

BOOK REVIEW ESSAY

## Can Constitutional Change Transform Society?

Raul Sanchez-Urribarri 

La Trobe University, Melbourne, Victoria, Australia  
Email: [r.sanchezu@latrobe.edu.au](mailto:r.sanchezu@latrobe.edu.au)

This essay reviews the following works:

**Constitutional Change and Transformation in Latin America.** Edited by Richard Albert, Carlos Bernal, and Juliano Zaiden Benvindo. Chicago: Hart Publishing, 2019. Pp. 304. \$96.72 hardcover. ISBN: 9781509923502.

**The Politics of Institutional Weakness in Latin America.** Edited by Daniel M. Brinks, Steven Levitsky, and María Victoria Murillo. Cambridge: Cambridge University Press, 2020. Pp. 359. \$34.99 paperback. ISBN: 9781108702331.

**Constituents before Assembly: Participation, Deliberation, and Representation in the Crafting of New Constitutions.** By Todd A. Eisenstadt, A. Carl LeVan, and Tofigh Maboudi. Cambridge: Cambridge University Press, 2018. Pp. xxii + 200. \$34.99 paperback. ISBN: 9781316619551.

**A Revolution in Fragments: Traversing Scales of Justice, Ideology, and Practice in Bolivia.** By Mark Goodale. Durham, NC: Duke University Press, 2019. Pp. 320. \$27.95 paperback. ISBN: 9781478006527.

**Only the People Can Save the People: Constituent Power, Revolution, and Counterrevolution in Venezuela.** By Donald V. Kingsbury. Albany: State University of New York Press, 2018. Pp. xix + 210. \$32.95 paperback. ISBN: 9781438469645.

**Paths for Cuba: Reforming Communism in Comparative Perspective.** Edited by Scott Morgenstern, Jorge Pérez-López, and Jerome Branche. Pittsburgh: University of Pittsburgh Press, 2019. Pp. 408. \$37.95 paperback. ISBN: 9780822965497.

**Chile Constitucional.** By Juan Luis Ossa Santacruz. Santiago de Chile: Fondo de Cultura Económica Chile and Centro de Estudios Públicos. Pp. 133. \$12.00 paperback. ISBN: 9789562892056.

**Assessing the Left Turn in Ecuador.** Edited by Francisco Sánchez and Simón Pachano. Cham, Switzerland: Palgrave Macmillan, 2020. Pp. 403. \$149.99 hardcover. ISBN: 9783030276249.

---

Institutional reform has long been a major area of inquiry across Latin American studies. This rich literature grapples with the significance of institutions for political life; the gap between the politics of institutional design, practices, and resulting policy outcomes; questions of institutional performance and resistance, and ensuing demands for change, among

© The Author(s), 2022. Published by Cambridge University Press on behalf of the Latin American Studies Association. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

other themes of interest. The topic gained even more relevance after the waves of institutional overhaul that took place in the region in the 1990s and early 2000s. Some of the reforms went beyond piecemeal adjustments, including attempts to fully change and strengthen formal institutional frameworks and establish or renew the foundations for liberal democracy, functional market economies, and the rule of law. Of special note is constitutional redrafting. For instance, the last major democratization wave encompassed major constitutional change in Brazil (1988), Colombia (1991), Paraguay (1992), Peru (1993) and Ecuador (1998).<sup>1</sup> Later, as left-wing leaders and parties arrived in power, major reform agendas unfolded again, with the most ambitious centred on the creation of new constitutions from scratch, as was the case in Venezuela (1999), Ecuador (2008), and Bolivia (2009).<sup>2</sup> In these examples citizens elected popular, divisive leaders who appealed to the people (as a collective) to call for a constitutional refoundation of the polity, ushering in controversial—and often conflictive—political dynamics until the present day.<sup>3</sup>

In the same vein as recent review essays that have covered the subjects of constitutional and institutional reform in comparative perspective,<sup>4</sup> this review surveys eight scholarly works published in recent years that deal, in different ways and from different disciplinary vantage points, with transformative institutional reform and constitutional change. This includes notable books that theoretically address the persistence of weak institutions across the region (Brinks, Levitsky, and Murillo), the logics of citizen participation, deliberation and representation in the creation of new constitutions (Eisenstadt, LeVan, and Maboudi), and constitutional scholars' views on the region's recent constitutional reform experiences (Albert, Bernal, and Zaiden Benvindo). In terms of case studies, our selection includes an ethnographic analysis of the lived experiences of constitutional reform in Bolivia (Goodale), a detailed study of constituent power in Venezuela during the Bolivarian Revolution (Kingsbury), a historical description of constitutional redrafting in Chile (Ossa Santacruz), and edited collections that assess Correa's *Revolución Ciudadana* (Sánchez and Pachano) and describe and evaluate institutional reform initiatives in Cuba in recent years (Morgenstern, Pérez-López, and Branche). Together these books offer a comprehensive, interdisciplinary look at the politics of institutional reform in Latin America across a variety of settings, with an emphasis on constitutional reform.

