

THE “BOLIVARIAN REVOLUTION” AND VENEZUELAN CONSTITUTIONAL LAW *

Allan R. Brewer-Carías
Professor of Law, Universidad Central de Venezuela

The Venezuelan Constitution, last reformed in 1999, instituted the country as a Democratic and Social State of Law and Justice (Article 2), organized as “a decentralized federal State” (Article 4).¹

The political framework of the organization of the State, in based, on the one hand, in the principle of separation or powers (between five and not only three powers, adding to the traditional ones, the Electoral and the Citizens powers), with their autonomy and independence; and on the other hand, based on a vertical distribution of public powers in three territorial levels of government: National level, State level and Municipal level (Art. 136). In each level, the government must always be “elective, decentralized, alternative, responsible, plural, and of revocable mandate” (Article 6).

The political system of government is based on the principles of representative democracy, political decentralizing and political pluralism, according to which, no political institution of the State can be created without ensuring its elective character through elected representatives of the people by means of universal, direct and secret suffrage; without guaranteeing its political autonomy, which is essential to its decentralized nature; and without guaranteeing its plural character in the sense that it cannot be linked to a particular ideology.

And finally, the economic system is conceived as a mixed economic one, declaring economic liberty and free private initiative, altogether with the guaranty of private property, allowing the State participation in the economy, and in all case with the purpose of satisfying social justice.

These are the constitutional ground norms embodied in the 1999 Constitution that consequently cannot be changed by the government without changing the Constitution itself.

Nonetheless, in the name of a so-called “Bolivarian Revolution,” all these basic principles have been changed without a formal constitutional reform and, on the contrary, defrauding or in degradation of the 1999 Constitution, progressively implementing a new XXI century “Communist State.”

* Text of the conference delivered at the *33d. Conference of the German Society of Comparative Law, Legal limits of liberty and legal protection* Trier, Germany, September 16, 2011.

¹ See the study of the constitution regarding the regulation of this State Constitutional Model, in Allan R. Brewer-Carías, *La Constitución de 1999. Derecho Constitucional venezolano*, 2 vols., Caracas 2004.

It must be noted that in 1999, the national Constituent Assembly changed the very name of the country from the “Republic of Venezuela,” which had been the name of the country since 1811, into the “Bolivarian Republic of Venezuela” (Article 1); a name that has been very conveniently used to support what now is called the “Bolivarian Revolution.”

It must be remembered that Venezuela has a very long constitutional tradition, being this country the first to adopt a Modern Constitution following the principles of modern constitutionalism derived from the French and the American revolutions, which were embodied in the Federal Constitution of the Venezuelan States of December 21, 1811. That Constitution and all the papers of the independence process from Spain were conceived and written without the participation of Simón Bolívar, who in fact began his influence in the country as a military, fighting and commanding the national forces against the Spanish Armed forces. This is the reason for his name being indissolubly attached to the Venezuelan Independence, as well as to the independence of other Latin American countries such as Colombia, Ecuador, Bolivia and Peru which were historically called the “Bolivarian” republics.

His name, of course has been used many times for political purpose, so this is not the first time in Venezuela’s political history that rulers, mainly of military and authoritarian roots, have evoked Simón Bolívar to attract followers and to give some “doctrinal” basis to their regimes. It was the case of Antonio Guzmán Blanco in the nineteenth century and of Cipriano Castro, Juan Vicente Gómez, Eleazar López Contreras, and Marcos Pérez Jiménez in the twentieth century. Professor John Lynch, one of the great Bolívar’s biographers, has pointed out that:

“The traditional cult of Bolívar has been used as a convenient ideology by military dictators, culminating with the regimes of Juan Vicente Gómez and Eleazar López Contreras; these had at least more or less respected the basic thought of the Liberator, even when they misrepresented its meaning.”²

Adding that:

“In 1999 Venezuelans were astonished to learn that their country had been renamed ‘the Bolivarian Republic of Venezuela’ by decree of President Hugo Chávez, who called himself a ‘revolutionary Bolivarian.’ Authoritarian populist, or neocaudillos, or Bolivarian militarists, whatever their designation, invoke Bolívar no less ardently than did previous rulers, though it is doubtful whether he would have responded to their calls...But the new heresy, far from maintaining continuity with the

² See John Lynch, *Simón Bolívar: A Life*, Yale University Press, New Haven, CT, 2007, p. 304. See also Germán Carrera Damas, *El culto a Bolívar, esbozo para un estudio de la historia de las ideas en Venezuela*, Universidad Central de Venezuela, Caracas 1969; Luis Castro Leiva, *De la patria boba a la teología bolivariana*, Monteávila, Caracas 1987; Elías Pino Iturrieta, *El divino Bolívar. Ensayo sobre una religión republicana*, Alfai, Caracas 2008; Ana Teresa Torres, *La herencia de la tribu. Del mito de la independencia a la Revolución bolivariana*, Editorial Alfa, Caracas 2009. See also the historiography study on these books in Tomás Straka, *La épica del desencanto*, Editorial Alfa, Caracas 2009.

