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THE CONSTITUTIONAL SITUATION IN VENEZUELA: THE CONSTRUCTION OF A SOCIALIST COMMUNAL STATE¹

ABSTRACT This paper will try to emphasize how, in recent years, steps have been taken aimed at replacing the pluralist and decentralized State foreseen in the Constitution for a different model, based on the penetration of the socialism in the different community spaces, which constitutes the foundation for the establishment of a new scheme of production, of conviviality and legitimacy. It will highlight the contradictions between the model presented as desirable and the real state policies and judgments

KEY WORDS Constitutional law, socialism, Venezuela.

I. INTRODUCTION

Venezuela lives a complex political process that can be analyzed from different angles. Moreover, we believe that the development project has many contradictions and lacks homogeneity and symmetry with respect to a particular theoretical model or political-economic history. The institutional dynamics of the country is no exception to this complexity, but can be used to set the main lines of institutional evolution.

Briefly stated, we are faced with the establishment of a political and institutional order different from the one formally established by the Constitution in force. An order that, even though it does not try to explicitly break with the Constitution, has gradu-

¹ This article was submitted for publication before the death of Hugo Chávez.

ally been neglected. Instead of a lack of the constitutional design of power and constitutional vision on relations with the citizens of the state, there appears – on a strongly declarative or rhetorical and less practical note – the so-called communal state or communal socialist state.

Laws made to establish this form of state named it a “form of social and political organization,” and the key ideas are popular – of community-empowerment and socialism in everyday life – and, in all spheres of social life, the socialization of the means of production, at least in the basic or strategic meaning, and the formalization of a new scale of social ethical values. It pursues the multiplication of social cores of politicization, articulated into larger networks that are ultimately ascribed to the National Executive. This contrasts with the provisions of a constitution that guarantees political pluralism and human rights that are associated, and ensuring economic freedom, subject to state intervention necessary to preserve certain legal rights usually covered in the same Constitution. Furthermore, the communal socialist state tends to reduce the significance of regional and local territorial authorities under the Constitution, whose existence and autonomy is inherent in the definition of the state as federal and decentralized.

In this context, the present study aims to highlight the fundamental milestones of the process of establishment of communal socialist state and interpret from a constitutional standpoint. It also underlined the contradictions between what the state promises community in terms of community empowerment and institutional real effects deliberately produced.

II. CONSTITUTION AS THE FACADE TO THE IMPLEMENTATION OF AN ALTERNATIVE IDEOLOGICAL SYSTEM

A. The Constitution facade

Since 1999, the approval by referendum of the current constitution undermined the foundations of the formally proclaimed constitutional democracy, formally proclaimed, essentially implying neutralization and then subjecting the institutional checks and balances and progressive denial of political pluralism. The conquest of the institutionalism placed at the service of a political ideology, paved the way forward in the revolutionary process. The constitution allowed to hide the latest intentions of the “*chavista* Project” and served as a figurehead remainder of the opinions of those who warned against the authoritarian regime totalitarian-minded that was taking root. That was when the Constitution became the “Constitution façade”.

The rise of this stage was the institutional conflict that arose because of the popular initiative to convoke for a recall referendum of President of the Republic, which was subject, under decisions of the National Electoral Council and the Constitutional Court of the Supreme Court of Justice, to a veritable obstacle course and ended up serving as a census of government opponents, widely disseminated as the “Tascón List”.

The Use of the Constitution as a simple formal entitlement instrument had its limits and soon it began to show through, especially when the lack of independence of the judiciary became notorious and the Supreme Court was decanted each time as a mere pro-government actor. Expanding the number of judges under the Organic Law of the Supreme Court of Justice and increasing its budget, with eminently partisan criteria, in December 2004, was a glaring sign of this evolution.

The Constitution facade survived but was expected as the right moment to fall off on the constitutional order of values, and the electoral victory of Hugo Chávez in the presidential election of December 2006 was provided. Upon learning of the election results, Chávez declared that the people had voted for the Bolivarian Socialism and, days later, in a public ceremony he alluded to the Simon Bolivar National Project, but not yet formally introduced it as well-defined in its essential lines, which led to the implementation of socialism; he emphasized the need for an enabling law, and announced its intention to propose to the National Assembly a number of amendments to the Constitution.² This was confirmed in his inaugural speech of January 10, 2007. He said that “a transitional period had ended” and a “new era” began. One of its hallmarks would be, together with the new geometry of power, “the revolutionary creative explosion of communal power.”³ The way Chávez understood and proclaimed his electoral victory marks this as a turning point, but the truth is that the rift with the 1999 constitutional design and constitutional normative power itself was prior and gradual, as was the collectivist conception that was advocated. This event, therefore, led to a change not in the essence or nature of the process, but in the intensity or speed of reforms and openness with which they deviated from the Constitution.