### The relevance of institutional change

These books help us reconsider key aspects of the junctures and processes that lead to major institutional change in Latin America, the varied roles different political actors can play in these processes, other important factors that account for specific institutional modifications, and the extent to which such reforms are consequential in a region where institutions tend to be considered weak or dysfunctional. Together, they offer a complex account of the politics of major institutional reform, challenging stereotypes and unfounded assumptions along the way. Moreover, beyond cross-national indicators, each

<sup>1</sup> Rodrigo Uprimny, "The Recent Transformation of Constitutional Law in Latin America," *Texas Law Review* 89 (2010): 1587–1610. See also Gabriel Negretto, "Constitution-Building Processes in Latin America," Institute for Democracy and Electoral Assistance (International) IDEA Discussion Paper 3/208 (2018), <https://www.idea.int/sites/default/files/publications/constitution-building-processes-in-latin-america.pdf>.

<sup>2</sup> See David Landau, "Constituent Power and Constitution Making in Latin America," in *Comparative Constitution Making*, ed. David Landau and Hanna Lerner, 567–588. (Northampton, MA: Edward Elgar, 2019).

<sup>3</sup> Almut Schilling-Vacaflo and Detlef Nolte, eds., *New Constitutionalism in Latin America: Policies and Practices* (London: Routledge, 2012).

<sup>4</sup> See the essays by Scott Morgenstern, "Democratic Reforms, Institutional Fixes, and Political Failures," *Latin American Research Review* 56, no. 4 (2021): 968–976; and Donald Kingsbury, "Latin American Extractivism and (or after) the Left," *Latin American Research Review* 56, no. 4 (2021): 977–987.

case merits careful consideration in ways that are sensitive to the country's particular social, cultural, economic, and political context.

Consider, for example, how the notion of Latin America as the land of constitutional instability becomes less clear at closer inspection. While several Latin American countries have a reputation for frequent reform and spotty implementation and compliance with constitutional norms, there is wide variation across the region. Richard Albert, Carlos Bernal, and Juliano Zaiden Benvindo's edited volume *Constitutional Change and Transformation in Latin America* offers an excellent, comprehensive overview of different constitutional reform experiences and a critical approach to their effects and relevance for the region's political and legal systems. This collection covers a wide selection of topics grouped in three main sections that span some of the most pressing questions and developments in the field: "Popular and Populist Constitutional Democracy," "Judicial Review of Constitutional Amendment," and "Constitutional Reform and Stability." From the start, the authors point out that it is important to go beyond existing generalizations and persistent stereotypes that gloss over the rich landscape of experiences in the region (3). For instance, some countries, like Argentina or Chile, have had a low number of constitutions throughout their history (four and seven, respectively), while others like Bolivia, Ecuador, and Venezuela rank among those with the highest numbers of constitutions in the region and globally (with a whopping number of sixteen, nineteen, and twenty-six constitutions, respectively).<sup>5</sup> Such numbers should be approached with caution, though, since the formal adoption of a new constitution might not imply a significant transformation of the constitutional text but rather a limited reform made for reasons of political convenience.<sup>6</sup> The lack of major constitutional redrafting could also mean that there are lawmaking or judicial mechanisms that allow for amending or reforming the constitution without resorting to broader constitutional reform exercises—or simply that constitutional norms are abandoned and/or informal norms exist or surge that make reform unnecessary. Major modifications can come through different processes and modalities; the issue is to understand to what degree they are consequential.

As Daniel Brinks, Steven Levitsky, and María Victoria Murillo highlight in their edited volume *The Politics of Institutional Weakness in Latin America* (chapter 1, conclusion), it is quite challenging to study the performance and dynamics of institutions, the extent to which they influence political behavior, and different aspects of institutional change (including timing, key actors, and nature of the processes leading to reform). Measuring whether a particular institution functions in comparative perspective can be very difficult across units and over time (280–288). This difficulty is also acknowledged by legal scholars, who resist arguments for a homogeneous approach to constitutional efficacy and change (see also Albert, Bernal, and Zaiden Benvindo).

How can we best evaluate whether reforms matter, and to what degree? In this regard, Brinks, Levitsky, and Murillo's volume is illuminating and should be mandatory reading for anyone interested in institutional strength and weakness. The editors and contributors invite us from the start to evaluate institutions and their overhaul not in terms of what they promise or expect to accomplish but in terms of what they actually do, that is, to what extent they set specific goals/ambitions and achieve them. Conversely, weak institutions are characterized by not having consequential goals or simply by failing to achieve what they expect to do in a particular setting. Brinks, Levitsky, and Murillo go further and discuss three categories of institutional weakness: insignificance (institutions "without ambition," 11); noncompliance (which happens in cases of state nonenforcement and state

<sup>5</sup> See Gabriel L. Negretto, *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America* (Cambridge: Cambridge University Press, 2013), 21.

