

**THE SITUATION OF THE VENEZUELAN STATE AFTER THE APRIL 2013
PRESIDENTIAL ELECTIONS:
THE CHÁVEZ'S INSTITUTIONAL LEGACY ***

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As we all know, the Venezuelan Presidential Elections that are going to be held next Sunday April 14, 2013, are due to the death of Hugo Chávez Frías, who after being President of the Republic for two terms since 1999, and after being reelected on October 2012, never managed to take his oath of office, missing the Inauguration ceremony that was scheduled for January 10th, 2013. The fact is that since December 10th, 2012, he was confined to a bed in a Hospital in Habana, Cuba where he was operated upon, not being seen alive in public since then.

This means that since December 2012, it was absolutely clear that the late President was already unable to govern, a situation that nonetheless was deliberately hidden by government officials in Caracas, even by making believe that he was ruling the country from Havana, a fact that was completely false. To this day nobody really knows exactly when he died. Even the Supreme Tribunal of Justice, in his last decision of March 8, 2013 through which it allowed Vice President Nicolás Maduro to continue ruling the country as acting President, in a very careful way did not affirm that the former President actually died on March 5th, 2013, as it was officially announced, it only said that was the day that the Vice President announced.¹

The result of all the secrecy surrounding the condition of the former President and of the manipulation of the information regarding his incapacity to govern, were two “custom made”

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¹ See the text of the decision No 141 of March 5, 2013 in <http://www.tsj.gov.ve.decisioes/scon/Marzo/141-9313-2013-13-0196.html>

judicial decisions issued by the Supreme Tribunal of Justice, in January 9th, 2013² and in March 8th, 2013, in which, contrary to express constitutional provisions, the Tribunal ruled to ensure, first, the continuity on the tenure of Vice President Maduro who was in charge of the Executive Power, affirming that the late President was supposedly in charge of the government, which was absolutely impossible; and second, that the same Vice President Maduro, after he announced the death of the former President, was the one to assume the Presidency with the possibility of running as a candidate in the Presidential Elections that were to follow, without stepping down from such official position.

Thanks to those unconstitutional rulings, Nicolás Maduro, as acting President, is one of the candidates, illegally using all sort of public resources and funds and without any control by the National Electoral Council.³ Consequently, we can say without hesitation, that Maduro is currently running in the presidential election as *the official candidate of the State*. Yes, I repeat, as the official candidate of the Venezuelan State, and not of a particular political party, facing the candidate of the opposition, the Governor of the Miranda State Henrique Capriles, who is confronting the most vulgar abuse of power⁴ ever seen before in an electoral campaign in the

² See the text of the decision No 2 of January 9, 2013 in <http://www.tsj.gov.ve/decisiones/scon/Enero/02-9113-2013-12-1358.html>

³ See for instance, the *Comunicado* issued by my University, the Central University of Venezuela, on April 3, 2013, in which the University Council expressed that “*Procupa al Consejo Universitario las osetnsibles violaciones por parte de organismos oficiales a las reglas de juego, propias de un proceso electoral democrático, y a la ausencia de vigilancia efectiva del CNE ante las reiteradas denuncias formuladas por los sectores afectados.*” Available at: ucvnoticias.ucv.ve/wordpress/?p=17069

⁴ Even the brother of the current Minister of Information of the Government, in an article with the title published on April 7, 2013, has said: “*Masivo, grotesco y desvergonzado es el uso de los recursos públicos en la campaña electoral oficialista. Las evidencias abundan y atropellan diariamente la vista y la impotencia ciudadanas. Miles de millones de bolívares que nos pertenecen a todos salen del torrente institucional para ser dilapidados en el proselitismo electoral y el activismo del partido de gobierno. Oficinas públicas disfrazadas de sedes partidistas. Decenas de miles de funcionarios públicos dejan los puestos de trabajo y cumplen su jornada laboral en tareas político partidistas bajo la más absoluta impunidad. Televisoras, radios, periódicos, revistas y panfletos que se proclaman “de todos los venezolanos” pero que operan como órganos oficiosos del Partido Socialista Unido de Venezuela o como megáfonos de éste. Edificios, auditorios, mobiliario, imprentas, computadoras, papel y tinta, equipos de sonido, alimentos y bebidas, aviones, avionetas, helicópteros, autobuses, gandolas, camiones, camionetas, carros y motos oficiales puestos al servicio del calendario y propósitos partidistas y no del calendario y propósitos institucionales, menos aun al servicio de las necesidades populares. Es incalculable la cantidad de horas-hombre de nuestros funcionarios, la cantidad de unidades tributarias de nuestros impuestos y la cantidad de barriles de nuestro petróleo desviados y despilfarrados en esta borrachera roja rojita, unas veces encubierta y las más descarada y retadoramente abiertas.*” See Mario Villegas, *Muchos recursos y cero escrúpulos*,” in *Diario 2001*, Caracas, April 7, 2013.

