

Power Asymmetries and the Origins of Self-  
Enforcing Constitutions:  
Venezuela since 1945, Latin American in the 1990s, and the  
United States in 1787

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## Abstract

Much is known about the effects of different types of constitutions; less about the conditions that lead to their emergence. Here I explore the origins self enforcing constitutions, i.e., those that lower the stakes of powerholding. Self-enforcing constitutions are more likely to emerge and yield stability under conditions of “reduced power asymmetry,” i.e., when incumbents are strong, and opposition forces not much weaker. When the opposition is too weak (i.e., large asymmetry), constitutions may emerge, but they will likely be hyperpresidentialist and thus highly displeasing to the opposition, increasing the chance of instability. When the opposition is too strong (negative asymmetry), constitutions may fail to emerge altogether, precluding regime renewal. This argument challenges theories positing that democratization is contingent on maximizing the power of the democratizing force, whichever that may be. Instead, stability-yielding constitutions may depend on equalizing the distribution of power between the opposition and incumbent, with a slight advantage for the latter.

## I. Introduction

The drafting of a new democratic constitution is often considered a moment of national joy—a time of exceptional politics that can become “a symbolic marker of a great transition in the political life of a nation” (Ackerman 2002:771-97). However, for many political actors, this historical moment could instead represent a daunting political crisis (Arato 1995).

In Chapter XXX, I defined political crisis as a situation in which any political actor anticipates a huge political loss. During a constitutional moment, at least two types of actors anticipate severe political losses: sympathizers of the previous regime, who fear that the new constitution will be too punitive, too redistributive, or too far afield; and non-majority democratic political forces, who fear that the new constitution will not empower them sufficiently or as much as it will empower their stronger political opponents.

Perhaps the only political actors exempt from experiencing a crisis during constitutional moments are majority forces—those actors who are part of a group that is large enough to win elections easily. These actors may feel that they have sufficient power to control the constitutional negotiations to their advantage, and thus, may have less to worry about. But even assuming that such a self-confident group exists, they will still approach the constitutional moment with the fear that they may have to make unwanted concessions to their smaller rivals. In short, both large and small political forces have much to fear during any process of constitutional rewriting.

What can these different actors, each with different degrees of bargaining leverage and their own fears, do to overcome their sense of crisis? More specifically, what factors determine whether the negotiations for drafting a new constitution will produce or avoid the outcomes that weaker political actors fear the most—i.e.,

constitutions that produce rules of the game that impose more political losses to smaller forces than to majority forces?

This is an important question to ask because it moves us to explore the origin of “self-enforcing constitutions.” A recent strand in political science argues convincingly that democracy requires the creation of a set of rules that are “self-enforcing:” actors of different political persuasion must voluntarily agree to adhere to new rules of competition, regardless of their outcomes. While this literature has clearly defined the political problem to be solved in democratic transitions (i.e., create rules that are in the interest of all actors to respect), it has not yet specified conclusively the conditions that produce this particular outcome.

I will argue that a major determinant of self-enforcing constitutions, and thus of political stability in new democracies, has to do with the balance of forces among signatories, and more specifically, whether the than non-majoritarian forces achieve sufficient gains. Self-enforcing constitutions are more likely to emerge and yield stability under conditions of what I call “reduced asymmetry,” i.e., when incumbents are strong, and opposition parties not much weaker. When the opposition is too weak (i.e., large asymmetry), pacts may emerge, but they will displease the opposition, increasing the chance of instability. When the opposition is too strong (negative asymmetry), pacts may fail to emerge, precluding regime renewal. I illustrate these points by examining constitutions in Venezuela since 1947, Latin America in the 1990s, and the United States in 1787. This argument challenges theories positing that democratization is contingent on maximizing the power of the democratizing force, whichever that may be. Instead, stability-yielding pacts may depend on equalizing the distribution of power between the opposition and incumbent, with a slight advantage for the latter.

In offering a theory of self-enforcing constitutions, this paper synthesizes, and in some cases, refines different schools of thought in the literature on pacts. This is a rich literature that has been influenced by rational-choice, legal, historic-institutionalist, and structuralist approaches. My argument borrows from each. It is informed by rational choice in its attention to the strategic interaction between incumbent and opposition forces, and to how electoral rules affect that interaction. It is informed by legal constitutionalism in its attention to the content of pacts and how it shapes the post-pact response of the opposition. It is informed by historic-institutionalism in its attention to how existing institutions provide alliance opportunities for actors who are unsatisfied with the content of pacts. And it is informed by structuralism in its attention to economic performance, although I place less emphasis on economics and class dynamics than most structuralist Venezuela specialists (Karl 1997; Ellner 2003:7-25; Hellinger 2003; Medina and Maya 2003; Roberts 2003)

## II. On the Origins of Self-Enforcing Constitutions

A useful theory on the origins of self-enforcing constitutions must be able to identify the factors that lead incumbent and opposition forces to overcome their initial fears, make a pact with one another through the signing of a new constitution, and, more important, adhere to their agreements. I will try to offer such a theory by drawing from the literature on pacts, which flourished in studies of democratization in the 1980s.

A pact can be defined broadly as any agreement of compromise signed, at a minimum, by an incumbent and an opposition political force. They can be as simple as a document of understanding about procedures or policies, or they can be as encompassing as a national constitution. A common textbook defines constitutions as the “codes of

norms which aspire to regulate the allocation of powers, functions, and duties among the various agencies and officers of government, and to define the relationship between these and the public” (Finer, Bogdanor et al. 1995:1). A constitution, therefore, is the highest legal document of a nation. Like pacts, constitutions require actors with different power to negotiate with one another. In this chapter, I will focus on “foundational pacts,” i.e., pacts signed at the inauguration of a new democratic regime and which typically climax with the drafting of a new constitution.

Democratic foundational constitutions, like pacts, are quintessential functional institutions: actors draft and sign them for the purpose of restraining their counterparts, mitigating their own political insecurity, and achieving a *modus vivendi*. Pacts are meant to serve as antidotes to polarization and mutual suspicion. As such, they help pave the way for democratization (O'Donnell and Schmitter 1986; Di Palma 1990; Karl 1990:1-23; Karl and Schmitter 1991:269-84; Przeworski 1991; Reynolds 2002). Yet, intentions do not always come true. Hard as they may try, actors may fail to reach an agreement, or if they reach an agreement, pacts may fail to mitigate political insecurity, leading to post-pact instability.

What determines these outcomes? Pacts can take multiple forms, occur in very diverse political settings, and involve varied actors. Yet, I argue, there are two simple distinctions in pact-making that can explain their propensity to yield stability or instability. The first distinction has to do with the balance of forces among signatories. The other distinction is the extent to which the pact lowers the cost of being in the opposition. Foundational pacts in which the balance of power among signatories is deeply asymmetrical and whose provisions raise the cost of being in the opposition are most likely to fail. They either do not get signed or, if signed, they become intensely

presidentialist (and thus, excessively biased toward the incumbent), thereby dissatisfying the opposition.

While balance of forces helps explain the incidence as well as the content of pacts, the content, in turn, helps explain whether the opposition will be “satisfied” with the signed pact. Herein lies a key to the sustainability, or self-enforcement, of pacts. A satisfied opposition is necessary for post-pact stability. An unsatisfied opposition, on the other hand, foretells instability, but only if other conditions hold. By influencing the content, the balance of forces at the moment of creation of the pact can influence post-pact stability.

### **III. Asymmetry of Power and Extra Help**

Arguments about enduring and stabilizing pacts are predicated on four basic claims. First, the politics of foundational pact-making depend on the strategic interaction of two sides among elites—namely, incumbents (henceforth *I*) and the opposition (henceforth *O*) (Przeworski 1991; Higley and Gunther 1992; Negretto 1998). Second, pact-making depends on the prevalence of soft-liners on each side (O'Donnell and Schmitter 1986). Soft-liners are actors who prefer to deal with their opponent through peaceful, rule-bound competition rather than through open confrontation or simple noncooperation (Linz 1978). Third, successful pact-making depends on “mutual guarantees.” Each actor must be willing to offer guarantees that it will not threaten the “vital interests” of their counterparts (Karl 1990; Karl and Schmitter 1991). And finally, as a corollary of the previous point, the most important guarantee that must be offered is perhaps “credible bounds on the behavior of political officials” (Schedler, Plattner et al. 1999; North, Summerhill et al. 2000:23-29). Constitutions must place limits on the relative gains achieved by political winners. Winning office cannot constitute huge

advantages, and being out of office cannot constitute political opprobrium. In short, enduring, stability-producing pacts must “lower the stakes of politics” (Weingast 2004).

Yet, this picture is theoretically incomplete. First, except for the proposition that soft-liner strategies must prevail, these arguments are mostly prescriptive, outlining the contours of a successful pact, rather than the conditions that lead to their emergence. Second, even in societies without major ethnic fragmentation and conflict, the participants involve not two, but three actors at a minimum: *I*, the large opposition forces (henceforth *LOFs*), and the small-size opposition forces (henceforth *SOFs*). As I will argue later, the role of *SOFs* is crucial for understanding post-pact stability.

Third, the prevalence of soft-liners is not enough, or at least, not enough to explain the propensity of pacts to yield condition four, namely lowering the stakes of holding office. There is no question that democratization requires *I* to adopt a soft-line position: it must agree to offer concessions to its opponents and, more crucially, accept rules of self-restraint. But *I* will only agree to rules of self-restraint if it feels sufficiently pressured to do so. As Kantor (1977) argued decades ago in his study of Latin American constitutions, the way to limit the power of the president is to create “competing centres of power.” For those power centers to emerge, *O* must be relatively strong (an institutional condition) and willing to exert pressure (a strategic condition). *O* therefore cannot be as moderate as *I* (Bermeo 1997). If *O* doesn’t pressure *I* sufficiently with mobilizations, denunciations, and attacks, *I* will not have an incentive to negotiate and yield power (Tilly 1992). Essentially, *I*’s propensity to be moderate may depend on *O*’s propensity to pressure.

Yet, on the other hand, *O* must not be excessive either. If *O* becomes too threatening, it will scare *I* and thus ruin the chance of a negotiation. Excessive confrontation can also alienate moderate societal actors, who may end up perceiving *O* as excessively obstructionist. *O*'s central dilemma in the politics of pact-making is that it must offer a combination of some hard-line resistance (to force *I* to concede) and also some degree of moderation (to offer incentives for *I* to negotiate). It cannot be one or the other; it must be both. This is a difficult game to play, to say the least, and it typically splits *O*.

To explain which preference (to pact or not) and which strategy (to pressure or not) both *I* and *O* end up adopting, analysts often rely on personality and ideology variables. If each negotiating party is lucky enough to be under the helm of politicians with the right personality (moderates) and value structure (respect for democracy), then the groups will play the game well, offering concessions and finding the right mix of pressure and moderation. The problem of relying on personality and ideology variables is not that these are irrelevant, but that they are predicated on arguments that simply restate rather than solve the puzzle to be explained: moderation and respect for democracy explains moderate democracy. Furthermore, personality and ideology variables cannot account for the instances of pressure (non-moderate behavior) that *O* forces often display in order to get a satisfying pact.

The theoretical challenge is therefore to specify the structural and institutional conditions that generate the different strategies that *I* and *O* will adopt. This paper makes such specification. In particular, it argues that the balance of forces between *I* and *O* helps to explain the propensity of actors to sign a pact and whether the pact will offer mutual guarantees and restraints on *I*. Following Kantor (1977), Geddes (1994), Colomer

(1995:74-85), Bermeo (1997:305-22), and Negretto (1998; 2001; 2002), I argue that under conditions of high asymmetry (e.g., if *I* is very strong and *O* is very weak), pacts will fail, if they occur at all. As (Olson 2000:31) argues, democracy emerges when there is a “broadly equal dispersion of power that makes it imprudent for any leader or group to attempt to overpower the other.” The “overthrowers” cannot have the power to make themselves autocrats. *I* has no incentive to offer guarantees to *O* because it does not fear it, and *O* is not strong enough to compel *I* to negotiate.

On the other hand, under reduced asymmetry (i.e., if both *I* and *O* are strong), the chance of pact-making increases, although it is not guaranteed. Pact-making is not guaranteed because a strong *I* may still conclude that it ought to repress or disregard *O*, and a strong *O* might feel that it has no reason to abdicate and negotiate with *I*. Stuck on these hard-line positions, parties hold back from signing pacts (Przeworski 1991). Thus, low asymmetry in the balance of forces between *I* and *O* must be accompanied by soft-liner positions on each side.

Once *I* and *O* make the decision to negotiate, the next important variable is the balance of forces between them. Specifically, it is important that the distance between *I* and *O* not be large. Two types of asymmetries matter at this point. The first is what I would call “inter-institutional asymmetry:” the distance between *O*’s position at the negotiating table and its position at some other important political institution in the country, such as Congress. *O* might be politically strong in the nation, but if its representation at the negotiating table does not reflect that, there is a risk that *O* will deem the process of pact-making as unfair.

The other type of asymmetry that matters, perhaps even more, is what I would call “table asymmetry:” the distance between *I* and *O* at the negotiating table itself. High table asymmetry is fatal for pact-making (Arato 2005:17), or if the pact materializes, for post-pact stability. The reason is that, with few seats, *O* lacks the necessary bargaining leverage to extract favorable concessions from *I*.

High table asymmetry is a huge handicap for *O* because *O* has a particularly ambitious agenda, perhaps more so than *I*'s (Horowitz 2002:27). *O* needs the pact to offer not just protection (or minimum guarantees), but also, provisions that make it easier for it to leave its opposition status (Lijphart 1991:72-84) (Lijphart 1992:208). *O* does not just want to survive, it wants to thrive. Minimal guarantees are thus not enough. *O* needs extra help in the form of wide presence in the country's institutional landscape, or at the very least, rules that do not penalize it for staying in the opposition. Thus *O* is interested in huge gains and huge restraints on *I*. This means that *O* will push for lessening the formal powers of the Executive branch (the political institution that they can't control) and increase the power of Congress (the institution where they have political preference). This is the paradox of pact-making. *O* needs the most out of the pact, and yet, it is the weaker party to the negotiation. *O* must come to the negotiating table with the highest bargaining leverage possible. In short, the politics of pact making must not only the lower the stakes of holding power, and also raise the stakes for those in the opposition.

In short, the balance of forces, both inter-institutionally and at the negotiating table, shapes the incidence and content of the pact.<sup>1</sup> The latter, in turn, shapes how pleased *O* will be coming out of the negotiation. This raises yet another issue: the selection rule used to determine representation at the bargaining table.

One can imagine two possible selection rules: favorable and unfavorable to *O*. A favorable selection rule is one that yields a level of representation that accurately reflects, or even exaggerates, the true strength of *O* territorially (e.g., across different subnational government units) and institutionally (e.g., in parliament). An unfavorable rule is the opposite, yielding under-representation of *O*. The selection rule is therefore crucial because, as John Elster (1998:13) argues, it can lead to “bias and distortion” of representation.<sup>2</sup> To expect simple majority rule to produce inclusion would be disingenuous: the Frankfurt Constituent Assembly of 1848, for instance, was elected by universal manhood suffrage, and yet no peasants, very few shopkeepers, and even fewer workers were ultimately included. While Elster focuses on class representation, his key point is broader: the idea is to find a selection rule that ensures diversity of political representation, especially among potential dissenters. The U.S. Constitution, as will be shown later, did exactly this. Delegates to the Convention chose a voting rule based, not on majority rule, but rather on granting each state an equal vote, thereby giving rise to the possibility of minority veto over majority decisions. The specifics of the rule are not important. What matters is whether the rule inflates or deflates the power of *O*. In the words of Arato, “under majoritarian electoral and decision rules, the resulting constitutions reflect only the majoritarian view” (Arato 1995:226). These types of constitutions are unlikely to generate loyal opposition.

