

## With the cards stacked against you: Challenges to a negotiated transition to democracy in Venezuela

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### Abstract

This article uses the political science literature on transitions to democracy to discuss the domestic challenges to a negotiated transition in Venezuela. Whereas a transition to democracy may occur through many different pathways and processes, the negotiated path has often been hailed as the most conducive to democracy consolidation. This article discusses three key challenges to a negotiated outcome in Venezuela. The first is the current political-economic context marked by de-liberalisation and rapidly increasing inequality between the “ins” and “outs”; the second refers to the content of a potential pact in a situation where the Venezuelan state is retrenching territorially and from key state functions; and the third refers to the challenges of guaranteeing a pact for the future in a context of a majoritarian constitution and weak electoral prospects for the regime. The article shows how the structural conditions in Venezuela reduces the incentives for both parties to enter a democratising pact and add insights to the transitology literature on how de-liberalisation and stateness problems negatively affect actors’ incentives to negotiate a pact. *Keywords:* Venezuela, transition to democracy, democracy, authoritarianism, liberalisation, de-liberalisation.

### Resumen: Retos para una transición negociada a la democracia en Venezuela

Este artículo utiliza la literatura de la ciencia política sobre las transiciones a la democracia para discutir los desafíos internos de una transición negociada en Venezuela. Mientras que una transición a la democracia puede ocurrir a través de muchas vías y procesos diferentes, la ruta negociada a menudo ha sido aclamada como la más conducente a la consolidación de la democracia. Este artículo analiza tres desafíos clave para un resultado negociado en Venezuela. El primero es el contexto político-económico actual marcado por la desliberalización y el rápido aumento de la desigualdad entre los “incluidos” y los “excluidos”; el segundo se refiere al contenido de un pacto potencial en una situación en la que el estado venezolano se está retrayendo territorialmente y de funciones estatales clave; y el tercero se refiere a los desafíos de garantizar un pacto para el futuro en un contexto de una constitución mayoritaria y perspectivas electorales débiles para el régimen. El artículo muestra cómo las condiciones estructurales en Venezuela reducen los incentivos para que ambas partes participen en un pacto democratizador y agrega ideas a la literatura de transición sobre cómo los problemas de desliberalización y de estado afectan negativamente los incentivos de los actores para negociar un pacto. *Palabras clave:* Venezuela, transición a la democracia, democracia, autoritarismo, liberalización desliberalización.

## Introduction

Venezuela is going through an unprecedented political, social and humanitarian disaster, which due to the mass exodus of Venezuelans also have large negative regional consequences. The question of how to get out of the quagmire is on top of the agenda for most countries in the Americas, and certainly most Venezuelans as well. Many moderate politicians and observers both within and outside Venezuela argue that a negotiated transition is the best possible, and most realistic, way to ensure that a new democratic, government may take charge, and democratic and economic reforms may be implemented.<sup>1</sup> This resonates well with the lessons from the classical and recent literature on democratic transitions, which stress that transitory pacts and power sharing agreements are the best path for a transition to and stabilisation of democracy (Alberts, Warshaw, & Weingast 2012; O'Donnell & Schmitter 1986). Despite tremendous internal and external pressure for a transition to democracy in Venezuela, however, the attempts for a negotiated solution have so far come to naught. This article uses insights from the political science literature on transitions to democracy to discuss the challenges to a negotiated – or pacted – transition to democracy in Venezuela.

Even though negotiations between the opposition and the regime is nothing new in Venezuela under *chavismo* (see Alfaro Pareja 2020), the calls for a negotiated solution have strengthened since 2018 due to mainly three causes. First of all, the deepening socioeconomic crisis, aggravated by the Corona-pandemic, increase daily the human costs of not finding a solution involving a transition to democracy. Second, the vague threats by president Trump, encouraged by parts of the opposition, that an invasion (coined as “all cards are on the table”) of Venezuela is considered as a way to end the Maduro-regime. Third, the opposition’ strategy of “pressure and collapse” involving the declaration of the National Assembly’s president Juan Guaidó as interim president, and a coup-attempt on April 30, 2019, has (so-far) failed. All these factors indicate that since no party is strong enough to win over the other, a situation akin to Gandhi’s (2008: 90-92) *turmoil equilibrium*, maximalist strategies only contribute to a prolonged stalemate between the regime and the opposition and further human suffering. Negotiations involving give-and-take thus become in the opinion of many, the most reasonable, rational, and humanitarian solution to the Venezuelan situation.

The debates on a negotiated pact have also been relevant given a series of on and off attempts at negotiations between the government and (various groups of) the opposition, often with international support, such as the latest in 2019 supported by Norway.<sup>2</sup> Although a negotiated transition is normatively attractive, all observers admit that the current political, social, and economic conditions of Venezuela present many challenges for a negotiated outcome. Guided by the transitology literature within political science, this article at-

tempts to systematically analyse three of the main domestic challenges to a negotiated solution in Venezuela.

