The Legal Death of the Latin American Democracy: Bolivarian Populism's Model for Centralizing Power, Eliminating Political Opposition, and Undermining the Rule of Law

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THE LEGAL DEATH OF THE LATIN AMERICAN DEMOCRACY: BOLIVARIAN POPULISM'S MODEL FOR CENTRALIZING POWER, ELIMINATING POLITICAL OPPOSITION, AND UNDERMINING THE RULE OF LAW

Frank M. Walsh*

“The death of democracy is not likely to be an assassination from ambush. It will be a slow extinction from apathy, indifference, and undernourishment.”
- Robert M. Hutchins, American educator and writer

ABSTRACT

Over the past decade, Hugo Chávez has remade the Venezuelan polity into one of his own liking: centralizing power and undermining his rivals. The most striking feature of the changes in Venezuelan government is the fact that the changes have been made through ostensibly legal mechanisms; that is, Chávez has used Venezuelan democratic institutions to centralize his power. Chávez’s blueprint for power-centralization is straightforward: (1) he convened a constitutional constituent assembly to rewrite the previous constitution, (2) he created a doppelganger Congress and Supreme Court, gradually transferring power from the existing Congress and Court to the new institutions, and (3) he dissolved the original Congress and Supreme Court, leaving only his hand-picked versions of the legislature and judiciary. Bolivia’s President Evo Morales and Ecuador’s President Rafael Correa have already begun to copy Chávez’s approach. Democracy’s supporters must meet this rising authoritarian tide by supporting increased rule of law reform in Latin America.

ARTICLE:

On February 15, 2009, Venezuelans took to the polls and approved a constitutional amendment removing presidential term limits. Hugo Chávez, the Venezuelan president, championed the

* Yale University, B.A., 2004; Georgetown University Law Center, J.D., 2007. This article is dedicated to Edward W. Walsh, 1954-2006, for never missing a chance to do the right thing.
referendum as the “perfect victory” and proclaimed his now unlimited tenure as opening “wide the gates of the future.” The removal of term limits, however, was just the latest in a string of changes to the Venezuelan government that have centralized power in Chávez’s hands. A decade ago, Venezuela was a functioning (albeit not perfect) democracy with a separation of powers between coordinate branches of government. Today, Chávez has replaced the judicial and legislative branches with his own hand-picked lackeys, centralized power in the executive branch, and cleared the way for a lifelong term of office.

The most striking feature of the changes in the Venezuelan polity is the fact that the changes have been made through ostensibly legal mechanisms; that is, Chávez used Venezuelan democratic institutions to centralize power. Alongside official changes through legal channels, Chávez and his supporters have engaged in illegal tactics to silence opposition through intimidation and coercion.\(^2\) The legal changes to government, accompanied by illegal acts of coercion, have resulted in an empowered Hugo Chávez and a government that is fundamentally unable to check Chávez’s agenda.

Policymakers must confront this assault on the rule of law in Latin America. The Venezuelan centralization of power represents a dangerous potential path for the countries in the region; Bolivia’s President, Evo Morales, and Ecuador’s President, Rafael Correa have both already mirrored several of Chávez’s power centralization moves. Paraguay and Nicaragua might be next. These changes threaten to undo decades of commitment and millions of dollars that have been spent trying to develop Latin American democracies and instill the rule of law.

This article analyzes the Venezuelan power centralization in several ways. Part I discusses Chávez’s institutional “reforms.” By examining the seminal Spanish-language documents relied upon by Chávez, the article explains exactly how Chávez was able to navigate the legal channels to fundamentally undermine the rule of law in Venezuela. Part II discusses how the Venezuelan-Bolivarian Revolution has been mirrored by other nations. Part III argues that democracy’s supporters should meet the Bolivarian challenge with a renewed emphasis on rule of law reform and a commitment to Latin American democracy.


2. See, e.g., Chávez’s Groundwork for Lifetime in Office, WASH. TIMES, Feb. 13, 2009 (“Student-led opposition groups, whose evocative slogan is ‘No Means No,’ have faced intimidation and violence. Members of the anti-Chávez press have been beaten and killed”).
I. THE LEGAL DEATH OF THE VENEZUELAN DEMOCRACY

Hugo Chávez was able to centralize power by first paralyzing other branches of government and then replacing them. As described infra, Chávez first created a doppelganger body (a new legislature and new court) and then began to favor the new doppelganger over the original entity. Over time, Chávez abolished the original institution and transferred all power to his new creation. In that way, he was able to quietly replace the coordinate branches of government.