country. Even the Ministry of Defense has openly endorsed Maduro in the name of the Armed Forces,⁵ as well as all the Government Ministries have taken part in the campaign,⁶ including the Ministry of Foreign Affairs and the Venezuelan Embassies.⁷

Perhaps that is why Nicolás Maduro, a few days ago, affirmed, threatening in the most typical style of the former President, that if for any “historical accident” Capriles won the election, in no more that two months there will be a “popular uprising” against his policies.⁸

But in spite of the efforts to try to copy the rude style of the late President, this election is conditioned, above all, by the fact that for the first time in fourteen years of elections, the former President, having being the President with the longest tenure and political presence in all of Venezuelan political history, is not physically participating in it.⁹

In addition, as any authoritarian leader of his kind, and in his case, after having mastered the use of the media, like nobody else, the former President cannot really be imitated. Nobody can really claim to be him or similar to him. Nobody can effectively claim to inherit his political legacy.

Nonetheless, as we all know, the candidate Maduro is openly trying to imitate him, to sell himself as his “son,” and to hide himself in his shadow. The last sign of such attempt has been his announcement a few days ago, that the dead President appeared before him, flying, and

⁵ See the expressions of Diego Molero Bellavía, Minister of Defense, in *CNN es la Noticia*, 5-3-2013, available at <http://cnnespanol.cnn.com/2013/03/05/ministro-de-la-defensa-venezolano-hace-un-llamado-a-la-unidad/>

⁶ As was reported today in *The New York Times*, Maduro’s party “taps nearly unlimited government resources. Government workers are required to attend rallies. Government television stations broadcast every event, and government ministries openly take part in the campaign.” See William Neuman, “Even in death, Chávez Is a Powerful Presence,” in *The New York Times*, New York, April 9, 2013, pp. A4 and A7.

⁷ See the Circular I.DVM Europa 000-189 of April 4, 2013, sent by the Vice Minister for Europe Ayerim Flores R. to all the Venezuelan Embassies and Consulates informing that “en el marco de las elecciones presidenciales a realizarse el 14 de abril de 2013, se llevará a cabo un plan de acción que articule una estrategia de campaña electoral en Europa a través de nuestras Misiones Diplomáticas [...] orientada a reafirmar la continuidad de la revolución Bolivariana con el triunfo de Nicolás Maduro y la ejecución del ‘Plan de la patria para la gestión Bolivariana Socialista 2013-2019’, tal como lo diseñó el Comandante y líder de la Revolución Hugo Chávez.”

⁸ See in “Maduro: habrá un “alzamiento popular” si triunfa Capriles,” ANSA, Caracas March, 28, 2013, available at http://redigitaltv.com/?p=97014&utm_campaign=nacional-y-politica&utm_medium=twitter&utm_source=twitter

⁹ Chavez ruled the country more years than any of the other well known authoritarian rulers, more that Antonio Guzmán Blanco in the XIX century, and Juan Vicente Gómez in the XX century. See Allan R. Brewer-Carías, *Historia Constitucional de Venezuela*, Editorial Alfa, Caracas 2008, Vol II.

transfigured into a little bird, giving him his benediction for the Presidential campaign.¹⁰ This sort of expressions made by any other than Chávez, only generates sorrow or laugh, but for sure evidences the dangerous risk that one of the possible outcomes of this election could result in a tragic comedy with a phantom directing the policies of the country.

In this context, any way, the current situation of the presidential campaign is that if it is true that who is actually running against Henrique Capriles is not the former President, the constant use by Mmaduro of the Chávez's legacy, has placed Capriles in the situation of really being running against all the apparatus of the State, the same State that through the Supreme Tribunal and the National Electoral Council has admitted the candidacy of Maduro in violation of the Constitution, particularly because as Vice President he was forbidden to be a candidate.

Now, despite this situation and independently from the result of the elections, in which both candidates currently have real chances of winning, the fact is that both, Capriles and Maduro as well as all Venezuelans, in the near future, will have to face the reality of the institutional monumental mess that we all are inheriting from the former President long government. This is precisely the aspect that I want to address today, related to the "beyond" the election.