<sup>6</sup> Zachary Elkins, Tom Ginsburg, and James Melton, *The Endurance of National Constitutions* (Cambridge: Cambridge University Press, 2009).

incapacity and/or societal resistance, 15), and instability (or “minimally stable,” i.e., do not change often). Their discussion is illustrated with examples from the literature or the book’s contributions (22), offering a comprehensive framework for further development and empirical analyses in the subsequent chapters. This includes three chapters by contributors who further discuss causes and consequences of institutional weakness, including institutional instability (change of electoral rules, chapter 2 by Ernesto Calvo and Gabriel Negretto); the complex effects and legacy of “bad” institutions (Michael Albertus and Victor Menaldo, chapter 3); and the relationship between formally strong institutions and chronic institutional weakness, for example with respect to presidential power in the region (Gretchen Helmke, chapter 4). Next, in chapters 5 through 10, the book offers different views on noncompliance, while chapter 11 (by Tulia Falletti) looks at institutional strengthening (institutions adopted due to demand from civil society). Finally, in chapter 12 the editors engage with the chapters’ content, their methodological choices, and brings us back to a persistent question: Why is institutional weakness chronic in the region?

### Historical legacies and constitutional change

For any comprehensive analysis of institutional reform, the historical context matters. This is particularly the case for constitutional reform. Reaching out to the country’s recent (and more distant) past helps us understand how, and to what degree, current constitutional dilemmas are linked to preceding events, legal/institutional traditions, long-standing political conflicts, social dynamics, and past policy pathways. The importance of past institutional choices and the weight of historical legacies and traditions can have a significant impact on subsequent institutional frameworks, defining the range of options available to political leaders. This has been the case in Latin America since the first constitutions were approved, following the emergence of Latin America’s former colonies as independent states.<sup>7</sup> It is, then, this tension between tradition and change that characterizes Latin American constitutionalism (as Fernando José Gonçalves Acunha points out in Albert, Bernal, and Zaiden Benvindo, 51), and institutional reform more broadly (Brinks, Levitsky, and Murillo, 288–293). If constitutional rules fail to bind actors or significantly compel them to act in ways that they would not act otherwise, quite often the option of reforming is offered as a panacea. Yet, while recent experiences of institutional reform and constitutional redrafting in Latin America have been consequential and have resulted in important consequences for citizens (including setting the template for democratic life across much of the region), quite often the gap between reform expectations and social and political life persists.

The Chilean case is very instructive when reflecting on the role of historical legacies in the trajectory of institutions and the prospects of constitutional change, as we see in Juan Luis Ossa Santacruz’s *Chile Constitucional*. In a well-written and accessible account, he provides an overview of different episodes or key “constitutional moments” of constitution-making exercises in Chile: in 1828, 1833, 1925 and 1980. The study is a historical analysis based on a wide range of sources. Its key contention is that, despite the important differences between the 1828, 1833, and 1925 constitutions, there was a significant degree of ideological/intellectual continuity between them due to “a moderate or conservative form of understanding post-independent liberalism in Chile, which informed politics way into the twentieth century” (15), and the redrafting efforts until then bet on reform (as opposed to a full break or “refoundation”). Ossa Santacruz’s account goes further by exploring the sociopolitical context, key choices, and implementation trajectories of each constitution,

<sup>7</sup> As Roberto Gargarella points out, legal and political thinkers focused their debates on “1) how to identify the past; 2) how to describe it; 3) how to evaluate it; 4) how to act in relation to that legacy.” Gargarella, *Latin American Constitutionalism, 1810–2010: The Engine Room of the Constitution* (Oxford: Oxford University Press, 2013), 62.

explaining its significance for the country's social and political life. He alleges that the 1973 military coup led by Augusto Pinochet and the eventual creation and approval of the 1980 Chilean Constitution broke with that tradition. The 1980 Constitution represented an effort by the Chilean military to institutionalize a project that was at odds with the moderation that characterized the country's constitutional tradition. It was an authoritarian constitution, which endured symbolically and legally after the transition to democracy after Pinochet's defeat in 1988.<sup>8</sup> Although there were several major amendments to the 1980 Constitution, including several important modifications in 2005, key elite interests remain largely unaltered (bringing to mind the stickiness of "bad" institutions, as discussed by Albertus and Menaldo in Brinks, Levitsky, and Murillo, chapter 3).

The current Chilean constitutional reform can be seen as trying to address this anomaly by way of doing the opposite, that is, enhancing democratic participation with the expectation (or hope) that this will deepen social inclusion and democratic citizenship in Chile, which would then lead to increased legitimacy.<sup>9</sup> Efforts have been made to strike a balance between popular demands, political elites' participation, and institutional continuity in the current Chilean constitution-making process.<sup>10</sup> Yet, as with other processes of this nature, we still need to wait for the constitution-making exercise to conclude and for the resulting constitution to be implemented to evaluate whether these succeed in practice, and to what degree.