This type of power centralization is not unprecedented: democracies have become undemocratic before. Probably the most often cited example is the Weimar Republic’s collapse into fascism before World War II. A powerful and charismatic public speaker, Adolf Hitler won election based on the popularity of his criticisms of the Versailles settlement. Once in power, Hitler pushed through a number of centralization measures to consolidate his power. On March 24, 1933, the Reichstag passed the Enabling Act, which gave the cabinet full legislative power and the ability to deviate from the Weimar Constitution. On July 14, 1933, the Reichstag passed a law prohibiting any political party other than the Nazi Party. The Nazis also passed a number of laws and decrees that reduced the powers of regional and local governments and abolished representative assemblies. The judiciary was likewise attacked; when the Supreme Court acquitted three of the four defendants charged with complicity in a fire set at the Reichstag, Hitler stripped the Supreme Court of jurisdiction and established a new “People’s Court” to try cases.

Chávez’s Venezuela is not as centralized as Nazi Germany, nor are Chávez’s coercive measures as brutal as Hitler’s. Their blueprints for power centralization, however, are substantially similar. Both were military veterans. Chávez served as a Venezuelan paratrooper while Hitler was a decorated war hero in World War I. Both participated in failed coups in their early political careers, Chávez in a failed 1992 endeavor and Hitler in the 1923 Beer Hall Putsch. Both were imprisoned for their involvement in the coup attempt, and both spent their time in prison contemplating their return to power through democratic election. Both came to power on the heels of persistent political corruption and an inability to address social problems such as income inequality. Both rode the wave of popular support to power. And both were able to use their countries’ legal systems to create autocracy where democracy had formerly stood.

4. Id. at 178-79.
5. Id. at 179.
6. Id.
7. Id.
A. CHÁVEZ'S RISE TO POWER AND THE ORIGINS OF THE BOLIVARIAN REVOLUTION

Hugo Chávez was profoundly affected by what he perceived as the government's inability to alleviate the plight of the country's poor and its eagerness to send the military to quell protestors. Chávez held the government, and its constitution, in such contempt that he attempted a coup in 1992. The government was able to resume control and Chávez's coup ultimately ended in failure. Despite the coup's failure, Chávez emerged politically successful from the ordeal. Chávez's arrest provided him with the opportunity to voice his complaints with the traditional establishment and list a series of demands, such as "cost-of-living clauses for wages, tax reform facilitating a redistribution of wealth, and renegotiation of debt." These demands were extremely popular with Venezuelans, and his actions were viewed as an attempt for change. Ironically, Chávez's failed overthrow of the democratically elected government acted as the catalyst for his own democratic ambitions.

Hugo Chávez refers to his political philosophy as the Bolivarian Revolution. The movement repackages populism. Based on Hugo Chávez's interpretations of Simon Bolivar, Simon Rodriguez, and other leftist leaders, Bolivarianism advocates income and land redistribution, the mobilization of the state's resources to increase the poor's standard of living in the attempt to achieve "social justice," and asserting a nationalistic stance to regain a supposed loss of sovereignty during and following the Cold War.

Another crucial characteristic of the Bolivarian Revolution is its apparent propensity to concentrate power. The founding members and their ideology expressed a willingness to supersede legal constraints to achieve...
their objectives. This notion has gained popularity after forty years of observed political ineptitude. Following the 1992 coup, Hugo Chávez emerged as a folk hero and the Bolivarian revolution expanded its popularity, symptomatic of the endemic shift towards authoritarian maneuvers. Hugo Chávez’s insistence to wear his red beret during campaigns may have foreshadowed the large role the military came to play in Chávez’s administration and its centralized organizational structure.

During the 1960s, several ex-guerrilla fighters joined Hugo Chávez’s movement, bringing not only their leftist ideology but also a militaristic perspective. For example, Kléber Ramírez criticized the historical structure of the Venezuelan state, citing its limited capacity. He called for a stronger national executive, the elimination of state legislatures, and reorganization of the municipal government, which he argued would form the bedrock of a new democracy. Another patron of the movement, Argentinian historian Noberto Ceresole, echoed an already growing sentiment that democracy in Latin America was beginning to fail. Furthermore, his prescription for a decaying system involved replacing it with a strongman government buttressed by the military. Following Chávez’s electoral victory at the polls in 1998, Ceresole decided to travel to Venezuela in order to promote a more “progressive” military government. In sum, Bolivarianism rationalizes a populist, and occasionally an authoritarian, governance method.

Armed with widespread public support, Chávez set out to remake the Venezuelan government. As described infra, Chávez first attacked the legislative branch, then the judicial branch, and finally removed executive term limits.