The first challenge is the political-economic context and the obstacles it presents for giving the Maduro regimes incentives to leave power under any agreement. While liberalisation has generally been considered a necessary precondition for a negotiated transition to democracy (e.g. Huntington 1991: 124-127; Linz & Stepan 1996: 3; O'Donnell & Schmitter 1986), Venezuela has been going through a process of de-liberalisation of political and civil liberties at least since the opposition's victory in the December 2015 parliamentary election. The rapid deepening of the socioeconomic crisis and increasing inequality clearly increase the pressure against the Maduro-regime, but more importantly here they also increase the difficulties of incentivising the Maduro regime to exit power. The second challenge is the increasing stateness problems in Venezuela. The current Maduro regime is controlling less and less of its territory and also increasingly using private actors to maintain political order (see Gan 2020), which reduce the scope of what a pact can include. The third challenge relates to the difficulties of guaranteeing a negotiated outcome – or pact – under a new democratic regime. A pact assures mutual guarantees for the “vital interests” of each party by avoiding that the winner takes all in a new democratic context (O'Donnell & Schmitter 1986: 37), and may include elements such as power sharing, reserved domains of power for the military, amnesties, transitional justice schemes for human rights abuses, or agreements on socioeconomic issues. Here, two issues are of particular importance. One is how to guarantee power sharing – or counter-majoritarian institutions – under the current Bolivarian Constitution and electoral system that are among the region's most majoritarian? And secondly, how to secure a veto position over changes to a pact when the regime is electorally weak? Although any pacted transition is challenging and fraught with problems, the sum of these challenges, in addition to negative international conditions resembling Cold War scenarios with great powers supporting each side of the conflict, Venezuela is in an almost uniquely difficult situation with respect to negotiation a transition to democracy. This article continues with a short summary of Venezuela's descent into autocracy and some of the lessons from the transitology literature before it proceeds to discuss the abovementioned three challenges to a negotiated transition in Venezuela.

### **Venezuela's descent into autocracy**

The literature on transitions to democracy focus on how non-democratic regimes transition into democracy and therefore I first establish that the Venezuelan regime under Maduro today is a non-democracy, or autocracy. This section briefly describes Venezuela's descent into autocracy by narrowing in on how the Maduro regime would not accept the consequences of an electoral loss.<sup>3</sup>

Venezuela's regime under president Hugo Chávez (1999-2013) and later under president Maduro (2013-) has been widely debated, but for many years the regime was mostly considered a type of democracy due to the numerous and relatively free elections under Chávez. However, most observers and Hugo Chávez himself, argued that the regime was not modelled on a liberal or representative democracy.<sup>4</sup> The 1999 Constitution rather called for a participatory and protagonistic democracy, created in reaction to what was perceived as the failed liberal, Punto Fijo democracy of 1958-1998. Debates were frequent on whether to define the regime as a subtype of a democratic or non-democratic regime (Mainwaring 2012; Weyland 2013), but as long as elections were held and Chávez and PSUV (Partido Socialista Unido de Venezuela) kept winning them there was no way of knowing if the regime would accept alternation in power. Whether bolivarian (Smilde 2011), popular (Motta 2010), radical and civil-military (Corrales 2014), plebiscitary (Levitsky & Roberts 2011), participatory (McCoy 2004), or populist (Ellner 2003; Roberts 2012), I consider the regime a subtype of democracy until the opposition won a two-thirds majority in parliament in the December 2015 elections.

With a minimal definition Przeworski (1991: 10) argued that “democracy is a system in which parties lose elections”, writing with colleagues some years later he added that “the outcomes of elections must be irreversible under democracy even if the opposition wins” (Przeworski, Alvarez, Cheibub, & Limongi 2000: 17). PSUV's loss to the opposition's coalition, MUD (Mesa de la Unidad Democrática), in the December 2015 parliamentary elections gave the Chávez-Maduro regime its first real test on whether it would accept an electoral loss, which also meant losing power.<sup>5</sup> In all other elections since 1998, Chávez and his party had won with clear electoral majorities, thus doubts as to the true nature of the regime prevailed. The electoral loss of 2015, however, quickly turned Venezuela into a non-democratic regime. Gaining two thirds of the parliamentary seats was key since it gave the opposition coalition the power to change the constitution and, in theory, power to unseat president Maduro. Therefore, the parliamentary election became a test of whether or not the regime accepted losing elections and losing power. As events turned out, it became clear that the electoral result of the parliamentary election was not irreversible, and Venezuela was no longer a democracy.

While there is no space to go into details about all the events since December 2015, a few moments are worth highlighting. Even before the newly elected parliament could be sworn in, the Maduro regime was safe-proofing its hold on power by having the outgoing parliament select 13 new politically pliant Supreme Court Justices even though the Supreme Court was not scheduled to be reshuffled until late 2016.<sup>6</sup> Further, in January 2016, the Supreme Court decided to suspend three opposition legislators from the state of Amazonas on account of electoral irregularities, effectively cancelling the opposition's two-thirds majority in the National Parliament. In a series of later decisions the Supreme Court and the Maduro government basically stripped all power from

parliament by systematically annulling its decisions, giving parliamentary faculties to the Supreme Court, briefly suspending parliament, and finally by creating and electing a government-controlled Constituent National Assembly in July 2017 that took over parliamentary functions. In sum, the Maduro government reversed the opposition's parliamentary victory by removing all powers from parliament.