Failures to amend and/or reform institutions in a timely way, especially constitutional texts, often end in major political conflict. Comparisons across different processes, however, are tricky. The challenges experienced by Chile to reform the constitution echo those experienced by citizens and social movements in other countries. Consider, for example, the Venezuelan case. The replacement of the 1961 Constitution, via the 1999 Constituent Assembly after Hugo Chávez's election, took place following years of discontent, protest, and major failures to reform or replace the country's institutional framework (even if both processes and the path that led to them have major differences as well).<sup>11</sup> The unamendability of constitutions or other major hurdles can make the best prospects of reform go awry (see Yaniv Roznai's chapter in Albert, Bernal, and Zaiden Benvindo). At the same time, when examining citizens' involvement in reforming institutions—including constitutional frameworks—it is important to take seriously the interests of the key actors promoting this change and look at the different ways in which contention strategies can lead to institutional/constitutional change, along with dynamics of resistance on the ground.

### Bottom-up participation and reform dynamics

Another key variable that helps explain constitution-making patterns is citizen participation. The idea of citizens being involved in constitution-making and institutional reform processes is nothing new. As Gabriel Negretto points out in his recent seminal contribution assessing constitutional reform in democracies, "the active involvement of citizens before, during, and after constitution writing" is supposed to have a variety of benefits, such as "to enhance a sense of ownership over the new text, promote a democratic institutional

<sup>8</sup> Javier Couso, "Trying Democracy in the Shadow of an Authoritarian Legality: Chile's Transition to Democracy and Pinochet's Constitution of 1980," *Wisconsin International Law Journal* 29 (2011): 393–415.

<sup>9</sup> Lisa Hilbink, "Constitutional Rewrite in Chile: Moving toward a Social and Democratic Rule of Law?," *Hague Journal on the Rule of Law* 13 (2021): 223–234; Claudia Heiss, "Legitimacy Crisis and the Constitutional Problem in Chile: A Legacy of Authoritarianism," *Constellations* (2017): 470–479.

<sup>10</sup> Gabriel Negretto, "Deepening Democracy? Promises and Challenges of Chile's Road to a New Constitution," *Hague Journal on the Rule of Law* 13 (2021): 335–358.

<sup>11</sup> See Carlos García Soto, Miguel Martínez-Meucci, and Raúl Sánchez Urribarri, "Winds of Change: Comparing the Early Phases of Constitutional Redrafting in Chile and Venezuela," *Hague Journal on the Rule of Law* 13 (2021): 315–334.

design, and facilitate its enforcement.”<sup>12</sup> Yet, the questions as to what degree the participation that is claimed to exist in a particular context effectively takes place, in what sense, and to what ends are all subject to contested theoretical and methodological debates. Moreover, this is linked to the perspective of citizens as the exclusive, legitimate holders of constitution-making powers, that is, broadly speaking, as constituent power. This topic, as Bernal points out (Albert, Bernal, and Zaiden Benvindo, chapter 1), is controversial and open to significant debate across disciplines.

One of the most significant contributions to the debate of participation in constitutional redrafting is Todd Eisenstadt, Carl LeVan, and Tofigh Maboudi’s *Constituents before Assembly*. In this ambitious effort, the authors explore in detail different ways in which citizen participation enhance the creation of constitutions and the democratic process more generally, thus becoming instrumental for a polity’s subsequent democratization. They endorse a bottom-up approach to constitution-making that accommodates different roles for civil society, social movements, and popular input. The research relies on an empirical assessment of an original data collection effort (the Constitutionalism and Democracy Dataset) to test their claims, finding that popular participation throughout redrafting processes impact subsequent levels of democracy. This dataset seeks to capture different stages of the constitution-making process (convention, debate, and ratification), and measures levels of participation in each one of these phases, distinguishing between “imposed,” “popular,” or a mixture of the two. These components are combined into a process variable that measures overall participation.

Eisenstadt, LeVan, and Maboudi emphasize that participation works best when it takes place at earlier stages of the constitution-making process and is seen as “constituent deliberation” (chapter 2), in contrast to trends that rely mainly on referendums at the end of the process, or are limited solely to the election of representatives to the constituent assemblies. This is particularly important, as referendums have been used as legitimizing tools of constitution-making processes in the past where the executive, political parties, or technocrats have been the dominant actors (and have designed processes where the benefits of such referendums are lacking).<sup>13</sup> Moreover, a focus on popular/civic participation in the actual discussion and elaboration of the constitution—as opposed to focusing only on constitutional rules as outcomes—highlights the importance of civil society actors as stakeholders, while it also challenges legalistic approaches to the benefits of constitutions. Here, a connection with the introductory chapter by Brinks, Levitsky, and Murillo in their edited volume is critical. Institutions that count with broad societal backing tend to be stronger, as they tend to face less resistance and are more stable over time. Both constitution-making elites, technocrats, and reform advisors should bear this in mind as the reform process unfolds, to avoid crafting institutions that are useless or systematically disobeyed (even if such disobedience is often toleration or forbearance by state actors; see Alisha Holland on “coercion gaps” in Brinks, Levitsky, and Murillo, chapter 5).

