

The ALBA Constitutional Project and Political Representation

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Abstract

After the Cold War era, significant constitutional changes took place in Latin America. One distinct trend is the neo-Bolivarian constitutionalism, which has taken place in the ALBA countries, including the constitutional replacements of Venezuela (1999), Ecuador (2008) and Bolivia (2009). Many scholars have rightly criticized these constitutional experiments arguing that they have helped to deteriorate a liberal notion of democracy. This essay approaches a question that complements those criticisms from a different perspective: how the ALBA countries have resorted to varied notions of political representation. The authors use the classic work of Pitkin to identify the different sorts of political representation involved in the ALBA constitutional experiments, finding a combination of symbolic and descriptive representation. The former is linked to the figure of the President as a *caudillo* that centralizes political power, whereas the latter is fostered by both the President and the contents of the new constitutions related to the original peoples. As a result, the empowering purpose of constitutionalism has been preferred over its constraining purpose.

1. Introduction

Two of the main purposes of constitutionalism are constraining political power and empowering ordinary people. Whereas the former requires effective constitutional entrenchment, the latter requires effective political representation or direct popular participation. Jeremy Waldron criticizes how, particularly in the USA, legal scholars and judges have emphasized the “constraining” function while overlooking the “empowerment” function.¹ In Latin America, however, an inverse criticism can be made. While many failed experiences of constitutional entrenchment and frequent constitutional change have prevented the constraining role of constitutionalism from operating with the same success as

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¹ Jeremy Waldron, *Constitutionalism. A Skeptical View*, in CONTEMPORARY DEBATES IN POLITICAL PHILOSOPHY 267 (Thomas Christiano & John Philip eds., 2009).

in other regions,² many regimes have aimed to emphasize the empowerment function, as we will show later. Nevertheless, dubious ways of organizing and distributing political power have also restricted the empowerment function to perform well in Latin America.³ Latin American oligarchic elites and *caudillos* taking over political power prove to be a significant challenge for constitutionalism.

After the end of the Cold War, many Latin American countries reformed their constitutional systems in a context that included choices that were not necessarily constrained by the influences and options provided by the Soviet and American models. Amongst all the diverse constitutional projects pursued in the post-Cold War context, probably the novelest ones are the projects of the regimes of the ALBA (*Bolivarian Alternative for the Americas*) countries, i.e. Venezuela, Nicaragua, Ecuador, and Bolivia. As we will show, these regimes advanced constitutional experiments that replaced their existing constitutions with a discourse that emphasizes a direct connection between the *caudillos* and the people, seeking forms of representation that aim to justify the centralization of political power in semi-hegemonic regimes, while deteriorating liberal institutional arrangements. Using Waldron's characterization, we claim that these constitutional projects have reduced the "constraining" function of constitutionalism while aiming to enhance constitutionalism's "empowerment" function. However, we should be skeptical about the real possibilities that the ALBA constitutional model provides for empowering ordinary people.

We use Pitkin's classic typology on political representation to show the innovative approach that ALBA constitutionalism has pursued. By combining descriptive and symbolic forms of representation, ALBA constitutionalism has also empowered the *caudillos* and substantively advanced the representation of the indigenous peoples. We argue that the ALBA regimes have used this political strategy to centralize political power and harm other representation venues such as Congress. By doing this, the ALBA regimes have put into question both functions of constitutionalism. Of course, this does not mean that specific mechanisms and features of descriptive representation, included in the novel ALBA constitutions, cannot result in an improvement in the political representation of disadvantaged groups. Our argument is limited to showing that, from the approach of political representation, the ALBA constitutional strategy has been unable to reconcile both the constraining and the empowerment functions of constitutionalism.

² See generally, Miguel Schor, *Constitutionalism Through the Looking Glass of Latin America*, 41 TEX. INT. LAW J. 1 (2005).

³ An interesting argument is provided by Gargarella, who criticizes the 'Engine Room' of Latin American constitutions. ROBERTO GARGARELLA, LATIN AMERICAN CONSTITUTIONALISM 1810-2010. THE ENGINE ROOM OF THE CONSTITUTION (2013).