Under favorable electoral rules, negotiations are likely to produce a content that will please *LOFs*. *LOFs* will have the bargaining leverage to extract subsidies from *I*. Pleased *LOFs* increase the chance of post-pact stability. Cooperation between *I* and *LOFs* to defend the new regime is more likely. The problem will occur with *SOFs*. Even if selection rules are favorable, *SOFs* will always have low representation, and thus,

minimal bargaining leverage. *SOFs* will not be able to extract as satisfying a deal as *LOFs*. Thus, the same pact that will please both *I* and *LOFs* may not please *SOFs* at all.

Under unfavorable selection rules, neither *LOFs* nor *SOFs* will come to the negotiating table with sufficient strength. *LOFs* might find themselves trapped. They cannot prevent the negotiation from favoring *I*, which tempts them to walk away, but they might decide to stick to the process due to a prior verbal commitment. *LOFs* probably spent a great deal of time asking for a pact, and they may not want to appear hypocritical by walking away. Consequently, *LOFs* may end up signing the pact, but grudgingly, aware that they are getting a raw deal. Furthermore, an unfavorable selection rule leads to under representation of *O*, thereby reducing the “inclusiveness of the bargaining cartel,” which Encarnación (2005:182-203) has argued is a necessary condition for post-pact compliance.

In sum, I propose the following propositions to explain the incidence and content of enduring, self-enforcing constitutions:

1. Foundational constitutions are more likely to yield stability under reduced asymmetry, in which *O* is strong, but *I* is stronger. These situations will produce less presidentialist constitutions.
2. If *O* is weak relative to *I*, it will lack the bargaining leverage to pressure *I* to sign a pact of self-restraint. The pact, if it materializes, will likely be highly presidentialist, and highly displeasing to *O*.
3. If *I* is too weak relative to *O*, and thus uncertain about its electoral fate, it will shy away from pact-making. The chances of a constitution are significantly lower.

4. Rules to decide representation at the negotiating table can either mitigate or exacerbate this asymmetry. If rules reduce the asymmetry between *I* and *LOFs*, then *LOFs* will have a higher chance to meet their ambitious agenda (subsidies), and thus walk away satisfied. *SOFs*, on the other hand, will be unsatisfied, since they will not obtain as much as *LOFs*.
5. If rules are unfair, diminishing the degree of representation of *LOFs*, a pact might still be signed, but it will be excessively biased toward *I*. Both *LOFs* and *SOFs* will be unsatisfied, and post-pact instability is likely.

My focus differs from the frequent works that seek to explain the impact of formal rules on the president's power, the legislature, and policy-making (Haggard and McCubbins 2001). I focus instead on the effect on a lesser-emphasized actor—the opposition—and its prospects in complying with the new regime. Furthermore, my take on asymmetry departs somewhat from Przeworski's (1991:82-3) focus on information and balance. For Przeworski, the key issue in determining the outcome of pacts is whether the balance of forces between *I* and *O* is even or uneven, and whether this balance is known to signatories. If the balance is uneven, Przeworski predicts, as I do, an agreement will emerge that “ratifies” this relation of forces, and is thus unfavorable to *O*. If the balance is even, he argues, the outcome of the negotiations is unpredictable (“no equilibrium” exists). I contend, instead, that one can be more predictive than this by looking at variations in asymmetry. If asymmetry is large, the outcome is a flawed agreement that will displease *O*. If asymmetry is low, the outcome is a stable, compliant pact. If asymmetry is unfavorable to *I*, pacts are unlikely to occur.

#### IV. Studying Venezuela since 1945: methodological benefits

Ever since Levine's (1973) famous study of Venezuela's pact-guided transition to democracy in 1958 (Levine 1973), the case of Venezuela became an obligatory reference among all students of comparative democratization. Scholars marveled at the durability of these foundational agreements in a region plagued by instability and dictatorship. And yet, despite widespread familiarity with the Venezuelan case, even many Venezuelanist political scientists may still be unaware that there have been not one, but four major episodes of pact-making in Venezuela's democratic history, each with different outcomes:

- 1) the Constitution of 1947, which failed to deter the opposition from overthrowing the democratic regime in 1948, leading to a decade-long authoritarian regime;
- 2) the pacts of 1958,<sup>3</sup> followed by the Constitution of 1961, which had two post-pact stages: first, cooperation among the leading parties and conflict between them and the smaller parties (1961 and 1968), and second, political peace (1968-1983);
- 3) the attempt by Congress to revise the Constitution, starting in 1989 and abruptly shelved in 1992; and
- 4) the Constitution of 1999, which has failed to prevent polarization and instability.

This variation in pact-making and stability is not easy to explain with short-term economic variables focusing on contextual macroeconomic conditions (see Table 1). The

two instability-yielding pacts (1945-1948 and 1999-2004) occurred during periods of extremely different economic conditions. And the stability-yielding pact (1958-1961) occurred during a period of meager economic growth<sup>4</sup> that is not much different from the economic conditions of failed pact-making (1989-1992).

There are several methodological advantages to studying these four cases, rather than conducting a large-n, variable-oriented study of foundational pacts. First, this research design offers the opportunity to study a negative case—the aborted constitutional reform of 1992.<sup>5</sup> An effort to create a large database of constitutions worldwide would most likely miss most pacts that were attempted but never came to fruition. Failed pacts, which are crucial cases for testing my argument about the conditions that give rise to agreements, are more readily visible through qualitative research techniques such as the one employed in this paper. Second, this design allows me to control for many contextual variables: country, culture and socioethnic profile, economic structure (dependence on a commodity export, non-developed status) and often, the same political actors. Third, this type of research allows me to investigate the kind of proposals that made it into pacts as well as those that did not make it. Knowing the demands that do not make it into the agreement offers an insight into the outcome of the negotiations between the incumbent and the opposition, or more specifically, into the extent to which the opposition was slighted, which in turn is crucial for understanding the opposition's level of post-pact satisfaction. Finally, this research design offers variation in the dependent variable, not just in terms of emergence, but also post-pact results.

Although each of these episodes has generated sufficient scholarship attention in its own right, few of these works attempt to compare all these different episodes.<sup>6</sup> The

real challenge is to generate a theory of pact-making that would account for this variation and be applicable to other cases as well.

## V. The Evidence

One of the most significant differences among Venezuela's constitutional processes of 1947, 1958-1961, and 1999 was the balance of forces among the signatories. The measure of asymmetry that I use is straightforward: the numerical difference between the size of *I* and *O*, so that the higher the difference, the higher the asymmetry. A negative value indicates a pro-*O* asymmetry. Asymmetry was very high in 1946, even higher in 1999, and low in 1958-61. And when asymmetry was very pro-*O* (i.e., negative), circa 1992, an initiative to change the constitution was aborted by orders of *I*.

### A. High Asymmetry: The Constitution of 1947

The fundamental problem of the democratic experiment of 1945-1948, the so-called Trienio, was the enormous power asymmetry between *I* and *O*. After removing General Isaías Medina Angarita from office for his refusal to hold elections, Venezuela's leading party, Acción Democrática (AD), enjoyed overwhelming popular support—hovering around 70 percent of the electorate. The new government started out with the support of all key political actors: opposition parties, business leaders, foreign oil companies, the U.S. embassy, the military, and the Church (Stambouli 1980:66). Its first decree included a commitment to organize a Constituent Assembly. However, because popular support for AD was so overwhelming, the AD leaders who presided over the transitional civil-military junta that came to power in 1945 saw no need to accommodate *O*. Initially, *I* offered a minor gesture to *O*, by naming Rafael Caldera, the leader of the nascent opposition party (the UNE, renamed COPEI in 1946), as Attorney General

(October 26, 1945). But soon, *I* lost complete interest in incorporating any ideas from *O*. *I* even encouraged mass mobilizations featuring vicious anti-*O* slogans such as: “Down with the reaction! Death to Copei!” (Magallanes 1977:392; Camejo Ron 1999:150). In April 1946, Caldera resigned as Attorney General to protest acts of violence committed by AD militants against Copei (Stambouli 1980:72). Consistently throughout the entire Trienio, AD refused to accept *O*’s request to form a coalition government, even though *O* felt that they too contributed to undermining the previous dictatorship. Most appointments to state offices were reserved for adecos or independents (Stambouli 1980:73). The government became a “decree-making machine.”

*I*’s reluctance to negotiate with *O* colored the politics of the 1947 Constituent Assembly. The call for a Constitution safeguarding “universal, direct, and secret vote” for president and congress was the most important demand placed by all political parties during the previous dictatorship. Medina Angarita’s refusal to accept this principle was a major trigger of the 1945 coup. There was ground for consensus, but *I* was also interested in exploiting the advantages of its popularity, and thus retain control of the new constitution. Consequently, AD selected a self-serving electoral rule for choosing delegates to the assembly: universal, direct vote. Predictably, this rule made consensus difficult. The rule gave AD 78 percent of the votes, a formidable table asymmetry of 57 points (see Table 2). It led to an incredibly skewed representation at the negotiating table: 137 delegates for AD and twenty-three for the opposition (nineteen delegates for COPEI and two each for the URD and the PCV) (Kornblith 1991:67)—an even larger asymmetry of 71 points. All five seats of the directorship (*directiva*) of the Constituent Assembly were filled with AD representatives (Cárdenas 1987:24).<sup>7</sup> URD leaders, Jóvito Villalba, who played a key role as a constitutionalist during the Medina Angarita regime,

did not even make it to the Assembly. Furthermore, AD decided that the decision-making rule would be based on simple majority, essentially permitting I to approve most clauses without the support of the opposition (Camejo Ron 1999:153).

The result of *O*'s under representation and majority-based decision-making rule was a Constitution heavily biased toward *I* at the expense of *O*. For instance, the Constitution gave the president the right to "order the preventive detention" of persons who were believed to be implicated in plans to overthrow the Government by coup or violence (Article 77). The Constitution did not even recognize the right to form political parties or to protest ("*manifestar*"). AD rejected the opposition's demand for direct election of governors and reduced power of state legislator (The New York Times 1947; Ellner 1999). AD rejected Copei's call for a complete ban on presidential re-elections, pushing instead for its own preference (a ban simply on immediate reelection) (Camejo Ron 1999:142). AD also rejected the URD's call for the direct election for a vice-president, a figure conceived as a mechanism for restraining the powers of the president (Camejo Ron 1999:143). *O* also disliked all provisions pertaining to the Church, education, the formation of the Council of Economics, and agrarian reform (Kornblith 1991:68). Essentially, COPEI defended a more liberal conception of the state, in which the state plays a more subordinate role vis-a-vis economic and individual rights, whereas AD supported a more centralist, state-heavy political philosophy; the latter notion prevailed, which is the reason that the only opposition party that supported AD was the Communist Party.

*O*'s level of discontent with the 1947 Constitution, and with AD in general, was manifest from the start. Copei initially questioned whether the elections to the Constituent assembly were free and transparent. A number of *O* delegates recorded their

discord. The two URD delegates quit. Copei delegates signed the Constitution, but also made it clear that they did so “with reservations,” condemning the process as illegitimate and denouncing AD’s “totalitarian tendencies” (Kornblith 1991:73).

With this level of *O* discontent, the Trienio regime remained shaky, constantly facing insurrection. This instability compelled AD to become less accommodating toward *O* (Magallanes 1977:350-51). But the government was also gratuitously insensitive. In March, the government appointed Luis Beltrán Figueroa as Minister of Education; he was the most ardent advocate of the “estado docente” thesis and thus the most significant bone of contention with the Church. In July 1947, it even arrested key leaders of COPEI. In November 1948, the military, led by the Chief of the Estado Mayor, Marcos Pérez Jiménez, presented a set of conditions to the government: 1) that Rómulo Betancourt leave the country; 2) that AD disband its militias; and 3) that AD militants in the cabinet be replaced with independents (Stambouli 1980:81-2). The government, or more specifically, AD’s leadership, refused and was immediately overthrown; none of the opposition parties, including Copei, URD, and the PCV, condemned the coup. Copei’s communiqué about the coup explicitly stated that AD “bears the maximum responsibility” for the coup; 9 of the 14 paragraphs in the communiqué are criticisms of AD.

#### B. Low Asymmetry: The Constitution of 1961

The balance of forces during Venezuela’s next attempt at pact-making was entirely different. By 1958, one of the main lessons learned by AD in the 1950s was not so much that democracy was valuable, but that it was dangerous to alienate *O*. This is one reason that AD finally agreed to one of *O*’s most important demands from the

Trienio—the creation of a coalition government. AD even agreed to relinquish the strategic ministries of labor to URD, and education, to an independent figure, satisfying COPEI’s demand to keep adeco secularists from controlling education (Velásquez 2005).<sup>8</sup> The most important symbol of AD’s new conciliatory attitude toward COPEI was the fact that the foundational accord—the Punto Fijo Pact—was signed at the private residence of this party’s president, Rafael Caldera’s Quinta de Punto Fijo, hence the pact’s name.

AD changed its attitude vis-à-vis *O*. AD saw that *O* was strong—not strong enough to defeat *I* electorally, but strong enough to unseat it from power (Corrales 2001). This reduced asymmetry between *I* and *O* was confirmed in the 1958 elections. The difference in votes between *I* and *LOFs* was a tiny  $-1.64$  (Table 2). AD approached pact making in the late 1950s, including the constitutional process of 1961, with an attitude of respect toward this new symmetry, a true turn-around from the 1940s (Myers 2004).<sup>9</sup>

Furthermore, AD was so respectful of this new symmetry that it chose a selection rule for constitutional delegates that was even more extremely favorable to *O* (Caballero 1977).<sup>10</sup> Rather than rely on proportional representation based on direct vote (which would have given AD a strong advantage), *I* and *O* agreed to choose delegates based on congressional representation, where *LOFs* were strongly represented and *SOFs* were slightly overrepresented (in relation to the results for the presidential election). Raúl Leoni of AD and Rafael Caldera of COPEI decided that the constitutional commission would be composed of eight representatives from AD, four from COPEI, four from URD, three from PCV, and three independents (Kornblith 1991:72). *O* obtained 65 percent of seats in the Constitutional Commission, a pro-*O* asymmetry of  $-27.2$  (Table 2). This distribution of seats at the negotiating table was even more favorable to *O* than the

distribution of seats in congress, where *I* had an advantage of 9.7 points. In short, table asymmetries were generously favorable to *O*.