The importance of popular participation to trigger constitution-making processes, inform the elaboration of constitutions, approve constitutional texts, resist/enable the implementation of the reforms in question and, in short, enhance democracy in the long run require careful discussion in specific contexts. This is particularly the case where “the people” are called on as the original and exclusive holders of constitution-making powers. To what extent is this the case, though, when such processes are led by leaders claiming to act on their behalf, with little resistance, facing weak institutions? Here we cover a

<sup>12</sup> Gabriel Negretto, “Replacing Constitutions in Democratic Regimes: Elite Cooperation and Citizen Participation,” in *Redrafting Constitutions in Democratic Regimes*, ed. Gabriel Negretto (Cambridge: Cambridge University Press, 2020), 101.

<sup>13</sup> See Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: Oxford University Press, 2012).

selection of books focused on Bolivia, Ecuador, and Venezuela—three countries that experienced profound and divisive constitution-making processes under the populist administrations of Evo Morales, Rafael Correa, and Hugo Chávez. The resulting texts spearheaded ambitious political reform programs with a wide catalogue of fundamental rights and novel mechanisms of political participation. However, they also led to greater political conflict, and their institutional frameworks were typically subject to the control of the same political leaders who promoted their creation. They remain, at best, very controversial examples of constitutional transformation.<sup>14</sup>

### Venezuela

In the case of Venezuela, the 1999 Bolivarian Constitution is often cited as an example of an “imposed” constitution, which eventually facilitated the deterioration of democracy despite alleged good intentions.<sup>15</sup> On this topic, constituent power theory is particularly important. Constituent power theory has been brought to the fore on several occasions in Latin America as a framework to enable constitutional change and major political transformations. It has often been invoked by populist leaders, for whom the constitution is not often seen as a binding document that structures authority, but rather as a law that serves as an instrument for a sovereign government that can be manipulated according to the ruler’s need.<sup>16</sup> Moreover, its potential and dangers in specific circumstances and contexts continue to be subject of scholar discussion.<sup>17</sup> In Venezuela, constituent power was invoked as an overarching argument to “refound the state,” replacing the constitution and intervening existing branches of powers under the premise that it was required for the implementation of a new constitutional order that was truly democratic, inclusive, and participatory. In his study of political participation and constituent power in Venezuela, *Only the People Can Save the People*, Donald Kingsbury defines constituent power in reference to Bolivarian Revolution and Chavismo as “the horizontal, creative, inclusive, and transformative force of collective life (which) resists inequality, hierarchy, and exclusion in all forms” (4). This is a definition with a very specific normative content, directly linked to Antonio Negri’s understanding of constituent power, which is not restricted to the constitution or, in Negri’s words, “resists being constitutionalized.”<sup>18</sup> Kingsbury depicts constituent power as a drive for popular democratic transformation, “a radically egalitarian project involving an intense degree of participation, self-direction, and inter-subjective development—*protagonismo*, in twenty-first-century Venezuelan argot” (47).

The relevance of the past to explain the challenges of the present, and the significance of bottom-up processes in constitution-making also guide Kingsbury’s analysis of the experience of constituent power in Venezuela, looking back as early as the independence wars in the early nineteenth century. He then turns his attention to the dynamics between constituent and constituted power during Venezuela’s recent political trajectory during the

<sup>14</sup> David Landau, “Abusive Constitutionalism,” *University of California (Davis) Law Review* 47 (2013–2014): 189–260. See also Carlos de la Torre and Felipe Burbano de Lara, “Populism, Constitution Making, and the Rule of Law in Latin America,” *Partecipazione e Conflitto: The Open Journal of Sociopolitical Studies* 13, no. 3 (2020), <http://siba-ese.unisalento.it/index.php/paco>.

<sup>15</sup> Ana María Bejarano and Renata Segura, “The Difference Power Diffusion Makes: Explaining Divergent Outcomes in Colombia (1990–1991) and Venezuela (1998–1999),” in *Redrafting Constitutions in Democratic Regimes: Theoretical and Comparative Perspectives*, ed. Gabriel Negretto (Cambridge: Cambridge University Press, 2020), 131–154.

<sup>16</sup> Paul Blokker, “Populist Constitutionalism,” in *Routledge Handbook of Global Populism*, ed. Carlos de la Torre (London: Routledge, 2018).

<sup>17</sup> Andrew Arato, *The Adventures of the Constituent Power: Beyond Revolutions?* (Cambridge: Cambridge University Press, 2017). See also Joel Colón-Ríos, *Constituent Power and the Law* (Oxford: Oxford University Press, 2013).

<sup>18</sup> See Antonio Negri, *Insurgencies* (Minneapolis: University of Minnesota Press, 1999).

decline of the country's liberal democratic regime (after the 1980s), and the Bolivarian Revolution that unfolded after Chávez's election in 1999. Kingsbury pays special attention to the Caracazo (the riots that took place on late February and March 1989 in Caracas, Venezuela), as a defining moment or "event" (in Alain Badiou's words) signifying a rupture that unleashed a "liberatory political sequence" (51) sustained by egalitarian forces. Of particular interest are the dynamics of relations between these egalitarian desires and the efforts to create a political party that both channels revolutionary impulses and becomes an effective machine to win elections and exercise power (chapter 2), and the critical analysis of how constituent power continues to push for change in the context of the Bolivarian Revolution, as a "subjective force of egalitarian ruptures" (chapter 3). Kingsbury also analyzes how constituent power interacts with a large-scale urban development project (the Caracas Metro) throughout history, influencing how the Metro operates (chapter 4). Finally, Kingsbury denies that the Venezuelan opposition's struggle against the Bolivarian Revolution is a manifestation of constituent power, since it doesn't pursue an egalitarian rupture.