In Chávez's participatory model of democracy direct participation and the institution of the referendum won an important role in the political culture of the country with the recall referendum enshrined in the 1999 Constitution (Chapter 4, Section II, arts. 70-73) as its utmost expression. The opposition under the MUD umbrella early had as strategy to organise a recall referendum against president Maduro. In 2004 the opposition was finally allowed to hold a recall referendum against Chávez but lost. In 2016, the unpopular Maduro who lingered around 20 percent support in surveys, stood small chances of surviving a free and fair recall referendum. Even though the opposition often could barely hold together, it was united in its resistance to the Maduro regime and demonstrated a strong ability to mobilise voters against Maduro. Using the Constitution against Maduro and aiming to secure popular legitimacy for removing Maduro, the opposition used the better part of 2016 to assemble signatures to secure a recall referendum against president Maduro. Complying with decisions in subordinate state tribunals, the National Electoral Council (Consejo Nacional Electoral, CNE) stopped the attempt in October 2016 alleging fraud in the collection of signatures to call for the referendum.<sup>7</sup> The decision was just another confirmation that the Maduro-regime had turned autocratic by not accepting elections that the regime would lose. Organising in 2017 an election for a Constituent Assembly,<sup>8</sup> local and regional elections later the same year and presidential elections in 2018 were classic autocratic attempts of co-opting the opposition (see e.g. Gandhi 2008), and did not change the fact that Venezuela now was run by a regime where the ruling party could not lose elections. In other words, the regime did not satisfy the most minimal definition of democracy political science can provide, and much less any other more comprehensive definition of democracy.

## **Transitions to democracy**

Having established that Venezuela is autocratic, I now discuss the transition literature that focuses on transitions to democracy from non-democracies. There are many ways to distinguish between different types of transitions,<sup>9</sup> here I deal mainly with the distinction between a negotiated and other types of transitions because it is the most relevant distinction for the current debates about Venezuela. Transitions to democracy can and do occur in many ways, only one of which is the negotiated path.

One of the reasons why a pact or negotiated transition to democracy is normatively appealing is because the alternatives often are worse. Yet, a pact

transition in and of itself is relatively non-democratic both because it is negotiated by (non-elected) elites and because pacts limit the new democracy – or popular will – in exchange for stability. A pact then is not without its proper risks as it will often secure continuity, and elite interests, instead of a clear break with the authoritarian past, thus creating authoritarian enclaves or a type of protected democracy. Transitions, however, come in many forms, for instance as the result of an invasion where the external force imposes (electoral) democracy (such as in Panamá in 1989), through democratising coups (such as in Paraguay in 1989, and Bolivia between 1978 and 1982), a revolution (such as in Costa Rica in 1948), or through regime collapse (such as in Argentina 1983). A transition can therefore come as the result of popular pressure from below, pressure from elites that previously supported the authoritarian regime, external pressure or any combination of these three forces. For instance, in Peru, popular and international pressure combined with elite defections contributed to the collapse of the Fujimori regime in 2000 (see Carrión 2006). As a contrast, negotiated transitions such as in Chile, Brazil, and Uruguay, are considered to be a more peaceful, orderly, and less violence-prone mode of transition.

Pacted transitions are considered superior to other types of transitions because they tend to lead to a more stable democracy. Inspired initially by the Spanish transition of a *reforma pactada–ruptura pactada*, O'Donnell and Schmitter (1986) saw pacts as a way to gradually install democracy in a manner that safeguarded the regime against defections from the outgoing authoritarians and impatient democratisers. Later research supports the early findings of O'Donnell and Schmitter that pacted transitions that do not provide a clear break with the past, but rather manage to protect the interests of the old, outgoing elites (Albertus & Menaldo 2018), through counter-majoritarian institutions that give the same elites an institutional position to secure their interests despite being a minority (Alberts et al. 2012), offer the most stable compromise for democratic consolidation. A pacted transition then, limits the incoming democracy by protecting the interests of the outgoing elites that would otherwise not have been protected had the majority had its will under democratic rule.<sup>10</sup> A transition through a coup from above may protect these same interests in a new democratic situation, but without the consent of the democratising opposition (and therefore also prove less stable).

