

Successes and struggles of participatory democracy: The constitutional processes in Venezuela and Bolivia May 2007

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Introduction

By virtue of its foundational nature, no document is more important to the political structure of a nation than its constitution. As a result, no process is more capable of re-founding a nation than the process of creating a constitution. In recent years, many Latin American countries, such as Colombia in 1991 and Peru in 1993, have rewritten their constitutions. While both were important processes, their significance pales in comparison with Venezuela's, which took place in 1999. The Constitution of the Bolivarian Republic of Venezuela is revolutionary in many regards, but perhaps the most significant is the process by which it was written. It was a project undertaken with levels of consultation and participation unmatched by those that came before. The result of this process was the creation of a document that is inspirational to the Venezuelan people and to those who wish to follow their example.

Bolivia is attempting to emulate Venezuela, but its process is often seen as an imitation that is driven more by Hugo Chávez than by the Bolivian people. The reality is that both countries came to the point of writing new constitutions through long struggles. The first calls for a new constitution in both countries can be traced back farther than any single politician. Over the last 25 years economic growth in Latin America has stalled significantly (Weisbrot), and the vast majority of the people continue to live in poverty. The failure of the neoliberal system to produce economic growth and its inherent tendency to perpetuate an unjust distribution of wealth led first to movements demanding change in the form of a new constitution and later to the election of leaders who could bring that change.

Initial calls for a new constitution

Venezuela: When Hugo Chávez was elected president of Venezuela in 1998, he won on a platform of change that was symbolized by his promise to write a new constitution. By the following year the Constitution of the Bolivarian Republic of Venezuela had been written, and it was quickly approved and adopted. This series of events should not, however, give the impression that the call for a Constitutional (or Constituent) Assembly was new to the 1998 election or that it was unique to Chávez's political movement. The previous constitution of Venezuela was written in 1961, and its 38-year term is the longest of any constitution in Venezuelan history. The first calls to reform the 1961 Constitution were heard in the 1980s from groups advocating the decentralization of power and executive and judicial reform (Kelley), but it was not until the early 1990s that the movement gained its broad base of support.



In 1992, a group of reformers led by Hugo Chávez attempted to take control of the government by means of a military coup. Through the failure to achieve their aims by military force, the movement (and Chávez in particular) began to realize that it would be necessary to gain power through democratic means. Following closely behind the coup attempt, the Venezuelan people tried to remove President Carlos Andrés Pérez from office. As there was no constitutional mechanism to do this, it was initially thought that it would be necessary to amend the constitution. Ultimately, the courts resolved the issue and Pérez was removed, but the difficult process convinced many that a new system was needed (Kelley), paving the way for the process to begin just after the election of Hugo Chávez.

Bolivia: The Bolivian movement for constitutional reform can be traced back to the formation of organized indigenous social movements in the lowlands regions in 1990. It was in this year that groups in the east marched for “land and territory,” calling for a new constitution to put an end to the exclusion of indigenous people from the political process. Throughout the 1990s the demands from social movements grew ever louder. By the end of the decade, the political situation in Bolivia intensified as the various groups of the social movements began more active opposition to the unpopular actions of the government. Throughout 2000 and 2001, protests took place across the country, including the “water wars” in Cochabamba, in which activists consistently included a new constitution among their demands. In 2003, President Gonzalo Sanchez de Lozada was forced to resign following a violent incident in which 67 civilians were killed by police and security forces. The popular demands for Sanchez de Lozada’s resignation were combined with calls for a new constitution (Andean Information Network).



Unlike in Venezuela, where the constituent assembly was closely associated with Hugo Chávez, the creation of the assembly in Bolivia is the product of the support of the last four presidents. Sanchez de Lozada came out in favor of the assembly on the day before he was removed from office. While accomplishing little, this paved the way for his successor, Carlos Mesa, to take the first substantial steps toward creating the assembly. The interim president that followed Mesa, Eduardo Rodriguez, set the date for the election of the assembly. The Constituent Assembly was an integral part of Evo Morales’ campaign for the 2005 election, and the process will take place during his presidency, but it should be noted that his was not the first administration to take steps toward convoking the assembly (Andean Information Network).

Election of members

Venezuela: Once the Constituent Assembly had been convoked it was time to elect the Assembly members. This process is an interesting one to consider, since the representative and participatory nature of the constitutional reform project is reflected to a certain extent in who is chosen to sit in the Assembly. In Venezuela, the candidates essentially fit into two categories: those who supported Chávez and those who opposed him. The opposition candidates represented a variety of different interests and political parties, but many chose to run on their own initiative (i.e. without party or organizational affiliation).