constitutional ideas of Bolívar, as was claimed, invented a new attribute, the populist Bolívar, and in the case of Cuba gave him a new identity, the socialist Bolívar. By exploiting the authoritarian tendency, which certainly existed in the thought and action of Bolívar, regimes in Cuba and Venezuela claim the Liberator as patron for their policies, distorting his ideas in the process.”³

That is, never before had the adherence to Bolívar led to changing the republic’s name and to the invention of a “Bolivarian doctrine” to justify the government’s policies, as Chávez has done regarding his “XXI century Socialism” one.⁴

This “Bolivarian Revolution” led the President of the Republic himself, in 2007, to propose a constitutional reform before the National Assembly,⁵ in order to express and formally incorporate in the text of the Constitution the socialist “Bolivarian doctrine” or “Bolivarian Socialism”⁶ as the fundamental doctrine of the Socialist State he proposed to establish.

Of course, no relation can be found in any of Simón Bolívar writings with any aspect related to socialism. Just to remember, as Karl Marx was born in this city of Trier, if Bolívar would have expressed any idea related to socialism, Marx would have detected it when he wrote, ten years after publishing his book with F. Engels on *The German Ideology*⁷ where the word “communism” perhaps was first used, the entry on “Simón

³ See John Lynch, *Simón Bolívar: A Life*, Yale University Press, New Haven, CT, 2007, p. 304. See also A.C. Clark, *The Revolutionary Has No Clothes: Hugo Chávez’s Bolivarian Farce*, Encounter Books, New York 2009, pp. 5-14.

⁴ The last attempt to completely appropriate Simón Bolívar for the “Bolivarian Revolution,” was the televised exhumation of his remains that took place at the National Pantheon in Caracas on July 26, 2010, conducted by President Chávez himself and other high officials, including the Prosecutor General, among other things, for the purpose of determining if Bolívar died of arsenic poisoning in Santa Marta in 1830, instead of from tuberculosis. See Simon Romero, “Building a New History By Exhuming Bolívar,” *The New York Times*, August 4, 2010, p. A7.

⁵ See on the constitutional reforms proposals, Allan R. Brewer-Carías, *Hacia la consolidación de un Estado socialista, centralizado, policial y militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Editorial Jurídica Venezolana, Caracas 2007; *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Editorial Jurídica Venezolana, Caracas 2007.

⁶ All his proposals to construct socialism were linked to the president to Simón Bolívar’s 1819 Constitution of Angostura, which he considered “perfectly applicable to a socialist project” in the sense of considering that it was possible to “take the original Bolivarian ideology as a basic element of a socialist project.” Of course, this assertion has no serious foundations: it is enough to read Bolívar’s 1819 Angostura discourse on presenting the draft constitution to realize that it has nothing to do with a “socialist project” of any kind. See Simón Bolívar, *Escritos fundamentales*, Caracas 1982. See also Pedro Grases ed., *El Libertador y la Constitución de Angostura de 1819*, Caracas 1969; José Rodríguez Iturbe, ed., *Actas del Congreso de Angostura*, Caracas 1969.

⁷ See in Karl Marx and Frederick Engels, “The German Ideology,” in *Collective Works*, Vol. 5, International Publishers, New York 1976, p. 47. Véanse además los textos pertinentes en http://www.educa.madrid.org/cms_tools/files/0a24636f-764c-4e03-9c1d-6722e2ee60d7/Texto%20Marx%20y%20Engels.pdf

Bolívar y Ponte” for the *New American Cyclopaedia* published in New York in 1857.⁸ The fact is that in such article no mention at all is made regarding socialist ideas of Bolívar, being it one of the most critical works on Bolívar ever written.

In any case, in order to begin to implement the so-called “Bolivarian Revolution” President Chávez presented to the national Assembly a complete draft of Constitutional Reforms, with the purpose of establishing a socialist, centralized, militaristic, and police State,⁹ called the “Popular Power State” or “Communal State,” affecting the most essential and fundamental aspects of the state,¹⁰ as follows:

First, the democratic and decentralized State was to be converted into a centralized state of concentrated power under the illusory guise of a popular power, implying definitive elimination of the federal form of the state,¹¹ rendering political participation impossible, and degrading representative democracy. For such purpose, the reform established a new “popular power” (*poder popular*) (art. 16), composed by communities (*comunidades*), each of which “shall constitute a basic and indivisible spatial nucleus of the Venezuelan Socialist State, where ordinary citizens will have the power to construct their own geography and their own history;” which were to be grouped into communes (*comunas*).¹² The main aspect of these reforms is that it was expressly stated that the popular power “does not arise from suffrage or from any election, but arises from the condition of the organized human groups that form the base of the population.” Consequently, representative democracy at the local level and territorial political autonomy was to disappear, substituted with a supposed participatory and protagonist democracy that would, in fact, be controlled by the president and that proscribed any form of political decentralization and territorial autonomy.¹³ Even anticipating the

⁸ See *The New American Cyclopaedia*, Vol. III, 1858, on “Bolívar y Ponte, Simón.” Available at <http://www.marxists.org/archive/marx/works/1858/01/bolivar.htm>

⁹ See Allan R. Brewer-Carías, *Hacia la Consolidación de un Estado Socialista, Centralizado, Policial y Militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Colección Textos Legislativos, No. 42, Editorial Jurídica Venezolana, Caracas 2007.

