter Four. An inconsistency in the quantitative data prohibited it from delineating years to study.

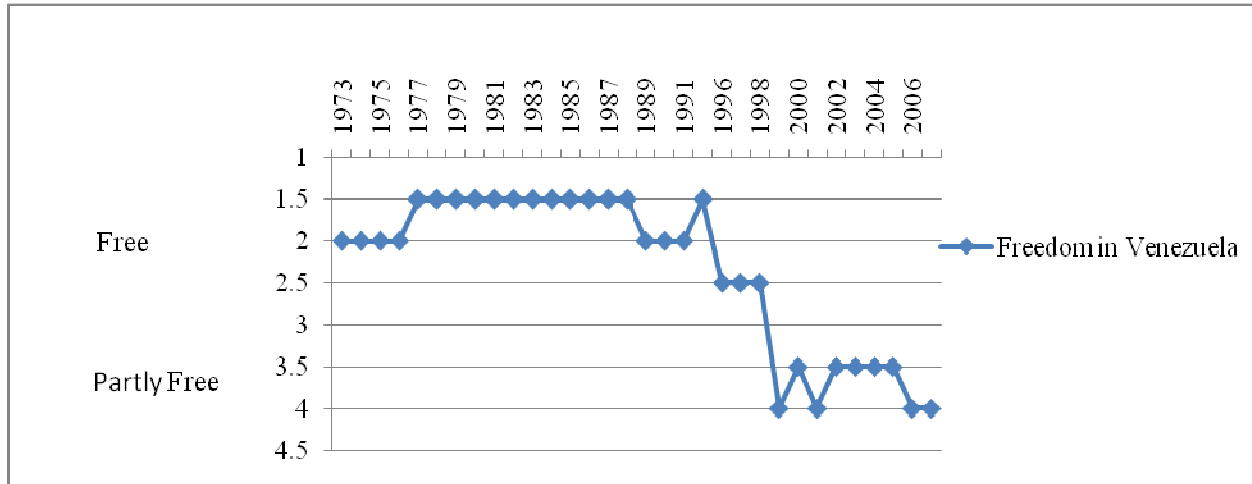
<sup>22</sup> By looking at the traits of a democracy this dissertation speaks to the literature on the quality of democracy. By quality of democracy this dissertation refers to “good democracy accords its citizens ample freedom, political equality, and control over public policies and policy makers through the legitimate and lawful functioning of stable institutions. Such a regime will satisfy citizen expectations regarding governance (*quality of results*); it will allow citizens, associations, and communities to enjoy extensive liberty and political equality (*quality of content*); and it will provide a context in which the whole citizenry can judge the government’s performance through mechanisms such as elections, while governmental institutions and officials hold one another legally and constitutionally accountable as well (*procedural quality*)” (Diamond & Molino, 2004, p.21). This definition is based on an extensive survey of the literature that uses the term ‘quality of democracy.’ The central focus on the dissertation is not on contributing to the quality of democracy literature, but to the more nuanced literature on institutional stability—but it recognizes that the concepts are inherently linked by the very fact that they strive to identify components that improve democracy. The relationship between the two concepts is more thoroughly explored in Chapter Two.

<sup>23</sup> To arrive at ratings for political rights Freedom House uses a 40-point ranking scale, and a 60 point ranking scale for civil liberties. Freedom House has responded to earlier criticism see Munck & Verkuilen (2002) for not publicizing the aggregate data by releasing more nuanced information, including the ratings on their subcategories (see: [www.freedomhouse.org/template.cfm?page=276](http://www.freedomhouse.org/template.cfm?page=276)). Exceptions include 1992, 1994 and 1995.



Freedom House does not directly measure democracy, it is the most commonly used indicator of democracy in comparative politics.<sup>24</sup>

**Figure 1: Venezuela Freedom in the World Scores 1973-2007**



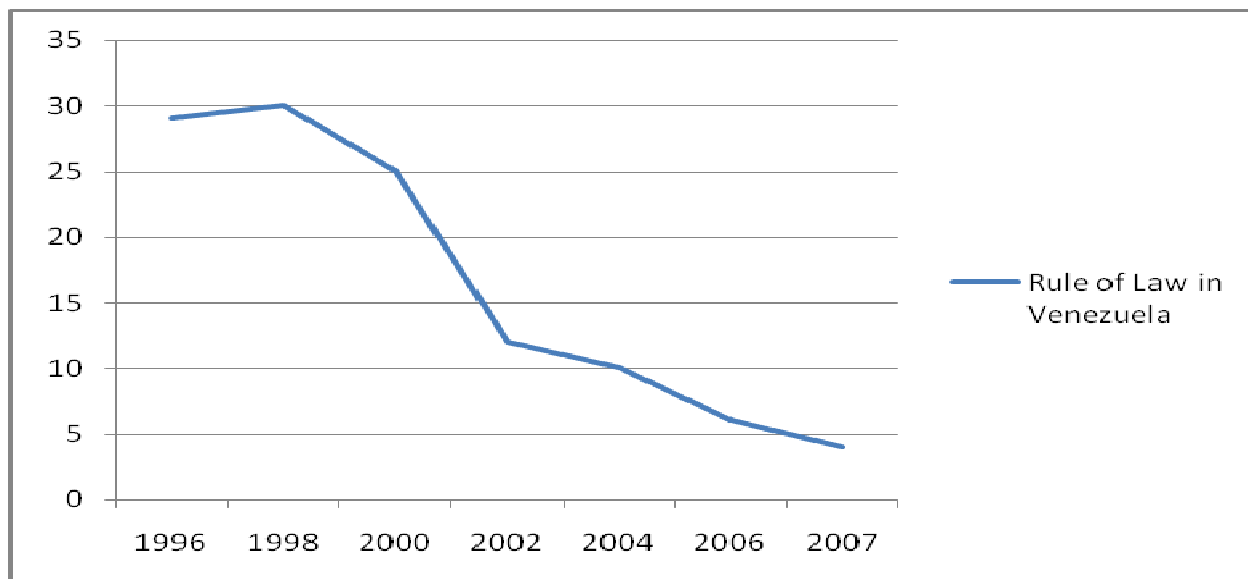
Source: This figure was created by the author with numbers from Freedom House. According to Freedom House, a country is classified as a democracy if it obtains a combined average score of 2.5 or less on the Freedom House index of political rights and civil liberties. Political rights and civil liberties scores were obtained from “Freedom in the World” (1973-2007 editions), Freedom House, available online at [www.freedomhouse.org/research/index.htm](http://www.freedomhouse.org/research/index.htm).

Venezuela’s rule of law ranking has dropped even more abruptly in a similar period, falling from 29 in 1996 to 9.2 in 2006, as shown in Figure 2 (World Bank, 2006). The fact that this fall coincided with Chávez’s election led many to hypothesize that Chávez’s actions undermined the rule of law and in turn democracy. Mainstream media asserted that problems

<sup>24</sup> For some recent studies that use Freedom House scores as an indicator of level of democracy see: Inglehart, 2003; Diamond, 2002; Finkel et. al. 2008). McClintock, 2006 provides further justification for the use of Freedom House scores as measures of democracy.

associated with Chávez's presidency caused the fall in rule of law. Data cannot substantiate this claim because rule of law scores only became available in 1996. This makes a strictly quantitative comparison of the rule of law in the two periods difficult.

**Figure 2: Rule of Law in Venezuela 1996-2007**



Source: This figure was created by the author with the rule of law score is taken from the governance matters indicators 2007. This score is a collection of several sources that measure the rule of law.<sup>25</sup>

This quantitative evidence allows us to hypothesize that there is a correlation between democratic instability and a low respect for the rule of law. The use of quantitative data alone does not give a good picture of the state of democratic stability or the rule of law in Venezuela. It would be incorrect to discern the causal relationship from this data alone. As indication of the inconsistency of the data, and on different coding methods, there is not even agreement in the

---

<sup>25</sup> The World Bank Institute's rule of law score measures citizens' perceptions, crime rate, enforcement of contracts, and effectiveness and predictability. It uses percentile rankings to compare countries. I will further elaborate on this indicator in Chapter Three.

literature on which years Venezuela can be considered democratic. For example, Álvarez, Cheibub, Limongi, and Przeworski, in their often cited ACLP dataset, classifies Venezuela as consistently democratic from 1959 through 2002, the last year their dataset covered (Przeworski, et. al. 2000, pp.291-300). Freedom House, as stated above, has listed Venezuela as “partly free” since 1999. Although Freedom House measures political and civil liberties, not democracy directly, Freedom House scores are often used as an indication of democracy. This inconsistency in the data heightens the need to study how the rule of law contributes to institutional instability from a qualitative perspective.

In order to develop a more accurate and in-depth account of the relationship between democracy in presidential systems and the rule of law, this dissertation relies on detailed process tracing. This analysis is used to dismiss the possibility that the relationship is spurious. Spurious causation suggests that the perceived correlation between rule of law and institutional instability could exist for reasons that have nothing to do with the relationship between these two variables. For example, it could be that presidentialism is adopted in countries where the rule of law is low for other reasons.

An examination of how the perils of presidentialism impact institutional stability will establish a more accurate account of the causal relationship. To test this relationship, this dissertation explores how low rule of law interacts with the perils of presidentialism (minority government, coalitions, deadlock, fixed terms and term limits) to exacerbate democratic instability. It is also possible that other factors inherent in the Venezuelan political process have affected the relationship between the two variables. Therefore, this dissertation considers other prominent explanations for the timing of democratic instability in Venezuela including the pacted transition.

## 1.6 Sources of Evidence

Original data was collected for this dissertation through a series of 139 interviews with experts on the topic. These interviews were conducted in Venezuela from August 2005 – August 2006 and from November 2006 – August of 2007. In order to conform to the ethical approval process of the University of British Columbia, and to maintain complete confidentiality of the interviewees, individual interviews will be identified only by number. Interviews were carried out primarily with experts in the judiciary and with political and legal elites. The experts interviewed include one sitting and two former Chief Justices of the Supreme Court of Venezuela; and current and former Supreme Court judges, including several judges involved in controversial rulings, for example, the ruling on the military leaders of the April 11, 2002 coup attempt. Additionally, I interviewed several lower court justices, public prosecutors, lawyers, political party representatives, leaders of non-government organizations and citizen groups, professors, members of the military elite, members of the constitutional assembly, local journalists, foreign correspondents and diplomats. Interviews included high-ranking representatives from all five branches of the Venezuelan government (executive, legislature, judiciary, electoral, and (citizen) moral).<sup>26</sup> These interviews are an important contribution to our understanding of the judiciary in Venezuela because, unlike in the other notable major studies, interviews have been conducted with several members who support or are sympathetic with the Chávez government.<sup>27</sup> Interviews have been supplemented with primary source material,

---

<sup>26</sup> The functions and roles of each of these branches of government will be outlined in Chapter Five.

<sup>27</sup> Many of the attempts that have been made to analyze the judiciary have been unable to interview members from both the government and the opposition. For example International Bar Association (2007) reports that they were unable to interview any high ranking members of the government and very few individuals associated with the judicial system (International Bar Association, 2007, p.16; Consorcio Justicia, 2007).

including court case rulings, the National Gazette of the National Assembly, and archival materials from several major national newspapers.

The amassed qualitative data serves two basic purposes. First, it expands our understanding of the Venezuelan legal and political systems, the importance of which is fundamental because there are a limited number of secondary sources on the issue. Second, going beyond secondary sources is important; one because there is a large gap between the letter and practice of the law—what in theory should exist does not necessarily occur in practice. And two, the issues are highly politicized and change is occurring in a very polarized environment, making unbiased perspectives more difficult to unveil. Since the relationship between the judiciary and the executive is highly politicized, and the research was conducted in a highly polarized environment, it was necessary to solicit a wide variety of perspectives and to cross-check facts and information.<sup>28</sup>

Using this interview data, a narrative of the interpretations, motivations, and beliefs held by members of the political and legal elite toward executive-judicial relations can be reconstructed. Although this empirical analysis is centered on Venezuela, effort is made to evaluate how generalizable the findings are. By combining literature related to instability in presidential systems with literature on the role of the executive in Latin America and its relationship with the judicial branch, the lessons learned in this dissertation are likely generalizable within the region. The conclusions are likely to be transferable because of the similarity of problems with democratic instability, the separation of powers, and judicial independence in other countries. Beyond Latin America, the findings will contribute to

---

<sup>28</sup> Every effort was made to validate the often subjective information from interviewees. When there was uncertainty, the events were verified using available primary and secondary resources. Where this was not possible, the information is clearly presented as the opinion of the interviewee.

understanding where judicial institutions have become key players that shape political processes and determine policy outcomes, which include Western and Eastern Europe, India, South Africa, and the Middle East (Helmke, 2000).

## **1.7 Plan of the Dissertation**

Following this introduction, this dissertation is broken into seven additional chapters. Chapter Two lays out the theoretical antecedents to this project. It situates the dissertation in the literature on democratic stability and establishes the necessity of shifting our focus from regime to state to more accurately study instability. It defines, in detail, the key terms that will be addressed. Chapter Three argues that existing theories on democratic instability would be more accurate if they considered the judiciary. Therefore, it provides a review of the literature on democratic instability in presidential regimes. In order to better understand this relationship, Chapter Three examines several conceptions and measurements of the rule of law and argues that to uphold respect for the rule of law, judicial independence is necessary. Therefore, Chapter Three provides the definition of judicial independence and operationalizes how it will be studied.

Chapter Four positions the dissertation in the literature on Venezuela. In so doing, it shows that an examination of executive-judicial relations provides a better understanding of democratic instability. There is agreement in the literature that partyarchy<sup>29</sup> contributed to the establishment of an exclusionary system and eventually to high levels of political instability and to the collapse of the Punto Fijo pact. Although existing literature provides part of the picture, a focus on executive-judicial relations helps explain how similar forms of exclusion continue. This

---

<sup>29</sup> Partyarchy is a term that explains the party domination of the political system. Specifically, “political parties monopolize the electoral process, dominate the legislative process, and penetrate politically relevant organizations to such a degree that violates the spirit of democracy” (Coppedge, 1994, p.2)

chapter establishes that the executive-judicial relationship that coalesced under the pact stifled the development of an independent judiciary. During this period the parties supplanted state institutions and the problematic implications of this relationship came to light during the transition period.

The empirical chapters that follow employ a method of process tracing to explore how the relationship between the executive and the judiciary affected institutional stability. Chapter Five explores how under the Chávez government, elected in 1998, the administration was able to overcome minority government and deadlock through a judicial decision that allowed for constitutional change. The executive used this judicial decision to elect a constitutional assembly to re-write the 1961 Constitution. There was significant debate on the legality of using a referendum to call for constitutional change and on the methods used to determine the members of the constituent assembly; despite some opposition to the government's methods, the population demonstrated its approval for the Bolivarian Constitution of 1999. The 1999 constitution increased the power of the President. It did so by formally concentrating power in the executive: it increased the presidential term, expanded term limits, changed the legislature from bi-cameral to unicameral and altered appointment and removal provisions for the Supreme Court. The chapter ends by showing how the new rules measure up to the criteria for judicial independence as laid out in Chapter Three.

The Bolivarian Constitution of 1999 aimed to provide a break from the corrupt institutions of the past, and as such, a fresh start. The Venezuelan population showed its support for these changes by electing Chávez with 59.5 percent of the vote in the 2000 presidential election. Chapter Six shows how under accusations of unresponsiveness and corruption, however, the coalition fell apart and the government could not contend with rising political

unrest. Chapter Six looks at these incidences of unrest and shows how the court, rebuilt to counter corruption, was manipulated to favour the executive. When faced with the most substantive threat to democratic stability, an attempted coup, a legal ruling which acquitted those involved in the coup prompted the punishment and purging of the courts and subsequently an expansion of the Supreme Court. Executive influence during the recall referendum directly affected the electoral outcome. The changes during this one-year period show that, while formal mechanism were introduced to increase judicial independence, in practice the Courts were reconfigured when they ruled against the government.

Chapter Seven shows how the government used its majority to alter both term limits and fixed terms. It argues that the misuse of executive power had negative consequences for democracy in Venezuela. This misuse lowered citizens' confidence in political institutions, leading to a boycott of the 2005 Legislative elections. Increasingly, the population was forced to move away from operating within political institutions in its attempt to have political influence and reducing dialogue among diverse interests.

The final chapter revisits the central argument by restating the process by which the judiciary was used to concentrate power into the hands of the executive and in turn used this power to secure positive electoral outcomes even while using institutions arbitrarily. This research supports the claim that these perils, under circumstances of low rule of law, resulted in institutional instability. This chapter demonstrates how the case of Venezuela qualifies the current theories on institutional instability in presidential systems. The lack of respect for law made it possible for actors to follow legally questionable paths that in turn undermined democracy. These findings contribute to the study of presidentialism by showing how it interacts with low rule of law to result in instability. It contributes substantively to our understanding of



Venezuela. Finally, it demonstrates the important insight gained from looking at democracy at the state, not only at the regime level. The chapter ends by highlighting the prospects for institutional stability and by pointing to directions for future research.

# CHAPTER TWO

## 2.1 Evaluating Democratic Stability

Following the “third wave of democratization,” as it was termed by Huntington (1991), many countries have created enduring democracies, but many of these democracies have failed to consolidate, or to make democracy the “only game in town” (Linz & Stepan, 1996, p. 6). These unconsolidated democracies continue to meet the minimal definitions of democracy—free and fair elections—without granting citizens other benefits of democracy; they continue to suffer from large scale human rights violations, rampant corruption, and high levels of inequality, these undesirable features are often exacerbated by the population’s inability to hold leaders accountable.<sup>30</sup> Despite such problems, leaders continue to be chosen through elections and the endurance of electoral democracy gives these countries an air of democratic legitimacy, even though they do not possess much “democraticness,” to borrow O’Donnell’s term (1994, 2000, and 2001). In order to address such shortcomings, O’Donnell claims we need to shift our focus, adding that “democraticness is an attribute of the state, not only of the regime” (2001, p. 24-25).

The many countries that are stalled in in-between phases present a challenge to the study of comparative politics. As Pérez-Liñán (2007) notes, there is a new pattern of instability in presidential democracies: they fail to breakdown, but severe problems with democracy persist. To explore the causes of instability we can no longer look only at complete breakdowns (meaning back-slides from democracy to dictatorship) of democratic regimes. Instead we need to

---

<sup>30</sup> For an overview of some of the most pressing problems related to democracy including quality of democracy, citizenship shortcomings, inequality, corruption and institutional deficiencies as well as the obstacles to overcome these problems see O’Donnell, Cullell and Iazzetta 2004, Diamond and Morlino (2004) and Schedler, Diamond and Plattner (1999).

look at the relationship between state institutions, because “institutional instability short-circuits elections, undermines faith in existing institutions, and threatens investor confidence and economic growth” (Helmke, 2008, p.1). Such forms of instability continue to pose problems to democratic governance even though they stop short of a full breakdown.

This chapter begins by clarifying the distinction between how I use the terms regime and state. It will explain why a minimal definition of democracy that focuses only on the regime is not sufficient to evaluate the stability of democracy—and that it is necessary to explore state level institutional instability. Second, it addresses the debate on definitions of democracy and provides the definition that will be used in this dissertation. Third, the chapter will explore the many meanings of instability to show how this dissertation builds on and relates to other studies of instability. Fourth, it will provide an overview of how state institutions support elections or more specifically how horizontal accountability is important to ensure vertical accountability. Next it provides an analysis of the literature on stability in presidential and parliamentary regimes in order to introduce the perils of presidentialism. Finally, the chapter will show how a study of institutional stability contributed to the quality of democracy literature without adding to the laundry list of important features of democracy.

## **2.2 The Regime State Distinction**

Whereas regime instability was evaluated based on the binary categories of democracy and dictatorship, we know that institutional instability is present when a crisis between institutions exists—this includes “one or more branches of government issued a threat or carries out an attack against another branch or branches” (Helmke, 2008, p.10). In order to better understand democracy, O’Donnell (2001) supports the adoption of a minimal (or procedural) definition of

democracy, but considers it both at the level of political regime and at the level of state. A regime, he clarifies, can be defined as:

patterns, formal and informal and explicit or implicit, that determine the channels of access to principal governmental positions; the characteristics of the actors who are admitted and excluded from such access; and the resources and strategies that they are allowed to use for gaining access (O'Donnell, 2004, p. 15).

Following this definition, a regime can mean the difference between a democracy or an autocracy (Stepan & Skach, 1993; Cheibub & Limongi, 2002; Przeworski, 2000).<sup>31</sup>

A state, meanwhile, is defined as both the territorial entity that “delimits those who are the carriers of the rights and obligations of political citizenship,” on one level, and “...a legal system that enacts and backs the universalistic and inclusive assignment of these rights and obligations” (O'Donnell, 2001, p. 18).<sup>32</sup> Therefore, “the state is not only a set of bureaucracies; it is also a legal system that is enacted and normally backed by the supremacy of coercion held by the state institutions over the territory they delimit” (O'Donnell, 2005, p. 31). This dissertation has adopted this definition of state and attempts to contribute to the literature that seeks to understand state level components of democracy. As Collier and Levitsky note, “by shifting the overarching concept from ‘regime’ to ‘state,’ O'Donnell establishes a more demanding standard for labeling particular countries a democracy” (Collier and Levitsky, 1997, p. 446).

---

<sup>31</sup> As a point of clarification it is worth pointing out that some scholars use the terminology of presidential and parliamentary regimes (Cheibub, 2002; Stepan & Skatch, 1993; Mainwaring, 1990; Linz, 1990), other scholars label them presidential and parliamentary systems (Przeworski, Alvarez, Cheibub & Limongi, 1996; Lijphart, 1999; Shugart and Haggard, 2001) and still others use the terms seemingly interchangeably (Linz, 1990; Mainwaring and Shugart, 1997; Linz 1994). This dissertation, for reasons of consistency calls them systems and saves the term regime for reference to democracy or dictatorship. Alternatively, regime types can include totalitarian, post-totalitarian, and sultanistic rule (Linz & Stepan, 1996, p.40)

<sup>32</sup> A third aspect of O'Donnell's analysis that warrants greater attention than can be given here is the guarantees given to political citizenship which come from the notion of agency. He sees democracy as an institutionalized wager in which an actor's agency ensures that they impact the system (O'Donnell, 2001, p. 19).

In differentiating his definition of state from other commonly used definitions O'Donnell (1993) argues that "it is a mistake to conflate the state with the state apparatus, the public sector, or the aggregation of public bureaucracies. These, unquestionably, are part of the state, but are not all of it" (p. 1356). If legal institutions are a component of the state, then it is logical to study elements of the legal system when seeking to uncover state level instability.

The term "government" is used in reference to "the set of institutions that makes and enforces collective public decisions for a society" (Dyck, 2003, p.21). Government can also be used to describe the current elected officials. The distinction between the terms state and government is important because in some countries there is little separation between state and government; when a particular party or leader comes to power, there can be a tendency to blur the lines between state and government.

A shift in focus from regime instability (or breakdown) to state level instability evaluated through institutional instability, does not constitute a logical leap because both are concerned with the outcome of elections as a reflection of vertical accountability. A shift in focus from regime to state, however, allows for a better assessment of whether elections are a reflection of the population's preferences, and also whether elections will continue to be held in the future. The need to look beyond elections to determine the democraticness of a country is also addressed in the quality of democracy literature.

The quality of democracy literature builds from the shortcoming of the consolidation literature. The concept of consolidation has been accused of being teleological (Schedler 1998; O'Donnell 1996, Linz & Stepan 1996); for example it "posits, explicitly or implicitly, that a given entity inherently tends to move from lower (or immature or incomplete) to higher (or more mature, or complete) stages, up to an end point that marks the full development of its

potentialities” (O’Donnell, 1996, p. 163-164). Consolidation tends to see only one path toward an ideal point—consolidated democracy. The countries that have been referred to as transitioning have, however, remained in this in-between category, or gray zone. Seeing them as an in-between category implies that “analysts are in effect trying to apply the transition paradigm to the very countries whose political evolution is calling that paradigm into question” (Carothers, 2002, p. 10). Seeing these countries as transitioning toward a consolidated end can lead us to ignore the enduring nature of these political systems in these countries.

The shift in focus from regime to state institutions does not require us to cast aside the findings from previous studies of democratic stability. I will show that the perils that contributed to presidential regime instability also contribute to institutional instability. As such, instead of providing a scorecard for how democracy can be measured, this chapter will provide both an overview of the current uses of stability in the literature and provide justification for the definition that will be used throughout this dissertation. The analysis of democracy on state level has focused on the ability of state institutions to hold the executive accountable through horizontal accountability, and especially the encroachment by one branch on another branch of government. For these reasons this dissertation has chosen to focus on institutional instability, or specifically, threats or attacks by one branch of government on another to probe deeper into the relationship between presidentialism at low rule of law and instability.

## **2.3 Democracy Defined**

Etymologically, democracy means rule by the demos, or the people. We can trace the roots of democracy to ancient Greece where direct rule by the people occurred through popular assemblies. In modern times, where countries tend to be much larger, this form of direct rule has not proven feasible. Instead, modern democracies have an agreed upon set of rules to determine

how citizens will choose their representatives. The rules, designed to qualify the majority rule, are enshrined within a nation's Constitution.

Political scientists have often defined democracy on a continuum from the most minimal definition of democracy based predominantly on elections (Dahl's 1971 conception of polyarchy; Schumpeter, 1942 see also Munck, 2004) to more comprehensive consolidated democracies (Diamond, 1996, 1999; Fukuyama, 1992). Robert Dahl defines democracy in a minimalist way, calling it polyarchy. In polyarchies citizens have the ability to voice political opinions; the opportunity to elect political leaders in free and fair elections; the right to compete for public office; the ability to tap into alternative sources of information; and the right to organize freely (Dahl, 1971, p. 3). This definition is the most used and accepted contemporary definition of democracy (O'Donnell, 1996; Carothers, 1997; Diamandouros, Gunther & Puhle, 1996; Karl, 1990; Linz & Stepan, 1996; Schedler, 1998). The parsimony of this definition means that it travels well and thus is applicable to many different cases. Nonetheless, it is widely understood that although elections are a necessary condition for democracy, they are not sufficient.<sup>33</sup>

Whereas minimal definitions, such as polyarchy, focus on the existence of elections, more comprehensive definitions have sought to identify preconditions and criteria necessary for democracy to endure. Enduring democracies are often considered consolidated and although consolidated democracies are more stable, and break down less often, there is no agreement on the necessary characteristics that a democracy requires in order to be classified as a consolidated democracy (Mainwaring, 1992; O'Donnell, 1996; Schedler, 1998). During its evolution, the

---

<sup>33</sup> An extreme example would be a country that forced the electorate to vote at gunpoint—surely such a country lacks all other democratic rights, and in turn, the election would not hold any weight even if it was conducted freely and fairly.

literature on democratization has shifted focus. Among the main findings within the democratization literature has been different ways of reaching stable democracy. The most commonly referenced definition of consolidation is the one presented by Linz and Stepan (1996): Democracy can be considered consolidated when it is “the only game in town” behaviorally, attitudinally, and constitutionally (Linz & Stepan, 1996, p. 6).<sup>34</sup> Some scholars who study democracy see consolidation as an ideal goal because such regimes tend to be the most enduring. In a search for the characteristics that were most likely to lead to consolidation, scholars discovered that the form of government mattered (Linz, 1978, 1990; Stepan and Skach, 1993). More specifically, parliamentary democracies are more enduring because “parliamentarism provides a more flexible and adaptable institutional context for the establishment and consolidation of democracy...” (Linz, 1990, p. 68). The unique characteristics that are present in these different forms of government will be explored in the following section.

### **2.3.1 Beyond Elections:**

This dissertation accepts the theoretical assertion that elections are a necessary but not sufficient characteristic of democracy. It is important to recognize that there has been some opposition to more inclusive definitions of democracy that look beyond elections. For the most part this resistance has come from those who challenge liberal democracy and suggest that deliberative or participatory forms are superior (Held, 1992), and from those who see liberal democracy as a culturally biased understanding of democracy (Bell, 2006; Robinson, 1996; Parekh, 1992). In another line of criticism, other scholars steer clear of any debate that adds “adjectives” to democracy because they see too many qualifications of the term democracy as diluting the

---

<sup>34</sup> Gunther, Diamandouros and Puhle (1995, p.8), offer an alternative way to define consolidation. Specifically, they consider a democracy to be consolidated when it can “survive and remain stable in the face of such serious challenges as major economic or international crisis, or even serious terrorist outbreak.”



concept (Diamond, 1996; 1999; Collier & Levitsky, 1997).<sup>35</sup> With little common ground, the discipline remains stuck in its focus on elections.

Instead of accepting that there is one continuum along which all countries must follow, other scholars have suggested that socio-political, economic or cultural conditions unique to each country have resulted in different forms of democracy that endure and so ought to be studied. Debates over the essential elements of democracy have focused on those that are fundamental to consolidating democracy (Schedler, 1998; Diamond, 1996; 1999, Fukuyama, 1992). Recent literature has identified diminished subtypes of democracies — delegative (O’Donnell, 1994); illiberal (Zakaria, 2004); pseudo (Diamond, Linz & Lipset, 1995, p. 8); hybrid (Diamond, 2002, Smith, 2005); and gray-zone (Carothers, 2002). Another possibility is that these countries, instead of fitting into democratic categories could more accurately be classified as autocratic and therefore more appropriately labeled electoral authoritarian (Schedler, 2006); semi-authoritarian (Ottaway & Carothers, 2000); or competitive authoritarian (Levitsky & Way, 2002). The inability of countries to move beyond these stages has, in turn, led scholars to believe that they are worthy of study, rather than being countries in transitional phases on the path to becoming consolidated democracy.

The main component that could classify a country as unstable in terms of a breakdown is a switch from the presence to absence of elections or the military control of the executive. Yet the purpose of elections is undermined when the presence of “formally democratic political institutions . . . masks (often, in part, to legitimate) the reality of authoritarian domination” (Diamond, 2002, p. 24). Countries that hold elections in the absence other characteristics of

---

<sup>35</sup> By “democracy with adjectives,” Collier and Levitsky (1997) refer to the number of subtypes of democracy that emerged to explain categories of countries that were not fully democratic or fully authoritarian. This has led to an increase in conceptual confusion that stems from researchers dissatisfaction with procedural definitions such as those of Schumpeter and Dahl.

democracy are often called electoral authoritarian regimes. The notion of an electoral authoritarian regime finds its antecedents in O'Donnell and Schmitter's concern over variation in transition outcome, specifically, they recognized that when countries transitioned from a dictatorship, democracy is not the only potential outcome: they identified the potential for a liberalized authoritarian regime, *dictablanda*, or illiberal democracy *democradura* (1986, p. 9). These classifications have been returned to with greater emphasis in the literature on hybrid regimes and electoral authoritarian rulers.

Sub-groups of countries that have not reached consolidation are still considered 'democratic' for the one thing they have in common: elections. Yet, elections alone do not ensure that citizens enjoy the benefits of democratic rule, as is indicated by the emergence of countries that have democratic regimes, without other features of democracy. Specifically, the purposes of democracy—participation and contestation—are undermined. For their part, electoral authoritarian regimes have few, if any, requisites of democracy apart from elections (Schedler, 2006). To be exact:

Electoral authoritarian regimes play the game of multiparty elections by holding regular elections for chief executive and a national legislative assembly. Yet they violate the liberal-democratic principles of freedom and fairness so profoundly and systematically as to render elections instruments of authoritarian rule rather than 'instruments of democracy' (Powell, 2000).

The governments in such countries claim a public mandate to rule, yet they often do so with few restraints on their power. Whereas democracies are based on the will of the people, authoritarian regimes are based on the will of a small group, or an individual, over society. One danger to democracy is when leaders abuse their electoral mandate to maintain their position or to guarantee their continued electoral success. When elected leaders use their electorally gained power only to perpetuate accumulate electoral power and increase control over future electoral

competition, the future of free and fair elections is often questioned. Electoral authoritarian regimes give leaders a claim to hold a public mandate while at the same time missing other features necessary to ensure their power as leaders is checked. This is problematic because leaders claim to represent the public mandate, yet the rights of the public are restricted and the public has few avenues to influence leaders, undermining the true nature of democracy.

This tendency to abuse power becomes more possible when the executive's power is unchecked. O'Donnell labels this form of leadership delegative democracy. This concept captures how Latin American leaders claim a personal mandate to govern. Once elected, presidents tend to rule by their whim, ignoring the demands of civil society and their own electoral promises: "Whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term in office" (O'Donnell, 1994, p.59). Therefore, since the policies that a president enacts, "need bear no resemblance to the promises of his campaign" O'Donnell asks "has not the president been authorized to govern as he (or she) thinks best?" (O'Donnell, 1994, p.60). Delegative democracies have few horizontal restraints on a leader's power. Therefore, delegative democracies have fewer mechanisms in place to hold leaders accountable for their actions. Moreover, in delegative democracies there are few guarantees that the institutions that protect democracy will be respected.

## **2.4 The Various Meanings of Instability in the Democratization Literature**

The democratic breakdown literature was concerned first and foremost with the replacement of a democratic regime by a non-democratic regime (Linz, 1978; Shugart & Carey, 1992, p. 39;

Cheibub, 2007, p. 1).<sup>36</sup> Yet, the literature has shifted attention from full breakdowns, to other shortcomings of democracy because, as Pérez-Liñán (2007) asserts, “the new pattern of instability poses a major theoretical challenge for comparative studies of presidentialism... Recent crises have led to the downfall of elected presidents without triggering democratic breakdowns” (Pérez-Liñán, 2007, p. 3).<sup>37</sup> This statement has important implications. The empirical reality suggests that full regime breakdowns are less common than they were previously and therefore the literature needs to shift its focus from full regime breakdown to consider shortcomings in other forms.

It is necessary to clarify how the term instability is being used. The literature has been inconsistent in its definition of instability and conflicting use of the term prompted Przeworski, Alvarez and Cheibub to note: “we put ‘instability’ in quotation marks because the concept is congenitally muddled” (2000, p.186). To overcome confusion caused by the multiple uses of the word instability, the word warrants clarification. The literature explored above used the concept of instability to describe a shift from democratic to non-democratic forms of political regime (using dichotomous categories of democracy and non-democracy). One such example is Przeworski, Álvarez, Cheibub and Limongi’s definition that regime instability is akin to frequent changes of heads of government from democrats to dictators (Przeworski et. al 2000, p. 123). The UNDP report Towards a Citizen’s Democracy states that stability of the democratic regime is threatened by high levels of inequality, poverty, social exclusion, a loss of confidence in the

---

<sup>36</sup> This literature recognized that instability can emerge to temporarily remove democracy and that the possibility of re-equilibration can come about when democratic authority is temporarily replaced and a return to democracy occurs (Linz, 1978).

<sup>37</sup> Venezuela does not fit directly into this category because its President has remained in power for over a decade—we have not therefore seen a “downfall” in an elected president. Instead we have witnessed a systematic deterioration of institutions capable of checking the power of the executive, and thus, a downfall of democratic institutions. The case of Venezuela contributes to this body of literature because it shows how state level factors impact democratic governance.

political system, radical actions and government crises (PNUD, 2004, p.21). The UNDP remains concerned with the continuation of democratic regimes, but it identifies factors below the regime level as factors that will contribute to problems at the regime level.

Other studies of instability have focused on factors that are likely to create instability such as economic conditions (Lipset, 1959; Diamond and Linz, 1989); number of effective parties (Sartori, 1976; Lijphart, 1999); or electoral system (Shugart and Carey, 1994). These studies suggest different ways that democratic instability could be triggered, or identify conditions that tend to be present in countries that have had regime breakdown and thus a transition from democratic to non-democratic rule.

These studies of democratic breakdown focus on the outcome, and have sought to identify the causes. Full breakdowns are less common. The infrequency of full breakdowns does not mean that the causal factors that have contributed to breakdown in the past have disappeared; these factors could be ameliorated by other conditions, or full breakdown could be avoided for reasons that have nothing to do with the causal factors.

In other bodies of literature ‘instability’ is used to describe political instability such as violence and protest. Although I am more interested in exploring institutional instability it is important to consider how other factors of instability have been looked at and why I have chosen this one. For example, the World Bank Institute evaluates political stability based on perceptions of “the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism” (Kaufmann, Kraay & Matsruzzi, 2007, p.7). This definition combines both violence—which other scholars have referred to as political instability—with the notion of complete overthrow, but they do not specify if this would be a regime breakdown or not. Still other scholars have focused on political

strikes and riots when seeking to measure political instability (Schneider and Frey, 1995). These factors often, but are not always a sign of political crisis.

While political instability may impact the political process, it generally does not get so severe as to impact the regime. As Pérez-Liñán (2007, p. 2-3) notes, “Latin America is confronting a distinctive pattern of political instability, one that represents a break from the past. As in previous decades, democratically elected *governments* continue to fall, but in contrast to previous decades, democratic *regimes* do not break down.” Whereas military coups were the dominant means of democratic regime interruption in Latin America throughout the 1970s, they are not common in recent years. To address this, Pérez-Liñán turns to an examination of the impeachment of presidents, what he terms to be “the most powerful instrument to displace ‘undesirable’ presidents without destroying the constitutional order” (Pérez-Liñán, 2007, p.3). Therefore, scholars who look at democratic instability have looked at many different things. The challenge, then, becomes how we explore the root causes of the instability even if the outcome has not been a complete breakdown.

In an attempt to address this question of causation, more recent literature has focused on understanding causes of interruptions in constitutional powers, short of full break downs, which have come in many forms. Valenzuela (2004) sees interruptions as indications of failed presidencies, categorizing them as functional equivalents to breakdowns (pp. 6-14). Instead of a full breakdown he focuses on chief executives that were “interrupted” in the sense of being unable to finish their terms because of resignation, coup, or protest (Valenzuela, p.8). Other scholars have shifted their focus to look at democratic crises, which include any

“unconstitutional alteration of the constitutional regime,”<sup>38</sup> *autogolpes*<sup>39</sup> and the suspension of constitutions. A recent contribution by Gretchen Helmke seeks to identify why institutional instability emerges in some Latin American cases and not others. To do so, she constructed the Institutional Crisis in Latin America (ICLA) Dataset. In this dataset institutional crisis is said to have occurred when “one or more branches of government issued a threat or carries out an attack against another branch or branches” (Helmke, 2008, p.10). She provides a list of threats or attacks including:

impeachment, investigation, prosecution, immunity stripping, self-resignation, forced resignation, challenge to rule-making authority, rule around via plebiscite, rule around via constituent assembly, non-compliance, rebellion [sic], alter size or composition, alter term length, alter jurisdiction, suspend, dismiss, or dissolve, involve 3rd parties, prevent running for office, assassination (Helmke, 2008, p.11).

This long list includes several of the factors that we have seen in Venezuela and thus can act as a means of operationalizing institutional instability.

Furthermore, hemispheric leaders have recognized the need to protect against threats to democratic governance. The hemisphere’s commitment to democracy is intended to protect countries from “unconstitutional interruptions of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state” (Organization of American States, 2001, Article 19; see also Boniface, 2007). This literature provides a precedent for the study of problems of democracy that does not focus on the outcome of regime level change.

---

<sup>38</sup> See for example: (Articles 19 and 20, section IV, “Strengthening and Preservation of Democratic Institutions” Lima, Peru September 11, 2001).

<sup>39</sup> In the words of Cameron: “the term *autogolpe* refers to a temporary suspension of constitutional guarantees and closure of Congress by the executive, which rules by decree and uses referenda and new legislative elections to ratify a regime with broader executive powers” (Cameron, 1994, p. 146).

When we observe a slow strangulation of democracy rather than a complete rupture, how do we know when political crisis will translate into regime crisis? Often times, violations of the democratic principles have occurred when elected leaders have altered democratic institutions because there have been no other state institutions with the capacity to check their power. Since these violations have occurred without impacting the democratic regime, they are overlooked if we focus only on regime transitions. Yet, they are detrimental to democratic political institutions. In other cases the veil of legitimate elections has been used to undermine democratic institutions.

In fact, it is the ability of parliamentary democracies to deal with crises at the state and government levels before they cause regime crises that make them more stable (Stepan & Skach, 1995, p. 321). Pérez-Liñán (2007) demonstrated why a shift in focus from a full regime breakdown to a focus on other causes of instability was necessary. This switch in focus from regime to state does not constitute a major analytical shift if we accept that democracy means more than just elections. This dissertation understands democratic institutions to be unstable when one branch of government can threaten or attack another. This definition recognizes that, for example, an executive with the ability to run roughshod over other institutions is a threat to the stability of democratic institutions. In order for democracy to be the “only game in town” there must be predictability of the rules of the game, and these rules are established and upheld by state institutions.

## **2.5 How the State Upholds Fair Elections**

A distinction between democratic regime and democratic state is not new in the literature. The recognition of a difference between state and regime was implied in the literature, but was not always concretely explored. Both O’Donnell and Munck argued that even procedural definitions of democracy required the presence of an impartial state. Munck (2008) used Dahl’s critique of



Schumpeter as an indication that democracy is about more than just who has the right to vote. He argues that even under a minimal definition of democracy a basic state structure is assumed, though not fully examined (Munck, 2008, p. 132).

Similarly, O'Donnell asserted that even taking its 'minimal' definition, as presented by Schumpeter and Dahl, democracy required institutions beyond fair elections. O'Donnell qualified this position by stating that fair elections as "the sole characteristic of democracy, presuppose the existence of some basic freedoms, or guarantees, if such elections are to exist" (O'Donnell, 2001, p. 16). Without other legal guarantees and freedoms, free and fair elections cannot exist. For O'Donnell (2001) this shortcoming stems from a lack of focus on the necessary inclusion of a basic, egalitarian, legalistic framework the literature, which he argues that both Schumpeter and Dahl allude to, but did not address. O'Donnell stated that they were intentionally unspecific about the necessary characteristics that could provide for this level of equality because of the complexity of such an issue (O'Donnell, 2001, p. 9). This debate is complicated by the fact that what may provide for such guarantees in one country may not have the same outcome in another country, making generalizability of findings more difficult. Moreover, Stephanie Lawson asserts that when the political structure is more democratic, there is a clearer difference between state and regime. When the political structure is less democratic, the distinction between these two concepts is less obvious.

O'Donnell's major clarification is that "democraticness" is an attribute of the state, not only of the regime (O'Donnell, 2005, p. 32).<sup>40</sup> This distinction draws a clear line between regime

---

<sup>40</sup> It is worth noting that Fernando Henrique (1979, p.38) uses the term state in a slightly different, but not contradictory, context. He defines state as "the basic 'pact of domination' . . ." Cardoso linked his notion of state to the socio-economic patterns and noted that the same form of state can exist under different regimes (1979, pp. 39-40). For Cardoso this distinction was made in the context of studies on Bureaucratic Authoritarianism because he observed different patterns of capitalist states and forms of political regimes. He decided on this usage because "the

and state and how each contributes to democracy. To reiterate, O'Donnell offers an important clarification on the relationship between state and regime. For democracy to exist, a state structure must be in place that ensures "practically all actors, political and otherwise, take for granted that fair elections will continue being held into the indefinite future . . ." (O'Donnell, 2005, p. 15). When this occurs, actors strategize based on this continuance of elections; otherwise, they resort to other means of accessing the regime (O'Donnell, 2005, p. 15). As such, both a democratic state and a democratic regime are necessary preconditions for democracy to flourish.

If elections are the only "democratic" component, a country can be classified as having a democratic regime, but not necessarily a democratic state. A democratic state is essential to ensure that a democratic regime is upheld. This dissertation adopts a minimal definition of democracy, but shows that for elections to be considered free and fair, sufficiently strong institutions must exist to ensure that the existence of elections into the future is not questioned. That is to say that there must be institutional and nonpartisan means of ensuring that elections are free and fair, such as an independent electoral authority.

Whereas the consolidation literature was concerned first and foremost with stability at the regime level, that is, if a country continued to hold elections, the quality of democracy literature has opened the black box of the state level factors that contribute to weakening democracy. Iazzetta points out that current democratic theory was unable to explain the reality in Latin America, where "democratized regimes existed alongside states with strong authoritarian legacies" (2004, p. 1). This dissertation explores the inner workings of one such state.

---

relationship between the two is far from clear and, given that this is a complex and rather controversial subject, it might be wiser to advance modestly along the unambitious path of the political description of the institutions of bureaucratic-authoritarian regimes" (Cardoso, 1979, p.40).

The existence of elections alone is not sufficient to ensure that electoral democracies do not become electoral autocracies. Given this definitional specification and since elections are a fundamental component of democracy, electoral events (including referenda) are used in this dissertation as the key events for analysis. Elections and referenda act to reinforce vertical accountability<sup>41</sup> and are the citizens' means of interacting with state institutions. Nothing inherent in elections ensures horizontal accountability.

The quality of democracy literature recognizes the “democraticness” as an attribute of the state, not only of the regime (O'Donnell, 2005, p. 32). To delineate what is included in an analysis of the state, O'Donnell adds two conditions: “(a) by the implication of the definition of democratic regime, a legal system that enacts and backs—at least—those same rights and freedoms; and (b) a legal system that prescribes that no person or institution is *de legibus solutes*” (2004, p. 33). Essentially, O'Donnell suggests that to understand democraticness at the state level we must first consider if the state institutions have control over the territory –which, with a few exceptions the Venezuelan state does, and second, we must look at the accountability mechanisms in place to ensure that no one is above the law (perhaps the most controversial and meaningful theme in contemporary Venezuelan politics).

In order for state institutions to be effective, O'Donnell argues, the state's actions must be “based on the application of laws and regulations that are clear, knowable by the citizens, and enacted in ways that accord to democratic procedures” (O'Donnell, 2004, p.35). This observation suggests that more attention is warranted toward the study of how laws impact state institutions.

---

<sup>41</sup> O'Donnell defines vertical accountability to mean not only elections, but also other “social demands that usually can be articulated without suffering state coercion, and regular coverage by the media of at least the more visible of these demands and of apparently wrongful acts of the public authorities. . . .” (O'Donnell, 1999 in Schedler, Diamond & Plattner, 1999, p.30).

Such state institutions that help to enforce horizontal accountability, for example, the legislature, the judiciary, electoral bodies or other institutions as outlined in the constitution (O'Donnell, 2003). Horizontal accountability “results when some properly authorized state institutions act to prevent, redress, and/or punish presumably illegal actions or inactions committed by public officials (see O'Donnell 1998, 2003). How horizontal accountability is implemented varies, but there is a tendency in Latin American and other new democracies for officials, once elected, to be “only minimally responsive to citizen preferences, constrained by other agencies of government, and respectful of the rule of law” (Diamond and Morlino 2002: xi). With regard to horizontal accountability, Schmitter notes that “a regime or system of governance in which rulers are held *accountable* for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their representatives. Accountability is central to virtually all ‘procedural’—as opposed to substantive—definitions of democracy.” (Schmitter 1999, p.60). We cannot have electoral democracy without institutional predictability to ensure that the expectation of holding elections will continue in the future: holding leaders accountable for their actions is one way of incentivizing them to play by the rules of the game.

## **2.6 Stability in Parliamentary versus Presidential Systems**

Scholars presented evidence to suggest that parliamentary systems are more stable and have a lower breakdown rate than presidential systems, yet explanations for this finding conflict (Bunce, 2000; Lijphart, 2000; Przeworski, et al. 2000; Cheibub, 2002; Cheibub & Limongi, 2002). Much of the initial research focused on full breakdowns, and was centered on Linz's perils. I survey this literature, and argue throughout this dissertation the factors that Linz links argues lead to breakdowns (minority government, coalitions, deadlock, fixed terms, and term limits) are indeed causes of institutional instability even in the absence of full breakdown. Initial research

suggested that when breakdowns were replaced with instability, using the World Bank Institute's measure of instability, presidential systems continued to be more unstable, particularly when respect for the rule of law was low (Cameron, Blanaru, Burns, 2004).

Some scholars attribute the higher breakdown rates of presidentialism to factors beyond its intrinsic constitutional features, such as the constitutional separation of powers (Cheibub, 2002, p. 308). Others reject the basic finding and attribute higher breakdown rates in presidential systems to methodological problems in previous studies, such as spurious correlation, selection bias or preexisting regime type (Mainwaring & Shugart, 1997).<sup>42</sup> This body of literature is concerned with instability specifically with relation to the survivability or breakdown of democratic regimes.<sup>43</sup> This literature adds an important methodological clarification, but the pressing question remains unanswered: Why are presidential democracies in Latin America so unstable? I argue that we can better answer this question by considering how the perils of presidentialism lead to institutional instability at low levels of rule of law. An overview of the literature on presidential breakdown will explore the five perils of presidentialism to show a systematic shortcoming: an exclusive focus on executive-legislative relations.

To uncover the differing breakdown rates, theories on the causes of instability in presidential regimes have concentrated on aspects of presidentialism absent in parliamentarism. For example, whereas a leader's continuation in office in a parliamentary regime is dependent on

---

<sup>42</sup> This dissertation supports Cheibub's (2007) declaration that the resolution to presidential instability lies in designing better presidential democracies; however, it diverges from his work which suggests that lower levels of "survivability" stem from their tendency to be adopted in regimes with "activated" militaries. This dissertation does not deny that pre-existing power relations may impact "survivability" but sees sufficient evidence to suggest that this teleological analysis is flawed. First, Bejerano (2000) shows that similar transition styles can lead to very different outcomes. And second, even an "activated" military can be kept in democratic check with a strong respect for the rule of law.

<sup>43</sup> Mainwaring and Shugart define a breakdown based on a change in score for Freedom House. A country was considered to have had a breakdown if its score increased to 5.0 or greater (Mainwaring & Shugart, 1997, p. 28).

support of the legislature, presidential regimes are characterized by “mutual independence,” in which the legislature and the executive have independent electoral mandates with separate and fixed terms that act as their own source of legitimacy (Stepan & Skach, 1993).

The presidential breakdown debate, as mentioned in the introductory chapter, has centered on the following five perils: minority governments, deadlock, coalitions, fixed terms, and term limits. The perils are interrelated; both the survivability and the institutional stability of presidential regimes are compromised by minority governments, which can easily result in political deadlock.<sup>44</sup> Deadlock can be overcome legally through the formation of coalitions or illicitly through negotiation, or pork barrel deals. The propensity for problems is increased when fixed terms and term limits complicate the removal of leaders. To end unpopular presidencies, actors have often been pushed to unconstitutional measures and leaders have tried to overcome barriers to their leadership by extending their terms. These problems, solved through a vote of confidence in parliamentary regimes, have been cast as the main causes of presidential breakdown. My research supports the claim that these five issues contribute to institutional instability in the case of Venezuela. It was not the perils alone, however, but their existence under conditions of low respect for the rule of law that resulted in instability. Therefore, it was a precarious respect for the law that made it possible and lucrative for actors to follow legally questionable paths in their contention with minority government, deadlock, coalitions, fixed terms and term limits.

Minority governments in presidential systems occur when presidents lack a legislative majority, or in a bi-cameral system when the government lacks a majority in one of the two houses. Minority governments can lead to deadlock when presidents are unable to have

---

<sup>44</sup> It is worth noting that there are arguments that suggest that minority governments are not as uncommon in parliamentary governments as previously assumed (Strom 1990; Cheibub, 2002, p. 154).

legislation approved. Inability to pass legislation slows a government's agenda. In the face of deadlock, presidents have the option of building a coalition to enable the approval of legislation. Evidence suggests that when coalitions are difficult to build, presidents may be tempted to rule in legally questionable ways. Presidential regimes, unlike their parliamentary counterparts, lack confidence checks to ensure that leaders without the support of the legislature can be removed from power. This means that there is no institutionalized mechanism to resolve executive-legislative conflict. Moreover, there is no legal means for the legislature to remove a president, short of impeachment, which requires an illegal act. Thus, in presidential systems problems of government easily result in the executive running roughshod over existing political institutions with few checks.

While agreeing that there is a higher probability of minority government in presidential systems, José Antonio Cheibub (2002) argues that minority governments do not necessarily lead to breakdown. Cheibub and Limongi show that, to overcome minority situations, governments' can enter into coalitions. In fact, they state that "the occurrence of minority governments has no impact whatsoever on the survival of presidential democracies (Cheibub & Limongi, 2002, p.154). Helmke (2008, p.1) adds that "not all non-majoritarian situations in Latin America lead to inter-branch crises." She cites the examples of Fujimori and Chávez who have successfully dissolved legislatures when they lacked majorities, noting that other presidents have not. One way to overcome minority representation in congress is through coalitions. By building a coalition presidents can successfully have their policies approved by the legislature despite inadequate initial partisan support. Cheibub and Limongi refute this research by arguing that

coalitions do not inherently lead to breakdown (Cheibub & Limongi, 2002).<sup>45</sup> Moreover, Cheibub discounts the impact that deadlock has on break down. He argues that even under situations of deadlock, the probability of breakdown is not substantive. According to his calculations, “whereas 1 in every 31 presidential democracies dies when there is no deadlock, 1 in every 26 dies when there is deadlock” (Cheibub, 2002, p. 301). As such, Cheibub claims that the breakdown rate is not substantively different when the existence of deadlock is controlled for, and therefore, he argues that the level of concern with deadlock often expressed in the comparative literature is unwarranted.

Cheibub’s conclusions discount the impact that deadlock and coalitions have on presidentialism and suggest that neither affects democratic endurance. This inference, however, invites clarification. To be specific, Cheibub shifts the level of analysis from minority presidents to minority government, contradicting much of the existing literature which focuses on minority presidents: “Minority governments are those in which the governing coalition does not control a majority of seats in the legislature or, in a bicameral system, those in which it does not control a majority of seats in at least one of the chambers” (Cheibub, 2002b, p. 287). For their part, minority presidents exist when “...the party of the president does not control a majority of seats in the legislature” (Cheibub, 2002, p. 294).<sup>46</sup> The important difference between the two concepts is that, for Cheibub, the existence of a coalition means the government is no longer considered a minority. Minority governments, therefore, are far less frequent than minority presidents (Cheibub, 2002, p. 294). As previously stated, coalitions are a common method used by minority

---

<sup>45</sup> Whereas 1 in every 31 presidential democracies dies when there is no deadlock, 1 in every 26 dies when there is deadlock. This difference does not warrant the level of concern with deadlock that is often expressed in the comparative literature (Cheibub & Limongi, 2002, p.156).

<sup>46</sup> Valenzuela (1993, p.8) on the other hand defines minority presidents to be “the lack of majority support in the legislature.



leaders to overcome deadlock; it is not common for minority presidents to rule without some form of coalition.

Although Cheibub's finding adds an important clarification, his shift in focus from minority president to minority government does not shed light on the mechanisms that lead minority presidents to become unstable. Moreover, the shift in the unit of focus opens avenues for future research, but it also minimizes the direct comparability of these findings to previous conclusions. Instead, the focus on minority governments defines the case-set more narrowly. In turn, Cheibub's definition of deadlock is far more restrictive than that of previous studies.<sup>47</sup>

Secondly, other research that questions the survivability of coalitions suggests that, at times, these coalitions are informal or concealed (Mainwaring & Shugart, 1997; Stepan & Skach, 1993; Amorim Neto, 1998; Mejía Acosta, 2006). Along similar lines, many scholars also address the tendency of presidents to resort to questionable or illegal means to overcome deadlock situations (see for example: Riggs, 1988; Valenzuela, 1994). Cheibub's examination of minority governments does not address either of these bodies of literature and it is for these latter reasons, this dissertation argues, that minority presidents can rule with little respect for democratic institutions.

Another aspect that contributes to breakdown in presidential regimes is their propensity to have fixed terms. Having a set end date to a president's term makes early removal, except through impeachment, difficult. This is true even when a leader is ineffective or unpopular. As such, having fixed terms "systematically contributes to impasses and democratic breakdown" (Stepan & Skach, 1993). Taking Latin America as an example, we can see that fixed terms often lead to presidents being violently forced out of office (Linz, 1994; Mainwaring, 1990; Pérez-

---

<sup>47</sup> These studies tend to rely on divide government as an indication of deadlock –or the probability of a deadlock situation (see: Mainwaring, 1993; Jones, 1995; Carey, 1997 and Mainwaring & Shugart, 1997).

Liñán, 2005; Pérez-Liñán, 2007). This was true in Bolivia (2003), Ecuador (1997, 2000, 2005), Peru (2000) and Venezuela (1993 and 2002). In each case, removal of presidents prior to the end of their terms occurred because of widespread discontent. The method of removal has varied, but included accusations of insanity, widespread protest and military coup.<sup>48</sup> Compared to the parliamentary option of a non-confidence vote, the presidential mechanism to remove political leaders is more likely to violate the democratic rules. Moreover, the legal removal of a president requires the judiciary, emphasizing the specific importance of this body in presidential regimes, unlike in parliamentary regimes the president cannot be removed by the legislature.

The final element of presidentialism associated with a higher level of break down is term limits, a common although not intrinsic characteristic of presidentialism (Cheibub, 2002). When a leader is barred from reelection, an institutional means of accountability is lost. With fewer incentives to remain honest to the population, leaders can inappropriately push through agendas to secure their legacies. Alternatively, when leaders face possible reelection there is greater temptation to abuse the presidential office to secure their own reelection. The prevalence of this form of abuse prompted Matthew Shugart and Scott Mainwaring to argue that reelection should only be permitted in countries “where reliable institutions safeguard elections from egregious manipulation by incumbents” (Shugart & Mainwaring, 1997). When presidential regimes lack institutional checks on the power of the executive, they can more easily manipulate state resources to stay in power. In some countries this has seen the executive remove the limit on reelection and in turn use state resources to secure the reelection of their administration.