1. Step #1: Chávez Undermines the Congress By Creating a National Constituent Assembly

Hugo Chávez’s actions as President illustrate that he had no intention of defending and upholding Venezuela’s Constitution. Several times during his campaign, Chávez stated that the constitution was “moribund” and lacked legitimacy. He sought to radically and systematically transform Venezuela’s political institutions. In order to achieve this objective, he needed to write a new constitution that would eliminate certain

15. Ellner, supra note 11, at 6.
16. Id. at 6. Noberto Ceresole supported importing a government model similar to that of Egypt’s Gamal Abdel Nassar.
17. Although Noberto Ceresole undoubtedly influenced Hugo Chávez at an early stage, Chávez ultimately ended the friendship and forced Ceresole out of Venezuela for political reasons.
20. Myers, supra note 2a, at 276.
obstacles and create new institutions that would ultimately be responsive to him. The establishment of the National Constituent Assembly proved the mechanism through which Chávez would achieve these lofty ambitions.\(^{21}\)

In April 1999, Chávez announced a referendum for the establishment of a National Constituent Assembly ("ANC") to craft a new constitution for the country.\(^{22}\) The Venezuelan public responded favorably to Chávez's promise that radical change and a new constitution would help alleviate the rampant corruption and injustice that plagued Venezuela. Eighty-five percent of the voters favored the referendum.\(^{23}\) Moreover, seventy-two percent of the voters accepted that the newly created institution define its own limitation, creating the opportunity for the new body to assume powers for which the 1961 Constitution did not allow.\(^{24}\) The July 25, 1999 election for ANC delegates resulted in an overwhelming victory for Hugo Chávez's leftist coalition, the Patriotic Axis (Polo Patriotico), which won 120 of 131 seats.\(^{25}\) With an ANC composed primarily of those politically and ideologically aligned with him, Chávez began to solidify his centralization of power.\(^{26}\)

In August, the ANC officially commenced operations. While Congress and the ANC ostensibly operated with a "cohabitation" relationship, in reality, Congress was under constant duress from the Assembly.\(^{27}\) Congress's acceptance of such a disadvantageous position resulted from fear that it would be disbanded altogether. Chávez and his supporters made their distrust towards Congress and many within the administration called for its immediate abolition.\(^{28}\) Eventually, cohabitation gave way to complete domination by the Assembly. On August 25, 1999, the ANC stripped Congress of its right to pass laws or even meet.\(^{29}\) The ANC had completely replaced the preexisting legislative authority in Venezuela.

2. Step #2: Chávez Targets the Judiciary

a. The Decision on the Judicial Reorganization Decree

The ANC almost immediately exceeded its mandate to draft a new constitution and instead set out to "restructure the state" by displacing
the Supreme Court. The Venezuelan Judiciary came under direct assault from the ANC when, in August 1999, the Assembly declared a “judicial emergency.” The Judicial Emergency Decree appointed a seven-person commission, staffed by a majority of Chávez-supporters, to review over 2,000 claims of corruption and incompetence among judges and congressmen and gave them the power to fire those found to be corrupt. The Judicial Emergency Commission had jurisdiction to investigate the Justices of the Supreme Court, the members of the Judicial Council, and approximately 1,200 judges. The ANC’s Decree threatened to eviscerate any independence the Judiciary had from the Executive; any judge could be removed from office if the four Chavista members of the Judicial Emergency Commission so desired.

While judicial oversight was in no way part of the ANC’s legal mandate, the Venezuelan Supreme Court nevertheless upheld the appointed commission’s constitutionality in an eight-to-six decision. Ironically, the majority opinion based its argument on the principles of the rule of law: “The Supreme Court reaffirms its submission to the rule of law and its willingness to collaborate with other branches of government. It therefore offers to contribute to the principal aims of the Judicial Emergency Decree.” The majority relinquished any authority to override the decisions made by the ANC and “unofficially confirmed the supra-constitutional right of the ANC.” The decision was so controversial that the Chief Justice of the Supreme Court, Cecilia Sosa, resigned in protest over the decision.

The Decision on the Judicial Reorganization Decree was widely believed to be a result of Chávez’s intimidation of the Court—many thought that if the Court confronted the ANC then Chávez would have simply dissolved the Court. Supreme Court Chief Justice Sosa lamented that the court had “committed suicide to avoid being murdered.” President of the Chamber of Deputies, Henrique Capriles Radonsky, echoed Sosa’s sentiments and said that the Supreme Court had acted out of self-preservation:

[T]his action by the [Supreme Court] was an action to preserve their existence within the republic . . . that there was great incertitude in these actions by the [Supreme Court] because in essence the ANC

34. Id.
35. Id.
37. Chavez’s Power Grab, supra note 30.
could, for example, at any moment in time, institute the Death Penalty, and there existed no judicial organism by which an action by the ANC could be declared illegal or unconstitutional.  