2. Latin American Constitutionalism and the ALBA Constitutional Project

Latin-American constitutionalism has been commonly portrayed as prolific but unstable, demonstrating a high rate of constitutional change before and after the end of the Cold War. This common understanding should not come as a surprise if we consider that the region has enacted 195 constitutions between 1810 and 2015.⁴ This is undoubtedly a high number, at least compared to Western Europe, an area that has passed fifty-two constitutions from 1789 to 2015.⁵ Of course, these numbers vary across countries within Latin America. For example, while Mexico has replaced its constitution only once during the twentieth century, Bolivia has substituted its constitution seven times and Ecuador nine times.⁶ Frequent constitutional change, combined with the existence of numerous attempts of unsuccessful constitutional changes,⁷ suggests that in many Latin American countries the line between ordinary politics and constitutional politics is frequently blurry and that the lack of sufficient constitutional entrenchment is one of Latin America's political problems.⁸ Presidential candidates not only promote constitutional changes but also include in their presidential platforms, quite often, constitutional drafts aimed at substituting the existing political system.

Certainly, these changes result from different causes, some of them quite reasonable. Examples are the reforms advanced by Latin American countries that developed different constitutional strategies to deal with their transitions from authoritarian regimes to democracies. Some countries replaced their constitutions as a result, such as Brazil in 1988, while others implemented negotiated constitutional amendments, such as Chile in 1989. Nevertheless, sometimes changing the constitutions has also become a tool for would-be autocrats that seek to centralize political power, like Peru in 1993 under the Fujimori's regime.⁹

Comparative constitutional scholars have given particular attention to the constitutional changes of the ALBA countries, including the constitutions of Venezuela (1999), Ecuador (2008), and Bolivia (2009). All these countries had previous oligarchic ruling elites that were strongly criticized, and the new constitutions helped to consolidate the power of new governments seeking to replace them. There are at least two reasons why scholars have been interested in these constitutional changes. First, those changes have

⁴ GABRIEL NEGRETTO, CONSTITUTION-BUILDING PROCESSES IN LATIN AMERICA 7 (2018).

⁵ *Id*

⁶ See Gabriel Negretto, *Replacing and Amending Constitutions: The Logic of Constitutional Change in Latin America*, 46 LAW SOC'Y REV. 749, 752 (2012).

⁷ See JAVIER CORRALES, FIXING DEMOCRACY. WHY CONSTITUTIONAL CHANGE OFTEN FAILS TO ENHANCE DEMOCRACY IN LATIN AMERICA 40–52 (2018). See also, Sergio Verdugo & Jorge Contesse, *Auge y Caída de un Proceso Constituyente: Lecciones del Experimento Chileno y del Fracaso del Proyecto de Bachelet*, 4 DERECHO CRÍTICA SOC. 139 (2018).

⁸ Schor, *supra* note 2.

⁹ See THE FUJIMORI LEGACY. THE RISE OF ELECTORAL AUTHORITARIANISM IN PERU (Julio Carrión ed., 2006).

attempted to legitimize the incumbent regimes, allowing them to accumulate political power, undermining the possibility of alternation in power, and deteriorating the competitiveness of the democratic system. Second, these constitutional changes have introduced innovative forms of constitutionalism by weakening the separation of powers schemes and promoting illiberal (or post-liberal) forms of constitutionalism that seem to combine a Socialist narrative with an Indigenous agenda.¹⁰

These constitutions are remarkably long,¹¹ even for Latin American standards, and they share certain features related to a neo-Bolivarian distinct identity.¹² Those features associate with a non-liberal and plurinational approach emphasizing the rights of the indigenous peoples,¹³ and with Socialist policies.¹⁴ These constitutions are largely aspirational,¹⁵ and frequently contain mission statement provisions¹⁶ that are hardly enforceable. Other specificities of ALBA constitutionalism are a critical approach towards “standard” Western constitutional doctrines, as well as frequent invocation to Latin American symbols such as historical heroes like Simón Bolívar, or Indigenous traditions such as the way they refer to the “Mother Nature” (e.g. see the Bolivian and Ecuadorian constitutional preambles). Also, the neo-Bolivarian constitutions typically recognize generous social rights,¹⁷ despite “almost no economic and social rights litigation.”¹⁸ Often, these constitutions resort to a nationalistic narrative, emphasize substantive equality, and employ ambitious rhetoric portraying constitutional change as “foundational” instead of merely corrective. Indeed, constitution-makers have “consciously tried to make a break with the past.”¹⁹