The request from the President of the Republic for an enabling law that would allow him to issue decrees with the force of law, was satisfied expeditiously by the parliament – appointed by the Venezuela National Assembly – and for the long term of a year and a half. This would not be the first enabling law granted to President Chávez, but has certain hallmarks. One deals with the singular generality and temporal extent of the rating, but another, which deserves to be emphasized, refers to the political and institutional context. Unlike the enabling legislation conferred on the President Hugo Chávez in April 1999, during the term of the 1961 Constitution, and in November 2000, the enabling law aproved by a parliament that consisted fully of Chávez forces in early 2007. These forces had a majority when the Enabling Act was passed in 2000, but then the case was similar in the National Assembly, with opposition political parties that could be an obstacle to the rapid adoption of some laws; the parties had an undeniable democratic support but did not fit with the government regulation. Hence, the step taken in 2007 was a clear sign of the determination to promote an ideological project called 21st

² Instituto de Altos Estudios Diplomáticos Pedro Gual, Observatorio Socialista de Venezuela, Caracas 2007, pp. 2 y ss., at <<http://www.aporrea.org/ideologia/n88913.html>>, 3 August 2012.

³ Transcription of the video recording, at <<http://vulcano.wordpress.com/2007/01/11/discurso-de-hugo-chavez-en-su-toma-de-poseion>>, 3 August 2012.

Century Socialism, even at the cost of the sacrificing the fundamental principles of the Constitution relating to the division or distribution of public power.

The same applies to Simon Bolivar National Project, formalized after the Plan of the Economic and Social Development of the Nation (2007-2013)⁴, First Socialist Plan, submitted by the President in September 2007, which was inconsistent in many respects with the Constitution and would be approved by the National Assembly on December 13, 2007, just after the popular rejection of the constitutional reform.

It is therefore no wonder that the President has wanted, on the one hand, to make the legal and institutional evolution happen, promoting a constitutional amendment that would adapt the supreme law to a dynamic development policy and on the other hand, new mechanisms for revolutionary transformation. The 1999 Constitution not only did not reflect the reality of the operation of the government, but also did not fit anymore, if it ever had, with the aspirations of those in power. That Constitution was, in the eyes of its main promoters, an expression of insufficient transactional project, reformist or warm, and could not be preserved even from a symbolic point of view. Fewer still considered the repeated invocation of this Constitution by the opposition and other social sectors, compared to estimated official measures, as unfair and unconstitutional. Also important was the purpose of constitutional discourse to delegitimize the opposition. If approved, constitutional reform would not only have lost critical support for the implementation of certain official decisions, but also would have been subjected to the results in form of the constitutionalization of socialism. Also, Chávez wanted to reconcile the legitimizing factor of complying with a Constitution with trimming the important safeguards that he had estimated when it would become applicable.

B. The proposed constitutional reform of 2007 and its rejection in the referendum: the sharp deconstitutionalization

The Constitutional Reform Bill submitted by the President to the National Assembly in August 2007 and its expansion by the National Assembly meant the establishment of a centralized state, territorially, politically and ideologically monochromatic, which, however, on the rhetorical level had not completely abandoned the idea of formal law and constitutional supremacy, because it wanted to continue to obtain the utility derived from legitimacy through law.