The decision to cooperate with the ANC did not save the Judiciary; rather, the ANC took the Decision on the Judicial Reorganization Decree as an invitation to institutionalize its hold over judges.

Less than four months after the Decision on the Judicial Reorganization Decree, Chávez finally buried the Supreme Court. On December 22, 1999, the ANC created the Supreme Tribunal of Justice to replace the old Supreme Court. The old Supreme Court Justices were all removed from the Judiciary as a new crop of pro-Chávez judges took the reins of Venezuela's highest court. The Supreme Tribunal of Justice asserted jurisdiction over its predecessor's docket. The era of an independent high court in Venezuela had ended.

b. The Aftermath of the Decision on the Judicial Reorganization Decree: A Dependent Judiciary and a Controlling Executive

The judicial system that developed in Venezuela after the Decision on the Judicial Reorganization Decree resulted in a judiciary that was substantially dependent on the caprices of the Executive. Chávez and the ANC were able to maintain control over the Judiciary by (1) denying judges tenure, (2) "packing" the Supreme Tribunal of Justice to ensure that a majority of the Justices remained pro-Chávez, (3) limiting the manner in which judges could be nominated, and (4) suspending judges perceived to impair the Bolivarian Revolution.

First, the Chávez administration has kept the vast majority of judges classified as provisional and therefore afforded a lower degree of protection. According to a 2003 Organization of American States (OAS) report, only 183 of the 1,772 judges in Venezuela were tenured. By denying judges tenure, the Emergency Judicial Commission can remove judges without even affording them a trial. For example, Supreme Tribunal of Justice President Iván Rincón Urdaneta explained that the March 2004 removal of three Caracas judges did not warrant a hearing because they were "temporary judges with short terms." The ultimate result of this perpetual tenuous employment is that judges are subject to arbitrary

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38. Brown-Perez, supra note 36, at 128.
40. Id.
42. Castaldi, supra note 41, at 496.
44. Castaldi, supra note 41, at 495.
removal and are more susceptible to political pressures.\textsuperscript{45}

Second, the Venezuelan government “packed” the Supreme Tribunal of Justice in order to get a favorable majority. Even though Chávez had replaced the old Supreme Court with his Supreme Tribunal of Justice in 1999,\textsuperscript{46} the Tribunal had grown too independent for his liking by 2004.\textsuperscript{47} In May 2004, the ANC passed the Organic Law of the Supreme Tribunal of Justice (\textit{Ley Organica del Tribunal Supremo de Justicia}) that severely changed the composition of Venezuela’s highest court.\textsuperscript{48} The new law increased the number of judges from twenty to thirty-two, and the twelve new judges would be selected via a majority vote in the Chávez-controlled ANC.

The decision to enlarge the Supreme Tribunal was ostensibly made to increase the Tribunal’s capacity to handle its large caseload, but many skeptics claimed that the move was actually a carefully calculated political maneuver.\textsuperscript{49} The ANC’s statement that judicial nominees must self-identify with the “process”—that is, nominees must adhere to the Bolivarian revolution—strongly suggests that the Tribunal’s enlargement was political in nature. The Supreme Tribunal, now firmly in the hands of pro-Chávez judges, declared that it had the right to review any decisions of any court. Consequently, any controversial issue revolving around the constitutionality of an act will ultimately be heard by a group that has made clear its allegiance to Chávez.

Third, the Organic Law changed the way the judicial branch deals with changes in the nomination process of judges. Article 8 of the Law calls for a two-thirds majority in the National Assembly to receive confirmation. But, the vote can occur up to four times, allowing time for political jostling and pressure, if need be. If the nominee does not receive the required amount of votes after four attempts, then a simple majority within the National Assembly suffices. The eventual simple majority rule seems to make the two-thirds requirement superfluous. Given that a majority of the National Assembly belongs to President Chávez’s political coalition and wants to see his vision carried out, the ostensibly democratic process of selecting members of the Supreme Court offers no real check on Chávez’s tyranny of the majority.