A final distinction between a pacted transition and other forms is that the outgoing regime makes a conscious decision to liberalise and enter into negotiations, while in other modes of transition the regime is overthrown by force. An important question is how can one convince the ruling elites to enter a pact that makes them leave power? Since few transitions to democracy in Latin America under the Third Wave were negotiated, we can assume this is difficult. In fact, Przeworski (1991: 54-66) argued that such agreements were impossible or based on miscalculations on the part of autocratic rulers or the democratic opposition. Both the classic and more recent literature argue that one must reduce sufficiently the costs of concession for the ruling autocratic

elites (Klein & Regan 2018; O'Donnell & Schmitter 1986). Costs of concession can be reduced through guarantees for outgoing elites, as mentioned above, but also through the demands the opposition makes and its strategies to confront the authoritarian regime (e.g. non-violent vs. violent). Some concession costs, however, cannot easily be reduced by the opposition through negotiations. Baturo (2010: 642), discussing the probability of presidents respecting term limits, addresses an important concession cost when focussing on the stakes of power. The higher the stakes the lower the probability of a transition. These stakes increase with power and the perks of power (income, corruption, etc.), but also with the probability of the outgoing elites of maintaining their "high status life after leaving power", in other words the socioeconomic gap between ins and outs.

Reducing the costs for conceding to the democratising opposition's demands suggests that moderate strategies and demands from the opposition have a higher probability of ending in negotiations (and reaching an agreement) than radical strategies and demands. There is a danger, however, that if the pressure towards the authoritarian regime is too "soft", the incumbent will not be pressured to the negotiating table at all (Corrales 2018). Thus, the pressure and strategies used against the authoritarian regime must be strong and radical enough to increase the costs of repression, but not too radical so that the costs of concession become higher than those of repression (Dahl 1971: 15-16).

Finally, the literature on transitions and in particular pacted transitions argue that there are two necessary conditions that must be satisfied. First, there must be a split in the regime that weakens it sufficiently so that its continuance is questioned, but equally important, the split must produce soft-liners (or reformers) in the regime that may enter into honest negotiations with the opposition (Linz & Stepan 1996; O'Donnell & Schmitter 1986; Przeworski 1991, 1992). Absent such a regime split, incumbents will not liberalise and negotiations will not take place. The second condition is that the autocratic regime must liberalise prior to negotiations. Liberalisation comes prior to democratisation, it is initiated by the autocratic regime, and refers to processes that reduce censorship, allows for somewhat more space for autonomous organisation of civil society, and extending and providing some safeguards for civil rights. If liberalisation does not occur, the opposition will be too weak to pressure the regime into negotiations (Corrales 2018: 19-20). Further, liberalisation may signal regime moderates' true intentions to democratise, and generate some trust between the actors, which benefits negotiations. With liberalising steps, the opposition can see that the regime is able to deliver on qualitative improvements for civil liberties and rights and can regard such processes as acts of good will in the negotiations on a transition to democracy.<sup>11</sup>

Although there are numerous challenges confronting the actors in any regime, this summary highlights two particular challenges for the Venezuelan case and a third that has rarely been discussed in the classic literature. First, in a context of de-liberalisation and increasing inequalities, how can incentives

for the Maduro regime to enter into a pact with the opposition be created? Although the relationship between the state and democracy is widely analysed, the transition literature discusses less how stateness problems affect transition negotiations. The second challenge is therefore: given the regime's reduced control over the state, what can be pacted between the parties? And, third, how can a pact be guaranteed into the future given the reduced state capacity, the unwillingness by the parties to reform the majoritarian political system, and the popular weakness of Maduro and the PSUV? These domestic challenges confronting a negotiated transition in Venezuela are arguably higher than in any other negotiated transition in Latin America to-date.

### **Political-economic context and lack of incentives to pact with opposition**

Creating incentives for the regime to pact with the opposition is about reducing the concession costs and increasing the costs of repression. The opposition has attempted the latter through mass demonstrations, naming Juan Guaidó interim president, trying to call for a recall referendum, documenting human rights abuses, and other actions. Under this pressure, the Maduro regime chose to repress rather than liberalise. Responding to this repression, the international community and in particular the United States have imposed individual sanctions and since the summer of 2017 turned to more comprehensive sanctions that increase the costs of repression, and the economic problems in Venezuela (see Bull and Rosales 2020). Except for a credible threat of an invasion it is difficult to see that the costs of repression can be increased significantly, indicating that increasing the cost of repression for the regime alone will not lead to a transition to democracy.

Two issues, then, put Venezuela in a particularly challenging position when it comes to creating incentives for the regime to step down after negotiations. One is the ongoing process of de-liberalisation set in motion by the regime as a reaction to the opposition's victory in the 2015 parliamentary elections and the subsequent pressure for democratic reforms, which increase both parties' costs of concession. The other is the economic crisis and the inequalities and increasing gap between the ins and outs that it creates. This latter point may be counterintuitive as the economic crisis has increased the internal and external pressure on the regime, and as a consequence the likelihood of a regime breakdown and a democratic transition, in line with some research on the topic (e.g. Acemoglu & Robinson 2006; Reuter & Gandhi 2011). The point I make, however, is that the crisis decreases the likelihood of a *negotiated* transition by raising the stakes of power and therefore making it more difficult to create incentives for the regime to negotiate its exit. In sum, both factors increase the concession costs for the regime and thus makes any negotiated solution more difficult than in many other cases, and more difficult than it could have been for instance in 2016.