¹⁰ For a useful literature review, see Jonas Wolff, *New Constitutions and the Transformation of Democracy in Bolivia and Ecuador*, in NEW CONSTITUTIONALISM IN LATIN AMERICA. PROMISES AND PRACTICES 183 (Detlef Nolte & Almut Schilling-Vacaflor eds., 2012).

¹¹ Zachary Elkins, *Constitutional Revolution in the Andes?*, in COMPARATIVE CONSTITUTIONAL LAW IN LATIN AMERICA 108 (Rosalind Dixon & Tom Ginsburg eds., 2017).

¹² See, e.g., Phoebe King, *Neo-Bolivarian Constitutional Design*, in SOCIAL AND POLITICAL FOUNDATIONS OF CONSTITUTIONS 366–397 (Denis J. Galligan & Mila Versteeg eds., 2013).

¹³ E.g., Mark Tushnet, *The New “Bolivarian” Constitutions: A Textual Analysis*, in COMPARATIVE CONSTITUTIONAL LAW IN LATIN AMERICA 126 (Rosalind Dixon & Tom Ginsburg eds., 2017).

¹⁴ Javier Couso, *The “Economic Constitutions” of Latin America: Between Free Markets and Socioeconomic Rights*, in COMPARATIVE CONSTITUTIONAL LAW IN LATIN AMERICA 343, 354 (Rosalind Dixon & Tom Ginsburg eds., 2017).

¹⁵ Roberto Gargarella, *Latin American Constitutionalism, 1810–2010: The Problem of the "Engine Room" of the Constitution*, in LAW AND POLICY IN LATIN AMERICA. TRANSFORMING COURTS, INSTITUTIONS, AND RIGHTS, 192 (2017).

¹⁶ King, *supra* note 12 at 372–374.

¹⁷ Couso, *supra* note 14 at 354.

¹⁸ Carlos Bernal, *The Constitutional Protection of Economic and Social Rights in Latin America*, in COMPARATIVE CONSTITUTIONAL LAW IN LATIN AMERICA 338 (Rosalind Dixon & Tom Ginsburg eds., 2017).

¹⁹ Rodrigo Uprimny, *The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges*, 89 TEX. LAW REV. 1587, 1602 (2011).

Critics of these constitutional changes often claim that they have produced or helped to trigger authoritarian or semi-authoritarian outcomes.²⁰ They use them as examples of abusive forms of constitutionalism,²¹ or as constitution-making processes undermining democracy,²² or leading to a sort of competitive authoritarianism.²³ Even though these criticisms are justified, critics rarely take into account the legitimization strategies that those regimes use.²⁴ Our argument is different because it identifies the way the ALBA countries portray political representation before elaborating our criticism. This does not exclude—but complement—other criticisms against ALBA constitutionalism.

3. Political Representation and the ALBA countries

Concerning political representation (PR), one of the central claims behind the critical approach adopted by ALBA constitutionalism, is the severe representation deficit of certain disadvantaged groups, particularly the indigenous peoples. These groups are relevant in the Latin-American context, Bolivia being the country with the highest percentage of indigenous population (62 percent).²⁵ However, the former ruling elites rarely satisfied the various demands of the indigenous peoples. For this reason, any account discussing whether the ALBA constitutional model has responded to the second function of constitutionalism (i.e., empowering ordinary people) should identify how the ALBA regimes represent the indigenous peoples and their demands.

The claim for more and better representation should be deconstructed. Following Pitkin's classification, it seemed to target descriptive representation as a means to achieve more and better substantive representation. We believe, however, that mixed with descriptive elements, the ALBA experiences also show relevant features of symbolic representation, which, at least in some instances, may be the most influential element involved. Notice that both –descriptive and symbolic representation – are not based on what the representative does, but on what the representative "stands for." The former "depends on the representative's characteristics, on what he *is* or is *like*"²⁶ and assumes a shared personal

²⁰ But see Jorge González-Jacome, *From abusive constitutionalism to a multilayered understanding of constitutionalism: Lessons from Latin America*, 15(2) INT'L. J. CONST. L. 447, 458 (2017).