The candidates who ran on the pro-Chávez ticket belonged to the Polo Patriótico, a coalition of Chávez's Fifth Republic Movement (MVR) with Movement Toward Socialism (MAS) and Patria Para Todos (PPT), two other left-leaning political parties (Garcia-Guadilla & Hurtado).

Of the 131 members of the Assembly, three were elected from among the indigenous minority in special elections. The indigenous elections took place separately from the regular elections, and the rules for voting were based on the customs of Venezuela's indigenous communities. This left 128 members to be elected in the regular elections. Twenty-four of these would represent a national constituency, and the remaining 104 would be selected at the state level. The process for electing these representatives produced controversial results. Rather than providing a number of seats to each party in proportion to the number of votes it received, each election for the Constituent Assembly was individual. As the opposition lacked political unity, there were often a number of opposition candidates running against just one candidate from Polo Patriótico. While the opposition may have received a majority of the votes in a certain election, these votes were generally split between several candidates, allowing the Polo Patriótico candidate to win the election with a plurality, but not a majority, of the votes (Garcia-Guadilla & Hurtado).

When the votes were counted, Polo Patriótico candidates had won 95 percent of the seats (120 out of 131) while receiving only 62 percent of the total votes. This distribution of seats in the Assembly ensured that Chávez's party could pass many of the measures that would usually be blocked by the parties on the right. It has also been argued, however, that the dominance of one party restricted the amount of discussion and participation that could occur in the Constituent Assembly (Garcia-Guadilla & Hurtado).

Bolivia: The election of the Constituent Assembly in Bolivia took place under different political circumstances than in Venezuela, so it faced different types of challenges. The most important question that had to be answered was how organizations from civil society would participate in the Assembly. In accordance with the 2004 electoral law, any organization not previously registered as a political party with the National Electoral Court would have to gather 15,000 signatures in less than a month in order to run a candidate (Andean Information Network). Many social organizations wanted the government to ease the onerous restrictions, but in the end it was obligated to abide by the previously established law. As a result, the ruling MAS party was essentially the only intermediary through which indigenous groups, labor unions, and civil society organizations would nominate candidates. Those who defended this system claimed that MAS adequately represented the viewpoints of these groups, but others asserted that many outside opinions have not been heard because they have been filtered through an established political party (Dangl).

The results of the Assembly election showed a continuation of the trend that brought Evo Morales to the presidency six months earlier. The traditional parties on the right had largely lost their support since the realignment ushered in by Morales' election in 2005. The failure of these political forces to resolve the issues that eventually led to violence caused many to lose faith in them. As a result, the majority of the parties on the right were small organizations newly created to run for the Assembly elections, and they generally achieved only minor representation in local elections (Mokrani & Gutierrez).

Poder Democrático y Social (Podemos) was the one exception to this trend. It became the most significant opposition party in the Constituent Assembly by occupying 60 seats out of the possible 255. MAS won 137 seats and is able to muster a total of 151 votes through alliances. This gives the ruling party a strong majority, but it remains well short of the 170 votes that it would need to pass measures through the Assembly with a two-thirds majority (Mokrani & Gutierrez). This would set the stage for a conflict over the procedural rules of the Constituent Assembly that would end up absorbing much of the Assembly's time in its first months.

Early challenges

Venezuela: The Constituent Assembly in Venezuela faced challenges from those who opposed the process from the earliest moments. Even before the members had been elected, the opposition challenged the legality of the Assembly. They claimed that the 1961 Constitution would have to be amended, as it did not provide a procedure for its replacement. The Supreme Court ruled in favor of the Assembly in this case, finding that a popular referendum represented enough public support for the measure to replace a constitutional amendment.

The second tactic of the opposition was to attack the central role that Hugo Chávez played in the process. The specific complaint was that the referendum calling the Constituent Assembly reserved most of the rights to decide the rules of the Assembly for the executive. As the question in the referendum initially read, citizens would hand over to the president the power to establish the rules for electing the Constituent Assembly “by executive decree” (Garcia-Guadilla & Hurtado). This time the challenge was upheld by the courts, and Chávez was forced to change the wording of the question. He published his proposal for the rules of the election process, and the people voted on this published document rather than delegating full authority to Chávez to decide how the representatives would be elected (Garcia-Guadilla & Hurtado). Neither of these efforts managed to break the momentum of the movement, but they demonstrated the presence of a mobilized opposition to the Constituent Assembly.