Kingsbury's emphasis on the people and the exercise of constituent power as a key variable of the Bolivarian Revolution's emergence and subsequent trajectory has the virtue of steering readers' attention from an excessive emphasis on Chávez as populist leader, highlighting the need to consider Venezuelans' aspirations for equality and change in historical context. However, setting aside discussions about the book's conceptual framework,<sup>19</sup> and its debatable emphasis on egalitarianism as a key feature of constituent power—as opposed to considering it a vessel for a wider range of existing and potential demands for political change—, Kingsbury's assessment perhaps gives too little relevance to Chávez's decisions and ultimate responsibility as the nation's leader. The arrival of Chávez in power; the key decisions that drove Venezuela's process of political change under Chavismo; Chávez's populist discourse; his government's policies and eventual push for an explicit socialist transformation of the Venezuelan state; the positioning of Venezuela in the regional and international arena; the centralization of decision-making, and the creation of the United Socialist Party of Venezuela—all these decisions are directly related to Chávez's leadership role, to a lesser or greater degree. And this is an important factor to consider when taking stock of the Bolivarian Revolution as a political project, as several other works have already pointed out at length.<sup>20</sup>

Numerous works have highlighted Chávez's role in the use and abuse of the constitution as a mechanism for the concentration of power, and as a personalist leader of a political project that broke with Venezuela's democratic rule and became increasingly authoritarian over time.<sup>21</sup> Moreover, the legacy of conceiving Chávez's authority as representing the people directly beyond a democratic mandate within a constitutional framework persists in Nicolás Maduro's rhetoric to this day, and is directly connected to the definitive collapse of democracy in recent years. On the same note, conceiving constituent power as an overarching, perpetual threat that can be invoked by the leader over constituted branches of power was precisely the argument behind the unconstitutional creation of the 2017 National Constituent Assembly—a body whose main goal ended up being not so much to write a constitution (it did not replace the constitution in the end) but to usurp the powers of the legislature and support Maduro's political survival in times of crisis.

<sup>19</sup> Lucia Rubinelli, *Constituent Power: A History* (Cambridge: Cambridge University Press, 2020).

<sup>20</sup> David Landau, "Personalism and the Trajectories of Populist Constitutions," *Annual Review of Law and Social Science* 16 (2020): 293–309.

<sup>21</sup> See Allan Brewer Carías, *Dismantling Democracy in Venezuela: The Chavez Authoritarian Experiment* (New York: Cambridge University Press, 2010). See also Allan Brewer Carías, *La muerte de una constitución: La experiencia del proceso constituyente de Venezuela de 1999 desencadenado por unas sentencias de la Corte Suprema de Justicia del 19 de enero de 1999* (Caracas: Editorial Jurídica Venezolana, 2021).

## Bolivia

Mark Goodale's assessment in *A Revolution in Fragments* of the changes Bolivia experienced under Evo Morales offers an interesting contrast to Kingsbury's analysis of constituent power in Venezuela. There, the creation of the new constitution began shortly after Morales came to power in 2006 via a constituent assembly convoked by appealing to a special constitutional clause found in the existing constitution (which had been inserted into the Bolivian constitution in 2004).<sup>22</sup> The new constitution thus "formally established Bolivia as a postcolonial, postrepublican, postneoliberal and plurinational state" (24), that sought to reinvidicate a "cosmovision" of Bolivia that championed Indigenous rights and the protection of nature (the Pachamama). However, the process of establishing this constitution was characterized by ongoing confrontations between the Movimiento al Socialismo (MAS) government and the opposition, heralding tensions that would only grow more complicated over time.

In order to evaluate constitutional change, it is imperative to go beyond ideological pretensions and assess, rigorously and in situ, the actual transformations that have actually taken place. Goodale offers us an analysis of the Bolivian experience grounded in the daily realities of Bolivians and of multiple actors and stakeholders in the transformation process the country endured after Morales's election. In a long project that spanned over a decade of work, Goodale has sought to develop an ethnography of political change in Bolivia that could be sensitive to the individual, local, or contemporary experiences of change and, at the same time, offer "a sense of national politics and an appreciation for the wider political economies" (7) that informed the change process. Goodale's ethnography deliberately keeps a critical distance or "disengaged or noncollaborative anthropology" (13), refusing to take sides in what became an increasingly polarized and violent political environment.<sup>23</sup>

Goodale notices that Bolivia's political transformation after Morales's election was controversial and divisive. A process that "took place in terms of a series of inclusions and exclusions that were problematically, even paradoxically, justified within a broader ideological framework of pluralistic belonging" (5). The Bolivian transformation also began with a far-reaching overhaul of the country's constitutional and legal framework—not explicitly articulated as a "constituent power" project, but one nevertheless aiming for radical transformation based on bottom-up political participation. It was an ambitious proposition that, while aiming for political recognition and ushering in a new era that leaves a problematic historical legacy behind, at the same time had to grapple with the country's varied social, economic, and political landscape. Moreover, in the Bolivian case we can also see the tensions between changes promoted from the political center, incarnated and articulated by a charismatic populist leader, and the demands pushed from the bottom up by citizens and social movements with interests that not always match those of the state.