As mentioned, Venezuela turned into an autocratic regime from December 2015 onward. The removal of effective contestation has been accompanied by a process of de-liberalisation which has reduced space for civilian opposition, increased censorship, and repression of the opposition and street demonstrators. The report from the UN Human Rights Office of the High Commissioner (HRC 2019), in addition to Human Rights Watch and Amnesty's various reports (Amnesty International 2018), and local human rights organisations such as Provea and Foro Penal, all document an increasing violation of human rights since 2016. According to figures from Foro Penal the total number of political prisoners have increased every year from 2016, and the OHCHR reports more than 7,000 extrajudicial killings by the authorities since 2018 alone. In addition, most opposition parties have been banned (Martínez 2018), and many opposition leaders and parliamentarians have been either banned from running for office, exiled or jailed (Singer 2019). The list could be longer, but there should be no doubt the country has de-liberalised considerably since 2016.

Why does de-liberalisation matter for a negotiated transition? Venezuela under Maduro may not be more repressive than the military regimes in Chile and Argentina, or authoritarian regimes in Latin America, but in all of the cases of a negotiated transition (Brazil, Chile, Ecuador, and Uruguay) the highest levels of repression occurred several years prior to the negotiations and the transitions. The distance in time from intense repression to negotiations reduced the costs of concessions for both the regime and the opposition. One of the main reasons negotiating with the regime is so controversial among all the opposition parties (and non-*chavista* Venezuelans) is that the repression has been increasing and is still ongoing. "One does not negotiate with tyrants", or the likes, is a common refrain in social media. Thus, negotiating with the regime debilitates the unity of the opposition and weakens the pressure against the regime when it is most needed, and therefore reduces the regime's incentives to negotiate its own exit. For democratisation, it is a vicious circle. For Maduro, increasing repression, and the international documentation of it, increases their costs of concession because regime insiders have more to lose by exiting power. Although amnesties often are part and parcel of a negotiated transition to democracy, these are likely to be much harder to negotiate when killings and arrests are ongoing during negotiations.<sup>12</sup> The 15-year distance from the most intense repression in Chile to the negotiations in that country is likely to have made it less costly for the opposition to agree to the regime's terms for leaving power. Further, liberalisation is also a signalling mechanism from the regime towards the opposition that there might be space for further democratisation if compromises are found through negotiations. De-liberalisation also sends signals, in Venezuela it has come as a reaction to demands for democracy sending the signal that the regime is not willing to leave power. This increases doubts about the regime's intentions during negotiations because all other regime actions since 2016 indicate it is not willing to democratise.

The political science literature has insisted that liberalisation is a necessary condition for democratisation through negotiations because without liberalisation the civilian opposition to a military regime would never become strong enough to force negotiations or a transition. Venezuela's regime development since 1999 has been the opposite of the military regimes in South America since it started out as a democracy only to turn autocratic and much less liberal after many years. Therefore, the civilian opposition was comparatively speaking initially strong in Venezuela, and at times so radical that for years many argued that it was the opposition and not the regime that most threatened democracy.<sup>13</sup> The de-liberalisation process, however, weakens the opposition's strength and therefore also the pressure on the regime to negotiate, and increases both parties' costs of concession. It is therefore possible that on a more general level it is more difficult to negotiate a transition in regimes that have had a slow process of autocratisation than in the classical military regimes that started with a coup and high levels of repression before it slowly liberalised.

In addition to descending into an autocracy and de-liberalising, Venezuela has entered an economic and social crisis that is arguably the worst in the history of the region. Hyperinflation going on two years in 2018-2019, GDP loss of around 65 percent, mass exodus of ca. 5 million Venezuelans,<sup>14</sup> and record high levels of poverty and inequality have created immense human suffering for the Venezuelan people (España & Ponce 2018a, 2018b), but also increased tremendously the stakes of power by increasing the gap between the "haves" of the regime insiders and the "have nots" of the regular Venezuelan. Even though people working for the regime also suffer during the crisis, the crisis hits the outsiders harder thus increasing the relative distance between the ins and outs. Following Baturó (2010), the devastating economic crisis, exacerbated by sanctions as pointed out by Bull and Rosales (2020), increases the stakes of losing power for those who sustain the regime to levels not experienced in other cases of a negotiated transition in Latin America. Even though one may negotiate to protect the economic interests of the outgoing elite, one cannot negotiate away the dire economic situation of Venezuela. Hence few in the regime are likely to see their status maintained after leaving power or being able to obtain a regular job.

