VENEZUELA UNDER CHAVEZ: BLURRING BETWEEN DEMOCRACY AND DICTATORSHIP?*

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Nowadays, the question inserted in the title of this lecture: "*Venezuela under Chávez: Blurring between Democracy and Dictatorship?*," can be answered in a direct way: Venezuela is not a Democracy, and the government we have, has all the similarities to a Dictatorship, although with a blurry shape in its final steps of clarification, which still allows certain liberties. This is what still confuses so many people with democratic ideas when referring to the Venezuelan political situation.

Due to its still democratic origin, I prefer to qualify the government as an Authoritarian one that has been established, precisely using the elective instruments of democracy, of course defrauding them as well as defrauding the Constitution, with the final purpose of destroying all of them.

This Authoritarian government has been established during the now long decade the country has been under Hugo Chávez ruling, since he was first elected in 1998. Ten years have past since that election, during which he was elected again, in 2000, after the approval of the new Constitution of 1999, and again reelected in 2006. The result of these elections and reelection is that currently, he is the Head of State with the longest period in office in all our constitutional history; with the possibility since last February, to continue in an indefinite way in the Presidency. The 1999 Constitution used to limit the reelection of elected officials only for the next term, but last February 2009 a very questionable Constitutional amendment was approved by referendum, eliminating such restrictions. So now we have the possibility for continuous reelection for all elected officials, without limits.

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The initial election of Chavez in 1998 was the product of a severe political crisis affecting the democratic party system that was successfully established and developed in the country since the so called Democratic Revolution of 1958. But after four decades of democratic practice, that political system and the traditional parties (Social Democratic and Christian Democratic) ended in a political vacuum of leadership, which was filled up by Hugo Chavez Frías, an antiparty candidate that in 1992 lead an attempt of military *coup d'état* against the democratic institutions of the country. As a direct product of the crisis of the system, he gained power through democratic elections.

Nonetheless, the initial elective origin of his ruling and the successive elections and reelections we have had, are not enough to quality the regime we have as a Democracy. On the contrary, during this past decade (1999-2009) the country has suffered a dramatic process of destruction of its democratic institutions and of violation of the Constitution, made from within the same State institutions, defrauding the democratic regime and the Constitution itself. That is, the Constitution and the democratic tools have been used in a fraudulent way, for the purpose of destroying them. That is why the blurry of the Dictatorship that remains has now rapidly begun to disappear.

I. THE DEFRAUDATION OF THE CONSTITUTION

It is clear then that the installment of the Authoritarian regime we have was not the result of a classical military *coup d'état* like the many one we had in the past. Instead it is the result of a systematic process of destruction of all the basic principles of democracy, using for such purposes the democratic tools. As mentioned, Chávez was elected in 1998 as an anti party candidate, after the collapse of the political parties that had controlled the political life of the country during the second half or last century[1], filling the vacuum they left. The main political proposal which helped his election was the obvious need the country had at that time, for a change –as many countries have from time to time, in their

[1] See Allan R. Brewer-Carias, *Problemas del Estado de los Partidos*, Editorial Jurídica Venezolana, Caracas 1998; "La crisis de las instituciones: responsables y salidas," in *Revista del Centro de Estudios Superiores de las Fuerzas Armadas de Cooperación*, N° 11, Caracas 1985, pp. 57-83; and in the Revista de la Facultad de Ciencias Jurídicas y Políticas, N° 64, Universidad Central de Venezuela, Caracas 1985, pp. 129-155.

political history-. In our case, the promised change was offered to be satisfied by means of the convening a National Constituent Assembly in order to transform the State and the legal order, and to enact a new Constitution.

This institution (a Constituent Assembly) was not established in the then Constitution in force of 1961. The only way to elect it, was by means of previous constitutional reform or a previous constitutional interpretation. The later was diligently provided by the former Supreme Court of Justice, one month after the election of Chávez and under his pressure, in January 1999, in a very ambiguous decision in which the dilemma between popular sovereignty and constitutional supremacy[2] was resolve in favor of the former. The Constituent Assembly was then elected after a consultative referendum took place on April 1999, and the result was the election of a Constituent almost completely controlled by Chavez supporters. I personally, as an independent candidate, was elected member of the Assembly being one of the only four "opposition" members out of 131 members of the Assembly.

This Assembly, far from dedicating itself to write off the new Constitution, was the main tool the President used in order to assault and completely control political power violating the Constitution whose interpretation helped to created it[3]. In Venezuela, in August 1999, it was precisely the elected Constituent Assembly the one that gave a c*oup d'état*[4]*,* unfortunately with the consent and complicity of the Supreme Court of Justice, which as it always happens in these illegitimate political collusion cases, it was inexorably the first victim of the Authoritarian government which it helped to grab the total power. In

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2 See Allan R. Brewer-Carias, *Poder constituyente originario y Asamblea Nacional Constituyente (Comentarios sobre la interpretación jurisprudencial relativa a la naturaleza, la misión y los limites de la Asamblea Nacional Constituyente)*, Colección Estudios Jurídicos N° 72, Editorial Jurídica Venezolana, Caracas 1999, pg. 296; and "La configuración judicial del proceso constituyente o de cómo el guardián de la Constitución abrió el camino para su violación y para su propia extinción", in *Revista de Derecho Publico*, N° 77-80, Editorial Jurídica Venezolana, Caracas 1999. pg. 453 ss

3 See Allan R. Brewer-Carias, *Debate constituyente (Aportes a la Asamblea Nacional Constituyente), Volume I (August 8-September 8, 1999)*, Fundación de Derecho Publico-Editorial Juridica Venezolana, Caracas 1999.

4 See Allan R. Brewer-Carias*, Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autonoma de Mexico, Mexico 2002.

just a few months, in December 1999, that diligent Supreme Court was erased from the institutional scene[5].

The 1999 Constituent Assembly was the instrument used by the President to dissolve all branches of government and to dismiss all the public officials that have been democratically elected only a few months before, in November 1998. That is, the representatives to the National Congress, the representatives to the States Legislative Assemblies and the members of the Municipal Councils as well as the State Governors and municipal mayors, all were dismiss. Only the President of the Republic remained in power, as the conductor of the constitutional fraud. In addition, the National Assembly interfered all the other unelected public offices, among them, and above all, the Judiciary, whose autonomy and independence has been progressive and systematically demolished.[6] Since that interference, the Judiciary has been closely controlled by the Executive Power, having the Supreme Tribunal of Justice at its service, being its Constitutional Chamber the most ominous instrument for the consolidation of authoritarianism in the country[7].