¹⁰ See Rogelio Pérez Perdomo, “La Constitución de papel y su reforma,” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, p. 14; G. Fernández, “Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la República. La modificación constitucional como un fraude a la democracia,” *Id*, p. 22; Alfredo Arismendi, “Utopía Constitucional,” in *id.*, p. 31; Manuel Rachadell, “El personalismo político en el Siglo XXI,” in *id.*, p. 66; Allan R. Brewer-Carías, “El sello socialista que se pretendía imponer al Estado,” in *id.*, p. 71-75; Alfredo Morles Hernández, “El nuevo modelo económico para el Socialismo del Siglo XXI,” in *id.*, p. 233-36.

¹¹ See Manuel Rachadell, “El personalismo político en el Siglo XXI,” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, 67; Ana Elvira Araujo, “Proyecto de reforma constitucional (agosto a noviembre 2007). Principios fundamentales y descentralización política,” in *id.*, 77-81; José Luis Villegas, “Impacto de la reforma constitucional sobre las entidades locales,” in *id.*, 119-23.

¹² The communes were created in the statute on the Federal Council of Government. See *Ley Orgánica del Consejo Federal de Gobierno*, *Gaceta Oficial* N° 5.963 Extra. of Feb. 22, 2010).

¹³ This fundamental change, as the president stated on August 15, 2007, constituted “the development of what we understand by decentralization, because the Fourth Republic concept of decentralization is very different from the concept we must work with. For this reason, we have here stated ‘the protagonist participation of the

constitutional reform proposal, perhaps being sure of its approval, in 2006 the Law on the Councils of the Popular Power (*Consejos del Poder Popular*) was sanctioned.¹⁴

Second, the state was to be converted into a socialist state for the purpose of the “construction of a Socialist democracy” (art. 158); thus establishing a political official doctrine of socialist character – Bolivarian doctrine – allowing the criminalization of all dissidence was formally established.

Third, the mixed economic system was to be converted into a state-owned, socialist, centralized economy by means of eliminating economic liberty and private initiative as constitutional rights, as well as the constitutional right to private property; conferring the means of production to the state, to be centrally managed; and configuring the state as an institution on which all economic activity will depend.¹⁵

Fourth, the state was to be converted into a repressive (police) state, given the regressive character of the regulations established in the reform regarding human rights, and also into a militarist state, on the basis of the role assigned to the “Bolivarian Armed Force” (*Fuerza Armada Bolivariana*), which was configured to function wholly under the president, and the creation of the new “Bolivarian National Militia (*Milicia Nacional Bolivariana*). As the President himself explained, the motivation for the drafting of the constitutional reforms in 2007, was to construct a “Bolivarian Socialism, Venezuelan Socialism, our Socialism, and our socialist model,” having “the community” (*la comunidad*), as its “basic and indivisible nucleus,” and considering that “real democracy is only possible in socialism.”¹⁶

people, transferring power to them, and creating the best conditions for the construction of social democracy.” See *Discurso de orden pronunciado por el ciudadano Comandante Hugo Chávez Frías*, op. cit., 50.

¹⁴ See Giancarlo Henríquez Maionica, “Los Consejos Comunales (una breve aproximación a su realidad y a su proyección ante la propuesta presidencial de reforma constitucional),” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, pp. 89-99; Allan R. Brewer-Carías, “El inicio de la desmunicipalización en Venezuela: La organización del poder popular para eliminar la descentralización, la democracia representativa y la participación a nivel local,” in *AIDA, Opera Prima de Derecho Administrativo. Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Asociación Internacional de Derecho Administrativo, Mexico City 2007, pp. 49-67. The 2006 law was replaced by *Ley Orgánica de los Consejos Comunales*, *Gaceta Oficial* N° 39.335, Dec. 28, 2009. See the comments on this Law in Allan R. Brewer-Carías, *Ley de los Consejos Comunales*, Editorial Jurídica Venezolana, Caracas 2010.