Figure 3 summarizes the relationship between presidentialism and democratic breakdown as it is illustrated in the existing literature. This literature attributes break down to minority

---

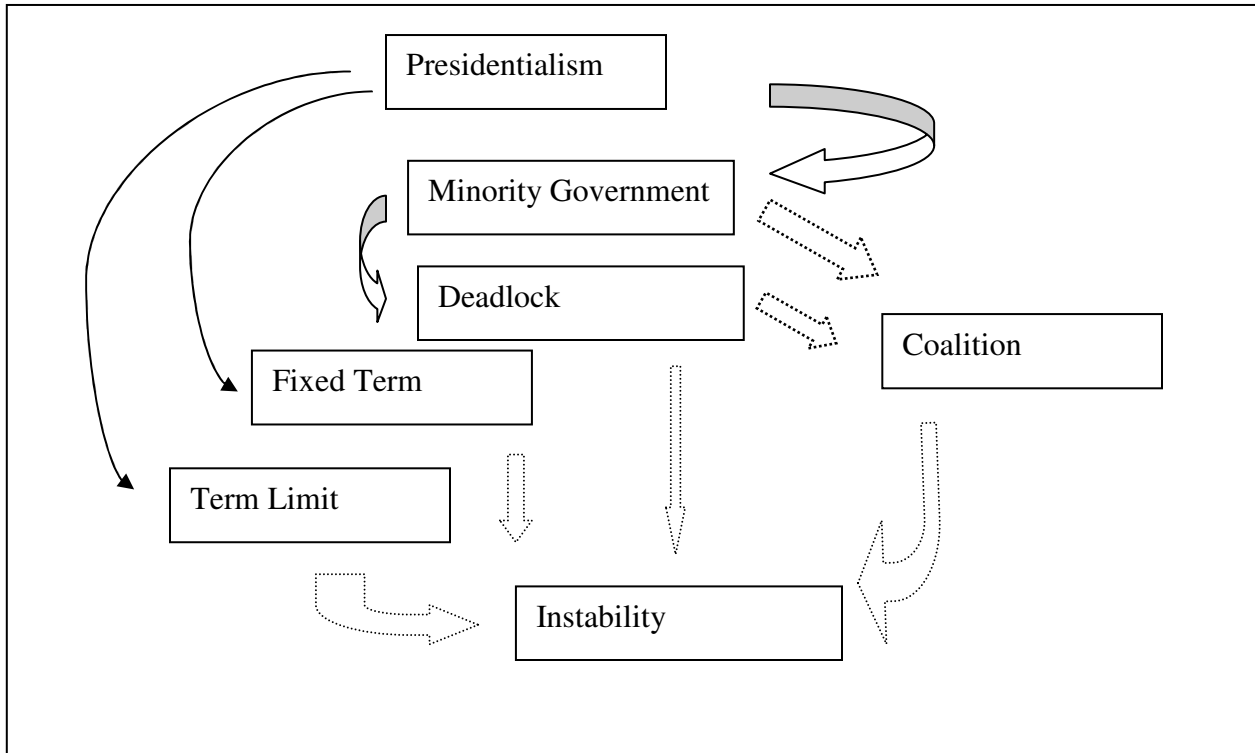
<sup>48</sup> Degree of violence associate with these early terminations has varied considerably, as has the level of popular support. For more on the Andean region see Mainwaring, Bejarano and Pizarro Leongomez (2006).

government, which leads to deadlock because coalitions can be difficult to form. In addition, term limits and fixed terms complicate the relationship between the executive and the legislature because presidents are difficult to remove. The debate in the existing literature is too narrowly defined. There is good theoretical reason to believe that the interaction between legislative and executive powers alone is insufficient to explain instability in presidential systems. In the words of Cheibub:

It is possible, therefore, to stop seeing presidentialism as the main offender in democratic instability and to start looking for other institutional factors that may lead to a better understanding of how these regimes actually work, rather than deriving performance implications from the regime's constitutional principle. (Cheibub, 2002, p.308)

I argue that it is not presidentialism alone, but the interaction between presidentialism and low rule of law that results in the violation of democratic rules. Or more specifically, on how low rule of law impacts the president's ability to rule without constraint and on how this can be damaging to democracy. This body of literature has focused on breakdown (or regime stability). Above all, the focus was on if a country remains a democracy or if it falls to authoritarian rule.

**Figure 3: Instability of Presidentialism**



Source: Author's depiction of argument based on a modification of Cheibub's How Presidentialism leads to Breakdown Figure (2007, p. 8).

To better understand the relationship between constitution type, stability and the rule of law, Cameron, Blararu and Burns (2004) controlled for constitution type, and measured the different rates of stability when rule of law was strong or weak. This study found that when the rule of law is strong the difference in stability between constitution types is minimal. When the rule of law is weak, however, presidential democracies have only a 25 percent chance of survival, compared to a 56 percent chance for parliamentary democracies (Cameron et al.

2004).<sup>49</sup> To account for the fact that there are far fewer breakdowns in recent years, this study used political stability rates, based on World Bank Institute's measure of political stability, to control for the smaller number of recent breakdowns. This Article found that the relationship remained consistent: presidential systems were more likely to be unstable at lower levels of rule of law than parliamentary systems. This finding not only supports the hypothesis that presidential systems are less stable, but it also extends the debate by showing a clear and robust correlation between low rule of law and system type. Even so, two critical questions remain unanswered: Firstly, why do presidential systems have, on average, lower levels of rule of law? And secondly, what causal mechanisms lead low rule of law in presidential systems to bring about much higher levels of breakdown or instability?

Empirical research shows that there has been a decrease in the number of breakdowns in recent years. "After the third wave of democratization Latin American executives have been unstable, but the democratic regimes have survived" (Marsteintrede & Berntzen, 2008, p.97). Despite the seemingly positive evidence to suggest that democratic governance is strong, the citizens of many countries do not enjoy the benefits of democratic governance. This theoretical puzzle has prompted a shift in the literature. Therefore, to improve our understanding of the democraticness of presidential regimes it is logical to begin with the previously identified perils.

---

<sup>49</sup> It is worth noting that survival rates measure if a regime breaks down and becomes undemocratic, while stability rates measure general levels of the strength of a democratic regime through an evaluation of several components (World Bank, 2004). This study compared breakdown and instability (using World Bank institute measures) to bring Stepan and Skach's 1993 study up to date and control for the fact that fewer full breakdowns have occurred in recent years. The different concepts of instability will be fully examined in Chapter two.

## 2.7 Quality of Democracy

In an attempt to determine why some democracies have not progressed beyond electoral regimes, the quality of democracy literature seeks to uncover the causes of 'low quality' democracy. As Diamond and Molino assert there has been a shift from the focus on consolidation to an attempt to assess quality of democracy (2004, p. ix). Unlike the consolidation literature, the quality of democracy research recognizes an in between category and these scholars note that despite the fact that regimes have not broken down, there continue to be problems with democracy. The quality of democracy literature also notes that previous theoretical explanations were unable to explain why so many 'low-quality' democracies persisted (Iazzetta, 2004, p.1). The catch-all nature of the term 'quality of democracy' warrants clarification for the purpose of this dissertation.

This shift in focus from democratic consolidation to quality of democracy implies an improvement or a deepening of democracy, but this the body of literature does not present a parsimonious set of indicators to measure improvements in quality. For example, Schedler notes that the concept of 'democratic quality' is still unclear and controversial: "while we have tons of literature as well as a great deal of consensus about liberal democracy's minimum standards, discussion about the standards of democratic quality is still preliminary. Therefore, in the debate, conceptualizing democratic consolidation as democratic deepening amounts to inviting a free-for-all" (Schedler 1998, p.104). Although a plethora of literature has emerged since Schedler's 1998 assessment, the literature has not moved beyond a laundry list of operationalizable variables. The authors contributing to this literature are forthcoming that their attempt to build a new theoretical perspective is only in its infancy (see for example Iazzetta, 2004, p.2; O'Donnell, 2004, p.10).

In an attempt to provide a clear definition of quality of democracy Morlino (2004) argues that quality is dependent on three factors: procedure, content and outcome. Morlino states that a “‘quality’ or ‘good’ democracy may be considered to be one presenting a *stable institutional structure that realizes the liberty and equality of citizens through the legitimate and correct functioning of its institutions and mechanisms*” (emphasis in original Morlino, 2004, p. 6-7). In so stating, Morlino implies that for a democracy to be of “high-quality” the institutions must function based on a set of fair and stated rules. Such institutions can ensure that the procedure is fair and will more likely lead to a positive outcome.

In this attempt to provide a better understanding of the quality of democracy Diamond and Morlino suggest eight dimensions: 1) rule of law, 2) vertical accountability, 3) responsiveness, 4) freedom, 5) equality, 6) participation, 7) competition, and 8) horizontal accountability. In addition to these eight dimensions they emphasize the importance of transparency and effectiveness of representation (Diamond and Morlino 2004, p. x). As operationalizable variables Diamond and Morlino go on to recognize that these concepts overlap and suggest that “democratic quality can be thought of as a system, in which improvement in one dimension can have diffuse benefits for others (and vice versa)” (Diamond and Morlino 2004: x). Therefore, identifying a clear link between a problem in one dimension and its results on another dimension can be difficult.

To further refine our understanding of quality of democracy, Levine and Molina (2007) reduce the number of indicators to five, and they include: 1) electoral decision, 2) participation 3) accountability, 4) responsiveness and 5) sovereignty (Levine and Molina, 2007, p. 24). Levine and Molina dismiss the rule of law as a requisite element of quality of democracy, because they state that the study of legality should be done separate from the study of the political process.

Instead, they focus on free and impartial elections and political freedoms (Levine and Molina, 2007, p.25). In so doing, they explicitly note that they are not dismissing the important role that legality plays in politics, or in democracy.

Other scholars have argued that it is more difficult to separate the concept of legality from the state. With regard to the role of the legal system O'Donnell (2004, p.12) notes that:

... it is a mistake to conflate the state with its bureaucratic apparatus. Insofar as most of the formally enacted law existing in a territory is issued and backed by the state, and as the state institutions themselves are supposed to act according to legal rules, we should recognize that the legal system is a constitutive part of the state. As such, what I call 'the legal state' (that is, the part of the state that is embodied in a legal system) penetrates and textures society, furnishing a basic element of stability to social relations.

For O'Donnell the legal system plays an important role in determining the actions of state institutions. For him, the legal structure provides a foundation upon which to build stable, as in predictable, relations. Linz and Stepan also recognize the importance of the legal system, linking it directly to democratic improvement: "Indeed, the more that all the institutions of the state function according to the principle of the state of law, the higher the quality of democracy and the better the society" (Linz and Stepan, 1996b, p.19). In accepting that the legal system plays an important relationship between different institutions of the state Diamond, Plattner and Schedler state that:

It is becoming increasingly clear that without working systems that can provide 'credible restraints' on the overweening power of the executive, democratic regimes tend to remain shallow, corrupt, vulnerable to plebiscitarian styles of rule, and incapable of guaranteeing basic civil liberties. In short, they tend to remain 'low-quality' democracies" (Diamond, Plattner, and Schedler, 1999, p.2).

Although the specifics of the definition of quality of democracy remain unclear, there seems to be agreement among quality of democracy scholars that checks on the power of the executive are necessary. Furthermore, the key to such checks lies in the ability of state institutions to restrain



the executive (and as an extension, other political actors). As a procedural dimension of the quality of democracy, horizontal accountability is upheld, at least in part, through the rule of law.<sup>50</sup> Both horizontal accountability and the rule of law are important factors in determining the stability of the institutional structure that mediate the functioning of state institutions (for an application of this see Hagopian, 2004, p.125).

Resistance to the notion that a set of state level criteria is a necessary to check the power of the executive has come from scholars that see quality of democracy as being a strictly liberal democratic phenomenon. In part, this belief stems from the liberal democratic understanding that institutional accountability can be reached through the implementation of the rule of law. For liberals, the constitutional rules uphold democracy and so the concept of democracy cannot be separated from the concept of constitutionalism. In the words of Preuss (1995), independence from the arbitrary and capricious subjectivity of a ruler

is the most elementary meaning of constitutional rule. A regime which does not meet this standard is simply out of date; it may endure for a time, perhaps even a fairly long time, but since it lacks legitimacy and is erected on pure power, it degenerates to despotism (Preuss, 1995: 5).

Preuss recognized the difference between an enduring democracy and one that subjects the leaders to the rules. The legitimacy of these rules is one way to determine if a democracy will endure. Essentially for Preuss a non-liberal democracy is not a democracy. Likewise, Linz and Stepan (1996) state that the rule of law, embedded in constitutionalism, is necessary for a democracy to be consolidated: “All significant actors—especially the democratic government and the state—must respect and uphold the rule of law” (Linz & Stepan, 1996, p. 10). This

---

<sup>50</sup> It is important to note that horizontal accountability has and can be upheld in other ways; for example, through a strong party system, as will be argued in the following chapter. The argument here, however, is that this accountability is only likely to be predictable when it is enshrined in, and upheld by, respect for the rule of law.

requires “a clear hierarchy of laws, interpreted by an independent judicial system and supported by a strong legal culture in civil society” (Linz & Stepan, 1996, p. 10). Whereas, Diamond (1999, pp. 11-12) was explicit that a liberal democracy has a rule of law, Linz and Stepan (1996, p. 15) stated that “. . . no regime should be called a democracy unless its rulers govern democratically.”

The need for a predictable set of rules that limit the actions of government is not necessarily linked only with maximal definitions of liberal or consolidated democracy. The link between rule of law and stable democracy is exaggerated because the defense of the rule of law upholds liberalism, not only democracy. Liberalism and democracy are two different concepts. Rule of law is desirable because, among other things, it adds predictability and institutionalizes the resolution of conflicts. Consolidated democracies are often assumed to have respect for the rule of law because in a consolidated democracy the tension between constitutional restrictions and democratic rule is overcome through an institutionalized state-society relationship. Some scholars argue that by definition there is tension between rule of the people and the qualification of this rule (Elster, 1988, p.2; Habermas, 1995). This tension comes from the fact that, on the one hand, constitutions limit the power of the majority, while on the other hand, democracy is rule of the people. Since constitutions limit the power of the people, constitutions operate as “constraints on the governing ability of majorities” (Sunstein, 1988, p. 327).

When this relationship is respected, however, any tension that exists between limiting the power of the people is overcome by the benefits of predictability delivered with a constitution that is viewed as legitimate. When the rules are not seen as equitable, or when they are not respected and one group possesses sufficient power to challenge other groups, this equilibrium is threatened and actors will seek other mechanisms to influence the political regime (Przeworski,

1991). In democracies this influence generally comes from elections—but when elections are not seen as free and fair actors seek other measures of accessing power or influencing the rules. How the power of rulers is constrained is a concern for liberal democrats, but for enduring democracy or any sort it is necessary to have a clear set of respected rules. Democracy’s most minimal criteria—free and fair elections—require state institutions to uphold it. A democratic regime can not be upheld without some level of democratic state. This is not a component only of liberal-representative democracy; instead, a democratic state is necessary to uphold elections.

To date, the quality of democracy literature has been dominated by scholars first and foremost interested in representative democracy (Diamond and Morlino, 2004, p. xiii). Although the study of representative democracy has been dominated by those interested in liberal democracy, a few scholars such as O’Donnell and Coppedge recognize that there are forms of democracy other than liberal democracy—such as popular sovereignty—that are equally valid (Coppedge, 2004, p. 247). In such forms of democracy a “democratic state is obliged to carry out popular will” (Coppedge, 2004, p.247). How such a state could be evaluated or measured is the topic of the next section. The components of the state will be explored in the following section. Plattner fears that in an attempt to overcome this normative component of quality of democracy, scholars try to hide behind measurable indicators, but these in fact, enshrine the particular “preferences of scholars as objective standards of quality” (Plattner, 2004, p. 107). Similarly, Altman and Pérez-Linan (2002) recognize this normative component and instead of attempting to overcome it, or ignoring its significance, they analyze “in which countries democracy performs better given some normative standards. Much of the debate about the quality of democracy is about the identification of these normative standards” (Altman and Pérez-Linan 2002, p. 87), and they cite examples of a lack of horizontal accountability. The normative component is

interesting, but so too are procedural components. The quality of democracy literature shows the importance of looking at the state level but the role of the state remains only one component of quality of democracy. The important role that the state plays in upholding a democratic regime precedes the search for measures of quality of democracy.

## **2.8 Conclusion**

This chapter has established how democratic regime stability, political stability and institutional stability have been used in the literature. It argued that when elections are used as an indicator of democratic stability, a country may have a functioning democracy at the regime level; however, there are a number of countries that have come to hold democratic elections without other features of democracy. This has given rise to a category of countries that can be classified as electoral authoritarian. Examples include Zimbabwe, Russia, and Singapore all of which have multiparty elections that coincide with authoritarian governance (Schedler, 2006, p.1). Under such regimes, leaders may continue to be elected, but citizens have not come to enjoy the full benefits of democracy.

In order to ensure the full benefits of democracy, democratic regimes require democratic states. The quality of democracy literature attempts to provide us with operationalizable variables to access the democraticness of a country by considering state level factors other than elections. This literature falls short of providing clearly established operationalizable variables, especially when we consider the notion of democraticness outside of liberal democracy.

The minimal criteria for democracy—free and fair elections—cannot be upheld without democratic state institutions in place to ensure that citizens can hold their leaders accountable. That is to say, without some aspect of horizontal accountability, vertical accountability is undermined. In addition, for these rules to be considered democratic they must have the capacity

to hold the rulers responsible for their actions so that rulers are unable to run roughshod over political institutions. My analysis separates the procedure from the outcome and emphasizes the importance of procedure.

By focusing on state level attributes of presidential systems this dissertation seeks to determine how the perils of presidentialism interact with low rule of law. In so doing, this chapter provides the basis for the rest of this dissertation to build on in its attempt to provide insight into why presidential systems and instability are correlated. Lastly, this chapter overviewed the literature on quality of democracy and established the overlap between this concept and the notion of institutional instability. Although the dissertation contemplates many of the same questions as the literature on quality of democracy, and it contributes to this literature, it focuses on the more narrowly defined concept of institutional instability.

# CHAPTER THREE

## 3.1 The Rule of Law and Democratic Stability

The rule of law is characterized by the supremacy of law over the will of individuals. An overview of the rule of law literature shows that most research measures the rule of law through a proxy. The judiciary is the body of government that enforces law and therefore is fundamental to the rule of law. Since the terms rule of law and judicial independence are frequently used interchangeably, it is important to outline how the literature uses and distinguishes the two concepts. In order to determine the best means of evaluating the rule of law, this chapter begins with the literature that explores the relationship between the rule of law and democracy.

Despite the seemingly evident nature of the claim that the rule of law is important for democratic stability, the relationship between the two concepts is not well understood. Specifically, the causal mechanisms that lead a country with low respect for the rule of law to become democratically unstable are not well known. As Russell and O'Brien (2001) state, the judiciary can contribute to the breakdown of rule of law through collaboration with the executive, or through passivity. Problematic executive-judicial relations have prompted a growing scholarship to address the importance of judicial independence and to identify its key attributes.<sup>51</sup> From this literature, we know that when the rule of law is weak, the executive can easily seek unconstitutional or illegal means of resolving political problems. Intuitively this makes sense, but we need to develop a better understanding of how it occurs. Several attempts have been made to quantify different components of the rule of law. This chapter will first

---

<sup>51</sup> In every Latin American country the constitution provides for the independence of the judiciary, although the independence of the courts is not always guaranteed (World Bank, 2000, p. 181).

provide an overview of these measures. It will then justify the dissertation's focus on judicial independence and operationalize it. This will provide the reader with both a better understanding of how previous studies have measured judicial independence, and show how it will be examined in Venezuela. Empirical evidence suggests that there is a disjuncture between the letter and practice of the law, therefore, prior to concluding, this chapter overviews the importance of looking at informal institutions.

### **3.2 The Rule of Law**

The rule of law refers to the supremacy of law over the will of individuals. Laws, when well respected and implemented uniformly, add predictability, stability, justice and equality to the society in which they function. An examination of the literature shows that previous attempts to evaluate and measure the rule of law have done so in different ways and on many levels. This section first surveys the literature and then it justifies the dissertation's focus on judicial independence. It then demonstrates how judicial independence will be operationalized in this study. In so doing, this dissertation presents a collection of elements of judicial independence that will be used as the guideline for its evaluation. As will be demonstrated, this is necessary because there is a shortage of statistical data available in the quantitative realm. Moreover, qualitative studies have tended to focus narrowly on one indicator, and so do not provide an in-depth explanation.

The debate on the importance of the rule of law in relation to democratic stability finds its antecedents in the law and development literature of the 1960s. This body of literature concentrated on the importance of law for economic development and was founded on the theoretical belief that democratic stability spurs economic development (Lipset, 1959; Przeworski & Limongi, 1997, p. 155). Lipset (1959) stated that "the more well-to-do a nation,

the greater the chances that it will sustain democracy” (Lipset, 1959, p.79).<sup>52</sup> More specifically, Lipset argued that the increase in education and the reduction of inequality—in the form of a growing middle class—improve the probability that democracy will be stable. Other studies have refuted this relationship. For example, Przeworski and Limongi (1997, p. 177) concluded that “the emergence of democracy is not a by-product of economic development,” but they recognized that once established, economic conditions play an important role and democracies are more likely to survive when economies are growing. Modernization theory alone fails to explain why Latin American nations shifted toward authoritarianism in the late 1960s, during a period of relative prosperity and growth and toward democracy in the 1980s (Remmer, 1995, p.106). This logic holds true for the case of Venezuela where, despite increasing equality and a growing economy, democracy has been unstable.<sup>53</sup>

Largely due to the shortcomings of modernization theory, the law and development literature did not contribute directly to the debate on democratic stability until O’Donnell revisited the importance of rule of law. O’Donnell (1998, and 2001) noted that in many unconsolidated democracies the executive had a tendency to supersede the law. In such cases, the executive, seeing itself as above the law, ruled as it saw fit; upholding its own interests with few constraints and little respect for the population’s will. In an attempt to define the rule of law, O’Donnell stated that it existed when:

---

<sup>52</sup> In many of these earlier studies political regimes were seen as dichotomous, either dictatorships or democracies. More recent literature has contributed to narrowing this debate. The most common factors include wars, death of the dictator, foreign pressure, and economic crises (Przeworski & Limongi, 1997, p. 157). With a shift in focus away from legal structures the scholars in this field of research questioned whether democratic stability was endogenous or exogenous to economic development (Przeworski & Limongi, 1997). This research focus diverged attention away from the role of the legal system. Later work, however, showed that several factors other than modernization led to the collapse of dictatorships and to the emergence of democracy

<sup>53</sup> The relationship between economic development, inequality and democratic stability in Venezuela is discussed in chapter four.



whatever law there is, this law is fairly applied by the relevant state institutions, including, but not exclusively, the judiciary. By fairly applied I mean that the administrative application or judicial adjudication of legal rules is consistent across equivalent cases, is made without taking into consideration the class, status, or power differentials of the participants in such processes, and applied procedures that are pre-established and knowable (O'Donnell, 1999, p. 308).

Above all, O'Donnell was concerned with ensuring that leaders are subject to the law, and that state institutions apply laws fairly and consistently. He provided a solid starting point from which to identify the institutional mechanisms that can uphold the rule of law. He did not, however, test the theoretical assertions that he presented. His observations were used to explain the persistence of unconsolidated or low quality democracy in many countries. O'Donnell argued that in the absence of a state that can uphold a democratic rule of law, a universalist legal system, and social conditions supportive of citizenship, "we face a new monster: democracies without effective citizenship for large sections of the political community" (O'Donnell, 1995, p.34). The stagnation of these democracies led some to conclude that they were not in fact progressing toward liberal democracy as anticipated.

### **3.3 Existing Measures Related to the Rule of Law**

Several datasets have been created that attempt to quantify the rule of law. This section reviews these data to show that none is a comprehensive measure of the rule of law. They are useful for illuminating specific aspects of the rule of law, but considered independent of other sources, none is sufficient to provide an in-depth understanding of the rule of law, nor are these data capable of illuminating the causes of low rule of law. This critique will be followed by a discussion of qualitative studies which have tended to focus more narrowly on one indicator.

One of the most common measures of democracy in comparative politics literature is Freedom House's measures of political and civil liberties.<sup>54</sup> Freedom House goes beyond measuring democracy and has been used to measure, more broadly the level of governance.<sup>55</sup> Specifically, Freedom House attempts to capture aspects of governance through a 40-point ranking scale to rank political rights, and a 60 point ranking scale for civil liberties. In response to Munck and Verkuilen's (2002) criticism that Freedom House did not publicize its aggregate data, Freedom House has been more forthcoming and has since released ratings on their subcategories. Still, the utility of this resource is confined to providing a snapshot of democratic stability by classifying countries into the three categories of free, partially free and not free. In and of itself, Freedom House reveals little about the rule of law.<sup>56</sup> Freedom House measures, however, do allow us to identify key years that mark a problematic break from stable democratic governance. To understand the events in these years, however, requires more in-depth study.

In an attempt to measure changes in the rule of law, the World Bank Institute has created a variable designed to measure citizens' perceptions of the rule of law, crime rate, enforcement of contracts and predictability. According to the World Bank Institute's rule of law score, the rule of law in Venezuela has taken a sharp decline in recent years: whereas in 1998 Venezuela scored 29.8 on this indicator, in 2005 this had fallen to 9.2. Other indicators, such as corruption, did not plummet as low. For example, Venezuela's ranking on control of corruption changed

---

<sup>54</sup> For uses of Freedom House data see Linz and Stepan (1996), Diamond (1996 & 2002), Stepan and Skach (1999). McClintock, 2006 provides further justification for the use of Freedom House scores as measures of democracy. Freedom House is often used as a measure of democracy even though it measures civil rights and political rights. These categories correspond with Dahl's characterization of polyarchy. Freedom House is a more complete measure than ACLP, which only looks at elections, specifically if elections occur and if there is competition for them. See also Munck & Verkuilen 2002, and Munck 2008.

<sup>55</sup>Mainwaring and Shugart (1997) use Freedom House to measure democratic breakdown if the Freedom House score goes over 5.

from 17.6 in 1998 to 16.7 in 2005 (Kaufmann, Kraay & Mastruzzi, 2006).<sup>57</sup> The large change on the rule of law indicator and the relatively small change on corruption demonstrates that other related measures exist, but that they may be independent to the rule of law, thus increasing the need to study them in greater detail. Since the concepts of corruption and the rule of law are often linked, it is important to distinguish between them.

The level of corruption has remained relatively constant, while the indicators of rule of law have fallen dramatically. This suggests a significant disjuncture between the two concepts. Corruption is defined as “the extent to which public power is exercised for private gain, . . . as well as ‘capture’ of the state by elites and private interests” (Kaufmann, et al., 2006, p.4). While there is an inherent relationship between corruption and rule of law, the variables used to measure them act independently. Another common measure of corruption is compiled by Transparency International (TI). TI’s corruption variable is based on perceptions of corruption, including political corruption. This gives us some insight into the perceived level of corruption in a given society and also into how effective the law is at curbing corruption. In 2007, Transparency International ranked Venezuela 162 out of 179 countries (Transparency International, 2007, p.7). This ranking was based on survey research conducted with business people and country analysts. Transparency International recognizes that an independent judiciary is necessary to uphold the rule of law and combat corruption but makes no attempt to measure how independent the judiciary is (Transparency International, 2007, p.3).

With respect to the rule of law, the World Bank Institute’s measure is based on four criteria: 1) citizens’ perceptions; 2) incidence of crime; 3) enforcement of contracts, and; 4)

---

<sup>57</sup> Control of corruption is measured on a percentile ranking. For a detailed description see Kaufmann, Kray & Mastruzzi (2006).

effectiveness and predictability of the judiciary.<sup>58</sup> These categories provide a useful skeleton around which to organize the following survey of the literature because most other indicators fall into these broad categories.

The first category of the World Bank Institute's rule of law score is citizens' perceptions. Perceptions are often, but not always, a reflection of reality. Therefore, it comes with an inherent subjective or normative component. When the rule of law is enshrined, it contributes to the establishment of a hierarchy of norms that are internalized through social processes which make actions and expectations predictable. Once established, a shared normative framework spurs a political culture, rooted in civil society and respected by both the state apparatus and the population (Linz & Stepan, 1996, p. 14). Socio-cultural theories of political science have cited the respect for societal norms as having an important impact on democratic stability (Almond & Verba, 1963, Putnam, Leonardi, & Nanetti, 1993).

Tracking citizen's perceptions in the Latin American context, the Latinobarometro<sup>59</sup> is a widely cited source of public opinion data. It uses polls to gather the population's perception of political institutions.<sup>60</sup> This data shows a negative or pessimistic perception of democracy in Latin America. As a region, only 29% of the population is satisfied with democracy (Latinobarometro, 2004). This data shows that a similar low level of confidence applies to the judiciary as well as other individual governmental institutions, as shown in Table 4 below.

---

<sup>58</sup> See: <http://info.worldbank.org/governance/kkz2002/q&a.htm#2> Each of these 4 sections includes several subsections. In fact, to arrive at the final rule of law score the World Bank uses an amalgamation of 25 sources from 18 organizations, making it one of the most extensive on the rule of law. It is relied on here to indicate that citizens do not have a high perception of governing institutions. Although there is a lack of available data, the large number of countries covered by the World Bank makes it the best source to use. For another example see Kunicová and Rose-Ackerman (2005) which relies on the World Bank's Control of Corruption Index which aggregates surveys of perceived levels of corruption across countries.

<sup>59</sup> For a more complete explanation please see [www.latinobarometro.org](http://www.latinobarometro.org). It should also be noted that recent discrepancies in data from Latinobarometro call into question the accuracy of its findings.

<sup>60</sup> For studies that use public opinion as a measure of judicial effectiveness please see (Smithey et. al. 2000; and Gibson et. al. 1998).

**Table 4: Public Perception of Institutions in Latin America**

Institution	Confidence Rate
Government	30 %
Parliament	24 %
Judiciary	32 %
Church	71 %
Democracy	29%

Source: This table was created by the author taking statistics from Latinobarometro, 2004.

When prompted to identify why, respondents reported “a lack of equality” as the key determinant of efficiency. Clearly, citizens in Latin America do not perceive their political institutions to be functioning fairly. This means that Latin American governing institutions are not perceived to have high levels of equality.

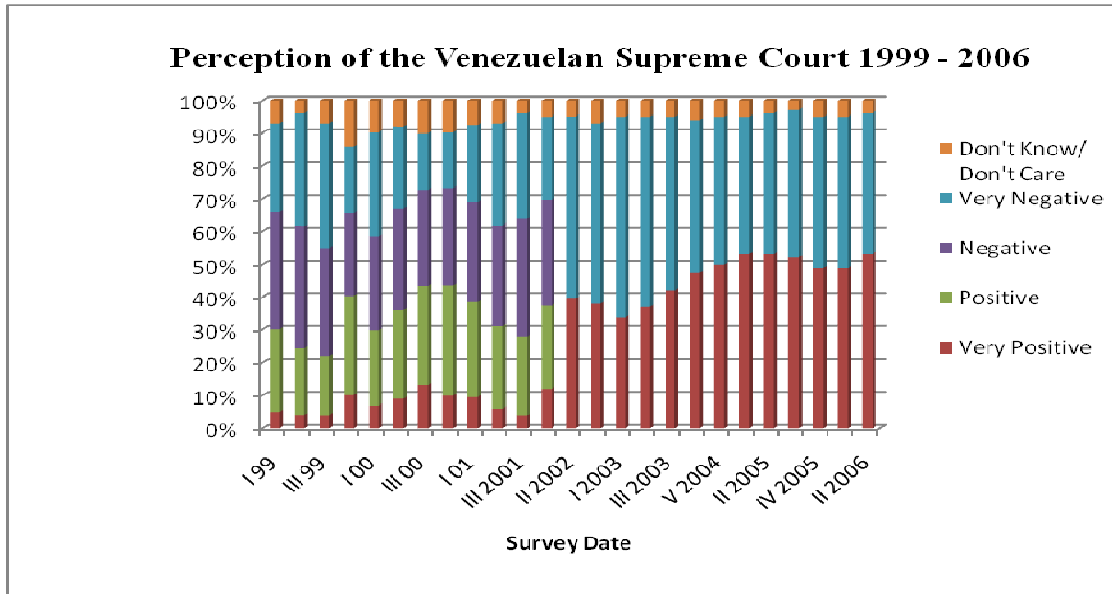
The perceived lack of equality suggests that the public does not have confidence in the state’s ability to create and enforce fair laws. Poor perceptions of political institutions are linked to a broader problem of citizenship issues in Latin America (Karl, 2000). An improvement in citizen rights stems from bolstering elements of citizenship, including those related to vertical accountability, such as party participation, trust, and civil society organizations.<sup>61</sup> Public opinion is in part a reflection of how citizens feel about their judicial systems. In Venezuela, public opinion toward the judiciary changed considerably over Chávez’s period in government. As the data in Figure 4 shows, in 1999, thirty percent of the population had a positive or very positive perception of the judiciary, by 2006 this had risen to over fifty percent. These survey statistics, taken from Consultores 21’s perception of institutions’ historical series data, shows an overall increase in the perceived role of the Supreme Court. It also shows an increasing polarization; by

---

<sup>61</sup> Extensive studies regarding problems related to citizenship in democracies in these areas can be found in O’Donnell, 1994, 1999, 2004; Coppedge, 2002b; Mainwaring, 2006; Karl 1999; and Putnam 1995.

2002 respondents ceased to choose the more moderate options of positive or negative and instead answers were either very positive or very negative.<sup>62</sup>

**Figure 4: Perception of the Venezuelan Supreme Court 1999 – 2006**



**Source:** This is the author’s recreation of survey data taken from Consultores21 (2007) Historical Series Data. The data was collected through surveys by Consultores conducted several times a year, across the country. Participants were asked to rank their perception of the Supreme Court and given five options: Don’t know/Don’t Care; Positive, Very Positive, Negative or Very Negative. (Ns/Nc; Positivo 1; Positivo 2; Negativo 1; Negativo 2) Author’s translation.

Public opinion experts in Venezuela report that more than simply being an adequate depiction of the population’s true perception, answers to questions about support for government institutions tend to directly reflect support for or against the government (Interview, 558). For example, if an individual supported the government they would give a high rating to all public

<sup>62</sup> The survey did not note a change in question to indicate that these categories had been removed. Individuals who work on the survey confirmed that they had not been changed.

institutions, and therefore according to these Venezuelan public opinion experts, this type of data does not give an adequate depiction of perception (Interview, 558). This expert's opinion suggests that polls are a reflection of the support for the leader, not a reflection of how well the institution is operating. The latter is what we normally seek to measure when we look at public perception. If we are measuring performance based on public opinion then we could conclude that the situation has improved. This is problematic, however, because according to other measures of performance, such as impartiality, and non-politicization, little has improved. Public opinion is an important aspect of democracy—and the disjuncture between opinion and performance is an indication that we need more detail to truly understand what is occurring.

Data that shows low public opinion illustrates a problem, but to understand the root of the problem requires an explanation of institutional performance. While recognizing that public opinion is an important aspect of judicial independence, this dissertation is focused predominantly on horizontal accountability. Studying citizens' perceptions, other than to signal where problems may exist, is more conducive to projects that look at vertical accountability and at studies that focus on ways of increasing civil society's involvement in the political process.<sup>63</sup>

The second component of rule of law identified by the World Bank Institute is crime rate. Crime rate measures the frequency and types of crimes committed. This indicator is of concern to those interested in measuring how effective and responsive judicial institutions are and how they deteriorate or improve over time.<sup>64</sup> To treat this as a significant variable, however, presupposes that there is a functioning judicial system. A low reported crime rate cannot (in many countries) be taken as indication that criminal activity is low. In some cases, low crime rate

---

<sup>63</sup> There are several comprehensive studies on Citizens' perceptions of the judicial system in Venezuela. See (Roche & Richter, 2003; Casal, Roche, Richter & Hanson, 2005).

<sup>64</sup> On a related subject, Transparency International provides an index of corruption levels based on survey data. [www.transparencyinternational.org](http://www.transparencyinternational.org)

indicates that crimes are not being reported and are being dealt with outside the judicial system. The use of crime rate as an indicator assumes a functioning judicial system and therefore, is a problematic measure of the rule of law.<sup>65</sup>

Similarly, the third component of the World Bank Institute's ratings, enforcement of contracts, also presupposes a judicial administrative capacity. This measure is of great significance to those concerned with the rule of law as it relates to regulating market economies and providing predictability for investors. Without adequate state institutions to set standards for the regulation of contracts, the study of how well contracts are enforced is not revealing. Once it has been determined that such state institutions meet a minimal standard, the enforcement of contracts can be a useful means of determining the effectiveness of state institutions.

Evidence from Latin America suggests that contracts are not enforced uniformly. Although at times predictable, enforcement is likely tied more closely to one's position in society and the strength of one's contacts than to a legal code. For example, Hernando de Soto demonstrated that in Peru getting a business license can be up to 1,500 times faster with the right connections (de Soto, 1987, p. 133). Similarly, Erik Jensen notes that the formal legal rules do not always determine actions and that operating outside of the formal legal system is especially prevalent for business interests who generally rely on close-knit groups of friends (Jensen, 2003, p. 355).<sup>66</sup> Often, businesses, and the lawyers that represent them, are aware of how the judicial system functions and of the power relations that operate outside the formal system. To conduct business in these societies it is necessary to work outside formal legal channels to settle potential

---

<sup>65</sup> For a comprehensive overview of crime and security in Venezuela see (Chacao, 2006).

<sup>66</sup> For an analysis of the difficulties of moving from clientelistic systems such as those present in Latin America, to ones more directly representative of the interests of the population who argues that clientelism undermines citizenship, see (Fox, 1994).



contract disputes. Measures that look at the formal system, therefore, do not reflect reality. The predictability and enforcement of contracts is problematic when a strong legal system to oversee them is absent. Therefore, considered alone, the enforcement of contracts does not capture the full picture.

The final component used by the World Bank Institute's measure of the rule of law is effectiveness and predictability. The effectiveness of a judicial system relates to how capable it is of delivering on constitutionally ascribed responsibilities. Predictability of the judiciary relates to whether judicial rulings are applied equally across cases with similar circumstances. Predictability assumes that cases will be subject to the same procedures by the court system and in return equivalent punishments will be prescribed. This means that the application of rules should be immune from political control (Hart, 1997). When this condition is not met, the judiciary lacks independence. In democratic systems, where executives by design change regularly, judicial branches should remain predictable.

The efficiency and predictability of the judicial system is heavily influenced by judicial independence, but because the efficiency and predictability is an aggregate indicator, it tells us little of the actual functioning of the judiciary. Nor does it tell us the components necessary to establish judicial independence. To determine how to evaluate if the judiciary can deliver on constitutionally ascribed responsibilities, I draw on work in the field of judicial independence. Predictability is evaluated based on the equal application of the law—that the law is applied with little regard for the actors involved and is applied equally. Equal application is determined by independence, and therefore a focus on the components of independence is necessary.

The literature on the rule of law supports the assertion that the independence of the judiciary is one of the most pressing problems in relation to the rule of law (Verner, 1984;

Larkins, 1996; Jensen, 2003). After all, the judiciary is the branch of government responsible for enforcing the rule of law. Without an independent judiciary it is highly unlikely that the enforcement of a rule of law will be impartial. To give a more accurate picture of how the judiciary functions requires detailed process tracing of executive-judicial relations. Prior to this, however, this chapter turns to an elaboration of judicial independence.

### **3.4 Judicial Independence**

To demonstrate that judicial independence is an important component of the rule of law, a survey of the literature will be used to determine the criteria by which judicial independence will be evaluated. Prior to presenting components of independence, it is necessary to define judicial independence. In the words of Larkins:

judicial independence refers to the existence of judges who are not manipulated for political gain, who are impartial toward the parties of a dispute, and who form a judicial branch which has the power as an institution to regulate the legality of government behavior, enact ‘neutral’ justice, and determine significant constitutional and legal values (Larkins, 1996, p.611).

Similar definitions are offered by organizations that aim to foster judicial independence. For its part, the United Nations (UN) sets forth standards for the Basic Principles on the Independence of the Judiciary (1996). Although these standards are not laws, many countries adopt them as models for conformity. In building these standards, the UN defines judicial independence as “judges with full authority to act, free from pressures and threats, adequately paid and equipped to carry out their duties” (United Nations, 1996, paragraph 12).<sup>67</sup> Additionally, although short of providing enforceable standards, the International Bar

---

<sup>67</sup> Increasing violence toward lawyers and judges provoked the United Nations commission on Human Rights to appoint a Special Rapporteur to investigate these problems and to focus on the promotion of universal judicial independence.

Association recommends minimum criteria for the functioning of independent judiciaries (Shetreet, 1985). These definitions suggest that judges must possess the ability to act without political influence. They do not, however, provide a methodology of how to evaluate or measure judicial independence, nor do they indicate how to achieve independence.

Despite a shared belief among scholars on the importance of judicial independence, the concept is not easily measured (Verner, 1984; Wilson & Cordero, et al., 2004). Evaluating independence is complicated by the small number of quantitative studies that measure independence. This lack of indices and the incomplete data within these indices mean that it would be lax to rely solely on quantitative studies.<sup>68</sup> Therefore, I turn to qualitative literature to identify the most important elements that affect independence. As will be shown, no single qualitative study alone is sufficient because they use a number of different indicators to show judicial independence.<sup>69</sup> This demonstrates that there is no consensus in the literature.

Qualitative literature is useful to establish the aspects of judicial independence that impact institutional stability (Fiss, 1993; Feld & Voigt, 2002; World Bank, 2004).<sup>70</sup> Joel Verner's 1984 review of the literature highlights a positive correlation between judicial independence and the level of political stability. A recent and growing literature on the comparative study of political institutions has marked a return to identifying the link between judicial independence and democratic stability (Larkins, 1996; Weingast, 1997; Larkins, 1998;

---

<sup>68</sup> Both Polity IV and the ACLP datasets, two common sources for data related to democracy, give no consideration to the judiciary. The Gutenberg Quality of Democracy dataset includes indicators for judicial independence that are borrowed from Porta, López-de-Silanes, Pop-Eleches & Shleifer. These include variables that measure judicial independence, Tenure of Supreme Court Judges, Tenure of Administrative Court Judges, Case Law, Judicial Independence, Rigidity of Constitution, Judicial Review and Constitutional Review. The World Bank Institute's rule of law measure, the most oft cited statistics on rule of law, only began in 1995 making it difficult to use this measure for long term comparisons.

<sup>69</sup> Take for instance Matthew Stephenson's (2003) analysis that considers only judicial review as a proxy for judicial independence.

<sup>70</sup> For the impact that judicial non-independence has on investment see also (Gregorio, 2003).

Smithey & Ishiyama, 2000; Helmke, 2002; Iaryczower et al., 2002; Maravall & Przeworski, 2003).

In these studies concerned with judicial independence, there is a tendency to focus on Supreme Courts. Following the logic of Larkins, this dissertation will focus on Supreme Courts. Larkins states that judicial branches are hierarchical and the Supreme Court (or Constitutional Court as it is sometimes called) sits at the apex.<sup>71</sup> As the top legal authority, the Supreme Court and the constitutional laws it enforces represent the highest level of the legal hierarchy. Together, the Supreme Court and constitutional law sustain the overall framework of the rule of law within a country (O'Donnell, 1999). Constitutions lay out how judiciaries are structured and play a key role in analyses of the judiciary. After justifying the importance of the Supreme Court, Larkins notes that the executive can use the court to strengthen its power and weaken the separation of powers by influencing judges (Larkins, 1998).

Clearly it is important that judges have the capacity to make independent decisions; however, there are several means to ensure this independence. This paper borrows from Owen Fiss' system of classification and divides the examination of independence into three broad categories, "party detachment," "individual autonomy," and "political insularity" (Fiss, 1993). Party detachment, as it is aptly named, suggests that judges should not have links with parties (Fiss, 1993, p. 55). Individual autonomy deals with the power that one judge has over another in the judicial hierarchy. This also includes the impact of bureaucratic (administrative and

---

<sup>71</sup> In Venezuela, it is difficult to track Supreme Court performance. The World Bank reported that Venezuelan Courts only started to document decisions in 1997 (World Bank, 2002, p.2) and through their modernization project between 1997-2002 the publication time of decisions improved from seven years, to immediately (via internet). In addition, the judiciary, Public Ministry, and the Ombudsman, do not collect data and statistics. Transparency Venezuela reports that without this information you cannot evaluate their status or their progress (Salas, Lander & De Fritas, 2004, p. 5).

budgetary) practices on judges (Fiss, 1993, p. 55).<sup>72</sup> Lastly, political insularity deals with the relationship between the judiciary and other state institutions (Fiss, 1993, pp. 56-57).<sup>73</sup> Although party detachment is a fairly straight forward concept, individual autonomy and political insularity will be explored in greater detail below. I will draw on scholarly work in each of these areas to justify how each of these categories will be evaluated. This criterion will be included in the elements this dissertation uses to operationalize and evaluate independence.

### **3.4.1 Individual Autonomy:**

The nascent research on comparative constitutionalism suggests that provisions of tenure, appointment and removal are important for a judge to maintain autonomy. These features have been used to distinguish levels of independence in different countries.<sup>74</sup> Research in the area is limited by the fact that little research has been done outside of the United States:

comparativists know precious little about the judicial and legal systems in countries outside the United States. We understand little or nothing about the degree to which various judiciaries are politicized; how judges make decisions; how, whether, and to what extent those decisions are implemented (Gibson, et. al., 1998, p.343).

To improve our understanding of how judicial systems work, this dissertation focuses on the key components that ensure independence. Understanding the rules of tenure is one way to provide valuable insight into the true functioning of the judicial system.

---

<sup>72</sup> In Fiss' categorization he is most concerned with the power that one judge has over another in terms of judicial hierarchy, that is to say, a higher court judges ability to influence lower court judges. The literature suggests that the following: 1) Financing elements are related to the annual budget: A) Who elaborates the judicial budget? B) Who approves the judicial budget? C) Who allocates the judicial budget to lower courts? D) Who supervises the execution of the budget? E) Is there an amount stipulated by law? And, 2) What administrative capacity is assigned? A) Number of justices per 100, 000 inhabitants? B) Is the Judiciary considered efficient? C) Who is responsible for assigning cases? D) How do cases come before the Supreme Court?

<sup>73</sup> Fiss warns that judges with too much independence can be a threat to democracy. This warning is an indication that not all judges have democratic ends in mind and their actions should be kept in check.

<sup>74</sup> It should be noted that the comparative constitutions literature is of limited use here. The propensity of these scholars to assume that constitutions work as they are intended confines their use to the theoretical realm. For a good overview of this literature see: (Epstein,2001; Jackson, et. al., 2002; Russell, & O'Brien, 2001).

A judge's tenure is dependent on both the procedures for appointment and removal. In Fiss' classification, the appointment of judges who did not have partisan affiliation was an important way to ensure independence. To avoid nepotism and encourage meritocracy, appointments ought to be done through a non-politicized process (Wilson, et al., 2004). One means of curbing politicization is to increase the number of individuals involved in the appointment process. Appointments should be based on qualifications, through the implementation of minimum criteria including, for example, experience and education. A non-politicized process increases the probability that a judge will be impartial (Smithey & Ishiyama, 2000; Madhuku, 2002). In general, we can evaluate the formal procedures for appointing judges through the provisions laid out in the Constitution.

The length of a judge's term is also an important factor that can help ensure independence. Hamilton argued, in the Federalist Papers, that judicial authority could be preserved through life tenure, which acts as a barrier to the encroachments of the other bodies of the government on the judiciary and is also the best method to ensure a steady upright and impartial administration of the laws (Kramnick, et al., 1982).<sup>75</sup> When judges lack secure tenure, they are inhibited from making decisions free from the fear of negative retribution. Manipulation and politicization are easier when a judge's livelihood is on the line, or can be used as collateral.

Scholarly work has used provisions for tenure and term length to evaluate the prospects of a judiciary being independent. For example, Brian Loveman (1993) argues that security of tenure is the most fundamental of the guarantees of judicial independence and he notes that the reality of security of tenure is dependent on how judges are removed from office (Loveman, 1993). Similarly, Peter Russell (1987) emphasizes the supremacy of removal procedure and

---

<sup>75</sup> It is important to note here that encroachment could more easily occur when judges did not have adequate tenure, it was not a defining feature of judicial independence.

argues that this is necessary to protect judges from political authorities who may be displeased with their decisions, especially when a case impacts their interests. To foster independence, most nations provide for a formal, institutional procedure for removal from office (Von Lazar, 1972). In order to have judicial independence, the key issue in all these different removal procedures is that it must be made via a process that is free of political rivalry and motivation.

Life tenure alone is not enough: As Gretchen Helmke (2002) demonstrated, while Supreme Court justices in both Argentina and the United States have life tenure, in Argentina, justices serve an average term of only 5.6 years versus 16.3 years in the United State (Helmke, 2002, p.292). The discrepancy between formal and actual tenure shows that similar rules in different countries have very different outcomes. Helmke's finding suggests that factors other than the formal procedures impact tenure. Looking at only tenure provisions and other formal procedures fails to explain why there is a large discrepancy between the rules of tenure and how long judges actually serve. Instead, we need to focus on how different judicial systems actually function.

In short, if judges fear that their interpretation of the law compromises their security of tenure they are less likely to rule impartially. That being said, there must be provisions to remove incompetent judges. Unless the judicial system can purge incompetent, ineffective, inadequate, careless, incapacitated, senile justices, those who abuse their power, and those who do not conduct their jobs, it cannot be considered effective (Reardon, 1974). Requirements for dismissal vary depending on country, but include: special laws; permission of judicial councils; and impeachment or conviction for a crime. This suggests a gap between the letter and enforcement of the law.

### **3.4.2 Political Insularity:**

According to Fiss, branches of the government must be protected from the undue infringement of other branches of government (Fiss, 1993).<sup>76</sup> By definition, “political insularity enables the judiciary to act as a countervailing force within the larger governmental system” (Fiss, 1993, p. 56). To reiterate, the concept of an independent judiciary requires that other branches of government not exercise direct control over decisions of the judicial branch (Henley & Haynes Suhr, 2004). Therefore, how can we measure whether or not insulation exists?

One means of evaluating political insularity is to determine if and how often judicial branches ruled against the government (Rosenberg, 1992, pp. 370-371; Tate, 1995; Rosenn, 1987; Verner, 1989). For one, Robert Dahl (1957) argued that if a court only ruled against the government occasionally it could be taken as an indication that the court did not have true independence. Helmke’s (2002) Strategic Defection Theory questioned if the court’s ability to rule against the government was a good indicator of independence. She demonstrates that, in the case of Argentina, judges do not necessarily remain loyal to current presidents, but are strategic and take into consideration future governments and the perceived interest of these governments (Helmke, 2002).<sup>77</sup> Therefore a ruling against a current leader could be as politically motivated as ruling in favour of them. Specifically, if judges anticipate a change in administration they tend to rule in a way they calculated to be favorable to the incoming government. This theoretical qualification suggests that court rulings against a government alone, cannot be a true indication of independence.<sup>78</sup>

---

<sup>76</sup> Fiss was also concerned that judges should not be given too much independence and demonstrated that it should not be assumed that judges with independence would act within democratic means.

<sup>77</sup> It should be noted that Helmke (2000; 2002) used only Argentina to develop this theory. Her later work Helmke (2005) added possible case studies of Mexico and Venezuela, but this work has not yet been fully developed.

<sup>78</sup> Initially, this dissertation attempted to shadow the methods used by Helmke (2002) to examine the turnover rate of Supreme Court judges and to code case decisions as favorable or unfavorable to the sitting and incoming administration to evaluate if SDT was being used in Venezuela. The unavailability of statistical information made this endeavour difficult. At the time of writing the Supreme Court of Venezuela was in the process of compiling a list



Another way to measure political insularity is through the institutional checks provided by the Constitution, such as judicial review. Judicial review provides a check on the executive to ensure that it cannot rule without limits. Specifically, judicial review is the process by which courts have the right to determine if laws are constitutional. The concept stems from the *Marbury v. Madison* case in the United States, which determined that the power to judge the constitutionality of laws fell within the jurisdiction of the courts (Lijphart, 1999). As Austrian constitutional architect Hans Kelsen has argued, judicial review should be handled by constitutional courts (Tate & Vallinder, 1995). Judicial review is premised on the belief that it is necessary to control constitutional order to assure the protection of fundamental rights (Cappelletti, 1971). When a court can rule on the legality of executive or legislative actions, it has a degree of independence for the judicial branch (Abraham, 1986). Judicial review ensures that the judiciary has a legal right to rule on the constitutional relevance of laws but it does not immunize against influence that could come from other branches.

Judicial review, in theory, provides a level of independence that allows the judicial branch to regulate the relationship between the state and its citizens.

The judicial branch, after all, is the institution normally charged with the enforcement of the constitution, rights, and other democratic procedures in constitutional democracies. Ideally, through the application of judicial or constitutional review, judges cannot only mediate conflicts between political actors but also prevent the arbitrary exercise of government power (Larkins, 1996, p. 606).

Clark (1974) has similarly argued that the protection provided by judicial review is of greater importance in countries that are prone to delegative leaders because it gives the courts greater power to limit the actions of the executive (Clark 1974-1975). The policing role judicial

---

of appointment and removal dates of all Supreme Court judges. Until this information is available this method is not feasible. Furthermore, the high rate of supplemental judges used for short time periods further complicates this analysis.

review provides also ensures that it is a positive indicator of judicial independence (Tate & Vallinder, 1995).

Evaluating judicial review, however, is complicated by different forms of practice in different countries. As Mauro Cappelletti (1971) has found, there are two different methods of implementing judicial review: the “diffuse method” of review common in North America and the “concentrated method” characteristic of European countries (Cappelletti, 1971). Latin American countries do not fit neatly into either category. In Venezuela, judicial review is exercised by all judges, not just by Supreme Court justices. This means that the constitutionality of a law can be challenged by anyone, provided they can establish standing. To show standing one must prove that they have been negatively affected by the law (Brewer-Carías, 2002). The ultimate jurisdiction over all constitutional issues, in Venezuela, lies within the constitutional chamber of the Supreme Court. Theoretically, this suggests a strong sense of independence.

In previous studies, judicial review alone has been considered the determinant of judicial independence. Take for instance Matthew Stephenson’s (2003) analysis, which considers only judicial review as a proxy for judicial independence. Evaluating independence based on this sole factor is too constricted because it dismisses cases where there is no provision for judicial review, but whose judicial independence is not contested, such as Switzerland.

Furthermore, in spite of the presence of judicial review in many countries, and although the judiciary is legally free to act against the executive the judiciary is not always capable of restraining the actions of the executive and it cannot escape encroachment by the executive. There is a tendency for executives to disrespect the separation of powers. In delegative democracy, leaders do not tend to respect existing political institutions (O’Donnell, 1996). This encroachment is perhaps the result of a lack of judicial independence, but it is not a defining

characteristic as some studies have perhaps claimed. In these countries constitutional provisions for judicial independence exist, however in actual fact, institutions possess few restraints on the executives' ability to govern. When political actors are not restrained by the institutional framework, they tend to pursue policies with immediate or short-term payoffs (rewarding supporters) in place of longer-term pay-offs and true institutional reform targeted to overcome problems (Geddes, 1994).

As an example of leaders disrespecting the separation of powers, Cameron (2002) argues that leaders such as Chávez and Fujimori have successfully used their executive power to “eliminate checks and balances and create ‘delegative democracies,’ if not disguised autocracies” (Cameron, 2002, p.134). One such example occurred when former Argentinean President Carlos Menem after being accused of violating the separation of powers to expand the Supreme Court, responded to critics by stating “Why should I be the only president in 50 years who hasn't had his own court?” (Larkins, 1998, p. 428). This shows how too often, Latin America democracies lack de facto institutional checks on a leader's power.

To remedy the delegative tendencies of leaders, and facilitate political insularity, O'Donnell has highlighted the need for:

state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful ( O'Donnell, 1999, p.38).

This reference highlights the need for an effective judicial system. From O'Donnell's other work, we know that Latin American countries tend to have strong executive branches. Therefore, the main problem is how to restrain the executive. An overbearing concentration of power in the executive branch, especially if the legislature is weak, provides even more reason to consider the

role of the judiciary in ensuring democratic stability (Helmke, 2002). Yet, by and large, presidents lack incentives to strengthen political institutions. Evidence suggests Presidents can actually undermine the judiciary and with it, the rule of law (Prillaman, 2000; Ungar, 2002). Contributions from this body of literature have come from scholars who have begun to explore how the judiciary has affected democratic stability in other Latin American countries (Domingo, 2005; Chávez, 2004; Helmke, 2002; Larkins, 1998), but few studies look at Venezuela (exceptions include: Louza, 2007; Kornblith, 2005; and Brewer-Carías, 2002; 2006).

Overall, how the executive branch interacts with the judiciary is an understudied phenomenon. In order to illuminate our understanding of this area of the judiciary, this dissertation examines the institutional structures that exist using the collection of elements detailed below as a guideline. Built through an extensive examination of the literature in the field, the components of independence offered in the dissertation ensure that the analysis of Venezuela is theoretically grounded. A discussion of how the judicial system in Venezuela measures up to the elements identified here as being key to judicial independence is explored in Chapter Four. This dissertation uses process-tracing to highlight how the judicial system works.

**Figure 5: Constellation of Presidential Powers in Relation to the Judiciary in Latin America.<sup>79</sup>**

---

**Political Insularity**

1. Is there a provision for judicial review?
  - a. Who holds the review powers?
  - b. What is the extent of review powers?
2. Can the court rule against the executive?

**Individual Autonomy**

3. Are judges appointed through constitutional provision?
    - a. Who nominates justices?
    - b. Who appoints justices?
  4. Is there a constitutional provision for the removal of judges?
    - a. Who is responsible for the removal of justices?
    - b. What are the provisions for removal?
  5. What tenure provisions are justices given?
    - a. What is the Tenure for Supreme Court?
    - b. How long do they actually serve?
    - c. What are the provisions for promotion and renewal?
- 

### **3.5 The Formal – Informal Divide**

The above mentioned collection of elements, like in the majority of scholarship, looks at how formal political institutions prescribe and account for judicial independence. Evidence suggests, however, that informal institutions are more revealing of actual practice (Helmke & Levitsky, 2004, pp. 2-3; Mejía Acosta, 2006). Likewise, the application of the above elements of judicial independence, in the case of Venezuela, shows that there is a large gap between the written law

---

<sup>79</sup> This table was created by the author. Shugart and Mainwaring's Constellation of presidential powers was used as an inspiration for this typology. Shugart and Mainwaring (1997) compares executive – legislative relationships as a models. For more information on how judicial review relates to judicial independence see (Busey, 1964; Von Lazar, 1972; Verner, 1984) Appointment, impeachment and tenure issues see: (Clagett, 1952; Needler, 1963; Von Lazar, 1972; Verner, 1984)

and how the law is practiced. In general, informal or extra-constitutional behavior, negatively impacts democratic stability by creating a parallel set of rules (Hartlyn, 1994; O'Donnell, 1994).<sup>80</sup> An exploration of the informal institutions at play is necessary, because it exposes the "...incentives that enable and constrain political behavior" and without such insight, we would not understand the true operation of the judicial system (Helmke & Levitsky, 2004, pp. 2-3).<sup>81</sup> There is often a big difference between the formal provisions and the actions of leaders. Rebecca Bill Chávez (2005) demonstrated the importance of considering informal practices when behaviour is inconsistent with constitutional provisions. To trace this behavior and its impact on democracy, Chávez (2005) employs process tracing and looks at Argentina during four different time frames.