\textsuperscript{46} See \textsc{Michael McCaughan}, \textit{The Battle of Venezuela} 66 (2005).
\textsuperscript{47} Some speculate that Chavez desired a change to the Tribunal in order to reverse an earlier decision acquitting those responsible for a failed 2002 coup d’etat against Chavez. The Supreme Tribunal had dismissed the charges against four military officers who participated in the coup, citing that there was no real coup but rather only a “power vacuum.”
\textsuperscript{49} In similar fashion, Franklin D. Roosevelt’s threatened to “pack the court” in 1937 when the U.S. Congress struck down his New Deal legislation.
Fourth, the Organic Law created the means for arbitrary suspensions of judges, making them more likely to preserve the status quo and not upset the National Assembly. The same problems that arose from the simple majority rule in the nomination process re-emerge in two specific mechanisms that effectively neutralize a judge. Although the law permits removing a judge with a two-thirds majority, the National Assembly can suspend a judge pending a hearing and reject appointments to the court with only a simple majority. A judge can be suspended for up to ten days before having a hearing if he or she violates his or her duties outlined by Article 265 of the Constitution and Article 12 of the Tribunal of Supreme Justice law. In practice, however, these “10 day suspensions” are not observed and several suspensions have carried on for a prolonged period of time, even indefinitely. The selectivity of respecting the ten days allotted by the Constitution also points to a potential for political abuse.

3. Step #3: Chávez Removes Term Limits and Secures Indefinite Rule

As described supra, Chávez completed his authoritarian maneuvers on February 15, 2009 with the removal of presidential term limits. Article 230 of the previous Venezuelan Constitution had allowed a president to be re-elected only once. Chávez had found this limitation too constraining, and began to work towards its removal.

Chávez’s first attack on Article 230 came in December 2007, when he sponsored a constitutional amendment that would have eliminated term limits as part of an omnibus set of sixty-nine public policies that would have also instituted communal councils and collective property, effectively nationalized banks, nationalized large ports of the agriculture and oil industries, empowered authorities to detain citizens without charge, and declared “the mandate to unify Latin America.” While the Chávez-supported legislature approved this massive reform, the majority of Venezuelan voters rejected the referendum and the presidential term limitation remained intact. Only fourteen months later, however, Chávez once again pushed for indefinite rule. The voters responded this time, and Chávez now stands ready to run for another term in 2012.

4. A Chávez-centric Polity

Chávez’s attack on potential opponents did not stop with the judiciary and legislature. His next target was the unofficial fourth branch of government, the media. The most prominent example of Chávez’s anti-media campaign was the government’s refusal to renew the broadcast license for Radio Caracas Television (RCTV), the most vocal opposition news

Even though RCTV was Venezuela’s oldest television station, Chávez did not hesitate in replacing RCTV with state-run television stations, which showed cartoons and old movies during the protests accompanying RCTV’s closure. Chávez’s repression of RCTV has been repeated against other media outlets that choose to criticize the Venezuelan president.

The result of Chávez’s “reforms” has been a Venezuelan state that insulates its executive from democratic challenge. As the Economist Intelligence Unit states, “[t]he Venezuelan Constitution gives significant political power to the executive...[i]n practice, Mr. Chávez retains even more influence than stipulated under the Constitution.” For example, after Venezuelans rejected a series of Chávez-supported reforms in December 2007, Chávez secretly pushed twenty-six laws through the legislature that affected most of the measures rejected in the national referendum. Chávez has systematically eviscerated the Venezuelan legislature and judiciary’s ability to control his power. As Fulbright Scholar Brenda Brown Perez writes, as a result of Chávez’s constitutional maneuvering, “Venezuela lost any semblance of ‘balance of powers,’ at least in the context in which it was previously known in a judicial sense.”

One of the most striking aspects of Chávez’s power centralization has been the fact that it was done via legal channels; Chávez used ostensibly legal mechanisms to strip potential opponents of power. Simply put, democracy is not necessarily permanent. Seventy years ago, a German ex-military officer won election and passed a series of laws that morphed a democracy into an autocratic state. Today, a Venezuelan ex-military officer has done the same.

II. THE VENEZUELAN MODEL COULD BE FOLLOWED IN OTHER LATIN AMERICAN COUNTRIES

The real danger of the Venezuelan model for undermining the rule of law via legal mechanisms is the fact that other countries have begun to follow Venezuela’s lead. Chávez has not been a passive bystander in this process; he has actively pursued the “exportation” of his Bolivarian revo-
olutions and has spent millions on Leftist candidates. By finessing consti-
tutions and pushing through legislation, other Chávez-supported leaders
have tightened the executive’s reins on control.

Bolivia’s Evo Morales, in many ways Chávez’s protégé, has begun to
follow the populist trend in centralizing power and nationalizing major
industries. Since coming to power on December 18, 2005, Morales has
actively pursued a populist agenda. He has also followed Venezuela’s ex-
ample by setting up a constituent assembly to change constitution provi-
sions that limit his power.