Another factor that increases the stakes of losing power and the concession costs on both sides, that I also return to below, is the fact that many in the regime have gained their income and status through illegal activities (e.g. López Maya 2018), and civilian and military leaders alike have relations and common interests with illegal armed groups (International Crisis Group 2020). First, leaders involved in criminal business have even more to lose than the ones having gained their income in legal business, increasing the regime's concession costs. Second, if the main civilian and military leadership owe its status due to illegal business as for instance the March 2020 indictments of president Maduro, Diosdado Cabello, and Supreme Court president Maikel Moreno, among many other indictments and corruption *exposés* of regime insiders in other

countries, indicate, it becomes harder to negotiate the protection of their interests than if the regime leaders were involved mainly in legal business because it increases the concession costs for the opposition. Therefore, arguments that one cannot negotiate with criminals are popular among parts of the opposition. The problem with negotiating with criminals, however, is not a moral one, but rather that it increases concession costs on both sides.

The increased stakes of power due to the economic crisis makes a negotiated transition more difficult since it becomes increasingly costly to provide incentives for regime leaders to leave power at the same time as there are lesser resources to distribute to the outgoing elites. Thus, the political economic context in Venezuela through the process of de-liberalisation and unprecedented economic crisis, stacks the card against a negotiated outcome by increasing the costs of concession for both parties, but especially for the regime.

### **The regime's reduced state control reduces the scope for negotiation**

Even though Linz and Stepan (1996) and Rustow (1970) discussed issues of stateness and the nation-state, these authors were more preoccupied with nation-building than state-building. Despite the argument that an established nation-state was prior to democratisation, the issue of how a weak state affects negotiated transitions to democracy is less developed in the literature (but see Mazzuca & Munck 2014; and Møller & Skaaning 2011 for arguments on state or democracy first). In this section, I argue that when a regime loses control over state functions and over the state's territory, this reduces the scope of what can be negotiated and pacted during a transition, and the likelihood of achieving a pact around key challenges to the regime in question.

Due in large part to the ongoing economic crisis in Venezuela, the Maduro regime has less control over the Venezuelan territory than three years ago.<sup>15</sup> Ebus (2019) has documented how private, illegal actors have taken over mining in large areas of the country, especially in the Orinoco Mining Arc (see also Rosales 2019), where also the military as an institution has important economic interests that often is intertwined with those of illegal groups (International Crisis Group 2019). Further, among others, Insight Crime shows that the ELN has increased its presence in Venezuela over the last couple of years reducing the state's control over these areas (Fundaredes 2019; Insight Crime 2019). The second dimension of this argument relates to what Natalia Gan (2020) points out. The increased use of private groups for repression in urban areas, or the paramilitarisation of the state. Over time the media and researchers like Gan have documented the use of e.g. *colectivos* to strike down demonstrators and protesters in the streets. In essence, parts of the state's coercive apparatus are becoming privatised and the coercive apparatus is less under control of the regime than it has been. It is not the exact dimension of this privatisation that matters, which is hard to identify, but rather the increased presence of the use of private groups to perform security functions (or repression)

that is relevant. Partly as a survival strategy, the Maduro regime is losing and negotiating away its monopoly of violence in Venezuela and its control over its territory to illegal armed groups. These developments, and the complex relations between armed groups, the military and the state (see e.g. International Crisis Group 2020), have led observers to conclude that Venezuela is a mafia-state (Naím 2012) or a neopatrimonial regime (López Maya 2018). Following Linz and Stepan (1996) it is only in authoritarian, rather than neopatrimonial/sultanistic (or totalitarian) regimes, that a negotiated transition in fact is possible. The state's dependence on illicit activities and various state actors' deep and complex relations with illegal groups clearly complicates the scope and likelihood of success of any negotiation. At a more abstract level, these activities and relations also change the nature of the regime as López Maya (2018) argues, which holds as a consequence that a negotiated transition is virtually impossible (Linz & Stepan 1996: 67) and that the logic the transition literature describes for a negotiated transition may not work in Venezuela.

Neither ELN, *colectivos* or other private armed groups have been present at the negotiating table, and it would be naïve to believe that these groups would have any interest to enter into or respect any negotiated pact and lay down their activities if a transition takes place. Granted, a democracy is more likely to be able to deal with such stateness problems (Møller & Skaaning 2011), but the outgoing regime is not able to negotiate or hand over the full control over the territory or the state's coercive apparatus to a new regime should a negotiated transition materialise. Thus, severe problems related to the Venezuelan state will not become part of a negotiated pact.

Even though Venezuela may not be a so-called failed state (yet), its stateness problems are large and effectively reduce the scope of what can be negotiated in a pact. A reduced scope for negotiations also makes it more difficult to reach an agreement, which is one reason why the opposition's "*cese de usurpación, gobierno de transición, y elecciones libres*" has been criticised. Thus, the negotiations are not likely to touch on the stateness issues that are considered an almost necessary condition for democracy (Møller & Skaaning 2011), this omission from the negotiations is a serious one. In fact, the stateness problems of Venezuela and the impossibility of including it in the negotiations point towards the next challenge. Møller and Skaaning (2011) find that the rule of law, which may be an important guarantee for any pact transition, is not compatible with severe stateness problems. In fact, Albertus and Menaldo (2018: 45-49) argue that elites will only opt for democracy over dictatorship if state capacity is strong enough to secure their position in a new regime.