Through the defraudation of the Constitution in order to reach power, once all the State branches of government were controlled, the government began another defrauding process, this time of democracy, using precisely the tools of representative democracy for the purpose of progressively eliminating it, and supposedly substituting it by a "participative democracy" based on popular councils of a new Popular Power completely controlled from the Head of the State.

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5 See the study about the effects of the transitory regime established by the Constituent Assembly after the approval, by popular referendum, of the Constitution of 1999, in its own margin, in Allan R. Brewer-Carias, *La Constitucion de 1999*. Editorial Arte, Caracas 2000; and *La Constitucion de 1999. Derecho constitucional venezolano*, Volume II, Editorial Jurídica Venezolana, Caracas 2004, pp. 1150 ss.

6 See Allan R. Brewer-Carias, "La progresiva y sistemática demolición de la autonomia e independencia del Poder Judicial en Venezuela (1999-2004)", at the *XXX Jornadas J.M Dominguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto 2005, pp. 33-174.

7 See Allan R. Brewer-Carias, "Quis Custodiet ipsos Custodes: De la interpretación constitucional a la inconstitucionalidad de la interpretación", at the *VIII Congreso Nacional de derecho Constitucional*, Peru, Fondo Editorial 2005, Colegio de Abogados de Arequipa, Arequipa, September 2005, pp.. 463-489.

This centralizing and concentrating framework of the State that has been implemented during the past decade was the one that the President of the Republic pretended to have constitutionalized in the constitutional reform proposal he formulated in 2007, which fortunately was rejected in by referendum held on December that same year. The intention, as was announced by the then Vice President of the Republic in January 2007, was to install what he called "the dictatorship of democracy."[8] Of course, in democracy no dictatorship is acceptable, even "of democracy" and of course not "of the proletariat" as was proposed in 1918 in the old Soviet Union through the same sort of popular councils or "soviet of soldiers, workers and country men." Nonetheless, even loosing the referendum, as Chávez publicly announced, he has been illegitimately implementing the rejected constitutional reform through delegate legislation, with the diligent help of the Constitutional Chamber of the Supreme Tribunal.

In this way, even without succeeding in the proposed constitutional reform, in a continuous process of defraudation of democracy and of the Constitution, a new model of Authoritarian State has emerged based on a supposed Popular Power not established in the Constitution. Its authorities have been elected in popular elections, although not always through free and independent elections. Nonetheless they have served to give the Authoritarian government a sort of camouflaged suit, with "constitutional" and "elective" marks or shapes, designed for the destruction of the representative democracy itself. This disguise has cheated or deceives many observers, even in this country. Nonetheless, in spite of this disguise, what is true is that the regime, as any authoritarian one, lack of all the essential elements and components of democracy, which are much more than the sole popular or circumstantial election of government.

We have to remember that after so many antidemocratic, militarist and authoritarian regimes we have had in Latin America in the past decades, some of them also disguised as

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[8] Jorge Rodríguez, Vice-President of the Republic, in January 2007, expressed: "Of course we want to install a dictatorship, the dictatorship of the true democracy and the democracy is the dictatorship of everyone, you and us together, building a different country. Of course we want this dictatorship of democracy to be installed forever", in *El Nacional*, Caracas 02-01-2007, pg. A-2.

Democracies because their electoral origin, the Organization of American States approved in Lima on September 11, 2001 (the same day of the terrorist attacks in New York), the Inter-American Democratic Charter *(Carta Democratica Interamericana)*, which can be considered as the most important international document ever approved on these matters. This instrument, in effect, enumerates among the *essential elements of the representative democracy,* in addition to having periodical, fair and free elections, based on universal and secret vote, as expression of the ruling of the people; the other following elements: the respect for human rights and fundamental liberties; the access to power and its exercise with subjection to the Rule of law; the plural regime of the political parties and organizations; and most important of all, "the separation and independence of all branches of government" (article 3).

All these essential elements of democracy are precisely the ones that during the past decade, have unfortunately been ignored or fractured in Venezuela, in the name of a supposed participative democracy. Never before in the past decades, there had been more violation of human rights as those occurred during the Chavez years, many of which have been registered in the numerous petitions filed before the Inter-American Commission on Human Rights.

The access to power has been achieved contrary to the Rule of law, by violating the separation and independence of the Judicial, Citizens and Electoral branches of government,[9] and the last political reforms creating the Communal Councils, tend to

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[9] See Allan R. Brewer-Carias, *La Sala Constitucional versus el Estado democrático de derecho. El secuestro del poder electoral y de la Sala Electoral del Tribunal Supremo y la confiscación del derecho a la participación política,* Los Libros de El Nacional, Colección Ares, Caracas 2004; "El secuestro del Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004", in *Revista Jurídica del Perú*, Año LIV Nº 55, Lima, March-April 2004, pp. 353-396; "El secuestro del Poder Electoral y de la Sala Electoral del Tribunal Supremo y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela: 2000-2004", in *Revista Costarricense de Derecho Constitucional*, Volume V, Instituto Costarricense de Derecho Constitucional, Editorial Investigaciones Jurídicas S.A., San José 2004, pp. 167-312; "El secuestro de la Sala Electoral por la Sala Constitucional del Tribunal Supremo de Justicia, in *La Guerra de las Salas del TSJ frente al Referéndum Revocatorio*", Editorial Aequitas, Caracas 2004, C.A., pp. 13-58; "El secuestro del poder electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004", *Stvdi Vrbinati*, Rivista Trimestrale di Scienze Giuridiche, Politiche ed Economiche, Year LXXI – 2003/04 Nuova Serie A – N. 55,3, Università degli studi di Urbino, Urbino, 2004, pp.379-436; «El secuestro del

substitute electoral representation by supposed citizen assemblies and councils whose members are not elected, but appointed from the summit of the Popular Power controlled by the President of the Republic.

The plural regime of parties has been destroyed and the official Single Socialist Party is completely imbricate in the apparatus of the State and also controlled by the President of the Republic.

Because everything depends on the State, only those who are part of the Single Socialist Party could have a political, administrative, economical and social life.

And all this entire institutional distortion in a system without the existence of separation or independence between the branches of government, not only in their horizontal separation (between the Legislative, Executive, Judicial, Citizens and Electoral) due to the control that the Executive Power has over them; but in their vertical distribution, where the Federation has been progressively dismantled minimizing the federated States and the municipalities, by means of eliminating every trace of political decentralization, that is, of autonomous entities in the territory, preventing any real possibility for democratic participation.