First, Morales has attacked judicial independence. For example, after
several judges ruled against his expansive socialist programs, Morales
publicly criticized the judges and called for members of the Constitu-
tional Court to be tried by Congress. Morales’s threats violated the ju-
dicial independence clause of the Bolivian Constitution, which reads: “the
magistrates and judges are independent in the administration of justice
and are subordinate only to the Constitution and the law.”

Second, when he found the Bolivian constitution too constrictive,
Morales undertook a massive series of constitutional reforms that were
approved on January 25, 2009. In standard populist fashion, Morales
removed the constitutional term limitation on presidents and added a
new Article 168 that will allow him to serve another term. The new
constitution includes a litany of other changes that give the government a
greater control over the economy, broaden the nationalization of private
industries, and increase the rights of indigenous people. The new con-
stitution also changes the judicial independence clause to read: “The fol-
lowing are guarantees of judicial independence: (1) judges will act in
conformity with the judicial profession, (2) the budgetary autonomy of

63. On his hundredth day in office, Morales nationalized Bolivia’s oil and gas reserves,
ordering the military to occupy Bolivia’s gas fields and giving foreign investors a
six-month deadline to comply with demands or leave. See Carin Zissis, Bolivia’s
Nationalization of Oil and Gas, BACKGROUNDER, COUNCIL ON FOREIGN RELA-
also recently joined the Bolivarian Alternative for the Americas, a socialist trade
group that previously consisted of Cuba and Venezuela. The new three-nation
pact is now calling itself the “Axis of Good,” and is actively working to expand its
membership. Id.

64. Alvaro Vargas Llosa, Honduras’s Coup is President Zelaya’s Fault, WASH. POST,
July 1, 2009.

65. Bolivia: IBA Calls on President Morales to Desist from Undermining the Rule of
Article/Detail.aspx?ArticleUid=5DDE8323-44A8-47D2-88D6-E1CD45658633.

66. BOLIVIAN CONSTITUTION, Title III, Art. 6 (2005) (“Los Magistrados y Jueces son
independientes en la administración de justicia y no están sometidos sino a la Con-
stitución y la ley. No podrán ser destituidos de sus funciones, sino previa sentencia
ejecutoriada.”).

67. Terry Wade, Bolivia’s Morales wins referendum, Eyes Re-Election, REUTERS, Jan.
26, 2009.

68. BOLIVIAN CONSTITUTION, Title II, Art. 168 (2009).

69. Arthur Brice, Bolivarian vote on constitution could help president, CNN ONLINE,
the judicial organs." It is unclear whether this change from the "subordinate only to the Constitution and the law" language is merely cosmetic or whether there has been a substantive right in the judiciary's ability to decide the law.

In short, Morales has strengthened the power of the Bolivian executive, undermined private property rights, and attacked the judiciary when it resisted his progressive agenda. While the Bolivian polity is not as Morales-centric as the Venezuelan government is Chávez-centric, the stage has been set for further power centralization. Given how Morales has followed Chávez's example thus far, it is not unlikely that Morales would continue down the path towards autocracy.

Ecuador's Rafael Correa, Nicaragua's Daniel Ortega, and Paraguay's Fernando Lugo are three other possible populist leaders who might follow Chávez's lead. While Ecuador, Nicaragua, and Paraguay have not engaged in the wholesale centralization efforts that Venezuela and Bolivia have effected, leaders in Quito, Managua, and Asunción have been receptive to populist rhetoric and policy. In sum, the rule of law in other Latin American countries might fall prey to the same forces currently at work in Venezuela.

III. RULE OF LAW REFORM: DEFENDING AGAINST THE ATTACK ON DEMOCRATIC RULE

The Venezuelan example demands that democracy's supporters help nations attempting to resist the slide into autocracy. The "shield" against autocratic centralization should come in the form of rule of law reform, where democratic institutions are developed and strengthened.

Rule of law, as a general proposition, states that governments should respect the laws of a nation and recognize the decisions of the judiciary. Organizations like the World Bank, the Inter-American Development Bank ("IDB"), and United States Agency for International Development ("USAID") have all emphasized the importance of engaging in rule of law reform in Latin America. As USAID describes, rule of law reform in Latin America advances American interests by promoting democracy:

By helping countries to establish just and effective legal systems, the United States is able to strengthen democracies in the region, increase their legitimacy in the eyes of citizens, and bolster support for

70. Bolivian Constitution, Title III, Art. 178 (2009) ("Constituyen garantías de la independencia judicial: (1) El desempeño de los jueces de acuerdo a la carrera judicial (2) La autonomía presupuestaria de los órganos judiciales").