### **Majoritarian constitution and electorally weak regime**

Vicente Díaz, a member of the opposition's negotiating team in the Oslo and Barbados talks, stated after the talks had ended: "*Venezuela requiere un acuer-*

*do serio y a largo plazo*” (see Delgado Marcucci 2019). Above, I discussed a key challenge to a serious – or broad – agreement, this final section deals with the challenge of a pact that endures. Pacts or negotiated transitions make for more stable democratic outcomes according to the cited literature. This is one of the key reasons why observers suggest negotiations as the best solution to the crisis in Venezuela. Yet, any pact must not only be agreed upon, it must also be respected, and guarantees for compliance must be in place for the parties to accept a pact. One does not need to go farther than Colombia and the peace deal with FARC to find examples of the importance of guarantees. In August 2019 a group of former FARC leaders and soldiers withdrew from the peace agreement on account of the lack of guarantees and compliance by the Colombian state. If a pact cannot be guaranteed, the parties are unlikely to enter into it. Guarantees for a pact can be given by a trusted third party (the courts/rule of law, international society, etc.) or by sharing power between the parties (even at the cost of democracy). The latter was the case in Colombia and Venezuela in the regimes created in the late 1950s. Venezuela today faces two challenges for using power-sharing as a guarantor for a pact: the Bolivarian Constitution, and an electorally weak regime.

It was first during the 2015 parliamentary elections that it became clear that the opposition was willing to accept (and at times even celebrate) the 1999 Constitution. The opposition has since tried to use the Constitution against the Maduro-regime, among other things to try to call for a recall referendum. Thus, the Constitution is not part of the negotiations. The problem is that unless the 1999 Constitution actually becomes part of the negotiations, the Constitution itself is an obstacle to guaranteeing any pact. The 1999 Constitution is highly majoritarian with a huge concentration of power in the presidency (Corrales 2018) and a highly disproportionate electoral system that benefits the largest party (Briceño 2013). The 1999 Constitution also redressed some of the advances of de-centralisation in the 1990s, thereby also effectively preventing a territorial-based power-sharing agreement. Therefore, negotiations will have to take place under an institutional system which resembles a “winner takes all” system, when knowledge on negotiated transitions to democracy insist that counter-majoritarian institutions, and power sharing must be present to guarantee a deal (Alberts et al. 2012; O’Donnell & Schmitter 1986). The framework under which a new democracy is supposed to operate, work against establishing counter-majoritarian institutions that can secure institutional representation for the PSUV. Parliament, the institution in which power sharing and veto power against renegeing on the pact may lie (think only of how the Pinochet regime managed to secure a counter-majoritarian veto power in the Senate in Chile), is weak in the Bolivarian Constitution (as also demonstrated under the rule of Chávez, and since 2016), thus offering few guarantees for the concerned Maduro loyalists once a transition has taken place.

The second problem for guaranteeing a pact under democracy is the electorally weak position of the ruling party, PSUV, and of its leader Nicolás Ma-

duro. Roberts (2016: 39) reminds us that economic and political elites in autocratic regimes may opt to democratise if they are confident that they can compete on the electoral arena, and it is not unreasonable to think that the poor electoral position (under free and fair conditions) of PSUV and Maduro is a key issue that prevents a negotiated pact. When Pinochet accepted losing power in a referendum, it was after receiving 44 percent of the votes and securing the outgoing regime's position through counter-majoritarian institutions. If PSUV and Maduro receive approximately 20-25 percent of the votes in a parliamentary election, the party will first be punished by the majoritarian-like electoral system and then end up having no blocking power to the opposition's desires to renege on a pact that is likely to be unpopular. The unpopularity of PSUV and Maduro becomes a difficult obstacle to guaranteeing a deal since it cannot be guaranteed through a rule of law,<sup>16</sup> and since the 1999 Constitution with its majoritarian features is considered sacred by both parties. Therefore, even though the opposition through negotiations would agree to amnesties, protection from prosecution, not touch any riches gained illegally by regime representatives, etc., these agreements cannot be guaranteed long-term, which means that the regime will not enter them. The paradox here is that it is the regime's electoral weakness rather than its strength that works against a negotiated transition to democracy.

If the Gordian knot of a guaranteed pact is to be resolved, designing counter-majoritarian institutions to include PSUV in power-sharing agreements must become part of the negotiations. This would be easier with a more popular regime since there are limits to how counter-majoritarian institutions can become before they are no longer democratic.