Besides all the essential elements of democracy, the *Inter-American Charter* also defined what it called the *fundamental components of the democracy*, namely the transparency of governmental activities, that is, the integrity and accountability of the government, and the respect of social rights and freedom of speech and press. Other component is the constitutional subordination of all institutions of the State to the legally constituted civil authority, and the respect to the Rule of law in all the entities and sectors of society.

Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004». in *Boletín Mexicano de Derecho Comparado*, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, Nº 112. México, January-April 2005 pp. 11-73.

Unfortunately, all these essential elements and fundamental components have also been ignored or fractured in Venezuela: the governmental activity deployed by the rich and suddenly wealthy State, has ceased to be transparent due to the lack of any sort of control and check and balance, not being possible to demand any kind of accountability to the government, so a rampant corruption has been developed in a way never seen before. In addition, the freedom of speech and press has been systematically threatened, imposing in many cases self-censorship, and the reporters and dissident media have been persecuted.

Democracy is much more than just elections and voting (article 4), and that is why Venezuela under Chávez cannot be called a Democracy. As mentioned, all the essential elements and components of democracy have been progressively dismantled during the past decade, and in particular, the principle of separation of power, precisely because is the most important and fundamental pillar of the Rule of law that can allow all the other factors of democracy to be possible[10]. To be precise, Democracy, as a political regime, can only function in a constitutional Rule of law system where the control of power exists; that is, one in which check and balance exists based on the separation of powers, so that power can be stopped by power itself. In other words, without the control of power, any of the abovementioned essential factors of democracy can not be achieved, because only controlling Power is that there can be absolutely free and fair elections, that is, there can be efficient representation; only controlling power is that political pluralism can exist; only controlling Power is that there can exist an effective political participation; only controlling Power the effective transparency in the exercise of government can be assured, with the existence of means for government accountability; only controlling Power there can be a government submitted to the Constitution and the laws, that is, the Rule of law; only controlling Power there can be an effective access to justice, and a Judiciary functioning with valuable autonomy and independence; and only by controlling Power there can be a true and effective guaranty for the respect of human rights.

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[10] See about La Carta Democrática Interamericana y la crisis de la democracia en Venezuela, Allan R. Brewer-Carias, *La crisis de la democracia venezolana. La Carta Democrática Interamericana y los sucesos de abril de 2002*, Ediciones El Nacional, Caracas 2002. pg. 137 and ss.

On the contrary, the excessive concentration and centralization of power, as it occurs in the Venezuelan Authoritarian government, despite its electoral origin, has lead the country inevitable to a Dictatorship, precisely because of the lack of and efficient controlling systems over the government, and even worst, alleging having popular support.

II. THE CONSTITUTIONAL PROVISIONS ON SEPARATION OF POWERS AND THE ORIGIN OF THE DEPENDENCY OF THE BRANCHES OF GOVERNMENT

Regarding the concentration of powers, it must be recognized that it has its roots in the same Constitution. This one is the only one in contemporary world that has established the principle of separation of powers between not only three, but five different branches of government, that is, the Legislative, the Executive, and the Judiciary, and in addition the Electoral Power, exercised by the National Electoral Council, in charge of the organization and conduction of the elections; and the Citizens Power, attributed to three different bodies: the Prosecutor General Office (*Ministerio Público*), the Comptroller General Office and the Peoples' Defendant (article 136).

But as mentioned, in spite of this *penta* division of powers, the fact is that the autonomy and independence of the branches of government is not completely and consistently assured in the Constitution, its application resulting on the contrary, to a concentration of State powers in the National Assembly, and through it, in the Executive power.

In effect, in any system of separation of powers, even with five separate branches of government, in order for such separation to become effective, the independence and autonomy among them has to be assured in order to allow check and balance, that is, the limitation and control of power by power itself. This was the aspect that was not designed as such in the 1999 Constitution, and notwithstanding the aforementioned penta separation of powers, an absurd distortion of the principle was introduced by giving the National Assembly the authority not only to appoint, but to dismiss the Judges of the Supreme Tribunal of Justice, the Prosecutor General, the General Comptroller, the People's Defendant and the Members of the National Electoral Council (Articles 265, 279 and 296);

and in some cases, even by simple majority of votes. This latter solution was even proposed to be formally introduced in the rejected 2007 Constitutional reform proposals, seeking to eliminate the guarantee of the qualified majority of the members of the National Assembly for such dismissals.[11]

It is simply impossible to conceive the autonomy and independence of separate powers and to understand how can they exercise mutual control, when the tenure of the Head officials of the branches of government (except the President of the Republic) depend on the political will of one of the branches of government, that is, the National Assembly, which is the more political one. The sole fact of the possibility for the National Assembly to dismiss the head of the other branches, makes futile the formal consecration of the autonomy and independence of powers, being the High officials of the State aware that they can be removed from office at any time, precisely if they effectively act with independence[12].

And unfortunately, this has happened in Venezuela during the past decade, so when there have been minimal signs of autonomy from some holders of State institutions, who have dared to adopt their own decisions distancing themselves from the Executive will, they have been automatically dismissed. This occurred, for instance, in 2001 with the People's Defendant and with the Prosecutor General of the Republic, originally appointed in 1999 by the Constituent National Assembly, who were separated from their positions[13] for failing to follow the dictates of the Executive power; and this also happened with some Judges of the Supreme Tribunal who dared to vote decisions questioning the Executive

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[11] See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado Socialista, Centralizado y Militarista. Comentarios sobre el alcance y sentido de las propuestas de reforma Constitucional 2007*, Editorial Jurídica Venezolana, Caracas, 2007; and *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007),* Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

[12] See "Democracia y control del poder", in Allan R. Brewer-Carias, *Constitución, democracia y control de poder*, Centro Iberoamericano de Estudios Provinciales y Locales. Universidad de Los Andes, Mérida 2004.

[13] It the case of the General Prosecutor of the Republic, appointed in December of 1999, he thought he could initiate a criminal impeachment proceedings against the then Minister of the Interior; and the People's Defendant, also thought that she could challenge the Special Law of the 2000 National Assembly on appointment of Judges of the Supreme Tribunal without complying with the constitutional requirements. They were both duly not ratified in 2001.

action, who were immediately subjected to investigation and some of them were removed or duly "retired" from their positions[14].