Employing the method of process tracing, this dissertation shows that a lack of political insularity contributed to a lack of judicial autonomy in Venezuela. That is to say, methods to ensure political insularity are provided for in the constitution, yet, they are systematically undermined. This finding reflects Raymond Duncan's argument that overwhelming evidence suggests "the independence and strength of the judicial branch is more fictive than true" (Duncan, 1976, pp.152-53). This dissertation will build on the previous claim that judicial independence contributes to democratic stability by demonstrating how the stability of democratic institutions in Venezuela was both damaged and impeded by the executive's domination of the judicial system. If a legal structure exists, but is not robust enough to stand up to political pressure, it does not go very far in preserving democratic stability. In theory, "judicial

---

<sup>80</sup> This does not dismiss the possibility that informal institutions have the capacity of contributing to democracy. For an examination of how pacts can contribute to stability between clans (though not necessarily to democratization, See (Collins, 2006)

<sup>81</sup> A few attempts have been made to quantify informal or de facto judicial independence. One such example is Feld & Voight (2002) who conducted expert surveys in 66 countries.

independence insulates judges so that they can decide cases on the basis of the law and apply the law equally to all, especially those in power” (Cameron, 2002, p. 133). In reality, judicial independence is violated in a number of different ways. To study the impact of the judiciary on democratic stability we must look at how it actually functions and identify the causal mechanisms that prevent it from operating as legally intended.

### **3.6 Conclusion**

This chapter laid out how the rule of law has been analyzed in previous studies and it established why this dissertation prioritizes judicial independence as the most important determinant of the rule of law. Components used by other studies to evaluate the rule of law are far less meaningful if the judiciary is not independent. Yet there is little agreement on how to analyze judicial independence. To most accurately evaluate judicial independence, this chapter has overviewed both qualitative and quantitative measures. From these it has established the elements of judicial independence that capture the formal measures generally attributed with upholding independence.

Evidence suggests, however, that there is a large gap between the letter and practice of the law. To understand the true impact of the judiciary on democratic stability we need to be familiar not only with the formal institutions and role of the judiciary, but also with its actual role and with how the two diverge. Since informal institutions and practices are not codified, to understand how they function requires an in-depth examination. The best means of doing so is through a monographic treatment of a single country. The chapters that follow overview both formal and actual practices and demonstrate that informal institutions are a more accurate depiction of how the judiciary functions. After establishing the formal components of the Venezuelan judicial system, this dissertation will use process tracing to study executive-judicial

interactions in order to identify causal mechanisms at play. In accordance with current trends in the literature, this dissertation will focus on the Supreme Court as the highest court in the nation.



## CHAPTER FOUR

### 4.1 Institutional Sources of Instability in Venezuelan Democracy

To support the argument that judicial independence is important for the stability of democratic institutions in presidential systems, this chapter suggests that previous explanations of instability—in Venezuela—including the pacted democracy, economic downturn, and the presidential system may be improved through an understanding of how the judiciary functioned. The hypothesis that a positive relationship between judicial independence and stability exists would lead us to expect an independent judiciary in earlier years. This conclusion is reached because most of the literature classified the Punto Fijo period (1958 - 1988) in Venezuela as a democratically stable. The Punto Fijo period had a stable democratic regime, but a more in-depth overview demonstrates that parties supplanted state institutions. Process tracing reveals that executive encroachment on the judiciary, enabled through a lack of judicial independence, was commonplace. This dissertation contributes to the existing literature that seeks to explain how the pact broke down. And it also reveals that once the pact broke down, the true impact of a lack of judicial independence was exposed. Explanations for the pact's failure based on its exclusionary nature, presidentialism and economic downturn are convincing. This dissertation does not seek to refute these assessments of why the pact failed; instead it adds nuances that deepen our understanding of the Venezuelan political system.

After demonstrating that there is value in studying the role of the judiciary, this dissertation argues that under the democratic pact a politics of exclusion and politicization of the judiciary forced those who did not have power to operate outside of the political system. It then argues that that this relationship is present in the Bolivarian period (1999 - 2007). This

dissertation hypothesizes that it was a lack of judicial independence that enabled politicization and exclusion. As a presidential system, there were few institutional mechanisms to hold leaders accountable, and once elected Chávez was able to systematically reconfigure the existing democratic institutions.<sup>82</sup> To date, his revolutionary project has not been institutionalized and a tendency of the executive to threaten or attack other institutions undermines institutional stability.

The pact gave the façade of a stable democracy. The regime was stable, but the state institutions necessary to uphold democracy were absent. I provide an overview of the executive's ability to threaten and attack the judiciary and this chapter shows how influence over the executive inoculated the parties from accountability and, as a result, an exclusionary system emerged.

For the purpose of this dissertation Venezuela's democratic history is divided into three distinct phases. The first, 1958—1988 was characterized by the Punto Fijo era, the second, 1989—1998 was a period of transition between Punto Fijo style 'representative' democracy and the start of the Bolivarian revolution. This decade of transition was characterized by high levels of politically motivated violence leading to President Pérez's impeachment (For analysis on the political nature of this period see: McCoy & Myers, 2004; Perdomo, 2004; Ellner & Hellinger, 2003; Combellas, 2003; Buxton, 2001; Karl, 1997; and Coppedge, 1994). The inability of the existing political structure to mitigate high levels of violence and inequality helped pave the way for Chávez's rise to power. The third period 1999—2007, is referred to as the Bolivarian revolution (see: Buxton, 2001; Buxton 2005; Hellinger, 2003, McCoy 2004, McCoy, 2004).

---

<sup>82</sup> In parliamentary systems the head of government requires the support of the legislature to remain in power—this check on the leaders power does not exist in presidential systems.

Following his election in 1998, Chávez's attempts to reform the old political institutions, based on his popular appeal, have provoked criticism that he is acting undemocratically.

Yet a similar pattern of executive encroachment has persisted across time periods and threatens to undermine institutional stability because the overarching relationship between the executive and other political institutions, I argue, has changed little. This Chapter briefly overviews the key previous explanations of instability in Venezuela and argues that instability can be more thoroughly understood when we consider the role that judicial independence has played.

This chapter also addresses how presidentialism contributed to institutional instability. Specifically, if aspects of presidentialism contributed to problems, why had the system not broken down sooner? As Coppedge (1994) asserts, presidentialism did not cause problems sooner because problems were successfully masked. The institutional literature shows that Venezuela's form of presidentialism contributed to the exclusive nature of the party system (Levine & Crisp, 1994; McCoy & Myers, 2004; Coppedge, 1994).<sup>83</sup>

When oil prices fell in the 1980s, the political parties lost grip of their stronghold on power. In the absence of strong parties it became evident that other institutions necessary for the maintenance of democracy were not present. The stability of the democratic regime was called into question at the end of the 1980's when the high level of political instability challenged the democratic regime. The unstable nature of the presidential system became evident in the transition years between 1988 and 1998.

---

<sup>83</sup> It is worth noting that the plethora of research on parties provoked Levine and Crisp (1994) to consider political parties as an independent category, while McCoy and Myers (2004) classify parties as an aspect of broader political institutions (see also: Coppedge, 1994; and Levine, 1973).

Scholars identified three important causes for the fall of the pacted democracy and problems of democratic governance; The Punto Fijo pact itself (Levine, 1978; Karl, 1987; Bejarano, 2005), the economy (Karl, 1997), and presidentialism (Karl, 1997; Coppedge, 1994). Although the pacted democracy ended, economically, the country remains highly dependent on oil, and a similar form of executive-judicial relations persisted. The presidential system and the executive's tendency to encroach on other institutions remain. This highlights the necessity of exploring the role that presidentialism and low rule of law have played. Through an overview of the main scholarship on instability in Venezuela, this chapter suggests that a focus on the persistent non-independence of the judicial helps explain why the executive remains largely unaccountable.

To explain how the executive could avoid accountability, one government supporter suggested that “very little has changed politically. The opposition is just mad that it is us in power now, not them” (Interview, 458; similar sentiment expressed in Interview 457). The following chapter builds on this overview to explain how a similar, and democratically harmful, executive domination of the political system has continued even while so many other contributing factors that caused political problems in the past have remained. For a better overall understanding of institutional instability in Venezuela, we must consider the role of the judiciary. More specifically, Jennifer McCoy (2004) states that institutions had a very important impact in determining “how the distribution and representation crisis unfolded in the Punto Fijo era and how since 1999 they have prevented normalization of the Bolivarian polity” (McCoy, 2004, p. 292). She notes that there have been a number of political and economic changes, although overall:

The Fifth Republic has not changed these basic traits of power-1958 Venezuelan politics: structurally, dependence on oil continues;...Institutionally, it [the post-1958 system]

maintains a highly centralized decision-making structure, even though a new set of privileged actors have emerged. It is now the traditional elites who are excluded, much like in the Trienio of 1945-1948. The Bolivarian regime continues to rely on the distribution of oil rents and has failed to restore the regulative and administrative capacities of the state. (McCoy, 2004, p.294)

Instead of being corrected, institutional problems from earlier eras continue to negatively impact Venezuela's democracy. Buxton (2005, p.329) argues that "under Chávez, there has been continuity with the 'politics of exclusion' that characterised the Punto Fijo period (1958–1998)." This exclusion, led those left out to operate outside of the system: "Excluded from the benefits and political privileges implicit in Punto Fijo, the left consequently assumed the role of an antisystem actor." (Buxton, 2005, p. 335). The nature of exclusion has exacerbated polarization:

Previously privileged groups have lost access, influence and patronage, a situation that has led to their rejection of the new institutional arrangements. By contrast, those who have gained ascendancy and opportunity under the Chávez government have an overriding interest in defending the administration. This situation has exacerbated the existing problem of institutional incapacity, which the government has bypassed rather than addressed. In failing to adopt practices based on meritocracy and objectivity, the Chávez government may undermine the capacity of its revolutionary programme to be institutionalised over the longer term (Buxton, 2005, p.338).<sup>84</sup>

The exclusionary nature of the presidential system and a lack of judicial independence have persisted throughout the three periods. The key differences between the periods are important to note; during the Punto Fijo era problems associated with the low rule of law were masked by the political pact; in the transition years the problems associated with a non-independent judiciary became evident; and as demonstrated by to his direct influence over the Supreme Court, persisted under Chávez.

---

<sup>84</sup> Similarly, Garcia-Guadilla (2006, p.149) demonstrated that a fear of the "other" led to exclusion. 'In the case of the privileged sectors the "other" is excluded even from the category of "civil society," while for the nonprivileged the other is the "oligarch," excluded from the "people" and the "sovereigns." In both cases these social images, reinforced by political polarization in the nation as a whole, served to justify acts of violence, the spatial and social exclusion of the "other," and the denial of the existence of the other "civil society."

This chapter makes two main contributions. First, the chapter overviews the literature on the democratic nature of pacted democracy and presidentialism, it then argues that existing explanations of instability are incomplete without considering the role of the judiciary. To do so it uses the Punto Fijo and transition eras as stepping off points. An overview of these eras shows one, that there is value in studying the role of the judiciary and two, that the underlying relationship between the executive and the judiciary, which I argue is one of domination, existed to different degrees under all three periods. Second, it demonstrates how the judiciary was made ineffective in previous periods. The chapter shows how the detrimental impact of the judiciary became evident in the transition period and how unsuccessful attempts to reform the judicial system acted as a catalyst provoking the electorate to break from the political party system and elect Chávez. By establishing the importance of exploring executive-judicial relationships, this chapter sets the stage for future chapters to show how a lack of judicial independence harms presidential stability by truncating institutional development.

## **4.2 Venezuela's Pacted Democracy: 1958-1988**

There is wide agreement among scholars that during this period, Venezuela was able to thwart the regime instability experienced in much of the region through a pact.<sup>85</sup> The Punto Fijo pact established the practice of regular elections and ended the Marcos Pérez Jiménez dictatorship. In 1958 the pact certified that the COPEI, AD and Unión Republicana Democrática (URD) would share power commensurate with the electoral results (Levine, 1978). The pact provided regime

---

<sup>85</sup> Another account comes from the literature on political culture, which makes the assumption that political learning occurs and in turn, it builds democratic political culture. This literature finds its antecedents in the work done by Gabriel Almond and Sidney Verba (1980) and in the work of Robert Putnam (1995). As an example of political learning in Venezuela, Nancy Bermeo (1992, p. 277) argues that Betancourt's role in the reconstruction of democracy showed that change could come from learning. In this perspective, lessons from past experience condition future responses as actors "learn" from previous lessons.

stability because it ensured the parties were in agreement on the country's basic political and economic program (Karl, 1987, p. 82).<sup>86</sup> The regime stability earned Venezuela the title of “near perfect” democracy prior to 1989 because it had regular elections, an alternation of parties in power, and it upheld respect for civil rights (Ellner, 2003, p. 7).<sup>87</sup> When evaluated against measures of institutional instability, democracy does not seem as robust. Although elections continue, the executive's immunity from persecution hindered the systems capacity to be democratic—an issue that I will address in the next section of this chapter.

Comparative political scientists are concerned with how institutional equilibriums establish democracy in different countries. Some scholars have asserted that the best means to establish a consolidated democracy was through the use of pacts. Philippe Schmitter (1994) argued that democratic consolidation depends mostly on the mode of transition and he claimed that “the most favorable context for an eventual consolidation is a ‘pacted transition’” Schmitter explains how this form of transition is beneficial because it is an agreement between elites, who will “. . . respect each other's interests” (Schmitter, 1994, p. 68). A pact is defined as:

An explicit, but not always publicly explicated or justified, agreement among a select set of actors which seeks to define (or, better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the ‘vital interests’ of those entering into it. (O'Donnell & Schmitter 1986, part IV p. 37)

The belief that pacts were good for democracy stems from the historical use of political pacts as a means to end military dictatorships. A pacted democracy may have been preferable to military rule, but the transition does not ensure that democratic institutions will emerge. As was the case in Venezuela, pacts allowed elites to agree on the ‘rules of the game’ and to ensure that the

---

<sup>86</sup> In order to appease the military, the armed forces were guaranteed economic and technical improvements. In addition, officers were guaranteed immunity for actions under the Pérez-Jimenez dictatorship (Karl, 1987, p. 83).

<sup>87</sup> Ellner (2003, p.7) qualifies this statement by recognizing that these are the conditions that political scientists have identified as basic to “long-lasting, well-functioning democratic regimes.”

democratic institutions that emerged did not threaten their interests, thus providing elites with an incentive to support democracy (Przeworski, 1991, p. 90). Higley and Gunther (1992, p.24) suggested that pacts “constitute the only direct and rapid route to consolidated democracy that is available in today’s world.” Burton, Gunther and Higley (1992, p.34) argue that “private negotiations among elites are an acceptable, even routine feature of democratic governance, as long as the elites involved are held publicly accountable through elections and other processes.” According to this logic, the establishment of a democratic regime, through elections, is equivalent to the establishment of democratic governance.

At first many such pacts were heralded for their ability to deliver democracy, despite their inherently undemocratic nature which came from the fact that their creators had no public mandate (Hagopian, 1990; Karl, 1986). Although it is difficult to conclude that even the most well established democracies are void of elite influence, in countries where the process of pacted transition allowed elite groups to establish the rules of the new democracy, the rules were often established to privilege these same elites. Under these newly-established rules, there were often few institutional mechanisms to ensure that elites could be held accountable; when these rules did exist, too often they were not followed. The merit of these pacts came from the fact that they introduced elections and this was valued above the undemocratic nature of their inception.

In Venezuela, some scholars have argued that because democracy emerged from a pact, it was doomed from its inception. Karl (1987) argued that executive domination, limited representation, and political exclusion are characteristic of democratization by pact because: “in the long run, pacts may hinder the prospects for the future democratic self-transformation of the society, economy, or polity, thereby producing a sort of ‘frozen’ democracy” (Karl, 1987, p.



88).<sup>88</sup> The pact, which was a reflection of elite interests', was not easily changed by the same elites who created it.

Elites who were involved in establishing the pact had no public mandate to represent the people, meaning the transition to democracy was done through non-democratic means. Borrowing from Rueschemeyer, Stephens and Stephens (1992, p.64), we know that "if the state is simply a tool of the dominant classes, democracy is either impossible or a mere form." McSherry (1992, p.471) asserts that pacts can be undesirable because their exclusive nature can create a climate of fear and an overwhelming sense of injustice and hopelessness.<sup>89</sup> The extensive involvement of elites in the transition process prompted these scholars to question the long-term impact that pacts would have on democracy. Pacts, therefore, while providing stability, can install unequal democratic state institutions that do not necessarily reflect the will of the people.

Pacts can bring an agreement among elites to respect electoral outcomes. This is a step in the direction of democracy, because it increases the time horizon of the democratic regime, but the existence of elections alone does not ensure stable democratic governance. While a pact that helped transition a regime to democracy and then implemented rules equally could increase the longevity of a democratic regime; a pact that does not hold leaders accountable is unlikely to result in the establishment of robust democratic institutions. It is clear, therefore, that a focus only on the establishment of elections is insufficient to ensure that the benefits of democratic governments were delivered to citizens.

---

<sup>88</sup> See also O'Donnell, & Schmitter, 1986; Przeworski, 1991, pp. 79-88; Levine, 1978, pp.82-109).

<sup>89</sup> For an analysis of pacts in the Central Asian context see Kathleen Collins (2006). Collins asserts that "Pacts do not make democratization more likely" but between clans pacts can help lessen a democratic blow—arguing that clan pacts can have an important, yet informal, contribution to a durable, "but not necessarily democratic transition" (Collins, 2006, p. 50).

Other work has convincingly shown that not all pacts lead to the same outcome.<sup>90</sup> In contrast to research which argued that transition by pact was the best means of establishing democracy, Ana Maria Bejarano (2005, p.27) shows that the degree of restrictions imposed by pacts can explain if a country ended up reaching consolidated democracy or not. Through an in-depth case comparison, Bejarano recognized that democracy in Colombia and Venezuela was weak, ill-equipped, and possessed “critical problems such as that of imposing collectively binding rules on the society (namely, the rule of law) or overcoming social and economic distress” (2005, p. 36). Her recognition of the importance of how societies implement pacts is an indication that the rules that mediate conflict have a large impact on the eventual consolidation of democracy. In addition to providing greater insight into the debate on the outcome of pacts, Bejarano recognizes the underlying importance of the rule of law. She demonstrated that the content and nature of the pact, and how pacts enforced societal-institutional relations affected the future endurance of democracy. A pact transition does not guarantee a consolidated democracy even in the presence of elections.

The extent to which a pact transition can be considered democratic or not, rests on the features of democracy we see as most important. In the words of Terry Lynn Karl (1986):

A pact transition is a form of limiting this uncertainty that has both advantages and disadvantages for democratization. If [regime] stability is the primary measure, pacts among elites can be highly successful...the cost of the stability of pact making has been the abandonment of greater democratization (pp. 217-218).

Despite the recognition that pacts were problematic, the direct effect they had on removing the military from political power was an accomplishment; pacts demonstrated a commitment to a

---

<sup>90</sup> For an analysis of how similar transitions can lead to different outcomes see Bejarano (2000). By comparing Colombia and Venezuela, Bejarano demonstrates how “mode of transition” is not the only indicator of democratic outcome, and focuses on institutional legacy.

future with a more democratic regime. The focus on elections, however, led scholars to overlook other important elements necessary to ensure democratic governance, in particular the judiciary. Pacts can deliver the electoral components of democracy and may even lay the groundwork for the development of other democratic institutions, but without state institutions in place to check governing institutions, their future is uncertain.

### **4.3 The Functioning of the Judicial System 1958 to 1988**

Although the judiciary was not fully independent in any of the periods studied here, it is important to note that it was differently non-independent. During this period the politicization of the judiciary was the result of a lack of individual autonomy and political insularity of the judges. As outlined in chapter three, individual autonomy involves the influence that one judge has over another, while political insularity refers to the relationship between judges and other state institutions (Fiss, 1993). Literature on judicial independence states that tenure procedures including appointment and removal of judges is the most important determinant of judicial independence (Fiss, 1993; Helmke, 2002; Smithey & Ishiyama, 2000; Madhuku, 2002; Russell, 1987; Wilson et. al. 2004). In Venezuela, during the Punto Fijo era tenure procedures, including the appointment of judges, were completely controlled by the party. Although the electoral regime endured, the politicization of the judiciary enabled parties to maintain their privileged positions and other segments of society were excluded from the formal political process.

The extent of politicization within the judiciary led Former Supreme Court President Omar Alfredo Mora Díaz to state that from 1830 until 1998, the judicial system had been an appendage of the executive (Mora Díaz, 2006: pp. 9-10). He specifically attributed problems to the fact that judges were not admitted to the judiciary based on their legal credentials, but instead on their support for party politics (Mora Díaz, 2006: 10). Although formal rules to select judges

through the *Consejo de la Judicatura* had been in place since 1972, the formal selection criterion was ignored and the two main parties shared the distribution of positions in the judicial administration and in the courts (Carlos Ayala Corao: quoted in Buxton, 2001, p.32; Ojeda 1995, p. 82). The procedure resembled more of a ‘*a dedo*’ method, meaning judges were hand picked rather than subject to evaluation based on set criteria. What mattered most were personal connections (Interview, 419).<sup>91</sup> It became regular practice for the two major parties to negotiate who would be appointed to the Supreme Court and to balance magistrates between them (PROVEA, 1996, p. 26). The appointment practice led to the declaration that in 1983, 99 percent of judges had a publically declared political party affiliation (Rangel, 1985, p. 218). During the Punto Fijo era the judiciary was heavily influenced by the executive.

Partisan political appointments led to a judicial system that was dominated by “judicial tribes” (Interview, 471). Tribes were comprised of individuals who would work together to ensure that other like-minded individuals were hired or promoted and to secure favorable judicial decisions. These tribal networks extended beyond magistrates, and encompassed judges at all levels and other members of the judicial system, including attorney generals, employees in judicial administration, police, and other public sector employees (Fernandez, 1985, p. 33; Ojeda, 1995, p. 113).<sup>92</sup> These tribes were well-known and regularly referred to in conversations and in the media.<sup>93</sup>

---

<sup>91</sup> In 1992 political actors were forced to appoint magistrates in a more open and professional manner somewhat improving the image of the Supreme Court (Perdomo, 2006, p. 5).

<sup>92</sup> In this period, one of the most well-known tribes was David Morales Bello’s from Acción Democrática. This tribe was counter balanced by a group associated with COPEI which fell apart in August 1994 when there were cases decided against it. Another tribe was reportedly led by Dr. Reyes Sanchez and was known for working across parties. This group was especially successful because of its links outside of the judicial system (Ojeda, 1995, pp. 118-121). The tribes were famous for “wining and dining” those they wanted to bribe (Ojeda, 1995, p. 128). More recently, the Magistrate Valazquez Alvaray attributed his fall from power to the tribe known as *Bande de los Enanos* (Perdomo, 2006, p. 12). Alvaray was dismissed on accusations of corruption that at the time of writing had not been

By appointing magistrates along party lines, presidents successfully installed courts that would rule in their favor. This had a negative impact on democracy because it made the judiciary subservient to the executive and legislature (Roraima, 1987, pp. 162-163). Extreme party influence in the judiciary led the courts to be viewed as ineffective because they lacked both professionalism and independence from political parties (Kada 2003b, p. 118). José Vincent Rangel concluded that partisan appointment procedures led judges to ignore equality and justice (Rangel, 1985). Injustice and inequality were so blatant that some judges had predetermined prices for sentences. The judiciary was seen as ineffective because, to interpret the law, magistrates did not consider what the Constitution or legal codes said, but were concerned with the reaction of the government and political parties to their decisions. The decisions of judges were not therefore based on legality.

One former judge reported that prior to making a politically relevant decision judges always consulted the Attorney General, party leaders, or the President directly (Interview, 523). The partisan appointment of judges had dire ramifications for justice and the rule of law. These deep-rooted problems led Rangel to state that justice under democracy was even worse than when Venezuela was ruled by dictators (Rangel, 1985, p. 6). With a Supreme Court and legal framework staffed by those loyal to AD and COPEI, impunity, injustice, and corruption were rampant (World Bank, 1992; Ojeda, 1995).

Two kinds of justices emerged: one for the rich and those connected to the parties, and one for everyone else. “Justice” itself was also for sale. If one had the resources, one could pay

---

fully investigated. Valazquez Alvaray had been incredibly active politically, both as the engineer of the Ley Organica de Tribunal Supremo de Justicia (LOTSJ), and as a deputy for the MVR.

<sup>93</sup> The existence of such tribes is undeniable, though there is disagreement on who exactly is involved in each tribe, and the extent of power they hold. The existence of tribes with such great influence suggests that they act as informal institutions.

one's way out of the judicial proceedings during any phase along the way. It was not uncommon for judges to receive 'gifts,' including cash, cars, apartments (Ojeda, 1995, p. 31) or airplanes (Interview, 539). The irregular application of the law was also evident when the same judges gave different sentences in similar cases depending on the actors involved (Rangel, 1985, pp. 9-20). This practice was so prevalent that judges were rarely punished.

Short of being fully independent the parties acted as a balance against one another. Party officials knew that what goes around comes around and this prevented them from using the judiciary as an outright tool of their party. Yet, the political parties dominated the judiciary to such an extent that the judiciary's ability to act as a check on the power of other institutions was undermined. Both the independence of the Venezuelan judiciary and its impact on democracy are understudied. In part, this can be attributed to a lack of understanding of how the judicial system worked. The largest contributions to this area come from the previously referenced William Ojeda, a journalist turned politician, who documented the politicization in a book entitled ¿Cuánto vale un Juez?, (How much does a Judge cost?) and from reports by La Comisión Presidencial para la Reforma del Estado (COPRE) (the Presidential Commission for State Reform) that highlighted how problems with the judiciary affected the quality of democracy. In addition to these in-depth analyses, periodic newspaper articles also brought public attention to the issue.<sup>94</sup>

If one was caught committing a crime, the first line of defense was to pay the police officer. If this failed, evidence or important documentation could be "lost" for the right price (Interview, 546). Ojeda outlined some of these payments in his book. He noted that as high as 70

---

<sup>94</sup> It should be noted that, at the time of conducting field research Concorsio Justicia was in the process of setting up a watch dog organization to overlook judicial actions. In 2006 it began a study on the state of judicial independence in Venezuela the final report was presented in July 2007 and was in the process of publication.

to 80 percent of the irregular payments made within the judicial system went directly to the judges (Ojeda, 1995, p. 31). He was imprisoned for one year following the publication of his book. His judicial proceedings were irregular and he was forbidden from calling witnesses and from appealing to the Supreme Court for 14 months (Buxton, 2001, p. 33).<sup>95</sup> A lack of equality and justice inhibited the application of the law.

There was recognition at the time that problems in the judiciary affected the political system. The need for change had not gone unnoticed and a serious dedication to change of state institutions materialized with the formation of COPRE in 1984. The aim of COPRE was a broad overall reform of the state and it was tasked with looking at the monopolization of representation and participation by political parties. Evidence that a high level of corruption in the judiciary had an impact on governability can be found in the former Supreme Court President Jose Santiago Nuñez Aristimuno, speaking in his formal capacity as President of the Supreme Court, expressed the opinion that democracy had not reached the judiciary (Brewer-Carías, 1987, p. 2). In response to these problems, the commission recommended judicial reform, electoral reform, the decentralization of government, and the introduction of a more direct form of democracy to better represent the population (Combellas, 2003, p. 2).<sup>96</sup> The recommendations made by COPRE highlighted how the judicial system required change in order to overcome corruption and inefficiency (Perdomo, 2004, p. 349). This change became more probable when the National Congress established the Comisión Bicameral (Bicameral Commission) for constitutional change on 6 June 1989. Change within the political system, however, proved to be slow and

---

<sup>95</sup> There were some interviewees who refuted the exact facts presented by Ojeda, alleging that he had got the actors wrong, but the existence of these infractions was not refuted (Interview, 477).

<sup>96</sup>This group largely adopted the proposals put forth by Roraima, a group convened under the Lucinchi government that called for the depoliticization of state institutions (Buxton, 2001, p. 43). These reforms were not supported by AD; however, when Andrés Pérez won the presidency in 1988, he gave COPRE ministerial status, improving the possibility that change would be realized (Buxton, 2001, p. 44).

inconsistent. Apart from a 1989 reform that introduced the direct election of governors, and created the position of mayor, few changes materialized (Combellas, 2003, p. 2).<sup>97</sup>

Without being constrained by other branches, the executive could govern with few impartial arbiters. Much like in the rest of Latin America, the judicial branch has never enjoyed the degree of independence that it was granted in the Constitution. Yet, since the system augmented their support, parties paid no attention to the problems within the judiciary except to ensure that people in key positions would remain faithful (Perdomo, 2004, p. 337). Actors in the judicial system were reluctant to initiate change, so corruption within the judiciary continued but much of the literature that looks at instability focused on economic and institutional problems. The parties, through their control of the executive, were able to influence appointments in the judiciary, and therefore able to ensure that the judiciary ruled in their favour. When the system fell, the absence of institutional constraints became more evident.

#### **4.3.1 Competing Explanations for the fall of Pacted Democracy:**

The institutional arrangements set up under the Punto Fijo pact were unable to withstand economic downturn. Scholars have shown that there is a positive relationship between economics and regime stability—the wealthier a country, the more likely it is to have a stable democracy (Przeworski & Limongi, 1997; Lipset, 1959, p.56). At best, the body of literature that explores the role of economics and democratic stability is inconclusive with regard to how wealth sustains democratic governance. Przeworski, Álvarez and Cheibub (1996, p.39) assert that the endurance of democracy is dependent on “...[existing] democracy, affluence, growth with moderate inflation, declining inequality, a favorable international climate, and parliamentary institutions.” When oil prices fell in the late 1970s and early 1980s, political

---

<sup>97</sup> The *Comisión* presented its final recommendations to Congress on 20 March 1992.



parties in Venezuela were no longer able to maintain their privileged position. There was, however, no switch on the regime level from democratic to non-democratic governance, but there was an increase in political instability including protests, coup attempts and a presidential impeachment.

Karl argued that the timing of Venezuela's political instability in the 1980s is best explained by an economic downturn. Political volatility was "...painful testimony to the diminishing capacity of the democratic regime to implement its economic program and to manage conflict without the lubricant of petrodollars" (Karl, 1997, p. 181). Thus, the failure of the pact was due to poor economic performance and a resulting inability of the parties to maintain their patronage ties. Volatility in oil prices contributed to the fall of the Punto Fijo system.

Coppedge argues that it was not economic hardship alone that created problems, "the breakdown of democratic regimes is frequently blamed on economic problems, but whether the regime falls depends as much on the strength of the regime as it does on the strength of the blow" (Coppedge, 1994, p. 9). This implies that a stronger institutional structure would be capable of withstanding the economic downturn. He argued that partyarchy made the regime more resilient, but undermined the quality of democracy in the long run. Other than stating that "the quality of democracy affects the stability of a democratic regime" (Coppedge, 1994, 8), he does not identify the qualities that contribute to a quality democracy. In relation to survivability, Coppedge argued that "For a democracy to survive, it must be democratic enough to respond to its people and adapt quickly to a changing world" (Coppedge, 1994, 9). The rigidity of the Venezuelan system made change difficult.

Scholarly research has argued that Venezuela's presidential system makes change difficult. The "explicitly presidentialist" nature of the Venezuelan system "exaggerated the concentration of power in the executive" (Karl, 1997, p. 93). Paradoxically, although presidential partyarchy increased regime stability under the Punto Fijo pact while at the same time it decreased the long term quality of Venezuela's democracy by stifling the development of more representative democratic institutions (Coppedge, 1994, p. 4; p. 39). Coppedge argued that Venezuela had not broken down under presidentialism sooner "not because presidentialism causes no problems but rather because Venezuela has enjoyed exceptional advantages over its neighbours that have helped it survive conflicts between the president and the Congress—economic prosperity, frequent majority governments, and exceptional leadership" (Coppedge, 1994, p. 178). These additional factors masked larger institutional problems that lowered the quality of democracy.

Although the regime was stable, the presidential system stifled mechanisms for conflict resolution. Specifically, Coppedge noted that under the partyarchy system in Venezuela there were few mechanisms to reduce stalemate (Coppedge, 1994, p. 167). Stalemate, or deadlock, occurs in presidential regimes when the president lacks a majority in one of the houses. In some cases this can be overcome through formal coalitions, or when party discipline permits through ad hoc coalitions. Coppedge argues that Venezuela's unique party system did not permit this flexibility because legislators held the party line (Coppedge, 1994, p. 157).<sup>98</sup> The political party agreement assuaged executive-legislative conflict. There simply were not conflicts over dual claims to legitimacy between the executive and the legislature as have been associated with instability in other countries. Such conflicts have often caused regime, political and institutional

---

<sup>98</sup> It is worth noting that party discipline is so strong that the role call was never taken, and the leader of the party's opinion was taken as representing the will of the party.

instability. Both the legislature's claims to legitimacy and the judiciary's inability to combat corruption were overshadowed by partyarchy.

Since all power within the state was controlled by the party-dominated executive, the state had no independent capacity to end corruption at the highest level. As a result corruption led to blatant rent-seeking behavior and subsequent corruption undermined the legitimacy of democracy (Karl, 1997, pp. 139-140). Instead of nurturing democracy "...the centralized, presidentialist political model" increasingly reinforced the undemocratic aspects of the Punto Fijo pact (McCoy, 2004, pp. 285-286).

Under the centralized model, the revenue from high oil prices went directly to the state; there is little to suggest that the model had changed in the Chávez period from 1998 to 2007.<sup>99</sup> This allowed a rent-seeking state to emerge and to maintain a strong hold on power and in doing so the Venezuelan political system became characterized by inefficiency and an underlying level of institutional instability. In resource dependent states that have built their growth on oil wealth, the resource boom "abruptly and automatically expands the jurisdiction of the state and concentrates power in the executive... Fearing instability, governments spend even more and become more dependent on revenues from petroleum to sustain themselves in power" (Karl, 1997, p. 65). In resource rich countries such as Venezuela, the power of the state tends to increase when there is an increase in oil wealth; this centralization of wealth leads to a concentration of power in the state, but the institutional capacity of the state often cannot keep pace, and so institutional evolution is slow (Karl, 1997, p. 59). The fragility of these institutions

---

<sup>99</sup> Chávez made attempts to diversify manufacturing and food production in Venezuela, in an attempt to reduce the country's dependence on oil wealth.

became evident when faced with economic hardship the parties' hold on power was challenged.<sup>100</sup>

The resource dilemma emerges in primary commodity producing countries because profits from rents produced from resource extraction that tend to be concentrated in the state can be politically mediated. Karl (1987) outlined the important role that the petroleum sector played in Venezuela's transition to democracy. Karl argued that "oil exacerbated the already high degree of centralization of authority in the executive [and] aggravated the form of presidentialism that could be found elsewhere in Latin America" (Karl, 1997, p.90). Oil money influenced the political structure. The existence of oil in Venezuela certainly lubricates the economy. Levine (2002, p.249) recognizes that "of greater political interest was the way its revenues were used; presumably put to different purposes by democracies answerable to the people and dictatorships answerable to a narrow clique. Petro states do not tend to be sustainable because "once the money runs out, or even if the rate of increase slows, patronage will dry up and loyalties wither" (Levine, 2002, p. 254). This proved to be the case in Venezuela because when the oil prices dropped elites could not maintain political control. Dependence on oil remained high in the 1998 – 2007 period despite the Chávez administration's attempts to diversify. This dissertation leaves an extensive discussion of the role of economics on stability to future research.

---

<sup>100</sup> This view is supported by Karl's (1986) conclusions on the stability of pacts. "Finally, the viability of a *democracia pactada* is related to the cost of the maintenance of the pacts themselves. Ironically, the state-owned petroleum that provides a fiscal advantage also has powerful disadvantages associated with it. Since the state is the center of accumulation in an oil-producing country, pact-making is based upon agreements that carve up the state through a complicated spoils system which, in the end, has a deeply corrosive influence upon the efficacy and productivity of the state itself. . . Since petroleum has played a fundamental and unique role in the formation and maintenance of this party system, the long-term viability of this form of pacted democracy and its value as a model for other countries may become clear only when the oil money begins to disappear" (Karl, 1986, p. 219)

## 4.4 Decade of Transition: 1989-1998

Given the perception that Venezuela's democratic regime was stable, observers were shocked when politically motivated violence broke out in the late 1980s shattering the image that Venezuela was a perfect democracy. In the words of Brian Crisp and Daniel Levine, "after decades of political stability and social peace, beginning in 1989 Venezuela's democratic order was shaken by widespread unrest and citizen disaffection" (Crisp & Levine, 1998, p. 27).<sup>101</sup> This period had a high level of political instability in the form of protests and violence. Returning to Helmke's (2008) classification of institutional instability, this period also experienced a number of rebellions, impeachment, and general threats by one branch of government to another; in response to the inability of the existing political institutions to mitigate societal problems, the population turned to extraconstitutional means.<sup>102</sup>

This violence, which characterized the second transition phase of Venezuela's democratic history, began with riots in 1989 known as the *Caracazo*. The government responded to this unrest by unleashing the army on crowds of unarmed civilians (Coker, 1999).<sup>103</sup> The heavy military and police repression sparked outrage. During this uprising over 500 people were killed in street rioting (Buxton, 2001, p. 34). This number of deaths made the *Caracazo* the most violently suppressed protests in Venezuela's history (Buxton, 2001, p. 34). Another notable example of social unrest occurred a year prior to *Caracazo*. This event known as *El Amparo*, occurred when eight fishermen were executed by the army. This event did not reach the level of

---

<sup>101</sup> Levine and Crisp (1994) view the democratic order as being shaken by these events. One could also see these as a manifestation of frustration and instability, and not a cause of this instability.

<sup>102</sup> For a complete overview of Helmke's indicators of institutional instability see Chapter two of this dissertation. There is some overlap between notions of political instability and institutional instability –this is evident in Helmke's inclusion of rebellions as a sign of institutional instability when it is also considered a sign of political instability. It can be classified as a threat to institutional stability because it shows that institutions are incapable of contending with societal unrest.

<sup>103</sup> For a comprehensive analysis of the *Caracazo* see: (Lopez-Maya, 2003).

violence of the *Caracazo*, but it is cited as an example of governability problems and as an indication that the government would resort to sheer violence as a means of solving societal problems, and of the state's inability or unwillingness to persecute offenders.<sup>104</sup>

Political instability in this period is most evident in how individuals sought extraconstitutional solutions, including the 1989 riots and the 1992 coup attempts. The population turned to such measures “out of frustration with the functioning of democratic institutions and the blockage of formal channels of representation” (Coppedge, 1994, p. 4). This dissertation argues that, instead of causing a disruption in an otherwise democratic system, the politically motivated violence was the result of a flawed democratic system. The parties' domination of the political system stifled the development of other political institutions, and the parties dominated the executive with few checks, outside of each other, on their power. As political parties became progressively less representative, politics was increasingly dominated by a political and economic minority (Coppedge, 1994; Corrales, 2001; Martz, & Myers, 1994). Eventually, the system self-destructed and elites could not maintain their political clout. This period of Venezuela's democratic history did not see an end to elections, yet cracks in the democratic edifice became more apparent, and when the power of the political parties fell—a lack of institutional capacity was evident.

## **4.5 The Judiciary in the Transition Years 1989-1998**

The seemingly sudden eruption of political instability grew to threaten regime stability through two coup attempts. An examination of Pérez's impeachment shows that the political parties

---

<sup>104</sup> These events were the catalyst for mobilization of non-government organizations (NGOs) such as COFAVIC and PROVEA which were created to increase awareness of violence and human rights problems. Both groups remained active at the time of research for this dissertation.

influence on the judiciary had a direct impact on Venezuela's politics. Although elections continued in this period, the lack of impartial justice became evident. This section argues first that a lack of impartial justice contributed to the fall of pacted democracy; and second, that failed pressure to rectify problems in the judiciary contributed to extraconstitutional pressure to change the political administration in the form of two attempted coups and eventually in the complete rejection of the pacted democracy and the election of a political outsider, Hugo Chávez .

When the parties were strong, judges knew how to rule to keep their jobs. There was no question, one former magistrate insisted, "we always did what the party demanded." When the parties lost power, he recalled great uncertainty; "it was no longer clear how we should rule" (Interview, 523). A lack of impartial justice in the Punto Fijo era led to a high level of violence and directly contributed to the deterioration of partyarchy, or may have even have caused it (Buxton, 2001, p.43). As she notes:

the absence of a functioning rule of law was a factor in the burgeoning legitimacy crisis for the Venezuelan state and the 'democratic' characteristics of the Punto Fijo regime were openly questioned. ...[the executive] increasingly relied on the use of state force for its preservation" (Buxton, 2001, p. 34).

The government's reaction to high levels of popular unrest made it clear that the political system was unable to respond to governability problems. State agencies, for example, were never held accountable for violations of the law (Buxton, 2001, p. 34). Victims have never seen justice for the crimes committed against them. One expression of the population's dissatisfaction with the state's role was framed in a letter written by a group of notable citizens and delivered to the President. The letter, called Carta de los Notables, written in 1990, publicly criticized the political system in Venezuela, called attention to the high level of corruption and, in particular, highlighted the ineptitude of the judiciary and called for the resignation of all magistrates in the

Supreme Court (Perdomo, 2004, p. 349).<sup>105</sup> The letter criticized the government for not implementing sufficient reforms to correct shortcomings in the political system, such as the introduction of the position of prime minister, which would be tasked with parliamentary responsibility. This proposal was a direct reaction to the propensity of the strong presidential system to generate significant corruption. Additionally, this letter raised public attention of corruption and mobilized a push for reform (Pérez Perdomo, 2003, p. 455).

Further demonstrating the enshrined politicization of the judicial system, a 1992 World Bank report stated that the “judicial system was in absolute crisis due to politicization and bureaucratic incompetence” (World Bank, 1992, p.13). This view was echoed in a United Nations survey that claimed that the Venezuelan judiciary was one of the least ‘credible’ in the world (Buxton, 2001, p. 32).<sup>106</sup> In sum, instead of interpreting the legal code for its merits, judges’ decisions were based on political calculations, and the judicial system was an extension of the executive and the legislature, which were likewise dominated by political parties (Brewer-Carías, 1975; Combellas 1979; Njaim & Pérez Perdomo, 1994, p. 3).

When individuals were unable to hold the executive accountable through legal channels they began to seek extra-institutional resolutions to the problems, often acting outside of the constitutional process. Most notable of these were two coup attempts in 1992. The first, in February, was conducted by the Movimineto Bolivariano Revolucionario 200 (MBR 200), a group of low-ranking military officers led by Hugo Chávez. The direct catalyst for this coup

---

<sup>105</sup> Signators to the letter include: Arturo Luis Berti, Alfredo Boulton, Miguel Angel Burelli Rivas, María Teresa Castillo, Jacinto Convit, Tulio Chiossone, José Román Duque Sánchez, Arnoldo Gabaldón, Ignacio Iribarren, Eloy Lares Martínez, Ernesto Mayz Vallenilla, Domingo F. Maza Zavala, José Melich Orsini, Hernán Méndez Castellanos, Pastor Oropeza, Pedro A. Palma, Rafael Pizani, Carlos Guillermo Rangel, José Vicente Rangel, Alfonzo Ravard, Elías Rodríguez Azpúrua, Isbelia Sequera Segnini, José Santos Urriola, Arturo Úslar Pietri, and Martín Vegas (Carta de los Notables, 1990).

<sup>106</sup> Again, this was reflected in a 1995 survey “which found that 78 per cent of respondents were of the opinion that the Supreme Court, the highest expression of judicial authority in the country, was inefficient and untrustworthy.” (Consultores 21, Insight 21” VenEconomy 1999, quoted in Buxton, 2001, p. 32).



attempt was systematic government corruption (Buxton, 2001, p. 46).<sup>107</sup> Although Chávez failed to take political office directly following the coup, it catapulted him on to the public stage. Following his failed 1992 coup, Chávez drew attention to the high level of corruption and the unfair nature of the judicial system and he called for a new constitution (Norden, 2003, p.96)-- this drew a direct link between problems in the judiciary and the existing political system. Chávez was imprisoned for his attempts; upon his release he remained determined to change the political system. The uprising against corruption was aimed both at the problems within the armed forces and at government. Although the coup attempt failed and was also condemned by the international community, it transformed Chávez into a hero and set the stage for his return to power.

A second and more violent coup attempt occurred in November 1992; this one was conducted by members of the air force high command (Levitt, 2006). Much of this insecurity was aimed directly at President Carlos Andrés Pérez, not at the regime or at the decline of governability (Lander, 1996, p. 68; Buxton, 2001, p. 47). As is often a problem in presidential systems, dissatisfaction with an unrepresentative political regime forced actors into illegal actions because it was difficult to remove the President. The one legal method to remove the president, impeachment, required evidence that the law had been broken and the politicized nature of the judicial system made the likelihood of such a process succeeding very low.

With the presidential impeachment in 1993, there was the illusion that this was the action of an independent judiciary. Carlos Andrés Pérez, an Acción Democrática president, had been elected with a near-majority in Congress. He had tried but failed to develop a congressional majority with other parties when his own party increasingly turned its back on him (Valenzuela

---

<sup>107</sup> Chávez later used this frustration as momentum to launch his 1998 campaign, with corruption as the main issue.

2004b, pp. 9-11). Pérez was impeached for the misuse of public funds. Crisp and Levine found that the impeachment process was accomplished with “meticulous attention to proper constitutional procedure” (Crisp & Levine, 1998, p. 32). While the application of the law may have followed legal protocol, Pérez’s impeachment is viewed in retrospect as a politicized decision by many government officials (Interview, 449; Interview, 471).<sup>108</sup>

One interviewee stated that “most lawyers believe it was a negotiated political decision and Pérez’s party abandoned him” (Interview, 479). Specifically, she did not see it as an indication of the rule of law but rather of a political process. To support this position she argued that the transfer of public funds from one department to another—the crime for which Pérez was accused—was illegal but such was common practice. Moreover, while Naoko Kada (2003) asserted how remarkable the removal through the legislature and not the military was; Kada also stated that Pérez’s impeachment was not an indication of the judiciary’s ability to check executive power (Kada, 2003, p.113).

Pérez’s confidence that the court would rule in his favour was indicated by his public request, prior to the court’s decision, that the party respect the decision of the court (Kada, 2003, p. 130). The impeachment attempt shed light on the level of corruption among parties. It was a combination of party conflicts and government inability to deal with discontent that created the dangerous climate of corruption that undermined the legitimacy of democratic rule (Karl, 1997, p. 158).<sup>109</sup> Hellinger (2003, p. 33) argued along a similar vein and noted how incredible levels of corruption had gone previously unpunished, making this conviction seem more like “a desperate attempt to remove from office the highly unpopular president...” and not an indication of an

---

<sup>108</sup> For example: (The Vengeance of Dinosaurs 1993; Mayobre, 1995).

<sup>109</sup> The decline of *pactismo* left the government with no support. Both members of his party and COPEI members made day to day governing impossible and repeatedly called for his resignation (Karl, 1997, p. 183).

independent judiciary. Party politics and party infighting had a larger influence over legal proceedings than a strict application of the law. Legal uncertainty surrounded this ruling because, as Lander (1996, p.71) noted, the amount was minor when compared with previous infractions, and similar or more serious crimes went unpunished in the years that followed.

With the exception of the fact that the impeachment process itself occurred under considerable threat of violence it did follow legal procedure. In accordance with legal protocol, Pérez was accused of corruption by José Vicente Rangel,<sup>110</sup> and the request for his impeachment came from the Attorney General, Ramón Escobar Salom. The Attorney General had, however, been selected by Congress and was not perceived to be independent of party interests (Kada, 2003, p. 119; p. 468).<sup>111</sup> Furthermore, in March 1993, the Chief Justice of the Supreme Court, Gonzalo Rodríguez (a known COPEI affiliate), assigned himself to hear the case. Although democratically permitted, skeptics questioned his motivation and accused him of doing so for political ends. As evidence that the president's removal was not an indication of an independent judiciary, between 5 May and 20 May while the case was being decided, Movimiento al Socialismo (MAS) threatened to use violence against the Supreme Court Justices if they voted against sending the President's case to trial.<sup>112</sup> Moreover, as an indication of MAS' non-democratic intentions, in place of Pérez, it proposed a joint military-civilian government led by

---

<sup>110</sup> There are several different versions of why Pérez was impeached. Kada reports that Rangel's accusation of corruption was based on the fact that just prior to passing exchange rate reforms, Pérez took 250 million Bolivares and exchanged it to dollars. Following the devaluation, he re-converted the dollars into Bolivares and only returned the 250 million, and pocketing the rest (Kada, 2003, p. 125)

<sup>111</sup>In strict legal terms: "In 1993, impeachment investigations were handled by the Supreme Court upon request by any citizen (though most requests are not followed up). "If the Court did recommend a trial, the Senate decided, by the majority vote of its members (i.e., absolute majority), to impeach the president and the president was suspended" (Kada, 2003, p. 116). The independence of the Supreme Court was questionable, in Kada's own words: "Under the 1961 constitution, Supreme Court justices were selected by Congress in joint session for nine-year terms (with the possibility of reappointment). This selection rule resulted in a Supreme Court whose overwhelming majority was strongly aligned with one of the two major political parties" (Kada, 2003, p. 118)

<sup>112</sup> This was a credible claim since Supreme Court Justices had been receiving letter bombs at the time (Kada, 2003, p. 131).

Hugo Chávez. The process was heavily influenced through “an abuse of power by a segment of the military and supported by some prominent political leaders...” (Kada, 2003, p. 133). This meddling invited complaints that the trial had not been conducted in a legally convincing manner (Martin, 1996, pp. 206-20; Rey, 1993, p. 9; p. 112).

When the case of impeachment was presented to the Supreme Court, nine justices voted in favor of a trial while the other six abstained from voting. Following this decision, the Senate voted unanimously in favour of hearing the case (Kada, 2003, pp. 125-126). Pérez was initially accused of embezzlement, but he ultimately was impeached for the misappropriation of state funds, having donated 40 million dollars to support the electoral campaign of Violetta Chamorro in Nicaragua (Buxton, 2001, p. 48). The judicial system already lacked credibility because it was perceived to be manipulated by politics. What some scholars have seen as the appropriate exercise of legal authority (Karl, 1997; Crisp & Levine, 1994) upon closer examination can be seen as the party system using its political influence and using the legal system for political clout. The way the president was removed confirmed that the judiciary was highly politicized, and also that the parties were not willing to toe the party line indiscriminately. The inability of the Supreme Court to apply a neutral justice brought greater attention to problems of the non-independent judiciary.

#### **4.6 Judicial Reform Attempts in the Transition Years**

The turmoil caused by political rebellions and the two presidential coup attempts in 1992 heightened the conviction of the reform-minded that change to the judicial system was needed. This unrest was a catalyst for reform and the government began to work with the World Bank on a series of judicial reform projects to address the problems of partial justice. The first, signed in December 1993, was valued at 60 million dollars, and a second project signed in 1997 was

valued at 7.3 million. These projects did not bring about rapid change. To begin with, implementation of the project was delayed because the Venezuelan government took two years to endorse the project after it was approved by the World Bank (Interview, 424). When the project was finally initiated, progress was complicated by the fact that none of the people in the Pérez administration, with whom the project idea and arrangements were agreed upon, remained in office (Interview, 424).<sup>113</sup> This contributed to problems with implementation, as did the thirteen different directors who oversaw the project in its seven years, each of whom came with his or her own management ideas and conceptions for the future direction of the reforms (Interview, 496).<sup>114</sup> The lack of consistency hindered attempts at true reform.

A negotiation process between the Pérez cabinet and the Judicial Council had resulted in an agreement that judicial reform would be made through the Council. Putting the council at the helm circumvented the need for legislative approval, removing some of the political obstacles, but it also meant that the changes made were of a purely technical nature (Lawyers Committee 1996, p. 5). These were much needed changes and involved modernizing facilities, including court houses, which were severely under-equipped. The World Bank reform projects introduced the Juris and Tepuy systems for tracking cases and case results. Judges' previous means to track decisions, their "daily books," was personalistic and decentralized. This procedure made it difficult to compare rulings in different tribunals, or rulings over time in the same tribunal. Because there was no common standard for tracking information, it was easily lost. As recently

---

<sup>113</sup> These projects faced some difficulties with implementation largely because the Consejo de Judicatura was not prepared to implement the project and it was further complicated by the process of writing a new constitution (Louza, 2007).

<sup>114</sup> Members involved in the reform process were not concerned with the politicization of the process because the government had to support each change (Interview, 495). A Center for Strategic and International Studies (CSIS) report states that the efforts and investments in reform have been "neutralized" by executive "encroachment" on the judiciary (DeShazo & Vargas, 2006).

as the late 1990s, several tribunals did not use computers to track cases. To directly improve the Supreme Court, the Tepuy program was a gateway for decisions to be placed on the internet as soon as they were concluded. This system made the website for the Supreme Court (TSJ) one of the world's most modern. In this way, the modernization process which intended to make the judiciary more effective, accessible, and credible was seen as a success (Interview, 424). However, because these projects focused on physical infrastructure, they did not directly address elements of politicization (Interview, 424). Since politicization was the biggest problem facing the judiciary, the reforms did little to tackle the root of the problem.

A critical assessment of the reform projects was captured in a joint publication of the Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights Education and Action. The main critique of this report, entitled Half-Way to Reform (1996), was that infrastructure modernization was only contributed to part of the inefficiency and that true change could only come from combating the deep-seated politicization of the judicial system. To make matters worse, individuals involved in the reform said that the changes were ineffective because there was not enough incentive within the judiciary to change the system (Interview, 528). Skepticism comes from the fact that the projects quickly became politicized and manipulated for political ends (Interview, 492). That being said, the reforms had an indirect impact on transparency by making it more difficult to hide inefficiencies and irregularities (Interview, 424). The report suggests that with greater government and civil society participation, judicial reforms could have a more substantive impact. The World Bank is limited by Article IV of its charter to consider only economic issues; therefore, the direct impact that it can have on political affairs of a nation is limited (Lawyers Committee 1996, p. 2). As a result,

the reforms were not effective at eliminating the most pressing problems of judicial independence, including extreme politicization.

The phrase no hay, or ‘there is none’ was repeatedly stated during interviews in response to questions on the nature of judicial independence. Answers to more probing questions—such as why there was no independence, how independence was most commonly violated and how independence had deteriorated—were not answered in a uniform or straight-forward manner. The overwhelming conclusion was that the judiciary had never been free of political pressure. “Judges used to be more influenced by money, now they are influenced by politics” stated one former judge who qualified this statement by noting that money still had influence (Interview, 478). Other interviewees noted that justice has always been an instrument to serve the government (Interview, 437; Interview, 479). Furthermore, a former judge stated that “everyone is afraid of an independent judiciary” (Interview, 523). Qualifying this comment the interviewee went on to explain that the government prefers to use the judiciary to its favour and not be constrained by an independent judiciary.

The executive’s ability to influence judicial decisions was not a new feature of Venezuelan democracy. The mechanism that allowed the executive to operate under few constraints was not presidentialism alone, but the fact that “...the judiciary did not function on the basis of a rule of law” and it in turn contributed to regime delegitimization (Buxton, 2001, pp. 219-220). The interaction between a centralized presidential system and a lack of respect for the rule of law created an environment that was not conducive to democratic stability because the state had no capacity to end corruption at the highest levels and within the Supreme Court. When the power of the parties deteriorated, the judiciary was not in a position to uphold a rule of law—and had never really been. The rule of law had been the rule of parties. Instead of being a

damaged democracy, Julia Buxton (2001) asserts that: “The term ‘Venezuelan democracy’ was an oxymoron. What Chávez sought to displace was not democratic government per se, but a highly restricted and illegitimate political system that had prevented new forms of representation from emerging” (Buxton, 2001 p. 2). Buxton pinpoints the shortcomings of democracy during the Punto Fijo years. The break from the previous system that came with Chávez opened the opportunity to overcome democratic shortcomings.

#### **4.7 Chávez as a Consequence of Dissatisfaction with the Previous System: 1999-2007**

Chávez’s election in 1998 marked a clear end to partyarchy; he campaigned on a platform to revive democracy by recreating political institutions and by putting an end to corporatism and corruption. It was clear that the Venezuelan population wanted change and the old guard political parties were all but eliminated from the political scene when they abandoned their candidates to support Salas Römer (Roberts, 2003, p.67).

The alternative of Hugo Chávez appeared preferable, especially because he attached the label of a ‘different democracy’ to the changes he promised to implement. Few who supported him had any idea what Chávez’s ‘different democracy’ would entail. That it was ‘democratic’ and ‘different’ seemed to be sufficient” (Myers & McCoy, 2003, pp.62-63).

Chávez’s election was a clear indication that the population wanted change.

We can observe similar forms of exclusion under the Punto Fijo era and in the third period 1998 to 2007 when state power was largely concentrated in the executive. In the beginning, the Punto Fijo pact brought regime stability and political calm because leaders could distribute wealth; this led to an exclusionary regime that asphyxiated representation by excluding segments of the population and in turn damaged democracy. If institutions of the state, such as the judiciary, had the ability to combat corruption, damage to democracy could have been



mitigated. The executive's continued ability to run roughshod over other political institutions calls into question the claim, by some authors, that the political and institutional instability in the 1999 to 2007 period were caused nearly exclusively by Chávez's style of government.<sup>115</sup> The similar patterns suggest that perhaps there were similar causes. Although a counterfactual analysis could argue that, done differently, more representative democratic institutions could have been institutionalized—that is not the purpose of this dissertation.

Much like pacted democracy, in the beginning Bolivarian democracy was buttressed by high oil prices. Again, pluralist representation was been damaged by a concentration of power in the executive and, when attempts to influence the political system from within were exhausted, individuals who were discontent with the political system pushed for change outside the political system. The use of state resources from oil to invest in social programs no doubt mitigated societal problems that may otherwise have emerged. Oil wealth was, however, used by the state to uphold the state's power. The executive is restructuring the state of Venezuela and buttressing its own power, and it is doing so in the absence of institutional checks and balances.

An examination of executive judicial relations shows that a lack of institutional autonomy and little political insularity of judges existed during the period of the democratic pact. Prior to turning to an explanation of executive-judicial relations in the remaining chapters and to how the judiciary contributed to institutional instability, this chapter finishes with an overview of Bolivarian Democracy.

---

<sup>115</sup> Although many authors recognize that factors prior to Chavez have contributed to instability there tends to be a great deal of emphasis on his style. This over-simplification of the issue is common in the media. For an academic overview see Levine, 2002, pp. 261-263; Kornblith 2005; and for an analysis of how leaders who by pass representative institutions to rule in the name of the masses can damage democracy see Roberts, 2000.

## 4.8 The Bolivarian Revolution

Chávez bolstered support based on his desire to move away from the previous elite-centered system, but the direction that his proposed institutional changes would take was not clear. He successfully convinced the population that there were only two available options: Punto Fijo style rule or a revolution. Alternatives and the potential for dialogue between the extremes were strangled. Since Chávez was not forthcoming about what Bolivarian democracy encompassed, he has successfully channeled attention to its honorable end goal of greater equality, participatory democracy and social justice, and made it difficult to evaluate the revolution's progress.