It will not be possible to enter into the details of the Constitutional Reform Bill here. Suffice it to recall that the two great purposes of the Reform Project, according to the speech given by the President of the Republic to the National Assembly on the occasion of his presentation, were building on the foundation of the revolution in the field of society, and deepening of socialism in the political and socioeconomic sphere. According to the presidential address, the revolution would have already successfully entered the political arena, having freed political society of traditional restraints on the economics

⁴ *Líneas Generales del Plan de Desarrollo Económico y Social de la Nación 2007-2013*, República Bolivariana de Venezuela, Caracas 2007, at <http://www.cenditel.gob.ve/files/u1/lineas_gen_nacion.pdf>, 3 August 2012.

of power (the bourgeoisie or oligarchy); what was still needed was forming their own civil society through the construction of *a new society, a new state as a correlate*.⁵

The purpose of the project was not noticeable at first glance in its articles, which were largely focused on changes to rules concerning the organization of the public authorities, but this aspect of the proposal was particularly relevant. The new geometry of power, intended to replace the current political-territorial division, was supported by two essentially social or sociological concepts, such as the city and the municipality, where the municipalities were the “social cells of the territory”, integrated by communities, which in turn represented the “core basic and indivisible territorial Venezuelan Socialist State” (art. 16). Communities, communes and cities were also within the proposal, from the concepts which took up the notion of Power (art. 136), and in which community councils and other Councils of People’s Power were set up, which would be the expression of a right to political participation that would condition the construction of socialism (art. 70). The promotion, organization and registration of these councils would be a matter of National Power (art. 156, Nº 35). Thus, the territorial organization had become, by constitutional mandate, a sort of an ideological penetration into social area, intended as (somewhat veiled but indubitable) social transformation that corresponded to this second stage of the revolution. Proof of this could be found in Article 168 of the project, whereby what should be promoted locally is *citizen participation through the Councils of People’s Power and socialist means of production*.

The attempt to deepen socialism covered several sectors of human endeavor. The territorial organization was based on the idea of the Socialist State (articles 16 and 168), political participation was contingent on the construction of socialism (art. 70), as well as the participation of the people (art. 158), and they adopted a socialist economic model (section 112 and Temporary Provision Ninth).

These two great purposes, to which we must add the indefinite (or continuous) presidential reelection (or continuous), were kept in the document that was widely spread as the Explanatory Memorandum of the Project, which introduced a time perspective of gradualism in the analysis. According to the Explanatory Memorandum, the Reform Bill was just a tool to accelerate the transition to socialism; it would take many years and involve the adoption of additional measures, backed by the Reform, which might be accompanied by further constitutional adjustments. This transition would presuppose a change in attitude and values, predictably preceded by a generation gap. Extending the time horizon of the Presidency of the Republic was considered a key part of the process.⁶

The above underscores the scope of the proposed constitutional reform, which had a huge draft, clearly surpassing the limits of a simple amendment to the Constitution (article 342 Constitution). The single estimate of the weight that socialism had within

⁵ *Presentación del Proyecto de Reforma Constitucional ante la Asamblea Nacional por parte del Comandante Hugo Chávez, Presidente de la República Bolivariana de Venezuela*, Ministerio del Poder Popular para la Comunicación y la Información, Caracas 2007, 40 ff.

⁶ *Proyecto Reforma Constitucional. Propuesta del Presidente Hugo Chávez*, Presidencia de la República, Agosto 2007, at <<http://www.analitica.com/media/9949568.pdf>>, 3 August 2012.

the project is imply much too overreaching to illustrate. Socialism would become the great fundamental principle of the emerging constitutional order, which would have a serious impact on Title I of the Constitution, whose provisions are not subject to change or amendment by way of a constitutional amendment. Thus, democratic pluralism (art. 2 Constitution) had been undermined, as well as decentralization inherent to the federal character of the state (articles 4 and 6 Constitution).

Arguably, some of the proposed changes, particularly those that impinge on democratic pluralism, could not have been incorporated into the Constitution even by a National Constituent Assembly by attacking the very notion of constituent power (democratic), but clearly, the use of the process of reform to transform the constitutional institutions, economy and society to the extent what the project intended to do was surreptitious or fraudulent, an undeniable violation of the limits of constituted powers to make amendments to the Constitution. The final participation of the people in a referendum comes to mind, where the procedures for the introduction of an amendment or reform does not amount to an expression of the original constituent power, but is a form of political control over the people.

The Constitutional Reform Bill passed by the National Assembly was rejected in a referendum on December 2, 2007, which fact placed its promoters at the crossroads: to fully respect the result of the referendum, which meant abandoning the proposals contained in the reform Bill that would come into conflict with the provisions of the 1999 Constitution, at least until it would be constitutionally possible to rethink the rejected reform, or to go ahead with the changes – but in surreptitious ways.