The result was a Constitution designed to prevent single-party hegemony. In terms of legislative and partisan powers—the standard metrics used by Shugart and Carey (1992) to measure levels of presidentialism—the 1961 constitution was not terribly different from the 1947 constitution (see Appendix). In terms of state-party and state-society relations, however, the difference was enormous. The president's power to make preventive arrests disappeared. Article 113 explicitly stated that “electoral bodies shall be composed in such a way that no political party or group predominates,” which was achieved by proportional allocation of ministers and the provision of state funding for the opposition parties. Such measures precluded the development of an overbearing majority party, lowering the cost of losing and increasing incentives for opposition parties to uphold the pact. AD also agreed to one of COPEI's principal demand by refraining from reinserting a clause from the 1947 constitution stating that “La educación es función esencial del Estado” (in Article 53). Instead, the 1961 constitution introduces a constitutional guarantee on behalf of “education liberty” and “state promotion and protection of private education” (Articles 55, 78 and 79), thereby putting an end to the most divisive issue between COPEI and AD during the Trienio. Furthermore, the 1961 constitution adopts more explicit mechanisms for incorporating certain “social forces” into policy-making processes (Kornblith and Maingón 1984:76-8).<sup>11</sup> Presidents were banned from immediate reelection and allowed to run again after 10 years. In contrast, no term limits were imposed on legislators. The concessions to *O* were so substantial that they would result, over time, in what Coppedge denominated as “partyarchy,” which, in combination with the constitutional prohibition of presidential reelection, led to chronic

“lameduck” presidents (Kornblith and Maingón 1984; Coppedge 1994; Crisp 2000; Crisp and Johnson 2001; Corrales 2002; Monaldi, González et al. 2005).<sup>12</sup>

*I*'s policy of lowering the asymmetry in favor of *O* cost it dearly: AD suffered two major defections, and almost 11 serious military and civilian rebellions between 1958 and 1963, many of which were supported by *SOFs*. *SOFs* were unhappy because they failed to make as many gains as *LOFs*. Since *SOFs* were underrepresented in the Constitutional process (in fact, deliberately excluded), their leftist demands did not make it into the Constitution. They were the unsatisfied actor of the 1958-61 foundational pacts, and by 1962, they embarked on an armed insurrection against the regime. Nevertheless, the remarkable consequence of this Constitution was to produce a degree of “cooperative competition,” to borrow from Schmitter and Karl (1991) between *I* and *LOP* that lasted until 1988.

### C. Negative Asymmetry: The Failed Constitutional Reform of 1992

Pact-making depends on the relative position, not only of *O*, but also of *I*. If *I* is weak relative to *LOFs*, then pact-making is improbable. This situation brings about the condition that according to Przeworski is most inauspicious for pact-making—uncertainty about electoral prospects. It explains *I*'s 1992 decision to abort an *O*-sponsored initiative to rewrite the constitution.

The political context for the rise of a new foundational pact was optimal in 1989. All sectors of the political spectrum recognized that Venezuela was suffering from a chronic economic and political crisis. Furthermore, asymmetry was low: *LOF* was strong: although Copei suffered an unexpected defeat in the 1988 presidential elections, its performance was stronger than in the previous election of 1983 (see Table 2).

Furthermore, the distance between *I* and *O* shrank even further in the 1989 mayoral elections. *O* was strong enough to demand a new pact, but *I* was still enough ahead to accede.

As predicted, legislators from COPEI, Venezuela's leading *LOF*, proposed a legislative commission to study the possibility of reforming the constitution in 1989, maybe even drafting a new one.<sup>13</sup> The Senate approved the proposal unanimously, demonstrating that both *I* and *O* forces were supportive. Copei's president, Rafael Caldera, was appointed president of the Bicameral Commission for the Revision of the Constitution. By 1992, the commission had created a huge agenda for change, including a proposal for a Constituent Assembly (Alvarez 1998). The commission wanted a new constitution calling for fairly significant changes such as requiring the internal democratization of parties, introducing the recall referendum, shortening the president's term in office, creating a prime minister and an ombudsman, reforming term limits of elected officials, etc. These were presidential-abatement proposals, as is to be expected from *O* forces (Combellas 1993; Kornblith 1995). In early 1992, after a coup attempt in February, the commission acquired a high profile in Venezuelan politics, as multiple organizations of civil society believed that a Constituent Assembly, or a constitutional reform, was the best way to solve the crisis (Márquez Ferrer 1998:22).<sup>14</sup> In March, the commission submitted its recommendations for discussion in the Chamber of Deputies, and later, deliberations began in the Senate as well.

By 1992, however, the asymmetry of forces had changed dramatically: the low asymmetry of 1989 gave way to a negative, pro-*O* asymmetry. The electoral decline of *I* resulted from a series of political shocks: disagreement within and among party elites about the wisdom of the market-oriented policies pursued by the government, two coup

attempts, frequent street protests, and a precipitous decline in the popularity of the president. All polls suggested that both *LOFs* and *SOFs* (MAS, La Causa R) were becoming stronger. An informal recall referendum organized in June 1992 by one *SOF* (La Causa R) showed the “NO” (continuity of the president) option winning by 87 percent (Sanoja Hernández 1998:173).

AD was thus perfectly aware that its prospects for the 1992 mid-term and the 1993 presidential elections were dim. Aware of its decline in relation to *O, I* lost all interest in constitutional change (Revista SIC 1992:381).<sup>15</sup> On March 1992, AD vetoed the idea, and in June, it decided to reject the proposal from a *SOF* (MAS) to simply amend the constitution to shorten the presidential term (Kornblith 1997; Sanoja Hernández 1998).<sup>16</sup> The legislature continued to debate the proposals, with COPEI leaders becoming increasingly enthusiastic, but in September, AD’s leadership issued a communiqué: “given the adverse environment,” it was inadvisable to continue discussions on the issue (Kornblith 1997:98). The whole project was thus shelved.

No Venezuelanist has convincingly explained why Rafael Caldera, who presided the Bicameral Commission for the Revision of the Constitution until its demise, did nothing to reform the constitution once he became president (Combellas 1994).<sup>17</sup> Some claim hypocrisy (Alvarez 1998:109); others blame the post-1993 Congress (Combellas 1998:xi). My argument is that the real reason was negative asymmetry. Caldera won office in 1993 with an asymmetry of -39.1 (Table 2). He was a minority president, controlling neither the Congress nor the governorships. Under conditions of negative asymmetry, not even a prior advocate of constitutional change developed an interest in constitutional negotiation.

#### D. Extreme Asymmetry: The Constitution of 1999 (The Fifth Republic)

The 1999 Constitutional process, on the other hand, occurred in a context characterized by a pro-*I* asymmetry that was even more extreme than during the Trienio. Both table and inter-institutional asymmetries were huge. A new constitution emerged, but one that intensely displeased *O*.

Hugo Chávez in 1998, like Oswaldo Alvarez Paz in 1993, ran for office largely on a platform to “refound” Venezuela’s democracy and change the Constitution. The idea of a Constitutional reform, dead since 1992, experienced a major revival around the 1998 elections, as many civic leaders (Alvarez 1998:113)<sup>18</sup> and even Congressional leaders (see *El Universal* (March 23, 1998)) intensified their call for constitutional reform. Chávez made this his campaign banner.

Once elected, Chávez faced the obvious question: what selection rule to adopt for the Constituent Assembly. After the December 1998 presidential elections, in which Chávez did well (56.2 percent of the vote), and the April 1999 referendum to change the constitution, in which the “yes” vote did even better (71.8 percent of the vote), Chávez realized the magnitude of his popularity across the *voting* electorate (whether it was widespread across the *entire* electorate is hard to gauge because abstention rates were high). Honeymoon elections tend to be hugely beneficial to *I* forces to the detriment of runner-up forces (Shugart and Carey 1992:251), and in 1999, Chávez estimated correctly that this effect would indeed be large. He became determined to take advantage of this effect, and thus, his rush to complete the referendum for the Constituent Assembly.

When the referendum results confirmed the honeymoon effect (i.e., an overwhelming support for *I*), Chávez acted like AD in 1946: feeling no need to

accommodate *O*, he did little to accommodate it. He chose a selection rule for constitutional delegates based not on parliamentary representation (as the Constitution mandated, the Caldera commission suggested, and many notables including members of the Polo Patriótico argued). Instead, he chose direct popular elections based on majoritarianism (Alvarez 2005).<sup>19</sup> The reason for avoiding congress was simple: asymmetry was decidedly pro-*O* (-7.6 in Deputies, Table 2) (see also Alvarez 1998:111, 126).

Although the total votes obtained by opposition and independent candidates reached approximately 30 percent, only six made it into the Constitutional Assembly (Penfold 1999; Maingón, Baralt et al. 2000:91-124; Crisp and Johnson 2001; Coppedge 2003). The result was a dramatic inter-institutional asymmetry of 88.6 at the Constituent Assembly, the largest distance between *I* and *O* ever in Venezuela—what Blanco (2003:235) calls an excessive “*ventajismo*” for the president.

Asymmetry was huge not just between *I* and *O* at the negotiating table, but also between *O*’s real strength across the country and its representation at the table. In 1999, *O* parties were in trouble, but they were not decimated. In the November 1998 Congressional elections, which took place only nine months prior to the elections to the Constituent assembly, *O* parties received 53.8 percent of the seats in the House of Deputies. *O* also obtained fourteen of twenty-three governorships.

The president was able to achieve this *ventajismo* this because of clever electoral strategizing,<sup>20</sup> and because *LOFs* were in disarray and demoralized in the first half of 1999, and the anti-*LOF* sentiment, strong through the 1990s, actually peaked in Venezuela in the first half of 1999 (Stokes 2001; Domínguez 2003:358-63).<sup>21</sup> With *LOFs* in disarray and in disrepute, the only recourse available to challenge the president

was the Supreme Court, as indeed happened in Venezuela. The problem is that Supreme Courts in Latin America seldom act as effective challengers of presidential powers, let alone during honeymoon elections and in situations in which public opinion is decidedly favorable to the president (Helmke 2004). Venezuela's Supreme Court in 1999 acted no differently. The Supreme Court tried but in the end proved unable to stop the president.

Early in 1999, the president had proposed two questions on the constitutional referendum. The first question asked Venezuelans to authorize the president to carry out a constitutional assembly. The second question asked Venezuelans to authorize the president to decide the "electoral process for selecting the members of the National Constituent Assembly" (Presidency of the Republic 1999). In March 1999, independent lawyer Gerardo Blyde Pérez asked the Supreme Court to annul Question 2, arguing that electoral rules had to be decided by the official electoral body (the Consejo Nacional Electoral) and not the president. On April 15, 1999, the Supreme Court ruled in favor of annulling Question 2. But after a series of negotiations with the Consejo Nacional Electoral, which changed officers in the meantime, the Court agreed to a reformulation of Question 2 that essentially granted the president the right to decide the electoral rule.<sup>22</sup>

No power was thus able to stop the president from creating huge table and inter-institutional asymmetries. Consequently, *O* responded to the constitutional assembly by feeling cheated. *O* could do nothing to deter *I* from drafting a self-serving document. *LOFs* were seriously underrepresented at the assembly and demoralized, and the few independent delegates who were present were divided among themselves and uninterested in coordinating their positions with *LOFs*.

The result was a constitution heavily biased toward *I* and thus, highly presidentialist, in detriment of *O* (Márquez Ferrer 1998; Alvarez Díaz 1999; Revista SIC 1999:434-35; Virtuoso 1999; Maingón, Baralt et al. 2000; Blanco 2003:250-54)..<sup>23</sup> Table 3 shows the 17 most polemical issues debated in the assembly and whether *I*'s preference prevailed or not. The information is drawn from papers by an authoritative witness—Ricardo Combellas, president of the Commission on Executive Powers during the Constituent Assembly. The table shows that indeed there was considerable discussion on a wide range of issues, some of which split even the pro-*I* forces. But the table also shows the extent to which Chavez's preferences prevailed.

The Assembly not only codified the majority of the president's preferences (i.e., slighted *O*), but more seriously, it increased the costs of being in the opposition. Although the constitution guarantees enormous civil rights and creates new powers independent of the Executive branch (Viciano Pastor and Martínez Dalmau 2001), it undermines the rights of organized opposition and the institutions that, in presidential systems, are typically available for capture. State funding for parties, for instance, was banned (de facto, reserving state funding only for *I*). The judicial council, the mechanism through which parties control the judiciary, was also abolished. More laws can be created by referenda, thereby bypassing party input. Congressional (and thus party) control of the military was abolished (Norden 2003:100).

The changes pertaining to the military also weakened *O*'s status in Venezuela. By abolishing the 1961 principle of the “apolitical” and “non-deliberating” character of the armed forces, the armed forces obtained the right to participate in politics and to vote in elections. The other side of the coin is that the president, as commander in chief, obtained the right to use the armed forces for political positions, including the right to fill

the bureaucracy with officers, to grant the military power to disburse social spending, to include military officers in the cabinet and private deliberations, and to present military officers as candidates in elections. By declaring promotions the sole autonomy of the Armed Forces, the new Constitution abolished any parliamentary control over military affairs, giving them entirely to the Commander in Chief (Lander 2000). For a civilian-based *O*, this empowerment of the military constituted a clear political displacement.

The president obtained the possibility of re-election and expanded the presidential term in office from five to six years, contradicting the consistent spirit of most opposition parties since Pérez to reduce the presidential term. The new figure of a vice-president was created, but the Congress was given no say in nominating or approving candidates for the position, contradicting the opposition's desire to have a chief of cabinet more accountable to the legislature. Although the National Assembly obtained the right to fire the vice-president through a vote of censure with a two-third majority, the President obtained the right to dissolve the National Assembly after three votes of censure within the same presidential term. In essence, the constitution grants the president the last shot in this game, which is equivalent to granting him the power to always prevail. Finally, the Constitution granted the state enormous prerogatives to intervene in the economy, and increased the state's monopoly control over the oil sector (Guerrero 2003). The new constitution also lessened the restrictions, in terms of justifications and duration, of enabling laws.

Although the new constitution incorporates *O*'s long-standing request for an innovative recall referendum, the threshold for removal was set too high: 20 percent of registered voters must sign a petition, 25 percent of registered voters must participate, and the number of votes on behalf of the recall option must exceed the number of votes

cast for the official in question in his or her most recent election. Furthermore, insofar as this mechanism is still considered a “check” on power, it was also applied to all other public posts (including municipal councils) and even legislative bills, not just the president, something that does not exist in most other constitutions permitting the recall referendum for executive posts (Kornblith 2006). In effect, this cancels out the extent to which the Constitution checked the power of the Executive branch—all other powers received the same check.

As an instrument to check the power of the president, the power of the recall option varies according to the original popularity of the officer. If the officer was elected with a wide plurality, the threshold for removal is so high that the impact of the recall option as a deterrent mechanism is lessened. If the president wins by a narrow vote or in the context of high abstention, however, the recall option can become a credible and easy threat (Carey 2003). In short, the recall option in Venezuela is mostly an instrument to curtail the power of narrowly elected presidents, rather than strong presidents. Furthermore, the recall option can also become an instrument for maximizing the power of the president vis-à-vis opposition officials: the president can activate the recall option against other officers elected by minority parties in the local posts, where incidentally, abstention tends to be higher (Alvarez 2003:154).

Additionally, the 1999 Constitution reversed the process of decentralization underway since 1989 and which was so dear to *O*. The elimination of the Senate meant that no branch of government was left to voice state interests equally, where *LOFs* had strong representation. The stress on direct participation rather than parties meant that traditional campaigning techniques, in which *Os* had an advantage, would no longer be

useful (Alvarez 2003:152). Strengthening the power of the Executive vis-à-vis Congress and the provinces by definition hurt *O*, whose stronghold was precisely those arenas.

In short, the costs of being in the opposition, and the obstacles for escaping this status, had never been higher in Venezuela's democratic history. *O* parties were in disarray after the 1998 elections, but the provisions of the 1999 Constitution made recovery difficult.

Biased as its content may be, perhaps the most pro-*I* initiative that emerged from the entire process was the Executive's March 1999 decision to treat the Constituent Assembly as an "originating" (*originaria*) body (Viciano Pastor and Martínez Dalmau 2001:143-158). The government defined an "originating" body as one that enjoys all the rights to "transform the state and create a new juridical order" (Combellas 2003:16). Several jurists and *O* leaders condemned this as a dangerous and excessive concession of powers to the Assembly. They wanted instead the existing political bodies ("*poderes constituidos*") to limit the actions of the Constituent Assembly (Maingón, Baralt et al. 2000:102). Even the Supreme Court ruled in April 1999 against treating the assembly as *originaria* (Viciano Pastor and Martínez Dalmau 2001:136-137).