72. Castaldi, supra note 41, at 481.
their democratic institutions. Judicial reform not only supports the
idea of democracy for which the U.S. stands, it actually aids the
mechanics of democracy, as well, ensures that justice functions effect-
ively and transparently.73

Strong judiciaries and an institutionalized belief in the importance of
the separation of powers are critical in ensuring democracy's longevity.
A detailed analysis of discrete rule of law reform lies outside the scope of
this article; rather, this article simply posits that a renewed emphasis on
rule of law reform is the appropriate response to Venezuela's attempt to
export its Bolivarian Revolution. Future rule of law reform efforts
should, however, build upon lessons learned from previous rule of law
reform efforts.

A. The History of Rule of Law Reform in Latin America

Broadly speaking, rule of law reform institutionalizes the idea that the
law has a clear meaning, applies equally to everyone, and supports civil
liberties.74 Beyond that expansive definition, however, there is much de-
bate over what exactly is encompassed in the field. Thomas Carothers,
founder and director of the Democracy and Rule of Law Project, astutely
observes that the majority within the rule of law reform camp are lawyers
and thus places a larger emphasis on the judiciary and law enforcement
institutions more generally.75 This has led to the interchangeability be-
tween the phrases "rule of law reform" and "judicial reform."76 The criti-
cal component of rule of law reform, whether it is in the judiciary or
elsewhere in the government, is an intent to reinforce the public's faith in
the law as an effective instrument of public policy.77

The history of rule of law promotion illustrates an evolution in the
movement's objectives and criteria as a better understanding of the prob-
lem developed. The movement in Latin America really started gaining
speed during the mid-1980s when bilateral and multilateral agencies be-
gan to progressively increase assistance targeting judicial reform.
USAID spearheaded the movement with a succession of legal framework
programs in Central America. The transition from the bilateral agencies
to the World Bank and the Multilateral Development Banks (MDBs) re-
ally took hold during the 1990s, signaling a change in the priorities of rule

76. THOMAS CAROTHERS, CRITICAL MISSION: ESSAYS ON DEMOCRACY PROMOTION 135 (2004).
of law reform. By 1999, the World Bank and the IMF were responsible for 30 rule of law reforms in the region, totaling $302 million. This pivotal moment signified the shift from a focus on criminal justice to limited focus on commercial-related legal matters.

Rule of law promotion gained momentum after the Cold War primarily because it was believed that such reform aids free market capitalism and democratic liberalization. The fall of the Berlin Wall symbolized the triumph of market capitalism and democracy. The collapse of the Soviet Union and its puppet regimes left a vacuum, a gap that was filled by ideas espoused by the West. As a result, the “third wave of democratization,” as Samuel Huntington calls it, swept through Latin America and Africa during the 1980s and 1990s. As newly elected governments came to power all over the world, and especially in Latin America, they were caught in the euphoria of the time and transitioned to market economies in a rapid manner, often via orthodoxy policies.78

The World Bank is illustrative of how international organizations have undertaken rule of law reform.79 The World Bank first engaged in rule of law reform because of its perceived connection to economic and democratic consolidation. The World Bank argued that rule of law reform promotes the enforcement of contracts, property rights, and a solid regulatory framework, which reinforces the free market and subsequently increases development. As former World Bank executive director Moisés Naím noted, the rule of reform is essential to the second phase of market reforms, which entails building institutions such as tax agencies, customs service, and antitrust agencies, and overall improving governance.80 Furthermore, economic globalization and the introduction of international investors are reinforcing the need for rule of law reform by demanding that governments be more transparent and accountable to investors’ needs.81

79. The World Bank was founded in 1944 with the mandate to support post-war reconstruction and has since expanded to the broader mandate of reducing worldwide poverty. It is the product of what is commonly known as the Western Liberal Democratic International Order, which was committed to an open world economy and the stabilization of socioeconomic welfare. THAZHA VARKEY PAUL & JOHN A. HALL, INTERNATIONAL ORDER AND THE FUTURE OF WORLD POLITICS 126-30 (Cambridge, 1999). More specifically, the World Bank seeks to promote economic growth by promoting low fiscal deficits, cutting subsidies as part of a larger push to prioritize public expenditures, a broad tax base with moderate marginal rates, market determined interest rates, an outward oriented economic policy, encouraging foreign direct investment, deregulation, and privatization. John Williamson, What Washington Means by Policy Reform, MODERN POLITICAL ECONOMY AND LATIN AMERICA: THEORY AND POLICY 18-23 ( Jeffrey Frieden, Manuel Pastor Jr. & Michael Tomz eds., 2000)
Operating under this economic mindset, the World Bank’s early rule of law reforms concentrated primarily on commercial and other areas considered pertinent towards economic development. This narrow attention became institutionalized when the World Bank’s General Council stipulated in 1990 that any of its reform initiatives must have a "direct and obvious implication for economic development." As a result, the World Bank dealt with lowering transaction costs associated with securing property and contract rights by targeting judicial and related administrative agencies. It did not address peripheral issues such as judicial independence, access to justice, constitutional law, criminal law, or the protection of human rights.