The consequence resulting from this factual "dependency" of the State organs regarding the National Assembly, has been the total absence of fiscal or audit control regarding all the State entities. The General Comptroller Office has ignored the results of the huge and undisciplined disposal of the oil wealth that has occurred in Venezuela, not always in accordance with Budget discipline rules, which has provoked the unfortunately classification of Venezuela in one of the lowest ranks on Government transparency in the world.[15] Nonetheless, the most important decisions taken by the Comptroller General have been those directed to disqualify many opposition candidates from the November 2008 regional and municipal elections, based on "administrative irregularities," although the Constitution establishes that the constitutional right to run for office can only be suspended when a judicial criminal decision is adopted (articles 39 and 42).[16] Nonetheless, the Constitutional Chamber of the Supreme Tribunal in a very diligent way has upheld the Comptroller General decision in defraudation of the Constitution.[17]

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[14] It was the case of Franklin Arrieche, Vice-President of the Supreme Tribunal of Justice, who delivered the decision of the Supreme Tribunal of 08-14-2002 regarding the criminal process against the generals who acted on April 12, 2002, declaring that there were no grounds to judge them due to the fact that in said occasion no military coup took place; and that of Alberto Martini Urdaneta, President of the Electoral Court, and Rafael Hernandez and Orlando Gravina, Judges of the same Court who undersigned decision N° 24 of 03-15-2004 (Case: *Julio Borges, Cesar Perez Vivas, Henry Ramos Allup, Jorge Sucre Castillo, Ramón Jose Medina and Gerardo Blyde vs. the National Electoral Council*), that suspended the effects of Resolution N° 040302-131, dated 03-02-2004 of the National Electoral Council which, in that moment, stopped the realization of the presidential recall referendum.

[15] See http://www.transparencia.org.ve

[16] In October 2008, the European Parliament approved a Resolution asking the Venezuelan government to end with these practices (political incapacitation in order to difficult the presence of opposition leaders in the regional and local elections) and to promote a more global democracy with complete respect of the principles established in the 1999 Constitution. See http://venezuelanoticia.com/archives/8298

[17] Teodoro Petkoff has pointed out that with this decision "the authoritarian and autocratic government of Hugo Chávez has clearly shown its true colors in this episode", explaining that "The political rights to run for office is only lost when a candidate has receive a judicial sentence that has been upheld in a higher court. The recent sentence by the Venezuelan Supreme Court, upholding the disqualifications, as well as the constitutionality of article 105 [of the Organic Law of the Comptroller General Office], constitute a defraudation of the Constitution and the way in which the decision was handed down was an obvious accommodation to the president's desire to eliminate four significant opposition candidates from the electoral field". ". See Teodoro Petkoff, "Election and Political Power. Challenges for the

Regarding the People's Defendant, it has been perceived more as a defendant of State powers than of the peoples' rights, even if the Venezuelan State never before has been denounced so many times as has happened during the past decade before the Inter American Commission on Human Rights. And finally, the Public Prosecutor has been characterized by using its powers to prosecute, using in a indiscriminate way the controlled Judiciary as a tool to persecute any political dissidence.

III. THE DEFRAUDATION OF POLITICAL PARTICIPATION IN THE APPOINTMENT OF HIGH GOVERNAMENTAL OFFICERS

But the process of concentration of powers that Venezuela has experienced during the past decade has also being the result of a process of defraudation or perversion of the Constitution, particularly by ignoring the limits the Constitution has established to reduce the discretional power of the National Assembly in the process of appointing the Heads of the different branches of government.

Independently of the constitutional provisions regarding the possible dismissal by the National Assembly of the Heads of the non elected branches of government, and its distortions, one of the mechanism established in order to assure their independence, was the provision in the Constitution of a system to assure that their appointment by the National Assembly was to be limited by the necessary participation of special collective bodies called Nominating Committees that must be integrated with representatives of the different sectors of society (arts. 264, 279, 295). Those Nominating Committees were established in order to select and nominate the candidates, seeking to guaranty the political participation of the citizens in the process.

Consequently, the appointment of the Justices of the Supreme Tribunal, the Members of the National Electoral Council, the Prosecutor General of the Republic, the People's Defendant and the Comptroller General of the Republic, was supposed to be made among the candidates proposed by the corresponding "Nominating Committees," which

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Opposition," in *Revista. Harvard Review of Latin America*, David Rockefeller Center for Latin American Studies, Harvard University, Fall 2008, pp.11.

were designed as the ones in charge of selecting and nominating the candidates before the Assembly. These constitutional previsions were intended to limit the discretional power that the Legislature traditionally had to appoint those high officials through political party agreements, by assuring political citizenship participation. [18]

But unfortunately, none of these exceptional constitutional provisions have been applied, due to the fact that during the past years, the National Assembly also defrauding or perverting the Constitution, has deliberately "transformed" the said Committees into simple "parliamentary Commissions" reducing the civil society's right to political participation. The Assembly in all the statutes sanctioned in order to establish such Committees and to regulate the appointment process, has established their composition with a majority of parliamentary representatives (whom by definition are not be representatives of the "civil society"), although providing for the incorporation of some other members chosen by the National Assembly itself from strategically selected "non-governmental Organizations."

The result has been the complete political control of the Nominating Committees, and the persistence of the discretional political and partisan way of appointing the officials head of the non elected branches of government, which the provisions of the 1999 Constitution intended to limit, by a National Assembly that since 2000 has been complete controlled by the Executive.

This practice even pretended to be constitutionalized through the rejected Constitutional Reform of 2007, with the proposal to formally establish exclusively parliamentary Nomination Committees, instead of them only being composed of representatives of the various sectors of civil society.[19]

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[18] See Allan R. Brewer-Carias, "La participación ciudadana en la designación de los titulares de los órganos no electos de los Poderes Públicos en Venezuela y sus vicisitudes políticas", in *Revista Iberoamericana de Derecho Publico y Administrativo*. Year 5. N° 5-2005. San José, Costa Rica 2005. pp. 76-95.