*O*'s nightmare about the steam-rolling effects a pro-*I* "originating" Constituent Assembly materialized quickly. In August 1999, the National Assembly, with the help of chavista supporters, seized the parliament building (the *Capitolio*) and deactivated congress. In September, the Assembly began to penalize federal judges, in part because the Supreme Court expressed some reservations about the extraordinary powers being assumed by the Constituent Assembly. The president of the Supreme Court, Cecilia Sosa, resigned, arguing that the courts preferred to "commit suicide" rather than accept

assassination (Combellas 2003). In November, the directorate of the Assembly approved a decree restricting the extent of the debate, in order to rush the signing of the constitutions, thereby foreclosing the possibility of introducing amendments and corrections (Combellas 2003). In December, a week after the electorate approved the new Constitution, the Constituent Assembly decreed the “Public Power Transition Regime” (*Régimen de Transición del Poder Público*), whereby the existing Congress, the state legislatures, the authorities in the Supreme Court of Justice, Attorney General, the National Comptroller, and the National Electoral Council were disbanded. The Assembly proceeded to appoint “provisional authorities” for these posts, including a twenty-one-person provisional legislature (the *Congresillo*). The newly appointed chief magistrate of the Supreme Court, Iván Rincón, was one of the previous justices to rule that the Constituent assembly was “*originaria*.”

Endowing the constituent assembly with so much sway was Chávez’s “self-coup,” a term applied to Peru’s President Alberto Fujimori when in 1992 he disbanded the leading political institutions at the federal level that were capable of holding him accountable. Chávez accomplished the same by way of the 1999 Constitutional Assembly (Coppedge 2003). *O* leaders were aghast, all the while *I* accused them of being oligarchs.

Today, many *O* leaders argue that the 1999 Constitution was directly written by the President. This is not true. *I* delegates were able to introduce initiatives that did not exactly match the preferences of President Chávez, and which in some occasions surprised him. However, it is true that all the initiatives that the Executive strongly wanted were approved by the Assembly, including changing the name of the country,

expanding the presidential term in office and permitting reelection, abolishing the Senate, and providing greater autonomy and political rights to the Armed Forces.

To summarize the argument thus far, asymmetry is a critical variable in explaining the *incidence* and *content* of constitutions. Under extreme asymmetry, constitution-making will disproportionately favor *I*. *O* forces will be institutionally and morally weak to pressure *I* sufficiently. Resistance is left in the hands of the court system, which in Latin America seldom have the power to go against *I*, especially in moments of splendid honeymoons. These types of constitutions are less likely to be self-enforcing. *LOFs* and *SOFs* would walk out of the negotiations enormously resentful, and if the opportunities present themselves, they will turn highly antagonistic towards *I*. Under low asymmetry, on the other hand, constitution-making is more likely to favor *O*, and thus lead to more self-enforcing constitutions, and *LOPs* will be happier with the status quo. Under negative asymmetry, *I* will do all it can to avoid constitutional change. The Venezuelan cases show that the emergence of pacts, and thus political liberalization, occurs under low asymmetry, i.e., when both *O* and *I* are politically strong. The next sections extend this argument to other cases in Latin America in the 1990s and the United States in the 18th century.

## VI. From Unhappiness to Unrest

What happens to unhappy actors? Do they turn against the new constitution (i.e., create regime instability) or resign themselves to their lot (lend stability)?

There is huge distance between unhappiness and unrest. Mere political displeasure is not sufficient to render *LOPs* or *SOFs* confrontational. Other factors matter. The literature on the sources of instability is enormous. The reasons for protesting, or for being politically unhappy, can be numerous, maybe even infinite. But whether this unhappiness leads to active confrontation with state power may depend on more specific factors.

For the sake of simplicity, I focus on two factors that, in my estimation, are crucial in explaining whether unhappy actors in a democracy turn against the existing regime: the post-constitutional behavior of *I*, and to a lesser extent, the performance of the economy. With these additional variables, I can explain regime stability in Venezuela following each of the constitutions studied. But first, it is important to understand *O*'s predicament under a pro-*I* constitution.

#### A. *O*'s predicament after the Constitution

In situations of excessive pro-*I* regime change, as Venezuela experienced in 1947 and 1999, *O* finds itself in a predicament. *O*'s new underprivileged status fuels its desire to protest, but it also presents new obstacles for *O*. Specifically, *O* forces face three formidable obstacles: a popular *I*, a pro-*I* constitution, and heightened internal problems hindering their ability to solve collective action problems (in part due to its weakness and its predictably low morale following the constitutional defeat). *O* thus finds itself in the midst of a dilemma: it has heightened reasons to challenge *I*, but it has even fewer means to do so. How can *O* muster the political force to challenge *I*? The answer depends mostly on the post-constitutional behavior of *I*.

B. How *I* can (inadvertently) help *O* solve its predicament

The most important force that can help *O* solve its predicament is, paradoxically, the post-constitutional behavior of *I*. Specifically, the type of policies pursued by *I* immediately following the approval of the constitution may inadvertently help *O* solve its heightened collective action problems. In their theory of political institutions, Acemoglu, Johnson and Robinson (2005) summarize conventional wisdom in political science by saying that political forces derive two sources of powers: *de jure* powers and collective-action powers. De jure powers are those prerogatives granted to political forces as a result of the rules of the games (e.g., degree of electoral competition, political and civil rights, electoral systems, campaign finance regulations). De jure powers determine what Kitschelt describes as the degree of “openness of political regimes to new demands on the input side”(Kitschelt 1986:63)<sup>24</sup> For Kitschelt, the more “closed” the regime on the input side, the more likely a social movement will adopt a “confrontational” rather than an “assimilative” strategy. A confrontational strategy consists of disruptive behavior outside established policy channels. A pro-*I*/anti-*O* constitution means reduced de jure powers for *O*.

How can *O* solve this predicament? Two *I*-based policies matter the most.<sup>25</sup>

One has to do with politics; the other, with economics. Politically, *I* can either continue to take advantage of its newly gained favorable provisions to expand its own power and weaken *O*, or instead, it can take steps to integrate *O* and lessen its discontent. Using Kitschelt’s conceptualization, *I* can either try to open up the institutions to the benefit of *O*, or it can close them further. In short, *I* can become overbearing or accommodating.

Second, *I* can decide to defeat *O* by manipulating the economy to its advantage. Political scientists recognize that economic conditions play an important role in shaping the incidence of protest (Haggard 1995; Diamond, Hartlyn et al. 1999; Przeworski 2000; Remmer 2003). In general, in middle-income countries, the deeper the overall economic crisis, or the deeper the degree of deprivation suffered by politically aggrieved groups, the higher the propensity of citizens to protest (Gurr 1993) or of voters to vote against *I* (Remmer 1991; 1993; 2003). Under favorable economic circumstances, on the other hand, *O*'s available allies (and reasons for complaints) may diminish. For this reason, *I* has an incentive to counteract *O* by generating economic improvements.

What *I* needs is to be able to channel economic gains to specific target groups in order to coopt their political support and eliminate ally opportunities for *O*. *I* needs clientelistic, distributive policies. Insofar as *I* is capable of manipulating economic variables to its advantage, either by generating growth, or more likely, by distributing material gains to specific, cooptable actors, it diminishes the number of allies available to *O* and thus lessens its propensity to protest.

### C. Completing the Analysis: Explaining for Post-Constitution Stability

We can now complete the analysis of the Venezuelan case (see Table 4). This section draws from (Corrales 2006a). The first variable, asymmetries at the moment of regime foundation, explains the type of constitution (pro-*I* in 1947 and 1999) and the response of *LOFs* (unhappy in 1947 and 1999) and *SOFs* (unhappy in 1961).

The second set of variables explain whether unhappy actors rebel or not. In 1947, *I* pursued anti-*O* political policies, leading to a grand alliance between *LOFs*,

SOFs, the military, the church, and business groups. In 1999, similar anti-*O* policies were followed, with two major exceptions: the military was treated better and the economic conditions were worse (see Corrales 2005; 2006b). *LOFs* and *SOFs* rebelled against *I*, but could not count on the full support of the military. Without such support, *O* forces could not topple *I*. After 2003, economic conditions improved dramatically and *I* turned hyperpopulist—distributing state resources to friends and denying them to adversaries (Penfold 2005). *O*'s anti-*I* alliance began to break apart. As Acemoglu, Johnson, and Robinson (2005) argue, collective-action powers are always transient, especially if *de jure* power are against you.

The same set of variables can explain regime stability during the Punto Fijo Regime. Between 1961 and 1968, economic conditions were favorable and *I* remained accommodating of *LOFs*. Thus, *LOFs* continued to cooperate, *SOFs*, in contrast, did not. And because *SOFs* found external support (Revolutionary Cuba), they actually rebelled militarily.

After 1968, *I* policy toward *SOFs* switches, turning far more accommodating (by legalizing the Communist party, inviting them to enter the University system, granting amnesties). *SOFs* split, with some groups deciding to re-enter the political system. The result was a period of long peace in which both *LOFs* and *SOFs* cooperated with the regime.

## **VI. Power Asymmetries and the Taming of Presidentialism in Latin America in the 1990s**

Significant scholarship emerged in the 2000s on the political and policy effects of different degrees of presidential powers (Haggard and McCubbins 2001; The World Bank 2001; Inter-American Development Bank 2005). However, not much work has been done on the sources of these powers, or more precisely, on the sources of factors that lessen presidential powers, other than Kantor's (1977) dictum about the need to offer competing centers of power. In the previous sections, I tried to explain the rise of different degrees of presidentialist constitutions in Venezuela: positive asymmetries led to hyper-presidentialism and huge discontent for *O*; minor, pro-*I* asymmetry yielded less presidentialist constitution; and large negative, pro-*O* asymmetry precluded agreements altogether. I now extend this analysis to Latin America in the 1990s and in the United States in the late 18<sup>th</sup> century.

Power asymmetries shaped the politics of foundational constitutions in Latin America since the 1980s. Table 5 lists all the Latin American countries since the late 1980s that changed their constitutions by means of a Constituent Assembly. The table shows asymmetries prior to the Assembly (based on distribution of seats in the lower chamber of congress), during the constituent assembly, and immediately following the eight constitutional processes that took place. The table reveals that, in terms of table asymmetry at the Constituent Assembly, Venezuela is clearly an extreme case.

#### A. Trigger Mechanisms in Latin America in the 1990s

Table 5 also shows that most constitutional assemblies occurred in a context of pre-existing pro-*I* asymmetry or low negative asymmetry (based on the results of the previous legislative elections (in the lower chamber of Congress, if legislature is bicameral), which is consistent with this paper's argument about the conditions that lead

to constitution change. The only cases of large negative asymmetry (Ecuador, Peru and Venezuela) exhibited exceptional circumstances or exogenous pressures. In Ecuador, for instance, *I* called for a constitutional assembly to placate the turmoil generated by reigning economic chaos and the political crisis that followed the impeachment of President Abadalá Bucaram. In Peru, Fujimori offered the constitutional assembly after carrying out a self-coup, bowing to international pressures and convinced he would win overwhelmingly. In Venezuela, Chávez rushed the constitution during the honeymoon, when there were signs of quickly rising popularity. In both Peru and Venezuela, presidents estimated that their level of popularity far exceeded the asymmetries in Congress, and hence their eagerness to launch a constitution process.

This record suggests that there were at least four major conditions that propelled *Is* to pursue constitutions in Latin America in the 1980s and 1990s (summarized in Table 6).

- 1) Compelling exogenous factors. These are structural pressures, or crises, that are so destabilizing that *I* becomes persuaded, often grudgingly, that a constituent assembly is the only political instrument that can placate political agitation. These exogenous pressures include serious economic crises or generalized political instability.
- 2) Regime Transition: The collapse of an authoritarian regime triggers a desire to carry out a Constitutional assembly. It is a time of enormous momentum for democratic forces, which are eager to lock in their gains.
- 3) Rising *I* Popularity: When asymmetry is pro-*I* and the Executive is persuaded that his or her popularity is rising (i.e., *I* anticipates large

asymmetry), *I* will be tempted to launch a Constitutional assembly as a way to extract concessions from Congress. A common prerogative sought by Latin American presidents has been to relax of the no-reelection clause, which became common in Latin American constitutions since the Mexican Revolution (Kantor 1977).

- 4) And finally, a rise in the strength of *O*, which, as argued in this paper, compels *I* to negotiate. *O*'s strength can rise in two ways: overwhelming street mobilizations, producing heightened instability, or through institutional means, what this chapter has labeled reduced asymmetry.

Three of these factors are consistent with Bruce Ackerman's argument about the factors that give rise to "new beginnings" through constitutions. Compelling factors correspond to Ackerman's "catastrophic defeat scenario;" regime transitions correspond to his "triumphalist scenarios;" and *I*'s desire to extract promises from Congress corresponds to his notion of the "maximal leader problem," when a leader emerges who in the eyes of the masses as "the" symbolic representative of the movement's yearning for political definition. One factor that is not part of Ackerman's analysis, but which this chapter has argued is crucial for democratic foundational pacts, is low asymmetry.

Table 6 also suggests that (except in Columbia and Paraguay) none of the factors above was sufficient to trigger foundational pacts. Two combinations prevail. First, compelling structural conditions (exceptional circumstances) triggered constitutional assemblies only in combination with the rise of *O* (through mobilizations, low asymmetry or even negative asymmetry). Second, a strong desire by *I* to seek new powers triggered constitutional assemblies but only if *I* anticipates a large asymmetry. The one exception

is Paraguay, where a structural compelling factor (regime change) alone was sufficient to trigger the rise of a constitutional assembly.

B. Who Wins--*I*, *O* or both?

Armony and Schamis argue that all majority-based democracies are susceptible to the temptation by presidents to “strive for greater autonomy...circumvent congressional and judicial oversight...and ultimately thwarting the principle of separation of powers” (Armony and Schamis 2005:116-117). If all democracies face a “perpetual tension” between the impulse of executives to concentrate more power, and the countervailing tendency of groups (in office or in society) seeking to control and oversee the Executive branch, these tensions become even more conspicuous during constitutional processes. During these processes, constituents sit on on different sides of this pull. Pro-*I* forces side with the Executive, whereas the opposition resists.

The best mechanism to counter the tendency for the Executive to concentrate power is therefore to maximize the size of *O*. *O* forces might have divergent opinions, and this diversity of views tends to weaken *O*'s bargaining leverage vis-à-vis *I*. But the more *I* pulls for presidential prerogatives, the more *O* will move closer toward, or unify around, the idea of restraining presidentialism.

Despite the variety of triggering circumstances, the experience of Latin America shows that most *I*s encountered significantly reduced table asymmetry during constituent assemblies, often to their utter surprise. This was true even in Argentina, Peru, and Bolivia, where presidents Menem (Calvert 2002), Fujimori (Kay 1996), and Morales expected large support and yet ended up with constituent assemblies that had less than

favorable table asymmetries. The sole exception was Venezuela, where table asymmetry turned out to be far greater than even Chávez anticipated.