¹⁵ See Gerardo Fernández, “Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la República. La modificación constitucional como un fraude a la democracia,” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, p. 24; Alfredo Arismendi, “Utopía Constitucional,” in id., p. 31; José Antonio Muci Borjas, “La suerte de la libertad económica en el proyecto de Reforma de la Constitución de 2007,” in id., pp. 203-208; Tamara Adrián, “Actividad económica y sistemas alternativos de producción,” in id., pp. 209-14; Víctor Hernández Mendible, “Réquiem por la libertad de empresa y derecho de propiedad,” in id., pp. 215-18; Alfredo Morles Hernández, “El nuevo modelo económico para el Socialismo del Siglo XXI,” in id., pp. 233-236.

¹⁶ See *Discurso de orden pronunciado por el ciudadano Comandante Hugo Chávez Frías*, op cit., 32, 34, 35.

The proposed constitutional reform, without doubt, would have altered the basic foundations of the state.¹⁷ This is true particularly with respect to the proposals of the substitution of the democratic and social state with the socialist state; the elimination of decentralization as a policy of the state designed to develop public political participation; and the elimination of economic freedom and the right to property.¹⁸

All these constitutional reforms, were submitted to popular vote, and were all rejected by the people in the referendum that took place on December 2, 2007.¹⁹

One constitutional aspect that must be analyzed regarding the rejected constitutional reforms is that the proposals in themselves were unconstitutional because the procedure of “constitutional reform” cannot be used for so important changes. The Constitution, in effect, provides for three different methods of constitutional review: constitutional amendments, constitutional reforms, and the convening of a national Constituent Assembly, so major constitutional changes can only be approved by means of the former. In the case of the 2007 constitutional reform draft, it was sanctioned by the national Assembly evading the procedure established in the Constitution for such fundamental change, which imposes the convening of a Constituent Assembly. The reform defrauded the Constitution²⁰ as one more step of the “permanent coup d’état” that since 1999 has occurred in Venezuela.²¹ The procedure followed was challenged on grounds of unconstitutionality before the Constitutional Chamber of the Supreme Tribunal of Justice, which refused to exercise judicial review on these matters declaring that such actions could no even be filed.²²

¹⁷ See Eugenio Hernández Bretón, “Cuando no hay miedo (ante la Reforma Constitucional),” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, oo. 17-20; Manuel Rachadell, “El personalismo político en el Siglo XXI,” in id., pp. 65-70.

¹⁸ See on these reforms, Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, 2010.

¹⁹ See Allan R. Brewer-Carías, “La proyectada reforma constitucional de 2007, rechazada por el poder constituyente originario,” in *Anuario de Derecho Público* 2007, Año 1, Instituto de Estudios de Derecho Público de la Universidad Monteávila, Caracas 2008, pp. 17-65. According to information from the National Electoral Council on Dec. 2, 2007, of 16,109,664 registered voters, only 9,002,439 voted (44.11% abstention); of voters, 4,504,354 rejected the proposal (50.70%). This means that there were only 4,379,392 votes to approve the proposal (49.29%), so only 28% of registered voters voted for the approval.

²⁰ See Rogelio Pérez Perdomo, “La Constitución de papel y su reforma,” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, 14; Gerardo Fernández, “Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la república. La modificación constitucional en fraude a la democracia,” in id., 21-25; Fortunato González, “Constitución histórica y poder constituyente,” in id., pp. 33-36; Lolymer Hernández Camargo, “Los límites del cambio constitucional como garantía de pervivencia del Estado de derecho,” in id., 37-45; Claudia Nikken, “La soberanía popular y el trámite de la refroma constitucional promovida por iniciativa presidencial el 15 de agosto de 2007,” in id., 51-58.

²¹ See José Amando Mejía Betancourt, “La ruptura del hilo constitucional,” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, p. 47. The term was first used by Francois Mitterand, *Le coup d’État permanent*, Éditions 10/18, Paris 1993.

²² See Allan R. Brewer-Carías, “El juez constitucional vs. la supremacía constitucional O de cómo la jurisdicción constitucional en Venezuela renunció a controlar la constitucionalidad del procedimiento seguido para la ‘reforma constitucional’ sancionada por la Asamblea Nacional el 2 de noviembre de 2007, antes de que fuera rechazada por el pueblo en el referendo del 2 de diciembre de 2007,” in

In any case, the rejection of the Constitutional reform draft in the 2007 referendum, did not prevent the Government of beginning to implement them in order to establish the Socialist State, first through the progressive political process of concentrating and controlling all public powers by the National Executive, through the National Assembly, as has occurred regarding the Judiciary;²³ and second, through the enactment of ordinary legislation by the National Assembly and decrees laws issued by the President of the Republic as delegate legislation.²⁴

This process began even before the draft reforms were even submitted to the National Assembly. In June 2006 the National Assembly had passed the Law on the Communal Councils,²⁵ parallel to the municipal entities, supposedly to channel citizen participation in public affairs, but subjected to a system of centralized management by the national executive power and without any political or territorial autonomy.²⁶ The following year, in June 2007, the Central Planning Commission was created,²⁷ and in December 13, the National Assembly approved the 2007–13 Economic and Social Development National