Supporters of the Bolivarian Revolution often reference the success of the French revolution because they have similar ideals of liberty, equality, social justice and brotherhood. Supporters justify the Bolivarian Revolution on the basis that an increase in citizen participation would lead to greater equality and overcome the enormously unequal system that existed prior to 1998 (Interview, 453; Interview, 487; Interview 645). These supporters reference increased citizen participation and redistribution among the poor and therefore are optimistic in regard to prospects for democracy in Venezuela. Many interviewees cited the will of the people as the most important aspect of any democracy (Interview, 453; Interview, 469; Interview, 487, Interview, 645). They make reference to the ideals of the revolution and how the system is changing and see the political system as moving in a positive direction. A focus on the end goal, however, has camouflaged shortcomings in the process. In this way, the leaders demonized the past and idealized the future. The institutional problems, however, were unchanged.

The purpose of the Bolivarian Revolution evolved as time went on. In an announcement on 30 January 2005, during a speech to the World Social Forum, President Hugo Chávez

revealed that his revolution aimed to create twenty-first century socialism in Venezuela (Wilpert, 2007).<sup>116</sup> Ambiguity surrounded the concept until 25 February when Chávez made direct reference to the teachings of Simón Bolívar. Specifically, Chávez used Bolívar's decrees on education, land ownership, health, and the use of common property, to conclude that Bolívar was a socialist (Hernandez, 2007). In turn, Chávez declared that the Bolivarian Revolution was socialist. Later, during the Presidential campaign of 2006, Chávez called for a deepening of the revolution. He insisted that his revolution was distinct from Marxism; that this form of socialism was nationalistic and responded directly to the country's unique socio-economic and political environment (Buxton, 2007, p. 2).

Optimism for positive change has largely kept supporters on side, while the vocal opposition dismisses Chávez's promises as glib rhetoric. Supporters of Chávez discount opposition claims of irregularity and inequality (Interview, 453). Some government supporters feel that the opposition deserves to be discriminated against and see their exclusion as a form of payback for the previous unrepresentative political system (Interview, 513; Interview, 505). This belief has fueled political polarization and prevented dialogue between the opposing sides. The displacement of an institutionalized, unequal, corrupt system has given way to an exclusionary, corrupt, and unequal system.

## **4.9 Conclusion**

This chapter highlights the role that executive-judicial relations have played to complement existing theories of instability. Scholars contributing to the literature on instability in Venezuela seek to explain the fall of the Punto Fijo pact through structural and institutional factors and look

---

<sup>116</sup> Raby (2006, p. 177) reports that on 5 December 2004, Chávez announced the need to "reclaim the concept of socialism" an announcement he made public in January of the following year.

to justify the collapse of a seemingly stable system. In so doing, this literature points to important institutional reasons for democratic instability. Research to date, however, cannot account for why similar forms of executive influence over other institutions continued in the period from 1999 to 2007 when the party system no longer existed and economic conditions were for the most part prosperous.<sup>117</sup> In response to this shortcoming, this chapter demonstrated that claims to the stability of Venezuela's democracy were overstated because they were based only on the presence of elections. The democratic regime was stable, but the necessary institutions were not in place to ensure their continuation.

Many scholars writing on Venezuela classify it as democratic in the 1958 to 1989 period (Levine, 1978; Ellner, 2003, p.7). This was because the leaders were elected through democratic elections despite their power sharing arrangement. Scholars seem generally less wedded to this conviction in the 1989 to 1998 and 1999 to 2007 periods when the causes of instability are questioned (McCoy & Myers, 2004; Perdomo, 2004; Ellner & Hellinger, 2003; Combellas, 2003; Buxton, 2001; Karl, 1997; Coppedge, 1994; Njaim & Pérez Perdomo). Closer examination shows that under the Punto Fijo pact Venezuelan democracy did not extend much beyond elections. A high level of corruption, inequality and a lack of representation persisted—those outside of power were cut off from the political system. Problems associated with a concentration of power and limited representation that led to the demise of party rule have reemerged under the Chávez administration because they stemmed, at least in part, from the executive's ability to dominate the judiciary. The following chapters turn to an examination of the Venezuelan judicial system to show how its dysfunction contributed to institutional instability.

---

<sup>117</sup> Although it is beyond the scope of this dissertation to include an in-depth analysis of economic conditions,

## CHAPTER FIVE

### 5.1 Using a Popular Mandate to Reinvent Political Institutions

This chapter returns to the argument on the perils of presidentialism and argues that after his 1998 election Chávez used an already compromised judiciary to overcome the constraints of a congressional minority that would not grant him the authority to call a constituent assembly. Chávez's ability to overcome the constraints of a minority government did not compromise his leadership. Despite his lack of congressional support, the population's continued willingness to back Chávez was demonstrated through his successive electoral wins which included two referenda. One referendum sought permission to hold a constitutional assembly and one approved the new constitution once the assembly had completed writing it. Much of the population celebrated Chávez's positive electoral track record as a true victory for democracy and his supporters demonstrated their approval by reelecting him in the 2000 presidential elections held under the newly created 1999 constitution.

The use of a judicial decision to surmount congressional opposition led his critics to call him autocratic. Both extremes have merit: ever-larger majorities at the polls since Chávez was first elected in 1998 suggest broad support for his democratic reforms, while continued violations of the separation of powers, essential to check executive authority, and fundamental to some definitions of democracy, led some to conclude that Chávez has become increasingly autocratic.

Although Venezuela has never enjoyed a truly independent judiciary, the power sharing agreement between the political parties acted to attenuate the influence of the parties because there was always judicial representation and influence from the other party. The judiciary could not be considered independent because judges were appointed based on political loyalties and

decisions were politically influenced. When political parties lost their grip on control, judges stated that they no longer knew how to rule because the parties had always directed them (Interview, 523). The transitory period offered a weakening of party influence over the judiciary, but the judiciary was not able to break with the practice of politicization to establish itself as independent. This dissertation argues that the perils of presidentialism, minority government, coalitions, deadlock, term limits and fixed terms, in the presence of low rule of law, became a challenge to institutional stability.

Chávez was elected in 1998 with a minority government and failed to establish a coalition. Despite attempts to garner support within congress to back constitutional change, sufficient support could not be found. When faced with deadlock on the issue of constitutional change, the executive overrode Congress, used a judicial decision to permit the creation of a constitutional assembly, which was elected to rewrite the Constitution. Opposition supporters saw this method as controversial because it was not a provision so the 1961 Constitution. The new constitution redefined institutions to increase the executive's power. Congressional deadlock was circumvented with a judicial decision, allowing the executive to push through its agenda of constitutional change.

Broken into four sections, this chapter shows how, when confronted with a deadlock in Congress, Chávez relied on a judicial decision to overcome minority government and he took advantage of the lack of autonomy and neutrality of the judiciary, leveraging a non-independent judiciary. In particular, this decision appealed to the power of the people and allowed for the enactment of a referendum which called for the creation of a constitutional assembly. The second part examines how this assembly, assigned with the role of rewriting the Constitution, was effectively dominated by pro-government forces, and how its supraconstitutional status — the

notion that the constitutional assembly could rule in place of other institutions was granted by the judiciary. The third section describes how the new Constitution formally concentrated power in the executive. Finally, the chapter provides a brief overview of the 2000 presidential election. The chapter ends by noting that Chávez, despite some criticism on the democratic nature of his methods, was reelected under the new Constitution.

## **5.2 Referendum Circumvents Congressional Minority**

In 1998, Chávez captured the hearts and votes of Venezuelans through an anti-corruption campaign that sought to reclaim the country from a ruling elite increasingly seen to be dishonest, and a political system that had become highly exclusionary. One of the main planks of Chávez's election platform was his promise to have the constitution rewritten. His supporters believed that the constitution enabled the continuation of an unequal political structure built by the architects of the Punto Fijo pact. This pact, as a negotiated agreement between political parties to share power, largely shut out the political voice of the majority of the population for the 40 years that it was in effect.

The call for constitutional reform was not a new concept in Venezuela. Every *caudillo* leader in the country's history wanted his own Constitution, making the 1999 Constitution Venezuela's twenty-seventh.<sup>118</sup> Although Venezuela's 1961 Constitution was perceived to allow a system that was seen as unfair to perpetuate,<sup>119</sup> it lasted longer than any other.<sup>120</sup> Consequently,

---

<sup>118</sup> Throughout history it was common for Venezuelan leaders to rewrite the previous constitution, enshrining their own rules of the game.

<sup>119</sup> Angel Alvarez (2003, p. 150-151) explains how the constitution permitted the exclusionary, elite dominated party system to continue. As a result the system "minimized competition among elites, and minimized popular participation even more."

<sup>120</sup> Attempts to change it began as early as 1984 when a presidential commission aimed at broader overall reform of the state La Comisión Presidencial para la Reforma del Estado (the Presidential Commission for State Reform; COPRE), examined the monopolization of representation and participation by the political parties. The commission

even before he was formally sworn in as president, Chávez was able to convene a group of experts to set up an ad hoc committee to explore avenues of constitutional reform. This group, the Comisión Presidencial Constituyente (Presidential Constitutional Commission), was asked to assess the viability of issuing a decree to hold a referendum that would permit a constitutional assembly and to explore the mechanisms for electing members to this constitutional assembly. Committee member Ricardo Combellas recounts how Chávez participated personally in the meetings, both listening and actively formulating positions (Combellas, 2003, p. 5).<sup>121</sup> Although alternative means could have been used to reform the constitution, Chávez stated publicly that he was committed to using a constitutional assembly to have the Constitution rewritten because he was convinced that it was the best way to break from the existing power structure and bring about effective change (Harnecker, 2002). This method of constitutional change was legally questionable because it was not a provision of the 1961 Constitution. Some constitutional lawyers argued that it was necessary first to amend the 1961 constitution to allow for a constitutional assembly prior to holding one (Interview 553; Interview 555; Álvarez, 2007, p.169). Another interviewee stated that this method was used because Chávez knew that it was his best means of increasing his power (Interview, 428). Regardless of motivation, it is clear that when attempts to build a coalition in congress to support constitutional change failed, other avenues were explored. Therefore, Chávez's commitment to using the Constitutional Assembly as a means of constitutional reform invited accusations that he was willing to go to any means

---

suggested that the constitution could be reformed to change the electoral system, decentralize government, and introduce a more direct form of democracy that would better represent the population (Combellas, 2003, p. 2).

<sup>121</sup> Coppedge (2002, p.18) reports that although a panel had been convened to write the text of the referendum and to design "an interim electoral law" Chávez disregarded its suggestion and "dictated the terms of the referendum himself."



necessary to overcome the minority he faced in congress and deliver a new Constitution (Interview, 478).

Chávez as leader of the Movimiento Quinto Republica (MVR) (the Fifth Republic Movement)<sup>122</sup> was elected on 6 December 1998. He wasted no time and called for constitutional reform during his inaugural address on 2 February 1999, Chávez swore on the “moribund constitution” that would give our people a true Magna Carta. Chávez decreed that the National Electoral Council (CNE) set a date for a referendum to create and give a mandate to a constitutional assembly.<sup>123</sup> In response, the CNE set the referendum for 25 April 1999.<sup>124</sup>

Chávez had only a minority in Congress; the MVR received 56 percent of the vote but this resulted in only 44 of 208 seats in the House of Deputies and 12 of 57 Senate seats (Buxton, 2001, p.196). A broader coalition, which was known as the Patriotic Front, comprised of the PPT, MVR and MAS was built to win the election and was. This coalition ruled with a total of 70 deputies and 19 senators; consequently the Chávez government did not reach the two-thirds majority needed in congress to invoke constitutional change.

The first attempt to bring constitutional change failed when Chávez and his party were unable to build a congressional coalition to support it. Luis Miquilena, Chávez’s mentor and a member of Congress, spearheaded the drive to muster congressional support for the

---

<sup>122</sup> The MVR was created in 1997 while Chávez was in jail to challenge the political establishment in the 1998 presidential elections. Despite low popularity in the polls prior to the election Chávez won by a wide margin.

<sup>123</sup> This decree was known as Decreto N°3. As a part of this decree Chávez presented the following two questions: 1) Do you support the convocation of a constituent assembly with the purpose of transforming the state and to create a new judicial order that permits the effective functioning of a participative social democracy. And, 2) Do you authorize the president of the Republic by the means of a fixed act of government, based on the opinion of political sectors, social, and economic, and the bases of the process electoral in which the members of the Constitutional Assembly will be elected?

<sup>124</sup>No 990217-31, February 1999, published in the March 4, 1999, Gaceta. Convoked a referendum and set the date for April 25, 1999.

constitutional assembly, building on the backing of the Patriotic Front coalition.<sup>125</sup> Although it gained support from several groups including the MBR-200, the communists, and other left-leaning politicians, the government was unable to build sufficient support through coalitions to overcome the limitations of the minority government (Interview, 340). As can be characteristic of presidential systems, the minority government inhibited the government's ability to pass its agenda in congress. Instead, the constitutional assembly would have to be introduced in another way.

### **5.2.1 Surmounting Coalition Crisis:**

When faced with minority government, presidents can either moderate their agendas to appease an opposition dominated congress, or they can form coalitions to build support for their agendas. This dissertation adopts Mainwaring and Shugart's (1997, p.403) definition of coalition, which argues that a coalition is the share of seats held by the party of the president (see also Cheibub, 1999, p. 8).<sup>126</sup> What constitutes a coalition in presidential systems is contested. One group of scholars argues that legislative coalitions in presidential systems are less common than in parliamentary regimes<sup>127</sup> because the survival of the executive is not dependent on support from the legislature as it is in parliamentary regimes, presidential systems generate fewer incentives to form coalitions (Mainwaring, 1990; Stepan & Skach, 1993, p. 20; Mainwaring & Scully, 1995, p. 33; Linz & Stepan, 1996, p. 181).

---

<sup>125</sup> This is the coalition that was made predominantly of the Movimiento al Socialismo (MAS) and Movimiento V República (MVR) prior to the 1998 election, but included Patria para Todos (PPT), Independents for the National Community (IPCN), Partido Comunista de Venezuela (PCV), Grupo Convergencia (GC), Movimiento Electoral del Pueblo (MEP).

<sup>126</sup> For types of coalitions in Presidential systems see: Altman (2000) and Garrido (2003).

<sup>127</sup> Information on coalitions in parliamentary systems is abundant: (Riker, 1962; Dodd, 1976; Luebbert, 1986; Strøm, 1990; Müller & Strøm, 2000). Few attempts to make a comparison have been done (Geddes, 1994; Amorim Neto, 1998; Foweraker, 1998; Altman, 2001). See also, Sartori, 1997; Lijphart, 1999) and Mainwaring and Shugart (1997: 396, n. 2), who emphasized that there should be more work done in the area of coalition governments' in presidential systems.

This institutional feature can discourage the formation of coalitions because the concentration of power in the president's hands gives the president little incentive to form coalitions or power-sharing arrangements, or to take part in the give-and-take negotiations with the opposition that may be necessary to arrive at a compromise (Lijphart, 1992, p. 19). Essentially, the winner-take-all nature of presidential systems tends to dissuade cooperation with other parties (Linz, 1990; Valenzuela, 1994, p. 93; Stepan & Skach, 1993, p. 130). Presidents do not need the support of the legislature to stay in power, yet without the legislature's support presidents are unable to pass their policies, leading to deadlock.

An alternative view suggests that when coalitions do form, the dual claim to legitimacy tends to make them unstable (Negretto, 2006). When cooperation is strained, the probability of problematic relations increases. To examine unstable coalitions Negretto explores how executive-legislative conflict can lead to premature termination of presidencies. He concludes that when no cabinet coalition holds a majority, the probability of conflict increases (Negretto, 2006, p. 64).

According to other studies, coalition status has no impact on "the survival of democracy in either [presidential or parliamentary] system" (Cheibub, Przeworski and Saiegh, 2004, p. 1). This debate suggests that there is conflict over whether, in fact, coalitions have an impact on the survivability of a government. This debate in the scholarly literature on whether or not coalitions increase the probability of democratic instability is unresolved. Unlike students of U.S. political institutions, however, those who study Latin American political institutions "generally agree that divided government is almost always associated with gridlock, unconstitutional unilateral

actions, and inter-branch strife” (Negretto, 2006, p. 65).<sup>128</sup> To state it directly, when the executive and the legislature disagree there is no alternative but deadlock (Linz & Stepan, 1996, p. 181; Mainwaring & Scully, 1995, p. 33).

The role of the judiciary is critical to understand how conflict and deadlock within executive-legislative conflict can be overcome. In particular, when gridlock or deadlock exists in an environment that respects the rule of law, the outcome is likely to be amicable or at a least predictable and will occur within the context of political institutions. When conflict exists under conditions of low respect for the rule of law, clandestine agreements can be reached or illegal unconstitutional mechanisms can be sought (Mejía Acosta, 2006).

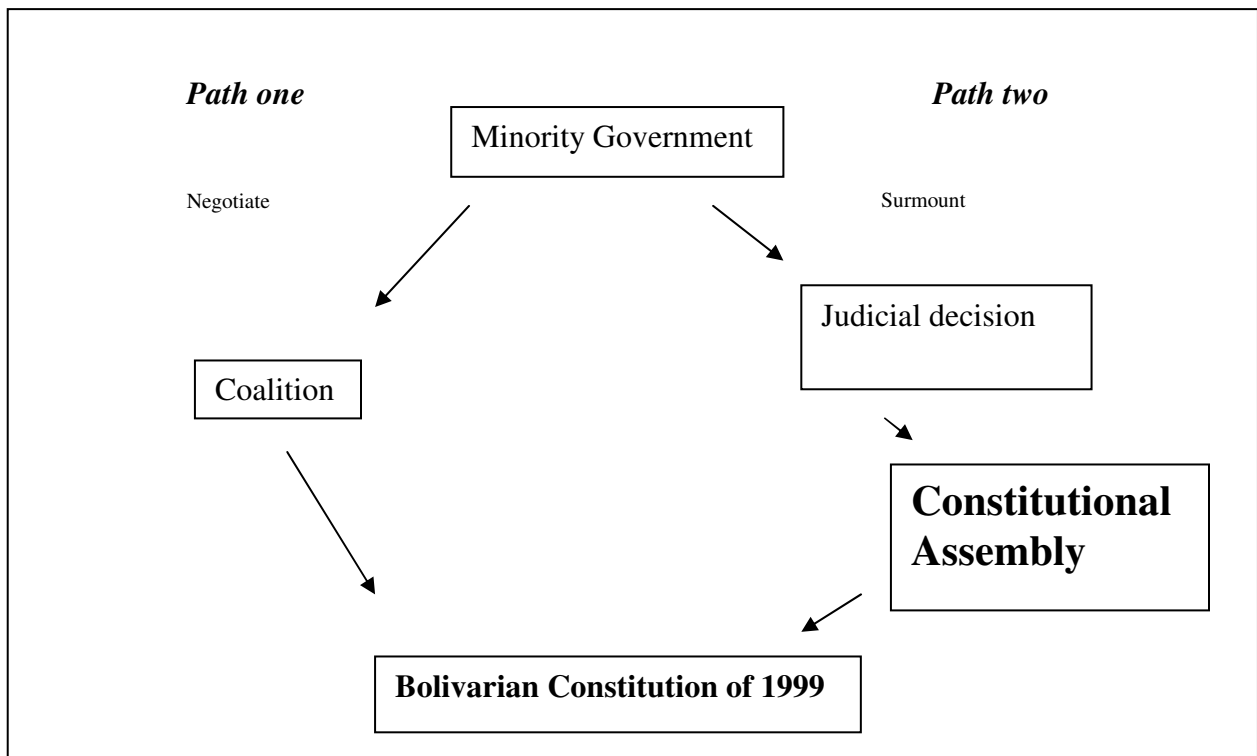
While the impact of the judiciary on coalitions is unstudied, Linz (1978) asserts that one way for the executive to avoid a loss of cohesion in regime-supporting coalition parties is by removing “. . . highly conflictive issues from the arena of partisan politics by transforming them into legal or technical questions” (Linz 1978, p. 69). It can be argued that Chávez used such an approach when he successfully removed the question of constitution change from Congress when attempts to work with congressional coalitions failed. Instead, he reframed it as a judicial question. As Figure 8 shows, there were two available options to reach the new Constitution. The first path—negotiate—involved building a coalition to garner support in Congress for a constitutional amendment. When the government failed to build a coalition, path two—surmount—was taken. As can be characteristic of presidential systems, a successful coalition could not be built. Instead, Chávez used the judiciary to leap-frog the constraints of Congress

---

<sup>128</sup> There has however been recent literature on coalitions in presidential systems of Latin America. For example, Altman (2000) asserts that problems of coalition formation are overstated, using the case of Uruguay he argues that coalitions can last. Hartlyn (1988) postulates that Colombia existed under coalition rule from 1958 – 1986; and Mejía Acosta (2006) explores the impact of “ghost” coalitions on Ecuadorian politics.

and introduce a constitutional assembly. This is problematic because the judiciary could not claim to be independent of political interests.

**Figure 6: Paths from Minority Government to Constitutional Assembly**



### **5.3 Using the Judiciary to Introduce a Constitutional Assembly**

In anticipation of Congress blocking his efforts to create a constitutional assembly, Chávez had provided a legal justification for the referendum in his 2 February decree, referring to a Supreme Court decision made the previous month: in December 1998, only 10 days after Chávez won the election, the human rights organization FUNDAHUMANOS brought a case on the constitutionality of creating a constitutional assembly before the Supreme Court (Álvarez 2007,

p. 158).<sup>129</sup> The explicit purpose of this ruling was to solicit an interpretation of Chávez's proposed use of referendum to ask for a constitutional assembly (Quintero, 2002, p. 484). The result of this ruling was the 19 January, 1999 political administrative chamber of the Supreme Court's ruling known as Fallo 17 which stated that the Constitution did not have to be amended in order to permit the formation of a constitutional assembly, but that a referendum on the questions would be sufficient.<sup>130</sup>

This decision was based on the justification that, since sovereignty is held by the pueblo<sup>131</sup> and a referendum allows for the exercise of the popular voice, a referendum overrules the requirement for congressional supermajority and establishes legality (Urdaneta García, 2000, p. 166; Hernández-Mendible, 2000, p. 84; Mejía, 2002; Interview, 152; Interview, 523). Specifically, the decision stated that the President, the Congress, or 10% of the electorate could initiate a referendum (Romero, 2002, p. 75). Therefore, constitutional change could be implemented without the support of Congress, providing that the government could win a referendum.

The importance of this interpretation lies in how the court's consideration of the pueblo marked a break from the past. One interpretation of this suggests that it could be interpreted as an indication of judges ruling strategically to align themselves with the incoming president. Gretchen Helmke (2002) demonstrated that in the case of Argentina judges voted strategically to protect their jobs. Her research proved that ruling against the government does not indicate independence, as indicated in Chapter Two. Evidence suggests that similar actions were used in

---

<sup>129</sup> It was a generally held belief that Chávez had been maneuvering to use this court decision prior to when he took power.

<sup>130</sup> The debate among legal and political professionals to discern the constitutionality of the constituent assembly remains unresolved and there are several legal professionals who continue to claim that the constitution was changed in an unconstitutional way (Interview 445).

<sup>131</sup> The term *Pueblo* refers to the Venezuelan population, though is generally used in relation to the poor majority. It is in the name of the pueblo that Chávez regularly states that he seeks to empower.

Venezuela. Although the courts were not previously considered fully independent, the decision to allow constitutional change through a constitutional assembly is said to reflect a shift in political power (Interview, 523).

During this time, the courts, like politics in general, were dominated by parties: former Supreme Court judges and members of the judicial community stated in interviews that since judges had been appointed by one of the ruling parties it was clear where their loyalties belonged. One former judge stated explicitly that when Chávez won the presidency from outside the traditional party system, judges were unclear about where their loyalties ought to be (Interview, 523). The change marked by the *pueblo* decision led to accusations that judges' were motivated by political, not legal, considerations (Interview, 523). In other words, judges ruled with the side they thought would keep them in their jobs—not with strict legal interpretation.

### **5.3.1 Legal Challenges to the use of a Constitutional Assembly to Reform the Constitution:**

Although Chávez was proactive and provided a legal justification for a constitutional assembly, this did not deter opponents from challenging the legality of using a referendum to call for a constituent assembly. This put the future of reform in the hands of the Supreme Court. Political parties, opposition groups and individuals asked the Supreme Court to rule on the constitutionality and legality of Congress and the CNE's decision to implement a referendum without a constitutional amendment on the grounds that the 1961 Constitution had no provision to hold a constitutional assembly (Urdaneta García, 2000, pp. 167-168).

Opposition parties such as AD, COPEI as well as other plaintiffs from the old political order challenged the government's attempts to call for a constitutional assembly through a referendum. Despite these efforts, they lost the majority of their cases (Romero, 2002, p. 76).

These legal actions were successful, however, in limiting the executives' influence. For example, one legal decision in particular both defined the powers of the assembly and limited the power of the President. When the referendum on the constitutional assembly was originally decreed in February, 1999, the question read, "Do you authorize the President of the Republic to establish by executive decree the basis of the electoral process through which members of the constitutional assembly will be elected, after having listened to the opinion of political, economic and social sectors?" (Romero, 2002, p. 79). Had this question been used, the president would have been granted all the power to define and direct the constitutional change, without limitations.

The original question was challenged in the Supreme Court on 3 March, 1999, on the premise that it was undemocratic; many legal experts believed it contradicted the very principle upon which the new Constitution was to be based, namely, popular participation. On 18 March, 1999, the court ruled in favour of the case placed before it by lawyer and opposition member Gerardo Blyde Pérez, ordering the CNE to modify the referendum question (Quintero, 2002, p. 34).<sup>132</sup> Published by the CNE on 25 March 1999, the new question more clearly defined the powers of the President, asking, "Do you agree with the bases proposed by the President to convene the constitutional assembly, under the regulations that were reviewed and modified partially by the National Electoral Council on 24 March, 1999 and that were published in the Official Gazette on 25 March, 1999?" (Romero, 2002, p.79). Instead of giving the president full control to decide the rules, this power was shared with the National Electoral Council. This court ruling is an example of how the court was able to restrict the power of the executive.

---

<sup>132</sup> This ruling was known as 'sentence 271.'



The referendum was held and won on 25 April, 1999, and with it, the government won its public mandate to convene a constitutional assembly. The two questions posed in the referendum passed with the support of nearly 90 percent of those who voted. The magnitude of this win is diminished when you consider that only 39 percent of registered voters participated.<sup>133</sup> Although voter turnout for such a pivotal election was low, President Chávez was given the legitimacy required to convene the constitutional assembly.

Chávez was elected into a minority government and initiated extensive constitutional change; when insufficient representation in congress prevented the reform, extra-congressional means were used. Chávez was accused of using the constitutional assembly as a way of overcoming the minority he had in congress (Interview, 447). The constitutional assembly allowed him to break from the institutions of the previous regime. The new Constitution meant that institutions of the fourth republic would no longer constrain the government (Interview, 523).

### **5.3.2 Legal Impact of Circumventing Congress:**

The legal decision circumvented the need for congressional support and silenced critics who insisted that a constitutional amendment was necessary; it also suggested that there could have been a political shift in the courts. Urdaneta García (2003, p.187) suggested that it was the flexibility of the Supreme Court that allowed for change. Coppedge also noted that “without a constituent assembly empowered to neutralize the legislative and judicial branches, Chávez would have remained accountable...without it [the court ruling] the entire process would have been patently unconstitutional” (Coppedge, 2002, p. 31). The legal decision provided him with

---

<sup>133</sup> This calculation is an overstatement of the support for the referendum because it uses only registered voters. The electoral registry, although containing those eligible to vote, was known to be incomplete.

the means to justifiably circumvent congress.<sup>134</sup> The court at this time was able to restrict the President's power but, some argued, it was still an indication of the courts' appeasement, as creating an assembly was prioritized over applying the law, as the ruling deviated from a strict application of the 1961 Constitution.

The justification for superseding existing institutions was based on the fact that these institutions were seen as unrepresentative artifacts of the previous democratically questionable regime. Since these institutions garnered little backing outside of their own ranks, there was support to surpass them. From a theoretical perspective Schmitt (1985) suggested that the will of the people is supreme over constitutional institutions. "Against the will of the people especially an institution based on discussion by independent representatives has no autonomous justification for its existence, even less so because the belief in discussion is not democratic but originally liberal" (Schmitt, 1985, p.15). In modern democracy, however, governing institutions are meant to represent the will of the people and are held accountable through institutional structures laid out in the state's Constitution that establishes the rules of democratic institutions.

According to Schmitt, there is an inherent tension between liberalism and democracy. Instead of amalgamating the two concepts as many liberal democrats do, Schmitt believed that liberalism destroys democracy and democracy destroys liberalism (Schmitt 1996, p.69).<sup>135</sup> The state restricts individual freedom: "for the purpose of protecting individual freedom and private

---

<sup>134</sup> Legal justification for this decision comes from "The possibility of [the people] delegating sovereignty via the suffrage to popular representatives does not constitute an impediment for its direct exercise in matters for which there exists no express provision in the norm regarding the exercise of sovereignty through representatives. Thus the people preserves its sovereignty [originaria] power for situations such as being consulted about referendum issues....The opinion of the electorate can be sought on any decision of special national transcendence other than those expressly excluded by article 185 of the Organic Law of Suffrage and Political Participation, including a decision relating to the calling of a Constituent Assembly. (Dominquez & Shifter p. 189).

<sup>135</sup> Schmitt recognizes that liberal democracy can exist –for a time. He stated that when it achieves power it "must decide between its elements (Schmitt, 1985, p.15).

property, liberalism provides a series of methods for hindering and controlling the state's and government's power" (Schmitt 1996, p.70). Democracy, according to Schmitt, does not put a limit on the state power, because "in a democracy, where those who command and those who obey are identical. . ." there can not be limits on the power of government (Schmitt, 1985, pp.14-15). By contrast, he asserts that in a monarchy or aristocracy a contract between state and society is possible and can be used to limit state power (Schmitt, 1985, p.15). Though there is merit in Schmitt's critique of the relationship between liberalism and democracy, his critique on the broader separation of powers in democratic systems warrants greater investigation than can be achieved by this dissertation.

### **5.3.3 Elections to Form the Constitutional Assembly:**

After the permission to convene a constitutional assembly was obtained through the April referendum, elections to determine the members of the constitutional assembly were held on 25 July of the same year. The perceived power of the Constituent Assembly is evident by the fact that many members of Congress resigned from their congressional seats, choosing instead to run for the constitutional assembly, because they were not legally entitled to do both (Norden, 2003, p. 101). To some, this was also a premonition to suggest that the Constitutional Assembly might act in place of Congress because at the time of its creation the relationship that would exist between the constituent assembly and other government institutions was unclear. The constituent assembly later replaced the sitting congress, which had been elected only a few months previously.

To choose members of the Constituent Assembly, a new electoral formula was introduced. The assembly involved candidates from both the national and regional levels and had a total of 131 seats. In the national competition, 24 candidates were elected from a field of 93.

Regionally, 104 members were elected from 1065 candidates to represent 23 states plus the capital (CNE, 1999); each of these 23 (plus national level) districts had a different number of seats, ranging from two to thirteen (CNE, 1999), the number of seats were proportional to the population (Urdaneta García, 2000, p. 168; Combellas, 2003, p. 6). In addition, three seats were reserved for representatives of indigenous peoples.

Although the system was multi-member, each district had more than one member, the result had a majoritarian effect because the candidates with the most votes won, this lead some scholars to classify it as a first-past-the-post system.<sup>136</sup> Specifically, this implied that the system had no proportional formula (Newman and McCoy 2001, p.28). Accusations that the change in electoral formula had political motivations were fueled by the fact that it was the first time that this non-proportional electoral system was used in Venezuela. Moreover, critics of Chávez accused him of commissioning research to identify and implement the electoral system that would ensure his supporters would gain the largest number of seats (Interview, 451; see also Corrales and Penfold, 2007, p.101).

To critics these accusations were given greater weight when the electoral gains by the MVR are considered. Table 5 shows a breakdown of MVR affiliates that won all 20 of the seats they ran for on the national level. MVR candidates dominated the elections and only lost in Aragua, Nueva Esparta and Portuguesa, as indicated by the bolded numbers in the table. The MRV alliance built by Chávez, known as the Polo Patriótico (PP), ran candidates strategically on a single ticket, reducing in-fighting. The opposition, on the other hand, ran as independents. This

---

<sup>136</sup> Newman and McCoy (2001) state that: “In theory, the electoral system was not a first-past-the-post system because there was more than one seat for the national and regional districts” (Newman & McCoy, 2001 p.27). They continue to state that: “In practice, however, it had the same majoritarian effect over the way votes were counted: In districts with more than one seat, the candidate with the most votes was elected (Newman & McCoy, 2001 p.28). This majoritarian effect is why other scholars have classified the electoral system as first-past-the-post for example see Hellinger, 2003 p. 43 and López Maya, 2003 p.85).

created competition amongst the opposition, and split votes (Coppedge, 2002, p. 29). The Polo Patriótico won 62.1 percent of the popular vote. Under the electoral system, this translated into 95 percent (121 of 128) of seats (Ellner, 2001, p.12).<sup>137</sup> The opposition, in contrast, won about 35 percent of the vote<sup>138</sup> but only seven seats (Crisp & Johnson, 2001, p. 272; Maingón, Pérez & Sonntag, 2001, p. 116).<sup>139</sup> Urdaneta asserted that under a proportional electoral system the Polo Patriótico would have won 10 fewer seats on the national level (Urdaneta García, 2000, p. 178). The electoral results suggest that the electoral system provided a clear advantage to MVR candidates, fueling accusations that the electoral system had been chosen based on political motivations. The popular support for Chávez translated into electoral domination because of the electoral system that was chosen. This suggests that the executive may have had influence over other institutions, though this dissertation does not argue that there is evidence to suggest that there was a blatant violation of the power of the electoral branch by the executive.

---

<sup>137</sup> Three additional seats were reserved for representatives of the indigenous populations and these were chosen based on indigenous mechanisms for choosing leaders.

<sup>138</sup> The percentage of votes won by the opposition is reported to be between 35-40 depending on the source.

<sup>139</sup> It is important to note that since these elections, several key members of the assembly have been critical of government actions, some doing so publicly: including, for example, Hermann Escarrá, Angela Sago, Alfredo Peña, Luis Miquilena, Leopoldo Puchi, and William Ojeda.

**Table 5: Concentration of MVR Candidates Elected in the Constituent Assembly Election 1999**

State	Number of MVR running	Number of MVR elected	Total seats available
<b>National</b>	<b>20</b>	<b>20</b>	<b>24</b>
Federal District	8	8	8
Amazonas	2	2	2
Anzoategui	5	5	5
Apure	2	2	2
<b>Aragua</b>	<b>6</b>	<b>5</b>	<b>6</b>
Barinas	2	2	2
Bolivar	5	5	5
Carabobo	9	9	9
Cojedes	2	2	2
Delta Amacuro	2	2	2
Falcon	3	3	3
Guarico	3	3	3
Lara	7	7	7
Merida	3	3	3
Miranda	11	11	11
Monagas	3	3	3
<b>Nueva Esparta</b>	<b>2</b>	<b>1</b>	<b>2</b>
<b>Portuguesa</b>	<b>3</b>	<b>2</b>	<b>3</b>
Sucre	3	3	3
Tachira	4	4	4
Trujillo	2	2	2
Vargas	2	2	2
Yaracuy	2	2	2
Zulia	13	13	13
<b>Total</b>	<b>124</b>	<b>121</b>	<b>128*</b>

Source: Authors creation based on numbers from (CNE, 1999). Calculations by author. There were a total of 1163 candidates in the ANC election.

\*Three additional seats were reserved for indigenous representatives.

The MVR's success in elections was due both to the electoral system chosen and to its candidate selection strategy. Some national and regional candidates were selected directly by Chávez, who actively and personally persuaded them to run (Interview, 540). The strongest candidates, who became known as "Las llaves de Chávez" (the keys of Chávez), were personalities known across the country; 20 of them ran in the national competition and all 20 of them were elected (Romero, 2002, p. 80). As logic would suggest, candidates with local

recognition were run locally. The electoral system had strong majoritarian tendencies and so the victory of the largest party was exaggerated (Reynolds & Reilly, 1997, p. 36).

The success of this electoral tactic ensured that only three MVR candidates lost<sup>140</sup> and, with 95 percent of seats, the MVR was in a position to control not only the process but also the content of constitutional change. Following the elections the group of 131 immediately began writing the Constitution, a task they were given only given 180 days to complete (Coppedge, 2002, p. 30; Combellas, 2003, p. 192). Members of the assembly reported that because so many people represented the same party and ideology, debate on several issues was limited (Blanco, 2002, p. 106; Interview, 532, Interview, 540). Some members also reported that Chávez directly drove the most important issues and the general direction of the reform (Interview, 534; Interview, 532).<sup>141</sup> Overall this suggests that the composition of the Constituent assembly affected the dialogue which was stifled by a lack of diversity of opinions.

### **5.3.4 The Reorganization of the Political Powers:**

The constitutional assembly may have been created to overcome congressional deadlock, but when it was first elected Congress and the constitutional assembly co-existed.<sup>142</sup> The MVR, concerned by a similar situation in Colombia where the Congress had agreed to work with the assembly but then sabotaged it, used the Colombian situation as legal precedence of suspending congressional sessions while the assembly re-wrote the Constitution (Ellner, 2001, p. 13).<sup>143</sup>

---

<sup>140</sup> These losses occurred in the states of Aragua, Nueva Esparta and Portuguese.

<sup>141</sup> This influence does not mean that Chávez was able to achieve all of his desired changes directly. For example, assembly members recount how Chávez hoped to eliminate the National Guard, but he was unable to because of the political power it enjoyed.

<sup>142</sup> Short of a full *autogolpe* this was nonetheless a move by the executive to stop congress and the judiciary (Cameron, 1998).

<sup>143</sup> In 1991, Colombian President Gaviria had encouraged the installation of a constitutional assembly outside Congress (Pérez-Liñán, 2005, p. 64; Interview, 535). This assembly took the role of being the definitive source of constitutionality and established a “plebiscitary model of unconventional constitutional change” (Barros, 2001, quoted in Pérez-Liñán, 2005, p. 64).

According to some leading Venezuelan constitutionalists, the Colombian precedent was a thin cover for Chávez's use of the constitutional assembly to build his own power base.

Justification for the ANC's authority to reform other institutions came from its claim to have originating power. Controversy over the extent of the power that the Constitutional assembly held stemmed from the debate over if it had "originating power," or specifically, over the question of if the ANC had the power to dissolve Congress and the Supreme Court. In other words, "originating powers" called into question the ability of the ANC to act in place of other governing institutions (Combellas, 2003, p. 194; Álvarez, 2007, p.169). This played a large role in dictating the power that the ANC would have because it determined what bodies could limit the actions of the ANC.

In an April 1999 decision, the Supreme Court ruled that the Constitutional Assembly did not have originating power, stating that its sole mission was to re-write the constitution. Yet, Chávez publically asserted that it did possess these powers and that they were drawn from the fact that it was elected by the population (Roth, 1999). The ANC President, Luis Miquilena declared that the Constituent Assembly had originating power, asserting that nothing could challenge the sovereign power of the Assembly (Gaceta Constituyente, 1999, p.2). The ANC used its originating power to reorganize all organs of public power, including the judiciary (Viciano Pastor and Martínez Dalmau, 1999, p.145-146). With this power the ANC "reduced the power of elected Congress, and intervened in the courts to remove judges (McCoy, 2006 p. 766). This included the removal of judges and the adoption of legislative powers (McCoy, 2006 p. 766 and 774). Had the ANC not had originating powers its jurisdiction would have been restricted to constitution writing.



Relying on a plebiscitarian model the Venezuelan Constitutional Assembly took control of the political institutions on 12 August, only 18 days after it was elected, when it declared a national emergency and announced that it would reorganize public powers (Greste, 1999). This stifled congressional power and gave it to a body dominated by government supporters and elected under a questionable system full authority to reform the constitutions and the political institutions.

A direct use of the constitutional assembly to carry out a threat or an attack against another branch, to borrow from Helmke (2008, p.11), occurred when the Congress, which had not held any real power since August, was dissolved in December (Molina & Pérez, 2004, p. 107). The constitutional assembly replaced congress with the Consejo Nacional Legislativo (CNL) (National Legislative Council). Further leaving its personal imprint, the constitutional assembly appointed the members of the CNL. That is to say, members of the CNL were not popularly elected (Molina & Pérez, 2004, p. 107; Calvert, 2004, p. 227).<sup>144</sup> From 15 December 1999, when the Constitution was approved by referendum, until 31 January 2000, the constitutional assembly acted as the legislature and used its power to revamp the political system. “It appointed a large number of public officials, rewrote the electoral law, and approved a ‘transitory regime’ that served as a kind of unratified constitution until new elections could be held” (Coppedge, 2002, p. 18). Such noteworthy change demonstrated the enormous power held by 131 members of the Constitutional assembly.

---

<sup>144</sup> This body had been elected by 39 percent of voters and was dominated by one political ideology.

### 5.3.5 The Supreme Court Rules that the Constitutional Assembly is Supraconstitutional:

Institutional restructuring was not confined to the legislature and on 18 August, the assembly announced a judicial emergency, which revamped the judiciary.<sup>145</sup> Until the emergency committee took control away from the Supreme Court it had been the last institution capable of limiting the assembly's power (Combellas, 2003, p. 9). The court had previously shown that it could limit the power of the constituent assembly when it ruled that the referendum question had to be narrowed and the power of the president was limited.

The constituent assembly, through the judicial emergency committee, essentially eliminated the chance that the judiciary could act against it. Members of the Supreme Court perceived this to be a blatant power grab. On 25 August, after senior judges of the Supreme Court had negotiated with assembly officials, the Court agreed in a six-to-eight decision that the constitutional assembly could place itself above all other bodies, including the Constitution (Molina, 2001; Combellas, 2003; International Commission of Jurists, 2001).<sup>146</sup> This contradicted an earlier court ruling that gave the assembly only the authority to write the

---

<sup>145</sup> Coppedge stated that the emergency commission essentially dissolved the judiciary: "it [the ANC] created a Judicial Emergency Commission that began a purge of the entire judiciary, including the Supreme Court and the Judicial Council. After the draft constitution was ratified on December 15, the ANC (which was not dissolved until January 31, 2000) decreed a Public Power Transition Regime that dissolved congress and the Supreme Court, and appointed the Ombudsman (*Defensor del Pueblo*), Public Prosecutor (*Fiscal General de la República*), Comptroller (*Contralor General de la República*), and the board of the National Electoral Council." (Coppedge, 2002, p. 30). The Judicial emergency was justified based on the high level of corruption and inefficiency in the judiciary. Since few people viewed the judiciary as an independent body there was not much in the way of public outcry.

<sup>145</sup> The eight magistrates voting in favour included: Iván Rincón, Hildegard Rondón de Sansó, Alirio Abreu Burelli, Humberto J. La Roche, José Luis Bonnemaison, José Erasmo Pérez España, Angel Edecio Cárdenas and Antonio Ramírez Jiménez. Those voting against included: Cecilia Sosa, Aníbal Rueda, Hermes Harting, Héctor Paradisi, Héctor Grisanti Luciani y Nelson Rodríguez. The final member of the court at the time, Jorge Rosell was not present (Renuncia la Presidenta).

<sup>146</sup> The eight magistrates voting in favour included: Iván Rincón, Hildegard Rondón de Sansó, Alirio Abreu Burelli, Humberto J. La Roche, José Luis Bonnemaison, José Erasmo Pérez España, Angel Edecio Cárdenas and Antonio Ramírez Jiménez. Those voting against included: Cecilia Sosa, Aníbal Rueda, Hermes Harting, Héctor Paradisi, Héctor Grisanti Luciani y Nelson Rodríguez. The final member of the court at the time, Jorge Rosell was not present (Renuncia la Presidenta, .

Constitution, not to act in place of other governing bodies (Chief of Venezuelan Court Resigns, 1999).

The Supreme Court had ruled that the ANC did not have the power to dismiss congress. After one such ruling Sosa remarked that the ANC was responsible for drawing up a new constitution not to “supplant existing institutions or to govern the country” (Roth, 1999). The court had previously determined that it was willing to work in conjunction with the constitutional assembly, Sosa is quoted as stating that: “Until the new charter has been written and approved by voters, she added, ”the Supreme Court will carry out its duties in accordance with the Constitution of 1961.” (Roth 1999). The apparent switch in opinion is believed to have come from outright pressure against the court (Interview 447; Interview 462; interview 473). One lawyer stated directly that the judges ruled in favour of President Chávez because they did not want to lose their jobs (Interview 504). Meanwhile, another legal expert stated that Magistrates thought that siding with the government was the best means of keeping peace—and argued that at times this was more important especially since judges had been so accustomed to ruling based on political factors (Interview 504b). Contributing to fear among magistrates, Manuel Quijada president of the assembly commission was quoted in local news sources as directly threatening dissolution of the Supreme Court if it attempted to interfere with the work of the ANC.

The legal justification for the 25 August ruling came from a decision that the constitutional assembly was supraconstitutional and had the authority to supersede the rules of the previous Constitution (Asamblea Nacional, 1999; Romero, 2002, p. 84; Interview, 542; Interview 543).<sup>147</sup> This court decision gave the ANC legal authority to position itself above other powers (Interview, 542). In response to this decision the Chief Justice of the Supreme Court,

---

<sup>147</sup> This was a decision in the Sala Plena of the Supreme Court on 6 October 1999. All Supreme Court magistrates have voting rights in the Sala Plena.

Cecilia Sosa Gomez,<sup>148</sup> resigned in protest, saying, “the court simply committed suicide to avoid being assassinated. But the result is the same. It is dead” (Top Venezuelan Judge Resigns, 1999). Sosa strongly disagreed with the decision made by the Supreme Court, which overturned previous court rulings. Sosa did not believe that the constitutional assembly had the legal power to unilaterally reorganize the judicial system, placing itself above the law, despite the president’s repeated public statements that it would.

Sosa had previously been instrumental in bringing attention to the need to reform the judiciary and improve its independence. One such step toward improving the judicial system had been to forge reform projects with the World Bank; she was also active in creating an international network of Supreme Court Judges (Interview, 475). Despite the shared goals of judicial reform, the President’s methods of conducting this reform clashed with the view of the Chief Justice of the Supreme Court. The underlying contrast of beliefs that fueled this conflict of opinions also prompted legal experts and political analysts to conclude that the president was rewriting the Constitution based on his own agenda with little regard for the law (Interview, 423; Interview, 449).

Prior to Sosa’s resignation, the constitutional assembly had appointed a Comision de Emergencia Judicial (CEJ) (Judicial Emergency committee) and assigned it the role of cleaning up the judiciary by eliminating corruption and increasing independence (Hernandez-Mendible, 2000, p. 94). How it would do this was not laid out clearly, so there was no easy resolution to the controversy between the congress and the constitutional assembly over which body had greater legitimacy. Despite the surrounding controversy the CEJ quickly began reforming the judiciary. The CEJ committee was comprised of eleven members, four of whom were members of the

---

<sup>148</sup> Inviting accusations of retaliation, Sosa was arrested in 2005 for her alleged involvement in the 2002 coup against President Chávez.

constitutional assembly.<sup>149</sup> The committee was granted the power to investigate and discipline judges, designate judges to the Supreme Court and restructure the judicial system (Interview, 523). The committee used its power to fire judges without consultation. As criteria to determine who would be fired, the committee began by letting judges with more than 7 complaints against them go. This meant that by the end of the year, the committee had suspended 230 judges (International Commission of Jurists, 2001).<sup>150</sup> One of these, and one of the first, was Supreme Court Vice President Franklin Arrieche, a well known Chávez critic (Human Rights Watch (HRW), 2004). It also fired ten judges responsible for acquitting 24 bankers implicated in a 1994 bank scandal.<sup>151</sup> Since this had been a politically charged decision, it invited accusations of having been driven by partisan intentions. The actions of the committee fuelled the belief that the judicial reform process was being used for political ends.<sup>152</sup>

Other top officials resigned as assign of protest against the CEJ's actions; among them was Normarina Tuozzo, who had been president of the *Consejo de la Judicatura*, the body in charge of the judicial system under the 1961 Constitution. Tuozzo's resignation on 13 September was in direct protest to the constitutional assembly's suspension of the judges. Several judges

---

<sup>149</sup> Members of the CEJ included: Judge Alirio Abreu Burelli and Nelly Morillo, a member of the Consejo de la Judicatura. Manuel Quijada was head of the commission.

<sup>150</sup> Gomez reports that when these judges were replaced with non-tenured judges—an issue I explore in the following chapter. “To the general dismay, some of the new judges had shady pasts and even criminal records, but the government was willing to overlook these details as long as the candidates offered their unconditional support to the Bolivarian revolution. In order to guarantee that the newly hired judges would remain unreservedly loyal to the regime, their appointments were made temporary so they could be easily dismissed without cause when deemed necessary.” (Gomez, 2008, p.19).

<sup>151</sup> The 1994 banking scandal led to the collapse of the Venezuelan banking system and a subsequent blow to investor confidence. For a more detailed examination see: Weyland (1998). Arrieche was fired for having lied about his credentials during the interview process. This was reported to be common practice and because others who also did not have the credentials, and who had lied about it, were not fired many felt that his firing was a political move. Moreover, many of the judges that were appointed during the rebuilding of the Court system did not have the requisite education (Interview, 455; Interview 461). A lack of qualified candidates was used as justification for hiring individuals without the prerequisites (Interview, 484).

<sup>152</sup> Despite tremendous pressure directly from the President during the ANC, he was reportedly not fully satisfied with the end result (Interview, 523). One example in particular was Chávez's push to implement a national police force. Despite failing to implement these changes through the 1999 constitution Chávez continued the push and the national commission on Police Reform (Interview, 564).

recounted the conundrum they faced at this time: they could abandon the judiciary in the face of changes with which they disagreed and forgo an opportunity to influence the direction of change, or they could stay despite their moral objections to the government's actions and try to influence them (Interview, 462). The fates of these judges varied.

When the judiciary determined that the constitutional assembly was supraconstitutional there was no longer a single branch of government that could check the powers of the constitutional assembly. The power to dissolve and recreate institutions had enabled the assembly, and in turn Chávez's 5<sup>th</sup> Republic, to break entirely from the previous government: "By the time the ANC ended its functions, there was not a single national power, other than President Chávez himself that had not been appointed by a body that was 93 percent Chavista" (Coppedge, 2002, pp. 30-31). Supporters of the constitutional changes assert that, from political and juridical perspectives, the changes were necessary to initiate participatory democracy, increase representation and judicial independence, and to reduce corruption. Overall, many of these supports saw the ends as justifying the means.

If, as Kornblith asserts, constitutions are not intended to be "political programme[s] of any particular party, but rather all of them..." (Kornblith, 1991, p. 88) then a constitution motivated by narrow political interests could pose problems when it comes to implementing the democratic process. A constitution written as a direct reflection of one political stripe, as this dissertation has argued was the case with the Bolivarian Constitution of 1999, could be perceived as illegitimate. Regrettably, this can lead to the entire project being overlooked, not just the negative aspects of it. In the words of one of Venezuela's best known constitutionalists: "Constitutions that are well respected ought to rise above subjectivity and should have a rationality that is valid for all circumstances and binding for everything" (García-Pelayo, 1991).

III, p. 3290). Although this may be unattainable and ideal, the domination of government supporters in the process of the Venezuelan Constitution's creation was controversial: "the process for constitutional change was galvanized and controlled, from beginning to end, by President Chávez" (Segura & Bejarano, 2004, p. 227). The concentration of power associated with writing the Constitution enraged the opposition and sparked worry among observers concerned with the stability of democratic regimes in the region (Greste, 1999).<sup>153</sup>

Nonetheless, the Bolivarian Constitution was put to a referendum on 15 December 1999, and passed. Since 72 percent of those who participated had voted in favour, and 46 percent of registered voters participated in the referendum, the overall public approval rating for the new Constitution was 33 percent. Not only had Venezuela accepted the Constitution, but it had indirectly legitimized the process used to write it. Even many people who were critical of the implementation process celebrated the new Constitution for its attention to human rights, indigenous rights, justice, equality, and participatory democracy, and for totally re-founding the republic based on participatory democracy and a rule of justice (Interview, 542). These critics, however, questioned the democratic foundation of a constitution constructed with such narrow participation. Formally, the Constitution increased the ability of citizens to participate in the democratic process through referendums. This addition gave citizens the capacity to recall officials, including the president. Citizens' right to express their discontent was protected and enshrined in Article 350.

---

<sup>153</sup> The four members of the constitutional assembly who were not perceived to be in direct support of the government were Alan Brewers Carins, Claudio Fermin, Jorge Olvarria and Alberto Franceschi (Kelly, 2000).

## **5.4 Structure of the Venezuelan Government under the 1999 Constitution**

In addition to reforming the state-societal relationship, the Bolivarian Constitution of 1999 changed the structure of the Venezuelan government. This section will outline these major changes and highlight how they gave the executive greater power. Venezuela is a constitutional democracy with a directly elected president and a unicameral legislature elected in a bifurcated system of proportional representation. In addition to the more typical executive, legislative and judicial branches of government, the 1999 Constitution introduced a citizen's power branch (or moral branch as it is sometimes called) and an electoral branch.<sup>154</sup> These new branches of government were seen as equivalent to the executive and legislature.

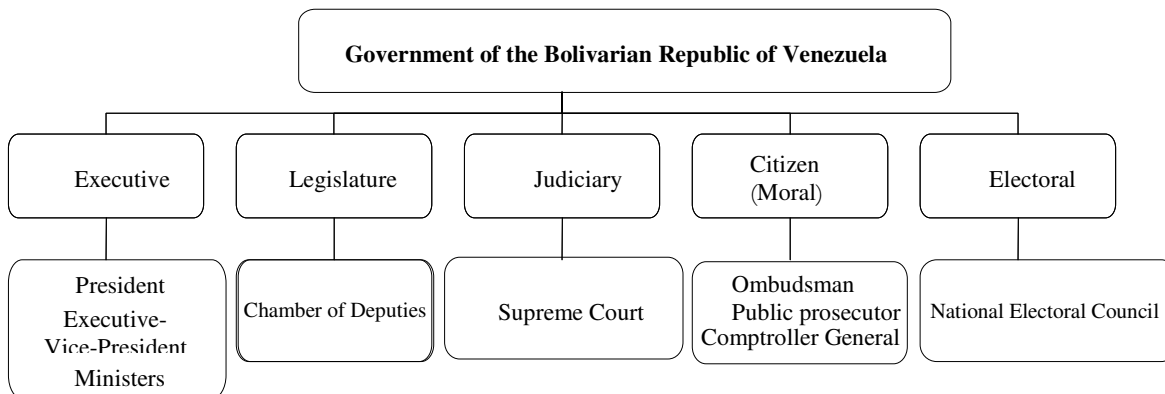
These additional branches are intended to make the Bolivarian Republic of Venezuela better able to represent the population's interests, through direct participation of citizens. The citizen branch is comprised of an Ombudsman, a public prosecutor and the Attorney General. The citizen's branch is intended to promote popular political participation. The electoral branch is headed by the Consejo Nacional Electoral (CNE) (National Electoral Council) and is responsible for overseeing all functions related to elections. A breakdown of the Venezuelan governing system and the relationship of the five branches of government are portrayed in Figure 7 below.

---

<sup>154</sup> In the Venezuelan government structure these branches are theoretically set up as separate and independent as depicted in Figure 7. Similarly, Costa Rica's constitution of 1949 added electoral and citizens branches to the government structure.



**Figure 7: Government of the Bolivarian Republic of Venezuela**



## 5.5 The Venezuelan Judicial System

The 1999 Constitution also brought several changes to the judicial system. Venezuela is a civil law country, though its original constitution borrowed heavily from the Constitution of the United States (Aronovitz, 2000). Unlike many other federal countries, Venezuela has no dual organization of national and state courts, meaning all courts are part of the federal system.<sup>155</sup> Administratively, there are seventeen judicial districts each with individual superior courts. Lower courts within a judicial district include courts of instruction, district courts, municipal courts, and courts of first instance. As depicted in Figure 8, the highest body in the judicial system is the Supreme Court of Justice. This Figure shows the relationship between upper and lower level courts.

The Supreme Court is divided into six chambers, each responsible for different aspects of law. These chambers include the constitutional, electoral, criminal, citizen, social and political administrative. The current court structure (the Tribunal Supremo de Justicia) was introduced in the 1999 Constitution, but modified and expanded by the LOTSJ in 2004. The 1999 Constitution

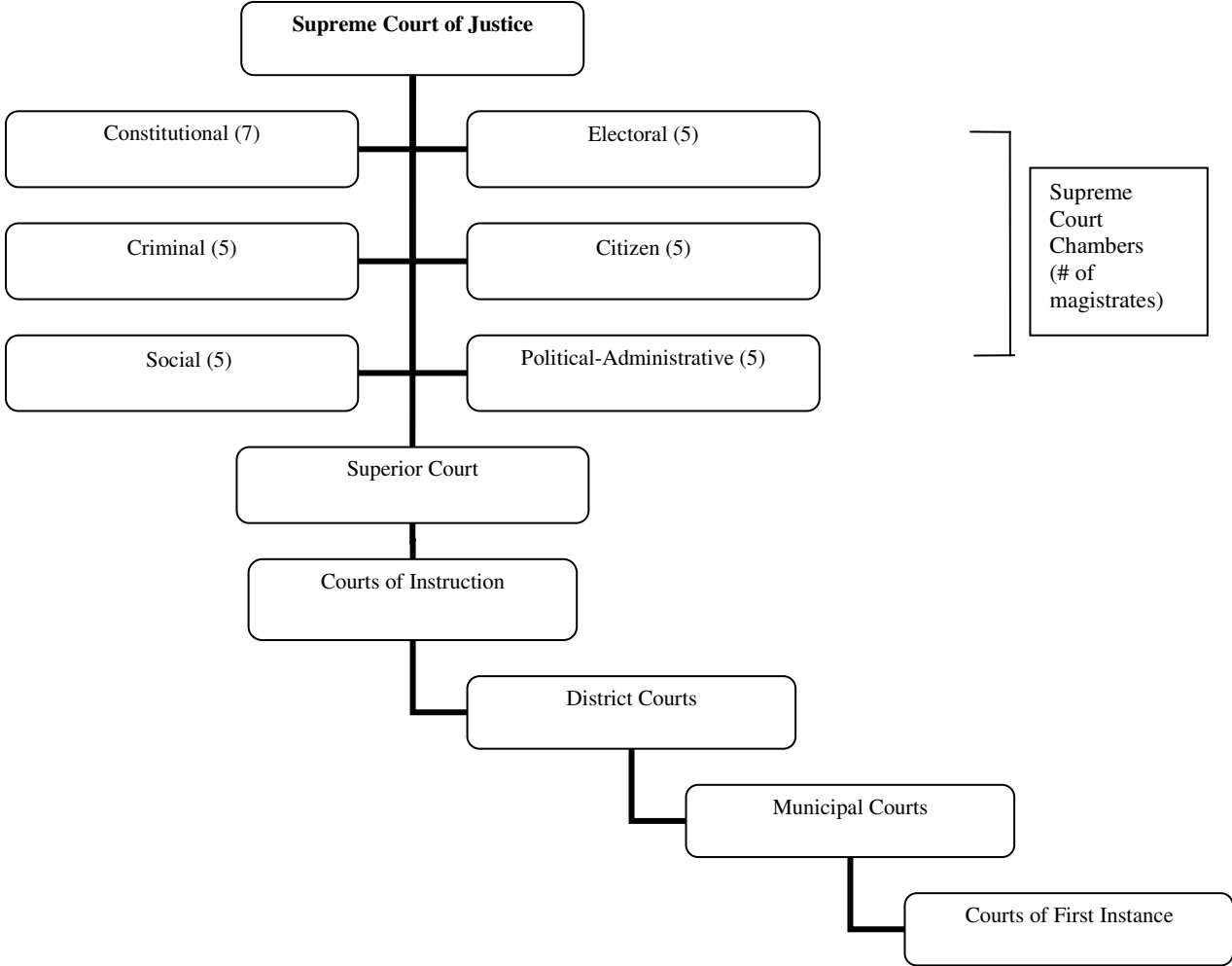
<sup>155</sup> For more on Federalism in Venezuela see: (Penfold, 2004; and Alvarez, 2003, pp. 155-157).

changed the Consejo Supremo de Justicia (CSJ) by adding the constitutional chamber, which was tasked with discerning the validity of constitutional cases. In addition to structural changes the new Constitution changed the appointment procedure to fill the court. Under the 1961 Constitution, the Supreme Court had 15 judges. These judges were appointed for 9-year renewable terms. The 1999 Constitution expanded the number of judges to 20 and changed their terms to 12 non-renewable years, with one-third of the judges being renewed every 3 years.<sup>156</sup> The important ramifications that these had on the judicial system are the topic of the next section.