The first option was required by the Constitution and democratic principles, but stood to counter the process of emptying the constitutional norms that had hitherto been carried out. The failure of the Reform Project's referendum of 2 December 2007 certainly represented an obstacle to the insistence unique in content, since the impairment of regulatory (art. 345 of the Constitution) added another partner to the wishes of the people in the exercise of sovereignty, the ignorance implied for Chavismo crossing a border of electoral democracy. However, the normative force of the Constitution of 1999 was already weak – as was the difference between supporters and voters opposed to reform, all of which added to the low turnout, especially in the ranks of Chávez, which spurred Chávez to move on, burning the few bridges with the facade of normality and constitutionality, and signaling his willingness to ignore an election result that posed a serious threat to the Revolution.

The second option, certainly campaigned alongside the above, would be in favor of an appreciation government policy that considered the referendum on constitutional reform as a contest whose outcome could depend on the relentless acceleration of the revolution, with no regard to moderation or cessation. This probably also reached political assessment of the Constitution; before the referendum on the reform, there were no effective constitutional norms and the popular rejection of the reform would not resurrect a hopeless Constitution. From the government's perspective nothing changed after December 2, 2007; they had merely missed the opportunity to catapult the process further. Thus, the defeat of the proposed constitutional reform seems to have para-

doxically completed the process of burying the Constitution of 1999 and the very idea of the Constitution as a warranty of order.

From then on, until today, there have been many events that demonstrated the process of glaring deconstitutionalization, among which stood out the implementation of two completely generic and enabling acts of excessive length (equivalent to an Enabling Act), and the promulgation of decree-laws to implement aspects of the reform previously rejected as inconsistent with the 1999 Constitution. Thus, by decree-laws, regulations or laws and even decisions have been taken, such as the creation of militias outside the components of the National Armed Forces, directly under the commands of the President of the Republic; the ideology of the National Armed Forces, the recentralization of constitutionally assigned powers to the states and the decline of its share in national income, the replacement of the constitutional concept of decentralization by the seizure of an alleged communal challenged by the lack of autonomy for community organizations, expansion of state control over the food industry and state intervention in the economy prior authorization occupations business or property indefinitely and without a warrant, the recognition of people's power and its superiority or exclusivity within the participatory citizen constitutionally established, the *sacralización* by law of socialism, to the detriment of political pluralism, reducing the autonomy of the Central Bank of Venezuela and the anticipation of presidential powers for the use of excess reserves; approval of the Economic and Social Development plan defined as a socialist plan over sizing, under a scheme of centralization, and the relegation of private property to a marginal position within the economic and political model in the making.⁷ These legal provisions have been associated with administrative, communications and other measures have been expanding at the rate of state to be built.

C. The pathological infiltration and movement of the 1999 Constitution: towards communal socialist state

The Venezuelan experience of recent years is added to the nations that have suffered the dismantling of democratic institutions thanks to its undermining by the supreme power holders. It is tragic episodes for democracies, where leadership catapulted by popular support attained positions of power from which constitutional structures, particularly the control bodies are first neutralized and then placed in the service of the emerging political order. From inside, the political order of constitutional democracy is promoted, thus undermining and its adulteration, through their open denial not only of its reorientation or re-reading, in which the electoral political legitimacy and social objectives invoked by the authorities intend justify removal of effective legal guarantees of political balances and the idea of limiting the power of the law.

The technique that characterizes these processes is the infiltration of the constitutional structures of pathological content at first numb the institutional and resilience

⁷ A.-R. Brewer Carias, *Reforma Constitucional y fraude constitucional. Venezuela 1999-2009*, Caracas 2009.

of social forces themselves, then, or in parallel, proceed to occupy the key position of political domination. The proposed strategy for the transition to the 21st Century Socialism is not therefore formally a repeal of the 1999 Constitution, but intends to keep it as an instrument of legitimacy and support – a parasitic emptying it of its content. It is our intention to further analyze this process of political science, as we are interested in an approach to the characterization of the current political and institutional dynamics of Venezuelan constitutional theory.