Eduardo Ferrer Mac Gregor y César de Jesús Molina Suárez (Coordinadores), *El juez constitucional en el Siglo XXI*, Universidad nacional Autónoma de México, Suprema Corte de Justicia de la Nación, México 2009, Tomo I, pp. 385-435---

²³ See Allan R. Brewer-Carías, “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)]” en *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Marcial Pons, Madrid 2007, pp. 25-57

²⁴ See Lolymar Hernández Camargo, “Límites del poder ejecutivo en el ejercicio de la habilitación legislativa: Imposibilidad de establecer el contenido de la reforma constitucional rechazada vía habilitación legislativa,” in *Revista de Derecho Público 115 (Estudios sobre los Decretos Leyes)*, Editorial Jurídica Venezolana, Caracas 2008, pp. 51ff.; Jorge Kiriakidis, “Breves reflexiones en torno a los 26 Decretos-Ley de julio-agosto de 2008, y la consulta popular refrendaría de diciembre de 2007,” in id., pp. 57ff.; José Vicente Haro García, “Los recientes intentos de reforma constitucional o de cómo se está tratando de establecer una dictadura socialista con apariencia de legalidad (A propósito del proyecto de reforma constitucional de 2007 y los 26 decretos leyes del 31 de julio de 2008 que tratan de imponerla),” in id., pp. 63ff.; Ana Cristina Nuñez Machado, “Los 26 nuevos Decretos-Leyes y los principios que regulan la intervención del Estado en la actividad económica de los particulares,” in id., pp. 215-20; Aurilivi Linares Martínez, “Notas sobre el uso del poder de legislar por decreto por parte del Presidente venezolano,” in id., pp. 79-89; Carlos Luis Carrillo Artilles, “La paradójica situación de los Decretos Leyes Orgánicos frente a la Ingeniería Constitucional de 1999,” in id., pp. 93-100; Freddy J. Orlando S., “El “paquetazo,” un conjunto de leyes que conculcan derechos y amparan injusticias,” in id., pp. 101-104

²⁵ *Ley de Consejos Comunales*, *Gaceta Oficial, Extra*. 5.806, Apr. 10, 2006. This statute was replaced by *Ley Orgánica de los Consejos Comunales*. See *Gaceta Oficial* N° 39.335, Dec. 28, 2009.

²⁶ See Allan R. Brewer-Carías, “El inicio de la desmunicipalización en Venezuela: La organización del poder popular para eliminar la descentralización, la democracia representativa y la participación a nivel local,” in *AIDA, Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Asociación Internacional de Derecho Administrativo, Mexico City 2007, 49-67.

²⁷ Decree Law No. 5,841 was enacted on June 12, 2007, *Gaceta Oficial* N° 5.841, Extra., June 22, 2007. See Allan R. Brewer-Carías, “Comentarios sobre la inconstitucional creación de la Comisión Central de Planificación, centralizada y obligatoria,” in *Revista de Derecho Público 110*, Editorial Jurídica Venezolana, Caracas 2007, pp. 79-89; Luis A. Herrera Orellana, “Los Decretos-Leyes de 30 de julio de 2008 y la Comisión Central de Planificación: Instrumentos para la progresiva abolición del sistema político y del sistema económico previstos en la Constitución de 1999,” in *Revista de Derecho Público 115, (Estudios sobre los Decretos Leyes)*, Editorial Jurídica Venezolana, Caracas 2008, pp. 221-32

Plan, providing that the “planning, production and distribution system oriented towards socialism,” being “the relevant matter” the progressive development of “social property of the production means.” Through another Law the State assumed all powers in order to control farming, livestock, fishing, and aquaculture, and in particular the production of food,²⁸ allowing the State to directly assume distribution and commercialization of goods, and the occupation of industries without compensation.²⁹ In 2008, another Law on the Popular Economy Promotion and Development was passed, establishing a “socio-productive communal model,” with different socio-productive organizations following the “socialist model;”³⁰ as well as the general law on matters of Consumer and Users Protection In the same openly socialist orientation.³¹ These Laws extended the state powers of control to the point of establishing the possibility of confiscating goods and services by means of their takeover and occupation of private industries and services through administrative decisions.³²

²⁸ Decree Law on the Organic Law on Farming and Food Security and Sovereignty. *Gaceta Oficial* N° 5.889, Extra., July 31, 2008. See José Ignacio Hernández G., “Planificación y soberanía alimentaria,” in *Revista de Derecho Público* 115, (*Estudios sobre los Decretos Leyes*), Editorial Jurídica Venezolana, Caracas 2008, pp. 389-94; Juan Domingo Alfonso Paradisi, “La constitución económica establecida en la Constitución de 1999, el sistema de economía social de mercado y el decreto 6.071 con rango, valor y fuerza de Ley Orgánica de seguridad y soberanía agroalimentaria,” in id., pp. 395-415; Gustavo A. Grau Fortoul, “La participación del sector privado en la producción de alimentos, como elemento esencial para poder alcanzar la seguridad alimentaria (Aproximación al tratamiento de la cuestión, tanto en la Constitución de 1999 como en la novísima Ley Orgánica de soberanía y seguridad alimentaria),” in id., pp. 417-24.