---

<sup>156</sup> Since the judges were appointed at the same time, the renewal of judges is anticipated to pose a problem when the judges' initial period is up in 2012 (Interview 548). It is also worth noting that the 20 member Supreme Court was expanded to 32 members in 2004 by adding two additional judges to each chamber. This will be elaborated upon in Chapter five.

**Figure 8: Venezuelan Judicial System**



## 5.6 Stronger Executive, Weaker Judiciary

The purpose of the constitutional reforms that the Bolivarian Constitution delivered were to increase participation and representation, yet in striving for these changes the document also increased the power of the executive. For one, it changed the Congress from a bicameral body with a house of representatives and a senate to a unicameral body, the National Assembly.<sup>157</sup> This eliminated the possibility of another check on new legislation and, because the senate had assured regional representation, reduced regional power and undermined the decentralization program that had been in progress.

The 1999 Constitution also extended the presidential term from four to six years, and removed the previous ban on immediate reelection of standing presidents. Instead of a one-term limit, Venezuelan presidents could stay in power for two terms, or 12 years. Since Chávez had not been elected under the 1999 constitution he argued that he was eligible for, and went on to be elected for two consecutive terms.<sup>158</sup>

Moreover, the changes brought important ramifications for both the individual autonomy and political insularity of the judiciary. As argued in Chapter Two, these are important categories of judicial independence. Many of these changes, as will be analyzed below, increased the potential independence of the judiciary. The increase in control possessed by the executive,

---

<sup>157</sup> Peru, Ecuador and Cuba are three other Latin American countries that also have unicameral chambers. One political analyst, and state employee claimed that prior to the 2007 reforms being released, some government advocates had suggested reintroducing the senate. He suggested that these positions were needed to provide more political favors to Chávez supporters (Interview, 523).

<sup>158</sup> In 2007 a referendum on constitutional reform sought to amend the provision on presidential reelection to allow only the President to be reelected indefinitely. When this package of constitutional reforms was overturned in elections. Chávez sought to hold another referendum on the 15 February 2009. This referendum sought and won indefinite reelection for nearly all elected positions.

however, counterbalanced these reforms by putting the executive in a position that it could override these changes, undermining their purpose.

### **5.6.1 Political Insularity:**

Judicial review, as noted in Chapter Three, is one means of ensuring political insularity and that the judiciary has the capacity to act as a check on the powers of other governing bodies. The gap between the letter and practice of the law, however, undermine its impact in Venezuela. Under the 1961 Constitution the power of judicial review was reserved for the Supreme Court in the integrated chamber—the Sala Plena.<sup>159</sup> The methods for judicial review were changed in the 1999 Constitution, increasing the ways in which the court could evaluate the constitutionality of laws.

The 1999 Constitution permits judicial review, to be initiated in the following ways: first, the chamber can be asked to rule on the unconstitutionality of statutes already in force. This can be done through popular action, by obligation or preventatively, before a statute is published (Brewer-Carías, 2006, p. 11).<sup>160</sup> Second, Article 336 gives the constitutional chamber the ability to review omissions of the legislative body (Brewer-Carías, 2006, p. 4).<sup>161</sup> Third, the constitutional chamber can rule in relation to *amparo* cases; these are cases related to the guarantee that all citizens have the right to protection by the Constitution. Although fewer judges had the final say on constitutionality, the ways to initiate the review process were increased.

---

<sup>159</sup> Plenary session, or Sala Plena, is the meeting of all magistrates of the Supreme Court and as such is taken as the greatest authority of the court.

<sup>160</sup> It has the power to do so in the following three incidences: 1) international treaties 2) organic laws, and 3) regarding non promulgated statutes, at the request of the President of the Republic (Brewer-Carias, 2006, p.15).

<sup>161</sup> This was taken from the Portuguese model; however, it extends judicial power to the constitutional chamber beyond what was permitted under the Portuguese system that was its antecedent.

Strictly speaking, judicial review is an important component of independence because it allows the judicial branch to act as a check on the power of other branches.

Venezuela uniquely combines Cappelletti's categories of judicial review, possessing characteristics of both diffuse and concentrated review models. Specifically, since all courts have the capacity to determine the constitutionality of legislation, it can be considered diffuse. Yet, since only the constitutional chamber of the Supreme Court is empowered to declare the "nullity of statutes contrary to the Constitution," it also has concentrated review (Brewer-Carías, 2006, p. 4). The constitutional chamber of the Supreme Court was given the exclusive right to declare the nullity of certain state acts when considered unconstitutional in (Articles 266, 334, 336) (Brewer-Carías, 2006, p. 11). Since plenary session is the meeting of all magistrates, and the constitutional chamber has only 7 magistrates, review power was possessed by fewer judges than it had been under the 1961 Constitution

The increase in the number of ways that the Constitution could be challenged was, however, undermined by political control of the judiciary (Brewer-Carías, 2006, p. 25). Brewer-Carías argues that instead of contributing to the advancement of democracy, greater judicial review has helped to destroy it.<sup>162</sup> Through judicial review non-independent, non-autonomous supreme courts can use their power to consolidate authoritarianism and to violate human rights.<sup>163</sup> To support this argument Brewer-Carías refers to the constitutional chamber's decision to annul the ruling issued by the electoral chamber in March 2004 regarding the recall

---

<sup>162</sup> Brewer-Carías is a respected and prolific constitutional lawyer. He has written extensively on constitutions (see: <http://www.brewercarias.com>). It is a widely held belief that he wrote the Carmona Decree that was used by Pedro Carmona Estanga when he took power in place of Hugo Chávez following the April 11, 2002 coup attempt. A warrant for his arrest was issued for his participation in this event.

<sup>163</sup> For more detail on this see Allan R. Brewer-Carías, «*Quis Custodiet ipsos Custodes: De la interpretación constitucional a la inconstitucionalidad de la interpretación*», in *VIII Congreso Nacional de derecho Constitucional, Perú*, Fondo Editorial 2005, Colegio de Abogados de Arequipa, Arequipa, September 2005, pp. 463-489 referenced in Brewer-Carias 2006.

referendum (CNE, 2004). The electoral chamber had ruled that a CNE's decision to accept signatures in support of a presidential recall was invalid, and ordered the CNE to set a date for the recall referendum. In response, the constitutional chamber challenged this position and claimed jurisdiction, overruling the electoral chamber and canceling the set date for the referendum. Brewer-Carías argues that throughout 2002 – 2004, during the consultative and repeal referendums, the constitutional chamber ruled several times in favour of the executive, distorting peoples' right to political participation (Brewer-Carías, 2006, pp. 30-31).<sup>164</sup>

Judicial review is often touted as a powerful tool of the judiciary to balance the powers of other branches. For example, Stephenson (2003) used it as a proxy for independence. Yet, in the case of Venezuela it was not necessarily used to balance government decisions, but instead to reinforce the executive's position. In this way, judicial review has not reinforced independence of government branches. The formal capacity that it had was overshadowed by the political influence that the executive possessed.

---

<sup>164</sup>The battle of the chambers will be explored in the following chapter. For a more detailed analysis of this challenge and its background, see Brewer-Carías et al. 2004. "La Guerra de las Salas del TSJ frente al Referendum Revocatorio." Editorial Aequitas, C.A. Caracas. See also: Decisions N° 24 of 15 March, 2004 (Exp. AA70-E 2004-000021; Exp. x-04-00006); and N°27 of 29 March, (Caso: *Julio Borges, César Pérez Vivas, Henry Ramos Allup, Jorge Sucre Castillo, Ramón José Medina Y Gerardo Blyde vs. Consejo Nacional Electoral*) (Exp.AA70-E-2004-000021- AA70-V-2004-000006). Brewer-Carías (2006, pp. 22-26). See decisions: N° 1139 of June 5, 2002 (Caso: *Sergio Omar Calderón Duque y William Dávila Barrios*); No 1139 of May 5, 2002 (Caso: *Sergio Omar Calderón Duque y William Dávila Barrios*); N° 137 of February 13, 2003 (Caso: *Freddy Lepage y otros*); N° 2750 of October 21, 2003 (Caso: *Carlos E. Herrera Mendoza*); N° 2432 of August 29, 2003 (Caso: *Luis Franceschi y otros*); and N° 2404 of August 28, 2003 (Caso: *Exssel Alí Betancourt Orozco, Interpretación del artículo 72 de la Constitución*), in Allan R. Brewer-Carías, *La Sala Constitucional versus el Estado Democrático de Derecho. El secuestro del poder electoral y de la Sala Electoral del Tribunal Supremo y la confiscación del derecho a la participación política*, Los Libros de El Nacional, Colección Ares, Caracas 2004, 172 pp; "El secuestro del Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004". in *Boletín Mexicano de Derecho Comparado*, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, N° 112. México, enero-abril 2005 pp. 11-73.

### **5.6.2 Secure Financing:**

Another maneuver to increase judicial independence was securing guaranteed financing for the judicial system. The 1999 Constitution increased and improved the security of funding. To ensure an autonomous operating budget, the Constitution guarantees the judicial system no less than 2% of the annual budget as outlined in Article 254. This gives the judiciary greater predictability and guarantees that it will have an operating budget regardless of political leaning.

Despite a marked increase in funding, however, several judges report that they do not have the budgets to buy basic office supplies necessary to run their offices. These judges report that to compensate for having to buy their own supplies such as paper for printers, they have passed the charges onto those being tried (Interview, 519). This practice perpetuates corruption by forcing judges to work outside the system to do their jobs. Financial shortcomings do not come from the formal provisions, which on paper at least have improved.

Serious problems related to financial inefficiency and the inappropriate spending of funds have been launched against the Dirección de la Magistratura (DEM), the body that oversaw the functioning of the judicial system (PROVEA, 2005, p. 270). In large part, inefficiencies can be attributed to a high turnover in management and a lack of continuance of general operating procedures when new management took over. Consequently, despite a constitutional provision to ensure funding, and an overall increase in funding, the system operated with a high level of inefficiency, which undermined its capacity.

### **5.6.3 Individual Autonomy under the Bolivarian Constitution of 1999:**

The 1999 Constitution also altered the process of appointing and removing judges. Article 214 of the 1961 Constitution, states that Supreme Court judges are elected for nine years by both chambers of government in a joint session, and one-third of judges were renewed every three



years.<sup>165</sup> In practice, Supreme Court judges were appointed with a simple majority by each new legislature, usually for five-year terms that mirrored those of the President and the Congress (Alvarez, 2003). “From 1958 until 1998, membership of or loyalty to AD or COPEI was a sine qua non for appointment to the judiciary, senior levels of the armed forces, posts within the electoral administration and promotion in key sectors such as higher education” (Buxton, 2005, p.336). Moreover, the Court’s composition was negotiated between the top leaders of Action Democracy and COPEI. As a result, the Court tended to be divided along party lines, and judges had little real autonomy (Interview, 448).

In an attempt to overcome the politicized appointment process Article 264 of the 1999 Constitution determines that Supreme Court judges are nominated for a non-renewable 12 year term. This Article also opened the nomination process up to the public. Article 255 of the 1999 Bolivarian Constitution specified that judges would be appointed based on public competition. The Article also states that the regulations for appointment and removal must follow legal procedures. Such laws are outlined in the Organic Law of the Supreme Court.<sup>166</sup> Constitutional regulations for the judiciary were altered significantly in 2004 when the Organic Law of the Supreme Tribunal of Justice was introduced. These changes and their impact will be analyzed in detail in the following chapter.

In addition the executive was given greater capacity to make the rules directly. The 1999 Constitution expands the National Assembly authority to pass enabling laws that can grant the president even greater power to decree laws than was permitted in the 1961 Constitution. The

---

<sup>165</sup> The article reads: Artículo 214. Los Magistrados de la Corte Suprema de Justicia serán elegidos por las Cámaras en sesión conjunta por períodos de nueve años, pero se renovarán por terceras partes cada tres años. En la misma forma serán nombrados los Suplentes para llenar las faltas absolutas de los Magistrados; sus faltas temporales o accidentales serán provistas en la forma que determine la ley.

<sup>166</sup> The Organic Law of the Supreme Court was replaced with the *Ley Organico de Tribunal Supremo de Justicia* in 2004. Among other things, this new expanded the number of Supreme Court judges.

formal changes increased the executive's power over other branches of government; this is significant for political analysts because it occurred in a Presidential system with strong centralized power.

## **5.7 The 2000 Elections**

Despite critics' objections' that Chávez had violated the separation of powers and an increasing fear among some skeptics that he was ruling as an authoritarian leader, the Venezuelan electorate renewed his leadership. Chávez's reelection was a clear sign that the Venezuelan population wanted a break from the previous political system. Following the rules of the new Constitution "mega-elections" were called to choose leaders at all levels of government (President, Members of the National Assembly, Governors, and Mayors). This election, initially set to be held on 28 May 2000 was suspended only days prior to it, when the Supreme Court ruled that the CNE was not positioned to ensure its reliability and transparency. The appeal to the Supreme Court to postpone these elections was brought forward by two civil society organizations. A combination of technical incapacity and accusations that several of the CNE members were too politicized (McCoy and Neuman, 2001, p.82). In response to their lack of preparation, the members of the executive board resigned. The members of the executive council had been appointed by the constitutional assembly, but were replaced not based on constitutional provision but rather through a process of negotiations among political parties and civil society (Hartlyn, McCoy and Mustillo, 2003, p. 21). The CNE that was appointed was more professional than the previous body,<sup>167</sup> but this process violated the Constitution and the new board members were perceived by some segments of society to be overwhelmingly in favor of Chávez (Coppedge, 2002, pp. 21-

---

<sup>167</sup> See Hartlyn, McCoy and Mustill, 2003 and Neuman and McCoy, 2001.

22). The designation of CNE members by means other than those outlined in the constitution have in the past increased the “perception among part of the electorate of some partisanship” (Carter Center, 2006, p.10). The fact that such positions cannot be filled in compliance with the law suggests that legal framework is insufficient to deal with governability issues. Additionally, with the exception of the local elections, elections for other positions were not constitutionally necessary (Molina and Pérez, 2004 p.107). Instead, some have suggested that they were driven by the popularity of Chávez—and his attempt to build power (Molina and Pérez, 2004, p. 107-108).

One former supporter of Chávez stated that, given the profundity of the changes and the politicization of the political system, it was not enough for the CNE to be honest, but it also had to go to great lengths to appear honest (Interview, 445). When the CNE board was appointed against the provisions laid out in the newly written constitution, critics questioned the government’s commitment to democracy. Despite the fact that the newly appointed CNE was considered to be more autonomous than the one appointed by the constituent assembly, the negotiation process that resulted in the replacement of the CNE board members did not comply with the legal parameters set out as guidelines for government. This suggests, that although the rules had been rewritten in order to establish a system with greater independence, the rules that it had established were not followed. Such practices, suggest that the legal regulations are insufficient to ensure governability and do little to establish institutional stability.

The behaviour of the government invited criticism not only from the opposition, but also from members of its own coalition. Only two weeks prior to the 2000 election, PPT demonstrated its discontent by leaving the coalition. To justify its dissent, the PPT directly cited

the government's militarization, and the government's unwillingness to open dialogue to other members of the coalition (Molina & Pérez, 2004, p. 111; Rohter, 2000).

In July 2000, Chávez was re-elected under the new constitution. Not only did reelection demonstrate renewed support for his government, sympathizers referred to an increase in the absolute number of votes received (3,673,685 in 1998 to 3,757,773 in 2000) (Molina & Pérez, 2004, p. 117); the percentage of votes received, however, in comparison to registered voters actually decreased (33.5 % in 1998 to 32.2 % in 2000) (Molina & Pérez, 2004, pp. 118-119). Once again parties friendly to the president fared well, capturing 60 percent of National Assembly seats (Weyland, 2001, p. 74), or to be more precise, 108 of the 165 seats in the National Assembly. The government had circumvented a minority congress through a judicial ruling, rewrote the rules, and was reelected with a renewed mandate and a majority, falling just short of the 110 needed for a qualified two-thirds majority that would be necessary to implement further changes to the constitution.

## **5.8 Conclusion**

Chávez leveraged the politicized judiciary to pass a constitutional assembly and overcome constraints of a minority congress. A minority government metamorphosed into a majority by means of three elections and two referenda. The growth in electoral support over this period was won in part through disrespect for the separation of powers, suggesting that Chávez, while democratically elected, had clear non-democratic tendencies. This introduces a paradox for the study of democracy because it raises the question of how we can determine if a leader supported by the popular mandate, who ostensibly manipulates the rules, can be classified as a democrat. Moreover, how can a popular mandate be affirmed when the validity of institutions is challenged?

Chávez was elected in 1998 with a mandate to overcome corruption and increase representation of the population to reclaim a political system that had been captured and dominated by a small elite group. Even prior to being elected, Chávez proved determined to revise the Constitution. Once elected, he showed his dedication by decreeing a constituent assembly on his inauguration day. Having failed to gain sufficient congressional support for constitutional change, Chávez circumvented the congress, and relied on a judicial decision which would allow the constitution to be rewritten by a constitutional assembly provided that it was supported by the population through a referendum. Although there were many ways through which the constitution could have been revised, without this judicial decision, it would have been difficult to do so using a constitutional assembly. Chávez stated his preference for a constituent assembly because it was the best means of ensuring participation in the political system.

A more in-depth analysis, however, shows that once the referendum passed, Chávez influenced candidate selection and the electoral system ensured that his supporters easily dominated the constitutional assembly. This chapter overviewed how a Supreme Court decision on the referendum invoked accusations that the judiciary was politicized. It ruled that the constitutional assembly was supraconstitutional, which gave the assembly grounds to suspend the Supreme Court, dismiss hundreds of judges, and write new rules to hire and fire judges.

As a result of the reorganization and dissolution of the judiciary and the subsequent dissolution of congress, Chávez was seen as bolstering his own power. The Constitution of 1999 increased the formal power of the executive because it eliminated the second chamber, reducing the number of representatives per capita. It also increased the power of the executive by extending presidential terms and eliminating the ban on immediate reelection. Despite what some perceived to be an unfair process of creation, not only was the 1999 Constitution approved

by referendum, but Chávez was also reelected under it in July of 2000. Chávez supporters argued that such extreme reform measures were necessary because only a full break from the former repressive institutions could liberate the Venezuelan political system (Interview, 428).<sup>168</sup>

---

<sup>168</sup> For a discussion of why Chávez supporters wanted such drastic change see the support for Chávez section of Chapter Five of this dissertation.

## CHAPTER SIX

### 6.1 From Polyarchy to Boliarchy

This chapter argues that in presidential systems with weak rule of law, when sectors of society are excluded from formal channels of government influence, they will seek extraconstitutional means to influence the system. Unlike their parliamentary counterparts, presidential systems have few institutional mechanisms to hold leaders accountable so discontented citizens seek other means of punishing leaders. In the case of Venezuela, when opposition groups removed the president in April 2002 and replaced him with Carmona, the Supreme Court ruled that those who assisted Carmona were filling a vacuum of power. For some, this was the sign of an independent judiciary because it was capable of ruling against the sitting president. Closer analysis, in this chapter, shows how the impeachment was in fact the act of a politicized judiciary, albeit one that had turned its loyalties against the President. In response, Chávez expanded the Supreme Court—a clear example of one state agency attacking another, and therefore an indicator of institutional instability.

As a show of democratic support, Chávez confirmed his popularity by winning a recall referendum. His ability to stave off the recall referendum for one year from its initial proposal in 2003—until it was held in August 2004, is a sign of unpredictable application of rules. This chapter argues that during this year the executive successfully encroached on the judiciary and on the CNE to indirectly ensure a successful electoral outcome.

Chávez's success in elections—elections that had been judged internationally as free, fair, and democratic—was enabled by a weak rule of law. This dissertation does not challenge the international community's assessment of the voting process as being free and fair, but shows

how the decisions of a non-independent judiciary contributed to the win. Specifically, a series of court rulings and conflicts between chambers of the Supreme Court benefited the government. By focusing on one Supreme Court case in depth this chapter allows for a better understanding of how the executive's actions can be classified as an attack on the judiciary, and in turn on the effect that this had on institutional stability. The irregular activity that is overviewed in this chapter contributed to a lack of confidence among the opposition and critics, and prompted questions about the impartiality of government institutions. How the population's lack of confidence in governing institutions affected democracy is the topic of the following chapter.

The lack of institutional impartiality largely inhibited the ability of institutions to rule against the government or act as a check on the power of the executive. In fact, the executive used its power to manipulate institutions in the name of democratic reform.<sup>169</sup> Instead of increasing the government's democratic legitimacy, however, the executive used the court to maintain power and install a judiciary that was partial toward the government. Essentially, executive-judicial relations operated in much the same as they had under the Punto Fijo pact; the executive maintained its ability to influence the court to its own advantage. Unlike during the Punto Fijo years, there was no competing party to deter or counterbalance the government.

As guardian of the Constitution, the Supreme Court played an important role during the period of judicial reform, even though, or because of the fact that every time it ruled against the government the executive accused the court of corruption or incompetence, and eventually reconfigured it. Over time, this pattern of ruling–resistance–reconfiguration undermined much of the potential for a separation of powers, and in turn increased the existing institutional instability.

---

<sup>169</sup> O'Donnell (1998) stated that it is not clear how well elections, held periodically, secure vertical accountability. He also adds that other important elements: "freedoms of speech, the press, and association, which permit citizens to voice social demands to public officials (elected or not) and to denounce these same officials for wrongful acts that they may commit" (O'Donnell, 1998, pp. 111-112).



This chapter shows that the attack on the judiciary was two-pronged. First, the judiciary was reconfigured so that the Supreme Court was the supreme authority over the functioning of the judicial system.<sup>170</sup> These changes were justified based on a need to overcome corruption. Once the first round of reform was completed, the government, with a strong electoral mandate for change, began to implement broad socio-economic and political measures to reduce poverty and consolidate a more egalitarian political structure. For all their benefit, the sustainability of these benefits was threatened by attempts to remove the government from power.

The Chávez government encountered serious opposition but proved robust, surviving a coup in 2002,<sup>171</sup> a national strike in 2002–2003,<sup>172</sup> and a recall referendum in 2004. Although not addressed in this chapter it is worth noting that President Chávez was again reelected in 2006. This chapter shows how in the face of opposition, the executive successfully subordinated the judiciary and eliminated key constraints on its power. It also shows how attempts to eliminate corruption through reforms failed and argues that this worked to the executive's advantage: the subordination of the judiciary not only facilitated Chávez's victory in the recall referendum but also diminished the ability of citizens to challenge the government. The resulting political action, or specifically, how opposition mobilization against the government came from outside political institutions, is the topic of the following chapter.

---

<sup>170</sup> Prior to the reform, the Consejo de la Judicatura (later replaced by the DEM) held authority over the judicial system (Louza, 2007).

<sup>171</sup> On 11 April, 2002, the head of the Chamber of Commerce, with support from the military and the top labour organization, overthrew Chávez and the head of the Chamber of Commerce declared himself President of the Republic.

<sup>172</sup> Business and labour organizations joined forces in protest against Chávez and demanded his ouster, or immediate presidential elections (Ellner, 2002).

This chapter is broken into six sections. The first section demonstrates how the judicial system was reformed to put the Supreme Court at the center of judicial administration.<sup>173</sup> The second section argues that the Supreme Court's decision on whether the April 2002 interruption in constitutional power was a coup—or if Carmona was filling a vacuum of power. The third section demonstrates how the executive reacted to the court ruling by ridiculing, and then reconstructing, the court. The fourth section shows that the court enabled the executive to win the recall referendum through decisions that directly favored the executive. Although never independent of political influence, this demonstrated the President's ability to run roughshod over other institutions to an extent not previously realized. The fifth section shows that the executive was able to increase its public appeal in the year between when the referendum was originally scheduled to happen and when it occurred. This one year lag was the direct result of infighting between different chambers of the Supreme Court. The final section offers conclusions on the affect of the Court restructuring on the stability of democracy institutions.

## **6.2 Centralizing the Administration of Justice into the Supreme Court**

Chávez was clear upon his reelection that he planned to use the new Constitution as the framework to implement sweeping economic and political reforms. Having won 56 percent of the vote in the July 2000 elections, Chávez's party, the MVR, had 76 of the 165 seats, but ruled with two other parties—Movimiento al Socialismo (MAS) and Patria para Todo (PPT)—in a coalition known as the Polo Patriótico (PP), which gave it 108 of the 165 seats. The coalition was not a blind supporter of the executive and, even prior to the election the PPT had voiced

---

<sup>173</sup> One interviewee even claimed that all of the power within the judicial system is dependent on the Supreme Court (Interview, 485).

concern over the government's reform program (Ellner, 2001, p. 20). Despite coalition problems, the executive was able to coerce the Congress into granting it decree power. By August, Chávez had already started making reforms to the judiciary to implement changes that had been proposed in the Constitution.

Decree authority had been used several times throughout Venezuela's history and it is commonly employed in other countries that need to implement far reaching reforms quickly. On 15 August 2000, Chávez decreed the creation of the Dirección Ejecutiva de la Magistratura (DEM) to replace the Consejo de la Judicatura. The Consejo de la Judicatura, the administrative body of the judiciary, had been suspended by the non-elected Comisión de Emergencia Judicial (CEJ) (judicial emergency committee) as a part of the restructuring of the judicial system. The CEJ controlled the judiciary for the transition year from August 1999 to August 2000. The creation of the DEM to replace the transitional CEJ was intended to institutionalize the judicial reform and reinstitute the administrative functioning of the judicial system. The administration of justice was not a new problem in Venezuela and the international legal community welcomed structural changes. One lawyer from a prestigious international law firm asserted that the judicial system was more inefficient than Russia's or Kazakhstan's (Interview, 524).

Instead of seeing the reforms as a means overcoming inefficiency and improving the judicial system, legal experts expressed concern that the changes were made with political ends in mind. One political leader went to the extreme of stating that "the executive branch used the Supreme Court to really get the job done" in reference to establishing executive control over all political institutions (Interview, 449).

The new DEM substantively changed the administrative structure of the judicial system. Like its predecessor, the DEM was tasked with administering the judicial system, but unlike the

Consejo de la Judicatura, it was not autonomous. The DEM was created as a subordinate body to the Supreme Court insofar as the DEM's top officials were nominated and could be removed by the Sala Plena of the Supreme Court (Louza, 2007, p. 9). The skepticism of the political leader quoted above was mirrored in the comments of legal practitioners who noted that the power within the judicial system came from the Supreme Court (Interview, 485). Concerned with the concentration of power in the executive, these legal practitioners expressed apprehension over the logic of the DEM reforms both for political and practical reasons (Interview, 485).<sup>174</sup> Politically speaking, it meant that the Supreme Court was in charge of appointing and removing the individuals tasked with policing and disciplining the Supreme Court. The selection process used for DEM's top officials meant that politicization at the management level of the Supreme Court could easily filter down through the entire system. Practically speaking, the move put decisions regarding governance and the administration of the judiciary into the hands of magistrates who had legal, not administrative, training (Louza, 2007, p. 10). Control over the Supreme Court, therefore, became even more strategically important as a means of influencing the rest of the judicial hierarchy.<sup>175</sup>

As an attempt to increase independence in the judiciary, the DEM tackled the problem of non-tenured judges. Prior to these changes Venezuela had a large portion of non-tenured judges. Politicians, lawyers, judges, and members of civil society all expressed concern over the impact that the number of untenured judges had on the independence of the judiciary. "Without tenure,

---

<sup>174</sup> Louza (2007, p.10) and the international Bar Association critique this decision because it leaves Magistrates in charge of making technical decisions and they are not trained as administrators .

<sup>175</sup> Brink (2004) notes that much of the limited literature that looks at the rule of law focuses on Supreme Courts and builds on the assumption that politicization at this level is attuned to politicization at lower levels. With the notable exception of his work, there is insufficient literature in this area to conclude otherwise. The centralized control that the Venezuelan Supreme Court holds over the judicial system suggests that a strict adherence to rules at lower levels would be an exception to the rules. More in-depth research in this area is warranted especially when one considers the very diverse functioning of the police force in different regions and municipalities of the country.

judges lack stability and this increases the risk that they will make decisions based on political favours” said one legal analyst (Interview, 423). As an indication of political influence, one prosecutor reported that, “if your decisions do not favor the government, you are suspended; judges decide in the way the government suggests” (Interview, 452). This same attorney also noted, that, in lower courts, “luckily political cases end up being decided by only a small number of judges” noting that she had been spared losing her job because she had never been assigned a political case, even though cases are, by law, assigned randomly (Interview, 452).<sup>176</sup>

The DEM’s attempt to tenure judges was seen as a positive move, since one of the strongest criticisms of the Venezuelan judicial system had been its lack of judges with tenure. International organizations publicly promoted the need to increase the number of judges with tenure. For years, the majority of judges had been provisional (HRW, 2004; Inter-American Commission for Human Rights (IACHR), 2003; IACHR, 2004). Non-tenured judges were a threat to independence because they could be dismissed without investigation. As the IACHR observed, “having a high percentage of provisional judges has a serious detrimental impact on citizens’ right to proper justice and on the judges’ right to stability in their positions as a guarantee of judicial independence and autonomy”(IACHR, 2003, paragraphs 159–177). In other words, when judges can be easily dismissed, their ability to make independent, uninfluenced decisions, especially in highly politicized cases, is compromised. “Consolidating the rule of law,” according to the IACHR, “demands a judiciary that is, and is seen to be, independent and

---

<sup>176</sup> This belief was shared by many individuals and became the topic of several statistical studies. The most notable of these was a project headed by Monica Fernandez and Foro Penal, whose statistics were published in local opposition-dominated newspapers. Despite repeated attempts, I was unable to obtain the original statistical data or the formal methods used in reaching these conclusions.

impartial, and it is therefore essential to reverse the tenuous situation of most of the Venezuelan judges [...]” (IACHR, 2003).<sup>177</sup>

The problem of untenured judges was not new to Venezuela. In 1997, when reform of the judicial system began, only 40 percent of judges held permanent appointments, according to TSJ/DEM figures. This percentage increased further during the judicial emergency in 1999, when, in a short period of time, a number of the judges were fired and replaced by provisional judges (TSJ, 2004, p.22). In 2001, the United Nations Human Rights Committee had voiced concern about the ease with which provisional judges could be removed. The problem persisted and a 2003 report by the IACHR found that of 1,732 judges, only 20 percent held permanent appointments (HRW, 2004, p. 9).

In addition to creating programs to tenure judges, the DEM was tasked with disciplining judges, and implementing training to improve the quality of their work. The number of tenured judges improved after 2001, largely as a result of a series of programs run by the DEM to prepare provisional judges to compete for permanent positions and to train individuals outside the judiciary interested in applying to become judges. It is difficult to determine the effectiveness of this program. Verifying the exact number of tenured judges is difficult because there are competing statistics: the number given by the president of the Supreme Court, the number provided in the TSJ year-end report, and the number provided on the TSJ website are all different (PROVEA, 2005-2006, p. 268). There is no obvious reason why these different institutions would have different numbers.

Despite the benefit of an increased number of judges with tenure, irregularities in the appointment process sparked concern over the true intentions of the reform. The first step toward

---

<sup>177</sup> The report went on to point out that this violates the Covenant (Article 2 paragraph 3, and Article 14), that guarantees a right to independent judiciaries.

filling positions in the Judiciary was taken when the National Assembly decreed the Ley Especial para la Ratificación o Designación de los Funcionarios y Funcionarias del Poder Ciudadano y Magistrados y Magistradas del Tribunal Supremo de Justicia para su Primer Período Constitucional,<sup>178</sup> (Special law for the ratification and designation of the functionaries of the citizens branch and magistrates of the Supreme Court for the first Constitutional period) on 14 November 2000. This law established that employees appointed provisionally by the Constituent Assembly were eligible to apply for full-time positions. This decision, taken by the National Assembly, overrode the constitutional provisions for filling these positions. Articles 264-267 of the Constitution required the use of a selection committee to fill the positions. This new law overrode the constitutional requirement and empowered the National Assembly, through the establishment of a committee of 15 deputies, to appoint individuals to public positions (Louza, 2007, p. 44). Whereas the Constitution stipulated that the selection committee was to be composed of members from different sectors of society, including representatives from civil society, the new law allowed magistrates to be nominated by a committee appointed by the National Assembly. These irregularities prompted legal experts to note that the government was not willing to follow legal rules, even rules that were largely created or heavily influenced by the government (Interview, 477). The rules seemed like a smoke screen, intended to put forward the appearance of fairness, but not to be complied with.

As magistrates to the Supreme Court were being appointed in a way that deviated from the Constitution, permanent judges were being hired to fill positions in lower courts through an open competition organized by a committee of the DEM, the Comisión de Evaluación y Concursos (Evaluation and Competition Committee). This process was seen as a positive

---

<sup>178</sup> This law was published in Gaceta No 37.077,14 November, 2000. It also applied to the Defensoría del Pueblo (Public Defenders) to the Ministerio Público (Public Ministry) and to the Contraloría General (Ombudsman).

contribution to judicial independence. In fact, it was the first time in Venezuela's history that a competition was used to appoint judges despite the legal requirement to do so since 1980.<sup>179</sup> Notwithstanding these efforts, by 2003, only 20 percent of judges held permanent positions (Louza, 2007, p. 12). The shortfall was due, by some accounts, to a lack of qualified individuals (Interview, 547). According to others, it was because the Commission lacked the administrative capacity to fill these positions (Louza, 2007, p. 10).

The appointment process was not without its share of problems. The competition ground to a halt in March 2003 on fraud accusations (Interview, 547). The competition did not start again until 2005. There are competing explanations for the hiatus: on the one hand, it was argued that large groups came to dominate the appointment of judges, and on the other hand, some argued that there had not been enough control in the process and politically undesirable judges were managing to pass the tests and get appointed (Interview, 547). During the hiring hiatus, to compensate for a lack of permanent judges, a body composed of six judges was empowered to fill vacant positions with temporary judges (Interview, 557). The control of appointments was put into the hands of a small number of judges—according to the theoretical literature discussed in Chapter Three, a smaller number of individuals with the responsibility of appointment can decrease the chance that appointment are independent. To avoid nepotism and encourage meritocracy, appointments ought to be done through a non-politicized process (Wilson, et al., 2004). One means of curbing politicization is to increase the number of individuals involved in the appointment process. Instead of increasing judicial independence by appointing permanent

---

<sup>179</sup> La Ley vigente from 11Septmeber, 1998 (Gaeta Oficial Extraordinario No 5.262), but this was preceded by a law in 1980 (Louza, 2007, p.10). The competition started in November 2000, and a total of 3,180 individuals had competed for 486 positions; 270 were offered jobs, (Perdomo, 2007, p. 18 quoted in Louza, 2007, p. 10).



judges through merit-based competition—the hiring program became politicized and failed to accomplish its established goals.

Tangible progress was made when the competition was re-opened in 2005, but the process was fraught with irregularities and was only run sporadically between January and December 2005. This round of hiring generated a significant number of new judges, and the proportion of provisional judges had already fallen to 35 percent by October 2005 (PROVEA, 2005–2006). Individuals involved in the process say that selection and training programs were run not only sporadically but also with inconsistent results (Interview, 547). An individual close to the hiring process reported that during the competition, exam papers were not actually marked and that those who “passed” had in fact been pre-selected based, above all else, on political desirability (Interview, 547). Although several individuals close to the process made reference to it having been politicized—and had observed that perceptions of its politicization had negatively influenced the view of the court, none could verify with certainty if the exams had been marked (Interview 438; Interview 451). Although the competition reduced the numbers of judges without tenure, it did little to improve the non-partisan nature of the judiciary or to promote greater equality.

In sum, the judiciary was restructured and the Supreme Court’s position, as the highest judicial authority, was strengthened. Not only was it the final court of appeal, it also had authority over the body that oversaw it. Structurally, this threatened independence of the entire judicial system. Legal theorists and experts criticized the move, but others noted the increased credibility that having these hiring practices provided, even if they were not done fairly (Interview, 547). Upon a closer look, what could have been a move toward solidifying institutional autonomy is more accurately described as a move to increase pro government

representation on the bench. A closer examination of how the judiciary interacted with the other branches of government helps reveal how these changes to the judiciary interacted with the perils of presidentialism and contributed to instability.

### **6.3 The Derailment of Constitutional Order**

Relations within Congress were increasingly characterized by infighting between members of the coalition, each attempting to leave their footprint on the revolution (Sylvia & Danopoulos, 2003, p. 67).<sup>180</sup> Conflict came to a head in November 2001 when Chávez passed 49 enabling laws just days before the expiration of the decree powers that he had been granted in 2000. The most controversial of these laws included land reform to redistribute idle plots and hydrocarbon laws which increased royalties on private companies. Since congress had given him this power, the move was legal, but its democratic spirit was challenged because it did not include stakeholder consultation or debate in congress. Explaining the questionable democratic nature of decrees, in general, Arturo Valenzuela stated that: “by resorting to decree powers presidents may become stronger, but the presidential system becomes weaker and more brittle, encouraging confrontation rather than accommodation” (Valenzuela, 2004, p. 14). In a related example, John Carey (2005, p.105) notes that while he was the President of Russia, Boris Yeltsin use of decrees invited a strong legislative response in 1992 and 1993, which were overruled with the use of further decrees. Much like in Peru, this deadlock was overcome with the use of a military (Carey, 2005, p. 105). Decrees, although not intended to do so, are too often used in place of negotiating with other branches of government and therefore are used to concentrate executive power.

---

<sup>180</sup> Problems in the legislature led Chávez to threaten MAS leader Leopoldo Puchi, and he eventually announced that MAS was no longer an ally of the Bolivarian revolution.

The enabling laws gave Chávez full control of certain controversial areas, including property rights and hydrocarbons, but what mobilized the opposition was the control the laws granted to the government over education. Many groups, both in and outside of government, saw these laws as a power grab (Corrales & Penfold, 2007, p. 102). Consequently, the opposition mounted its first large-scale, organized attempt to oppose the Bolivarian Revolution: a nationwide strike. The strike took place on 10 December 2001 as a direct response to the 49 enabling laws and was led by business and labour organizations (Lopez-Maya, 2004, p. 110; Wilpert, 2003, p.210; Wilpert, 2007, p.23).<sup>181</sup>

Condemnation of Chávez's use of the decree laws also existed from within government, and a significant blow to the movement came from the dissent of Luis Miquilena, a long time mentor to Chávez and a key architect of the revolution. Miquilena broke ties with government because he saw it as being too radical: he remained loyal to the ideology but disagreed with the government's unwillingness to negotiate with the opposition (Venezuela Risk, 2002). Not only did Miquilena's resignation signify the loss of his personal support, he took with him many key supporters in Congress (Interview, 473). Employees of the judicial system, including Supreme Court judges reported that Miquilena had been in charge of a tribe and controlled his own faction within the judiciary (Interview, 451; Interview, 454). Therefore, a lack of congressional agreement limited the actions that the government could take in response to the rising unrest and the government's ability to govern was restricted.

By early April of 2002 tensions were again high and intermittent demonstrations broke out. On 7 April, during the television broadcast of *Aló Presidente*, Chávez dismissed 13

---

<sup>181</sup> Wilpert 2007, p.23 stated that "the strike met with moderate success, but the media and the private sector's lockout of their employees for a day gave the 'strike' a heightened visible effect. Wilpert also noted the important role the downturn in the economy played as an additional catalyst to the strike.

managers at PDVSA (Wilpert, 2003, p.211). Chávez subsequently appointed five new members to the PDVSA board of directors, known to be loyal to the president. In response to accusations that the PDVSA appointments were political, the President asserted that they had always been so (Wilpert, 2002, p.19). Instead of seeking a legal recourse, citizens showed their lack of confidence in the justice system when the Confederación de Trabajadores de Venezuela (CTV) (Federation of Trade Unions) and the Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela (Fedecámaras) (Venezuelan Federation of Chambers of Commerce) called for protests to channel dissatisfaction against the government on 9 April (Wilpert, 2002, p. 211-212; Interview, 450). What was initially intended to be a one day strike was extended and for reasons that remain unclear, the 11 April demonstrations that had started off peacefully turned violent when crowds moved toward the presidential palace.<sup>182</sup>

Accounts of the events from 11 to 13 April 2002 are not clear and often conflict.<sup>183</sup> Several versions of the story have emerged and the main conflict centers on whether Chávez agreed to resign prior to leaving the presidential palace. There are numerous accounts of this event including: that Chávez resigned and was brought back to power by Fidel Castro (Interview, 490); that Chávez agreed to resign verbally and never signed anything (Interview, 473); that Chávez was forced at gun point to resign; and that Chávez was kidnapped from the palace, always refusing to resign (Interview, 516). Although these events are recounted differently by

---

<sup>182</sup> There are several reports that Fedecámaras and CTV had planned to use the crowds as a catalyst for a coup. Others claim that the anger led to the coup and that it had been unplanned.

<sup>183</sup> A part of the reason the facts are unclear is that access to information was interrupted, obscuring the facts of this period. Instead of showing the action live, TV stations were required to show a Cardena from the President. Venezuelan law requires that Cardenas, “chains” (similar to the Canadian Emergency broadcasts) of the President’s speech be broadcast simultaneously on all radio and TV stations. Many opposition TV stations opted to show split screens, broadcasting images of shots being fired into the crowd in anti-government protests. Opposition stations did not cover the demonstrations in support of the president, nor his return to the presidential palace. In their defense, they claimed that it was too dangerous – but few government supporters’ believed this. The stations’ actions during this crisis period resulted in accusations that TV stations aided the coup. These accusations led to the non-renewal of Radio Caracas Televisions broadcast license in May 2007.

the individuals interviewed who were present, those describing the events each have an unwavering commitment to their version of events.

None of the individuals interviewed for this dissertation who were in the presidential palace at the time of the coup were willing to comment on the specifics of the event. In the few cases that they were willing to recount the events, they spoke of the high levels of corruption and manipulation of the facts (Interview, 431; Interview, 450). Therefore, it is difficult to discern with certainty what actually occurred, though it is clear the coup did mark an interruption in constitutional order. Whereas the opposition asserted that Chávez was to blame because infringements on the constitutional order had created a climate of ungovernability, government supporters viewed the opposition as having instigated the violence (Asemblea Nacional, 2002). Each side blamed the other for the violence and deaths that resulted. In any case, the event is a clear indication of a poorly respected legal system, both because a group of individuals had to resort to extra-judicial means of removing the president and because the resulting legal battle revealed deep polarization within the judiciary.

Further confusing the issue was biased media coverage that skewed perceptions of the surrounding events: thus Jon Beasley-Murray asserted that “Venezuela’s coup (and coup it is, make no mistake) took place in the media, fomented by the media, and with the media themselves the apparent object of both sides’ contention” (Beasley-Murray, 2003, p. 41). Whatever the scenario, it is indisputable that on 11 April 2002, the head of Fedecámaras, Pedro Carmona, with support from segments of the military, briefly proclaimed himself Venezuela’s leader. Upon taking power, Carmona decreed the dissolution of all powers of the previous government and installed a provisional government, promising elections within a year. In addition to demonstrating a complete disrespect for the constitution, much of the population

believed this was too dramatic and did not support it (Interview, 450). Instead of respecting constitutional principles opposition actors showed their lack of confidence in constitutional procedures by working outside the constitution when the question of the President's continuation in power was respected. Loss of support by some sectors of the population, combined with the coup planners' disorganization, thwarted the coup attempt and Chávez, with the help of his supporters in the military, was back in office within 48 hours of leaving it, and the Constitution was restored.

Partisan accounts of the coup attempt vary considerably and each side draws on competing evidence to support its perspective. The divergent accounts of the events prompted Barry Cannon (2004, p.286) to question "how is it that two such polarised versions of demonstrable events can emerge in one country?"<sup>184</sup> If Chávez resigned or not is important inasmuch as it distinguishes whether Carmona overthrew the president or if he, as he claimed, filled a vacuum of power. Rey (2002) notes that it is problematic to accept that Chávez had resigned voluntarily because there was so much surrounding pressure from the military (Rey, 2002, p. 6). The question of a resignation remains important because it determines the culpability for violence surrounding these events.

Reaching definitive conclusions surrounding these events is complicated because much of the forensic evidence surrounding deaths and injuries has reportedly gone missing or been destroyed, and eyewitness accounts conflict (Interview, 460). If these allegations are true, they demonstrate that the judiciary is ineffective. Further evidence of disrespect for the judicial system is found in the fact that actors from all sides of the political spectrum did not follow the constitutional prescription for replacing the president. For its part, the 1999 Constitution states

---

<sup>184</sup> Cannon (2004) argues that the divergent accounts stem from two completely different and class-based perceptions of Venezuela.

that, in such an event, the vice-president was the one to be sworn in (Articles 233 and 234). Those who took power in place of Chávez, however, did not see the 1999 Constitution as legitimate and so refused to follow it. Some legal experts have suggested that they should have defaulted to the 1961 Constitution, under which the two chambers of Congress were responsible for appointing a new president (Articles 187 and 188) — but since the 1999 Constitution eliminated the second chamber of government, strict adherence to the 1961 Constitution was not a viable option (Interview, 463).

The implications for democracy of these investigations are also important; the event raised questions both among supporters and opponents about whether either side was committed to the democratic principle that it would be possible to “play another day” (McCoy, 2005, p. 121). With this idea McCoy notes that it was becoming increasingly difficult for both sides to believe that the other would be playing by democratic rules into the future, thus reducing the incentive for both sides to play by the rules. The events leading up to the 2002 coup attempt polarized the Venezuelan political system. In the words of Linz and Stepan (1996), democracy is consolidated when it is “the only game in town.” The removal of the president through a coup demonstrated a lack of respect for the law, but the legal reaction to the interruption in Constitutional power was an indication that the judicial system itself commanded little authority: neither side demonstrated a committed to a constitutional solution.

## **6.4 Political Deadlock Provokes Court Expansion**

How the court ruled, and the executive’s response to this ruling are even stronger indications of the lack of institutional autonomy. The court case to determine if there had been a power vacuum or a political coup fell under the jurisdiction of the Sala Plena. In accordance with Article 266 of the Constitution of the Bolivarian Republic of Venezuela, all Supreme Court magistrates sit in

the Sala Plena and this chamber is used in cases against the highest public office.<sup>185</sup> On 14 August 2002, in Sala Plena the magistrates ruled 11–9 that the generals involved in transferring power from Chávez to Carmona had filled a vacuum of power. This ruling exonerated those involved in the coup attempt from criminal charges associated with overthrowing a president and, as a corollary, removed any legal recourse the government might have had against them.

At the time of the coup the court was not seen as independent. Although extensive reforms that came with the constitution meant that the court was no longer a direct reflection of the Punto Fijo era there was still the belief that the rulings were not based only on the legal code. Manuel Gómez argued that “traditional judicial cartels were in fact long gone” in their place, he did not see a more independent judiciary, but one that reflected political interests (Gómez, 2008, p.19).

During this period, the court leaned toward the President until Miquilena withdrew his support (Interview, 516; Interview 473; Interview 451). Luis Miquilena had been the most prominent leader of the left and one of Chávez’s closest advisors until he pulled his support for the president in opposition to the government’s unwillingness to work with the opposition and Chávez’s use of decree laws. One political analyst reports Miquilena as saying that he “would not support a dictator” (Interview 473). With this accusation Chávez lost the support of Miquilena’s followers not only in the National Assembly but also in the Supreme Court. Miquilena influenced the court by convincing judges to vote against the notion of a coup (Interview 470; Interview 473). Edgardo Lander, explained that Miquilena had “considerable influence over a significant ‘block’ of high court justices and a number of deputies in the legislature, which Chávez’s coalition used to dominate” (quoted in Roth, 2002, paragraph 9). Miquilena’s withdrawal of support left the government coalition with only “a razor-thin majority

---

<sup>185</sup> The jurisdiction of each of the Salas of the Supreme Court are outlined in Article 266 of the Constitution of the Bolivarian Republic of Venezuela.



in the National Assembly” (Roth, 2002, paragraph 9). Miquilena was openly critical of how the president handled the events following the 2002 coup attempt and saw the confrontational angle that the government took as a threat the future ability to govern the country democratically (Vales, 2002). A history of politicization contributed to the impression that the courts decision was made with political ends in mind (Interview 452; Interview 425; Interview 478; Interview 470).

Chávez shared the belief that the court was politicized and just days after the decision on his Sunday-morning television show, *Aló Presidente*, he directly accused the judges of using the Court as a political tool; he said the ruling was incorrect and called for the judges to be investigated. “I, as head of state and head of the executive branch,” he said, “insist that the National Assembly quickly and effectively revise the expedients for performance, merit and yield” (Aló Presidente, 2002, #116). And he called on the National Assembly to investigate the methods used by the judges, their credibility, and their previous performance. These accusations were not only an expression of the president’s belief that the judges were driven by political ends, but also a thinly veiled threat. In addition, Chávez called for an inquiry into the bank accounts of the other judges believed to have taken politically unfavorable positions (International Bar Association, 2003, p. 25). Chávez claimed that the court was not independent and that it was controlled by the opposition. The president’s blatant involvement in the actions of the court was a violation of the constitutionally prescribed separation of powers. Few people interviewed tried to refute this point. Instead, most interviewees claimed that the courts in Venezuela had never been fully independent and was previously dominated by the parties (Interview 470).

The events of 11 April 2002 were a key turning point in Chávez's presidency and in his relations with the court (Interview, 523; Interview, 451). Only two years earlier the court had been reinvented under the 1999 Constitution in order to eliminate corruption, inefficiency, and reduce the possibility of the court acting politically. If the ruling was political, clearly these changes were not effective.

To resolve the controversy surrounding accusations that the court had ruled politically, the attorney general demanded that the case be re-heard, this time before the constitutional chamber of the Supreme Court. Many legal experts assert that the President was using the court for political, not legal, ends. Adding even more ammunition to these accusations was the fact that the case was not heard until 11 March 2005; by then, the Supreme Court was radically made-over (Carrasquero Lopez, 2005). A number of changes were made to the court in the hope that greater independence could be established.

Following the controversial court ruling, and before the case was reheard, the Supreme Court was expanded from the 20-member court established in the 1999 Constitution to a 32-member court. The expansion of the court was seen as a political reaction to the unfavorable case and as a means of ensuring favorable outcomes in future cases (Interview, 447; Interview, 523; Interview, 451; Interview, 447) From the time of the initial decision in 2002, until the case was reheard in 2005, nearly all the magistrates who had ruled that Carmona had filed a vacuum of power in the original Sala Plena decision were removed. The re-hearing of the case under these circumstances left many to conclude that the court had become purely a political tool.<sup>186</sup> The court's substantive political impact between 2002 and 2004, and a pattern of ruling-

---

<sup>186</sup> The seven Magistrates who heard this case were: The president, Luisa Estella Morales Lamuño; Vicepresidente, Francisco Antonio Carrasquero López. Magistrates: Luís Velázquez Alvaray, Marcos Tulio Dugarte Padrón, Arcadio De Jesús Delgado Rosales, Carmen Zuleta de Merchán, Elba Paredes Yéspica

resistance-reconfiguration are a further indication that the court could be easily manipulated to be a political tool. The executive easily influenced the functions of the court, eventually eliminating its ability to rule against the executive and the confidence that citizens had in its ability to rule impartially.

## **6.5 Court Decision Revises Electoral Rules Retrospectively**

The executive's systematic reconfiguration of the court is especially prevalent when we consider cases that involve the president. When the rules are in constant flux citizens are less likely to play by them. Having failed at ousting the president legally, the opposition's next attempt to challenge the President's leadership came in the form of a recall referendum. Although a legal entitlement in the Constitution, the agreement to resolve governability problems by means of a recall referendum was only arrived at after an arduous negotiation process involving the international community. The purpose of a recall referendum was to combat the issue of removing unpopular presidents and overcoming term limits by giving the population a tool with which to challenge an unpopular president's leadership half-way through his or her term. The first step in the process, according to the Constitution, was the collection of signatures to express this desire from the population.

When the opposition submitted the first set of signatures, it became increasingly obvious that the Supreme Court would have a large role in the direction of political events and that there was an uncomfortable relationship between the branches of government. In its attempt to challenge the president's rule, the opposition wasted no time and submitted signatures to the CNE on the first legally permissible day, half-way through the president's term. The 3.2 million signatures were collected under the leadership and organization of Democratic Coordination, an umbrella opposition group (Kornblith 2005: 125). On 12 September 2003, the CNE rejected the

petition on the premise that the signatures had been collected before the half-way mark of the president's term. The logic behind this ruling was that the population would need until half-way through the term to determine if the president was meeting expectations; if signatures are collected too early in the president's term, the population would not have had sufficient time to evaluate the president's performance. The opposition believed that the laws were being invoked retrospectively because this legal specification was not previously explicit.

Feeding the belief that the CNE's decision was political was the fact that on 25 August 2003, five days after the signatures had been presented, the Supreme Court directly appointed all five members to the CNE's executive committee (Kornblith 2005: 125). This was an unusual mechanism to appoint the executive. The appointments were made this way because the National Assembly was unable to successfully select the committee. Allegedly, an informal arrangement had retrospectively been reached in which the government would pick two members of the five member team, the opposition would pick two and the Supreme Court would pick the last one, the intention being to appoint a neutral commission (Interview, 524).<sup>187</sup> These groups were unable to come to an agreement.

To overcome this stalemate, the Supreme Court appointed the executive committee. Since the impartiality of the court had already been questioned this move led some to believe that the CNE was biased. The options for overcoming this deadlock in the National Assembly were limited and so, the fact that the Supreme Court appointed the CNE executive is not itself an indication of poorly functioning institutions. Some skeptics of the government said that, because of the Court's restructuring and subsequent appointment procedures, its CNE picks favoured the

---

<sup>187</sup> The National Assembly was also tasked with appointing the ten alternate commissioners and a lack of agreement around this aspect of the process reportedly resulted in the opposition's rejection of the agreement and an eventual stalemate in the National Assembly.

government. Others said that the Supreme Court was simply performing its constitutionally assigned role when it made the appointments.

How the CNE ruled following its appointment demonstrates why some critics were so skeptical of the governments respect for institutional integrity. The fear that the CNE was biased was compounded by the CNE's subsequent rulings that tended to favour the government. The CNE's decision not to keep signatures because of legal ambiguity left some members of the population feeling like the law was being interpreted in a partisan manner. Behind the scenes political actors report that there had been "strategies to control the constitutional chamber" and that Chávez had been directly intervening and "working both sides" to ensure that once the CNE was appointed that it would rule in his favor (Interview 516). This contributed to a growing impression that political institutions were not independent. To compensate for the politically charged atmosphere, it was not enough for the CNE to be independent but it also has to appear to be so (Interview, 629). The opposition began to see the CNE and other state institutions as government tools, and they did not believe that legal institutions had the capacity to promote impartiality.

#### **6.5.1 The Clash of the Constitutional Chambers:**

Opponents accused Chávez of engineering judicial outcomes by controlling the constitutional chamber and using its rulings to override decisions he did not agree with. One example of such clashes occurred between the electoral and constitutional chambers of the Supreme Court. The constitutional chambers successful overturn of the electoral chambers ruling contributed to a one year delay between the initial announcement of the referendum and when it was held suggesting that the clash directly helped Chávez to win the recall referendum (Interview 523).

Despite the first setback in its attempt to hold a recall referendum, a group from the opposition began the signature collection process again, and on 19 December 2003, this group presented a list of 3.6 million names to the CNE. The process for verifying the signatures, which according to the law had to be completed in thirty days, only began on 12 January 2004 (Kornblith 2005: 127). After the CNE had released several different versions of its “definitive results” in the media, it finally declared that 1.9 million of the signatures were not valid (Kornblith 2005, 128). The main reason for the rejection of these signatures was what came to be known as “similar handwriting.” In several instances, one person had filled out the forms on signers’ behalf, and only the actual signature was in the signer’s handwriting.<sup>188</sup> The rules for signature validation, which did not stipulate that individuals had to fill in their form themselves, had been set in September 2003 (Kornblith, 2005). Therefore, when the CNE decided that each person had to fill out their personal information independently, the decision, again, appeared to have been applied retrospectively. International observers joined opposition groups in voicing disagreement with this decision.