[19] See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado Socialista, Centralizado y Militarista. Comentarios sobre el alcance y sentido de las propuestas de reforma Constitucional 2007*, Editorial Jurídica Venezolana, Caracas, 2007; and *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007*), Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

IV. THE CATASTROPHIC DEPENDENCE AND SUBJECTION OF THE JUDICIARY

But the effects of the dependency of the branches of government subjected to the Legislative Power and through it, to the Executive, have been particularly catastrophic regarding the Judiciary, which after been initially intervened by the Constituent National Assembly in 1999[20], continued to be intervened with the unfortunate consent and complicity of the Supreme Tribunal of Justice itself. In this matter, in the past decade, the country has witnessed a permanent and systematic demolition process of the autonomy and independence of the judicial power, aggravated by the fact that according to the 1999 Constitution, the Supreme Tribunal which is completely controlled by the Executive, is in charge of administering all the Venezuelan judicial system, particularly, by appointing and dismissing judges.[21]

The process of political control of the Judiciary began with the appointment, in 1999 of new Magistrates of the Supreme Tribunal of Justice without complying with the constitutional conditions, made by the National Constituent Assembly itself, by means of a Constitutional Transitory regime sanctioned after the Constitution was approved by referendum.[22] From there on, the intervention process of the Judiciary continued up to the point that the President of the Republic has politically controlled the Supreme Tribunal of Justice and, through it, the complete Venezuelan judicial system.

For that purpose, the constitutional conditions needed to be elected Magistrate of the Supreme Tribunal and the procedures for their nomination with the participation of

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20 See Allan R. Brewer-Carias, *Debate Constituyente, (Aportes a la Asamblea Nacional Constituyente)*, Volume I, (August 8-Spetember -), Caracas 1999.

21 See Allan R. Brewer-Carias, "La progresiva y sistemática demolición de la autonomía e independencia del Poder Judicial en Venezuela (1999-2004)", in *XXX Jornadas J.M. Dominguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto, 2005. pgs. 33-174; and "La justicia sometida al poder (La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006)" in *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007,* Centro Universitario Villanueva, Marcial Pons, Madrid 2007, pp. 25-57.

22 See the comments regarding this Transition Regime in Allan R. Brewer-Carias*, Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico 2002, pp. 345 ff.

representatives of the different sectors of civil society, were violated since the beginning. First, as aforementioned, in 1999 by the National Constituent Assembly itself once it dismissed the previous Justices, appointing new ones without receiving any nominations from any Nominating Committee, and many of them without compliance with the conditions set forth in the Constitution to be Magistrate. Second, in 2000, by the new elected National Assembly by sanctioning a Special Law in order to appoint the Magistrates, in a transitory way, without compliant with those constitutional conditions.[23] And third, in 2004, again by the National Assembly by sanctioning the Organic Law of the Supreme Tribunal of Justice, increasing the number of Justices from 20 to 32, and distorting the constitutional conditions for their appointment and dismissal, allowing the government to assume an absolute control of the Supreme Tribunal, and in particular, of its Constitutional Chamber.[24]

After this 2004 reform, the final process of selection of new Magistrates was subjected to the President of the Republic will, as was publicly admitted by the President of the parliamentary Commission in charge of selecting the candidates for Magistrates of the Supreme Tribunal Court of Justice, who later was appointed Ministry of the Interior and Justice. On December 2004, he said the following:

> "Although we, the representatives, have the authority for this selection, the President of the Republic was consulted and his opinion was very much taken into consideration." He added: "Let's be clear, we are not going to score own-goals. In the list, there were people from the opposition who comply with all the requirements. The opposition could have used them in order to reach an agreement during the last sessions, be they

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[23] For this reason, in its 2003 *Report on Venezuela,* the Inter-American Commission on Human Rights, observed that the appointment of Judges of the Supreme Court of Justice did not apply to the Constitution, so that "the constitutional reforms introduced in the form of the election of these authorities established as guaranties of independence and impartiality were not used in this case. See Inter-American Commission of Human Rights, 2003 *Report on Venezuela*; paragraph 186.

[24] See the comments to this statute in Allan R. Brewer-Carias, *Ley del Tribunal Supremo de Justicia*, Editorial Jurídica Venezolana, Caracas 2004.

did not want to. We are not going to do it for them. There is now one in the group of postulates that could act against us…[the Government]". [25]

This configuration of the Supreme Tribunal, as highly politicized and subjected to the will of the President of the Republic has eliminated all autonomy of the Judicial Power and even the basic principle of the separation of powers, as the corner stone of the Rule of Law and the basic of all democratic institutions.

On the other hand, as aforementioned, according to article 265 of the 1999 Constitution, the Magistrates can be dismissed by the vote of a qualified majority of the National Assembly, when grave faults are committed, following a prior qualification by the Citizens Power. This qualified two-thirds majority was established to avoid leaving the existence of the heads of the judiciary in the hands of a simple majority of legislators. Unfortunately, this provision was also distorted by the 2004 Organic Law of the Supreme Tribunal of Justice, in which it was established in an unconstitutional way that the Magistrates could be dismissed by simple absolute majority when the "administrative act of their appointment" is revoked (article 23,4). This distortion, contrary to the independence of the Judiciary, also pretended to be constitutionalized with the rejected 2007 Constitutional reform proposals, which seek to establish that the Magistrates of the Supreme Tribunal could be dismissed in case of graves faults, but just by the vote of the majority of the members of the National Assembly." [26]

The consequence of this political subjection is that all the principles tending to assure the independence of judges at any level of the Judiciary have been postponed. In particular, the Constitution establishes that all judges must be selected by public

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[25] See in *El Nacional*, Caracas 12-13-2004. That is why the Inter-American Commission on Human Rights suggested in its Report to the General Assembly of the OAS corresponding to 2004 that "these regulations of the Organic Law of the Supreme Court of Justice would have made possible the manipulation, by the Executive Power, of the election process of judges that took place during 2004". See Inter-American Commission on Human Rights, 2004 *Report on Venezuela*; paragraph 180.

[26] See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado Socialista, Centralizado y Militarista. Comentarios sobre el alcance y sentido de las propuestas de reforma Constitucional 2007*, Editorial Jurídica Venezolana, Caracas, 2007; and *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007*), Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

competition for the tenure; and that the dismissal of judges can only be made through disciplinary trials carried out by disciplinary judges (articles 254 and 267). Unfortunately, none of these provisions have been implemented, and on the contrary, since 1999, the Venezuelan Judiciary has been composed by temporal and provisional judges,[27] lacking stability and being subjected to the political manipulation, altering the people's right to an adequate administration of justice. And regarding the disciplinary jurisdiction of the judges, it has not yet been established, and with the authorization of the Supreme Tribunal, a "transitory" Reorganization Commission of the Judicial Power created since 1999, has continued to function, removing judges in a discretional way and without due process,[28] particularly when adopting decisions contrary to the policies of the governing political authorities.