²⁹ See Carlos García Soto, “Notas sobre la expansión del ámbito de la declaratoria de utilidad pública o interés social en la expropiación,” in *Revista de Derecho Público* 115, (*Estudios sobre los Decretos Leyes*), Editorial Jurídica Venezolana, Caracas 2008, pp. 149-51; Antonio Canova González, Luis Alfonso Herrera Orellana, and Karina Anzola Spadaro, *¿Expropiaciones o vías de hecho? (La degradación continuada del derecho fundamental de propiedad en la Venezuela actual)*, Funeda, Universidad Católica Andrés Bello, Caracas 2009.

³⁰ Decree Law, No. 6,130 of June 3, 2008., *Gaceta Oficial* N° 5.890, Extra., July 31, 2008. See Jesús María Alvarado Andrade, “La desaparición del bolívar como moneda de curso legal (Notas críticas al inconstitucional Decreto N° 6.130, con rango, valor y fuerza de la ley para el fomento y desarrollo de la economía comunal, de fecha 3 de junio de 2008,” in *Revista de Derecho Público* 115, (*Estudios sobre los Decretos Leyes*), Editorial Jurídica Venezolana, Caracas 2008, pp. 313-20.

³¹ Decree Law No. 6,092 enacting the Access to Goods and Services Persons Defense Law. *Gaceta Oficial* N° 5,889 Extra of July 31, 2008; José Gregorio Silva, “Disposiciones sobre el Decreto-Ley para la defensa de las personas en el acceso a bienes y servicios,” in id., pp. 277-79; Carlos Simón Bello Rengifo, “Decreto N° 6.092 con rango, valor y fuerza de la ley para la defensa de las personas en el acceso a los bienes y servicios (Referencias a problemas de imputación),” in id., pp. 281-305; Alfredo Morles Hernández, “El nuevo modelo económico del socialismo del siglo XXI y su reflejo en el contrato de adhesión,” in id., pp. 229-32.

³² See Juan Domingo Alfonso Paradisi, “Comentarios en cuanto a los procedimientos administrativos establecidos en el Decreto N° 6.092 con rango, valor y fuerza de Ley para la defensa de las personas en el acceso a los bienes y servicios,” in *Revista de Derecho Público* 115, (*Estudios sobre los Decretos Leyes*), Editorial Jurídica Venezolana, Caracas 2008, pp. 245-60; Karina Anzola Spadaro, “El carácter autónomo de las ‘medidas preventivas’ contempladas en el artículo 111 del Decreto-Ley para la defensa de las personas en el acceso a los bienes y servicios,” in id., pp. 271-76. See, in general, Antonio Canova González, Luis Alfonso Herrera Orellana, and Karina Anzola Spadaro, *¿Expropiaciones o vías de hecho? (La degradación continuada del derecho fundamental de propiedad en la Venezuela actual)*, Funeda, Universidad Católica Andrés Bello, Caracas 2009

A primary purpose of the 2007 constitutional reforms was to complete the dismantling of the federal form of the state by centralizing power attributions of the states, creating administrative entities to be established and directed by the national executive, attributing powers to the president to interfere in regional and local affairs, and voiding state and municipal competency by means of compulsory transfer of that competency to communal councils.³³ The implementation of these rejected constitutional reforms was completed with the approval in 2010 of the Law on the Federal Council of Government,³⁴ forcing the states and municipalities to transfer its attributions to local institutions controlled by the central power (communal councils),

The last set of unconstitutional legislation implementing the 2007 rejected reform was approved in December 21, of 2010, by formally establishing a Communal State (or Socialist or Communist state) based upon the exercise of a new Popular Power that has no constitutional basis, created in parallel to the existing Constitutional decentralized State based upon the Public Power (National, state, municipal) expressly established in the Constitution.³⁵ For such purpose the National Assembly passed eight important Laws referred to the Popular Power; the Communes; the Communal Economic System; the Public and Communal Planning; and the Social Comptrollership,³⁶ and reformed the Organic Law on Municipalities, and the Laws of the States and Local Councils on Public Policy Planning and Coordination.³⁷

These laws were approved after President Chávez himself confessed in January 2010 that the supposedly “Bolivarian revolution,” was no more than the resurrection of the historically failed “Marxist revolution,” but in this case led by a president who – he said - has never even read Marx’s writings.³⁸ This presidential announcement provoked in April 2010, that the governmental United Socialist Party of which the President presides, in its First Extraordinary Congress then adopted its “Declaration of Principles” in which it officially declared itself as a “Marxist,” “Anti-imperialist” and “Anti-capitalist” party; prescribing that its actions are to be based on “scientific socialism” and on the “inputs of Marxism as a philosophy of praxis,” in order to substitute the “Capitalist Bourgeois

³³ See Manuel Rachadell, “La centralización del poder en el Estado federal descentralizado,” in *Revista de Derecho Público*, 115, (*Estudios sobre los Decretos Leyes*), Editorial Jurídica Venezolana, Caracas 2008, pp. 111-131.