The rejection of these signatures by the CNE was challenged in the Supreme Court. The case was brought forward by *Primero Justicia* on the grounds that there had been no rule explicitly stating that the personal information had to be filled out by individuals. They argued that the signature of an individual was sufficient to demonstrate intent. Finding in favour of *Primero Justicia*, on 15 March, the electoral chamber of the Supreme Court overturned the CNE

---

<sup>188</sup> One signer reported that the women working the desk was taking personal information and filling it in because she had good penmanship – and then signers were asked to show their intent with their signature (Interview 549).

decision against the *firmas planas* and ruled that the signatures were valid. In turn, the electoral chamber ordered the CNE to set a referendum date.<sup>189</sup>

Only two days later, on 17 March, the Constitutional Chamber said that the case was within its jurisdiction, not the Electoral Chamber's, and overturned the decision. The Constitutional Chamber, as the superior chamber, had the legal power to overrule decisions of other chambers. Decisions in the Constitutional chamber have the greatest importance because they are binding on the other chambers of the Supreme Court. It is worth noting that there has been a widely held belief that the constitutional chamber was staffed by government supporters and the electoral chamber was more sympathetic to the opposition (PROVEA 2003-2004: 381). Much of the population viewed this clash between chambers as an indication that politicization had reached even the top courts. Further fueling this belief, the Electoral Chamber magistrates who had decided in favour of the signatures were subsequently dismissed.<sup>190</sup> While judges who ruled against the governing administration were being punished, supporters were being rewarded. For example, Francisco Carrasquero, the president of the CNE from 2003 to 2005, was appointed by the National Assembly to the Constitutional Chamber of the Supreme Court.

As a means to overcome the clash of the chambers, constitutional experts suggested that the issue be decided by the Sala Plena. This argument was based on the logic that since this was a meeting of all magistrates of the Supreme Court, it could be viewed with greater legitimacy. In the end, the Sala Plena was not used. During these cases in 2003, the Sala Plena was thought to be evenly split between Government supporters and opponents. One former judge explicitly stated

---

<sup>189</sup> This decision prompted the citizens branch to begin an investigation into the judges of the electoral chamber (Kornblith 2005, p. 7).

<sup>190</sup> These magistrates were Alberto Martini Urdaneta, Rafael Hernández and Orlando Gravina.

that because there was a balance between government supporters and opponents the Sala Plena was not used throughout the process of the referendum (Interview 523).

As a sign of institutional weakness the conflict was resolved through negotiations with the international community. Negotiations facilitated by international observers ended the infighting within the Supreme Court and led to an agreement that permitted the reaffirmation of the signatures (Interview 523).<sup>191</sup> This process, which became known as the repair process, gave voters three days to verify or nullify questionable signatures. It resulted in the approval of 2.7 million names, exceeding the 2.4 million-name minimum, and signaled that a referendum on the president's leadership would be permitted (McCoy 2005: 115). The referendum date was then set for 15 August 2004.

## **6.6 Popular Mandate Used to Override Institutional Framework**

Chávez won the 2004 recall referendum with nearly 59 percent of votes and a turnout of almost 70 percent.<sup>192</sup> This win gave the president a renewed democratic mandate to advance the Bolivarian Revolution. International observers declared the voting to have been free and fair. The Carter Center stated that the most pressing problem with the referendum process was a lack of transparency within the CNE, which exacerbated other irregularities and contributed to doubt about the process (Carter, 2004, p. 234). The magnitude of irregularities meant that even with the international community's seal of approval segments of the population had little confidence in the political system (Interview, 470; Interview, 440). An inability to check the executive

---

<sup>191</sup> This agreement to clean up the signature registry was reached on 21 April.

<sup>192</sup> Reports in the literature on turnout and percent have varied somewhat. According to the Consejo Nacional Electoral (CNE) the turnout was 69.92 percent and the "No" side won with 59.09 percent. [http://www.cne.gov.ve/referendum\\_presidencial2004/](http://www.cne.gov.ve/referendum_presidencial2004/) (last accessed May 14, 2008).



throughout the process aggravated those who suspected fraud, but left them with no institutional path to air their grievances by systematically eroding the judiciary's claim to independence.

Fraud accusations were exacerbated by reports of irregularities on referendum day. The electronic voting system used was brand new. It was introduced in an attempt to avoid electoral fraud and to improve vote-counting efficiency. These Smartmatic voting machines had touch screens: voters selected their candidate by touching the screen, and a printout of the vote was placed in a box for auditing and verification purposes. It was the first time electronic voting had been used in Venezuela and, although paper ballots were produced, the machine calculated the votes and no full physical audit was ever performed (Interview 440, Interview 552). McCoy (2005, p. 177) reports that the CNE's decision to adopt untested new technology during a hotly contested election stirred suspicion.

As it happened, technical problems with the machines combined with high voter turnout produced long delays. Some of the polling stations that had been scheduled to close at 4 p.m. stayed open until midnight. These extended hours were not uniform and many of the stations that stayed open were in areas known to support the president. This led to criticism that the voting process itself was politicized.

Still more controversially, the machines had two-way communication capacity and the opposition accused the government of using the machines to send information from polling stations prematurely. Some opponents believed that this allowed the government to monitor its electoral progress and pressure voters to get to the polls in key areas. Others took a more extreme position, claiming that the machines had the capacity to change numbers and accused the government of both fixing the machines to a pre-determined outcome and of inverting the

numbers so that it appeared to win (Interview, 440).<sup>193</sup> Since the process leading up to the referendum was fraught with questionable institutional relations, these irregularities triggered great suspicion. Fueling accusations of voting irregularities, ballot boxes were not audited randomly. A fully transparent audit system could have helped to alleviate allegations of fraud, but this was not implemented.

In sum, irregularities were not addressed systematically and the opposition felt it had little recourse. When the decisions of the Supreme Court, the actions of the National Assembly, or the results of the referendum were challenged in court, complaints were deemed inadmissible (PROVEA, 2003-2004; Interviews, 549; Interview, 553; Interview, 551).<sup>194</sup> That is to say, the cases were not given their day in court. Technical and institutional problems combined to give the impression that the executive was trying to smother the will of the people, or at least a portion of them. With avenues to challenge the executive closed off, critics could not have their doubts put to rest.

Through an exploration of the process of holding a recall referendum, this chapter illustrates several shortcomings in the legal system. The repair process left room for discretionary interpretation by the CNE (Carter, 2005, p. 16). The combination of seemingly ad hoc rules, a lack of transparency in decision-making and an unclear communication channel within the CNE, contributed to questions about the CNE's capacity to verify the signatures, and, in turn, the results of the recall referendum. The international community encouraged a more

---

<sup>193</sup> The number inversion hypothesis was fueled by the publication of a book written by Jorge Rodreiguez, who served as CNE President from January 2005 until April 2006 ([http://www.cne.gov.ve/pe\\_cne.php](http://www.cne.gov.ve/pe_cne.php)). This book on the Recall Referendum, was published with the numbers inverted. While some people thought this was an indication that the reversed numbers were the true numbers, others thought it was an oversight or editorial error, while still others believed that it was a scandal with the editor (Interview 451).

<sup>194</sup> It is worth noting that one leading opposition lawyer who has been involved in several cases against the government reports that some of these cases were prematurely or inaccurately presented and recognizes that every single case against them was political. However, he does not doubt the politicization of the judiciary (Interview, 565).

democratic process, with both the Organization of American States and the Carter Center's international electoral observation missions, leaning heavily on the CNE to resolve the issues in a procedural, transparent manner (Kornblith, 2005, p. 126; McCoy 2005, p. 114; Carter, 2005).<sup>195</sup> The international observers certified that the process was free and fair, although the Carter Center noted that the process lacked transparency within the CNE, which heightened suspicion that the governing institutions were politicized, contributing to doubt about the process (Carter, 2004, p. 234).

The one year delay between the time the recall referendum was first presented and the time it was finally held benefited the government. By 2004 there had been an increase in popular support for the president and a shift in the composition of the Supreme Court. The executive used the one year lag-time from the proposal of the recall referendums to its realization to make changes to the judiciary and also to implement social development projects. The most significant reform to the judiciary involved the introduction of the Ley Organica del Tribunal Supremo de Justicia (LOTSJ) which was approved on 20 May 2004 (Asamblea Nacional, 2004). It was the most controversial change to the judicial system because it expanded the Supreme Court, definitively tipped the balance in favour of the president, and further jeopardized the perceived legitimacy of the court system.<sup>196</sup> Some members of the population already felt like there had been a complete rupture from the past political institutions (Interview 428). Manuel Gómez even argued that there had been a complete break from previous court in an attempt to increase

---

<sup>195</sup>During the period leading up to the recall the CNE was believed to have a 3-to-2 balance in favour of the government (Kornblith, 2005, p.128). In January 2005 some segments of the population believed that this balance shifted to 4 to 1 in favour of the government when Tibisay Urdaneta and Oscar León Uzcátequi were appointed. Sobella Mejías was thought to be the member rumored to be sympathetic to the opposition.

<sup>196</sup> In the words of Gómez "Venezuela adopted a law in 2004 permitting President Hugo Chávez's coalition to both pack and purge the country's Supreme Court. The law increased the number of justices from 20 to 32 and simplified the mechanisms for removing justices" (2007, p.111).

independence, but the result was even greater politicization (Gómez, 2008, p.19). Despite this belief among some that the court favored the government, the reform went ahead and the opposition responded with three main arguments against the law: the substance of the law; the necessity of the changes; and irregularities in how the law was approved and in how the new justices were appointed.

The substance of the law was challenged on the basis that it was a means of increasing the power that other branches of government had over the Supreme Court. First, it increased the number of judges from 20 to 32. This was said to tip the balance of a Supreme Court in favour of the government. Allegations that the new appointments were partisan were fueled by changes to the appointment procedures. These new rules made it easier for the legislative branch to appoint judges with a slim majority because if the National Assembly failed to approve the appointment of judges after three rounds. Specifically, The LOTSJ stated that if the National Assembly fails to achieve the required majority in the first three rounds of voting, it could make the appointment with a simple majority on the fourth vote (Article 8, LOTSJ). Therefore, instead of making it more difficult for the executive to stack the court, the 1999 Constitution made it easier. A governing coalition can use even a slim majority in the legislature to place judges on the bench. Under the LOTSJ the removal of judges was also made easier. The law provides only three circumstances under which a justice can be removed: first, when a justice provides false information at selection time; second, when a justice's attitude undermines the majesty of the supreme court or its members; and third, when a justice undermines the functioning of the judiciary (Article 23 (4) see also Article 11).<sup>197</sup> The last two criteria, in particular, are sufficiently

---

<sup>197</sup> Article 23 (4) states: The National Assembly, by a simple majority, will be able to annul the administrative act by which a Justice is appointed, principal or substitute, when this person has supplied false information at the time and for the purposes of his or her nomination, which prevented or distorted the fulfillment of the requirements

ambiguous and are subject to interpretation. This lack of clarity led to a fear that the rules of dismissal will be easy to abuse.

Additionally, section 23 (3) of the Organic Law of the Supreme Court allows judges to be suspended pending impeachment investigations (LOTSJ).<sup>198</sup> Once the citizen's branch, the branch of government responsible for upholding public integrity, deems that a justice has committed a serious offence, the accused offender will be suspended until there is an impeachment vote by the National Assembly.<sup>199</sup>

In theory the procedure does not pose a problem; however, in practice, the citizen's branch is believed to be politicized and in favour of the government. For one, it was headed by a former Vice President who had previously served as a member of the national assembly, a senator, and as a judge, even though constitutional regulations forbade it. This process contributes to the violation of separation of powers because the citizen's branch, according to the Constitution, is independent from the interests of other branches of government. Moreover, as can be characteristic in presidential systems, these changes reduced the incentives for members of the legislature to compromise.

---

established in this Law and in the Constitution of the Bolivarian Republic of Venezuela; or when the public attitude of these, which aims to harm [*atente contra*] the majesty or prestige of the Supreme Court, of any one of its Chambers, of the Justices of Judicial Branch [sic.]; or when it aims to harm [*atente contra*] the functioning of the Supreme Court, one of its Chambers, or the Judicial Branch.

<sup>198</sup> This article reads: "Supreme Court Justices will be subject to suspension or removal from their responsibilities, in cases of serious offenses, by the National Assembly, following the petition and determination of offenses by the Citizen Branch. In case of removal, the [decision] must be approved by a super majority of two thirds (2/3) of the members of the National Assembly, following a hearing for the Justice. At the moment that the Citizen Branch determines that an offense is serious and unanimously seeks removal, the Justice will be suspended from his or her post, until the definitive decision of the National Assembly. Likewise, [the Justice] will be suspended if the Supreme Court declares that there are grounds to prosecute him or her; in which case, this measure is different from the suspension sanction established by the Organic Law of the Citizen Branch."

<sup>199</sup> This is supposed to be done within ten days, but the deadline is regularly disregarded (LAWR, 2004).

## 6.7 Irregularities in the Supreme Court Expansion

Some opposition members saw the expansion as unnecessary and were unconvinced by the justification provided for the expansion. The official justification of the expansion was the need to reduce the backlog of cases and improve the Court's efficiency. Specifically, Celia Flores, speaking as an MVR deputy, claimed that the purpose of the LOTSJ was to ensure that the court could not be used by the tribes<sup>200</sup> or be controlled by one party the way it had been for years (Los Enanos, 2004). This overtly recognized that the expansion was made to counterbalance a politicized court. Following this logic, this move was necessary to eliminate corruption left over from the oligarchy.

Although a case could be made in favor of the change as a means of improving efficiency, the method used did not seem to reach the goals in the most effective manner. Specifically, the expansion added two judges to each of the chambers. This was done even though, as Figure 12 shows, there were large differences in the chambers' caseloads. The constitutional and political chambers had considerably larger caseloads than the others. For the most part, the distribution of cases across the chambers was predictable over time.<sup>201</sup>

To better target the high case load and to improve efficiency, the Court may have been better served by expanding only the chambers with the largest caseloads. For example, legal practitioners suggested that the constitutional and political administrative chambers could have received more than two new judges, and the chambers with lighter case loads could have received one or no new judges (Interview, 550; Interview, 553). These legal analysts suggest that

---

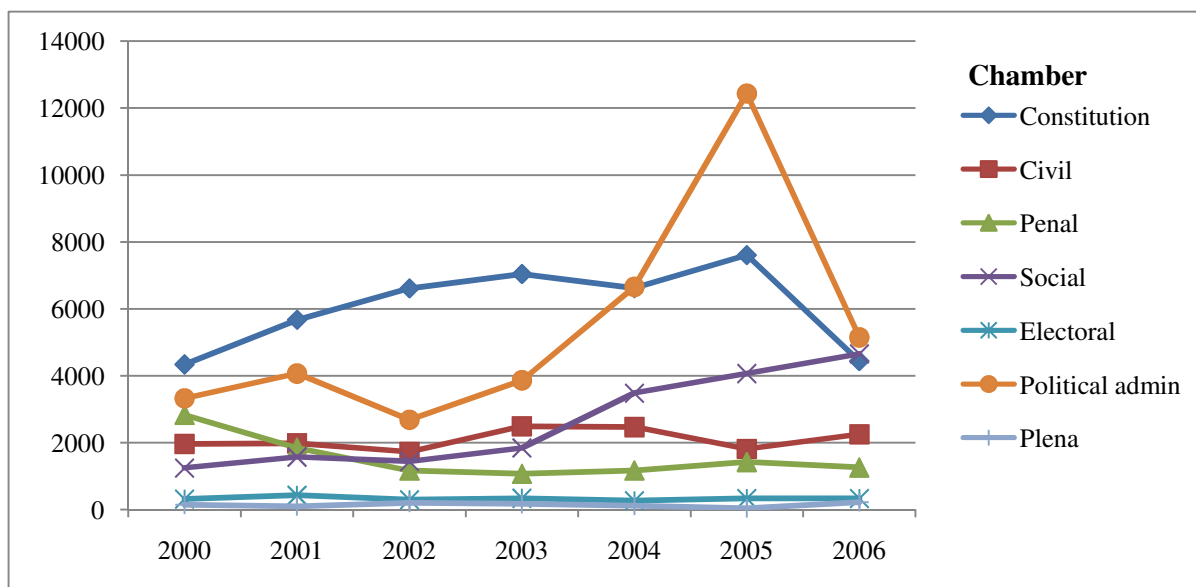
<sup>200</sup> The Venezuelan Judicial system has been historically dominated by *tribus* or groups that remain loyal to each other and help get each other with promotions and favorable rules. These groups are commonly referred to in newspapers, but few academic studies have been done exploring their role or composition. For a journalistic overview of some problems associated with the judges see Ojeda (1995).

<sup>201</sup> With the exception of the peak of political-administrative cases in 2005.

two new judges to each chamber was the government’s way of ensuring that it controlled all chambers (Interview, 550; Interview 553).

Moreover, the fact that the court has been reinvented in 1999 made the changes seem futile and a function of political interest. In 1999, the court was expanded from 15 to 20 judges. The 20 judges had been appointed by a two-thirds majority in the Constitutional Assembly. Since this body was dominated by government supporters, the opposition was suspicious that the changes were politically motivated. The expansion to 32 fueled the suspicion that the court had been expanded to overcome the government-opposition deadlock (Interview, 602). The court was therefore no longer seen as a reflection of the Punto Fijo era, yet, it was not seen as independent. Although some Venezuelan’s suspected that the court had been partisan prior to the 2004 changes, the changes that had been made able to overcome deeply entrenched politicization in the court. The shift of these supporters away from the government was believed to be the result of Miquilena’s withdrawal of support.

**Figure 9: Supreme Court Case Loads by Chamber 2000-2006**



Source: (Author’s graphical illustration: TSJ, 2007).

In addition to fears about the content of the law, critics cited the irregular process of approval, both of the law and of the newly appointed judges. Judicial experts claim that the law was passed in a legally questionable way (Interview, 438; Interview, 470). For one, the Assembly required that the law be debated article by article, allotting a set time for each (Interview, 438). To facilitate this process, the number of articles, originally numbering 160, was condensed to 24, making in-depth discussion of each one impossible (HRW, 2004; Interview, 438).

This expedited reading of the articles meant that several of the changes were not given adequate attention. In addition to insufficient time to debate the legal changes, and, contrary to Article 203 of the Constitution, which requires a two-thirds super-majority to approve laws that change the Constitution, the LOTSJ was approved by a simple majority. Only 83 of the 165 deputies voted in its favour (HRW, 2004, p. 17). The Court had interpreted the law to mean two thirds of the members who were actually present. Although the justification presented was far more legally complex, broad sweeping constitutional changes were made with only a slight majority.

After being passed in a questionable manner, the implementation of the new law also invited accusations of legal inconsistencies. Article 264 of the Constitution stipulated that members of civil society are to pre-select a list of potential judges. This list would then be presented to the National Assembly which would vote on the appointment of the new judges. In the case of the court expansion, while members of civil society were used, they were chosen by the National Assembly itself (PROVEA, 2003). This undermined the intended purpose of



involving civil society, the direct inclusion of the population in decisions of government.<sup>202</sup> Moreover, it meant that the National Assembly directly controlled all aspects of the process of appointing the new judges.

Additionally, although the Constitution is clear about the requirements of Supreme Court judges, newly appointed judges have not always met them (Interview, 487; Interview, 508; Interview, 448). To become a Supreme Court judge, Article 263 of the Constitution requires that a candidate 1) have Venezuelan nationality by birth; 2) be recognized as an honorable citizen; 3) be a judge with a recognized capacity and a good reputation, who has been a lawyer for a minimum of 15 years, holds a postgraduate degree or has been a tenured university professor for a minimum of 15 years, or has held a position for a minimum of 15 years as an esteemed superior court judge with a specialty related to the chamber in which they are nominated to serve; and 4) any other requirement established by law.

The International Bar Association's 2003 mission reported that the requirements for education and years of experience had not been met (International Bar Association, 2003). Others judicial activists report that some judges either did not hold post graduate degrees or the levels of required experience (Interviews, 438; Interview, 440; Interview, 523; Interview, 554). Additionally, critics report that some judges obtained doctorate degrees in a few short months. This gave them the formal qualification, but not the valuable knowledge or experience earned in the battle toward obtaining a graduate degree (Interviews, 438; Interview, 440; Interview, 523; Interview, 554).

Furthermore, some of the judges who were appointed were politically active. Although this practice had been common under the Fourth Republic, appointing politically active judges

---

<sup>202</sup> Article 264 of the Constitution provides for citizen involvement both through input in the nomination process and through the citizen's branch of government.

did little to bolster the government's attempts to break from the past unjust ways of operating. Political activity by judges is discouraged and often prohibited in order to improve the impartiality and independence of both the Supreme Court and the entire judicial system. It is one of the key requisites for an independent judiciary. One key example of a politically active judge was Luis Velazquez Alvaray: an *oficialista* member of the National Assembly, Velazquez Alvaray was appointed to the very Court whose expansion he had masterminded. He was joined by Francisco Carrasquero, the president of the CNE throughout the recall process, who was appointed to the Constitutional chamber.<sup>203</sup> Government supporters claim that the limited number of qualified people in the country justified some of the more questionable appointments (Interview, 487). Others refute this claim and assert that the questionable appointments were the product of a transition phase (Interview, 466).

Regardless of the questionable nature of the process, the expansion tipped the 11–9 balance following the 11 April case, and was seen as a blatant stacking of the Court to favour President Chávez (McCoy, 2005). Although the law was passed in May 2004, the referendum was held in August—prior to the actual appointment of the judges, which occurred in December.

In Cameron's opinion:

Chávez may have wanted a court that, in the event of a successful recall vote, would rule in favor of his candidacy in a new election (a point on which the constitution is silent). The court stacking also opens the door to even greater concentration of power in the hands of the executive, and denies Venezuelans recourse to a neutral body in the event of governmental abuses of power. (Cameron, 2004)

The possibility that these judges could have been appointed certainly made the referendum process more comfortable for Chávez supporters. Had his leadership been challenged in the recall referendum it would have been up to the Supreme Court to determine if he was eligible to

---

<sup>203</sup> Alvaray was fired on 8 July 2006 by the National Assembly on charges of corruption.

run in the elections that resulted. The court expansion could also have acted as a deterrent and shown that the executive would not tolerate a legal branch that did not promote its ideals. The loss of the Court's credibility, however, had an impact that would be felt well beyond the referendum.

## **6.8 The Government Builds Support Prior to Recall Referendum**

With the courts making inconsistent decisions and chamber infighting, it was clear that the judicial system did not have the capacity to mediate problems of governance as they arose. The court cases over the signatures and the referendum process had delayed the referendum itself, and by the time it was held there had been significant changes in the political landscape. Whether delays in fixing a referendum date had been engineered to buy time for the government or were simply kinks in a new process is difficult to determine. Changes in the president's popular support made it evident that the one year delay in holding the referendum was beneficial.

This one year lag benefited the executive because during that time that the initial agreement to hold a referendum was announced, until the date it was held one year later, popular support for the president increased. In July 2003 a Datanalisis poll had presidential popularity at only 36 percent and polls showed that 59 percent of the population thought that the government should step down. By June 2004, a Consultores 21 poll had the president's approval rating at 48 percent and in July 2004, another poll had the president's approval rating at 52 percent (Consultores, 2004). According to opinion polls, the year between when the recall referendum was initially proposed and when it was held corresponded with a significant increase in the president's popularity.

This rise in popularity is attributed to an increased investment in social programs. Social development was driven by the government missions programs, which began in March 2003.

The program started with Barrio Adentro, a primary health care program, whose purpose was to deliver free health services to low-income families. There was never any question that such social programs were needed, but the misiones have been criticized as being largely political in purpose and poorly managed administratively.

Throughout 2004 the other misiones program were expanded. These programs were aimed to reduce poverty among the most needy by providing health care, primary, secondary, and post-secondary education, and subsidized food. Meanwhile, another mission ran a program that issued ID cards to people who had never had their status in Venezuela, giving them political rights they had never enjoyed before. By targeting the same groups for these programs, the government ensured that the people it was helping had the political capacity to express their appreciation. The programs increased the number of people in the electoral registry prior to the recall referendum. Although it did so in a politically targeted way, it was successful at registering segments of the population that never had voting rights.

Despite the many obvious benefits, the missions have been criticized as being ill-managed, clientalistic, public-patronage programs. As Penfold (2006) observes, it is difficult to judge the validity of these claims because the missions were (and continue to be) financed, non-transparently, through a fund controlled directly by the president. In 2003 and 2004, the budget for this program contained more than 2 billion dollars, equating to 2.5% of GDP, making the missions program one of the largest social funds administered in Latin America in the last decade (Penfold, 2006).

Penfold argues that the funds were used strategically and clientalistically when Chávez faced electoral competition, noting that the more votes a region had given to Chávez in previous elections, the more the area received for specific missions (Penfold, 2006, p. 26). In this way, the

missions were used to compensate supporters. Penfold notes that the missions were used for political manipulation, to buy votes (Penfold, 2006, p. 2). Other researchers support this claim and assert that the programs were managed by and for the benefit of government supporters (Buxton, 2005, p. 337). To show their political support, recipients of social services were required to participate in marches supporting the government (Hawkins & Hanson, 2005, p. 118).<sup>204</sup> In an environment of weak institutional constraints, the government did not have to be accountable for how it spent its money or managed its programs.

The executive's commitment to the program is evident in its reaction to a court case that threatened the continuation of one of the missions. The future of the Barrio Adentro, which focused on bringing free health care to poor neighbourhoods, was threatened when the accreditation of its doctors was challenged in court.<sup>205</sup> The mission used Cuban doctors, provided in exchange for discounted oil, but the credentials of these physicians were challenged because they did not have the Ministry of Health's accreditation.<sup>206</sup> This complicated the mission and the relationship that it had with the existing health care infrastructure. Supporters argued that foreign medical doctors were needed to staff these clinics because Venezuelan doctors had drastically underserved these areas. In the eyes of supporters the need for universal medical care was above the law.

---

<sup>204</sup> Hansen and Hawkins (2003) conducted an extensive survey of the impact of Bolivarian Circles. Bolivarian Circles began in December 2001. They were similar to missions because they facilitated access to government poverty-alleviation programs.

<sup>205</sup> The use of this sort of social program to win electoral support for presidents is not new and is commonly associated with neo-populist governments (Roberts, 1995; Weyland, 1996). Neo-populist governments are seen as damaging to democracy because they tend to be anti-system and anti-institution. These governments seek to overthrow existing political systems in the name of the good of the majority. In so doing, they tend to concentrate power in the executive and are often unaccountable. When the institutional structure is weak there is no means to check the actions of the government and, thus, no means of assuring the population that the government is acting within acceptable limits. According to Weyland (2001) Neopopulism can be defined in political-organizational terms and is characterized by unorganized mass support (pp. 15-16). Neo-populism can have both democracy promoting and inhibiting characteristics, as Weyland notes. Additionally, there is not agreement in the literature on whether or not to include economic indicators in a definition of populism (Weyland, 2001).

<sup>206</sup> Many people, especially those sympathetic to the government, report that this was done for political reasons.

The case came before the Court of First Instance, the second highest court in the country, and when the court issued a ruling restricting the rights of Cuban doctors to work in the Venezuelan medical system, the entire court was suspended. In his 24 August 2003 *Aló Presidente* broadcast, Chávez said that the judges were unqualified and that their decision was political and unconstitutional. The public address and attack on the court was reminiscent of Chávez's 2002 attack on the Supreme Court following the coup ruling. The judges were subsequently dismissed on the grounds of gross misconduct.

Despite the unanimous support for the decision, two of the five judges have since been reinstated and subsequently received promotions: Evalene Moreno became president of the political administrative chamber of the Supreme Court and Luisa Morales was appointed as Chief Justice of the Supreme Court (Interview, 554).<sup>207</sup> Other individuals involved in the case have no doubt that these reappointments were politically motivated, based on how these judges were willing to rule in the future (Interview, 554). The suspension of the court fueled suspicion that the government was willing to go to all lengths to implement its agenda. The president's diatribe against the judges suggests a clear willingness to violate the judiciary's independence and signaled his willingness to do so if the court ruled the wrong way. Further making their dismissal seem like an unequal application of the law, the reinstatement of some, but not all the judges, indicated an unequal application of the law.

The changes the executive made to the judiciary between the proposal of a recall referendum and its realization gave the executive time to increase its popularity, which in turn led to electoral success. The executive won the referendum, but the questionable way in which the judiciary was reconfigured and rebuilt showed that the executive was committed to

---

<sup>207</sup> In this case all five judges were in agreement, suggesting to many that they should have been given the same treatment under the law. If there was in fact a violation or bad interpretation, all five should have lost their jobs.

institutional homogeneity. The executive stayed in power electorally, but the executive's apparent willingness to illuminate all checks on its power made it seem less committed to democratic principles.

## **6.9 Conclusion**

The executive's systematic reconfiguration of the judiciary constrained the judiciary's ability to check the power of the executive in Venezuela. In the name of overcoming corruption and increasing efficiency, the judiciary was restructured in 1999 to break from a corrupt past. The events between 2000 and 2004 covered in this chapter showed that the judiciary was left incapable of mediating governance problems.

The judiciary was redesigned to become administratively dependent on the Supreme Court. In turn, the Supreme Court was restructured by the executive so that it would be dominated by judges who above all sought to uphold the revolution. It was a two-pronged attack on judicial independence that affected both political insularity and individual autonomy. The court cases over the recall process bought the executive time to increase its popular support; at the same time, the Supreme Court appointed a government-backing CNE, and then did not consider accusations of fraud or other irregularities in the referendum. These factors combined to facilitate the president's electoral success. The government's actions led skeptics to question how committed the government was to democratic change. To be considered free and fair, "elections must also be impartially administered in a way that prevents or counteracts fraud in the voting and vote counting, assures the secrecy of the ballot, enables virtually all adults to vote, and resolves disputes in a transparent manner" (Diamond, 2002, pp. 21-35; Diamond, 2005). When electoral violations are severe enough to cause an "uneven playing field" between the

government and the opposition elections cannot be considered free and fair (Diamond, 2002, p. 28).<sup>208</sup>

The credibility that came from the international community's recognition of the free and fair nature of the referendum was counterbalanced by the institutional changes that made it difficult for citizens to challenge the government. The elections occurred but the state's ability to guarantee democratic rights was compromised by a lack of judicial independence. Without horizontal checks, the credibility of democratic institutions is more difficult to prove. This chapter demonstrated how a non-independent judiciary was used by the executive to secure electoral success. This abuse affected not only the legitimacy of elections, but also the credibility of the government's claims to be improving democracy. The following chapter explores the division between state and government to show how an undemocratic state affects governability and dissuades segments of the population from democratic political participation.

---

<sup>208</sup> A leader of one opposition party stated that participating in elections in Venezuela was like playing basketball on a hill. The government's net is much larger, and at the bottom of the hill, the opposition is on the top of a steep hill—both sides have nets, but the playing field is slanted (Interview, 468).



## CHAPTER SEVEN

### 7.1 Discontent with the Ruling Government

The government's disrespect for the existing political institutions isolated non-supporters. Some of the population, especially those who were critical of the government's agenda, asserted that the government discriminated against them and that the institutional changes left them with little recourse to challenge the government. The extent of this perceived political discrimination led segments of the population to withdraw from the democratic arena. Adding fuel to the growing fear of government discrimination, legislation was unequally applied and used for partisan ends to alienate and persecute the opposition. Additionally, a court ruling that allowed the government to take advantage of a loop-hole in electoral law gave the government an even more sizable electoral advantage. This discrimination led the skeptical opposition to boycott the 2005 legislative elections. The improbability that the opposition would have won a sufficient number of seats in Congress to keep the president in check undoubtedly contributed to the opposition's decision to boycott. This is an important point, but should not overshadow the other contributing factors and the fact that the decision not to participate in the elections is a strong sign of a lack of respect for the existing political institutions. Essentially, the opposition refused to play by the rules of a game, rules the opposition saw as being unjustly used against it. After the election, government supporters overwhelmingly dominated the political arena, including the legislature.

By the 2006 Presidential elections, the opposition had reentered the formal political arena, running a candidate in the Presidential election, but its participation in the election cannot be interpreted as a sign that democratic institutions were untarnished. In the lead up to the election both the government and the opposition acted, in many ways, in a non-democratic

fashion. The opposition, after failed attempts to run a primary, picked a unified leader behind closed doors. Lending to Chávez's popularity there was no serious consideration of running another MVR candidate. After losing the election to Chávez, the opposition remained outside the formal government institutions. The opposition mobilized against government policies and tried to influence politics from outside the formal system. Much of this mobilization was in opposition to the government's attempt to eliminate term limits, a classic hazard of presidential systems.

This chapter is broken into several sections. The first section argues that violations of voter secrecy, political persecution, and electoral rules written in favour of those in power led the opposition to conclude that the political system was unfair. In response, the opposition decided to boycott the 2005 legislative elections. The second section demonstrates how this boycott created a democratically challenging position since any solution to overcome the politicized institutions of the state remained legally under control of the National Assembly—which as a result of the opposition boycott had nearly 100 percent representation of government supporters. On the one hand, government attempts to correct the unequal system, most notably the reform of the Electoral Commission to encourage broader participation in elections, suggests a spirit of democratic cooperation. On the other hand, the method in which candidates were selected, and an inability to comply with democratic rules by both the opposition and the government, in the lead up to the presidential election in 2006, do not suggest a strong commitment democracy. The third section argues that rather than mobilizing within formal political institutions, the opposition was more successful at impacting the political system from outside of formal political institutions. This is best demonstrated through the student protest movement that grew in response to the perceived limits on freedom of speech and to the proposed constitutional reforms and, in particular, the government's attempt to remove term limits. The students' efforts

culminated in the defeat of a referendum on constitutional reform in December 2007. In spite of this, the executive remained committed to securing its power and sought to extend term limits, regardless of the referendum's defeat. Although beyond the scope of this dissertation, it is worth noting that the government secured this power through a referendum held in February 2009.

## **7.2 Alienation of the Opposition**

A minimal institutional condition for democracy, as asserted by Dahl (1971), is the ability for citizens to vote in free and fair elections. Generally accepted as inherent in the notion of free and fair elections are guarantees that the secrecy and anonymity of the vote will be respected. Knowing for whom individuals voted undermines a democratic right. Although not revealing who electors voted for, in Venezuela, a list of those who signed in favour of the President's recall was made public. This was interpreted as political discrimination when those when the information was used to fuel politically motivated discrimination. Both the government and private sector employers are culprits and have been accused of firing employees with unfavorable political perspectives (Interview, 517; Interview 452; Interview 528).

Accusations that publicizing voters' positions on the presidential recall violated citizens' right to secrecy were countered by claims that it was during the process of a referendum, not an election, so the list of preferences did not have to be private—after all, the list was a compilation of names of people who has signed in favour of holding a recall.<sup>209</sup> Since this was the first ever recall referendum in Venezuela, there is no historical point of comparison. Recall referenda are not a widely used method of challenging the government's leadership, thus making it difficult to

---

<sup>209</sup> One such campaign was funded by the Communist Party of Venezuela, who ran a billboard campaign that stated that “your vote is secret, not your signature.”

compare across cases. Since the recall referendum was administered by the CNE, citizens expected that they should receive the same rights to privacy.

As a remedy to correct the signatures that were not approved, members of the international community had negotiated a verification process to allow those who had signed to confirm their signatures. During the signature verification process of the recall referendum, a list of those who supported the President's recall, known as the Tascón list, was made publicly available on the internet. This list was published by MVR Deputy Luis Tascón, Member of Parliament for the state of Táchira. Deputy Tascón defends the list, stating that it was a necessary part of the signature repair process, which was required to resolve the conflict over the validity of signatures (Wilpert, 2005). The purpose of the repair process was to allow voters to certify their intention by reaffirming that they had signed in support of holding a referendum to recall the President. The Tascón list which had started as a means of verifying signatures was corrupted and grew into a database known as the MaiSanta database, which was in turn used for malicious and discriminatory ends. As Figure 12 shows, the MaiSanta database documents if the voter signed against the president, verified their signature, and participated in elections, and if they have received benefits from select government mission projects. Additionally, the database contained more than just signature verification information. It included personal information such as name, address, telephone number, voting centre and identification number.<sup>210</sup> The database makes personal information public, despite the that much of this information is legally protected from distribution.

The exact source of the information is unclear—the signatures were collected by Sumate and verified by the CNE. In an interview one high level employee of the CNE bragged that this

---

<sup>210</sup> The cédula is a Venezuelan identification number used for identification and taxation purposes.

information could only have been attained through the electoral registry (Interview, 465). This employee added that the only way that such complete information could have been compiled was through the collaboration of several different people within the CNE (Interview, 465). Another high level CNE employee verified that this is highly probable (Interview, 458). Although there is no public consensus on the source of information, the President’s public addresses at the time raised opposition suspicion that the state might consider wide scale political discrimination. In a national address, on 17 October, 2003 Chávez stated: “Whoever signs against Chávez... their name will be there, registered for history, because they’ll have to put down their first name, their last name, their signature, their identity card number, and their fingerprint” (El que Firme, 2003).

**Figure 10: MaiSanta Database**

Santa Inés (Rev.06/07/2004) R.E.P. (Marzo-2004) ? x

Leeme Registros: 12,394,109

Ingrese su Número de Cédula:  **SI FIRMO CONTRA EL PRESIDENTE (VALIDA)** Fecha Nac:

Apellidos y Nombre:

Dirección:

>> Listar Cédulas de mi Centro de Votación << >> Florentino <<

Centro Votación:

Dirección:

Región:

Fallecido:

Abstencionista:

Misión RIBAS:

Vuelvan Caras:

Source: (Jatar, 2006, p.41).

Awareness of the list's existence may have been enough to damage public confidence. As Warren (2002, p.695) notes, it is important that individuals "ought to benefit from those achievable, baseline equalities that underwrite political capacities and opportunities." The rights of individuals were not equally respected because the list became a tool for political persecution and many employees of the state (which is by far the largest employer), were fired from their jobs for having signed in support of the presidential recall. Some individuals who were employed at government ministries or at the state oil company were told directly that they were being fired for having signed against the president (Interviews, 465; Interview, 452; Interview, 448; Interview, 528). Individuals who signed also report significant bureaucratic impediments when trying to obtain government documents (passports and identification cards) and accessing government programs (Interview, 558). Others have been denied employment (Interview, 560). Companies bidding for government contracts have been given the stipulation that they cannot use employees who signed against the president (Interview, 560). Moreover, Hsieh, Ortega, Miguel, and Rodríguez (2007) argued that, in addition to political discrimination, individuals and firms identified as opposition by the MaiSanta list experienced a decline in income.

Accounts of discrimination stemming from the list were well documented in newspapers and on television. A publication written on the topic provides a collection of newspaper articles, letters from government employers, and personal accounts of job losses (Jatar, 2006). DVDs of the database were also available, and sold by street vendors.<sup>211</sup> Instead of noting the injustice that

---

<sup>211</sup> It is important to note that some Venezuelan researchers questioned the ethical use of this information. In referring to this information, therefore, I do not make direct reference to any individual cases. I have, however, checked the list for accuracy based on information provided by a number of individuals' who were kind enough to confirm their identification numbers and verify that the information provided on the list was accurate. This preliminary overview (approximately 25 individuals) revealed that in all but one case the information was correct. One person reported that they had in fact signed in favor of the government's recall, but that they do not show up on the list. This person expressed gratitude for the error (Interview 561). Although the database was previously available on-line at the time of writing it could no longer be located on-line. Likewise, the website for Luis Tascón

came with the availability of this information, some government supporters were proud of the power that this gave the government over the opposition. A few government supporters stated that this was legitimate payback for the years of discrimination that sectors of the Venezuelan population experienced (Interview, 508; Interview, 497; Interview, 453).

The existence of this list erodes confidence in the state, in the voting process, and in turn, in the government's ability to uphold democratic rights. As an indication of the grave shortcoming of the legal system, the creator of the list has not been punished and there have been no conclusive investigations into how the information was compiled. Critics of the government suggest that this is because Deputy Tascón has been loyal to the president; others assert that the list was created for honorable ends and therefore does not deserve punishment.<sup>212</sup> Regardless of the list's initial purpose, those who used the list to discriminate against individuals based on their political position have also not been punished. This equates to impunity for political favoritism. The list had a direct impact on democracy, and the functioning of democracy governance when it contributed to deterring voter participation in the 2005 parliamentary elections. Additionally, it reduced confidence in the political institutions and was a contributing factor for the opposition's boycott of the 2005 parliamentary elections as will be addressed below.

### **7.3 Political Persecution of Opponents**

The fact that several high level opposition leaders have been accused of crimes has led the executive to be accused of directly and unequally using of the legal system to target opposition members. This has further contributed to the opposition's disenfranchisement with political

---

which previously housed the list is no longer available at the same address. For research purposes a copy of the database will be stored by the author and is available upon request.

<sup>212</sup> In 2008, Tascón was not in good favor with the government but this was unrelated to the list.

institutions. The inconsistent application of the law equated to high levels of impunity. Determining if allegations of impunity were politically motivated is difficult. To classify these actions as discriminatory, it has to be shown that under some circumstances individuals have impunity while others are punished for committing the same act. This type of investigation, however, is complicated by the fact that when an offense is not persecuted, it goes unrecorded. That is to say that if two people commit a crime and only one is caught (or charged) and we are looking at offenses—we will not be able to observe the one that has gone unrecorded.

This methodological problem makes it difficult to compare the treatment of government and opposition supporters. An ideal comparison would involve the direct comparison of two similar cases; one case that involved an opposition leader and another that involved a government supporter. If it could be established that government supporters were repeatedly treated differently than opposition supporters and if, for example, the opposition repeatedly received harsher sentences, it would demonstrate that the law was being used as a political tool. Such a comparison is complicated because there are fewer cases against government supporters. When possible, every attempt to make such comparisons has been done. Although falling short of an ideal comparative method, this chapter shows that the law has been used against high ranking members of the opposition and civil society in a questionable manner. When one considers this use of the law in conjunction with the judiciary's lack of independence, allegations of political persecution are given greater weight.

Several high level opposition members have had legal challenges against them. The method in which the law has been applied leaves the impression that the judicial system is being used to persecute individuals who speak out against the revolution. According to the United Nations, “persecution” refers to any act by which fundamental rights are severely violated for



reasons of race, religion, nationality, political opinion or membership of a particular social group (United Nations, 1996). Furthermore, Article 26 of the Constitution of the Bolivarian Republic of Venezuela guarantees the entire population access to justice that is impartial, transparent, and independent. The Venezuelan non-government organization PROVEA provides a list of opposition leaders who have been persecuted based on their political beliefs. Some members of this list include: Leopoldo López, Mayor of Chacao; Monica Fernandez, lawyer; Cecilia Sosa, ex-President of the Supreme Court; Tulio Álvarez, constitutional lawyer; and Ivan Simonovis, ex-director of the Metropolitan police (PROVEA, 2003, pp. 276-277). Additionally, when Manuel Rosales, Presidential Candidate in 2006, announced that he would run for president, he was threatened with charges for his role in the April 2002 coup. This dissertation will turn to an overview of some of these high profile cases.

In some cases, judicial proceedings were seemingly used as punishment for disagreeing with the government. One such example is Tulio Álvarez,<sup>213</sup> a leading Constitutional lawyer, who spearheaded investigations and then publicly announced electoral fraud in the recall referendum. An active member of the Coordinadora Democrática, the opposition group that organized to challenge the government during the recall referendum in 2004, Álvarez was subsequently arrested on what have been termed false charges (Interview, 470). The judicial proceedings for his trial were fraught with irregularities (Interview, 545). Although some saw the charges as false, others have noted that he may have been guilty but that he was able to negotiate his way out of punishment, drawing on political connections and preventing his incarceration (Interview, 562). Either scenario indicates that the law was applied in a questionable manner. In

---

<sup>213</sup> Álvarez was a member of the constitutional assembly. After working for several months on the proposed reforms he retired in protest to the government's change of electoral law prior to the election on the constitutional referendum that he saw as an illegitimate grab for power. He also defended workers of the national assembly against the deputy William Lara.

the first scenario, Álvarez was persecuted for taking a position against the government showing an unequal application of the law. In the second scenario, power and influence determined his punishment, showing a weak application of the law.

The case of Leopoldo Lopez shows that both the manner in which cases have been conducted and the sentences themselves have been politically influenced. For example, Leopoldo Lopez, who at the time of writing had 26 charges against him, was found guilty of misusing campaign funds. Prior to being charged, the case had lain dormant for five years. The timing of his persecution raised suspicion that the law was being used for political ends (Interview, 528). The charges came only when Lopez held popular support as the Mayor of Chacao, a wealthy opposition-dominated neighbourhood of Caracas.<sup>214</sup> These assertions gained greater weight with his sentence, which forbade him from holding public office for a number of years following his current tenure (Asamblea Nacional, 2006; Gutiérrez, 2006, p. 34; Interview, 528).<sup>215</sup> In his own words, Lopez states that this is an indication of lack of equality in front of the law and that the persecution was politically motivated (Quoted in Gutiérrez 2006: 34). Since few comparable examples of government supporters exist, it is hard to systematically support this claim.

Another case allegedly fraught with irregularity was the case against Ivan Simonovis (Interview, 510; Interview, 470). Simonovis was the director of the metropolitan police force on 11 April, 2002. Following the protests on this day, Simonovis was charged with ordering officers to shoot on the crowds supporting the President. Separate from the details of the case, the way that his case has been undertaken since his arrest in November 2004 suggests that the law may have been applied unequally and also that the legal system was manipulated for political ends

---

<sup>214</sup> In addition, the re-opening of the case prompted allegations of double jeopardy (Interview, 528).

<sup>215</sup> The number of years that he has been banned from office for depends on the source that you consult but the majority of sources cite 13 years.

(Interview, 460). Simonovis, was held by the police Dirección de los Servicios de Inteligencia y Prevención (DISIP) (The Directorate of Intelligence and Prevention Services), had been brought in front of the judge several times, each time resulting in the postponement of the case. Instead of being held in Caracas where the event took place, the hearing is being held in Maracay, a predominantly military city seen as more sympathetic to the President (Interview, 459). Moreover, the three jurists on the case were open supporters of the president (Interview, 460). In April 2009, Siminovis was sentenced to 30 years in prison.

Another example of the government using legal intimidation against the opposition occurred when it persecuted non-governmental organizations. The most well documented of these cases is SUMATE, whose directors were accused of treason as a result of accepting 30,000 U.S. Dollars to run education programs centered on citizen rights regarding the recall referendum. To opposition sympathizers, this case is seen as a purely political tool of intimidation, both for the severity of the charges and for its timing (Interviews, 430; Interview, 552). Initial charges were laid in July 2005, prior to the December 2005 elections, and charges reemerged prior to the elections in December 2006. This had a deterrent effect, and reminded individuals that there were consequences for questioning the government.

Further evidence to suggest that the law was being used as a tool of intimidation was the introduction of strict new laws that aimed to allow the government to control which 'civil society' organizations could receive money from international groups. The government proposed to change the definition of civil society organization to exclude groups that receive money from foreign public or private sources (Interview, 494). This would limit the influence that these groups could legally have. Blocking the receipt of foreign funds for domestic projects does not appear to be consistent with the Chávez government's policy of sending money abroad to other

countries (Interview, 552). This discrepancy suggests that the rules will be applied differently depending on one's political leaning.

Inconsistent application of the law has not been reserved only for the organized opposition. Luis Velázquez Alvaray's case demonstrates that the law also looms as a threat for those sympathetic to the government. Also indicted in this case was government supporter Jesse Chacón, the difference in treatment between the two might be telling. Alvaray is an ex-magistrate and, as the creator of the LOTSJ, was the architect of Supreme Court expansion (to which he became a magistrate). When Alvaray became critical of corruption levels involving high level government officials, his accusations were met with allegations from the government that he had been involved in the corrupt use of government funds. The timing of these allegations remains suspect and many perceived them to be the result of his falling out with the government. The specific charges stem from Alvaray's participation in the acceptance of contracts to build new judicial buildings. In addition to the suspicious charges, the individuals in the cases (Alvaray and Jesse Chacón), both of whom were accused of corruption, were treated differently by the Public Ministry. Chacón, a loyal Chávez supporter, had at the time of writing, not been charged.

Following accusations of fraud, Alvaray fled the country, publishing a letter in a local newspaper chronicling corruption in the government. This case demonstrates a lack of rule of law in two ways. First, if we accept that Alvaray committed the alleged crimes, it is an indication that he felt he was above the law and unlikely to be caught. Second, if Alvaray did not commit the crime, his fleeing of the country may show a lack of confidence in his ability to receive a free and fair trial.

A legal system operating to uphold the will of the government, not the rule of law, does not instill confidence in its commitment to democratic governance. The underlying belief that the law is being applied unfairly further degrades confidence in the legal system and in the democratic intentions of the government. It also stifles dialogue and polarizes society by creating an ‘us against them’ mentality.

## **7.4 The Electoral System and How to Access Power**

Venezuela has a recent history of changing the voting system. In 1989 changes were introduced in an attempt to overcome political division that typified the Venezuelan political system under the Punto Fijo pact and to increase political representation. Demand for this change grew out of disillusionment with the voting system that allowed the AD-COPEI alliance to remain in power for close to forty years. A strong need for change became evident when voter turnout decreased in the 1980s (Crisp and Rey, 2000). A voting system was introduced, designed to increase the representation of smaller parties, to help reduce the dominance of partyarchy from the AD-COPEI alliance, and to alleviate dissatisfaction among the population with the political system (Levine & Crisp, 1995, p. 223).

Modeled on the German system, the Venezuelan electoral system gives each voter two votes. In this mixed-member system the first vote is worth 60 percent of seats. These seats are designated to individual candidates based on relative majority in each voting district. The winner is determined in single member districts by the first-past-the-post system. The other vote for a national party list of candidates is worth 40 percent of legislative seats and is determined by closed-party lists.

The original purpose of this bifurcated voting system was to link representatives more directly with the electorate. The mixed-member system was intended to provide “the best of both

worlds,” reducing large party domination by favouring large parties in the single seat districts while increasing the representation of smaller parties through proportional representation on the second vote (Shugart and Wattenberg, 2000). Theoretically, this occurs because when a candidate wins their voting district on the individual portion of the ballot, their seat counts toward the party’s proportional vote on the second half of the ballot. The party that wins the majority of seats in the individual half of the ballot loses a portion of seats in the party half. By favouring a second most popular party, the system diversifies representation. Therefore, when it was first implemented in Venezuela the electoral system could directly address party domination that had stifled representation.

The true intention of the law was undermined, however, when in order to surmount the restriction and to increase party representation, shadow parties were created to be used as electoral vehicles. Specifically, one party ran only on the party list section; this party was paired with another party on the individual portion by pairing the parties only for the purpose of voting, the representative nature of the system was undermined.

This loophole came to be known as morochas and its impact can be illustrated through its use in the August 2005 municipal elections. These elections revealed the morochas’ capacity to artificially grant majorities unrepresentative of the true popular vote.<sup>216</sup> For example, in 2005 the MVR ran candidates on the party list section and paired with the Union of Electoral Victors (UVE), which ran candidates on the individual section. Together these parties won 58 percent of the proportional vote, yet, when the list plus individual votes were combined the UVE-MVR won 80 percent of all seats (Wilpert, 2005), skewing overall representation. In the city of Valencia, morochas similarly allowed the MVR alliance to secure 77 percent of the seats with

---

<sup>216</sup> This concept was first used by Governor Lapi and the Convergencia party in the 2000 legislative elections. For Convergencia’s more recent position on morochas see <http://www.convergencia.org.ve/opinion/?id=468>

only 37 percent of the votes (Corrales, 2006, p. 38). Without adopting morochas this would have equated to only 46 percent of the seats (Corrales, 2006, pp. 38-39).<sup>217</sup>

The artificial proportion of seats received from the morocha system demonstrates how the electoral system could distort representation. Therefore, the opposition was highly critical of the government when it announced that it would use morochas for the 2005 parliamentary elections. Opposition groups argued that morochas went against the spirit of the Constitution since they undermined the Constitution's intended representative nature. Arguing that this was unjust Acción Democrática (AD) challenged the use of morochas in the Supreme Court. On 27 October 2005 the constitutional chamber of the Supreme Court ruled that morochas were not illegal and upheld their use in the December 2005 parliamentary election.<sup>218</sup>

Though this case provides no evidence of legal inconsistency, the decision exacerbated the feeling that electoral rules directly favored the governing administration (Interview, 498). This contributed to an already growing fear that state institutions, including the judiciary, favoured the government. Since much of the opposition saw this as compromising the intention of the laws of representation, they felt that it was a politically, not legally, motivated decision.<sup>219</sup> To reiterate, the mixed-member electoral system was created to reduce the monopolization of representation of a leading party and to open political space for smaller parties, yet the morochas secured the domination of one party.

The system invited criticism from international observers. Members of the European Union electoral observation team expressed their concern that the use of morochas went against

---

<sup>217</sup> Since the majority of the opposition withdrew from the December 4<sup>th</sup> election it is impossible to determine what percentage of the vote it would have won.

<sup>218</sup> For the full ruling see: <http://www.tsj.gov.ve/cuentas/scon/2005/cuenTascón-27102005.htm>. For the position of the CNE (Gomez, 2005).

<sup>219</sup> For more on executive dominance of the judiciary see: (Brewer-Carias, 2004; Brewer-Carias, Pena Solis, Rafeal Chavero Gazdik, Roman Duque Corredor, 2004).

the spirit of the Constitution (Union Europea, 2005, p. 3). The Organization of American States (OAS), more generally, observed “an aggressive and discourteous public discourse about the electoral system, which hampered the creation of a favorable climate in which to debate political proposals and to carry out constructive electoral campaigns” (OAS, 2005). To restore a more representative democracy the OAS called for “inclusive and good-faith dialogue” on all levels, and explicitly stated that the creation of such dialogue rests on the authority of the government (OAS, 2005).<sup>220</sup> Opposition members lost confidence in the electoral system; they did not trust the intentions of the government, or that the government was committed to promoting institutions capable of upholding democracy. Thus, the government’s use of state institutions to discriminate against the opposition, combined with the opposition’s suspicion surrounding how the system was being used, discouraged the opposition from formal participation.

#### **7.4.1 Electoral Advantage or Technological Affinity?:**

In addition to the perception that the government had embarked on a program of political persecution and that it had successfully manipulated the electoral institutions in its favour, there was concern that the technology used in the voting process could be tampered with. Despite the suspicion that surrounded the use of electronic voting machines during the recall referendum, the Venezuelan government continued to use the technology in the 2005 parliamentary election. A commitment to electronic voting comes from the fact that it allows for rapid vote calculation and minimizes the risk of fraud and of miscounting, common problems associated with manual voting (Interview, 502).

---

<sup>220</sup> A Carter Center report “Reflexiones Y Aportes Para La Reforma De La Legislación Electoral Venezolana” notes that unlike other mixed systems, Venezuela does not have provisions for corrections to offset imbalances (2006, p.5).



Although the government insisted that it was not possible, only days before the 2005 election an opposition group demonstrated—in front of international observers and the CNE—that the technology made it possible, albeit remotely, to track the sequence of voters and therefore to determine how people voted (Union Europea, 2005, p. 3). Specifically, it was demonstrated that the machines had the capacity to both send and receive information, which would allow the CNE to track the progress of votes (Interview, 446). The fact that this is precisely what the government had been accused of doing during the vote for the recall referendum heightened fears that voting was not conducted in a free and fair manner. Having experienced political discrimination stemming from the MaiSanta list, the opposition was highly suspect of the electronic system and had a heightened interest in securing free and fair elections.

Even the insurance of paper ballots which could be used to confirm that their vote had been registered correctly was not enough to convince skeptics that the voting could be free and fair. There remained widespread fear that the information could be altered by the machines or that it would be collected and used to deepen a campaign of political persecution. Opposition fears were amplified by the government's refusal to conduct a complete vote count and its commitment to a limited audit (Interview, 482). As a show of good faith and to encourage participation in the election, the CNE agreed to disconnect the finger print machines, and to turn off the transmission capacity of the voting machines until the voting was complete. It further specified that a print out of all votes would be made prior to transmitting the information to the CNE for tallying.

These precautions were not enough to assuage voters' fears that the institution was independent. From Mainwaring and Shugart (1997) we know that institutions capable of ensuring secure elections are a fundamental precondition of democracy—especially when

reelection allows incumbents to stay in power. Since the CNE had been appointed outside of the formal rules, it did not hold a high level of legitimacy (Interview, 445). Its role during the recall referendum led some of the population to believe that it was willing to rule in the government's favour. Moreover, since three of the five executive members of the CNE were believed to be associated with the government, it was not seen as an impartial body (Kornblith, 2005; McCoy, 2005).

Critics argue that opposition parties withdrew from the election because they knew that they were not going to win (Interview, 439). There is a high probability that this carries weight, specifically because the political parties that had the highest chance of winning seats were less likely to support the boycott. One such example is Primero Justicia, positioned to fair well in the election, the party did not initially support a boycott (Interview, 466). Action Democracia received criticism for being strong advocates of boycotting.<sup>221</sup> One representative of the party argued that they were not abstentionists, and that they were hoping to push for change electoral

ly, but felt that the rules of the electoral game had been shifted against them, using a basketball analogy, the party representative said that if it was a basketball game, the opposition side of the court would be uphill and have a smaller hoop (Interview, 468). Had the opposition been more likely to win a larger percentage of the seats, it may have been more willing to participate in the elections.

More specifically, the opposition was unlikely to prevent Chávez from gaining the two-thirds majority needed to make major constitutional amendments. Some critics assert that the opposition preferred to withdraw from the elections with the hope that accusations of political persecution and the entrenchment of unequal institutions would discredit the president's level of

---

<sup>221</sup> Opposition parties had a track record of threatening boycotts, including an attempt to boycott the 31 October, 2004 elections in protest of alleged fraud in the 2004 recall referendum (McCoy, 2005, p.118).

support. Indeed this position is well supported by polls which indicated that in the months preceding the 2005 parliamentary election Chávez enjoyed a high approval rating. These poll results suggest that the government was favoured to win. The independent polling firm Datanalásis had this rating as high as 70.5 percent at the beginning of 2005. In October and November Datanalásis and Consultores 21, two leading polling firms had Chávez ahead.<sup>222</sup> The opposition parties boycotted the election and locked themselves out of formal political institutions.

Podemos and PPT, two small parties typically associated with the government, however, demonstrated that it was possible to pressure the government from inside the political system. They used their small numbers to appose the speed and depth of the government's proposed reforms. Although the success of their efforts is difficult to measure, their impact on the government suggests that the opposition would have had greater political influence within the government than it had being shut out of the political system. The fact that one year later the opposition was able to garner the support of 38 percent of voters suggests that it would have been able to elect enough members of congress to influence the government from the inside, had the opposition chosen to run in the election. Allegations that the boycott was a political tool cannot be discredited, but the number of irregularities and the track record of abuse of power lent enough credence to the opposition's position to convince the majority of parties and candidates to boycott the election.