²¹ David Landau, *Abusive Constitutionalism*, 47 UC DAVIS L. REV. 189, 203–208 (2013).

²² David Landau, *Constitution-Making Gone Wrong*, 64 ALA. L. REV. 924–980 (2013).

²³ Steven Levitsky & James Loenton, *Populism and Competitive Authoritarianism in the Andes*, 20 DEMOCRATIZATION 107 (2013).

²⁴ Exceptions exist, though. For the way some scholars have criticized Landau's arguments, *see, e.g.*, González-Jacome, *supra* note 20; Joshua Braver, PUTTING "ABUSIVE CONSTITUTIONALISM" AND POPULISM IN PERSPECTIVE INT'L J. CONST. L. BLOG (2018), <http://www.iconnectblog.com/2018/07/putting-abusive-constitutionalism-and-populism-in-perspective-2/>.

²⁵ COMISIÓN ECONÓMICA PARA AMÉRICA LATINA Y EL CARIBE (CEPAL), LOS PUEBLOS INDÍGENAS EN AMÉRICA LATINA. AVANCES EN EL ÚLTIMO DECENIO Y RETOS PENDIENTES PARA LA GARANTÍA DE SUS DERECHOS (2014).

²⁶ HANNA FENICHEL PITKIN, THE CONCEPT OF REPRESENTATION 61 (1967).

feature (e.g. race and gender) between the representative and the represented.²⁷ The latter refers to a connection that “seems to rest on emotional, irrational psychological responses rather than on rationally justifiable criteria,”²⁸ and it is based on belief: it exists insofar as the represented believes it.

In the ALBA context, the symbolic dimension is provided mostly by the Presidential figure, whereas the descriptive representation factor is founded both in the Presidential figure and also in the contents of the new constitutions.

4. Presidential Figure: Symbolic and Descriptive Representation

Latin America has shown an unwavering commitment to presidential systems as opposed to parliamentary systems. This is relevant for our analysis because scholarship on PR usually focuses on the relationship between the Parliament as a whole and the electorate (*systemic*), or between members of the Congress and their constituency (*dyadic*), sometimes including the role of political parties. However, in Latin-American countries, the critical dimension of PR would most probably involve the relationship between the electorate (or a relevant part of it, such as disadvantaged groups) and the President. This can be clearly appreciated in the ALBA constitutional experiments. These were pushed by strong and charismatic Presidents (Evo Morales in Bolivia, Rafael Correa in Ecuador, Hugo Chávez and now Nicolás Maduro in Venezuela, and Daniel Ortega in Nicaragua), who stressed and even abused their “likeness” with disadvantaged groups of their electorate.

The most notorious example is Bolivia, where President Evo Morales built his political image over two group identities: *Aymara* and *cocalero*. *Aymara* are the second largest original people (pre-Hispanic) in the country,²⁹ and *cocaleros* are a less well-defined group linked to the low-income peasantry syndicalism. Here we can find the mixture between descriptive and symbolic representation we mentioned. President Evo Morales has made of his ethnic background a central political issue of his administration, appealing to the descriptive representation of all the indigenous peoples of Bolivia (thirty-nine groups accounting for 62 percent of the population).³⁰ His *cocalero* background was also used similarly, but with less intensity and predominantly during the first years of his service. Both groups are considered to be the backbone of his electoral support. Interestingly, the abundance of original peoples in Latin America may render President Morales a potential transnational representative, a role he seems to be flirting with.

²⁷ See also ANNE PHILLIPS, THE POLITICS OF PRESENCE (1998).

²⁸ PITKIN, *supra* note 26 at 100.

²⁹ CEPAL, *supra* note 25.