The phenomena of detachment from reality in constitutional law have been examined from different viewpoints. As this point, we must distinguish between two large groups or conceptual constellations. The first group includes categories such as the violation of the Constitution or constitutional mutations. The breach of the Constitution presupposes a violation of any constitutional provision in a particular situation, in exceptional or unique cases, maintaining the normative force of the injunction against all other cases. The mutation involves a constitutional change that occurs without changing the text of the Constitution. Mutations can be contradictory or in accordance with the Constitution, accepting usually only the latter.⁸ In connection with the breach of the Constitution has also been claimed that it can be compatible with the Constitution, which is very debatable.

These and other related categories which would not be appropriate to delve into, have one thing in common: they presuppose a will or a political action directed to leave the current Constitution. They can be isolated episodes or, in the case of mutations, transformations associated with permanent dialectic between constitutional norms and reality, between the static and the dynamic constitutional. It is also possible that both phenomena are recorded in a general erosion process of the Constitution, but this is something that is not apparent from these categories.

A more serious situation from the perspective of non-compliance with the Constitution, whose legality may be accepted in any case, is, however, when a divorce or breakup with the current Constitution is made – when the effective performance of the public authorities is deliberately and largely dispensed with, or when the essence of constitutional review processes is adulterated. They come to light now as categories of the perversion of the Constitution, the constitutional and fraudulent deconstitutionalization.⁹ The last two clarifications need to be applied to a situation such as the one outlined. Thus, the first is sometimes used with a neutral meaning from the standpoint of legality, to refer to the theft of a subject of the Constitution, to move it to the legislative, and not always in relation to circumstances of general ignorance of the Constitution, and the second is often used only against the power of constitutional reform. However, the first emphasizes the idea of emptying of the Constitution and the latter has also been employed in

⁸ See: C. Schmitt, *Teoría de la Constitución*, México 1981, p. 116; K. Stern, *Derecho del Estado de la República Federal de Alemania*, Madrid 1987, p. 334.

⁹ See: K. Loewenstein, *Teoría de la Constitución*, trad. y estudio sobre la obra por A.G. Anabitarte, Barcelona 1976, p. 213; N. Sagués, 'El concepto de desconstitucionalización', *Revista de Derecho*, N° 2 (2007), p. 181; P. de Vega, *La reforma constitucional y la problemática del poder constituyente*, Madrid 1985, p. 291.

grave contexts doctrinally undermining or manipulating the constitutionally established institutions, as in Mussolini's Italy or Hitler's Germany.¹⁰ This is in any case the sense in which these two categories serve to explain the political process that is unfolding in the country.

Meanwhile, the concept of perversion of the Constitution explains fairly well our institutional reality. As Loewenstein observes, it occurs when:

*The written constitution is used consciously to camouflage authoritarian and totalitarian regimes. In many cases, the written constitution is simply a convenient disguise for the installation of a concentration of power in the hands of a single wielder. The constitution has been deprived of its intrinsic telos: institutionalizing distribution exercise of political power (...) the distribution of political power between different power holders to limit his absolute power; has become the opposite effect.*¹¹

Venezuela of today does not suffer from simple mutations or constitutional breaches, although those are happening, too. Rather, it is immersed in a torrent of revolutionary pretensions that have sought and obtained the dismantling of the institutions of democracy and the rule of law provided for in the Constitution. We are far beyond a simple imbalance between the norms and constitutional normality attributable to natural historical development, the evolution of society or of the collective consciousness, or small deviations in the operation of certain public bodies. It hurts to see that the Constitution has been deliberately deprived of legal force and has been downgraded to the status of a political weapon in the struggle to stay in power. The high authority and dignity of the supreme law of order that guarantees human rights has been used to project an authoritarian model that violates or threatens these rights.

The deconstitutionalization is making its way up to an order of values contrary to the 1999 Constitution and largely to the very idea of Constitution, that ideology has justified itself, and supported only from the political boundaries. In this regard it can be argued that we are not facing the adjournment of a Constitution alternative or parallel, in the normative sense of the concept of Constitution, but we face a removal or purely instrumental use of the Constitution and the Law, whereby the supposedly revolutionary political maelstrom aims to unfold, unhindered and heteronomous.