The opposition boycott of the election was a blow to democratic governance because it demonstrated that not all actors were willing to play by the "rules of the game," rules the opposition had come to see as biased. The election resulted in twenty five percent of the

---

<sup>222</sup> Although a lack of adequate infrastructure and a climate of political fear create a high margin of error in political polling.

population awarding 100 percent of the seats in Congress to parties associated with the government as is summarized in Table 6 below. A 100 percent pro-government National Assembly left opposition groups with no representation in parliament. The opposition boycott did little to discredit the government, but it did bring attention to concerns over the democratic functioning of a president who faced few institutional challenges to his leadership. Checks on the power of the President had been slowly eroded. A lack of confidence in the credibility of electoral bodies combined with a suspicion that state powers were being used to fuel political persecution led to a boycott. This boycott asphyxiated the role of the opposition in formal political institutions.

**Table 6: Deputies of National Assembly 2006-2011**

<b>Party</b>	<b>Number of Seats</b>
Movimiento Quinta República (MVR)	119
Podemos,	19
Patria para Todos (PPT)	9
Movimiento Electoral del Pueblo (MEP)	
Partido Comunista de Venezuela (PCV)	7
MUPI, Puma LAGO AMANSA UPV, MEP, La Red del Pueblo UPPI-FIORP, FUNDACI, migado	10
MiGente, CONVIE	4
Acción Democrática	Boycott
COPEI	Boycott
Primero Justicia	Boycott
Proyecto Venezuela	Boycott
Un Nuevo Tiempo	Boycott

\* alliances are made at the state level: official alliances exist between MVR and PPT, MEP, PCV, UVE, UPV,

Podemos, PUMA, MiGente . For a complete list of current alliances by state see:

[www.cne.gov.ve/elecciones/diputados2005/documentos/alianzasactivas0412.pdf](http://www.cne.gov.ve/elecciones/diputados2005/documentos/alianzasactivas0412.pdf). Appendix One: 2000 Presidential elections. See also, Molina 2004: 118.

#### **7.4.2 The Restoration of Electoral Confidence through a New CNE:**

In light of the opposition boycott, institutional reform was necessary to improve confidence in the democratic institutions. Opposition members insisted that prior to their participation in the presidential elections of December 2006 the government needed to reform the CNE, clean up the electoral registry, remove or reform the system of electronic voting, and introduce a more transparent audit process.

The appointment of a new CNE was complicated, however, because its jurisdiction fell within the National Assembly, a body that was controlled entirely by parties sympathetic to the president. The National Assembly openly supported the President and therefore was not perceived to be capable of checking the power of the executive branch. The process to appoint a new CNE was clearly laid out in the Constitution. First, the Constitution calls for the formation of a postulation committee and, as stated in Article 19 of the Organic Law for Electoral Power (LOPE), this committee is responsible for the appointment of the CNE's board. Specifically, the members of the postulation committee are required to create a list of 65 names and give the list to the National Assembly, which in turn picks the members by a two-thirds majority. By law, the postulation committee is comprised of 10 members from civil society and 11 members of the National Assembly. Furthermore, Article 296 of the Constitution states that the five member executive committee of the CNE must be comprised of three members recommended by civil society, one member suggested by the law or politics departments of the nation's universities and one member chosen by the 'citizen power' branch of government.

Regardless of the fact that the ruling party controlled the National Assembly, the postulation committee was not named in accordance with the formal rules. Instead it was appointed unanimously and without previous debate by the National Assembly. The committee

presented names to the CNE, who in turn gave a refined list of candidates to the National Assembly; this process led to the naming of the executive committee on 27 April 2006. Moreover, this was the second time, since the implementation of the 1999 Constitution that the appointment of the CNE's executive committee was not done in strict compliance with the legal regulations. These actions made it seem as though the government was unwilling to abide by the law.

The committee's first decision fueled the suspicion that it might be political when it appointed Tibisay Lucena as the committee leader. Lucena's political stripes were well known as she had previously been both a member of the CNE and a creator of the Ley Organica de Poder Electoral (The Organic Electoral Law). There was no question that she was a staunch supporter of the revolution. The irregular appointment of the CNE and the leader did not portray a strong commitment to the democratic principle of impartiality.

In an attempt to ensure that voting could be fair, the administration agreed to clean up the electoral registry, and called for an audit to be conducted. The most pressing irregularities in the voting registry included: a disproportionate number of elderly people, several thousand people living at the same address, deceased people still retaining voting rights, incomplete information, and the number of individuals registered disproportionate to the actual population in many areas. The government agreed to conduct an audit, but control over the audit was given to the newly created Bolivarian universities. One University Dean recounted the attempts by the public and private universities to work together to address challenges faced by rapid changes being made by the government (Interview, 563). Although the idea of an audit by a number of universities across the country made the process of the audit seem inclusive and fair, the Bolivarian Universities were created to toe the government line (Interview, 563). Since the Bolivarian

Universities were committed above all else to the revolution, they were not seen as independent of the government's interests. Thus, the government seemed intent on projecting an image of genuine change, without opening up to true opposition.

These concessions on the government's part contributed to an increase in the electorate's confidence, but the choice to proceed with voting should not be taken as an indication that democratic norms were firmly established. As one indication of the democratic deficit in the electoral campaign, neither party had primaries running up to the election. Chávez was chosen as the MVR candidate by default. Since the president commanded such personalistic leadership of the party, there was no internal faction in the party that would or could challenge the president.

The opposition's attempt to hold primaries to choose a unified candidate failed. In the lead up to the election, the frontrunners in the opposition agreed that their only hope to challenge Chávez was to consolidate their support behind one candidate. Therefore, in closed door negotiations, opposition leaders decided to back Manuel Rosales. In defense of accusations that this was undemocratic, political actors stated that it was not possible to hold primaries because there were no regulations or institutionalized mechanisms to do so (IDB, 2007, p. 192). The oversight of these primaries should have fallen on the CNE, as the body in charge of elections, but it was unable to facilitate primaries.<sup>223</sup> This shows a weak institutional structure to support democracy.

Another common feature of electoral campaigns, the leadership debate, was also missing. Without this avenue to disseminate political platforms, this responsibility fell on the news media,

---

<sup>223</sup> Sumate, an opposition non-government organization offered to host the primaries to compensate for the CNEs lack of capacity. This offer was met with great criticism from the government who saw it as being too political for a non-government organization. Many individuals and groups within civil society thought the organization was too politically tainted and too aligned with segments of the opposition that supported Carmona. Much of the criticism against Sumate stemmed from the role it had played in the recall referendum.

a medium of communication that also was not independent of political interests.<sup>224</sup> The lack of debate further polarized the two sides by eliminating the chance for dialogue between them.

Campaign financing was also controversial. The government was accused of using state funds to run its personal electoral campaign. For one, the President often used *cadenas*, addresses to the nation that television and radio stations are required to play live, as well as his weekly television address, *Aló Presidente*, to promote and build support for his campaign and to advertise his plans for reform.

During the electoral campaign, Chávez called for the unification of all parties under the banner of the United Socialist Party of Venezuela (PSUV). This, he argued, would eliminate problems associated with party in-fighting and with coalition formation because it could unite all supporters under one party. As an indication that some party plurality remained, even among parties in the governing coalition, the communist party publicly stressed the irony of being pressured to dissolve under a socialist government after having survived two dictators and four decades of partyarchy, particularly because they were largely in favour of the leftist policies of the President (Interview, 551).

Although some recognized the need to alter the relationship between parties, attempts to create other coalitions were rejected and Chávez insisted on nothing short of one unified party (Interview, 556). Chávez publicly demanded that those who did not support the PSUV join the opposition. Since the National Assembly was overwhelmingly controlled by supporters of the government it was difficult for them to resist these changes. This overshadowed the members of elected congress who had chosen to run under party labels other than the MVR.<sup>225</sup> Despite the

---

<sup>224</sup> The independence of the media will be discussed below.

<sup>225</sup> During the time of writing the PSUV had run a membership drive and held internal elections. Although the party continued to establish itself there was distention within it.



fact that all parties had confessed their loyalty to the president, the president announced the deepening of this commitment through the creation of one party.<sup>226</sup> In the lead up to the election, members of the government used the states power to intimidate the electorate. For example, public employees were told directly by the Minister of Energy that if they did not support the revolution they should leave their jobs and make room for people who did. In an address to employees, Minister Rafael Ramirez threatened that the government would not look lightly on individuals who were passive in their support for the revolution. He stated that the state oil company PDVSA is ‘Rojo Rojito’ a common slogan that demonstrates commitment to the revolution.<sup>227</sup>

As indication that the executive used its power to intimidate the population, the President publicly congratulated the Minister on his support for the revolution.<sup>228</sup> These threats are even more powerful when one considers the impact of the MaiSanta list and the political persecution experienced by individuals depending on if they signed in support of the presidents recall or not. The opposition filed charges with the CNE stating that Ramirez’s actions, as a government minister, were in violation of electoral laws. These charges were initially denied by the CNE, leaving many in the opposition to feel that government institutions were incapable of respecting their own laws.<sup>229</sup>

---

<sup>226</sup> In support of the view that the electoral system matters, Kunicova and Rose-Ackermann (2005) demonstrated that closed-list proportional representation systems provide an institutional structure that provides larger incentives for self-dealing. Opportunities for corruption are enhanced, they argue, when there is centralized control over government (Kunicova and Rose-Ackermann, 2005, p. 585).

<sup>227</sup> This phrase literally means red, little red, it was often used to describe someone’s dedication to the revolution and to Chávez himself.

<sup>228</sup> Ramirez case was later challenged in court in what would become one of the few examples of the court ruling against the “interests” of the government. Rafael Ramirez received a fine for his actions. This, however, occurred in 2007 –after the election had taken place and the government had reaped the associated gains. The minister was not removed from his position, nor reprimanded publically for these actions.

<sup>229</sup> Months after the elections Ramirez was given a minimal fine for these actions. This decision is held up by supporters of the government as indication that the courts are independent. Critics however site the marginal amount

Signaling that the state had an institutional structure in place committed to upholding the revolution and confirming the belief that the judiciary had been transformed into a tool of the executive, Supreme Court Magistrates openly stated their commitment to the revolution. This was done at the inauguration ceremony for the judicial year in 2006 when members of the Supreme Court broke into a chorus chanting “uh, ah, Chávez no se va” a common slogan used at pro-government marches that means “uh ah, Chávez will not go.” The court’s commitment to the government was public, but it had not previously been stated so openly. Other indicators of members of the court being supportive of the revolution, the Chief Justice of the Supreme Court had openly professed his commitment to the revolution and to upholding revolutionary values in the media. In his own defense, Omar Mora Diaz defines his dedication to the revolution as a pledge to initiate fundamental change in the political and social structure of Venezuela, one that will allow equality for all Venezuelans (Lopez, 2005). To him, a violation of the separation of powers is necessary to overcome previous corruption. In an interview, Omar outlined his vision of a judicial system that leads the way in destroying the previous corrupt, slow, inefficient system that favoured big interests (Lopez, 2005). According to this argument, dramatic political and judicial reform was justified as a means to surmount shortcomings of the past. In this way, Mora Diaz justified a politicization of the reform process.

The level of distrust toward institutions intensified concern among opposition and moderate Chávez supporters that the state institutions could not impartially implement regulations. Therefore, in the lead up to the 2006 Presidential elections, Venezuela did not meet the criterion presented by Mainwaring and Shugart (1992) and Cheibub (2002): that the electoral infrastructure needs to be independent of the executive and capable of enforcing electoral

---

of the fine and the fact that it was issues months after the election and thus, damage, had been done as indication that the law was not enforced in a uniform or fair manner.

regulations that went against the will of the executive. Despite the existence of a state infrastructure that fell short of being fully democratic, the opposition saw an advantage in electoral participation. While both the government and the opposition professed a commitment to democratic principles, they discounted the other side, accusing it of not meeting the necessary criterion to qualify as a democratic actor. The electoral process left many people questioning the democratic nature of political institutions.

## **7.5 The Presidential Election 2006**

Chavez's electoral win cannot be attributed entirely to the absence of judicial independence, a lack of respect for the written law, and manipulation of the electoral system. Chavez had broad support for the electorate. Leading up to December 2006 Presidential election Chávez was ahead in most opinion polls, as was indicated by a September 2006 Hinterlace poll which found that 55 percent of correspondents would vote for Chávez. These polls proved to be a realistic reflection of the population's intent and on 3 December 2006 Chávez won an astounding victory, gaining over 60 percent of the popular vote and winning in every state. This debunked some of the fear that people were becoming disenfranchised: the election saw the highest level of turnout in Chávez's career as President.

This was a definitive win for the President. The votes received for the opposition were not sufficient to overcome past political miscalculations from the 2005 legislative election boycott and, because the election was only for the President, the opposition remained excluded from formal political institutions. Had the opposition garnered this level of support one year earlier, the Venezuelan political landscape would have looked very different. Several factions within the opposition continue to believe that the government had tilted political institutions severely enough to have damaged their independence. The opposition boycott of the 2005

election left it with few means to challenge the actions of the government, exacerbating the feeling that they were excluded from the formal political system. Instead of mitigating minority disenfranchisement, the electoral system acted to reinforce the power of the executive.

The electoral system did not help mitigate the concentration of power in the executive. The separation of legislative and presidential elections, which occurred for the first time in Venezuela in 1998, places direct personal emphasis on the election of the president. Since presidential regimes are based on dual legitimacy, where both the legislature and the executive claim to represent the will of the sovereign people, they often invite competing legitimacies. (Linz, 1994). Chávez used the direct legitimacy from his election to assert that in 2006 every vote was a direct vote for him, as was evident both in the rhetoric of his speeches and in his attempt to unite all parties in the National Assembly under one party—the PSUV—as discussed in the previous section.

Chávez used this renewed mandate of power to deepen his revolution. With no opposition representation in the legislature, in March 2007, the government easily secured decree powers. It was not clear why this added measure was necessary when Chávez already had a majority in the assembly. Nevertheless, the decree powers gave Chávez the right to pass laws in certain areas without the support of the National Assembly for a period of 18 months.<sup>230</sup> Since representation in Congress was overwhelmingly dominated by supporters of the government, the decree powers were not needed to overcome deadlock. Supporters and opponents alike have suggested that Chávez requested the enabling laws to reaffirm that his power was unchallengeable and/or to

---

<sup>230</sup> A similar strategy was used in 2000 when the President was given his first opportunity to pass enabling laws. This is not an uncommon tactic used in presidential systems to avoid undue delay and deadlock – having already solidified a strong majority in the legislature it is not entirely clear why this was necessary. Since representation in Congress was overwhelmingly dominated by supports of the government the decree powers were not needed to overcome deadlock. It has been suggested that Chávez requested them for at least two reasons. First, to reaffirm that his power was unchallengeable or alternatively to proactively demolish any future attempts at slowing the revolutionary agenda.

proactively demolish any future attempts at slowing the revolutionary agenda (Interview, 645, Interview, 560).

## **7.6 The Five Motors of the Revolution**

The enabling law was the first of what was termed “the five motors of the revolution” that Chávez announced would drive the revolution toward a socialist government. The second motor, constitutional change, was deemed necessary by Chávez to compensate for the oligarchic influence that penetrated the 1999 Constitutional reform. Some members of the opposition have seen this as a post-hoc move to legalize actions of the executive (Interview, 551; Interview, 544). Others have seen it as a grab for more power and referenced the fact that constitutional reforms were created in an exclusionary manner, by a government-run commission (Interview, 545).<sup>231</sup> Instead of following a similar pattern to the reforms conducted eight years earlier, the constitutional changes were conceived of by a commission that was composed of five individuals chosen by the President. This method invited criticism from individuals in civil society, from the organized opposition, and from non-governmental organizations. Exacerbating the suspicion that the reform was not being conducted in a transparent manner, the initial 33 reforms suggested by the president’s commission were expanded when the legislature added 36 additional reforms between the first and second readings. Details of the constitutional reform will be addressed in the following section of this chapter.

---

<sup>231</sup> The process and content of the constitutional reform is uncertain. A presidential commission worked on its recommendations for changes and reported these changes were presented to the National Assembly. This committee included the President of the National Assembly, Cilia Flores, and 12 others including five members of congress, one Minister, the President of the Supreme Court, the Fiscal General, the Defensor del Pueblo, the solicitor general, a writer and a lawyer.

The third and fourth motors, education that includes social values and a new geometry of power, seek to deepen the socialist nature of government and society. The exact mechanism to do so has not been fully elaborated, but education reform is paramount to these changes. The fifth motor, an explosion of communal power, was extended through ‘consejos comunales’, or community councils. These councils give groups of families who work together in cooperative-style community organizations control over community development projects. This empowers communities to be more directly involved in their own development, but it has been criticized because the councils remain under direct control of the executive. Like the missions, since the funding was not transparent several people have accused the government of using it as a tool to reward supporters (Interview, 526). In order to give greater legitimacy to these reforms, they were put to referendum. These reforms were seen as a means of further concentrating power in the executive. This dissertation now turns to an analysis of the mobilization against these reforms that occurred in the lead up to the constitutional referendum in December of 2007.

## **7.7 Restriction of the Freedom of Expression or the Implementation of Law?**

The wave of anti-government protests against the Constitution sprouted from a student movement that had developed in opposition to a perceived attack on freedom of speech. Prior to exploring the constitutional reform, this section overviews the role of the media, which was one of the main catalysts for opposition mobilization. As Cheibub (2002) points out, one important means of checking the power of the president is through access to the media. In the absence of other vehicles to promote political platforms such as candidate debates, media coverage is of even greater importance. A few short months after winning his third presidential term, Chávez received strong international criticism for his decision not to renew the broadcast license of

RCTV. In addition to its direct political impact, the non-renewal decision is an example of unequal application of the law. RCTV was criticized for the role it had played in the 2002 coup that removed Chávez from power, and for how it portrayed the oil production stoppage. Although other opposition media remains in operation, the closing down of RCTV discredited the government in the eyes of the opposition, who saw it as an attack on freedom of expression. A more significance long-term implication is how the law was selectively used.

The treatment that RCTV can be described as persecution because two other large, privately owned channels, Venevision and Globovision, also received sharp criticism for the role they played in the 2002 event. Unlike RCTV, these stations remained operational. In April 2002 all three stations aired the violent protests and portrayed the violent incidents as if they had been conducted against the opposition by government sources. They received criticism for biased reporting because all of them refused to broadcast the gathering of hundreds of thousands of people who had taken to the streets in support of the President's return to power. In so doing, the television audience was not given a full account of the events as they occurred. TV crews at the time reported that the protests were too dangerous to cover. This justification was seen as bogus by the many that saw the strategic political advantage of downplaying the role of the president's supporters. These protests are credited with shifting the loyalties of the armed forces, which then supported the president's return to power. To be specific, it was this power of the people that was directly responsible for bringing the president back, but several news agencies did not portray this.

Few people try to refute that opposition channels had biased reporting; how the channels reacted to these accusations characterized their future interactions with the government. The government treatment of these opposition channels was dependent on how they changed their

broadcasting. Following the events of April 2002, Venevision overhauled its programming and drastically reduced the anti-government information that it aired. Since this time, there has not been government pressure against Venevision. Globovision, like RCTV, continued to be critical of the Chávez administration and likewise received public threats that its broadcast permit would not be renewed. The situation of Venevision suggests that, had the other stations ceded to government pressures and toned down criticism, they too could have avoided being shut down. In addition to being viewed as an attack on the freedom of speech, this is an indication that the law was unequally applied and that it was used to strengthen the government's position.

As justification for not renewing RCTV's broadcast license legal experts sympathetic to the government's position cited a trail of legal infractions committed by the station, including improper registration and tax infractions (Interview, 548). What is not clear, however, is why these alleged criminal offenses were not contended with at the time of their infraction. This inconsistency again points to an unequal application of the law. The inability or unwillingness of the legal system to deal with legal infractions when they arise suggests an inefficiency of the law. The fact that they were only enforced years after being committed, and at a time when the government had consolidated its power in many other ways, adds strength to the argument that political motivations were stronger than legal motivations.

In an attempt to contest the non-renewal of the broadcast license, several court cases were brought before the Supreme Court.<sup>232</sup> In one of the most contentious decisions, on 25 May 2007, the constitutional chamber of the TSJ ruled that RCTV's transmission equipment would become

---

<sup>232</sup> Fueling the opposition's frustration was a court ruling on 17 May, 2007. The Constitutional Chamber of the Supreme Court (TSJ) declared inadmissible an action put forward by the employees of RCTV. In response to a case brought before the International Court on Human Rights, and Chávez's subsequent threats, the OAS President Jose Miguel Insulza, announced that the OAS had no intention of condemning Venezuela. On 23 May, 2007, the TSJ in the political-administrative chamber declared that the second *amparo* challenging the RCTV closure was inadmissible. This occurred only days before the set closure on 27 May, 2007.



the property of the state.<sup>233</sup> The court ordered the military to take control of the equipment and stated that the equipment could be used by the government-run station that inherited RCTV's airwaves. At 12:01am on 28 May the state launched Fundación Televisora Venezolana Social (TVES). TVES was not just a state initiative; it was operated under the control of the Ministry of Popular Power for Communication and Information.<sup>234</sup> In the eyes of the opposition, this affirmed that the government would not only to use its power to impede the opposition's ability to disseminate its message, but that the state would also use aggressive tactics to increase its own power. As a result, the Inter-American Court of Human Rights (IACHR) on 24 May 2007 agreed to hear the case of RCTV, accepting that it was a potential move against the freedom of expression.<sup>235</sup>

An even more telling sign of the political nature of the decision not to renew the license reemerged when the station returned to air as an international channel. One day after RCTV began broadcasting from Miami, Chávez announced that Cable (PayTV) channels were required to show *cadena*s (broadcasts of government announcements that all radio and television stations were required to show). Prior to this decision, other international broadcasters, unlike their domestic counterparts, were not required to show *cadena*s. On 26 July, RCTV was criticized for violating national broadcast regulations and the Minister of Telecommunications, Jesse Chacón, ordered RCTV to register as a national broadcast producer citing the communications act Ley de Responsabilidad Social para Radio y Televisión (Ley Resorte). The station was given five

---

<sup>233</sup> On 31 July, the Political-Administration chamber of the Tribunal Supremo de Justicia (TSJ) rejected the RCTV case against CONATEL. This case was brought against the confiscation of RCTV's transition equipment. The court ruled against RCTV, arguing that because it had come back on air, it had not suffered losses.

<sup>234</sup> Its inception was announced by presidential decree No. 5.349 in Gaceta Oficial N° 38.681.

<sup>235</sup> In another show of international support the US Senate passed a resolution condemning the actions. The European Parliament, which sent a delegation to Venezuela, also passed a resolution condemning the action, stating that it violates freedom of speech. The OAS was asked, by the US, to act on the Venezuela case, but on 12 July it declined because Venezuela did not give the required consent.

working days to register or face being forced off the air.<sup>236</sup> In response to pressure from the Association of Cable Television Stations (CONATEL), on 1 August 2007, the TSJ in the constitutional chamber granted RCTV and CONATEL protection. This meant that RCTV would not be immediately shut down for allegedly violating registration laws.

The case was touted by government supporters and officials as evidence of the court's independence. Had RCTV been required to register with CONATEL, and law was applied consistently, more than 40 stations would be affected.<sup>237</sup> Moreover, as a point of comparison, TeleSur, a Venezuelan state station which broadcasts from Venezuela to many parts of Latin America also does not broadcast cadenas. The timing of the legal case and its focus on RCTV make it appear that the Venezuelan government is applying the rules unevenly and retrospectively in an attempt to quash the opposition's right to free speech and increase the power of the government. The mobilization behind this issue became the foundation of a student movement that became the principle opposition movement against the constitutional reform.

## 7.8 Surmounting Term Limits

One of the most controversial issues in the 2007 constitutional reform was the notion of term limits. To secure its ability to govern into the future, the executive pushed to remove limits on reelection. Although limited reelection is not an intrinsic feature of presidentialism, it is a

---

<sup>236</sup> The president of la Cámara de TV por Suscripción (Cavetesu), Mario Seijas, suggested the government look into other TV stations as well. The company that owns RCTV, IBC, claims that they are an international company, and so are not required to register as a national broadcaster. If registered as national broadcasters, some of the requisite include: the requirement to play the national anthem at 12 and 6, provide 15 minutes of free government advertising daily in addition to broadcasting the government's cadenas.

<sup>237</sup> Broadcasting the cadenas is complicated for cable TV networks, and so they were not easily willing to comply. One of the largest challenges would be how they could continue to broadcast simultaneously in several countries if they were required to show cadenas and comply with the same regulations as domestic laws. Had IBC been required to comply other international channels including Playboy, the Disney channel and Sony would also be required to comply with these domestic regulations.

common feature widely implemented to restrict incumbents' abuse of power (Linz, 1994, pp. 16-17; Mainwaring & Shugart, 1997, p. 452). Despite an initial ban on immediate reelection, Chávez overcame this limitation and was elected for a second term in 2000 under the Constitution created by his government. Nine years after Chávez's first election, a proposed constitutional reform sought to eliminate restrictions on the president's term. Only two weeks after the proposed constitutional reforms were rejected in the December 2007 referendum, the president vowed to pass the law regardless. Chávez was successful in securing reelection in a February 2009 referendum. Prior to discussing the overall implications of the referendum, this section will first address the issue of term limits.

Chávez's supporters see the removal of term limits as a positive move to keep an effective and popular president. In the presidentialist literature, term limits were identified by Linz as a flaw of presidentialism: "the no reelection rule prevents the retention of a competent and popular chief executive, should a country be fortunate enough to have found one" (Linz 1994, quoted in Carey, p. 126). To his supporters, Chávez is not only an excellent politician, but also a strong figure fighting for freedom and equality. Seeing him as such, many support his attempts to extend term limits, regardless of the outcome of the referendum. Term limits have been linked to democratic instability when presidents seek unconstitutional means of extending their terms, either through alliances with the military or, by counting on support of the population to illegally retain office (Cheibub, 2002; Stepan & Skach, 1993, p. 22). After losing the 2007 Referendum on constitutional reform, a new referendum was held to consult the population about reelection on 15 February, 2009 and after many efforts, term limits in Venezuela were successful been removed.

Presidential term limits are put in place to offset the ability of incumbents to use their power to secure reelection (Mainwaring & Shugart, 1997, p. 452). There is general agreement in the literature that without term limits, incumbent leaders have a significant advantage (see, for instance, Cheibub & Przeworski, 1999), namely their use of state resources to maintain power (Cheibub, 2002). Instead of limiting terms, Cheibub (2002) suggests other forms for controlling the president's actions to limit his or her electoral advantage. These include strict regulation of campaign finance and procedures, public funding of campaigns, free access to media, and the strengthening of agencies that oversee electoral campaigns (Cheibub, 2002, p. 304). Although potentially effective, these regulations are unlikely to be implemented in a system with precarious rule of law. Moreover, in Venezuela the state was accused of financing campaigns with public funds, abusing media, and manipulating the agency responsible for electoral oversight.

The use of legally questionable means to extend term limits inspired Mainwaring and Shugart to warn against the dangers of reelection. They asserted that reelection should be permitted only in countries "where reliable institutions safeguard elections from egregious manipulation by incumbents" (Mainwaring & Shugart, 1997, p. 452). The case of Venezuela shows how institutions were incapable of safeguarding elections from accusations of misuse.

The existence of term limits does not necessarily lead to destabilization and their removal is not inherently a power grab. Supporters of presidentialism argue that term limits discount the future because good presidents cannot be awarded with reelection, meaning that political capital must be spent while the president is in power, and that a president is under constant threat from others positioning themselves for leadership (Linz, 1996, p. 12; p. 17; Cheibub, 2002). Therefore, the removal of term limits guards against presidents who push through agendas

without adequate preparation. Extending the argument, the abolishment of limits puts an end to these problems and the possibility of immediate reelection increases politicians' responsiveness to citizen demands and allows voters the freedom to retain popular incumbents. This eliminates the conundrum associated with term limits that result either in the loss of a competent president or “tampering with the constitution” (Shugart & Carey, 1992, p. 29).

Despite the potential benefits of permitting indefinite reelection, it occurs in few countries. Of the six presidential regimes without limit on reelection identified by Shugart and Carey's (1992) pivotal study on presidentialism (1992, p. 87) two countries — France and Finland— are mixed systems and the other four have since placed restriction on reelection. The Philippines,<sup>238</sup> Nicaragua<sup>239</sup> and the Dominican Republic allow for limited reelection, while Paraguay banned reelection after the dictatorship of Stroessner<sup>240</sup> (Carey, 2003, p. 125). This suggests that presidential regimes that once saw reelection as beneficial have reconsidered.<sup>241</sup>

Some countries have formally removed unlimited reelection and others have stopped reinforcing the rules that exist. Gideon Maltz (2007) classifies term limits as a defining feature of democracy and he identifies a trend among electoral authoritarian regimes toward the un-enforcement of term limits (Maltz, 2007, p. 130).<sup>242</sup> He shows that in dubiously democratic

---

<sup>238</sup>Under the 1987 constitution the Presidential term was extended to six years with one term reelection (Choi, 2001, p. 489).

<sup>239</sup> The 1995 constitutional reform limited the presidency to a six year term, followed by a term out of office and restricted the ability of those holding office for one year prior (Anderson, 200X:151)

<sup>240</sup> This change occurred with the 1992 constitution and has been directly linked to an abuse of powers by Stroessner (Streb, 1999, p.6).

<sup>241</sup> There has been a recent trend throughout Latin America to alter term limits. Although Peru, Bolivia, and Ecuador have altered limits, Venezuela is unique in having removed them. In addition Columbia, Brazil and Honduras have made attempts to further alter limits.

<sup>242</sup> Maltz classifies the following countries as having violated term limits between 1992 and 2006. Although his study is far from conclusive it can be taken as an indication of an emerging trend, Electoral authoritarian countries that violated term limits (\*indicates “hard” contravention): Belarus\*, Burkina Faso\*, Chad\*, Gabon\*, Guinea\*, Kazakhstan\*, Senegal\*, Serbia & Montenegro\*, Tajikistan\*, Togo\*, Tunisia\*, Uganda\*, Lebanon, Pakistan, Yemen, Angola, Colombia, Kyrgyzstan, Peru, and Uzbekistan. Democracies that violated term limits: Argentina, Brazil, Dominican Republic, Namibia, Romania, and Venezuela.

regimes, with a questionable quality of democracy, the continuation in power of a president overshadows the formal rules. In other countries the Constitutional provisions on reelection were eliminated or judicial rulings were ensured to enable a second term, as was done in Peru (Maltz 2007, pp. 128-129). It is this type of abuse of power by the sitting president or the incumbent that is the foundation for provisions against reelection.

## **7.9 The Referendum on Constitutional Change 2007**

To increase the legitimacy of the proposed constitutional changes, the government put the reform to referendum. The reforms were done in two blocks: one set proposed by and one proposed by the national assembly.<sup>243</sup> The reforms were presented in two blocks-A and B. On the referendum day, both blocks of the reform were rejected by the population. Block A, Chávez's reforms, the 'no' side won with 50.7 percent of the vote. In Block B, the National Assembly reforms, the 'no' side won with 51 percent. The referendum is an important turning point. Both the opposition and government supporters claimed success.

The opposition relished having finally beaten Chávez in an electoral event. On referendum day, a delay of several hours from the time the polls closed until the results were released led the oppositions to suggest that the delay was giving the oppositions and the

---

<sup>243</sup>The text of the referendum question read as follows: ¿Aprueba usted el proyecto de Reforma Constitucional con sus Títulos, Capítulos, Disposiciones Transitorias, Derogatoria y Final, presentado en dos bloques y sancionado por la Asamblea Nacional, con la participación del pueblo y con base en la iniciativa del Presidente Hugo Chávez? Author's translation: Do you approve the constitutional reform project, including its titles, chapters, transitory dispositions, and final dispositions which are presented in two blocks and sanctioned by the National Assembly with participation from the population and based on the initiative of President Hugo Chávez? Derogatory dispositions are those that are in the 1999 constitution and would be terminated while transitory dispositions were newly introduced. Non-official results can be found on the CNE web site at (last accessed 04 June 2008). Representatives of the CNE warn that these results are not official and that the official results are not ready yet (Personal Communication, 644). [http://www.cne.gob.ve/divulgacion\\_referendo\\_reforma/index.php?tipo\\_consulta=0&cod\\_estado=0&cod\\_municipio=0&cod\\_parroquia=0&cod\\_centro=0&num\\_mesa=0](http://www.cne.gob.ve/divulgacion_referendo_reforma/index.php?tipo_consulta=0&cod_estado=0&cod_municipio=0&cod_parroquia=0&cod_centro=0&num_mesa=0). There is no clear justification for why the final results have taken so long to confirm. Since voting is electronic this should be nearly instant. This sort of delay further leads people to believe that the government is "doctoring" the results.

government time to negotiate the final electoral outcome. During the delay, opposition groups took to the airwaves calling for public action. Shortly after midnight local time, when preliminary results were finally announced, the president conceded the referendum.

The loss can be attributed to an effective campaign by student groups, increasing domestic problems including defections within the government, and an abstention rate of approximately 44 percent.<sup>244</sup> The student movement, as previously discussed, began its mobilization against the government's refusal to renew RCTV's broadcast license. Since the average age of university students was between 18 and 21, these students could claim a credible distance from the events of 2002 for which the opposition had been discredited. The success of the student movement can in large part be attributed to its effectiveness in ensuring that the 'No' campaign canvassed the poor neighborhoods where the majority of Chávez supporters lived. Moreover, as one of the student leaders commented, they clearly distinguished that the referendum was not a question of Chávez's leadership and that whatever the outcome, Chávez would remain president (Interview, 641). This student leader stated that there was a common misperception; many voters did not understand the complexities of the issue, and as a result they believed that if they voted 'no' the president would be removed from power.

Domestic problems that led to the referendum loss stemmed from increasing insecurity<sup>245</sup> and food shortages. The level of violence in Venezuela was increasing, revealing weaknesses in policing, the rule of law and the overall inability of the state to maintain peace (Chacao, 2006).

---

<sup>244</sup> A higher participation rate, it is argued, would have helped the president.

<sup>245</sup> One of the first large scale demonstrations held by the student groups, led by Yon Goicochea from the Universidad Católica Andrés Bello, was in protest of rising violence following the execution of three Venezuelan-Lebanese-Canadians and their body guard. The targeted kidnapping reportedly had political ties, but the government and police forces did little to prevent the execution. The bodies were found only hours after being shot several weeks after the initial kidnapping. The level of violence in poor neighborhoods continued to climb and security experts state that there is no accurate way of quantifying the number of murders in the city (apart from counting bodies at the morgue) (Interview 643).

At the same time, food shortages posed increasing problems. These shortages have many causes: first, increasing income resulted in an increase in consumption and in turn an increased demand; second, price caps deterred companies from increasing production; and third, political uncertainty acted to dissuade investors both from increasing production and from investing heavily in industry. Further, when products were not regularly available, hoarding further exacerbated these shortages.

Timely criticism from insiders further contributed to a reduction in support for the constitution. For example, the former Minister of Defense, Raúl Baduel's public speculation about internal dissention that followed his defection combined with his public condemnation of the government. This defection was leveraged by the opposition. Baduel had been a trusted minister. In a public address following his July 2007 resignation, Baduel condemned the government's socialist agenda and in particular the damage posed by placing too much emphasis on the role of the state. He criticized the government for implementing a model that was unplanned and chaotic (Baduel, 2007). This condemnation led some former supporters to question the government's program and indicated to some that there must be a high level of dissention within the armed forces.

A second character attack came from Chávez's ex-wife. She was featured on several news stations attacking Chávez's character. Although often resembling a soap-opera more than a newscast, this resonated with many people in Venezuela's popular sectors.

Government supporters claimed victory, seeing the president's loss and subsequent secession as an indication that Venezuelan political institutions, and in particular the CNE, were democratic and could rule against the government. Both arguments hold merit and should not be overlooked. In an environment of political uncertainty, the population rejected the government's



proposed constitutional reforms. The government's attempt to gain a popular mandate for changes through a referendum was lost. Two weeks after the failure of the referendum, however, Chávez announced that he would seek many of the changes, regardless of the referendum outcome and he would not let the loss stand in his way. Legally, Chávez did not need the referendum approval for most of the proposed changes. This raises questions regarding Chávez's commitment to the desires of the population: why hold a referendum if results will not be respected?

## **7.10 Conclusion**

The executive was able to use influence over other political institutions to concentrate its own power. Perceived violation of voter secrecy contributed to an environment in which the state used its authority to discriminate against citizens, based on political preferences. This combined with a strong influence over electoral laws to ensure that the government could secure disproportionate representation. With a legal system that favored the government and closed off the possibility of recourse to the opposition, individuals with political views different from the state's views had few legal means of airing grievances. In response, the opposition boycotted parliamentary elections and shut themselves out of formal government institutions.

With no means of influencing the political system from the inside, opposition groups had few official avenues to voice political concerns. The government seized this opportunity to accelerate the revolution. The executive had successfully monopolized representation in the legislature and the judiciary had openly confessed its commitment to the revolution. Although remnants of a functioning democratic system remain, and despite the fact that changes are being made in the name of building a stronger democracy, a lack of horizontal accountability allows the executive great, although not unlimited, leeway to make changes.

Returning to Linz's original perils, the executive's commitment to the removal of term limits and the opposition's reaction are an indication that presidentialism has affected institutional stability; the executive could repeatedly stretch legal limits because the laws were precarious. The executive's manipulation of the judiciary discredited the judiciary's ability to mediate governance problems. Instead, an already powerful President was able to systematically increase his influence over governing institutions, leaving outsiders with no credible recourse to air their grievances.

# CHAPTER EIGHT

## 8.1 Conclusion

Institutional instability in presidential democracies is more accurately understood when we consider the role of the judiciary and the broader environment of low rule of law. When the judiciary is not independent, two major indicators of institutional instability can surface. First, the executive can easily threaten or attack, and even control other branches of government. Second, other political actors, unable to resolve their grievances within the political arena will choose to operate outside of the democratic institutions. Although this is true in both parliamentary and presidential systems, this dissertation focused on a presidential system with a low respect for the rule of law.

Through process tracing this dissertation has shown how as a democratically elected leader Chávez has systematically undermined democratic institutions intended to keep him in check. This was possible because, among other things, Venezuela lacked an independent judiciary. When individual autonomy and political insularity were lacking, the executive could encroach on the judiciary with little fear of reprimand. Using this influence, the executive appointed judges, and in turn, ensured that the judiciary was more likely to rule in favour of the executive.

Beyond adding empirical insight on instability in Venezuela, this dissertation makes two other valuable contributions to the literature. First, for the broader study of comparative politics it sheds light on how the perils of presidentialism interact with low rule of law to cause institutional instability; second, it demonstrates the importance of looking beyond the regime, or

the existence of elections, to understand how democratic institutions uphold democratic regimes. Future research is required to test if the findings will hold true in other cases.

This conclusion is broken into three sections. It begins by reviewing how the dissertation addressed the rule of law and judicial independence literature. Second, it revisits the key hypothesis of the dissertation and demonstrates how the perils of presidentialism interact with low levels of rule of law to contribute to institutional instability. In so doing, it revisits the causal mechanism through which low levels of rule of law can bring about institutional instability. Third, it argues that a democratic regime alone is not sufficient to ensure the continuation of democratic governance, and points to the need for other robust democratic institutions beyond the executive and legislature. The conclusion ends by discussing the implications of the findings for the broader democratic stability literature.

## **8.2 Rule of Law and Judicial Independence**

The rule of law is a broadly used concept, there is, however, no universal or broadly agreed on definition. As shown in Chapter Two, this dissertation argued that judicial independence is a central element of the rule of law—without an independent judiciary, it is unlikely that a country will have a high level of rule of law. Consequently, other attributes of the rule of law are less relevant if the role of the judiciary is not considered. Additionally, this dissertation pointed to the need to study not only the formal mandate of the judiciary, but also the actual practice of judicial operations. It showed that studying the formal system tells us little about how things actually operate.

As shown in Venezuela, despite guarantees of political insularity, tenure, and institutional autonomy, judges were often selected and dismissed in a politicized way. The presence of such practices in the Punto Fijo years explains why Venezuela transitioned so quickly from an

apparent democratic ‘success story’ to a country with high levels of political instability. The executive-judicial relationship based on domination that developed under the Punto Fijo era (1958 – 1988), became evident in the transition period (1989 – 1998) and endured in the Chávez era (1999 – 2007). Specifically, the tenure, appointment, and dismissal of judges were politically motivated.

Through substantial interviews and the use of secondary sources, I argued that judicial independence did not exist in any of the three periods. During the early democratic years, while independence was formally entrenched in the 1961 Constitution, the appointment and removal of judges was determined by partisan politics. Since two parties colluded during the Punto Fijo era, a balance of power existed. This relationship did not allow for true independence, but it did prevent the executive from running roughshod over the judiciary and other institutions.

Parties ensured that the behaviour of their members was moderated because they knew that whatever they did could be reversed, or vengeance could be sought when the other party took power. Nevertheless, the judiciary was incapable of independently checking the power of the parties. As one former judge stated, when the parties were strong, judges knew how to rule to keep their jobs. There was no question, he insisted, “we always did what the party demanded” (Interview, 523). When the parties lost political power at the end of the 1980s the judicial system was left in limbo: the parties could no longer control judges, but judges were more accustomed to reaching decisions based on political reasoning, not on legality.

The majority of the population that was shut out of the political system grew frustrated with its lack of representation and inability to influence the political direction of its country. This frustration was evident in the demands that this group made on the government for political reform. Excluded groups sought to work outside the democratic system, thereby destabilizing it.

Examples of outside pressure include two coup attempts in 1992. The first led by Hugo Chávez, was brought about by the population's inability to influence or punish a sitting president, a perennial problem in presidential democracies. The second coup attempt was further demonstration of the severity of governability problems. This attempt was also unsuccessful at removing the president, but combined the two coup attempts brought greater attention to high levels of political corruption.

This dissertation demonstrated that even the process of impeaching President Pérez in 1993, was politically motivated. Although the act of impeaching a president is often seen as a sign of judicial independence, a close examination reveals that it was in fact a political move and an indication his party had turned against him—not a sign that the court was acting independently.

A new political era was born when Chávez won the 1998 presidential elections based on an anti-corruption campaign. He vowed to give Venezuelans a more representative constitution, by re-founding the state on more egalitarian principles and breaking from the past oligarchic institutions.

### **8.3 The Perils of Presidentialism**

As an example that the perils of presidentialism interact with low rule of law, Chávez, elected in 1998 with a minority government, used a judicial decision to surmount an opposition-dominated congress. Reliance on a judicial decision was a back-up plan which he resorted to only after he failed to build a congressional coalition to support constitutional reform. This court decision allowed the new constitution to be written, provided it was supported in a referendum. A high level of dissatisfaction with the political system contributed to an easy win. Chávez convened a constitutional assembly and tasked it with writing the new Constitution. In turn, the body elected

to rewrite the constitution also replaced the elected congress. Thus, Chávez overcame the traditional constraints faced by presidents who have a minority government—and did not even have to form a coalition to overcome deadlock.

The government was able to overwhelmingly influence constitutional reform because it benefited from the electoral system used to determine the members of the constituent assembly. Once the constituent assembly had been elected, it called a judicial emergency, suspending the courts and reforming the entire judicial system. By encroaching on other state institutions the 131 member constitutional assembly drastically overhauled the state institutions.

The constitutional assembly used this restructuring time to purge and overhaul the judiciary in the name of eliminating corruption. The assembly's authority to do this, however, was contested. The Supreme Court had initially ruled that the constitutional assembly had to respect existing political institutions. After a period of political pressure the court overturned its earlier ruling and determined that the constitutional assembly was supraconstitutional. This gave the assembly legal authority to govern in place of other institutions. This highly controversial move led the Chief Justice of the Supreme Court to resign. She asserted that this was a blatant encroachment on the power of the Supreme Court.

The new constitution expanded the executive's power. Avoiding term limits, which had existed in the 1961 Constitution, Chávez was re-elected under the Bolivarian Constitution of 1999. Since the Constitution had been modified to allow for one-term reelection, Chávez proclaimed that he was eligible to remain in power for two full terms. Failing to secure a majority in 2000, Chávez faced coalition problems within the legislature as members vied, without success, for greater influence over government policy. The presidential system made influencing government difficult and political protest brewed until Chávez's leadership was

directly challenged by the 2002 coup attempt. Formal mechanisms of influence had proven futile and those in opposition to the government resorted to this extraconstitutional measure.

The Supreme Court ruled that those involved in the coup attempt were filling a vacuum of power—and so, were not criminally responsible for removing the president. This decision became a catalyst for the executive to introduce new judicial reforms by expanding the Supreme Court. At the time of the 2002 hearing, most people believed that the court was not a reflection of the Punto Fijo, which reflected party interests; yet, despite reforms a similar pattern of executive influence continued. In particular, Luis Miquilena defected from government and his supporters in the court followed suit. This left a balance between Chávez supporters and opponents. In response to this ruling, the court was expanded from 20 to 32. Although Chávez was vocal in his disapproval of the ruling, the official reason for the courts expansion was to improve efficiency. Opponents saw this as a thinly veiled attempt by the government to ensure that the court would side with it.

Following this ruling, and in a lead up to the 2004 recall referendum, a battle between the different chambers of the Supreme Court fueled accusations that the judiciary was not independent. Political actors believed that government supporters dominated the Constitutional Chamber. This suspicion was supported by the fact that the constitutional chamber repeatedly overruled the decisions of other chambers that ruled against the government. Further exacerbating the belief that the court was acting politically, judges were regularly dismissed after ruling against the government.

Of potentially greater political consequence, this clash between chambers delayed the recall referendum. The opposition believed it to be no coincidence that in this one year time-period, the government increased social spending and in-turn the President's personal support. In



August 2003, when the recall referendum was first proposed, the President's popularity was much lower than in August 2004, when it was finally held. The Supreme Court—long seen as a politicized body—came to be seen, by the opposition, as a political tool.

As a result of the Supreme Court's actions there was an increase in the belief that the judiciary was incapable of acting impartially, and that it could be used for nefarious ends, leading to a decrease in respect for political institutions. The recall referendum was a constitutionally permitted remedy for the population to challenge a president, but how the process leading up to the recall referendum was handled by the administration did little to quash fear that the government was systematically discriminating against segments of the population. And, in turn, it did little to mitigate the problems of institutional instability often associated with presidentialism.

The fear that the executive had threatened and attacked other state institutions was not assuaged by accusations of political persecution that followed the referendum. Targeted for supporting the opposition, citizens of Venezuela grew disgruntled with the political system and many of them refused to participate in the 2005 parliamentary elections. This boycott left the opposition with limited formal institutional avenues to influence the government. In response to the government's attempts to accelerate the revolution, the opposition mobilized outside political institutions and traditional parties. The most notable opposition mobilization in this time period was the student-led protest movement against the proposed constitutional reform of 2007. This mobilization was successful in thwarting the government's attempt to increase term limits through constitutional reform.

To influence the government, the opposition mobilized outside of formal political institutions to contest the proposed constitutional reform of 2007. The government lost the

referendum and Chávez suffered his first electoral defeat. The President's statement, two weeks after the failed referendum, that he would find another way to implement the desired change does not suggest an adherence to democratic principles or to the will of the people.<sup>246</sup> Chávez held true to his promise and won a referendum on indefinite reelection on 15 February, 2009. With magistrates from the Supreme Court publicly declaring themselves supporters of the revolution, the opposition was left confident that they had no legal recourse with which they could challenge grievances against the state.

Venezuela, as a case study in the importance of an independent judiciary, not only for the rule of law but also for institutional stability, allows us to reach several conclusions. First, we can dismiss the notion, at least in this case, that the relationship between institutional stability and rule of law is spurious. Rather, in Venezuela the perils of presidentialism intensified institutional instability when the rule of law was low. Leveraging a non-independent judiciary was necessary for the executive to concentrate power into its own hands. Chapter Six and Seven, highlighted how, once monopolized, the judiciary could be used to directly increase the power of the government—that is, the judiciary became a political tool. The executive used an already precarious rule of law to its advantage to overcome minority government, coalitions, and deadlock. Future research will apply this model to other cases where the independence of the courts is stronger to begin with. Having stifled the power of other state institutions, Chávez used his control to increase the fixed terms and removed term limits. Having continually reaffirmed his popular support, Chávez claims a popular mandate to rule. Yet, the attacks on the democratic edifice have left few institutional means of restraining the president between elections.

---

<sup>246</sup> On 31 July 2008, just prior to Chávez's decree law expiring he decreed 26 new laws. The content of these laws were not made immediately available to the public. Evidence available at the time of completion of this dissertation suggests that many of these laws mirror the constitutional changes that were rejected in the December 2007 referendum. Term limits, the most controversial among the proposed changes were not affected by the decree laws.

## **8.4 Democratic Regime and Democratic State**

The case of Venezuela epitomizes a broader problem in relation to democratic theory. How do we evaluate a leader who is elected to government and then proceeds to rule with little regard for the democratic institutions in place? Chávez was elected by a population frustrated with a corrupt ruling oligarch. In the process of destroying and rebuilding institutions, he has increased his own power and decreased the power of the institutions in place to restrain his leadership. The president has established sufficient influence over other branches of government to suffocate the institutions capable of challenging his power. In turn, continued electoral success gave the President a growing claim to be representing the public mandate.

The citizens' demand to rupture past institutions was so powerful that a questionable path to deliver this change was tolerated. Moreover, such changes were made in the name of improving democracy for the people. At the time of writing, it was not clear that there were any means left for people to challenge the government outside of elections and there are few, if any, institutions in place that can ensure that the executive respects any set of rules. Oligarchic institutions have been destroyed and it is not yet clear if inclusive institutions will emerge in their place. Few political mechanisms to resolve state-society conflict have been institutionalized, making it difficult to determine what form a new state-society contract could take.

Without institutionalized conflict resolution mechanisms, political changes, no matter how noble, cannot be sustained. Be it parties or an individual in power, if the rulers govern and no credible mechanism for citizens to air their grievances exists, those citizens will look outside of the formal political system for means to be heard. This is especially true when the credibility of elections is questioned and heightens the necessity of looking at many aspects of democracy.

Regular elections in the Punto Fijo years brought a change in the leading party, and earned Venezuela the title of democracy. Problems of politically motivated violence in the late 1980s and into the 1990s placed Venezuela in a category of in-between countries that were not fully democratic, but continued to hold relatively free and fair elections. In a search to understand the political systems of this and similar countries, research began to look at quality of democracy to determine the necessary characteristics. As a contribution to this body of literature, this dissertation shows that understanding executive-judicial relationships provides great insight into institutional instability.

The credibility of elections is called into question when there are no state institutions capable of upholding the rule of law. This is especially true when the electorate is required to operate outside of the political system in order to have political influence. What prevailed in Venezuela was an elected government that relied heavily on the judiciary to solidify its own power. This political influence was used to maintain power electorally and giving the President the legitimacy of being an elected leader. It would not have been possible to garner such strong executive power had a firm respect for the rule of law existed.

Previous analysis of Venezuela showed that, although seemingly free and fair elections were held under during the Punto Fijo pact, there were not strong democratic state institutions beyond the party. This clarification suggests the importance of looking beyond elections to evaluate institutional instability and reaffirms O'Donnell's qualification that the definitions of democracy, based on fair elections, "presuppose the existence of some basic freedoms, or guarantees, if such elections are to exist" (O'Donnell, 2001, p. 16). Specifically, without other legal guarantees, the freedom and fairness of elections cannot be demonstrated. The democraticness of Venezuela's political system was damaged because a state structure was not in

place to ensure that “practically all actors, political and otherwise, take for granted that fair elections will continue being held into the indefinite future...” (O’Donnell, 2005, p. 15).

This dissertation used process tracing to explore the interaction between presidentialism and the rule of law, and reveals that the relationship is important to improve our understanding of both how the executive can remove restraints on its power when the rule of law is low, and also, how the executive can manipulate institutions to increase its electoral power. Such a strong concentration of power within the executive was made possible because of a weak rule of law. Unless institutions can mitigate not exacerbate societal problems they are unlikely to be sustainable. Without institutions to keep the power of leaders in check the quality, stability or even the survivability of democracy is threatened.

## References

- Abraham, H. J. (1986). *The judicial process* (5<sup>th</sup> ed.). New York: Oxford.
- Alexander, G. (2002). Institutionalized uncertainty, the rule of law, and the sources of democratic stability. *Comparative Political Studies*, 35, 1145.
- Almond, G. A. & Verba, S. (1963). *The civic culture: Political attitudes and democracy in five nations*. Princeton, N.J.: Princeton University Press.
- Altman, D. (2000). The politics of coalition formation and survival in multi-party presidential democracies -the case of Uruguay 1989-1999. *Party Politics* 6 (3), 259-283.
- Alvarez, A.E. (2003). State reform before and after Chávez's election. In pp.147-160. In S. Ellner, & and D. Hellinger (Eds.), *Venezuelan politics in the Chávez era*. Boulder: Lynne Rienner.
- Alvarez, T. (2007). *Constituyente, reforma y autoritarismo del siglo XXI*. Caracas: Universidad Católica Andrés Bello.
- Alvarez, M, Cheibub, J.A., Limongi, F. & Przeworski, A. (1996). Classifying political regimes. In *Studies in Comparative Development*, 31(2), 1-37.
- Alvarez, M. Cheibub, J. Limongi, F. & Przeworski, A. (2000). ACLP political and economic database codebook. In *Democracy and development: Political institutions and material well-being in the world, 1950-1990*, 291-300.
- Aronovitz, A. (2000). Some reflections on the possible role played by constitutional culture in the preservation of democratic values in Latin America. In *Constitutional Cultures*. M. Wyrzykowski, (Ed.). Warsaw, 2000: Institute of Public Affairs.
- Asamblea Nacional. (1999). *Gaceta Oficial* no 990217-31. 4 Marzo.
- Asamblea Nacional. (1999). *Gaceta oficial* no. 36,859. 29 diciembre.
- Asamblea Nacional. (2000, November). Ley Especial para la Ratificación o Designación de los Funcionarios y Funcionarias del Poder Ciudadano y Magistrados y Magistradas del Tribunal Supremo de Justicia para su Primer Período Constitucional. *Gaceta oficial* no. 37.077,14
- Asamblea Nacional. (2004). Ley organica del tribunal supremo de justicia de la republica bolivariana de Venezuela. *Gaceta Oficial* 37.942. (Law approved on May 20, 2004.)
- Asamblea Nacional. (2006). *Gaceta Oficial* no. 38,455. (pp. 1-56). Retrieved February 16, 2007, from <http://www.asambleanacional.gov.ve/ns2/leyes.asp?id=749>

- Baumgartner, J. & Kada, N. ed. (2003). *Checking executive power : presidential impeachment in comparative perspective*. Connecticut: Praeger Publishers.
- Baduel, R.I. (2007). Discurso del general en jefe (EJ) Raul Isaias Baduel, Ministro del Poder Popular para la defensa en el acto de entrega del mppd en fecha. Unpublished speech.
- Baer, M.D. The Americas: the vengeance of the Venezuelan dinosaurs. *Wall Street Journal*. A13.
- Barros, R. (2001). Personalization and institutional constraints: Pinochet, the military junta, and the 1980 constitution. *Latin American Politics and Society*, 43(1), 5-28.
- BBC News. (1999, Aug. 25th). Top Venezuelan judge resigns. BBC World News. London. Retrieved July 8<sup>th</sup>, 2006 from BBC Online Network.
- BBC News. (2004). Paper endorses human rights watch "great concern" over judiciary. Retrieved June 19, 2004, from *Global News Wire -Asia Africa Intelligence Wire*.
- Beasley-Murray, J. (2003). The Coup will be televised. In Wilpert, G. Ed. *Coup against Chávez in Venezuela: The best international report of what really happened in April 2002*. Caracas: Fundación Venezolana para la Justicia Global.
- Bejarano, A. M. (2000). *Perverse democratization: Pacts, institutions, and problematic consolidations in Colombia and Venezuela*. (Doctoral Dissertation, Columbia University). Retrieved from CUL Academic Commons, 25 May 2005.
- Bejarano, A.M. & Pizarro, E. (2005). From 'restricted' to 'besieged': the changing nature of the limits to democracy in Colombia. In F. Hagopian & S. Mainwaring (Eds.), *The third wave of democratization in Latin America: Advances and setbacks* (pp.235-260) Cambridge: Cambridge University Press.
- Bell, D. (2006). *Beyond Liberal Democracy: Political Thinking for an East Asian Context*. Princeton: Princeton University Press.
- Bermeo, N. (1992). Democracy and the lessons of dictatorship. *Comparative Politics*, 25, 273—291.
- Blanco, C. (2002). *Revolucion y desolusion -la Venezuela de Hugo Chávez*. Madrid, Espana: Los Libros de la Catarata.
- Boniface, D. (2007). The OAS's mixed record. In eds. Legler, T., Lean, S., and Boniface, D., *Promoting democracy in the americas*. Baltimore: Johns Hopkins University Press.
- Brewer-Carías, A.R. (1975). *Cambio político y reforma del estado en Venezuela*. Madrid: Editorial Tecnos.

- Brewer-Carías, A. (1987) Le reforma del sistema electoral. *Revista Venezolana de ciencia política* 1(1), 51-75 (Universidad de los Andes).
- Brewer-Carías, A.R. (2002). Standing to raise constitutional issues in Venezuela. N. R. f. t. X. I. C. o. C. Law. Brisbane, Australia: International Academy of Comparative Law, 60.
- Brewer-Carias, A.R. (2004). El secuestro del poder electoral y de la sala electoral del tribunal supremo y la confiscación de derecho a la participación política mediante el referendo revocatoria presidencial. *Revista Ius et Praxis*, 10(1), 215 – 308.
- Brewer-Carías A.R. (2004). *La sala constitucional versus el estado democrático de derecho. El secuestro del poder electoral y de la sala electoral del Tribunal Supremo y la confiscación del derecho a la participación política*. Caracas: Los Libros de El Nacional, Colección Ares.
- Brewer-Carías, A.R. (2005) El secuestro del poder electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004. In *Boletín Mexicano de Derecho Comparado*, 112, (Enero-Abril),11-73.
- Brewer-Carías, A.R. (2005, September). *Quis custodiet ipsos custodes*: De la interpretación constitucional a la inconstitucionalidad de la interpretación. In *VIII Congreso Nacional de derecho constitucional, Perú*, (pp. 463-489). Fondo Editorial 2005. Arequipa: Colegio de Abogados de Arequipa.
- Brewer-Carías, A. R. (2006). Régimen y alcance de la actuación judicial de oficio en materia de justicia constitucional en Venezuela. *Estudios Constitucionales: Revista Del Centro De Estudios Constitucionales*, 4(2), 221-250.
- Brewer-Carias, A. Pena Solis, J., Chavero Gazdik, R., Duque Corredor, R. & Antela, G.R. (2004). *La guerra de las Salas del TSJ frente al referendum revocatorio*. Caracas: Editorial Aequitas.
- Bunce, V. (2000). Comparative democratization: Big and bounded generalizations. *Comparative Political Studies*, 33, 703-734.
- Burton, M., Gunther, R., & Higley, J. (1992). Introduction: Elite transformations and democratic regimes. In J. Higley, & R. Gunther (Eds.), *Elites and democratic consolidation in Latin America and southern Europe*. Cambridge: Cambridge University Press.
- Busey, J. L. (1964). *Latin America: Political institutions and processes*. New York: Random House.