Consequently, in all these processes except Venezuela, *O* forces obtained victories (i.e., reductions in presidentialism), including curtailment of Executive branch powers, empowerment of non-presidential institutions, deepening of decentralization, and more *LOF* access to political resources, such as state funding. In Argentina and Peru, presidents obtained their most significant preference (re-election permission and expanded decree authority, and in Peru, a smaller congress), but they had to concede to *O* more than they had planned (Jones 1997:290-98; Schmidt 2000; Llanos 2003:37-42).<sup>26</sup>

Table 5 also shows two types of constitutional processes in terms of table asymmetries: 1) subsidizers: those in which table asymmetry at the constituent assembly (either deliberately or accidentally) was negative (i.e., pro-*O*) or substantially lower than in the preceding election; and 2) non-subsidizers: i.e., those with positive table asymmetry. Among the subsidizers, Colombia stands out as the most generous, with a dramatic reversal of pro-*I* asymmetry prior to the constitutional process to a pro-*O* asymmetry during the constitutional process. Not surprisingly, the Colombian 1991 constitution curtailed presidentialism and empowered *LOFs* and *SOFs* significantly: it created the election of governors, gave governors more resources, reduced the power of the president in many policy areas, curtailed the president's ability to legislate by decree, increased the power of the legislature to overrule presidential veto (Archer and Shugart 1997; Cárdenas, Junguito et al. 2004).

Among the non-subsidizers, Venezuela 1999 is by far the most extreme. It went from a significantly pro-*O* asymmetry prior to the constitution to a formidable pro-*I* table asymmetry—the exact opposite of Colombia, but to a higher degree. The only case that comes close is Peru, but even there the reversal of asymmetries is less pronounced. In

Nicaragua, the ruling Sandinistas were particularly generous with *O* by following a selection rule that granted more representation to *O* than they achieved in the prior election (Reding 1987). In the other cases, the pro-*I* table asymmetries were low. In Brazil, for instance, the table asymmetry did not depart much from the pre-existing asymmetry, and consequently, the 1988 Constitution proved to be highly decentralizing, to the detriment of central and federal powers (Eaton 2004:155-59). In Nicaragua and Paraguay, the pro-*I* asymmetry actually declined in relation to the period prior to the constitutional assembly.

In short, the Venezuelan constitutional process stands apart. In Latin America's constitutional assemblies since 1987, table asymmetry favored *O*, improved in favor of *O*, or was not excessively biased in favor of *I*. Peru and more significantly Venezuela are the only two cases in which asymmetry was significantly pro-*I* and significantly different from the pre-constitutional period. They are the two cases in which the new constitution was the most expansive of Presidential powers.

### C. Mexico's 1996 Democratic Reforms

Although Mexico did not write a new constitution in the 1990s, it adopted a series of transcendental constitutional and electoral reforms in 1996, whose origin also support my power asymmetry argument. In 1996, Mexico's ruling party, the PRI, agreed to: 1) change the electoral law by reducing overrepresentation by the single-member district, costing the PRI five seats in Congress; 2) establish the autonomy of the Federal Electoral Institute, making it harder for the PRI to conduct electoral fraud; 3) make the office of the mayor of Mexico City an electoral post (rather than a presidential appointment); and 4) provide more funding and guarantee more media access to all

parties. These were the most democratizing, presidentialism-taming reforms in the past several decades in Mexico (Klesner 1997), and the preamble to *O*'s victory in the 2000 elections. The reforms incorporated demands that the *O* had been placing on the PRI since the 1980s.

Not coincidentally, the PRI agreed to these democratizing changes only when the party system achieved a level of reduced asymmetry that was favorable enough for *O* to pressure *I*, yet comfortable enough for *I* to feel it was safe to negotiate (see Brinegar, Morgenstern et al. 2001).<sup>27</sup> Major pressures for democratic reforms erupted in Mexico in 1988, not surprisingly, when power asymmetry was reduced to 2.8 (in the 1988 presidential elections) down from 62.9 in 1982 (Table 7). However, my theory predicts that *I* probably would feel too insecure at this point of *minimal* asymmetry to agree to major democratic reforms (especially given allegations that *I* was not even the legitimate winner in the 1988 election). *I* began to agree to some democratizing reforms only after its recovery in the 1991 midterm elections (Wise 2003), when asymmetry in the legislature improved dramatically from 4.2 in 1988 to 38.0 in 1991.<sup>28</sup>

It was only after the 1994 presidential elections, when asymmetry in the presidential elections became even more comfortable for *I*, jumping from 2.8 to 6.2 points, that *I* agreed to embark in the major reforms of 1996. And yet, *I* acted cautiously. Rather than convoke a constituent assembly, where asymmetries would have been low and possibly pro-*O*, *I* chose to negotiate the reforms in the legislature, where *I* had a considerably more comfortable asymmetry of 22.0. Pro-*I* forces in the legislature watered down the reforms that *I* had tacitly agreed with *O* (e.g., the amount of funds to be distributed proportionally to parties increased from 60 to 70 percent, which benefited the PRI). Because of these changes, *O* forces in the legislature did not support the reforms. The reforms were approved with the vote of *I* forces only.

In short, asymmetries help explain the rise of key democratic reforms in Mexico. *I* launched negotiations when asymmetry was low (in 1995), but not too low (in 1988-1991), and chose the arena of Congress rather than a constituent assembly, because asymmetry in that arena was pro-*I*. The result was a democratizing reform, albeit one that fell short of meeting the full approval of *O* forces. This is consistent with Magaloni's (2005) analysis of the creation of the IFE in Mexico (Magaloni 2005). Favorable but reduced power asymmetries had a twofold effect: it pressured the government to enact pro-democracy reform while simultaneously encouraging the government to believe that it could win under those rules. Believing that you can win, as Magaloni argues, is a precondition for this kind of change.

#### D. Aborted Constitutional Changes: Ecuador 2005, Colombia 1995 and 2002

The problem with discussing exclusively the cases in Table 5 is lack of variation in the dependent variable: the table includes only cases of adopted reforms and, thus, omits negative cases. Yet, as I argued, an important test of my argument is whether it can explain negative cases. To offer such a test, this section discusses three cases of failed reform efforts in Latin America—Colombia 1995 and 2002, and Ecuador 2005. They confirm the argument that under negative asymmetry, *I* will either relinquish—voluntarily or under pressure—the idea of pursuing a constituent assembly.

Like Venezuela in 1992-1998, Colombia 1995 is a case in which the president stops a process of constitutional reform because of declining asymmetry. In early 1995, Colombian president Ernesto Samper established a “Commission to Study Political Party Reforms,” with an eye toward reforming the recently enacted 1991 constitution. As in Venezuela in the late 1980s, a comfortable pro-*I* power asymmetry (of 13 points in the

Lower Chamber) encouraged a president to take the risk of starting a process of constitutional reform. The commission recommended various changes to the constitution, which received strong support from the president, his party (the Liberals) and the two leading opposition parties (the Conservatives and the M19).

However, as in Venezuela in 1992, a sudden erosion of the pro-*I* power asymmetry killed Samper's initial interest in pursuing the reform. Shortly after the commission issued its recommendations, credible revelations that drug money had made it into the Samper campaign engulfed the country into a serious political scandal. The scandal led to a major split in the ruling party, various resignations of key cabinet members, unrest in the military, discontent throughout business sectors, and a major confrontation with the United States. In terms of power asymmetry, the main consequence of the Colombian political crisis was to cloud the initial pro-*I* asymmetry. Samper was never able again to know for sure how many of his party members—or any other political actors—would side with him or against him and seek his impeachment. Almost every political sector began to negotiate their support to the president (Restrepo M. 1996). To save his administration Samper spent the rest of his term doling out state favors, leading to heavy deficit-spending (Latin American Regional Reports: Andean Group 1996:7; Leal Buitrago 1996), and “atomization” of the leading parties (Pizarro Lengomez 1996).

Another case of aborted reform occurred again in Colombia in 2000-02. President Andrés Pastrana proposed a series of reforms intended to increase presidentialism, only to see his plans frustrated by a power asymmetry that favored the opposition in Congress. The effort began when, in the context of a series of corruption scandals implicating members of Congress, Pastrana felt the time was right to score major inroads against the legislature. He proposed a referendum to approve a series of

reforms to the 1991 Constitution, which he and many actors blamed for Colombia's increasing governability problems. Pastrana's proposals included a reduction in the number of members of congress, the adoption of a new electoral system of proportional representation, a reform of campaign finance, and the annulment of the current congress followed by new legislative elections. It soon became clear that Pastrana's proposal was oriented toward weakening parties and Congress (Ulloa 2003:206). But Pastrana's party, the Partido Conservador, controlled less than 25 percent of Congress. Pastrana had come to office because of a "Grand Alliance for Change," formed between his party and anti-Samperista dissidents in the Liberal party, including former Samper cabinet members (Latin American Regional Report: Andean Group 1998:6-7). Instantly, Pastrana's proposal caused the Alliance to disintegrate. The Partido Liberal, holding a vast majority in Congress, turned against the president and even proposed revoking Pastrana's mandate. The President was not only forced to desist, but also to reshuffle his cabinet and appoint a Liberal party member to his cabinet. Colombia's negative, pro-*O* asymmetry was strong enough to force an even popular President from wanting to change the constitution to his advantage.

Finally, the 2005 Ecuador case is a rare example of almost perfect negative asymmetry, and by extension, failed constitutional reform. Alfredo Palacio took office in April 2005 after Congress forced the resignation of President Lucio Gutiérrez. Palacio was Gutiérrez's vice president. Congress appointed him not only to signal continuity, but also because in the last months of the Gutiérrez administration, Palacio had become an outspoken critic of the president, and in addition, was seen as party-neutral. Palacio was not a professional politician; he was a cardiologist and health minister prior to becoming vice-president and thus had no connections to any party in congress. As soon as he took office, Palacio promised to calm the country's political crisis by "refounding" Ecuador's

political institutions through a constituent assembly. Like Chávez in 1999, Palacio proposed a constitutional assembly that would have the power to sack all institutional powers, especially the legislature. Some of Palacio's proposal threatened directly the power of existing party leaders, e.g., requiring parties to renew their leaderships every two years, and requiring that they carry out primary elections for leadership posts (Latin American Regional Report: Andean Group 2005:6). But Palacio had no representation whatsoever in Congress. This was the equivalent of almost 100 percent negative asymmetry. The president spent most of his political energy between April and December trying to get the assembly process underway, but since the two leading parties in Congress, the Partido Social Cristiano (PSC) with 24 percent of the seats, and Izquierda Unida, with 15 percent of the seats, were in the opposition, Congress naturally responded vehemently, consistently resisting the president's efforts to hold a constitutional assembly. In December, Palacio attempted to bypass congressional opposition by going directly to the Supreme Electoral Tribunal. The government requested the court's authorization to carry out an election for a constitutional assembly. But Congress, aware of Palacio's low approval ratings at the end of 2005 (hovering around 28 percent), began to consider the possibility of impeaching the president. They even took the dramatic step of reshuffling the Supreme Electoral Tribunal to guarantee a negative vote on the president's request. The reshuffling of the court began with the sudden resignation of its president, Gilberto Vaca, a member of the Partido Social Cristiano. In his place congress appointed another PSC man, Xavier Cazar, and substituted two leftwing members of the court who were in favour of the constituent assembly. The result: the Tribunal voted five to one against the government's proposal (Latinnews Daily 2005). The interim interior Minister, Galo Chirigoba, accepted the government's defeat: "A chapter in the history of Ecuador has closed; in which the

people wanted to use their rights and decide their own destiny; lamentably this has not been possible" (ibid.).

In short, negative power asymmetry helps explain three recent negative cases of constitutional change in Latin America. In Colombia 1995 declining pro-*I* asymmetry forced *I* to change its mind. In Ecuador 2005 and Colombia 2000-02, presidents attempted to rewrite the constitution so as to maximize Executive Branch power vis-à-vis the Congress, but pro-*I* asymmetry precluded them from carrying through.

## VII. Asymmetry-Reducing Rules and the Taming of Presidentialism: the U.S. Constitutional Process, 1787-91

The previous section focused on table asymmetry. It showed that reduced pro-*I* asymmetry at the constitutional meeting can tame the degree of presidentialism in the emerging constitution. Now I want to discuss the other way of reducing power asymmetry that I raised in the discussion of Venezuela: adopting a decision-making rule that maximizes the power of the minority groups during a constitutional process. Such a rule was adopted during one of the most famous constitutional assemblies in the world: the Philadelphia meeting of 1787, which drafted the current U.S. constitution.

### A. Explaining the Taming of Presidentialism

The U.S. Constitution is often regarded as having produced a strong presidentialist (Lijphart 1991:74; 1992). Historian Paul Johnson (1997:189) even argues that the U.S. constitution granted the president far more powers than most monarchs of the time enjoyed. Today, among the 22 advanced democracies with uninterrupted

democratic politics since 1950, “the United States stands almost alone” in possessing a single popularly elected chief executive endowed with important constitutional powers; in most other cases, some variation of parliamentary system exists in which the Executive, the prime minister, or both are chosen by parliament (Dahl 2001:62-63).

However, if one approaches the question by looking at the alternatives that were rejected, as well as the non-Executive branch institutions that were empowered during the Philadelphia convention, the story becomes one of taming presidentialism. Features such as separation of powers, the existence of checks and balances among government branches, the creation of two legislative branches, the empowering of the Senate to oversee cabinet appointments, and even the extent to which federalism was allowed to survive and thrive are all victories obtained by those who did not want a powerful presidency. These great compromises (Berkin 2002:71-2) in presidential powers were the result precisely of asymmetry-reducing decision-making rules adopted by the framers.

I have argued the idea that less presidential, and hence, more self-enforcing, constitutions emerge in situations in which power asymmetry is somewhat but not extensively positive in favor of *I*. Prima facie, this argument seems inapplicable to the U.S. Constitution because, in the 1780s, there was no clear *I* to speak of. However, there were several political groups vying for influence during the constitutional debate, separated by huge differences in political resources. Specifically, there were three blocks divided among different type of assets: 1) population size (populous versus least populous states), 2) labor status (free-labor states versus slave-holding states), and 3) land/ports-endowed states (the south plus New York, Pennsylvania and Massachusetts versus the others).

The salient feature of the constitution process in the United States was the extent to which the framers chose a series of rules for conducting the negotiations that reduced

the enormous asymmetries within each of these blocs, thus empowering the least powerful group within each bloc, namely the least populous states, the slave-owning states, and the economically disadvantaged states. And these rules explain the “great compromise that is known today as the U.S. Constitution.

#### B. Triggering factors

In terms of Table 6, the Philadelphia constitutional process was triggered by “compelling structural forces.” By 1787, the newly established confederation of 13 “sovereign states” was facing both a severe economic crisis and a constitutional crisis. The latter was causing the former. Because states were refusing to contribute financially to the Congress (the constitutional crisis), the Congress was unable to meet its debt and borrow under favorable terms in international markets (the economic crisis). Consequently, it could not confront domestic and military threats (see Edling 2003). The previous “constitution,” the Articles of Confederation (1781), gave the Executive branch almost no meaningful power to raise money (any form of taxation required unanimous or close to unanimous consent). Excessive veto powers precluded the government from providing necessary public goods, which lowered even further the few incentives that states had to cooperate with the national government. The growing threat from foreign powers (especially England and Spain), and domestic insurgents (e.g., the 1786 Shay rebellion) convinced many of the need for a more powerful central government. Alexander Hamilton and James Madison emerged as the leading proponents of this nationalist formula, which by the summer of 1787 had become quite appealing.

The central political dilemma that the framers faced when they met in Philadelphia was how to substantially empower a national government to provide public

goods (defense against external and internal threats, economic regulation of intra-state and foreign trade) without sacrificing state prerogatives. From the point of view of its most influential intellectual driver, James Madison, the issue was also how to regulate the “luxuriancy of legislation” that the state legislatures were developing since independence. For Madison, these laws and treaties were often contradicting or encroaching on each other’s rules and encumbering the national government (Maier, Smith et al. 2006:211). A generalized fear of the new nation balkanizing into 13 different republics created a sense of crisis among the attendees.