A large part of Goodale's careful ethnography is dedicated to analyzing different perspectives on the subsequent implementation of the constitution, that is, patterns of policy implementation and resistance over the years across different environments. This included an ambivalent—and often contentious—relationship with different Indigenous communities, social movements, and groups that were invested in the process of "utopian transformation" to create and develop a plurinational project, and to replace neoliberal ideology and policies with policies guided by an ethos of *vivir bien* ("to live well," similar to the Ecuadorian case discussed below). The clashes between the interests of Indigenous

<sup>22</sup> See David Landau, "Constitution-Making Gone Wrong," *Alabama Law Review* 64, no. 5 (2013): 923–980.

<sup>23</sup> There is a lot to learn and ponder in Goodale's book in terms of research methods and ethnography; the author engages with a wide range of important questions regarding data collection, validity, positionality, personal risk and, most importantly, ethics. In this way, it is a great book to discuss at the masters and doctoral level.

communities, subnational elites, workers, and other groups versus the government's own preferences and policy choices illustrate conflict dynamics that have also taken place in other broad transformative

Goodale's rigorous study goes beyond commonplace assumptions about Bolivian politics, allowing the reader to develop a more nuanced view of the transformations that took place during the Morales period. Its complex framework spans very important discussions on questions of justice, the possibility of revolutionary change in a democratic context, the role of constitutions and legal instruments to effect change, and the possibilities for achieving long-lasting social, political, and economic inclusion without engaging in exclusionary practices. This is a thought-provoking work, especially when considering the fraught, conflictive phase that eventually unfolded in Bolivia following Morales's efforts to stay in power (despite an explicit constitutional restriction in this respect).<sup>24</sup>

### **Ecuador**

Francisco Sánchez and Simón Pachano's volume *Assessing the Left Turn in Ecuador* provides an excellent overall assessment of Rafael Correa's *Revolución Ciudadana*, including the relevance of centralizing, charismatic, transformative populist leadership; the executive's relationship with the state and civil society (looking at its tense relations with social movements and its efforts to control NGOs); corruption; "technopopulism" (a populist regime in which technocrats have a major role); and foreign policy, among other important topics. The volume concludes with a summary of the main features of Correa's regime. All in all, both country specialists and students or scholars interested in becoming familiar with Correa's experiment and contemporary Ecuadorian politics will find the volume illuminating and worth reading.

Similar to the cases of Venezuela and Bolivia, Correa's movement also relied on progressive discourse and advocated for deep transformations of the state while articulating a vision of government that was personalistic, vertical, and centralized. Also, authoritarian tendencies had an ambivalent relationship with the demand for political change, allowing the government to push forward major policy reform while stifling the bottom-up collective action processes that propelled and gave grounds for political change to begin with. To this end, in all three cases the government counted on a windfall of economic resources from raw materials exports, which it then used to finance social programs and, at the same time, enhance vertical political control at the expense of existing accountability mechanisms or, in the case of Ecuador, novel institutions like the Council of Citizen Participation and Control.

As in the Venezuelan case, these institutions were captured by political interests, as were the judicial systems of both nations. And, once again, as in the Bolivian and Venezuelan cases, state development projects and centralized decisions were often at odds with groups and citizens affected by these decisions, with the regime often trumping or sidelining their interests. Despite claims for popular participation, the Ecuadorian case offers additional room for reflection about the limits of constitutional reform as a tool for democratization in cases where political elites are able to control the process during and after the reform. In all realms of social and economic policy, a weak institutional structure allowed the government to circumvent and manipulate institutional rules and put short-term political interests ahead of constitutional and legal commitments.

In the end, as in Bolivia and Venezuela, the creation of a new constitution gave grounds to a project that went beyond the symbolic—the law became an important tool for recrafting the state. However, the implementation of these reforms varied as a function of different factors, and their sustainability over time was, from the beginning, questionable—

<sup>24</sup> Fabrice Lehoucq, "Bolivia's Citizen Revolt," *Journal of Democracy* 31, no. 3 (2020): 130–144.

owing to the personalistic nature of Correa's regime, the country's persistent institutional weakness and state capacity, and the lack of stable financial conditions beyond commodity booms, among other reasons. The Ecuadorian case also serves to remind us, again, about the gap between reform and reality and the tensions that are set to emerge in a democratic context. Moreover, a weak institutional framework can be abused by elected leaders, who can feel tempted to stay in power or capture the state as much as feasible during their term in office. Unsurprisingly, in all three cases—Bolivia, Ecuador, and Venezuela—replacing the populist leader elicited major succession dilemmas and crisis (see Helmke's chapter 4 in Brinks, Levitsky, and Murillo).