Just one case illustrates this situation: in 2003 when a contentious-administrative court ruled against the government in a politically charged case, the government responded by intervening (taking over) the court and dismissing its judges and, after the Inter-American Court of Human Rights in 2008 ruled that the dismissal had violated the American Convention of Human Rights and Venezuela's international obligations, the Constitutional Chamber on December 2008 resolved at the request of the government that the decision of the Inter-American Court cannot be enforced in Venezuela. The case can be summarized as follows:

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[27] The Inter-American Commission on Human Rights said: "The Commission has been informed that only 250 judges have been appointed by opposition concurrence according to the constitutional text. From a total of 1772 positions of judges in Venezuela, the Supreme Court of Justice reports that only 183 are holders, 1331 are provisional and 258 are temporary", *Informe sobre la Situación de los Derechos Humanos en Venezuela*; OAS/Ser.L/V/II.118. d.C. 4rev. 2; December 29, 2003; paragraph 11. The same Commission also said that "an aspect linked to the autonomy and independence of the Judicial Power is that of the provisional character of the judges in the judicial system of Venezuela. Today, the information provided by the different sources indicates that more than 80% of Venezuelan judges are "provisional". Idem, Paragraph 161.

[28] See Allan R. Brewer-Carías, "La justicia sometida al poder y la interminable emergencia del poder judicial (1999-2006)", en *Derecho y democracia. Cuadernos Universitarios*, Órgano de Divulgación Académica, Vicerrectorado Académico, Universidad Metropolitana, Año II, No. 11, Caracas, septiembre 2007, pp. 122-138

On July 17, 2003, the Venezuelan National Federation of Doctors brought an *amparo* action in the First Court on Contentious-Administrative Matters[29] in Caracas, against the Mayor of Caracas, the Ministry of Health and the Caracas Metropolitan Board of Doctors (*Colegio de Médicos*). The petitioners asked for a declaration of the nullity of certain measures of the defendant Officials through which Cuban doctors were hired for a much publicized governmental health program in the Caracas slums, without complying with the legal requirements for foreign doctors to practice the medical profession in Venezuela. The National Federation of Doctors argued that, by allowing foreign doctors to exercise the medical profession without complying with applicable regulations, the program was discriminatory and violated the constitutional rights of Venezuelan doctors.[30] One month later, in August 21, 2003, the First Court issued a preliminary protective *amparo* measure, on the ground that there were sufficient elements to consider that the constitutional guaranty of equality before the law was being violated in the case. The Court ordered, in a preliminary way, the suspension of the Cuban doctors' hiring program and ordered the Metropolitan Board of Doctors to replace the Cuban doctors already hired with Venezuelan ones or foreign doctors who had fulfilled the legal requirements to exercise the medical profession in the country.[31]

In response to that preliminary judicial *amparo* decision, the Minister of Health, the Mayor of Caracas, and even the President of the Republic made public statements to the effect that the decision was not going to be respected or enforced.[32] Following these statements, the government-controlled Constitutional Chamber of the Supreme Tribunal adopted a decision, without any appeal being filed, assuming jurisdiction over the case and annulling the preliminary *amparo* ordered by the First Court; a group of Secret Service police officials seized the First Court's premises; and the President of the Republic, among other expressions he used, publicly called the President of the First Court a "bandit".[33] A few weeks later, in response to the First Court's decision in an unrelated case challenging a local registrar's refusal to record a land sale, a Special Commission for the Intervention of the Judiciary, which in spite

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29 Contentious-administrative courts have competency to review administrative decisions.

30 See Claudia Nikken, "El caso "Barrio Adentro": La Corte Primera de lo Contencioso Administrativo ante la Sala Constitucional del Tribunal Supremo de Justicia o el avocamiento como medio de amparo de derechos e intereses colectivos y difusos," in *Revista de Derecho Público*, nº 93-96, Editorial Jurídica Venezolana, Caracas, 2003, pp. 5 ff.

31 See Decision of August, 21 2003, in *Idem,* pp. 445 ff.

32 The President of the Republic said: "*Váyanse con su decisión no sé para donde, la cumplirán ustedes en su casa si quieren*…" (You can go with your decision, I don't know where; you will enforce it in your house, if you want…). Talk in the TV program *Aló Presidente*, nº 161, August 24, 2004.

33 Public speech, September 20, 2003.

of being unconstitutional continued to exist, dismissed all five judges of the First Court.[34] In spite of the protests of all the Bar Associations of the country and also of the International Commission of Jurists;[35] the First Court remained suspended without judges, and its premises remained closed for more than ten months,[36] during which period simply no judicial review of administrative action could be sought in the country.[37]

The dismissed judges of the First Court brought a complaint to the Inter-American Commission of Human Rights for the government's unlawful removal of them and for violation of their constitutional rights. The Commission in turn brought the case, captioned *Apitz Barbera y otros ("Corte Primera de lo Contencioso Administrativo") vs. Venezuela*, before the Inter-American Court of Human Rights. On August 5, 2008, the Inter-American Court ruled that the Venezuelan State had violated the rights of the dismissed judges established in the American Convention of Human Rights, and ordered the State to pay them due compensation, to reinstate them to a similar position in the Judiciary, and to publish part of the decision in Venezuelan newspapers.[38] Nonetheless, on December 12, 2008, the Constitutional Chamber of the Supreme Tribunal of Venezuela issued decision No. 1939, declaring that the August 5, 2008 decision of the Inter-American Court on Human Rights was non-enforceable (*inejecutable*) in Venezuela. The Constitutional Chamber also accused

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[34] See the information in *El Nacional*, Caracas, November 5, 2003, p. A2. In the same page, the dismissed President of the First Court said: "*La justicia venezolana vive un momento tenebroso, pues el tribunal que constituye un último resquicio de esperanza ha sido clausurado*" ("The Venezuelan judiciary lives a dark moment, because the court that was a last glimmer of hope has been shut down"). The Commission for the Intervention of the Judiciary was the same one that had massively dismissed without due disciplinary process almost all judges of the country, replacing them with provisionally appointed judges, dependent on the ruling power.

[35] See in *El Nacional*, Caracas, October 12, 2003, p. A-5; and *El Nacional*, Caracas, November 18,2004, p. A-6.

[36] See in *El Nacional*, Caracas, October 24, 2003, p. A-2; and *El Nacional*, Caracas, July 16, 2004, p. A-6.