The attendees more or less agreed on the need to create a stronger national government, but they disagreed on how strong. Three major ideological groups emerged. At one extreme, there was a group that wanted a strong president and a centralized national bureaucracy (i.e., little autonomy to the states). This group was led by Alexander Hamilton and, to some extent, James Madison. At the other extreme were those who wanted to maximize state autonomy and minimize the central power of the national state. In the middle, there was yet another group who pressed for a strong national Executive but who recognized that for practical reasons, it was important to institute limits on Executive power and preserve some degree of federalism. At the start of the convention, the former group, otherwise known as the Federalists, dominated the floor (at least in terms of numbers) (Anderson 1993).

### C. Asymmetry-Reducing Decision-Making Rules

The Hamilton/Madison centralizing proposal did not prevail in the end,, partly because this view was not entirely popular. Nearly all Americans agreed that the president’s power needed to be curtailed because the memories of the tyranny of King

George III were still vivid (Beeman 2006:B12). Yet, that view was initially popular among many of the delegates who met in Philadelphia. My argument is that the reason that this preference did not prevail had to do, not with public opinion, but rather with, the asymmetry-reducing decision-making rule adopted during the constitutional debates.

The two most important asymmetry-reducing selection rules adopted in Philadelphia were: 1) each state would obtain one equal vote (each state was allowed to send as many delegates as they wanted but all delegates had to produce one vote per state); and 2) a large majority (9 out of 13 states) would be required to ratify the final document, based on majorities within each state's assemblies. Essentially, the principle of simple majority rule was jettisoned in favor a higher threshold of decision-making. This was a supremely pro-*O* selection rule that allowed minority groups to play hard on almost every issue. The result was a constitution that substantially accommodated the demands of the smaller factions in almost every thorny issue in the negotiations.

This accommodation becomes clear by tracing the evolution of two major issues issue debated in Philadelphia: 1) the system for allocating representation in the federal government, and 2) the degree of power in the hands of the Executive (or alternatively, degree of federalism) to regulate state's economy. For each of these issues, the final outcome was the one favored by minority blocs.

Table 8 provides the three different blocs at the convention that divided the delegates, their relative powers (based on populations), and their most intense preference regarding either of these two issues. On the cleavage based on population, the more populous states wanted institutions of representation shaped by proportional representation; the minority group strongly disagreed (Robinson 1970). On the cleavage based on type of labor, slave-owning states, the least powerful group, wanted slaves to be

counted for representation issues (e.g., in allocating seats in congress). They also wanted to ensure that the new Executive, however powerful, would never have the power to erode federalism, so that they could retain their political rights to hold slaves. Finally, there was a division within northern states only, which pitted what Robertson calls the “economically disadvantaged states” against the other northern states (Robertson 2005). The economically disadvantaged states of the north (“south of Massachusetts” and “north of Virginia”) were those that did not have large land expanses or major ports to compete with Boston, New York and Philadelphia. In a nation that was becoming economically bifurcated between mercantile interests and agricultural interest, the least economically-advantaged states lacked the assets necessary to play either role. These states included Connecticut, New Jersey, Delaware, Maryland, New Hampshire, and Rhode Island. They wanted to centralize power “selectively,” i.e., granting to the federal government only those powers that conferred advantages to the other states, while simultaneously granting enormous rights to states to determine and protect their own economic institutions. This faction was led by the Connecticut Delegation, and more specifically, by Roger Sherman.

In this divided meeting, in which small blocs held strong opinions, adhering to a system of simple majoritarianism would have produced enormous discontent on the part of each of these blocs. Madison was perfectly aware of this problem and he thus arrived to the Convention with the so-called Virginia plan. This Plan was designed to create a solid majority that united at least two blocs. It entailed creating a strong president elected, not by direct vote, but by a Congress, in turn apportioned by proportional representation. The Virginia plan intended to unite two blocs: the federalists (those wanted a strong presidency), the three most populous states (Virginia, New York and

Massachusetts) and three slave states that were undergoing a population boom (Georgia and the Carolinas).

A vote was taken, and indeed, the Virginia Plan won six to five. The small and economically disadvantaged states were in the opposition. This produced a crisis in Philadelphia, because the outcome offended two key minority blocs. Economically disadvantaged and slave-owning states felt that the Plan empowered the president and the larger states far too extensively. They threatened to walk away. If the delegates had stuck to the majority rule, the Virginia Plan would have prevailed or, more likely, the convention would have disbanded at this point. An alternative plan was proposed (the so-called New Jersey Plan), separating the election of the President from Congress, but this obtained even less support because it did nothing to address the concerns of the small minorities (slave-holding and economically disadvantage states).

To save the convention, these initial plans, in fact, many of Madison's initial ideas, were abandoned altogether. The decision-making rule created an incentive to search for a more compromising formula that did not displease the minorities as much as the Virginia plan. Because the constituents knew that ratification of the Constitution required approval by 2/3 of all state legislatures, they could not afford the walk out by five state delegations. This gave power to Roger Sherman, a delegate from Connecticut, one of the economically disadvantaged states, to come up with his own plan, the so-called Connecticut Compromise.

The Connecticut Compromise calls for splitting the legislative branch into two chambers—one comprised of seats distributed according to population (a norm that pleased the populous and population-expanding states) and another chamber comprised of two seats per state regardless of population (a norm that pleased every other state). Furthermore, the chamber of "equals," the Senate, received greater powers than the lower

house, in terms of scrutinizing the president and the cabinet. The compromise does not give the congress the power to elect president, contrary to what the initial Madison majority wanted. Finally, the proposal in the Virginia Plan that the national legislature could ban state legislatures was also rejected, a boost to federalism that also pleased the slave states (Wootton 2003:xxxv).

Because obtaining the support of the slave states was indispensable (given the decision-making rules), the new constitution also avoided condemning slavery, in fact, it avoided mentioning the word slave altogether, and adopted the notion of large autonomy for each state, including the right to maintain slavery. In fact, the delegates had to accept the idea, advocated by slave-holding states, of counting slaves (as three fifths of one free person) in assigning seats in Congress. This too was another check on the Executive and a victory for slave-owning states. It entailed a representatitional subsidy to slave-holding states that increased their representation in the House from 41 percent (if only free inhabitants were counted, as was the case in the Articles of Confederation) to 46.5 percent (Robinson 1970:180).

Once Madison's initial plan was defeated, Madison made an about face on the question of electing the presidency. Instead of advocating a president elected by Congress, as he did in his initial Virginia plan, Madison then proposed a more independently- elected president, that is, less dependent on the new congress, which now granted too much power to slave and economically-disadvantaged states. He proposed direct elections to the president. Again, he had to yield in two ways. First, his faction had to agree to allow the office of the President to be far more accountable to the Senate (where minority blocs had more power), and second, to abandon the notion of direct elections in favor of indirect election through the Electoral College.

The Electoral College was yet another important victory for slave states. Once it was determined that the Executive branch would be decided by direct election and not congress, the small and slave states faced a new political threat: the possibility that the most populous, non-slave states would still dominate the Executive branch through direct vote. So instead of direct popular election for the president, the constituents pressed for the idea of having states, through electors, choose the president, and the formula for allocating electors would be the similar as for allocating seats in the House of Representative (Robinson 1970).

In short, in a majority of issues that mattered for presidentialism, table asymmetry-reducing decision making rules reduced power asymmetries during convention, ensuring greater bargaining leverage, and thus more victories, for minority blocs at various stages of the negotiation. Robertson actually counts at least 36 substantive issues that divided Madison (representing the initial majority) and Sherman (representing the opposition). Seven resulted in compromises, 19 were victories for Sherman, and only 10 were victories for Madison. Furthermore, these rules gave blocs multiple opportunities to veto the process, shift alliances, and thus extract concessions.

The result was a constitution that although undemocratic in many respects (because it empowered “privileged” minorities, namely, slave-owning states and small states) (Dahl 2001), was far less presidential than originally envisioned, because it enshrined enormous, one could even say, cumbersome checks and balances among the top branches of government (the president and the legislature) and between the two tiers (federal and state levels). The democratic principle of proportional representation was sacrificed on behalf of the democratic principle of horizontal and vertical accountability, unprecedented for its period.

#### D. The Ratification Process and the Incorporation of *LOFs*

Inadvertantly perhaps, the decision-making rules created yet another opportunity for *LOFs* to influence the Constitution, even after it was signed by the framers. These rules stipulated a ratification process that required the final draft of the constitution to be sent to the state legislatures for approval. This essentially opened up yet another round for debate, and thus, another opportunity for *O* to influence the outcome. *O* forces seized this opportunity. In different degrees and in different states, groups who believed that the new constitution went too far in empowering the federal government (with “fiscal-military” powers) to the detriment of states and individual rights rose to challenge the Federalists (Edling 2003) .

The Antifederalists, as this new *O* force soon became known, did not win in any of the state legislatures, but they did come close in three key states—Massachusetts (187 to 168 votes), Virginia (89 to 79), and New York (30 to 27)—and one minor state—New Hampshire (57 to 47). These races allowed the Antifederalists to display enormous power. The Federalists were compelled to accommodate them. During the ratification process, the Antifederalists proposed a series of amendments to the constitution designed to protect individual and state rights more explicitly. Many delegates who voted for the Constitution did so on the expectation that such amendments be considered by the new congress. In many ways, therefore, the Constitution was ratified in many states on the tacit condition that it be immediately amended to incorporate some of the demands of the Antifederalists. The newly convened Congress did in September 1789, when it sent to the states twelve proposed amendments to the Constitutions. Ten of these amendments were ratified by the states. These amendments received the name of the Bill of Rights and became part of the Constitution.

The incorporation of the Bill of Rights represented one more instance in which the demands of yet another *O* forces (the Antifederalists) were incorporated in the constitution. Legally, the Bill of Rights lessened presidentialism; politically, it incorporated the last remaining faction in American politics at the time.

Despite these compromises, the U.S. constitution was no panacea. One could even argue that it created as many problems as it solved, by allowing too much ambiguity in defining state rights and presidential powers. These ambiguities had to be solved over the years through new amendments, fierce political competition among parties, high-profile court cases, and even a civil war. Yet, the U.S. constitutional process in 1787 elicited far more cooperation from *O* forces in the first few years of the republic than one would have imagined given the precedent (lack of cooperation during the Articles of Confederation) and the contentiousness of the new issues that the new government faced right away: raising money to pay external debts, restructuring the domestic debt, absorbing the asymmetrical debts of states, deciding the type of foreign policy vis-a-vis former rival Britain and former ally France, and figuring out how to treat the cotton-based, slave-intensive economy that was flourishing in the South.

#### E. Comparing the U.S. Constitution and the 1999 Venezuela Constitution

Andrew Arato (1995) argues that the reason the U.S. Constitution became so appealing, both inside the United States and abroad, was that the drafting convention adhered to four major democratic principles of procedure. While Arato might be exaggerating both the appeal and the stability generated by the U.S. Constitutions, he does make a substantive point: a key feature of the U.S. constitution was the extent to which it enshrined checks and balance. In more political-economy parlance, the U.S.

constitution “lowered the stakes of office-holding” (because the president faces many checks) and lessened the threat of being in the opposition (because it subsidizes small states), which as argued in the first part of this chapter, are deemed crucial for self-enforcing constitutions.

For Arato, the key to this success was, first, “publicity:” deliberations were initially closed, but eventually, open to public scrutiny. The second was “consensus,” or what this chapter described as a pro-*I* selection rule, which in the case of the United States meant avoiding majoritarianism. The third principle was “legal continuity,” by ensuring that the convention delegates operated under the law, i.e., respected the authority of Congress and the states. The final principle was “plurality of democracies:” the combination of different democratic procedures for ratifying the constitutional draft, first a vote at the assembly and the various forms of popular approval.

Of these, perhaps the only principle that the 1999 Venezuelan constitutional process respected was the fourth: plurality of democracies in approving the new document. The Venezuelan constitutional process was approved by a variety of mechanisms for producing approvals: referenda, elections to the Constituent assembly, favorable court rulings, approval by constituents, and approval by the electorate. One could even say that the “publicity” principle was also respected, although the obscurity with which certain key decisions were made (e.g., the composition of the *Congresillo*) leaves some doubt about the extent to which the process was entirely transparent. On the principles of selection rule and legal continuity, however, there is no question that 1999 Venezuela constitution was in utter violation. By choosing to decide everything on the basis of simple majoritarianism and declaring itself above all existing power, the

Venezuelan Constituent Assembly led to a deep level of the discontent on the part of all those actors who did not find themselves in the majority.

In early 2000, the size of this non-majority population was probably not very large. But by 2002, the opposition became larger, angrier, and irrepressibly mobilized. By focusing on power asymmetry, this chapter has tried to explain why the non-majority Venezuelan citizens were so displeased in 1999. However, this argument cannot explain why this anger grew in intensity and spread by 2001. That is the topic of the next chapter.

### **VIII. Conclusion**

This paper has drawn on the literature on pacts to study the origin, content and effects of constitutions. One problem with this literature is that it leaves the impression that pacts are medicines with adverse side effects. Pacts can cure intolerance among political opponents, thereby paving the way for democratization, but with a side effect—their conservative bias. Pacts empower the already-powerful, restrict contestation, foreclose policy choices, and exclude non-mainstream political groups, all of which puts breaks on democratic deepening (Norden:432-34; Hartlyn 1988:8-13; Hagopian 1990:147-66).

However, the main lesson from my study is that this side effect has been overstated (Encarnación 2005). An understudied characteristic of pacts that led to self-enforcing democratic constitutions is the extent to which the weaker actor (*O*), rather than the powerful one (*I*), is subsidized. While it may be true that “elites,” or political winners, in democracies must be made to feel less threatened by the prospects of change

and reform (Acemoglu and Robinson 2000:126-30), this paper emphasizes instead that an equally compelling imperative is to lessen the fears of non-majoritarian and losing political losers. Foundational pacts attempted in a context of high power asymmetry between *I* and *O* are prone to fail—they will either fail to materialize or will infuriate *O*. Undeniably, *I* must gain from pacts, but *O* must gain more. Subsidies for *O* must come in the form of favorable rules for the selection of representatives at the negotiating table, and more important, stipulations in the content of the pact that benefit *O* more than *I*. The former is a precondition for the latter, and the latter is a precondition for *O*'s satisfaction with the pact. The key to self-enforcing constitution is not so much their conservatism (in protecting the powerful), but their generosity toward the weaker forces.

Successful pacts cannot occur anywhere or every time. They require an auspicious historic-institutional condition: low asymmetry among signatories. This is condition seems necessary for lessening presidentialism and accommodating *O* forces, both of which are necessary for a loyal opposition to develop.

But my argument rests on more than historic-institutionalism. In addition to low power asymmetries, successful pacts also require a particular strategy: a deliberate effort on the part of *I* to tame majoritarianism by choosing an electoral formula that is favorable to *O*. If “successful leadership” consists of the ability of power-holders to “influence the achievement of goals” by facilitating “cooperation” and “inter-temporal bargains,” (Inter-American Development Bank 2005:14), then successful *democratic* leadership means willingness to subsidize opponents by choosing pro-*O* rules, certainly at the moment of regime foundation.