Bolivia: In Bolivia, the serious challenges began after the elections when the Assembly began to discuss its procedural rules. The rules of debate state that the constitution must be approved by a two-thirds majority of the votes. The opposition parties claimed that this meant that all votes taken in the Constituent Assembly would have to receive two-thirds of the votes to pass. MAS, fearing that this would slow the process of the Assembly, proposed legislation that would allow individual provisions to be passed by a simple majority, while still requiring a two-thirds vote for the final document (Mokrani & Gutierrez). This sparked a bitter debate in which both sides accused the other of attempting to skew the voting procedure in its favor.

The procedural question dominated the debate from August 2006 until February 2007, when a compromise was finally reached. The compromise calls for simple majority votes in all committees with two-thirds votes in plenary sessions both for individual provisions and the final document. Any provisions that fail to reach two-thirds support will pass through a commission charged with reaching compromise agreements. Those

provisions that still do not pass will be voted on directly by the voters in a referendum in which it must receive the support of at least half of the voters (Quispe).

The enormous task that resulted from disagreements over voting systems highlights the position of the Bolivian opposition as a group that has enough influence to try to stop MAS's efforts by political means as opposed to the legal ones pursued in Venezuela.

Participation and consultation

Venezuela: Venezuela's Constituent Assembly has been heralded as the advent of participatory democracy, an ideal that supplants the current paradigm of representative democracy. A participatory democracy seeks to benefit from the input of its citizens at each different stage in the process of making decisions, as opposed to simply holding elections to choose the few who will influence the decisions. The process of writing the Constitution reflects the participatory aspect of Venezuelan politics, as over half of the 624 proposals from civil society were included in some form in the document's final text (Dawn Gable). The mechanisms for participation varied from formal institutions to informal forums for offering proposals.

The formal settings included the Office of Attention to the Citizen of the Second Vice-president and the Commission of Citizen Participation. In addition to contact with individual members of the Constituent Assembly, informal participation also took place in the plenary sessions and the Commissions of the Assembly. Among those most open to suggestions from civil society were the Commission for Social Rights and the Family and the Commission for Human Rights. This is reflected in the fact that 101 proposals from human rights groups were accepted by the Assembly, 74 from education organizations, and 57 from social rights groups. The figures for these three categories of organizations represent the three highest totals of all groups that submitted proposals for consideration (Garcia-Guadilla & Hurtado).

Bolivia: Following the lead of Venezuela in establishing a participatory system for its constitutional process, Bolivia has developed several structures aimed at ensuring that the voice of the population is heard by the representatives of the Assembly. The consultation has taken place in two different steps. During the first period, which lasted until the second week of March 2007, the representatives were in Sucre hearing proposals in the capital. There they received written proposals which were processed and kept for later consideration. Also during this time, the representatives held public meetings at which they heard from various civil society organizations. The results of these meetings were summarized in order to be included in the debate over the text of the new constitution (Quispe).

In the weeks following the session in Sucre, the representatives traveled to the various districts and states to hear proposals. This period, which lasted until the second week of April, gave the general public the ability to voice its ideas and proposals before the representatives. Once these territorial consultations had been logged, the representatives returned to begin debating in committees. Here, the proposals that were received in writing and the results of the different public meetings are being discussed and considered for inclusion in the final text of the new constitution (Quispe). While the

processes for submitting proposals in Bolivia are more formal, they are clearly inspired by the participatory spirit of the Venezuelan process.

Results

Venezuela: The Constitution of the Bolivarian Republic of Venezuela reshaped the country in many significant ways. An important change was the addition of two separate powers. In addition to the traditional executive, legislative, and judicial powers, the Constitution adds the electoral power and the citizen's power. The electoral power consists of an independent National Electoral Council, which oversees elections both for government offices and for other organizations that request its services. The citizen's power acts as an ombudsman and consists of three offices: the attorney general, the public defender, and the comptroller general. The offices are charged with the three separate tasks of prosecuting individuals' violations of the law (attorney general), monitoring and preventing state violations of human rights (public defender), and prosecuting corruption in the government (comptroller general). In regards to the existing powers, the Constitution changed the legislature from a bicameral to a unicameral system with 167 representatives, three of which are required by law to come from the indigenous community. The executive's term was lengthened from five years to six, and the president was granted the ability to run for one immediate reelection (Wilpert). These are the most famous of the results of Venezuela's Constituent Assembly, but the true reshaping of the country took place on different fronts.

The provisions in the Venezuelan Constitution reflect the process by which the document was written, in that the first to benefit are those who are traditionally the most disadvantaged. The tone is set for women's rights in Venezuela by the language of the Constitution, which uses only gender-neutral or gender-inclusive wording, but there are also specific rights enumerated in the document. Discrimination against women, whether intentional or unintentional, is prohibited. In addition, the same protections are given to women's work in the home as to other forms of employment. The indigenous populations of Venezuela also enjoy considerable protection under the new Constitution. Indigenous languages, cultures, and land are officially recognized, and three seats are reserved in the legislature for representatives of the indigenous population (Wilpert).