B. General Guidelines for Effective Rule of Law Reform

The field of rule of law reform is a relatively new one that is still evolving as reformers attempt to isolate best practices and useful paradigms for repetition. Nevertheless, several broad principles for effective rule of law reform can be delineated.

First, the reform efforts must enforce judicial independence. The teeth of rule of law reform stems from the institutions that are targeted by it. Rule of law promoters tend to focus on the stewards of justice: the courts, prosecutors, police, and judges. Reforms attempt to increase the fairness, competence, and efficiency in each of these institutions. Although not all academics agree upon which institutions need to be targeted, the police, the judicial branch, and their subsidiaries are generally believed to have the most direct effect on rule of law, and subsequently these institutions have received the greatest amount of attention. While this emphasis on the judiciary may be a by-product of the overabundance of lawyers in the field, some statistical evidence supports the contention that judicial reform allows for the greatest gains in establishing the pub-


84. Tom R. Tyler, Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform, 45 AM. J. COMP. L. 871, 891 (1997) (“The importance which people place upon the motives and character of the judge, police officer, or mediator with whom they are dealing suggests one of the difficulties in instituting a RULE OF LAW within a society. Although the RULE OF LAW suggests a focus upon the neutrality of procedures, even within such procedures people are strongly affected by their views about the particular authorities with whom they are dealing.”) (internal citations omitted).

85. MARK UNGAR, ELUSIVE REFORM: DEMOCRACY AND THE RULE OF LAW IN LATIN AMERICA 141 (Lynne Reinner Publishers, 2002).

86. LINN A. HAMMERSGAARD, ENVISIONING REFORM: IMPROVING JUDICIAL PERFORMANCE IN LATIN AMERICA 2 (2007).

87. CAROTHERS, supra note 76, at 135-138.
lic’s faith in the government.88

The importance of judicial independence warrants special discussion. As stated in a 1996 report by the Lawyers Committee: “Judicial independence is the most important measure of commitment—the willingness of the government to take concrete steps to reduce political influence in judicial appointments and court operations.”89 Judicial independence, vis-à-vis the coordinate branches, is such an important indicator because independence is fundamental to the other tasks the judiciary carries out; the courts cannot hold government officials accountable, resist political pressures, or effectively administer justice if the courts are subject to the whims of the Executive.

Second, rule of law reform must take place in a comprehensive way. On a micro level, rule of law should focus on shortening the time to process claims, transitioning to a more open adversarial approach with proceedings in open court, making a judge’s decisions public, and explaining citizens’ legal rights to the public.90 On a more macro level, reformers should establish the judiciary as an independent branch of government vis-à-vis the other branches. This protection of the separation of powers, a principle dating back to the Baron of Montesquieu,91 reinforces the public’s faith in the law because only an independent judiciary can ensure that government officials are not above the law.92

Effective rule of law reforms require both micro and macro level measures; faith in the law requires both micro steps that safeguard individual rights and macro steps that protect the judiciary from executive encroachment. Future rule of law efforts should build upon the lessons learned from the World Bank’s experience and address judicial independence, access to justice, constitutional law, individual criminal law, and the protection of human rights.

IV. CONCLUSION

Democracy is not a static construct; rather, it can mature or regress over time. The Venezuelan example illustrates how the current political climate in Latin America can support a slide into autocracy undertaken in the name of a populist revolution. The economic crisis that has gripped the global economy since the end of 2008 will only exacerbate the fundamental conditions that gave rise to the autocratic slide.

89. Halfway to Reform, supra note 82.
92. JOHN LOCKE, TWO TREATISES OF GOVERNMENT 292-93 (Peter Laslett ed., 2d ed. rev. with amendments, 1970) (1690). For example, in Asia law is seen as a means to facilitate the state in its activities. This is rule by law, not rule-of-law.
Over the past two decades, Latin America has emerged from its checkered history of autocratic rule. Democracy has taken root, truth and reconciliation commissions have been formed, and economic policies have been opened. But the threat of autocracy still looms. Under the guise of Chávez-style populism, a slide away from the rule of law lingers as a wolf in sheep's clothing. The international community must recognize the threat of the Venezuela example and actively support the region's democracies from following in Chávez's footsteps. Only then will Latin America be able to ensure that the end of the twentieth century was the beginning of a true democratic era and not just the region's democratic moment.