### Reform under authoritarianism: The Cuban case

Now, sweeping institutional reform can also take place without involving a major overhaul of the country's constitutional framework via constituent assemblies. As we have seen, some of the region's most ambitious reform agendas in recent years have taken place via redrafting; in others, the role of constitutional reform has not involved a refoundation process but rather has proceeded via partial constitutional reform or amendments, or even via ordinary legislation, judicialization, or norm-making.

The case of Cuba is particularly interesting. Until recently, Cuba was the only surviving autocratic regime in a growingly democratic region. Following the Third Wave of democratization, there were expectations that the regime would either collapse or embrace democratic reform, as had been the case of many ex-communist countries in Eastern Europe and Central Asia. Yet, after a challenging time during the Special Period in Time of Peace in the 1990s—following the collapse of the Soviet Union and Cuba's repositioning in the global economy—the regime managed to make significant adjustments without altering its main institutional framework.<sup>25</sup> As Javier Corrales points out, the uneven economic reforms carried out enhanced regime survival.<sup>26</sup> Cuba's resistance to change has been tested once again in recent times, in the transition following Fidel Castro leaving power (after 2006), and now his brother Raúl stepping down and ceding power to a new generation, currently led by President Miguel Díaz-Canel.<sup>27</sup> This transition phase has witnessed significant reform, including, more recently, a major overhaul of the Cuban Constitution. This is a major feat, even if this reform could not be considered democratic but rather an exercise operating for the sake of the goals and needs of the authoritarian context in which it takes place.<sup>28</sup>

Scott Morgenstern, Jorge Pérez-López, and Jerome Branche's *Paths for Cuba* is a very enjoyable and thorough interdisciplinary survey of a country in flux. This carefully curated volume looks at different aspects of the efforts of the last few years to adapt the regime's communist legacy to current times. Following the volume's introduction by the editors, the book compiles contributions focused on three key aspects of reform—"Economics" (part 1), "Policy and Politics" (part 2), and "Citizens and Society" (part 3)—before bringing it back to final concluding remarks. Once again, it is very interesting to read this book in connection to the other works in our survey. Although we are talking about a different

<sup>25</sup> See Archibald R. M. Ritter's review in this journal, "Shifting Realities in Special Period Cuba," *Latin American Research Review* 45, no. 3 (2010): 229–238.

<sup>26</sup> Javier Corrales, "The Gatekeeper State: Limited Economic Reforms and Regime Survival in Cuba, 1989–2002," in *Debating Cuban Exceptionalism*, ed. Bert Hoffmann and Laurence Whitehead (New York: Palgrave Macmillan, 2007), 61–88.

<sup>27</sup> See Armando Chaguaceda and Eloy Viera Cañive, "El destino de Sísifo: Régimen político y nueva constitución en Cuba," *POLIS: Revista Latinoamericana* 20, no. 59 (2021), <https://polis.ulagos.cl/index.php/polis/article/view/1578>.

<sup>28</sup> Rafael Rojas, Velia Cecilia Bobes, and Armando Chaguaceda, eds., *El cambio constitucional en Cuba: Actores, instituciones y leyes de un proceso político* (Mexico City: Fondo de Cultura Económica, 2017).

type of regime, key questions of institutional conception and design, institutional weakness and adaptation, connections between the institutional framework and civil society, leadership style, and renewal dynamics come to the fore.

Shortly before this review was written, Cuba experienced a wave of protests that have brought the country back to headline news around the world. These protests speak to a renewed sense of citizenship across Cuba's youth and beyond, linked to growing use of the internet and exposure to global and regional trends. The Cuban regime now coexists with a democratic region and, despite counting on ideological allies, is subject to more pressures than before to prove and renew its progressive credentials. At the same time, the economy continues to put pressure in the Havana regime. How, and to what degree, this will elicit broad institutional reform beyond the "concessions" given by the Cuban regime given is left to be seen. To reflect on Cuba's trajectory as it unfolds, the contributions in Morgenstern, Pérez-López, and Branche offer an excellent starting point and dovetail very well with the books reviewed in this essay.

**Raul Sanchez-Urribarri** is a senior lecturer in crime, justice, and legal studies at the Department of Social Inquiry, La Trobe University (Melbourne, Australia). His research focuses on democracy, rule of law, and comparative judicial studies, with an emphasis on Latin America and Venezuela in particular. His work has been published in a variety of outlets, including the *Journal of Politics, Law and Social Inquiry*, *Annual Review of Law and Social Sciences*, *International Political Science Review*, and *Hague Journal on the Rule of Law*, among others. He is a Nonresident Research Fellow at Tulane University's Center for Inter-American Policy and Research (CIPR) and a coeditor at the journal *Thesis Eleven*.