## **Conclusion**

This article discussed three key challenges to a negotiated transition to democracy in Venezuela, all of which put Venezuela in a uniquely demanding position for reaching an agreement between the parties. In sum, the concession costs are extremely high on both sides due to the inequalities created by the economic crisis, the state's dependence on illicit activities and the process of de-liberalisation, Venezuela's stateness problems reduce the scope of negotiations and hinders the parties' ability to address key problems of Venezuela today, and Venezuela's majoritarian institutions in addition to Maduro's lack of popularity generate obstacles to guaranteeing a pact transition in the long-term. The transition literature has generally been actor oriented, and this literature has guided much of the current debates on the ongoing attempts to negotiate a transition. This article contributes to these debates by showing how structural factors such as the political-economic context, stateness problems and the political institutions affect the actors' incentives and contribute to stacking the cards against a pact transition.

The analysis also contributes to the transitology literature in two ways. First, Venezuela is not alone to have started out as a democracy and slowly descended into autocracy, in fact this is often how democracies die today (Levitsky & Ziblatt 2018). The analysis of attempts of negotiations during a process of de-liberalisation help clarify why liberalisation is important for democratisation and how ongoing repression increases the concession costs for all sides in the conflict. Venezuela may therefore hold many lessons for future attempts of transition from non-democratic regimes that have followed Venezuela's path. This article argues that negotiating a transition from such regimes may prove more difficult than from non-democratic regimes that started with a coup. Second, even though the relationship between the state and democracy is widely analysed, little is written about how stateness problems affect transition negotiations. Although Venezuela's stateness problems make for a neopatrimonial or mafia state, rendering negotiations virtually impossible according to the literature, the novelty here is that I show how stateness problems reduce the scope of the negotiations and increase the concessions costs for the regime since a weak state reduces the security of long-term guarantees provide by the pact. As such, the analysis adds insight to the broader literature on the relation between state and democracy.

It may be that Ramsey and Smilde (2018) are right that negotiations are the most realistic path out of the crisis in Venezuela. I hope they are. A negotiated solution will according to the literature on transitions, lead to a more stable democracy, and less violence. Yet, this analysis shows that a negotiated transition to democracy has the cards stacked against it. If negotiations are the most realistic path out of the crisis it is only because all other options are virtually impossible or because the path out of the crisis is unlikely to involve a democratic transition.

\* \* \*

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## Notes

- 1 See e.g. Lowenthal and Smilde (2019), Ramsey and Smilde (2018), Penfold (2018), former US ambassador to Venezuela, Patrick Duddy (2018), and Henrique Capriles (León 2018).
- 2 See Alfaro Pareja (2020). The recent Norwegian initiative was at least the fifth dialogue initiative between the opposition and the Chávez and Maduro governments since 2003.
- 3 I therefore ignore any violations to human rights, a key element of liberal democracy, and the deterioration of socioeconomic conditions, which are central to any expanded non-procedural definition of democracy.
- 4 For an early discussion discarding the Chávez regime as a liberal type of democracy, see Coppedge (2003).
- 5 Hugo Chávez accepted losing the 2007 referendum on a host of constitutional reforms, including removing presidential term limits, but this loss did not mean losing power since both parliament and the presidency remained intact. Two years later, Chávez, in another referendum managed to remove presidential term limits altogether.
- 6 The previous Supreme Court, however, had also been loyal to presidents Chávez and Maduro (Canova González, Herrera Orellana, Rodríguez Ortega, & Graterol Stefanelli 2015), but it can be speculated that president Maduro doubted their loyalty under the new situation.
- 7 Formally the process was stopped after the opposition had gathered the signatures (1 percent of the voters) required to be allowed to gather the signatures (20 percent of the voters) to force a recall referendum.
- 8 In addition, the 2017 elections to the Constituent Assembly violated the principles of one-person-one-vote, CNE stripped its own security measures allowing numerous irregularities, and the election did not respect the principle of proportionality. Given these conditions the opposition decided to not participate.
- 9 See e.g. Munck and Skalnik Leff (1997) who discuss the differences between transitions from above and below.
- 10 These works often assume or work with cases where the authoritarian elites are conservative, land-owning, or right-wing. In Venezuela, however, the ruling elites at least nominally belong to the left. Whether or not the left-right distinction makes a difference in negotiating transitions with authoritarian elites is a question worth exploring in future research.
- 11 Pacts can occur without a regime-led process of liberalisation, but then pacts tend to be among two parties belonging to the democratising elites and occur after the old regime has been extricated. The pacts in Colombia and Venezuela in the late 1950s are two examples.
- 12 And with the development of the inter-American human rights system amnesties are much more difficult to achieve than during the Third Wave.
- 13 The most prominent examples of disloyal behaviour by the opposition are the coup attempt in 2002, the oil strike in 2002-2003, and the boycott of parliamentary elections in 2005.

- 14 Venezuela's economic, social, infrastructural, and humanitarian problems are well documented.
- 15 For the argument it does not matter how large percentage of the territory that the regime controls through the state. The point is rather that the control is being reduced and that the more this control is reduced the larger the challenge for a negotiated pact to succeed.
- 16 The Maduro regime is also unlikely to find a guarantor in the United States, and it is unlikely that China or Russia, both relatively friendly to the Maduro regime, can effectively function as external guarantors of a pact.

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