³⁰ *Id.*

Together with this descriptive dimension, President Evo Morales seems to have also developed a strong emotional (or at least non-rational) link with a relevant part of the Bolivian electorate. Following a long tradition of Latin-American *caudillos*, and echoing some “Schmittian” notions of the leader, Morales presents himself as the “incarnation” of the Bolivian people, thus resorting to typical elements of symbolic representation. This has enabled Morales to reach out towards groups not descriptively represented by him.

In other ALBA countries, the *caudillo* component has been clearly dominant, although certain descriptive elements remain. For example, President Nicolás Maduro, Chávez’s successor and current leader of the *Bolivarian Revolution*, has always presented himself as the “worker-President,” resorting to a working-class identity. This kind of descriptive representation has pedigree, considering that the *ouvrières* were the first group in modern times to demand such representation: workers should be represented by workers, and not by members of the bourgeoisie.³¹ That is exactly what President Maduro constantly refers to in his political discourse.

5. Constitutional Change and the ALBA Regimes

As mentioned, ALBA countries adopted new constitutions during the first decade of the 21st century. The constitution-making procedures leading to the new constitutions took place during troubling times, sometimes ignoring the opposition, as in Venezuela,³² or by breaching the agreements reached with it, as in Bolivia.³³ From a substantive perspective, the “constraining” function of constitutionalism was harmed by the institutional arrangements included in the new constitutions, as they all aimed at strengthening the power of the President and weakening the separation of powers schemes by designing a sort of “Radical Democracy.”³⁴ Sometimes they used the existing constitutional or supreme courts to legitimize their experiments,³⁵ and other times these courts were previously dismantled to avoid blockage or meaningful supervision.³⁶

³¹ See PIERRE ROSANVALLON, LE PEUPLE INTROUVABLE 67, 351 (1998).

³² David Landau, *Constitution-Making and Authoritarianism in Venezuela*, in CONSTITUTIONAL DEMOCRACY IN CRISIS? 161–175 (Mark A. Graber, Sanford Levinson, & Mark Tushnet eds., 2018).

³³ Sergio Verdugo, *The Fall of the Constitution’s Political Insurance. How the Morales Regime Broke the Insurance of the 2009 Bolivian Constitution.*, 17 FORTHCOM.-INT. J. CONST. LAW (2019). Also, see Martín Mendoza-Botelho, *Revisiting Bolivia’s Constituent Assembly: Lessons on the Quality of Democracy*, 29 ASIAN J. LAT. AM. STUD. 19–55 (2016).

³⁴ Javier Couso, *Radical Democracy and the “New Latin American Constitutionalism”*, SELA (2014), available at https://law.yale.edu/system/files/documents/pdf/sela/SELA13_Cousu_CV_Eng_20130516.pdf.

³⁵ Raul A. Sanchez Urribarri, *Courts between Democracy and Hybrid Authoritarianism: Evidence from the Venezuelan Supreme Court*, 36 LAW SOC. INQUIRY 854 (2011).

³⁶ Andrea Castagnola & Aníbal Pérez-Liñán, *Bolivia. The Rise (and Fall) of Judicial Review*, in COURTS IN LATIN AMERICA 278 (Gretchen Helmke & Julio Ríos-Figueroa eds., 2011).

After their respective constitution-makers approved these texts, courts in Venezuela, Ecuador, Bolivia, and Nicaragua have been considered by many to be submissive institutions that do not check political power effectively.³⁷ The Bolivian Court, for example, has helped the Morales regime to get rid of presidential term limits even against the result of a referendum that was supposed to prevent him from amending the term limits included in the Constitution.³⁸ Courts in Venezuela and Ecuador have also enacted similar decisions.³⁹

While the ALBA constitutional projects involved the elimination of relevant constraints to the incumbent regimes, the constitutional texts also aimed at enhancing the ‘empowerment’ function of constitutionalism by including the recognition of groups (mainly original peoples)⁴⁰ and the incorporation of descriptive representation. Thus, the ALBA constitutional models deliberatively tried not to reconcile the constraining and empowerment functions of constitutionalism, favoring the latter over the former.