The literature on pacts has not been eager to recognize the importance of these subsidies, focusing instead on the conservative (pro-*I* biases) of pacts. Perhaps one

reason that the literature has focused so much on the conservative bias of pacts is that this literature seldom examines failed pacts. Successful pacts are compared to successful pacts only. Karl and Schmitter explore variations in modes of transitions, but they compare pact-based modes with other modes (“reform,” “imposition,” and “revolution”) rather than with failed pacts. This inattention to variation—a methodological trap that this paper has avoided by looking at completed and aborted pacts in Venezuela and Latin America—blinds scholars to the variable that most strongly distinguishes successful pacts from unsuccessful ones, namely generosity toward non-dominant groups.

Another reason for the inattention to the generosity of pacts toward *O* is that most studies on pacts were written several years, sometimes several decades, after the signing of the studied pact. By then, the political force that was weak at the moment of signing had probably turned into a powerful group—maybe even a ruling party. Scholars thus observe two dominant groups that gain far more than the *SOFs*, leading them to conclude that the pact was conservative. But to conclude that both *I* and *O* gain from the pact is already an implicit recognition of the higher generosity of pacts. It is this generosity that permits the weaker force to match the status of the dominant group.

Subsidies, naturally, can spoil the beneficiary. Successful pacts, therefore, carry the risk of eventual decay since they are intrinsically subsidy-intensive. Successful pacts provide so much extra help to non-dominant actors that is easy for such beneficiaries to develop political vices over time. In Venezuela after 1961, both AD and COPEI received enormous subsidies even when each was in the opposition, and this, in many ways, protected them from undergoing necessary adaptation to new economic conditions. Founding pacts are susceptible to what Horowitz calls “retrogression,” the tendency for those who gain to alter the course of the new regime to their favor (Horowitz 2002:35).

Unless pacts are continuously renewed, and subsidies lessened over time, successful pacts can be expected to eventually generate decay among their main beneficiaries.

**Table 1: Venezuela's GDP per capita during periods of democratic pact-making**

	Percent Change	Average Yearly Percent Change
1945-1949	38.2	7.60
1959-1963	9.61	1.90
1988-1992	2.77	0.05
1999-2004	-2.91	-2.60

Source: Author's calculations based on data from Venezuela's Central Bank and INE, except for 1945-1949 period, which was calculated using data from Asdrúbal Baptista, *Bases cuantitativas de la economía venezolana, 1830-1995* (Caracas: Fundación Polar, 1997).

**Table 2: Venezuela's Constitutional Processes: Power Asymmetries**

	<i>I</i>	<i>LOFs</i>	<i>SOFs</i>	<i>Asymmetry</i> <i>I - (LOF+SOF)</i>	Source
<b><i>Trienio (High Asymmetry)</i></b>					
1946 Constitutional Assembly (% of votes)	78.43	13.20	7.88	57.35	Corrales
1946 Delegates to Const. A. (% of seats)	85.63	11.88	2.5	71.25	Kornblith
1947 Congress (% of votes)	70.38	20.28	8.15	41.95	Corrales
1947 President (% of votes)	74.47	22.40	3.12	48.95	Corrales
<b><i>Punto Fijo Pact (Low Asymmetry+ Favorable Election Rule)</i></b>					
1958 Presidential elections (% of votes)	49.18	45.85	4.97	-1.64	CNE
1958 Deputies (% of seats)	54.90	39.90	5.30	9.70	CNE
1961 Constitutional Commission (% of seats)	36.36	36.36	27.2	-27.2	Kornblith
1963 Presidential elections (% of votes)	32.81	37.70	29.49	-34.38	CNE
<b><i>Failed Constitutional Reform, 1989-1992 (From Positive to Negative Asymmetry)</i></b>					
1983 Presidential Elections (% of votes)	57.7	35.1		22.6	Corrales
1988 Presidential Elections (% of votes)	52.7	40.0		12.7	Corrales
1988 Elections for Parliament (% of votes)	43.2	41.2	15.6	-13.6	Molina and Pérez 1998
1989 Elections for Mayors (% of votes)	39.7	48.3	11.9	-20.5	OCEI
1992 Elections for Mayors (% of votes)	32.3	32.3	14.1	-14.1	OCEI
1992 Elections for Governors (% of votes)	31.1	52.4	16.5	-37.8	OCEI
1993 Presidential Elections (% of votes)	30.45	68.28	1.27	-39.1	CSE
<b><i>Fifth Republic (Extremely High Asymmetry + Unfavorable Election Rule)</i></b>					
1998 Deputies (November) (% of seats)	46.20	53.20	0.60	-7.6	CNE
1998 Presidential (December) (% of votes)	56.20	39.97	2.82	13.41	CNE
1999 Delegates to Const Assem. (% of seats)	93.13	4.50		88.63	Penfold
1999 Referendum to approve Constitution	71.78	28.22		43.56	CNE
2000 Presidential elections (% of votes)	59.76	37.52	2.72	19.52	CNE
2000 Assembly elections (% of seats)	60.00	21.82	18.18	20.00	Georgetown
2004 Referendum	58.26	41.74		16.52	Georgetown

**Notes:**

**I:** AD in Trienio, Punto Fijo, and in 1989-92; Convergencia + MAS+URD+PCV+MEP and 12 other small parties; MVR+MAS+PPT in Fifth Republic

**LOFs:** COPEI in Trienio; COPEI+URD in Punto Fijo; COPEI in 1988 Presidential Elections; COPEI + MAS in 1989-92 Governor and Mayoral Elections; AD+COPEI+LCR in 1993 election; AD+PRVZL+COPEI in Fifth Republic

**SOFs:** URD+PCV in Trienio; PCV in 1958; FDP and Others in 1963; LCR+ORA+NGD+Other in 1992 Governor Elections LCR+CONVER+APERT+IRENE+OFM+RENOV (parties with less than 1 percent of the vote not listed).

1989 Governor election data not available.

<b>Table 3: The most polemical subjects pertaining to Executive Power</b>		
<i>I</i> 's initial preference regarding powers of the Executive Branch (items in yellow are opposition's preference?)	Preferred by	
1. Eliminating the Senate	I	Enacted
2. Introducing the Ballotage*	I/O	Not enacted
3. Eliminating state legislatures	O	Not enacted
4. Denying revenue powers to state governments	I	Enacted
5. Strengthening state monopoly over PDVSA	I	Enacted
6. Obtaining the right to dissolve the National Assembly....	I	Enacted
7. ...after two votes of censure	O	Enacted
8. Doing away with criminal immunity of parliamentarians	I	Not enacted
9. Eliminating the non-participating/deliberative nature of the military	I	Enacted
10. Making the Vicepresident dependent on <i>I</i>	I	Enacted
11. Allowing the immediate reelection of the president	I	Enacted
12. Expanding the president's term in office from five to six years	I	Enacted
13. Suspending Art. 184 from the 1961 Constitution, which bars close relatives (within the third degree of <i>consanguinidad</i> or second in affinity) from succeeding the President.	I	Enacted
14. Removing parliamentary control of military promotions	I	Enacted
15. Amplifying the scope of enabling laws...	I	Enacted
...while maximizing requirements for parliamentary approval of enabling laws	O	Not enacted
16. Using referenda to revoke legislation and change the constitution	I	Enacted
17. Preserving the 1961 norm which declared state governors as agents of the President.	I	Not enacted
<p>* Chávez preferred the ballotage, but after the electoral results in Uruguay (1999), in which the leftist candidate Tabaré Vázquez won the first but not the second round, Chávez dropped the issue from discussion.</p> <p>Source: Ricardo Combellas. N.D. El Poder Ejecutivo en la Constitución de 1999. <a href="http://www.monografias.com/trabajos16/poder-ejecutivo-venezuela/poder-ejecutivo-venezuela.shtml">www.monografias.com/trabajos16/poder-ejecutivo-venezuela/poder-ejecutivo-venezuela.shtml</a>, and Ricardo Combellas, 2003. El proceso constituyente y la constitución de 1999." Paper presented at the Symposium "Venezuela at a Crossroad: The First Crisis of the New Latin American Populism." Ibero-American Institute, Prussian Heritage Foundation, Berlin, Germany (October, 15-16).</p>		

<b>Table 4: Explaining Regime Stability in Venezuela, 1945-present</b>					
	Trienio 1945-48	Punto Fijo 1 1961-68	Punto Fijo 2 1968-188	Chávez 1 1999-2004	Chávez 2 2004-present
<b>Ind. Variable 1:</b> Power Asymmetry	High	Low		High	
Outcome: Anti- <i>O</i> constitution	Yes	No	No	Yes	Yes
<b>Ind. Variable 2a:</b> <i>I</i> 's effort to include <i>O</i>	No	LOPs yes; SOFs no	Yes	No (except the military)	No (except the military)
<b>Ind. Variable 2b:</b> Economic deterioration	No	No	No	Yes	No
Outcome: <i>O</i> 's behavior (regime stability)	LOFs, SOFs, and Military unite to overthrow regime	LOFs cooperate with <i>I</i> ; SOFs rebel.	LOFs cooperate; SOFs split: some integrated others not.	LOPs, SOFs, (military now split between pro- and anti- <i>I</i> ) challenge <i>I</i> .	<i>O</i> split and weakened

**Table 5: Power Asymmetry\* in Latin America's Constitutional Assemblies, 1987-2000**

Country	Previous elections in House of Deputies (year) <sup>4</sup>	Const. Assembly (year)	Outcome: Presidentialism	Post-Constitution (year)
Colombia <sup>5</sup>	20.00 (1990)	-42.20 (1991)	Declined	8.00 (1994)
Ecuador <sup>6</sup>	-34.14 (1996)	-40.00 (1997)	I and O gained	-41.66 (1998)
Argentina <sup>7</sup>	-2.72 (1993)	-24.20 (1994)	I and O gained	-0.40 (1995)
Brazil <sup>8</sup>	6.52 (1986)	6.00 (1988)	Declined	-57.00 (1990)
Nicaragua <sup>9</sup>	25.80 (1984)	9.00 (1987)	Declined	10.80 (1990)
Peru <sup>10</sup>	-31.20 (1990)	10.00 (1993)	I and O gained	11.60 (1995)
Paraguay <sup>11</sup>	33.34 (1989)	16.00 (1991)	Declined	0 (1993)
Venezuela <sup>12</sup>	-40.00 (1998)	86.26 (1999)	Increased	20.0 (2000)
Bolivia <sup>13</sup>	10.8 (2005)	7.4 (2006)	?	?

\* Asymmetry: Difference between the percent of seats obtained by *I* forces and percent of seats obtained by *O* forces.

Sources: *Base de Datos Políticos de las Américas*[online], Georgetown University and Organization of American States <http://www.georgetown.edu/pdba/Elecdata.html>. 2001, except for the following cases: for Colombia 1991: Cepeda; for Ecuador 1996: Mark Payne, *Democracies in Development: Politics and Reform in Latin America*. (Washington, DC: Inter-American Development Bank, 2002); for Ecuador 1997: *CNN Election Watch* <http://us.cnn.com/world/election.watch/americas/ecuador2.html>; for Argentina 1993: "Elections Results Archive." Center on Democratic Performance, Binghamton University; for Argentina 1994: Tow, Andy, "Atlas de elecciones en Argentina" [online] <http://www.towsa.com/andy/index.html>; for Argentina 1995: *CNE*, "Resultados de Elecciones Presidenciales Anteriores," [online] [http://www.pjn.gov.ar/cne/cne\\_res95.html](http://www.pjn.gov.ar/cne/cne_res95.html); for Nicaragua 1984, 1987: Susanne Jonas and Nancy Stein. "The Construction of Democracy in Nicaragua," *Latin American Perspectives*, Vol. 17, No. 3 (Summer 1990), pp. 10-37, and Andrew Reding, "Nicaragua's New Constitution: A Close Reading," *World Policy Journal*, 4, 2 (Spring 1987); for Nicaragua 1990: "Voter Turnout: Nicaragua" International IDEA, 23 October, 2001; for Paraguay 1989: Payne; for Paraguay 1991: "Facts on File, Inc," Facts on File World News Digest; for Venezuela 1998, 1999: "Consejo Nacional Electoral," [online] <http://www.cne.gov.ve/>; for Bolivia 2005: Europa World Year Book (2006). London, Europa Publications Limited; for Bolivia 2006: Latin American Andean Group Report (2006) "Rows as Constituent Assembly Looms."

<sup>4</sup> Asymmetry is measured as the difference in number of seats between *I* and *O* in the Congress (or in the lower Chamber if Congress is bicameral). For Argentina 1994 and 1995, Colombia 1991, and Nicaragua 1984, percentage of vote, rather than seats, was used.

<sup>5</sup> *I* = Partido Liberal 1990, 1991, 1994.

<sup>6</sup> *I* = Partido Social Cristiano 1996, 1997. Democracia Popular 1998.

<sup>7</sup> *I* = Partido Justicialista. 1993, 1994, 1995.

<sup>8</sup> *I* = Brazilian Democratic Movement Party, 1986, 1988, 1990.

<sup>9</sup> *I* = Frente Sandinista de Liberación Nacional 1984, 1987; National Opposition Union 1990.

<sup>10</sup> *I* = Fredemo 1990; Alianza Nueva Mayoría – Cambio 90 1993, 1995.

<sup>11</sup> *I* = Asociación Nacional Republicana 1989, 1991, 1993.

<sup>12</sup> *I* = AD 1998; MVR-MAS-PPT 1999, 2000.

<sup>13</sup> *I* = MAS 2005 and 2006.

<b>Table 6: Triggering Circumstances of Constituent Assemblies</b>									
	Arg	Bra	Bol	Col	Ecu	Nic	Par	Per	Ven
<b>I. Compelling Structural Force</b>									
A. Severe Economic Crisis		✓			✓	✓			✓
B. Constitutional Crisis or Recent Transition to Democracy		✓	✓		✓	✓	✓	✓	
<b>II. Heightened Power of <i>O</i></b>									
A. Political chaos/insurrection				✓	✓	✓			
B. Low Asymmetry		✓			✓				
<b>III. <i>I</i> initiative</b>									
A. <i>I</i> seeks reelection	✓				✓			✓	✓
B. <i>I</i> anticipates large asymmetry	✓		✓		✓			✓	✓

Table 7: Mexico's Power Asymmetries, 1982-2000

	Asymmetries
1982 Presidential Elections	62.9
1982 Legislative Seats	61.7
1985 Legislative Seats	62.0
1988 Presidential Elections	2.8
1988 Legislative Seats	4.0
1991 Legislative Seats	46.2
<b>1994 Presidential Elections</b>	<b>6.2</b>
<b>1994 Legislative Seats</b>	<b>22.0</b>
1997 Legislative Seats	-1.4

Source: Wise (2003).

Table 8: Blocs, Power Asymmetries and Issue Preference in the United States circa 1787.			
Type of Asymmetry	Bloc and percent of population circa 1790 (bold indicates the more powerful bloc)	Issue (bold indicates which preference prevailed)	
		Representation at the Federal Level	Presidential Powers to Regulate the Economy
Population:	<b>Most populous States (MA, NY, PA, VA)</b> <i>51.4 percent</i>	Proportional based on population	
	Least populous <i>48.5 percent</i>	<b>Equal</b>	
Slavery:	<b>Non-slave states (PA, MA, DE, NJ, RI, NY, CT, NH, VT)</b> <i>60.4 percent</i>	Proportional representation	Major power to regulate the economy
	Slave states (VA, SC, NC, GA) <i>39.6 percent</i>	<b>Prefer equal vote to all states; count slaves in determining quotas</b>	Substantial powers to manage the economy, <b>but no power to regulate slavery</b>
Land and Ports:	<b>Economically advantaged (South plus NY, MA, PA)</b> <i>71.8 percent</i>		
	Economically-disadvantaged (CT, NJ, DE, MD, NH, RI) <i>28.2 percent</i>		<b>Balanced: Some powers to manage the economy, with respect to economic trade; no power to regulate or ban slavery</b>
Source: Blocs taken from Robinson (1970) and Robertson (2003); population taken from <a href="http://hsus.cambridge.org/HSUSWeb/toc/showTable.do?id=Aa2244-6550">http://hsus.cambridge.org/HSUSWeb/toc/showTable.do?id=Aa2244-6550</a> .			