[37] See Allan R. Brewer-Carías, "La progresiva y sistemática demolición institucional de la autonomía e independencia del Poder Judicial en Venezuela 1999–2004," in *XXX Jornadas J.M Domínguez Escovar, Estado de derecho, Administración de justicia y derechos humanos,* Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto, 2005, pp. 33–174; "La justicia sometida al poder (La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006))," in *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007***,** Centro Universitario Villanueva, Marcial Pons, Madrid, 2007, pp. 25–57.

[38] See in www.corteidh.or.cr . Excepción Preliminar, Fondo, Reparaciones y Costas, Serie C No. 182.

the Inter-American Court of having usurped powers of the Supreme Tribunal, and asked the Executive to denounce the American Convention of Human Rights.[39]

This case, including in particular the *ad hoc* response of the Constitutional Chamber to the decision of the Inter-American Court, shows clearly the present subordination of the Venezuelan Judiciary to the policies, wishes and dictates of the President of the Republic. The Constitutional Chamber has in fact become a most effective tool for the existing consolidation of power in the person of President Chávez.

V. THE SUPREMACY OF THE EXECUTIVE AND THE ABSENCE OF CHECK AND BALANCE

But if the supremacy of the National Assembly over the Judicial, Citizen and Electoral Powers is the most characteristic sign of the implementation of the Constitution of 1999 during the last decade, the distortion of the separation of powers principle transformed into a power concentration system, also derives from the supremacy that, from a political-party's point of view, the Executive Power has over the National Assembly.

In the Constitution of 1999, the presidential system has been reinforced, amongst other factors, because of the extension to six years of the presidential term; the initial authorization of the immediate reelection for an immediate period of the President of the Republic (article 203), which has been modified last February (2009) establishing the possibility for his continuous and indefinitely reelection. In the rejected Constitutional Reform of 2007, the term of the President was even proposed to be extended up to seven years.[40]

With this presidential model, to which the possibility of the dissolution of the National Assembly by the President of the Republic is added even though in exceptional

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[39] Case: *Abogados Gustavo Álvarez Arias y otros* (Expediente : 08-1572).

[40] See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado Socialista, Centralizado y Militarista. Comentarios sobre el alcance y sentido de las propuestas de reforma Constitucional 2007*, Editorial Jurídica Venezolana, Caracas, 2007; and *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007*), Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

cases (Articles 236,22 and 240), the presidential system has been reinforced not even finding any check and balance, for instance in a Senate, which in 1999 was eliminated.

The presidential system has also been reinforced with other reforms, like the provision for legislative delegation to authorize the President of the Republic, by means of "delegating statutes" (enabling laws), to issue decree-laws, and not only in economic an financial matters (article 203). In a certain way, what has been constitutionalized in Venezuela is a Legislator that in fact is not a legislator. That is why, according to this provision, the fact is that the fundamental legislation of the country sanctioned during the past decade has been contained in these decree-laws, which have been approved without assuring the mandatory constitutional provision for public hearings, established to take place before the sanctioning of all statutes.

In order to enforce this constitutional right of the citizens to participation, the Constitution specifically set forth that the National Assembly is compelled to submit draft legislation to public consultation, asking the opinion of citizens and the organized society (article 211). This is the concrete way by which the Constitution tends to assure the exercise of the political participation right in the process of drafting legislation. This constitutional obligation, of course, must also be accomplished by the President of the Republic when a legislative delegation takes place. But nonetheless, in 2007 and in 2008, the President of the Republic, following the same steps he took in 2001, has extensively legislated without any public hearing or consultation. In this way, in defraudation of the Constitution, by means of legislative delegation, the President has enacted decree-laws without complying with the obligatory public hearings, violating the citizens' right to political participation.[41]

The last case occurred a few months ago, during July and August 2008, when the President of the Republic, according to the powers to legislate by decree that were delegated upon him in January 2007, by his completely controlled National Assembly, has sanctioned 26 very important new Statutes with the intention of implementing, of course in

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[41] See the comments in Allan R. Brewer-Carías, "Apreciación general sobre los vicios de inconstitucionalidad que afectan los Decretos Leyes Habilitados" en *Ley Habilitante del 13-11-2000 y sus Decretos Leyes*, Academia de Ciencias Políticas y Sociales, Serie Eventos Nº 17, Caracas 2002, pp. 63-103

a fraudulent way, all the constitutional reform proposals that were rejected by the people in the 2007 December referendum.[42]

Unfortunately, even being all unconstitutional, those Decree Laws were enacted and have been applied without any possibility of control or judicial review. The President is sure that his controlled Constitutional Chamber will not issue any judicial review decision on the matter. That is why such Chamber has been the most effective tool for the consolidation of the Authoritarian government.

VI. THE RECENTRALIZATION OF THE FEDERATION

But in a Democracy, the separation of powers not only has an horizontal meaning of check and balance between branches of government, but also, a vertical meaning of distribution of power between political and autonomous territorial entities, in a decentralized way, in order to promote and allow political participation of the citizens, which can only be possible when political power is close to the citizen. That is why in any democratic country a political decentralization of power exists, whether by means of the federal form of government or of a regional autonomous entities, and in any case, through an extended system of local government.

Since the times of Independence, Venezuela has always been formally organized as a Federation, although in a very centralized way, allowing all powers of the State to be centralized, as they now are. Only in the democratic period before the 1999 Constitution,

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[42] Regarding these 2008 Decree Laws, Teodoro Petkoff has pointed out that: "In absolute contradiction to the results of the December 2, 2007 referendum in which voters rejected constitutional reforms, in several of the laws promulgated the president presents several of the aspects of the rejected reforms almost in the same terms. The proposition of changing the name of the Venezuelan Armed Forces to create the Bolivarian National Militia was contained in the proposed reforms; the power given to the President to appoint national government officials over the governors and mayors to, obviously, weaken those offices and to eliminate the last vestiges of counterweight to the executive in general and the presidency in particular, was also contained in the reforms; the recentralization of the national executive branch of powers that today belong to the states and decentralized autonomous institutes was also part of the reforms: the enlargement of government powers to intervene in economic affairs was also contained in the reform. To ignore the popular decision about the 2007 proposal to reform the constitution in conformity with the will and designs of an autocrat, without heed to legal or constitutional norms, is, *stricto sensu*, a tyrannic act". See Teodoro Petkoff, "Election and Political Power. Challenges for the Opposition", in *Revista. Harvard Review of Latin America*, David Rockefeller Center for Latin American Studies, Harvard University, Fall 2008, pp.12.