In Bolivia, the rights and standing of the original peoples were one of the constitution’s main concerns. Some of the new constitutional contents reflect a descriptive approach towards the representation of these groups that easily fits with President Morales’s stress on ethnicity. Parting with the traditional French-style notion of “one state, one nation,” the 2009 Constitution declares Bolivia to be a “Plurinational” state (art. 1). This innovation allowed the blending of group-based representation into the national-representation paradigm, being the former a necessary factor for descriptive representation. Thus, all “nations” and original peoples are recognized the right to elect their representatives according to their peculiar procedures and rules (arts. 11.II.3, 26.II.4, and 211), and even to have their own representative structures (art. 403). Moreover, both the national lower chamber and regional parliaments should have reserved seats for representatives of the original peoples (arts. 146, 147, and 278).

Descriptive representation is not confined to the legislative branch. The presidents must appoint their cabinet considering the plurinational nature of the country (art. 172.22). Moreover, the Constitutional Court’s composition must “respond” to the same

³⁷ Raul A. Sanchez Urribarri, *Between Power and Submissiveness: Constitutional Adjudication in Latin America*, in COMPARATIVE CONSTITUTIONAL LAW IN LATIN AMERICA 276, 288 (Rosalind Dixon & Tom Ginsburg eds., 2017).

³⁸ Verdugo, *supra* note 33.

³⁹ Rosalind Dixon, David Landau & Yaniv Roznai, *Term Limits and the Unconstitutional Constitutional Amendment Doctrine: Lessons from Latin America* (2018).

⁴⁰ The recognition of the indigenous peoples and their rights is not confined to ALBA countries though. Claudio Fuentes & Macarena Sánchez, *Asientos Reservados para Pueblos Indígenas. Experiencia Comparada*, 1 CENT. ESTUD. INTERCULT. E INDÍGENAS (2018).

plurinationality (art. 197), and the Supreme Electoral Court should reserve two seats of seven for members of the original peoples (art. 206).⁴¹

The Ecuadorian Constitution of 2008 also declares the country “plurinational” and attempts to combine national representation with the political representation of groups, allowing descriptive representation to flourish. Concerning the original peoples and “nationalities,” several rights and prerogatives are recognized (art. 57 ff.), such as having representatives before official authorities; selecting their own authorities (which may have judicial powers); being subject to their customary law and creating autonomous regions (art. 257).

It is noteworthy that groups other than the original peoples are also considered. There is a duty of the State to promote gender parity, at least concerning public offices and the political parties’ structure (art. 65). The State also has a duty to ensure the political participation and representation of the disabled (art. 48), which may translate into affirmative action policies. This is likely considering that a further constitutional provision orders the State to adopt such measures to “guarantee the participation of groups discriminated against” (art. 65). In sum, the novel Ecuadorian Constitution is clearly concerned with disadvantaged groups, and it adopts elements of descriptive representation.

In Venezuela, Chavez’s Constitution, even though it rejects ”plurinationalism” (art. 126), also refers to groups and descriptive representation. Thus, several indigenous peoples’ rights are recognized (art. 119 ff.), among them, the right to political participation (art. 125).

Concerning descriptive representation, the Constitution orders the State to “guarantee indigenous representation” in the National Assembly (legislative), as well as in regional and local “deliberative bodies” (art. 125), which translates into reserved seats (three in the case of the National Assembly (art. 186)). Remarkably, a transitory constitutional disposition (7°) establishes several requirements to run for these reserved seats, among them, the candidate should be a member of an indigenous people and speak an indigenous language, thus reinforcing the descriptive component involved.

6. Critical Approach

Leaving aside the actual impact of these developments on substantive representation (which of course is not guaranteed), the excessive centralization of political power justified in a narrative of political representation that enhances the personalization of power in the hands of the president raises some concerns. Latin America’s long and tragic record of *caudillos*

⁴¹ On the elections of judges in Bolivia, see Amanda Driscoll & Michael J. Nelson, *Judicial Selection and the Democratization of Justice: Lessons from the Bolivian Judicial Elections*, 3 J. L. CTS. 115 (2015); Amanda Driscoll & Michael J. Nelson, *The 2011 Judicial Elections in Bolivia*, 31 ELECT. STUD. 628 (2012).