There is however a certain ideological recognizable that is guiding the actions of the authorities, regardless of the Constitution, whose main features are included in the Economic and Social Development National plan 2007-2013 and are reflected in the Draft Constitutional Reform of 2007, and then in policy instruments already approved. The Plan recommends in politics, the "Revolutionary and *Protagónica* Democracy"¹² and, economically, the "socialist production model".¹³ Also, it points to what is current-

¹⁰ L. Sánchez Agesta, *Principios de teoría política*, Madrid 1970, p. 341.

¹¹ K. Loewenstein, *Teoría...*, p. 214.

¹² *Plan for Economic and Social Development of the Nation 2007-2013. Simon Bolívar National Project. First Socialist Plan*, p. 14 et seq.

¹³ *Ibid.*, p. 20 et seq.

ly emerging as the communal socialist state, a concept that integrates the basic components of political order that is being imposed: the production model, the territorial organization, and popular power as an alternative source of political legitimacy.

A distinctive feature of the model is prefigured sociopolitical dissolution of individuality in the collective. Only once, purely rhetorically, reference is made to human rights there, as these are necessarily outside a conception in which *the individual values are substituted with consciously collective values* for the sake of the establishment of a *democracy protagonist, a revolutionary* (Explanatory Memorandum to the Bill). This collectivist vision permeates the Bill and manifests, for example, in the consecration of a social right to property which is owned by the State (art. 66). The weight of the collective comes out also in the oversized public planning in several socioeconomic sectors, which affects the performance of community councils and other instances of the so-called “People Power”.

The main idea of the socialist policy lies in the connection between these three elements, along with another that is not visible in the formula. It seeks political legitimacy from communities, primarily through the creation of community councils and the election of its spokesmen in assembly of citizens, which underlines the importance of this level of organization, which flows into the “commune”, defined as “socialist space¹⁴” which is fundamental in the new “national geopolitical¹⁵” or the geometry of power. At the same time, this community-level political participation is associated with socialist production model, through social production companies or productive partner organizations and social property, which have been destined to absorb all the means of production¹⁶ or at least the basic and strategic ones.¹⁷ The fourth element of the political-economic system in progress, that of the formula of the socialist state or communal Revolutionary and *Protagónica* Democracy is a thin disguise, a mere facade, and at the same time it is the domain of the central government, led by the President of the Republic, which provides the legitimacy circuit to power, popular at community level, and territorial socialist economy.¹⁸ The political-territorial microcephaly, which tends to weaken the United and Municipalities, translates well into a presidential macrocephaly.

Such communal socialist state is not supported by the Constitution of the Bolivarian Republic of Venezuela, that posits political pluralism as a fundamental principle (art. 2),

¹⁴ Article 3 of Regulation of the Organic Law of the Federal Council of Government (published in Official Gazette Nº 39382, of March 9, 2010, reprinted by material error according to Official Gazette Nº 39416, of April 4, 2010, and amended on two occasions, according to Official Gazette Nº 39655, of April 13, 2011 and Nº 39924 of May 17, 2012), and Article 5 of the Organic Law of the Communes (published in the Official Gazette Nº 6011 Extraordinary, 21 December 2010).

¹⁵ *Plan for Economic and Social Development of the Nation 2007-2013...*, p. 27.

¹⁶ *Ibid.*, p. 9.

¹⁷ Article 3 of Regulation of the Organic Law of the Federal Government and 8, Clause 14 of the Organic Law of the People (published in the Official Gazette Extraordinary Nº 6011 of December 21, 2010).

¹⁸ For this purpose, it is quite illustrative of the Law of Communal Councils (published in Official Gazette Nº 39335, of December 28, 2009).

wich opposes the attempt to politically and legally bind a particular vision of relations between the individual and the state, between private initiative and enterprise and state intervention, especially considering that according to this view the individual is downgraded to a subordinate position. The Constitution establishes a social state of law and justice (art. 2), so that would not be admissible purely liberal policies that suppress or minimize social protection for the weakest or abandon programs to ensure equal opportunity within a society in which the starting point is so different in different orders. But also protects economic freedom and private initiative in this area (sections 112 and 299). Private economic agents are not a foreign body within the socioeconomic system of the Constitution or a necessary evil acceptable in a transition phase toward statism or collectivism. They are rather fundamental and essential actors of that constitutional system, which draws a relatively flexible legal framework that supports private property and economic freedom, as the basis of the performance of individuals in this area, on the one hand, and on the other hand, the eventually control or direct state intervention (art. 299).