³⁴ See *Ley Orgánica del Consejo Federal de Gobierno*, *Gaceta Oficial* N° 5.963 Extra. of Feb. 22, 2010.

³⁵ See Gustavo Linares Benzo, “Sólo un Poder Público más. El Poder Popular en la reforma del 2007,” in *Revista de Derecho Público* 112 (*Estudios sobre la reforma constitucional*), Editorial Jurídica Venezolana, Caracas 2007, pp. 102-105; Arturo Peraza, “Reforma, Democracia participativa y Poder Popular,” in *id.*, pp. 107-13.

³⁶ See *Gaceta Oficial* N° 6.011 Extra. 12-21-2010. See on all these organic laws, Allan R. Brewer-Carías *et al.*, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal*, Editorial Jurídica Venezolana, Caracas 2011.

³⁷ See *Gaceta Oficial* N° 6.015 Extra. 12-28-2010.

³⁸ In his annual speech before the National Assembly on Jan. 15, 2010, in which Chávez declared to have “assumed Marxism,” he also confessed that he had never read Marx’s works. See María Lilibeth Da Corte, “Por primera vez asumo el marxismo,” in *El Universal*, Caracas Jan. 16, 2010, http://www.eluniversal.com/2010/01/16/pol_art_por-primera-vez-asu_1726209.shtml.

State” with a “Socialist State” based on the Popular Power and the socialization of the means of production.³⁹

With these declarations it can be said, finally, that the so called “Bolivarian Revolution” has been unveiled; a revolution for which nobody in Venezuela has voted except for its rejection, first, in the December 2, 2007 referendum, in which the President’s proposals for constitutional reforms in order to establish a Socialist, Centralized, Police and Militaristic state received a negative popular response;⁴⁰ and second, in the parliamentary elections of September 26, 2010, in which the Government lost the support of the majority of the popular vote, after an electoral campaign developed as a sort of “plebiscite” on the President, his performance and his socialist policies.

In such election, although the opposition won the majority of the popular vote in the election, it did not won the majority of seats in the National Assembly, due to distorting electoral regulations. Nonetheless, it won enough parliamentary seats in the National Assembly (approximately 40%), preventing the Government on the possibility of passing laws or decisions requiring a qualified vote, like the Organic Laws.

This meant that the President and his party, having lost the absolute control they used to have since 2005 over the National Assembly, before the newly elected deputies to the Assembly could have taken possession of office in January 2011, in December 2010 they forced the National Assembly to proceed to sanction of the aforementioned set of organic laws through which they have finished defining the legislative framework for a new State. In this way, by-passing the Constitution and in parallel to the Constitutional State, the National Assembly regulated a socialist, centralized, military and police State, called the “Communal State” of the “Popular Power” already rejected by the people in 2007. . The delegitimized National Assembly also passed an enabling Law authorizing the President, through delegated legislation, to enact laws on all imaginable subjects, including laws of organic nature, emptying the new National Assembly of matters on which to legislate for a period of 18 months until 2012.

The main purpose of these laws, as aforementioned, was the organization of the “Communal State” which has the commune as its fundamental unit, unconstitutionally supplanting the municipalities as the “primary political units of the national organization” (Art. 168 of the Constitution), through whose organization the Popular Power is exercised, although not through representatives. In this Communal State representative democracy is ignored, openly violating the Constitution.

³⁹ See “Declaración de Principios, I Congreso Extraordinario del Partido Socialista Unido de Venezuela,” Apr. 23, 2010, at <http://psuv.org.ve/files/tcdocumentos/Declaracion-de-principios-PSUV.pdf>

⁴⁰ See on the 2007 constitutional reforms proposals, Allan R. Brewer-Carías, *Hacia la consolidación de un Estado socialista, centralizado, policial y militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Editorial Jurídica Venezolana, Caracas 2007; *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Editorial Jurídica Venezolana, Caracas 2007.

One thing that has to be highlighted is that after failing to create the Communal State in substitution of the Constitutional State, the December 2010 Laws have created it in parallel or alongside the Constitutional State. The Socialist State based on the direct exercise of sovereignty by the people; and the Constitutional State, based also on the indirect exercise of sovereignty by the people through elected representatives by universal suffrage; in a system in which the former will gradually strangle and empty competencies from the second.