the democratization process of the country lead to the reinforcing of the policy of decentralization, with the establishment of the direct election of Governors and mayors, and the beginning of a process of transfer of powers and services from the national level of government to the States level. The 1999 Constitution, in a very contradictory way, continued with the federal form of the government, even qualifying the Federal State as "decentralized," but introducing elements in order to centralize power in detriment of the States of the Federation. All these centralizing elements have been used during the past decade, producing a very centralized government that has suffocated the regional and local autonomy of States and Municipalities. This process has been completed during the past year, during which the Government has reverted the decentralization efforts of the past, and has recentralized competencies that were transferred, in matters like health and education. Also last year, the Constitutional Chamber of the Supreme Tribunal interpreted the Constitution at the request of the Attorney General, concluding in a decision No. 565 of April 15, 2008[43], contrary to the provisions of the Constitution**,** that a very important "exclusive" attribution of the States to administer national highways, ports and airports was not such "exclusive" attribution, but only concurrent one, subjected to control of the national level of government, authorizing the central government to interfere in their exercise and even to reassume them. Based on this decision that in a illegitimate way mutate the Constitution, after the opposition won in the regional elections held on December 2008, very important positions of governorship and mayors in important States and cities (Maracaibo, Caracas), in a very quick way the National Assembly reformed the 1989 Decentralization Law[44] allowing the process of centralization that has occurred during the past weeks, reverting the decentralization process.[45] Even the local government in

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[43] Decision of the Constitutional Chamber n° 565, April 15, 2008, Case: Procuradora General de la República, Recourse of interpretation of article 164 of the Constitution, in http://www.tsj.gov.ve/decisiones/scon/Abril/565-150408-07-1108.htm. See the comments in Allan R. Brewer-Carías, "La Sala Constitucional como poder constituyente: la modificación de la forma federal del estado y del sistema constitucional de división territorial del poder público, in *Revista de Derecho Público*, No. 114, (abril-junio 2008), Editorial Jurídica Venezolana, Caracas 2008, pp. 247-262

[44] *Official Gazette*, N° 39 140, March 17, 2009

[45] General Port Law, *Official Gazette* Nº 39.140, March 17, 2009;; Civil Aviation Law, *Official Gazette*, Nº 39.140, March, 2009.

Caracas has been almost been extinguished by the unconstitutional recreation of a 19th century shaped "Federal District," under the name of "Capital District" governed by an executive authority appointed by the President and with the national Assembly as its legislative authority.[46]

Decentralization is the most effective instrument not only to guarantee civil and social rights, but to allow effective participation of the citizens in the political process and to consolidate democracies. That is why decentralization in the contemporary world is a matter of democracies. There are no decentralized autocracies, and there have never been decentralized authoritarian governments, only democracies can be decentralized. And that is why, precisely, the authoritarian government we have in Venezuela has centralized all power at the national level of government, suffocating states and local governments.

FINAL REMARKS

All these process of complete concentration of power through the subjection of all branches of government to the Executive, together with the complete centralization of power through the suffocation of the States and of local governments, can explain why a Head of State of our times, as is the case of President Chávez in Venezuela, can say, challenging his opponents that have criticized the abusive use of delegate legislation by the executive, a few months ago, on August 28, 2008, the following:

> "Whatever you do, the 26 Laws will go ahead! And the other 16 Laws,… also. And if you go out in the streets, like on April 11 (2002)… we will sweep you in the streets, in the barracks, in the universities. I will close the opposition media; I will have no compassion whatsoever …This Revolution came to stay, forever !

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[46] Special La won the Organization and Regime of the Capital District, *Official Gazette*, No 39.156 of April 13, 2009.

You can continue talking stupid thinks … I am going to intervene all communications and I will close all the enterprises I consider that are of public utility or of social interest! … **I am the Law … I am the State** !! 47

This was not the first time that the President of the Republic has used this expression. Also in 2001, when he approved more than 48 Decree laws, also via delegate legislation, he also said, although in a different way: "**The law is me. The State is me**."[48]

I am sure that to hear these expressions of a head of State of our times --expressions that were attributed to Louis XIV, but he never said,[49]-- precisely here in Philadelphia where the first Constitution of modern world was approved in September 28 of 1776 -described as the most democratic in America-, based on the principle of separation of powers; -to hear such expressions are enough to realize and understand the tragic institutional situation Venezuela is currently facing, precisely characterized by a complete absence of separation of powers and consequently, of a democratic government, all achieved through a process of defraudation or perversion of the Constitution, of democracy and of the rule of law, with no precedent whatsoever in our constitutional history.

As has been recently summarized by Teodoro Petkoff, editor and founder of *Tal Cual*, one of the important newspaper in Caracas:

"Chavez controls all the political powers. More that 90% of the Parliament obey his commands; the Venezuelan Supreme Court, whose number were raised from 20 to 32 by the parliament to ensure an overwhelming official majority, has become an extension of the legal office of the Presidency… The Prosecutor General's Office, the Comptroller's Office and the Public Defender are all offices held by "yes persons," absolutely obedient to the orders of the autocrat. In the National Electoral Council, four

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47 "*Yo soy la Ley…, Yo soy el Estado!!"* See the referente in the Blog of Gustavo Coronel, *Las Armas de Coronel*, 15 de octubre de 2008: http://lasarmasdecoronel.blogspot.com/2008/10/yo-soy-la-leyyo-soy-el-estado.html

48 "*La ley soy yo. El Estado soy yo*". See in *El Universal,* Caracas 4–12–01, pp. 1,1 and 2,1..

49 This famous phrase was attributed to Louis XIV, when in 1661 he decided to govern alone after the death of Cardinal Mazarin, but was never pronounced by him. See Yves Giuchet, *Histoire Constitutionnelle Française (1789–1958)*, Ed. Erasme, Paris 1990, p.8

of five members are identified with the government. The Venezuelan Armed Forces are tightly controlled by Chávez. Therefore, form a conceptual point of view, the Venezuelan political system is autocratic. All political power is concentrated in the hands of the President. There is no real separation of Powers."[50]

April 16, 2009

[50] See Teodoro Petkoff, "Election and Political Power. Challenges for the Opposition," in *Revista. Harvard Review of Latin America*, David Rockefeller Center for Latin American Studies, Harvard University, Fall 2008, pp.11-12