

A Constituent Assembly Only in Name? Part I on Venezuela's Constituent Assembly

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In July 2017, Venezuela's President Nicolás Maduro convened a constituent assembly. In other words, an authoritarian president under pressure relies on what some theorists have referred to as the origin of all democratic rule. This raises one central question: Is this assembly really a constituent assembly, or is it one in name only?

This first part of a three-part series on the 2017 Constituent Assembly in Venezuela will set out the governing party's arguments when convening the Assembly. It will propose a thin account of constituent assemblies to assess the question whether the Assembly is a constituent assembly only in name. It will then briefly summarize the events which culminated in convening the Assembly, and finally outline two reasons why the concept of constituent power is so attractive to authoritarian regimes.

Arguments for a Constituent Assembly in Venezuela

The Venezuelan government argues that the constituent assembly is not one in name only, and draws on two lines of argument to substantiate its claim: The first line of argument is that the Constituent Assembly is perfectly in line with the rules set out by the present constitution, which entered into force in 1999. This line of argument is flawed: if there can be such a thing as an unconstitutional constituent assembly, the Venezuelan assembly is certainly one (see Hanna Buck's blog post). His second line of argument draws on the idea of an unconstrained constituent assembly, as formulated by seminal theorists like Emmanuel Sieyès, or James Madison. Until now, Maduro's Constituent Assembly fails to fulfil even minimum criteria set out by a thin account of constituent assemblies (see Maria Haimerl's blog post): first, that it performs its tasks within a pre-assigned and limited time frame, and second, that its primary goal is to write a constitution.

These two criteria can be found in the works of a range of theorists, such as Emmanuel Sieyès and James Madison but also George Lawson, who stresses constituent assemblies' temporary mandate to model a state. Of course, this thin account can be contested: the famous French Assembly of 1789, to name just one example, sat for two years, and was – besides drafting a constitution – concerned with a whole range of parliamentary tasks. More generally, it seems to be widely accepted that constituent assemblies have many more tasks besides drafting a constitution. However, there are valid points that argue for the thin account applied here. First, an arrangement where the constituent assembly also acts as a legislator makes it a judge in its own cause, as one of its main tasks is to balance power between the different branches of government (Elster 1993, 182). Second, there are two major differences to the late 18th century French Assembly: while the historical French Constituent Assembly did hardly have any predecessors, and drafted one of the first constitutions of its kind, the Venezuelan one can look back to more than [200 years of constitution drafting by many different assemblies](#). Another crucial difference is that there simply was no parliament in France at the time – with the 1789 Assembly, power shifted from regal to popular sovereignty. In Venezuela, by contrast, there already is a parliament, where the opposition has a qualified majority. The only power shift to be expected here is a shift from populist sovereignty under Chávez to unpopular sovereignty under Maduro.

How come that Maduro convened a Constituent Assembly?

Ever since Hugo Chávez died in 2013, Maduro has been a president under huge pressure – starting with his extremely narrow and contested victory in the presidential elections. [In February 2014, student demonstrations were brutally suppressed](#), and a year later, the situation had only gotten worse, as food and medication got increasingly scarce. Although the opposition could get a qualified majority in the National Assembly by December 2015, it was not able to change politics in Venezuela.

Why did nothing change? Venezuela's Supreme Tribunal of Justice has already under Chávez been packed with loyal chávistas and has ever since supported the ruling party rather than providing for a check on the government: the Court has declared unconstitutional all laws enacted by Parliament – with only one exception. Finally, in March 2017, two new decisions by the Supreme Tribunal of Justice were issued. They were nothing less but a full-scale attack on the National Assembly and directed at stripping it from its legislative prerogatives. As a result of this [coup d'état, as Parliament called it](#), civil protests increased. It was in this tense political situation, that on May 1, Maduro announced that he wanted to convoke a Constituent Assembly to “spread peace” in the country. This announcement only led to further protests, [while the economic and financial situation in the country is in rapid decline](#). When the Constituent Assembly was elected, forty countries declared they would not recognize the new assembly.

What makes the concept of constituent power attractive to authoritarian leaders like Maduro?

Many have observed that authoritarian leaders are tempted to recur to the concept of the original constituent power. There are at least two reasons for this: one is theoretical, the other one strategic. On a theoretical level, autocrats such as Maduro or Chávez before him draw on theorists who stress that constituent assemblies – because they represent the people – must be unconstrained. In Sieyès' words, “the constituent power can do everything in relationship to constitutional making. It is not subordinated to a previous constitution. The nation that exercises the greatest, the most important of its powers, must be, while carrying this function, free from all constraints, from any form, except the one that it deems better to adopt”. Maduro seems to rely on this when, in a TV address in 2017, he said that the Assembly is, [“a power that's above and beyond every other. It's the super power”!](#)

He thus relies on a very reductive interpretation of theories on constituent assemblies, neglecting all legitimization aspects of Sieyès' or Madison's accounts, stressing just this one aspect: any previous law, including the constitution, does not bind the Venezuelan people, and thus the constituent assembly. By contrast, if we go back to Sieyès', he does say, “the constituent power can do everything”, but only “in relationship to constitutional making”.

On a level of political strategy, many scholars have observed the advantages of calling constituent assemblies: autocrats are able to write the electoral rules unilaterally instead of bargaining with Parliament (Landau 2017). Maduro, as Chávez before him, avoided to play by the existing rules and did not have to bargain with opposition politicians by calling a new constitution-making process. Venezuela is a vivid example of why constituent power may be called a liminal concept: it is both foundational and difficult to grasp which makes it particularly prone to abuse.

This article is the first part of a three-part series on the 2017 Constituent Assembly in Venezuela. It was originally prepared for presentation at the workshop on “The Rise of Authoritarian Constitutionalism: Empirical and Normative Perspectives” organized by Princeton University and Humboldt-Universität zu Berlin at Princeton, October 2017. We are grateful for comments and remarks made on that occasion.

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