## Appendix

Presidential Powers in the 1947, 1961 and 1999 Venezuelan Constitutions  
(latest version June 15, 2005)

In terms of presidential powers, the Venezuelan 1947 and 1961 constitutions are not that different, whereas the 1999 Constitution is considerably more empowering of the president. This is demonstrated in the Table below, which ranks the degree of presidential powers of each constitution according to the metrics employed in Shugart and Carey's (1992:150) landmark study on presidentialism.

In applying Shugart and Carey's metric to all three constitutions, I made two modifications. First, I changed a few of the scores that Shugart and Carey give to the 1961 constitution based on a more careful reading of the text (p. 155). The new scores raise the presidential powers on a number of categories.

1. Package Veto: instead of 0 (no veto), I give a score of 2 (Veto with override requiring absolute 2/3, see Article 173).
2. Partial Veto (to check)
3. Budgetary powers: instead of 0 (unrestricted authority of assembly to prepare or amend budget), I give a score of 2 (president sets upper limit on spending, within which assembly may amend). Article 228 banned Congress from authorizing spending above the estimated revenues made by the President).

Second, I added several components that are missing in Shugart and Carey's scorecard, but which, in my estimation, are significant elements of presidential power even according to Shugart and Carey (1992) or Carey (2003):

- A. Presidential Recall referendum (in Carey 2003:26): 2 = no recall referendum; 1 = recall referendum with high threshold for removal; 0 = recall referendum with low threshold for removal.
- B. Congressional recall referendum—whether the president can start a recall referendum on congressional leaders: 0 = no recall referendum for congress; 1 = recall referendum with high threshold for removal; 2 = recall referendum with low threshold for removal.
- C. Terms of Re-Election (Shugart and Carey 1992:87-91): 0 = No re-election; 1 = Reelection possible, only one term
- D. Sitting out time (ibid.): 0 = No-reelection ever; 1 = Reelection after sitting out two terms; 2 = reelection after sitting out 1 term
- E. Duration of mandate: 0 = 4 years; 1 = 5 years; 2 = 6 years
- F. Preventive Arrests—the extent to which the president can carry out preventive arrests even of parliamentarians: 2 = unlimited rights; 1 = limited rights; 0 = no rights.
- G. Enabling Laws. Shugart and Carey subsume these powers under the category of decree power, where a score of 0 means “no decree powers; or only as delegated by assembly.” The problem with this classification is that it is insensitive to the type of delegation that the assembly is authorized to

sets, and it is virtually the same as score 1 (authority to enact decrees limited). In Venezuela, there has been variation in the areas in which the legislature can “enable” the president to legislate. To account for this, I created a separate category of “enabling powers,” with the following possible scores: 0 = no enabling law mechanism; 1 = enabling laws in very few areas; 2 = enabling laws in many areas; 3 = enabling laws in every area

The result of this new metric and revision of Shugart and Carey’s scoring of the 1961 constitution, the new scores are as follows

<b>Venezuela: President’s Legislative Powers, 1947, 1961, 1999</b>			
<b>Item</b>	<b>Constitutions</b>		
	<b>1947 (Trienio)</b>	<b>1961</b>	<b>1999</b>
Package Veto/Override	<b>0</b> Majority Vote; One Discusión. Art. 173	<b>2</b> Two-Third, Art. 173.	<b>1</b> Simple majority of those present
Partial Veto / Override	<b>2</b> Absolute Majority; 2 discussions.	<b>1</b> Simple Majority, Art. 173	<b>2</b> Absolute Majority. Art. 214
Decree	<b>0</b> Art. 198	<b>0</b> Art. 240	<b>0</b>
Exclusive introduction of legislation (Reserve Policy Areas)	<b>0</b> Art. 166	<b>0</b> Art. 165	<b>0</b> Art. 204, No. 1
Budgetary Powers	<b>0</b> No restrictions on Congreso, Art. 162, No. 8 and 208	<b>2</b> Congress cannot authorize expenditures that exceed projected revenues, Art. 228	<b>3</b> Assembly cannot authorize expenditures that exceed projected revenues nor reductions, Art. 313
Proposal of Referenda	<b>0</b>	<b>0</b>	<b>2</b> Restricted. Not allowed on budget, tax, public credit, amnesty, human rights and treaties, Art. 74 and 236 No. 22
Congressional Recall Referendum	<b>0</b>	<b>0</b>	<b>1</b> Art. 72
Enabling Law	<b>0</b>	<b>1</b> Congress can grant enabling laws, but only on economic and financial matters only Art. 190, No. 8.	<b>3</b> Assembly can grant enabling laws on any area. Art. 203 and 236, No. 8
<b>Sub total</b>	<b>2</b>	<b>6</b>	<b>12</b>
<b>President’s Non-legislative Powers</b>			

Cabinet Formation	<b>4</b> Art. 198 No. 19	<b>4</b> Art. 190 No. 2	<b>4</b> Art. 236 No. 3
Censure	<b>0</b> Art. 153 No. 2	<b>0</b> Art. 153 No. 2	<b>2</b> Art. 187 No. 10
Cabinet Dismissal	<b>4</b> Art. 198 No. 19	<b>4</b> Art. 190 No. 2	<b>4</b> Art. 236 No. 3
Dissolution of Assembly	<b>0</b>	<b>0</b>	<b>1</b> Art. 236 No. 21., Art. 187, No. 10, Art. 240
Preventive Detention	<b>2</b> Art. 77	<b>0</b>	<b>0</b>
Immediate Reelection	<b>0</b>	<b>0</b>	<b>1</b>
Sitting Out time	<b>2</b> (one term)	<b>1</b> (two terms)	<b>0</b> (no reelection ever)
Term in Office	<b>1</b> (five years)	<b>1</b> (five years)	<b>2</b> (six years)
Presidential Recall Referendum	<b>2</b>	<b>2</b>	<b>1</b> Art. 72
<i>Subtotal (non-legislative powers)</i>	<b>15</b>	<b>12</b>	<b>15</b>
<i>Overall Score</i>	<b>17</b>	<b>18</b>	<b>27</b>

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<sup>1</sup> Amorim Neto (2002) applies a similar argument to Executive-legislative relations under fragmented political party systems. When the representation of parties in the cabinet is proportional to their presence in parliament, what he calls "cabinet coalescence," the legislature is more likely to cooperate with the Executive.

<sup>2</sup> **Elster, John. XXXX. "Introduction" (p. 13), plus his own chapter , plus chapter by Gargarella in Elster's book on deliberative democracy.**

<sup>3</sup> In addition to the Punto Fijo Pact of 1958, signed by the three leading parties, there were two other pacts signed during this period: the "Labor-Business Rapprochement Pact," which normalized relations in the workplace, and the "Declaration of Principles and Basic Program of Government," which committed the political parties to draft and defend a new constitution and to a new model of state-based economic development (see López Maya, Calcaño, Maingón 1989).

<sup>4</sup> In addition to anemic growth, the 1959-1963 period is characterized by growing unemployment, a significant decline in gross fixed investment, a decline in the price of oil, a major devaluation in 1961, and a major banking crisis (Baptista 2003:61).

<sup>5</sup> On the methodological advantages of "negative cases," see Ragin (2004).

<sup>6</sup> One notable exception is Coppedge (2002), who tries to show how the evolution of democracy in Venezuela since the 1940s defies general theories of comparative politics.

<sup>7</sup> Andrés Eloy Blanco, President; Ambrosio Oropeza, First Vice President; Augusto Malavé Villalba, Second Vice President; Miguel Toro Alayón, Secretary; Octavio Lepage, Undersecretary.

<sup>8</sup> There were only two AD leaders in the cabinet: Interior (Luis Augusto Dubuc), and Mines (Juan Pablo Pérez Alfonzo). Copei obtained the Ministries of Development (Lorenzo Fernández) and Agriculture (Víctor Giménez Landínez). URD received Foreign Relations (Ignacio Luis Arcaya),

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Labor (Luis Hernández Solís), and Communications (Manuel López Rivas). The other posts went to independent figures: Education (Rafael Pisan), Public Works (Santiago Hernández Ron), Finance (José Antonio Mayobre), Health and Social Assistance (Arnoldo Gabaldón), and Justice (Andrés Aguilar). Ramón J. Velásquez became Secretary General of the Presidency. In addition, Betancourt agreed to vertical co-participation in the public administration: deputy ministers were selected from parties other than the party of the designated minister.

<sup>9</sup> A key gesture of the new attitude was Leoni's decision to choose the 1953 Pérez Jiménez constitution, rather than the 1947 Trienio constitution, as the starting point for negotiation of the 1961 constitution.

<sup>10</sup> One of Betancourt's most important biographer argues that Betancourt in 1958 had developed a special favoritism toward COPEI: he was "especially interested in making COPEI more prestigious" and "strengthening [COPEI] so that it could become an alternative to [AD's] own political domination."

<sup>11</sup> Specifically, the incorporated social forces include: "private economic agents, consumers, labor unions, professional associations (*colegios de profesionales*) and universities" (Article 109).

<sup>12</sup> To overcome this institutional weakness, Venezuelan presidents developed different power-enhancing strategies, that included more than just expanding the bureaucracy and state control over unions, (Sonntag 1984) They also: 1) lower the value of Congress by keeping legislative outputs to a minimum, dominating the process of initiating of laws, and using enabling laws; 2) negotiate policy with non-party groups; and 3) exploit oil rents and distributing them among power holders.

<sup>13</sup> Venezuela in 1989 was suffering from a case of hyper-reformism (see Corrales 2002).

Economically, the government of Carlos Andrés Pérez launched the most profound package of neoliberal reforms ever in the history of Venezuela. Politically, enormous pressure mounted in the 1980s to force political parties to become more democratic. In 1989, Venezuela allowed the direct election of governors and mayors. The massive riots of February 1989 convinced legislators that

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further political reforms were necessary to placate this discontent. The decision by Copei to launch a process of constitutional reform was an effort to jump on this reformist bandwagon of 1989.

<sup>14</sup> Petitioners included *Revista SIC* and the Centro Gumilla, the Fundación de Derecho Público, the Comisión for the Reform of the State (COPRE), the CESAP, an umbrella organization of NGOs, and various intellectuals.

<sup>15</sup> My account differs from Kornblith (1995) in that I emphasize negative asymmetry, whereas she emphasizes opposition from various interest groups, including the media.

<sup>16</sup> AD was not the only group to raise objections. Several governors, intellectuals, media groups, and small opposition parties expressed strong reservations.

<sup>17</sup> By 1994, it was clear that the idea of reforming the constitution had captured the attention of Venezuelan intellectuals. In his brief 108-page book on the constitutional debate, Ricardo Combellas listed 51 bibliographic references dealing with constitutional issues, all published between 1992 and 1994.

<sup>18</sup> In August 1998, the president of the Academy of Political and Social Sciences, Alan Brewer Carías, sent a letter to President Caldera formally requesting calling a referendum to convene a Constituent Assembly.

<sup>19</sup> Shortly after winning office, Chávez appointed a pluralistic commission to advise him on how to organize the constituent assembly. Members included Tulio Alvarez (independent, previous adviser to Caldera), Oswaldo Alvarez Paz (Copei), Ricardo Combellas (Caldera Minister), Javier Elechiguerra (lawyer), Hermann Escarrá (MVR), Ernesto Mayz Valenilla (independent), Jorge Olavarría (pro-Chávez), Alfredo Peña (independent), Manuel Quijada (pro-Chávez), Tarek William Saab (MVR), Angela Zago (independent). Various electoral systems were presented to the president, including the possibility of a more proportional system. Chávez deliberately chose the system that was more likely to maximize the number of pro-government constituents at the

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assembly. This decision prompted one of the more independents members of that commission, law professor Tulio Alvarez, to resign.

<sup>20</sup> For each district, the ruling party made sure to nominate no more than the exact number of candidates possible, and called on supporters to vote en bloc for its list of candidates. Thus voters faced the option of voting for a few pro-*I* candidates or way too many *O* candidates. The result was that pro-*I* candidates accumulated votes whereas *O* candidates had to share many votes among many candidates, preventing any victories.

<sup>21</sup> AD and Copei were demoralized in the first half of 1999 and embarrassed by their unreliable behavior during the presidential campaign by either opportunistically choosing a frivolous candidate (COPEI first supported a beauty queen, Irene Saenz) or by nominating a candidate that was emblematic of the worse vices of the old regime (AD nominated old-guard, Luis Alfaro Ucero). At the last minute, to stop Chávez, both AD and COPEI abandoned their candidates in favor a politician who was openly hostile to both AD and COPEI. Public antipathy toward AD and COPEI, rising steadily in the 1990s, turned even more hostile in 1999.

<sup>22</sup> The reformulated question no. 2 became: “Do you agree with the guidelines proposed by the National Executive for the convocation of the National Constituent Assembly, which were examined and partially modified by the National Electoral Council in the March 24, 1999 session and whose entire text was published in the Official Gazette of the Republic of Venezuela no. 36.669 dated March 25, 1999?”

<sup>23</sup> For evidence that lowering presidentialism was a consistent demand of pro-constitutional *O* forces, see chapters by Victorino Márquez Ferrer, María de los Angeles Delfino, Jorge Sánchez Meleán, Angel Eduardo Alvarez, Julio César Fernández Toro, Julio Andrés Borges, Fernando Fernández in Combellas (1998).

<sup>24</sup> For Kitschelt (1986:63), openness comprises the following factors: 1) the number of political parties, factions, and groups that effectively articulate demands in electoral politics; 2) the capacity of legislature to develop control policies independently of the executive; 3) fluid and

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pluralist patterns of intermediation between interest groups and the executive branch; and 4) opportunity for demands to find their way into the process of policy compromises and consensus.

<sup>25</sup> On the impact of the “founding leadership’s” behavior on democratic survival, see Diamond, Larry, Jonathan Hartlyn and Juan J. Linz. 1999. Introduction: Politics, Society, and Democracy in Latin America. *Democracy in Developing Countries: Latin America*, . Larry Diamond, Jonathan Hartlyn, Juan Linz and Seymour Martin Lipset. Boulder, CO: Lynne Rienner Publishers, 1999.

<sup>26</sup> As Calvert (2002) argues, Menem “had to pay a high price” for his re-election concession: a reduction in the presidential mandate from six to four years, delegation of some presidential powers to a Chief of Cabinet who can be removed by the legislature, a runoff election, the creation of an autonomous government in Buenos Aires, an increase in the number of senators, etc. In addition, the new constitution regulates the president’s leeway to regulate by decree. Likewise, as Schmidt (2000) argues, Peru’s 1993 constitution “was not necessarily a disguise for continued authoritarian rule:” it established checks on executive decree authority, gave new prerogatives to the congress, and ended executive powers in selecting the judiciary.

<sup>27</sup> Although different than mine, Brinegar, Morgenstern, and Nielson’s (2001) explanation of this reform focusing on *I*’s negotiations with both *O* and *I*’s hard-line allies is not incompatible with my argument about reduced power asymmetry.

<sup>28</sup> The 1992-93 constitutional amendments included, among other things, doubling the number of Senate seats, guaranteeing Senate seats to the opposition, and impeding any party from controlling more than two thirds of seats in Congress.