Additionally, the emergence of popular power mainly through citizens' assemblies, communal councils and communes are now largely flowing outside constitutional means. There arises a contradiction with the Constitution, from the standpoint of political pluralism, when the law makes the activity of community councils, communes and other organizations of popular power into a basis for the construction of socialism.¹⁹

Added to all of the above is the erosion of federalism as a form of political and territorial organization of the Venezuelan State (art. 4, 6, 157 and 158 of the Constitution). Communal councils are simple, associative private (but hybrid) figures that have some of that but at the same time serve as local government bodies, when they receive resources originally earmarked for states and municipalities, to address (in connection with the Executive) national interests or needs that often overlap with the area of exercising the powers of those political-territorial entities. Communes, in turn, are defined by the Law of the Communes as local entities, so they should enroll in the structure of municipal government, but the law places them alongside the territorial organization of power under the Constitution. All this implies a shift of functions from these political-territorial autonomous spaces into a community allegedly linked to the National Executive through the Ministry of Popular Power with responsibility for public participation.

In addition, the democratic genesis of the authorities of the states and municipalities is undoubtedly superior to that of the spokesmen of the community councils or members of the organs of the communes, the emergence of open and competitive elections organized by the National Electoral Council offering all constitutional guarantees. All this translates into a disguised centralization and depletion of the meaning of the vote at the municipal level and the States, to the detriment of the constitutional distribution of power, which is particularly evident in the legislative rules and especially Federal Regulatory Council Government, which provides further devolution from

¹⁹ Article 2 of the Law of Communal Councils.

the various territorial organizations of popular power base by presidential decree²⁰, and also promotes the competition among all of them for the allocation of resources of the Interterritorial Compensation Fund, in accordance with the guidance of a highly centralized planning system.

The functioning of community councils is not an idea objectionable in itself. On the contrary, they may be instances of citizen participation in public affairs of singular importance, especially at the municipal level, in which the Constitution imposes a duty to the public to qualified community inclusion in the definition, implementation, monitoring and evaluation of public administration (art. 168). This partnership between the municipalities and local councils would strengthen both the municipal government and the possibilities to influence citizen the definition and implementation of policies and programs affecting local life. The participation of the community in taking up services transferred by states or municipalities under Article 184 of the Constitution (section 1), as well as implementing other mechanisms of community organization and participation referred to in this provision, including creating new decentralized (paragraph 6), is an important part of that process. What this implies, however, is that the communal councils with their ballast of ideological subjection and dependence to the National Executive have found themselves in a strange position and there emerges a state-community ambiguity. As for the communes, they could remain local, but would have to be inserted in the municipal government, instead of plotting against him, and should offer full democratic guarantees, including, of course, respect for pluralism.

It is worth stressing that community councils should be free expression of organized society, in all its diversity and community councils, local autonomies, framed in the municipal government and detached from the Executive. Popular power laws try to camouflage largely connecting these structures with the Executive Branch, but it is difficult to hide a column in the new socialist state engineering community. Rhetorically, the attempts at the a generation of governance from the bottom up, but the model actually advocated is an axis consisting of presidential power, on which the various manifestations of the so-called communal state depend.

III. FINAL THOUGHTS

The erosion of democratic institutions which we are witnessing must be countered by Venezuelans using constitutionally established channels. Reconstitucionalization movement urges the country to provide the legal framework for the political process to ensure pluralism and fundamental rights. The law, as a real limit to the rulers – and not as a simple formalization of existing power relations – is essential to the democratic development of peoples and lands. Democracy is based on periodic elections, but is not limited to them, as the Democratic Charter currently proclaims.

²⁰ Article 3 of Regulation of the Organic Law of the Federal Government.

The type of state should be reached in which that the Constitution does not absorbing the space of individual autonomy and social policy areas to feed a community controlled by the government, but rather where the private sector flourishes, which promotes and respects individual liberty, without prejudice to the regulation or administrative intervention that are absolutely necessary to meet the public interest. At the same time, it must be a state of rights, where judicial independence is recognized as an essential prerequisite of the effectiveness of those rights. It is also a state of social justice that operates – not at the expense of legal certainty and for the protection of private property and through social programs dependent on a particular ideological partisan position – but through open social policy, founded on universality and equality and human rights that must be indivisible and interdependent.

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