In addition to protecting those most disadvantaged, the Constitution guarantees an expansive set of rights that are applicable to all people. It begins by defining Venezuela as a "state of law and justice," instead of just a state of law. This implies an understanding of justice as more than just the enforcement of laws. Next, it affirms Venezuela's commitment to global human rights, including such aspects as employment, housing, and healthcare. The Constitution also guarantees the protection of biodiversity and national parks in the hopes of improving the environment. The final set in the broad definition of rights contained in the Constitution includes social, educational, cultural, and economic considerations. This ambitious widening of guaranteed rights is not immediately enforceable in Venezuela, but it sets the tone for the future of the country (Wilpert). The Constitution of the Bolivarian Republic of Venezuela did far more than just change the name of the country; it created in Venezuela a political system that takes into account all of the various factors that affect the livelihoods of its people.

Bolivia: The process of writing and approving the specific provisions of the new constitution in Bolivia is ongoing, and it is therefore impossible to speak of the final results of the Constituent Assembly's work. It is possible, however, to analyze the proposals being considered and the potential outcomes of the process. In relation to the rights of indigenous people, there is a difference that exists between the proposal of several indigenous organizations and the one put forward by opposition party Podemos. The indigenous groups want recognition of territory and other rights, while Podemos wants to give recognition to the culture and customs of the indigenous without changing their actual standing in relation to the government. A similar debate exists in the arena of women's rights, as Podemos has proposed to recognize equality for women under the law while MAS has proposed elaborating specific rights for women (Quispe). If the voting follows party lines, the two provisions dealing with indigenous and women's rights will most likely be sent to the people in a referendum.

In regards to the economic system of the state, the two political factions once again find themselves at odds. MAS and its allies propose a system in which the state is able to intervene to stimulate industrial production and in which collective and community property is recognized. Podemos and the other opposition parties, meanwhile, propose a free market which the state only regulates slightly, and they propose clear protections of private property rights. Environmental groups have proposed protections on biodiversity and forests in Bolivia, but it is unclear in what form these protections will pass the divided Assembly. There is a general agreement between the major parties on the basic rights of all people to health, education, work, and social security. Although the methods for ensuring these rights may differ, it is relatively clear that they will be included in some form in the final document (Quispe).

One of the more contentious debates in Bolivia centers on the question of autonomy. There was a question included in the referendum convoking the Constituent Assembly in which the people rejected a proposal to implement department-level autonomy. The results nationally showed almost 60 percent disapproving of the measure, but in the four departments that voted in favor of autonomy support ranged from 58 percent to 74 percent (Mokrani & Gutierrez). In the Assembly, the debate is between MAS and its allies and the coalition of right-leaning opposition parties led by Podemos. As the representative of the wealthier eastern regions of the country, the opposition supports greater regional autonomy. MAS, which represents mainly the poorer indigenous populations in the west of the country, has made the fundamental unity of the state a requirement for any discussion of autonomy (Quispe). It remains to be seen what compromise, if any, the Assembly will be able to make on this issue. If there is none, there would most likely be a repeat of the national vote on autonomy when the matter is sent to popular referendum.

Conclusion

The open and consultative process of the Venezuelan Constituent Assembly produced an inspirational document. That the Constitution inspires such hope in people is as much a product of the process whereby it was created as of the document itself. In

order to be truly effective, a constitution must be owned by the people that it governs. The sense of ownership of the Constitution among the Venezuelan people is remarkable. Pointing to a specific article in the document, one Venezuelan woman was able to claim proudly “I wrote that.” She and many like her are those who have never been able to take part in the political processes that impact their lives. For these people, many of whom carry a pocket-sized printed version of the Constitution with them at all times, their participation in the writing of this document gives them the voice in their own future which they had always lacked.

Bolivia has the opportunity to produce a similarly inspirational Constitution through its own consultative process. The Bolivian Constituent Assembly is attempting to learn from Venezuela and apply the concepts to its own particular political realities. By doing so, it has demonstrated that the ideas of participatory democracy and popular consultation can be applied in different situations. This principle could be especially significant as other nations in the developing world seek to remove the burdens of the same system that produced the constitutional movements in Venezuela and Bolivia. This is particularly applicable in Africa, where reform movements have generally failed to live up to their promise. However, other Latin American countries, such as Ecuador, may be able to draw even more direct lessons from these two countries. Every country has different political realities, and each country must therefore design its own system, but the principles of popular participation and consultation are universally applicable. The voice of the people is, after all, the most powerful weapon against injustice.

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