should warn us about abusing symbolic representation to unduly increase the concentration of power in the executive branch. The experience of the ALBA countries shows Presidential figures eager to impose their will over other branches of Government, even changing their composition or closing them down (e.g., President Morales dismantled the Bolivian Constitutional Court,⁴² and President Maduro used its control over the Supreme Court to virtually “suspend” the National Assembly⁴³). Sometimes this has been achieved through Constitutional Assemblies conveniently summoned and controlled by the executive.⁴⁴ In all the cases, the empowerment of the executive branch has harmed the authority of the legislatures, weakening their capabilities to develop effective forms of representation.⁴⁵ The legislatures have been the main institutional instances in which the opposition can perform some sort of political power, and weakening them has harmed the constraining function of the constitutional systems.

Moreover, these Presidents have been reluctant to leave office. President Morales has been in power since 2006, President Chavez’s rule ended only with his death, and his successor President Maduro, has clung to his office in the most objectionable manner. In Ecuador, President Correa tried to keep power even after he formally yielded it, until his successor decided to publicly part with him. In sum, the ALBA experiences show that symbolic representation, particularly by the Presidents, should not be overencouraged in the Latin-American context.

Concerning descriptive representation, we are still uncertain about whether its well-known difficulties would be worsened or lessened in the Latin-American context. Risks such as the encouraging of essentialism (the assumption that each group has “fixed essences given once and for all, with traits that are homogeneously distributed among all the group members”)⁴⁶ and fragmentation remain, particularly in the case of the original peoples who inhabit in specific territories, or even live semi-isolated from the rest of the population. On the other hand, giving the relevant number of the indigenous (and mestizo) peoples in most Latin-American countries, the demand for descriptive representation is very likely to increase. Considering that many original peoples can be found in more than one country (e.g., *Mayas, Mapuches, Aymaras, Quechuas*), descriptive representatives of transnational communities should not be discounted, giving place to something similar to *subrogate representation* (“when legislators represent constituents outside their own districts”).⁴⁷

⁴² Castagnola & Pérez-Liñán, *supra* note 36; Verdugo, *supra* note 33.

⁴³ See ESTUDIOS SOBRE LA ASAMBLEA NACIONAL CONSTITUYENTE Y SU INCONSTITUCIONAL CONVOCATORIA EN 2017, (Allan R. Brewer-Carías & Carlos García Soto eds., 2017).

⁴⁴ Landau, *supra* notes 21 and 22.

⁴⁵ See also Almut Schilling-Vacaflor, *Bolivia’s New Constitution: Towards Participatory Democracy and Political Pluralism* 90 EUR. REV. LAT. AM. & CARIBBEAN STUD. 3 (2011).

⁴⁶ Carol C. Gould, *Diversity and Democracy: Representing Differences*, in DEMOCRACY AND DIFFERENCES , 182 (Seyla Benhabib ed., 1996).

⁴⁷ Jane Mansbridge, *Rethinking Representation*, 97(4) AM. POL. SCI. REV. 515 (2003).

Likewise, a possible expansion of descriptive representation claims and mechanisms to other disadvantaged groups should not be discarded. Curiously enough, Latin America has been the region where electoral quotas for women, supported in descriptive representation claims, have been most widely adopted.⁴⁸

7. Concluding Remarks

In this essay, we have briefly discussed how ALBA constitutionalism has approached political representation, combining descriptive and symbolic forms of representation. Whereas both are present in the figure of the President or *caudillo*, the texts of the new constitutions show a substantial advancement of descriptive representation, particularly as applied to the indigenous peoples.

This use of political representation fits well with how the ALBA regimes have engaged with both functions of constitutionalism(i.e. constraining political power and empowering ordinary citizens). ALBA constitutionalism has not tried to reconcile both functions. Instead, it has consciously weakened the constraining role and used its constitutions and the charisma of its leaders to emphasize the empowering function. By reinforcing *caudillo* representativeness and strengthening the disadvantaged group's representation, the constraining role is further downplayed.

⁴⁸ DIFFUSION OF GENDER QUOTAS IN LATIN AMERICA AND BEYOND. ADVANCES AND SETBACKS IN THE LAST TWO DECADES (Adriana Piatti-Crocker ed., 2011).