- Buxton, J. (2001). *The failure of political reform in Venezuela*. Aldershot, United Kingdom: Ashgate.
- Buxton, J. (2007). The deepening of Venezuela's Bolivarian revolution: why most people don't get it. Open Democracy Net. (accessed 04 May 2007). <http://www.opendemocracy.net>
- Caldera, J.J. (2005, May 25). Las moroches. *Convergencia*. Retrieved June 11, 2006 from <http://www.convergencia.org.ve/opinion/?id=468>
- Calvert, P. (2004). Executive leadership and legislative assemblies: Latin America. *The Journal of Legislative Studies*, 10(2-3), 218-234.
- Cameron, M. (1994) *Democracy and Authoritarianism in Peru: Political Coalitions and Social Change*. New York: St. Martin's Press.
- Cameron, M. (1998). Latin American *autogolpes*: dangerous undertows in the third wave of democratisation, *Third World Quarterly* 19(2): 219-239.
- Cameron, M. (2002). Democracy and the separation of powers: Threats, dilemmas, and opportunities in Latin America. *Canadian Journal of Latin American and Caribbean Studies*, 27(53), 133-159.
- Cameron, M. (2004). The seven lives of Hugo Chávez. FOCALPoint, Spotlight on the Americas. 3 (7): 2-3.
- Cameron, M., Blararu, A., & Burns, L. (2004). Constitutional frameworks and the rule of law: Rethinking Stepan and Skach on parliamentarism versus presidentialism. Unpublished Manuscript.
- Cannon, B. (2004). Venezuela, April 2002: Coup or popular rebellion? The myth of a united Venezuela. *Bulletin of Latin American Research*, 23 (3), 285-302.
- Cappelletti, M. (1971). *Judicial review in the contemporary world*. Indianapolis: Bobbs-Merrill.
- Carey, 1997 Electoral Laws and the Survival of Presidential Democracies. *American Political Science Review* 91 (3): 766
- Carey, J.M. (2005). Presidential versus Parliamentary Government. pp. 91–122. In Handbook of New Institutional Economics. Eds. Menard C. & Shirley, M. United States: Springer
- Cardoso, F. H. (1979). On the characterization of authoritarian regimes in Latin America. In D. Collier (Ed.), *New authoritarianism in Latin America* (pp. 33-60). New Jersey: Princeton University Press.
- Carothers, T. (1997). Democracy without illusions. *Foreign Affairs*, 76, 85.

- Carothers, T. (1998). Rule of law revival. *Foreign Affairs*, 77(2).
- Carta de los Notables. (1990). Letter to President Carlos Andrés Pérez. (accessed 09 March 2008). <http://www.analitica.com/Bitblbio/notables/default.asp>
- Carothers, T. (2002). The end of the transition paradigm. *Journal of Democracy*, 13(1), 5.
- Carter Center. (2006, July). Reflexiones y aportes para la reforma de la legislacion electoral venezolana. Atlanta Georgia: The Carter Center. Accessed on 19 January, 2009. <http://www.cartercenter.org/resources/pdfs/peace/americas/EstudioElectoralVenezuela1%20CarterCenter.pdf>
- Casal, J.M., Roche, C.L., Richter, J., & Hanson, A.C. (2005). Derechos humanos, equidad y acceso a la justicia. Caracas, Venezuela: Instituto Lationamericano de Investigaciones Sociaes (Ildis).
- Chacao, A. (2006). Plan 180 propuesta para la justicia y la seguridad en Venezuela. In *Propuesta para Reducir la inseguridad en 180 dias*. Caracas: La Alcaldia de Chacao.
- Chávez, R.(2004) The Evolution of Judicial Autonomy in Argentina: Establishing the Rule of Law in an Ultrapresidential system. *Journal of Latin American Studies*. 36(3): 451-478.
- Chávez, R. (2005) *The rule of law in nascent democracies : judicial politics in Argentina*. California: Stanford University Press.
- Cheibub, J. A. (1999). Divided government, deadlock and the survival of presidents and presidential regimes. *American Political Association APSA, Atlanta, Septiembre*, 2-15.
- Cheibub, J. A. (2002). Minority governments, deadlock situations, and the survival of presidential democracies. *Comparative Political Studies*, 35(3), 284-313.
- Cheibub, J. A. (2007). *Presidentialism, parliamentarism, and democracy*. Cambridge England ; New York, NY: Cambridge University Press.
- Cheibub, J. A. and Limongi. F. (2002). Democratic institutions and regime survival: Parliamentary and presidential democracies reconsidered. *Annual Review of Political Sciences* 5, 151-179.
- Cheibub, J. A., Przeworski, A., & Saiegh, S. (2004). Government coalitions and legislative effectiveness under presidentialism and parliamentarism. *British Journal of Political Science*, 34(04), 565-587.
- Chief of Venezuelan court resigns to protest ruling.( 1999, August 25). *The Wall Street Journal*. A13.

- Choi, J. (2001). Philippine democracies old and new: Elections, term limits, and party systems. *Asian Survey*, 41(3), 488.
- Clagett, H. (1952). *The administration of justice in Latin America*. New York: Oceana.
- Clark, D. S. (1974-1975). Judicial protection of the constitution. *Hastings Constitutional Law Quarterly*, 2, 405-442.
- Coker, T. (1999). Globalization and state capital accumulation. *Latin American Perspectives*, 26(5), 75-91.
- Collier, R. and Collier, D. (1991) *Shaping the political arena : Critical junctures, the labor movement, and regime dynamics in latin america*. Princeton, N.J.: Princeton University Press.
- Collier, D., & Levitsky, S. (1997). Research note: Democracy with adjectives: Conceptual innovation in comparative research. *World Politics*, 49(3), 430-451.
- Collier, R. B. (1999). *Paths toward democracy: The working class and elites in western Europe and South America*. Cambridge, UK ; New York: Cambridge University Press.
- Collins, K. (2006). *Clans politics and regime transition in central asia*. New York: Cambridge University Press
- Combellas, R. (1979) El concepto de estado social de derecho y la constitucion venezolana de 1961. In *Estudios sobre la constitucion: Libro homenaje a Rafael Caldera*. Caracas, Venezuela: Universidad Central de Venezuela.
- Combellas, R. (2003). El proceso constituyente y la constitución de 1999/ The constituent process and the constitution of 1999. *Politeia*, 30(30).
- Consejo Nacional Electoral [CNE]. (1999). Asamblea nacional constituyente. *Gaceta Electoral De La Republica De Venezuela*.
- Consejo Nacional Electoral, (2004). Resolucion no. 040302 -131 (March 2, 2004.).
- Consejo Nacional Electoral, (2004) . Boletin electoral referendum 15 Agosto de 2.004. *Referendum presidencial 2004*. Retrieved May 18, 2008 from [http://www.cne.gov.ve/referendum\\_presidencial2004](http://www.cne.gov.ve/referendum_presidencial2004)
- Consortio de Justicia. (2007) *La indepenencia judicial y otros principios directamente relacionados: analisis conceptual*. Forthcoming. Caracas: Consortio de Justicia
- Consultores21 (2007) Historical Series Data. Percepción de Instituciones. Caracas: Consultores21

- Consultores 21. (October –November 2005). Historical Series Data. Percepción de Instituciones. Caracas: Consultores21. S.A.
- Coppedge, M. (2002). *Venezuela: Popular sovereignty versus liberal democracy*. Unpublished manuscript.
- Coppedge, M. (1994). Prospects for democratic governability in Venezuela. *Journal of Interamerican Studies and World Affairs*, 36(2).
- Corrales, J.& Penfold, M. (2007) Venezuela: Crowding out the opposition. *Journal of Democracy*. 18 (2), 99-113.
- Corrales, J. (2001). Strong societies, weak parties: Regime change in Cuba and Venezuela in the 1950s and today. *Latin American Politics and Society, Summer*, 81-113.
- Crisp, B. & Johnson, G. (2001). Venezuela en transición: elecciones y democracia, 1998-2000, en En Carrasqueño, J., Maingon, T., y Welsch, F., (eds). *Venezuela en Transition: elections y democracia, 1998-2000*. Caracas: Red Universitaria de Estudios Politicos de Venezuela.
- Crisp, B.F. (1997). Presidential behavior in a system with strong parties: Venezuela 1958-1995. In S. Mainwaring & S.M. Shugart (Eds.), *Presidentialism and Democracy in Latin America*. New York: Cambridge University Press.
- Crisp, B.F. & Levine, D.H. (1998). Democratizing the democracy: Crisis and reform in Venezuela. *Journal of Interamerican Studies and World Affairs* 40(2), 27-61.
- Dahl, R. A. (1971). *Polyarchy; participation and opposition*. New Haven: Yale University Press.
- Datanalisis. (January 2005). *Encuesta de Opinión Pública*. Caracas: Datanalisis
- Datanalisis (October –November 2005). *Encuesta de Opinión Pública*. Caracas: Datanalisis
- DeShazo, P., and Vargas, JE. (2006). *Judicial reform in Latin America: An assessment*. Center for Strategic and International Studies (CSIS) Americas Program. Washington, DC: Center for Strategic and International Studies.
- De Soto, H. (1987). *El otro sendero: la revolucion informal*, 6<sup>th</sup> ed. Bogota, Colombia: Editorial La Oveja Negra.
- Dessler, D. (1991). Beyond correlations: Toward a causal theory of war. *International Studies Quarterly*, 35, 337-355.
- Diamond, L. (1996). Is the third wave over? *Journal of Democracy*, 7(3), 20-37.

- Diamond, L. (1999). *Developing democracy : Toward consolidation*. Baltimore: Johns Hopkins University Press.
- Diamond, L. (2002). Thinking about hybrid regimes. *Journal of Democracy*, 13(2), 21-35.
- Diamond, L. (2005). *Assessing the quality of democracy*. Baltimore: Johns Hopkins University Press.
- Diamond, L., Linz, J., & Lipset, S. M. (1995). *Politics in developing countries: Comparing experiences with democracy*. Boulder: Lynne Rienner Publishers.
- Diamond, L. & Morlino, L. (2005) *Assessing the quality of democracy*. Baltimore: Johns Hopkins University Press.
- Diamond, L. & Morlino, L. (2004). An Overview. *Journal of Democracy*, 15(4), 20-31.
- Dodd, L. (1976). *Coalition in parliamentary government*. Princeton: Princeton University Press.
- Domingo, P. (2005). The rule of law in nascent democracies: Judicial politics in Argentina. *Perspectives on Politics*, 3(01), 176.
- Domingo, P. and R. Sieder (2001). *Rule of law in Latin America : The international promotion of judicial reform*. London: Institute of Latin American Studies.
- Duncan, W. R. (1976). *Latin American politics*. New York: Praeger.
- “El que firme contra Chávez está firmando contra la patria,” *El Universal*, October 17, 2003
- Ellner, S. (2001). The radical potential of Chavismo in Venezuela the first year and a half in power. *Latin American Perspectives*, 28(5), 5-32.
- Ellner, S. (2002, December 20). Middle-Class Revolt. *In These Times*. Retrieved May 4, 2006 from, <http://www.inthesetimes.com/article/280/>
- Ellner, S. & Hellinger, D., (Eds.). (2003). *Venezuelan politics in the Chávez era: Class, polarization & conflict*. Boulder: Lynne Rienner.
- Elman, C., & Elman, M. (Eds.). (2001). *Bridges and boundaries: Historians, political scientists, and the study of international relations*. Cambridge, MA: MIT Press.
- Elster, J. (1998). Introduction. In J. Elster (Ed.), *Deliberative democracy*. Cambridge: Cambridge University Press.
- Epstein, L., Knight, J. & Shvetsova, O. (2001). The role of constitutional courts in the establishment and maintenance of democratic systems of government. *Law and Society Review* 85(1), 117-164.

- Feld, L.P. & Voigt, S. (2003). Economic growth and judicial independence: cross-country evidence using a new set of indicators. *European Journal of Political Economy* 19(3), 497-527.
- Fernandez, G. (1985). *Democracia, estabilidad y desarrollo político en América Latina*. Buenos Aires: Editorial Pleamar
- Finkel, S., Pérez-Liñán, L., Seligson, M., Tate, C.N.. (2008). Deepening Our Understanding of the Effects of US Foreign Assistance on Democracy Building Final Report available at: [http://www.pitt.edu/~politics/democracy/FINAL\\_REPORT%20v18b.pdf](http://www.pitt.edu/~politics/democracy/FINAL_REPORT%20v18b.pdf) . Accessed on March 11, 2009.
- Fiss, O. M. (1993). The right degree of independence. In I. Stotzky (ED.), *Transitions to democracy in Latin America: The role of the judiciary*. Boulder: Westview Press, 55-72.
- Foweraker, J. (1998). Review Article: Institutional Design, Party Systems and Governability—Differentiating the Presidential Regimes of Latin America. *British Journal of Political Science*. 28(4), 651-676.
- Fox, J. (1994). The difficult transition from clientelism to citizenship: Lessons from Mexico. *World Politics* 46(2).
- Fukuyama, F. (1992). *The end of history and the last man*. New York: Avon.
- Freedom House (2007). *Freedom in the world: The annual survey of political rights and civil Liberties*. Pennsylvania: Rowman & Littlefield Publishers, Inc.
- Garcia-Guadilla, M.P. (2006). Social Movements in a polarized Setting: Myths of Venezuelan Civil society. in eds. Ellner, S & Tinker-Salas, M. *Venezuela: Hugo Chávez and the decline of an “exceptional democracy.”* Maryland: Rowan & Littlefield.
- Garcia-Pelayo, M. (1991). *Estado legal y estado constiucional de derecho*. Madrid: CEC.
- Garrido, A. (2003). *Notas sobre la revolución bolivariana*. Ediciones del Autor, Caracas, Venezuela
- Geddes, B. (1994). *Politician's dilemma: Building state capacity in Latin America*. Berkeley: University of California Press.
- George, A. L., & Bennett, A. (2005). *Case studies and theory development in the social sciences*. Cambridge, MA: MIT Press.
- Gerring, J. (2001). *Social science methodology: A critical framework*. Cambridge: Cambridge University Press.

- Gibson, J. L., Caldeira, G. A., & Baird, V. A. (1998). On the legitimacy of national high courts. *The American Political Science Review*, 92,343-358.
- Gómez,, J.V. (2005) TSJ decidió a favor de ‘Las Morochas’. In *Sufragio: La revista del poder electoral*.
- Gómez, M.A. (2008). *Greasing the squeaky wheel of justice networks of venezuelan lawyers from the pacted democracy to the bolivarian revolution*. Florida International University Legal studies Research Paper Series. Paper number 08-02. Social Science Research Network electronic library at: <http://papers.ssm.com/sol3/papers.cfin?abstract-id=128093> 1. (accessed January 09, 2009).
- Gregorio, Carlos. (2003) *Transparencia judicial y su impacto sobre las inversiones internacionales*. Buenos Aires: Mimeo.
- Grete, P. (1999, August 27). Venezuela's congress vows defiance. *BBC News*. Retrieved September 30, 2004 from BBC Online Network.
- Gunther, R. Diamandouros, N.P., Puhle, H.J. (1995) *The politics of democratic consolidation: Southern Europe in comparative perspective*. Baltimore: Johns Hopkins University Press.
- Gunther, R. Diamandouros, P.N. & Puhl, H.J. (1996). O’Donnell’s ‘illusions’: A rejoinder. In *Journal of Democracy* 7(4), 151-159.
- Guevara, A. (2004). *Chávez, Venezuela and the new Latin America: An interview with Hugo Chávez*. New York: Ocean Press.
- Gutiérrez, J. (2006). Entraísta Leopoldo López "mi lucha es contra la desesperanza". *Clímax*, Julio 8.
- Habermas, J. (1995). On the internal relation between the rule of law and democracy. In *European Journal of Philosophy*. 3(1): 12-20.
- Hagopian, F. (1990). “Democracy by undemocratic means?”: Elites, political pacts, and regime transition in Brazil. *Comparative Political Studies*, 23(2), 147.
- Hall, P. (2003). Aligning ontology and methodology in comparative politics. In J. Mahoney, & D. Rueschemeyer (Eds.), *Comparative historical analysis in the social sciences* (pp. 373-404). New York: Cambridge University Press.
- Hammergren, (2002) *Do judicial councils further judicial reform? Lessons from Latin America*. Washington D.C.: Carnegie Endowment for International Peace
- Harnecker, M. (2002). *Hugo Chávez frías un hombre, un pueblo*. La Habana: Editorial Ciencias Sociales.

- Hart, H. L. A. (1997). *The concept of law*. Oxford; New York: Oxford University Press.
- Hartlyn, J., McCoy, J., & Mustillo, T. J. (2003). *The 'Quality of elections' in contemporary Latin America: Issues in measurement and explanation*. Unpublished manuscript.
- Hartlyn, J. (1988). *The politics of coalition rule in Colombia*. New York: Cambridge University Press.
- Hartlyn, J. (1994). Crisis-Ridden Elections (Again) in the Dominican Republic: Neopatriotism, Presidentialism and Weak Electoral Oversight. *Journal of Interamerican Studies and World Affairs* 36(4), 91-144.
- Held, D. (1992). Editor's preface. *Political Studies*, 40, 7-9.
- Helmke, G. (2000). *Ruling against the rulers: Court-executive relations in Argentina under dictatorship and democracy*. Chicago: University of Chicago Press.
- Helmke, G. (2002). The logics of strategic defection: Court-executive relations in Argentina under dictatorship and democracy. *American Political Science Review*, 96(2), 291-304.
- Helmke, G., & Levitsky, S. (2004). Informal institutions and comparative politics: A research agenda. *Perspectives on Politics* 2(4).
- Helmke, G. (2008). The origins of institutional crises in latin america: A unified strategic model and test. Paper presented at the Workshop on the Rule of Law, Yale University, March 28-29, 2008.
- Henley, S. & Suhr, J.H. (2004). View from the wheelhouse: The role of court administration in the management, independence, and accountability of the courts. *The Florida Bar Journal*, March 2004.
- Hernandez-Mendible, V.R. (2000). La contribución del poder judicial a la desaparición de la constitución, la democracia y el estado de derecho. In J.M.H Casal & A.C. Hanson (Eds.), *El nuevo derecho constitucional Venezolano: Ponencias presentadas en el VI congreso Venezolano de derecho constitucional en homenaje al doctor Humberto J. la Roche* (pp. 81-107). Caracas, Venezuela: Universidad Católica Andrés Bello.
- Hirschl, R. (2008). *The judicialization of mega-politics and the rise of political courts*. *Annual Review of Political Science*. 11: 93–118.
- Hsieh, C., Orega, D., Miguel, E. & Rodriguez, F. (2007, September). The price of political opposition: Evidence from Venezuela's *Maisanta*. Retrieved May 30, 2008 from: [http://www.gsb.stanford.edu/facseminars/events/political\\_economy/documents/pe\\_09\\_07\\_miguel.pdf](http://www.gsb.stanford.edu/facseminars/events/political_economy/documents/pe_09_07_miguel.pdf)



- Human Rights Watch (2003). *Human rights watch world report, 2003: Events of 2002 (November 2001-November 2002)*. Retrieved May 4, 2006 from <http://www.hrw.org/wr2k3>
- Human Rights Watch (2004). *Rigging the rule of law: Judicial independence under siege in Venezuela*. Retrieved December 12, 2004 from <http://www.hrw.org.reports/2004/venezuela0604/>
- Huntington, S. P. (1991). *The third wave: Democratization in the late twentieth century*. Norman: University of Oklahoma Press.
- Iaryczower, M., Spiller, P.T. & Tommasi, M. (2002). Judicial independence in unstable environments, Argentina 1935-1998. *American Journal of Political Science*, 46(4): 699-716.
- Inglehart, R. (2003). How Solid Is Mass Support for Democracy—and How Can We Measure It? *Political Science and Politics* 36 (1): 51–57.
- Instituto Nacional de Estadística. (2006) *Índices de Desarrollo Humano*. Ministerio del Poder Popular para la Planificación y Desarrollo. (12 February 2007) from <http://www.ine.gob.ve/condiciones/calidadvida.asp>
- Inter-American Committee on Human Rights (IACHR). (2003). *Report on the situation of human rights in Venezuela*. Washington, DC: Organization of American States.
- Inter-American Development Bank (IADB), (2003). *Poverty reduction and promotion of social equity*. Washington DC: Inter-American Development Bank.
- Inter-American Development Bank (IADB). (2007). *Country Indicators – Venezuela*. Washington: Inter-American Development Bank. (4 January 2007) from: [http://www.iadb.org/countries/indicators.cfm?id\\_country=VE&language=English](http://www.iadb.org/countries/indicators.cfm?id_country=VE&language=English)
- International Bar Association. (2003). *Informe sobre la situación de la administración de justicia amenazada en Venezuela*. Caracas: International Bar Association Human Rights Institute.
- International Bar Association. (2007). *Venezuela: La justicia en entredicho*. Report of a mission to Venezuela by the International Bar Association Human Rights Institute. London: International Bar Association.
- International Commission of Jurists. (13 August 2001). *Venezuela- attacks on justice in 2000*. ICJ Legal Resource Center. Retrieved (6 June 2006) from [http://www.icj.org/news\\_multi.php3?id\\_groupe=2&id\\_mot=114&lang=en](http://www.icj.org/news_multi.php3?id_groupe=2&id_mot=114&lang=en)
- Jackson, V. C. & Tushnet, M.V. (2002). *Defining the field of comparative constitutional law*. Westport, CT: Praeger.

- Jatar, A. J. (2006). *Apartheid del siglo XXI*. Caracas, Venezuela: Sumate.
- Jensen, E. (2003). Beyond common knowledge: Empirical approaches to the rule of law. In *The rule of law and judicial reform*. E. Jensen and T. Heller, (Eds.). Stanford: Stanford University Press.
- Jones, M. (1995) *Electoral Laws and the Survival of Presidential Democracies*. Indiana: Notre Dame University Press.
- Kada, N. (2003). Impeachment as a punishment for corruption? The cases of Brazil and Venezuela. In J. Baumgartner, & N. Kada (Eds.), *Checking executive power: Presidential impeachment* (pp. 113-136). Westport, CT: Praeger.
- Karl, T. L. (1986). Electoralism versus democratization in El Salvador. In P.W Drake, & E.Silva (Eds.), *Elections and democratization in LatinAamerica, 1980-1985* (pp. 9-36). San Diego: Center for the Iberian and Latin American Studies, University of California.
- Karl, T.L. (1987). Petroleum and political pacts. *Latin American Research Review*, 22, 63-94.
- Karl, T. L. (1997). *The Paradox of Plenty: Oil booms and petro-states, Studies in international political economy*; 26. Berkeley: University of California Press.
- Karl, T.L. (1999). The perils of the petro-State: Reflections on the paradox of plenty. *Journal of International Affairs*, 53.
- Karl, T. L. (2000). Economic inequality and democratic instability. *Journal of Democracy* 12(1), 58-72.
- Kaufmann, D. Kraay, A. and Mastruzzi, M. (2007). *Governance Matters VII: Aggregate and Individual Governance Indicators, 1996-2007*. World Bank Policy Research Working Paper No. 4654. Washington: The World Bank.
- Kaufmann, D. Kraay, A. and Mastruzzi, M. (2006) *Governance Matters V: Aggregate and Individual Governance Indicators for 1996-2005*. Washington: The World Bank.
- Kelly, J. (2000, March). Thoughts on the constitution: realignment of ideas about the economy and changes in the political system in Venezuela. Paper presented at the meeting of the Latin American Studies Association. Miami, FL.
- King, G., Keohane, R.O. & Verba, S. (1994). *Designing social inquiry : Scientific inference in qualitative research*. Princeton, N.J.: Princeton University Press.
- Kornblith, M. (2005, May). Direct democracy and the referendum to recall the president in Venezuela. Paper presented at the 6<sup>th</sup> global forum on reinventing government, Seoul, S. Korea.

- Kornblith, M. (2005). The referendum in Venezuela: Elections versus democracy. *Journal of Democracy*, 16(1), 124-137.
- Kramnick, I. (Ed.). (1982). *The federalist papers*. Toronto: Bantam Books.
- Kunicova, J. & Rose-Ackerman, S. (2005). Electoral rules and constitutional structures as constraints on corruption. *British Journal of Political Science*, 35(04), 573.
- Lander, E. & Fierro, L.A. (1996). The impact of neoliberal adjustment in Venezuela, 1989-1993. *Latin American Perspectives*, 2(3), 50-73.
- Larkins, C. (1996). Judicial independence and democratization: A theoretical and conceptual analysis. *The American Journal of Comparative Law*, ( 44), 605-626.
- Larkins, C. (1998). The judiciary and delegative democracy in Argentina. *Comparative Politics*, 30(4), 423.
- Latinnews (2004, December 15). Venezuela: Chavistas to dominate supreme court. *Latinnews Daily*.
- Latin American Weekly Report (2004 December 15). Venezuela: Chavistas to dominate supreme court. *Latin American Weekly Report*.
- Latinobarómetro, (2004). *Informe—Resume. Latinobarómetro 2004. Una década de mediciones*. Santiago de Chile: Corporación Latinobarómetro. (Accessed February 4, 2005). [www.latinobarometro.org](http://www.latinobarometro.org)
- Lawson, S. (1993). Conceptual issues in the comparative study of regime change and democratization. *Comparative Politics*, 25(4). Pp. 183-205.
- Lawyers Committee for Human Rights (1996). Halfway to reform: The world bank and the Venezuelan justice system. Joint report by LCHR & Venezuelan Program for Human Rights Education and Action. Retrieved October 30, 2005 from <http://www.lchr.org/pubs/halfway.html>
- Legler, T., Lean, S., and Boniface, D., eds. (2007). *Promoting democracy in the americas*. Baltimore: Johns Hopkins University Press.
- Levine, D. (1973). *Conflict and political change in Venezuela*. Princeton: Princeton University Press.
- Levine, D. (1978). Venezuela since 1958: The consolidation of democratic politics. In J. Linz & A. Stepan (Eds.), *The Breakdown of Democratic Regimes: Latin America* (pp.82-109). Baltimore: Johns Hopkins University Press.

- Levine, D. & Crisp, B. (1994) Legitimacy, governability and reform. In L. Goodman, M. Naim, J. Forman, & J. Tulchin (eds.) *Lessons from the Venezuelan experience*. New Brunswick, NJ: Transaction Press.
- Levine, D. (2002). The decline of and fall of Venezuela: Ten theses. *Bulletin of Latin American Research* 21(2), 248-269.
- Levitt, Barry Steven. (2006) A desultory defense of democracy: OAS resolution 1080 and the Inter-American Democratic Charter. *Latin American Politics & Society - Volume 48(3)*, 93-123
- Levitsky, S., & Way, L. (2002). The rise of competitive authoritarianism. *Journal of Democracy*, 13(2), 51-70.
- Lijphart, A. (1992). *Parliamentary versus presidential government*. New York: Oxford University Press.
- Lijphart, A. (1999). *Patterns of democracy: Government forms and performance in thirty-six countries*. New Haven: Yale University Press.
- Lijphart, A. (2000). The future of democracy: Reasons for pessimism, but also some optimism. *Scandinavian Political Studies* 23(3): 265-273.
- Linz, J. (1978). *The breakdown of democratic regimes*. Baltimore: John Hopkins University Press.
- Linz, J. (1990). The perils of presidentialism. *Journal of Democracy*, 1(1), 51-69.
- Linz, J (1994) Presidential or Parliamentary Democracy: Does it make a difference? Pp.3-90 in. Linz, J & Valenzuela, The failure of presidential democracy: comparative perspectives vol. 1. 1994.
- Linz, J., & Stepan, A. (1996). *Problems of democratic transitions and consolidation: Southern Europe, South America and post-communist Europe*. Baltimore: Johns Hopkins University Press.
- Lipset, S.M. (1959). Some social requisites of democracy: Economic development and political legitimacy. *The American Political Science Review* 53(1), 69-105.
- López, E. (5 February 2005). Omar Mora Diaz, presidente del tribunal supreme de justicia: “Sí, yo sí soy revolucionario”, *El Nacional*. Retrieved March 10, 2005 from <http://infovenezuela.org/T1ST02P8V1.htm>
- López-Maya, M. (2003) The Venezuelan Caracazo of 1989: Popular Protest and Institutional Weakness. *Journal of Latin American Studies* 35: 117-137.

- López-Maya, M. (2004). Venezuela: Democracia participativa y políticas sociales en el gobierno de Hugo Chávez [Participant democracy and social policies in Hugo Chávez government]. *Revista Venezolana de Gerencia Social*, 9 (28)
- Los Enanos y la justicia. (2004, January). El Universal. 4 enero 2004. Pagina A 13.
- Louza, L. (2007). *La independencia del poder judicial a partir de la constitución de 1999*. Unpublished manuscript.
- Loveman, B. (1993). *The constitution of tyranny*. Pittsburgh: University of Pittsburgh Press.
- Luebbert, G. M. (1986). *Comparative democracy: Policymaking and governing coalitions in Europe and Israel*. New York: Columbia University Press.
- Madhuku, L. (2002). Constitutional protection of the independence of the judiciary: A survey of the position in southern Africa. *Journal of African Law*, 46(2), 232-245.
- Maingón, T., Pérez, C., & Sonntag, H. (2001). "Reconstrucción del orden político: el proceso constituyente de 1999." En Carrasqueño, J., Maingon, T., y Welsch, F., (eds). *Venezuela en Transition: elections y democracia, 1998-2000*. Caracas: Red Universitaria de Estudios Politicos de Venezuela.
- Mainwaring, S. (1990). Presidentialism in Latin America. *Latin American Research Review*, 25(1), 157-179.
- Mainwaring, S. (1993). Presidentialism, Multiparty Systems and Democracy: The Difficult Equation *Comparative Political Studies* 26(2), 198
- Mainwaring, S. and Scully, R. (1995). *Building Democratic Institutions*. San Francisco: Stanford University Press.
- Mainwaring, S. (2006). State deficiencies, party competition, and confidence in democratic representation in the Andes. In Mainwaring, S., Bejarano, A.M. & Leongomez, E.P.(2006) *The crisis of democratic representation in the Andes*. Stanford, CA: Stanford University Press.
- Mainwaring, S., O'Donnell, G, Valenzuela, S. (1992). *Issues in democratic consolidation: The new South American democracies in comparative perspective*. Indiana: Notre Dame University Press.
- Mainwaring, S. & Shugart, M. (1997) *Presidentialism and democracy in Latin America*. Cambridge: Cambridge University Press.
- Mainwaring, S., Bejarano, A.M. & Leongomez, E.P.(2006) *The crisis of democratic representation in the Andes*. Stanford, CA: Stanford University Press.

- Maltz, G. (2007). The case for presidential term limits. *Journal of Democracy*, 18(1), 128-142.
- Maravall, J. M. & Przeworski, A. (2003). *Democracy and the rule of law*. Cambridge: Cambridge University Press.
- Martin, C., Ed. (1996). *El Juicio a CAP: Inocente o culpable?*. Caracs: Arte Fotolitografico
- Martz, J.D. & Myers, D.J. (1986). *Venezuela: The democratic experience*. (Rev. ed.) New York: Praeger, 1986.
- Martz, J.D. & Myers, D.J. (1994). Technological elites and political parties: The Venezuelan professional community. *Latin American Research Review*, 29(1), 7-28.
- Mayobre, E. (1995, January 15). Carlos Andrés Pérez y la justicia. *El diario de Caracas*.
- McClintock, C. & Lebovic, J. (2006). Correlates of Levels of Democracy in Latin America During the 1990s. *Latin American Politics & Society* 48 (2): 29-59.
- McCoy, J. L. (1999). *Chavez and the end of "partyarchy" in venezuela*. *Journal of Democracy*. 10 (3): 64-77.
- McCoy, J. L. (February 2000). *Demystifying Venezuela's Hugo Chávez*. *Current History*.
- McCoy, J. L. (2004). From representative to participatory democracy? Regime transformation in Venezuela. In J.L. McCoy & D.J. Myers (Eds.), *The unraveling of representative democracy in Venezuela* (pp. 263-296). Baltimore: Johns Hopkins University Press.
- McCoy, J. L. (2005). The referendum in Venezuela: One act in an unfinished drama. *Journal of Democracy*, 16(1), 109-123.
- McCoy, J. L. (2006). International Response to Democratic Crisis in the Americas, 1990–2005. *Democratization*. 13 (5): 756 – 775.
- McCoy, J. L. (2006). The 2004 venezuelan recall referendum. *Taiwan Journal of Democracy*. 2 (1): 61-80.
- McCoy, J.L., & Myers, D. J. (2004). *The unraveling of representative democracy in Venezuela*. Baltimore: Johns Hopkins University Press.
- McSherry, J.P. (1992). Military power, impunity and state-society change in Latin America. *Canadian Journal of Political Science*, 25(3), 463.
- Mejía Acosta, A. (2002). Weak Coalitions and Policy Making in the Ecuadorian Congress (1979-1996). Meeting of the Latin American Studies Association, March, 2000. Accessed 16 February 2005 from: <http://www.nd.edu/~amejiaac/oldsite/MejiaAcosta.PDF>

- Mejía Acosta, Andrés. (2004). Informal Sources of Party Unity in the Ecuadorian Congress. Paper presented at the Latin American Studies Association meetings, Las Vegas, Nevada, 7-9 October.
- Mejía Acosta, A. (2006). Crafting legislative ghost coalitions in Ecuador: Informal institutions and economic reform in an unlikely case. In G. Helmke, & S. Levitsky (Eds.), *Informal institutions and democracy: Lessons from Latin America*. Baltimore: Johns Hopkins University Press.
- Molina V, J. E. (2001). The electoral effect of underdevelopment: Government turnover and its causes in Latin American, Caribbean, and industrialized countries. *Electoral Studies*, 30(3), 427-446.
- Molina V, J. E. (2004). The unraveling of Venezuela's party system: From party rule to personalistic politics and deinstitutionalization. In J. McCoy, & D. Myer (Eds.), *The unraveling of representative democracy in Venezuela* (pp. 152-180). Baltimore: Johns Hopkins University Press.
- Molina V, J. E., & Pérez, B.C. (2004). Radical change at the ballot box: Causes and consequences of electoral behavior in Venezuela's 2000 elections. *Latin American Politics & Society*, 46(1), 103-134.
- Morlino, L. (2004). 'Good' and 'bad' democracies: how to conduct research into the quality of democracy. *The Journal of Communist Studies and Transition Politics*. 20 (1): 5-27.
- Mora Díaz, O. A. (2006). *Palaras de apertura de las actividades judiciales del A 2006*. Caracas, Venezuela: Tribunal Supremo de Justicia.
- Müller, W. and Strøm, K. (2000). Conclusion. In *Coalition Governments in Western Europe*. Oxford: Oxford University Press.
- Munck & Verkuilen (2002). Conceptualizing and Measuring Democracy: Evaluating Alternative Indices. *Comparative Political Studies*, 2002 35(1), 5.
- Munck, G. L. (2004). Democratic politics in Latin America. *Annual Review of Political Science*, 7, 437-462.
- Munck, G. (2008). *Measuring Democracy: A bridge between scholarship and politics*. Baltimore: The Johns Hopkins University.
- Myers, D. J., & McCoy, J. L. (2003). Venezuela in the gray zone: From feckless pluralism to dominant power system/ Venezuela en la zona gris: Desde el pluralismo ineficaz hacia el sistema de poder dominante. *Politeia*, 30(30).
- Needler, M. C. (1963). *Latin American Politics in Perspective*. Princeton, N.J.: Van Nostrand.

- Negretto, G. L. (2006). Minority presidents and democratic performance in Latin America. *Latin American Politics & Society*, 48, 63-92.
- Neto, Amorin, O., (1998) *Of presidents, parties, and ministers: cabinet formation and legislative decision-making under separation of powers*. Unpublished doctoral dissertation, Department of Political Science. San Diego: University of California.
- Neuman, L.& McCoy, J.L. (2001). *Observing political change in venezuela: the Bolivarian constitution and 2000 elections*. Latin American and Caribbean Program. Atlanta, Georgia: The Carter Center.
- Njaim, H., & Pérez-Perdomo, R. (1994). *La funcion legislativa en Venezuela: Analisis y propositions, la reforma parlamentaria para la venezuela del siglo XXI*. Caracas, Venezuela: Rundacion Konrad Adenauer y COPRE.
- Norden, D. (2003). Democracy in uniform: Chávez and the Venezuelan armed forces. In S. Ellner, & D. Hellinger (Eds.), *Venezuelan politics in the Chávez era: Class, polarization & conflict*. Boulder: Lynne Rienner.
- O'Donnell, G. (1993). On the State, Democratization and Some Conceptual Problems: A Latin American View with Glances at Some Postcommunist Countries. *World Development* 21: 8, pp. 1355-1369.
- O'Donnell, G. (1994). Delegative democracy. *Journal of Democracy*, 5, 56-69.
- O'Donnell, Guillermo. (1995). Democracy, citizenship, and the state. In A. Przeworski et al. (Eds) ,*Sustainable Democracy*, Cambridge: Cambridge University Press.
- O'Donnell, G. (1996). Illusions about consolidation. *Journal of Democracy*, 7(2), 34-51.
- O'Donnell, G. (1996). Illusions and conceptual flaws. *Journal of Democracy*, 7(4), 160-168.
- O'Donnell, G. (1998). Horizontal accountability in new democracies. *Journal of Democracy*, 9(3) 112-126.
- O'Donnell, G. (1999). Polyarchies and the (un)rule of law in Latin America: A partial conclusion. In J.E. Mendez, G. O'Donnell & P.Sergio (Eds.), *The (Un)Rule of Law and the Underprivileged in Latin America* (pp.303-337). Indiana: University of Notre Dame Press.
- O'Donnell, G. (2001). Democracy, law, and comparative politics. *Studies in Comparative International Development*, 36(1), 7-36.
- O'Donnell, Guillermo. (2004). Why the rule of law matters. *Journal of Democracy* 15 (October), 32-46.



- O'Donnell, G. Cullen, J. & Iazzetta, O. (2004). *The quality of democracy: Theory and applications*. Indiana: University of Notre Dame Press.
- O'Donnell, G. & Schmitter, P.C. (1986). Opening (and undermining) authoritarian regimes. In *Transitions from authoritarian rule IV: Tentative conclusions about uncertain democracies* (pp. 15-36). Baltimore: Johns Hopkins University Press.
- O'Donnell, G., Schmitter, P. & Whitehead, L. (1986). *Transitions from authoritarian rule III: Comparative perspectives*. Baltimore: Johns Hopkins University Press.
- O'Donnell, G., Schmitter, P., & Whitehead, L. (1986). *Transitions from authoritarian rule IV: Tentative conclusions about uncertain democracies*. Baltimore: Johns Hopkins University Press.
- Ojeda, W. (1995). *Cuánto vale un juez*. Caracas, Venezuela: Vadell Hermanos Editores.
- Organization of American States). (2001), September 11. *Inter-American Democratic Charter*. Lima, Peru. Available on the Internet: 2 February 2002 [http://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](http://www.oas.org/charter/docs/resolution1_en_p4.htm)
- Ottaway, M and Carothers, T. (2000). *Funding virtue: Civil society aid and democracy promotion*. Washington, D.C. : Carnegie Endowment for International Peace
- Ottaway, M., & Carothers, T. (2000). Toward civil society realism. In M. Ottaway, & T. Carothers (Eds.), *Funding virtue: Civil society aid and democracy promotion*. Washington, D.C.: Carnegie Endowment for International Peace.
- Parker, Dick. (2007) Chávez and the search for an alternative to neoliberalism. Eds. Eds. Ellner, Steven and Tinker Salas, Miguel. *Venezuela: Hugo Chávez and the decline of an "exceptional democracy."* Maryland: Rowman and Littlefield Publishing Group, Inc.
- Parekh, B. (1992) The Cultural Particularity of Liberal Democracy. *Political Studies* 40: 160 - 183
- Penfold, M. (2004). Federalism and institutional change in Venezuela. In E. Gibson (Ed.), *Federalism and democracy in Latin America*. Baltimore: Johns Hopkins University Press.
- Penfold, M. (2006). Clientelism and Social Funds: Empirical Evidence from Chávez's "Misiones" Programs In Venezuela. Unpublished Manuscript.
- Pérez-Liñán, A. (2005). Democratization and constitutional crises in presidential regimes. *Comparative Political Studies*, 38(1), 51-74.
- Pérez-Liñán, A. (2007). *Presidential impeachment and the new political instability in Latin America*. Cambridge; New York: Cambridge University Press.

- Pérez-Perdomo, R. (2003). Venezuela 1958-1999: The legal system in an impaired democracy. In R. Pérez Perdomo, & L. Meir Freidman (Eds.), *Legal culture in the age of globalization*. San Francisco: Stanford University Press.
- Pérez-Perdomo, R. (2004). *Los abogados de América Latina. Una introducción histórica*. Bogotá: Universidad del Externado de Colombia.
- Pérez-Perdomo, R. (2006). Rule of law and lawyers in Latin America. *The Annals of the American Academy of Political and Social Science*, 603(1), 179.
- Pilar García-Guadilla, María. (2007) Social Movements in a Polarized Setting: Myths of Venezuelan Civil Society. Eds. Ellner, Steven and Tinker Salas, Miguel. Venezuela: Hugo Chávez and the decline of an “exceptional democracy.” Maryland: Rowman and Littlefield Publishing Group, Inc.
- Powell, G. B. (2000). *Elections as instruments of democracy: Majoritarian and proportional visions*. CT: Yale University Press.
- Preuss, U.K. (1995). *Constitutional revolution: The link between constitutionalism and progress*. Atlantic Highlands, NJ: Humanities Press.
- Prillaman, W. (2000). *The Judiciary and Democratic Decay in Latin America: Declining confidence in the Rule of Law*. Westport, CT: Praeger.
- PROVEA. (2003). Situación de los derechos humanos en Venezuela 2002-2003. *PROVEA Informe Annual* Caracas, Venezuela: PROVEA.
- PROVEA. (2004). Situación de los derechos humanos en Venezuela 2003-2004. *PROVEA Informe Annual*. Caracas, Venezuela: PROVEA
- PROVEA. (2005). Situación de los derechos humanos en Venezuela 2004-2005. *PROVEA Informe Annual* Caracas, Venezuela: PROVEA.
- PROVEA. (2006). Situación de los derechos humanos en Venezuela 2005-2006. *PROVEA Informe Annual* Caracas, Venezuela: PROVEA.
- Przeworski, A. (1991). *Democracy and the market: Political and economic reforms in Eastern Europe and Latin America*. New York: Cambridge University Press.
- Przeworski, A., Alvarez, M. Cheibub, J., and Limongi, F. (1996). What makes democracies endure? *Journal of Democracy* 7 (1):50-53.
- Przeworski, A., Cheibub, J. A., & Limongi, F. (2000). *Democracy and development: Political institutions and well-being in the world, 1950-1990*. Cambridge, Cambridge University Press.

- Przeworski, A., & Limongi, F. (1997). Modernization: Theories and facts. *World Politics*, 49, 155-183.
- Putnam, R. D., Leonardi, R. & Nanetti, R.Y. (1993). *Making democracy work : Civic traditions in modern Italy*. Princeton, NJ: Princeton University Press.
- Putnam, R. D., R. Leonardi, & Nanetti, R.Y. (1993). *Making democracy work : civic traditions in modern Italy*. Princeton, N.J., Princeton University Press.
- Raby, D. (2006) *Democracy and revolution: Latin America and socialism today*. London: Pluto Press.
- Rangel, J. V. (1985). *El poder de juzgar en Venezuela : Jueces, moral y democracia*. Caracas, Venezuela: Ediciones Centauro.
- Reardon, J. (1974, March). Judicial discipline and removal. Paper presented at The National Conference on Judicial Selection and Tenure, Denver, CO.
- Remmer, K. (1995). New theoretical perspectives on democratization. *Comparative Politics*. 28(1), 1-3-122.
- Renuncia la presidenta de la corte suprema de justicia, Cecilia Sosa Gomez. (1999, August 25). *El Nacional*.
- Republicana Bolivariana de Venezuela. (2000, November 14). Presidential decree no. 5.349. In *Gaceta Oficial no. 38.681*
- Rey, J.C., (1993). "La crisis de legitimidad en Venezuela y el enjuiciamiento y remoción de Carlos Andrés Pérez de la Presidencia de la República." *Boletín Electoral Latinoamericano*, IX (enero-junio), 67-112.
- Rey, J. C. (2002, July). Consideraciones politicas sobre un insolito golpe de estado. *Bitblioteca*. Retrieved June 4, 2005 from [http://www.analiitica.com/BITBLIO/juan\\_carlos\\_rey/insolito\\_golpe.asp](http://www.analiitica.com/BITBLIO/juan_carlos_rey/insolito_golpe.asp)
- Reynolds, A., & Reilly, B. (1997). *The international IDEA handbook of electoral system design*. Stockholm: International Institute for Democracy and Electoral Assistance (IDEA).
- Riker, W. (1962). *The theory of political coalitions*. New Haven: Yale University Press.
- Riggs, 1988, The Survival of Presidentialism in America: Para-constitutional Practices. *International Political Science Review*. 9 (3) 247-
- Roberts, K. (2000). Populism and Democracy in Latin America. Paper presented at Challenges to Democracy in the Americas (Conference). Atlanta: Carter Center.

- Roberts, K. (2003). Social Polarization and the Populist Resurgence in Venezuela. in Ellner, S. & Hellinger, D., (Eds.). (2003). *Venezuelan politics in the Chávez era: Class, polarization & conflict*. Boulder: Lynne Rienner.
- Robinson, W. (1996). *Promoting democracy: Globalization, US intervention, and hegemony*. New York: Cambridge University Press.
- Roche, L. & Richter, J. (2003). Defensa publica penal y acceso a la justicia en Caracas. Caracas, Venezuela: Paz Ativa Asociation Civil.
- Rohter, L. (2000, May 17) Venezuela: Coalition Split. *New York Times*. Retrieved arch 6, 2007 from <http://query.nytimes.com/gst/fullpage.html?res=9C0DE71E3BF934A25756C0A9669C8B63&sec=&spon=>
- Romero, J. E. (2002). Hugo Chávez: Construcción hegemónica del poder y desplazamiento de los actores tradicionales en Venezuela (1998-2000). *Utopía y Praxis Latinoamericana*, 7(17), 73-86.
- Roraima [Grupo Roraima]. (1987). *Mas y mejor democracia*. Caracas, Venezuela: Grupo Roraima.
- Rosenberg, G.N. (1992). Judicial independence and the reality of political power. *Review of Politics* 54(3), 369-88.
- Rosenn, K. (1987). The protection of judicial independence in Latin America. *Inter-American Law Review* 19(1), 1-35.
- Ross, M.L. (1999). The political economy of the resource curse. *World Politics* 51(2), 297-322.
- Roth, C. (1999, July 26). Venezulean President Chavez Says Assembly Can Dissolve Congress. *Dow Jones Business News*.
- Roth, C. (2002, December 21). Weak Venezuelan institutions start to challenge Chávez. *Dow Jones Newswires*.
- Rueschemeyer, D., Stephens, E. H., & Stephens, J. D. (1992). *Capitalist development and democracy*. Chicago, IL: University of Chicago Press.
- Russell, P. (1987). *Judiciary in Canada: The third branch of government*. Toronto: McGraw-Hill Ryerson.
- Russell, P. & O'Brien, D. (2001). *Judicial independence in the age of democracy: Critical perspectives from around the world*. Charlottesville: University Press of Virginia.
- Sartori, G. (1997) *Comparative Constitutional Engineering: An Inquiry into structures*,

- incentives, and outcomes*. New York: New York University Press.
- Schedler, A. (2006). *Electoral authoritarianism: The dynamics of unfree competition*. Boulder, Colorado: Lynne Rienner Publishers, Inc.
- Schedler, A. (1998). What is democratic consolidation? *Journal of Democracy*, 9(2), 91-107.
- Schmitt, C. (1985). *The Crisis of Parliamentary Democracy*. Massachusetts: Massachusetts Institute of Technology Press.
- Schmitt, C. (1996). *The Concept of the Political*. Translated by George Schwab. Chicago: Chicago University Press.
- Schmitter, P. (1994). Dangers and dilemmas of democracy. *Journal of Democracy*, 5(2), 57- 76.
- Schumpeter, J. (1942). *Capitalism, Socialism and Democracy*. New York: Harper & Brothers.
- Segura, R., & Bejarano, A. M. (2004). ¡Ni una asamblea mas sin nosotros! Exclusion, inclusion, and the politics of constitution-making in the Andes. *Constellations*, 11(2), 217-236.
- Shetreet, S. (1985). *Judicial Independence: The Contemporary Debate*. Boston: Martinus Nijhoff.
- Shifter, M. (2004). Breakdown in the Andes. *Foreign affairs* 83(5), 126-138.
- Shugart, M. & Mainwaring, S. (1997). Presidentialism and democracy in Latin America: Rethinking the terms of the debate. In S. Mainwaring & M. Shugart (eds.), *Presidentialism and democracy in Latin America*. New York: Cambridge University Press.
- Shugart, M., & Carey, J. (1992). *Presidents and assemblies : Constitutional design and electoral dynamics*. Cambridge England ; New York: Cambridge University Press.
- Smith, P. H. (2005). *Democracy in Latin America: Political change in comparative perspective*. New York: Oxford University Press.
- Smithey, I. S. & Ishiyama, J. (2000). Judicious choices: designing courts in post-communist politics. *Communist and Post-Communist Studies*, 33, 163-182.
- Stepan, A. & Skach, C. (1993). Constitutional frameworks and democratic consolidation: Parliamentaryism versus presidentialism. *World Politics* 46, 1-22.
- Stephenson, M. (2003). When the Devil turns...: The political foundations of independent judicial review. *Journal of Legal Studies* 32, 59-89.

- Strom, K. (1990). *Minority government and majority rule*. Cambridge, Cambridge University Press.
- Sunstein, (1988). Constitutions and democracies: An epilogue In J.E Sunstein & R. Slagstad (Eds.), *Constitutionalism and Democracy*. New York: Cambridge University Press
- Sylvia, R. D., & Danopoulos, C. P. (2003). The Chávez phenomenon: Political change in Venezuela. *Third World Quarterly*, 24(1), 63-76.
- Tate, N. & Vallinder, T. (1995). *The global expansion of judicial power*. New York: New York University Press.
- Teorell, J. Holmberg, S. and Rothstein, B. (2007). *The Quality of Government Dataset*. (version 1 July 07). Göteborg University: The Quality of Government Institute, <http://www.qog.pol.gu.se>
- Transparency International. (2007 September 26). *La corrupción arraigada en países de bajos ingresos requiere de acción global*. Retrieved October 9, 2007 from [http://www.transperency.org/news\\_room/latest\\_news/press\\_releases/2007/2007\\_09\\_26\\_cpi\\_2007\\_sp](http://www.transperency.org/news_room/latest_news/press_releases/2007/2007_09_26_cpi_2007_sp)
- Tribunal Supreme de Justicia. (2004). Dirección ejecutiva de la magistratura, unidad coordinadora del proyecto de modernización del poder judicial, "Proyecto para la mejora de la administración de justicia en el contexto de la resolución de conflictos en Venezuela. Caracas: TSJ.
- Tribunal Supreme de Justicia. (2005, October 27). Cuenta no. 171. Retrieved May 6, 2008 from <http://www.tsj.gov.ve/cuentas/scon/2005/cuenTascón-27102005.htm>
- Ungar, M. (2002). *Elusive reform: democracy and the rule of law in Latin America*. Boulder: Lynne Rienner.
- United Nations. (1996, August). Independence of the judiciary: A human rights priority. Retrieved July 16, 2008 from <http://www.un.org/rights/dpi1837e.htm>
- United Nations, (2007). *Statistical yearbook for Latin America and the Caribbean..* (2007). New York: Economic Commission for Latin America and the Carribean, UN Statistics and Economic Projections Division.
- Urdaneta García, A. (2001). Proceso constituyente y viabilidad de cambio democrático. In C. H. Casal, & A. Chacón Hanson (Eds.), *El nuevo derecho constitucional Venezolano*. Caracas, Venezuela: Universidad Catolica Andre Bello.
- Valenzuela, A., (1993) Latin America: Presidentialism in crisis. *Journal of Democracy*, 4(4) 3-.

- Valenzuela, A. (1994). The failure of presidential democracy. In J. Linz & A. Valenzuela (Eds.), *The failure of presidential democracy*. Baltimore: John Hopkins University Press.
- Valenzuela, A. (1994). Party politics and the crisis of presidentialism in Chile: A proposal for a parliamentary form of government. In J. Linz, & A. Valenzuela (Eds.), *The failure of presidential democracy* (pp. 91-150). Baltimore: Johns Hopkins University Press.
- Valenzuela, A. (2004). Latin American presidencies interrupted. *Journal of Democracy*, 15(4), 5-19.
- Vales, J. (2002, December 17). BBC Monitoring Americas: Ex-minister Miquilena says Chávez "got drunk with power". *Colombian Weekly Cambio*, bbcmap0020021217dych003pd.
- Van Evera, S. (1997). *Guide to methods for students of political science*. Ithaca: Cornell University Press.
- Venezuela risk: Political stability risk. (2002, 16 December). *Economics Intelligence Unit*.
- Verner, J. (1984). The independence of supreme courts in Latin America: A review of the literature. *Journal of Latin American Studies*, 16, 463-506.
- Von Lazar, A. J. (1972). *Latin American politics: A primer. With a foreword by Federico G. Gil*. Boston: Allyn & Bacon.
- Warren, M. (2002). What Can Democratic Participation Mean Today? *Political Theory*, 30(5), 677-701
- Weingast, B. R. (1997). The political foundations of democracy and the rule of law. *The American Political Science Review*, 91(2), 245-263.
- Weyland, K. (2001). Clarifying a contested concept: Populism in the study of Latin American politics. *Comparative Politics*, 34(1), 1-22.
- Wilpert, G. (2007). *Changing Venezuela by taking power: The history and politics of the Chávez government*. New York: Verso.
- Wilpert, G. (2005). Venezuela's Chávez Says Blacklist must be "Buried." Retrieved December 02, 2005 from: <http://www.venezuelanalysis.com/news/1072>
- Wilson, B. M., Rodriguez Cordero & Handberg, Roger. (2004). The best laid schemes... gang aft a-gley: Judicial reform in Latin America -- evidence from Costa Rica. *Journal of Latin American Studies*, 36, 507-531.
- World Bank. (1992). *Venezuela: Judicial Infrastructure Report*. New York: Oxford University Press.

- World Bank, (2000). *Anticorruption reform in rule of law programs*. Accessed 27 June 2005 from: [http://www.worldbank.org/wbi/governance/jr\\_africa/pdf/asis\\_ac\\_rol.pdf](http://www.worldbank.org/wbi/governance/jr_africa/pdf/asis_ac_rol.pdf).
- World Bank. (2001). *World Development Report 2000/2001: Attacking Poverty*. New York: Oxford University Press.
- World Bank. (2002). *World Development Indicators*. Washington, D.C.: the World Bank.
- World Bank. (2004). *World Development Indicators*. Washington, D.C.: the World Bank.
- World Bank. (2006). *Global monitoring report 2006: Literature survey on corruption 2000-2005*. Public Sector Governance. Poverty Reduction & Economic Management. Washington, D.C.: The World Bank.
- World Bank. (2007). *Governance matters indicators 2007*. Washington, D.C.: The World Bank
- Zakaria, F. (2004). *The future of freedom: Illiberal democracy at home and abroad*. New York: WW Norton & Company.



## Glossary of Key Concepts

**Delegative Democracy:** “Whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term in office” (O'Donnell, 1994, p.59).

**Electoral Authoritarianism:** Electoral authoritarian regimes play the game of multiparty elections by holding regular elections for chief executive and a national legislative assembly. Yet they violate the liberal-democratic principles of freedom and fairness so profoundly and systematically as to render elections instruments of authoritarian rule rather than ‘instruments of democracy’.” (Powell, 2000)

**Horizontal Accountability:** “the controls that state agencies are supposed to exercise over other state agencies” (O'Donnell, 1999, p. 185).

**Institutional Instability:** the threat or attack of one branch of government on another.

**Pact:** “An explicit, but not always publicly explicated or justified, agreement among a select set of actors which seeks to define (or, better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the ‘vital interests’ of those entering into it” (O'Donnell & Schmitter 1986, part IV p. 37)

**Parliamentarism:** “a system of mutual dependence:

1. The chief executive power must be supported by a majority in the legislature and can fall if it receives a vote of no confidence.
2. The executive power (normally in conjunction with the head of state) has the capacity to dissolve the legislature and call for elections.” (Stepan & Skach, 1993, p.3).

**Polyarchy:** Polyarchy includes the ability to voice political opinions; the opportunity to elect political leaders in free and fair elections; the right to compete for public office; the ability to tap into alternative sources of information; and the right to organize freely (Dahl, 1971, p. 3).

**Presidentialism:** “a system of mutual independence: The legislative power has a fixed electoral mandate that is its own source of legitimacy. The chief executive power has a fixed electoral mandate that is its own source of legitimacy.” (Stepan & Skach, 1993, pp.3-4).

**Regime:** The use of this term in the literature is somewhat controversial. The most often referenced definition is: “patterns, formal and informal and explicit or implicit, that determine the channels of access to principle governmental positions; the characteristics of the actors who are admitted and excluded from such access; and the resources and strategies that they are allowed to use for gaining access” (O'Donnell, 2005, p. 15). I use this term through the dissertation to refer to democracy or dictatorship.

**Rule of Law:** Throughout the dissertation this phrase is used to refer to the supremacy of law over the will of individuals. This parsimonious definition is derived from: “whatever law there is,

this law is fairly applied by the relevant state institutions, including, but not exclusively, the judiciary. By fairly applied I mean that the administrative application or judicial adjudication of legal rules is consistent across equivalent cases, is made without taking into consideration the class, status, or power differentials of the participants in such processes, and applied procedures that are pre-established and knowable” (O’Donnell, 1999, p. 308).

**Quality of Democracy:** “good democracy accords its citizens ample freedom, political equality, and control over public policies and policy makers through the legitimate and lawful functioning of stable institutions. Such a regime will satisfy citizen expectations regarding governance (*quality of results*); it will allow citizens, associations, and communities to enjoy extensive liberty and political equality (*quality of content*); and it will provide a context in which the whole citizenry can judge the government's performance through mechanisms such as elections, while governmental institutions and officials hold one another legally and constitutionally accountable as well (*procedural quality*)” (Diamond & Molino, 2004, p.21).