All of this is unconstitutional, particularly because in the structure of the Communal State that is established, in the end, the exercise of sovereignty is factually indirect, through supposed “representatives” that are not popularly elected through universal and direct suffrage, but “elected” in Citizens’ Assemblies, that are subjected to the control of the Central Power, being the whole system structured, directly controlled by a Ministry from the National Executive Branch of Government. Consequently, far from being an instrument of participation and decentralization is a centralized and tightly controlled system of the communities by the central power.

On the other hand, this Communal State is established imposing a unique official socialist concept and doctrine, contrary to any sort of pluralism, so that anyone who is not a socialist is automatically discriminated and excluded.

The December 2010 Laws on the Communal State and the Popular Power also reformed the Economic Constitution, establishing in parallel to the mixed economic system regulated in the Constitution, the so-called Communal Economic System to be developed “under communal forms of social ownership, to satisfy collective needs, social reinvestment of the surplus, and contribute to the country's overall social development in a sustainable manner” (art. 18).⁴¹ This system must be exclusively developed through “socio-productive organizations under communal social property forms” created as public enterprises, family productive units, or bartering groups, in which private initiative and private property are excluded.

The socialist productive model established in the Law (art. 3.2), is precisely defined as a “production model based on social property, oriented towards the elimination of the social division of work that appertains to the capitalist model,” directed to satisfy the increasing needs of the population through new means of generation and appropriation as well as the reinvestment of social surplus” (art. 6.12). This is nothing different than to legally impose a communist system by copying isolated paragraphs perhaps of a forgotten old manual of a failed communist revolution paraphrasing what Karl Marx and Friedrich Engels wrote 150 years ago (1845-1846) on the “communist society,”⁴² precisely

⁴¹ Organic Law of the Communal Economic System .See *Gaceta Oficial* N° 6.011 Extra. (12- 21-2010)

⁴² See in Karl Marx and Frederich Engels, “The German Ideology,” in *Collective Works*, Vol. 5, International Publishers, New York 1976, p. 47. Véanse además los textos pertinentes en http://www.educa.madrid.org/cms_tools/files/0a24636f-764c-4e03-9c1d-6722e2ee60d7/Texto%20Marx%20y%20Engels.pdf

based upon those three basic concepts: the social property of production means, the elimination of social division of work, and the social reinvestment of surplus (art. 1).

This Communal or Socialist State, regulated on the fringes of the Constitution, as mentioned, has been established as a “Parallel State” to the Constitutional State, but with provisions that, if implemented, will enable the Communal State to drown the Constitutional State, for which purpose the Law has provided that all organs of the Constitutional State are subjected to the mandates of the organizations of Popular Power, establishing a new principle of government, so-called in the Law, the principle of “govern obeying,” no other than obeying the wishes of the central government⁴³ through the controlled organization of the Communal State.

As the Popular Power organizations have no political autonomy, since their "spokespersons" are not democratically elected by universal, direct and secret ballot, but appointed by citizen Assemblies politically controlled and operated by the governing party and the National Executive who controls and guides all the organizational process of the Communal State in the sphere of socialist ideology, there is no way there can be a spokesperson who is not a socialist.

Consequently, this "govern obeying" principle is a limitation to the political autonomy of the elected bodies of the Constitutional State such as the National Assembly, Governors and Legislative Councils of States and Mayors and Municipal Councils, upon who ultimately is imposed an obligation to obey any provision made by the National Government and the ruling party, framed exclusively in the socialist sphere as a political doctrine.

Therefore, in the unconstitutional framework of these Popular Power Laws, the popular will expressed in the election of representatives of the Constitutional State bodies has no value whatsoever, and the people have been confiscated of their sovereignty by transferring it to assemblies who do not represent them.

The result of these Laws is that the National Assembly has imposed on the Venezuelan people, against the popular will and defrauding the Constitution, a Socialist State model, called “the Communal State,” in order to supposedly exercise Popular Power directly by the people, as an alleged form of direct exercise of sovereignty.

By regulating this Communal State of the Popular Power through ordinary legislation, in addition to defrauding the Constitution, a technique that has been consistently applied by the authoritarian regime in Venezuela since 1999 to impose its decisions outside of the

⁴³ Article 24 of the Law establishes the following principle: “Proceedings of the bodies and entities of Public Power. All organs, entities and agencies of Public Power will govern their actions by the principle of “govern obeying”, in relation to the mandates of the people and organizations of Popular Power, according to the provisions in the Constitution of the Republic and the laws.”

Venezuelan Constitution,⁴⁴ it now adds fraud to the popular will by imposing on Venezuelans through organic laws a State model for which nobody has voted.

What is clear about all this is that there are no masks to deceive anyone, or by reason of which someone pretends to be deceived or fooled about what essentially the “Bolivarian revolution” in Venezuela is nothing else but a communist Marxist revolution, carried out deliberately by misusing and defrauding constitutional institutions.

Trier, September 16, 2010

⁴⁴ See Allan R. Brewer-Carías, *Reforma constitucional y fraude a la Constitución (1999-2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009; *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010.