We must not forget that with all of its defects, just two decades ago, Venezuela was still one of the most envied democracies in Latin America, with a steady economic growth and permanent social policies led by Social Democratic and Social Christian parties; a situation that is in sharp contrasts with the current situation of the country that has the record of being among the countries with the highest index of violence and lack of security; of governmental inefficiency; of greater number of public employees compared to its population; of militarization of the Public Administration; of infrastructure destruction; of military expenses; of human rights violations; of impunity; of lack of economic liberty; of participation of the State in economic activities; of

¹⁰ See "Maduro dice que Chávez se apareció en forma de "pajarito chiquitico" y lo bendijo," in *Noticias 24*, April 2, 2013, available at <http://www.noticias24.com/venezuela/noticia/159655/maduro-dice-chavez-se-aparecio-en-forma-de-pajarito-chiquitico-y-lo-bendijo/>. This fact was reported in *The New York Times*, as follows: "In what rounds as the most surreal moment of Venezuela's preesidential campaign – a race whose central personality is the deceased president – Mr. maduro told the nation that Mr. Chávez's spirit came to him as a tiny bird that flew into a chapel where he was praying. / [...] / Mr. Maduro said that he whistled back and that the bird responded / 'I felt his spirit,' Mr. Maduro said. 'I felt him there as if he was blessing us, telling us: 'Today the battle begins. Go to victory.' [...] / So now at campaign rallies he whistles like a bird." See William Neuman, "Even in death, Chávez Is a Powerful Presence," in *The New York Times*, New York, April 9, 2013, pp. A4 and A7

imports' dependency; of public internal and external debt; of lowest international reserves; of oldest currency exchange control; of inflation and currency devaluation; of dependency on oil production; of greater State control on the media and of less freedom of expression; of the biggest political polarization; of institutional destruction; of absence of separation of powers and check and balances; of absence of government accountability and fiscal control; of corruption; and of absence of transparency in government. And the gravest of all, a country where the value of work has almost disappeared from society as a consequence of the policies that have been applied by the government supposedly to take care of the poor, which are based on direct subsidies and distribution of money and goods that eventually have worsened the situation of the poor with the mirage of pocket money.¹¹

The most recent record derived from the Chávez's legacy, has been the formal exclusion of the country from the international community having lost its voting rights in the bodies of the United Nations Organization because of lack of payment of the required contributions.¹²

So for the next election, the position of the two running candidates appears to be clear: In the case of Maduro, having been in the government since 1999, and purporting to be the heir of Chávez, he is proposing to continue with the policies that have led to the current catastrophic situation of the country,¹³ to the point that any other different political offer he could make, for

¹¹ As Luis Ugalde, the former Rector of the Andrés Bello Catholic University of Caracas said regarding the Chávez's legacy: "*Con 1 billón (1 millón de millones) de dólares en las manos, su pésima gestión ha llevado a Venezuela a los primeros lugares de endeudamiento interno y externo, de inflación (el triple del promedio latinoamericano), corrupción, creación de multimillonarios ineptos y parásitos a la sombra del poder político, récord en las importaciones de productos agropecuarios e industriales y ruina de la productividad con atrofia de las exportaciones. Nos ha puesto en los primeros lugares del mundo en el crimen en las calles y en las cárceles y nuestra sociedad enferma prolonga la agonía gracias al suero petrolero*" [...] "*Con ilimitada demagogia se le inculca a la población que para salir de la pobreza no son necesarios el esfuerzo propio y la productividad; basta la ayuda de un presidente compasivo y generoso con el reparto del ingreso petrolero. Al contrario decimos, lo que el pobre necesita para dejar de serlo es apoyo decidido a su educación y formación productora, a su organización social y la creación de millones de puestos de trabajo con inversión y enorme creatividad empresarial exitosa de decenas de miles de emprendedores.*" See in Luis Ugalde, "Salud y Compasión," *El Nacional*, Caracas, April 4, 2013, available at http://www.el-nacional.com/luis_ugalde/Salud-compasion_0_165583664.html

¹² See "Venezuela pierde temporalmente su derecho a votar en la ONU por impago de cuotas," in *Globovisión*, Caracas April 3, 2013, available in <http://globovision.com/articulo/venezuela-pierde-temporalmente-su-derecho-a-votar-en-onu-por-impago-de-cuotas>

¹³ As was reported today in *The New York Times*, "Mr. Maduro drives home the point by telling crowds that his only mission, if he wins, will be to carry out the socialist revolution that Mr. ZChávez left unfinished. He call himself 'the son of Chávez.'" See William Neuman, "Even in death, Chávez Is a Powerful Presence," in *The New York Times*, New York, April 9, 2013, pp. A4 and A7. See

instance, to improve the grave situation of lack of security and lower the extremely high rate of crime in the country, will necessarily fall into a vacuum. In the case of Capriles, on the contrary, he is proposing to change all those failed policies that have lead the country to the current situation, and to reestablish the rule of law in the country.

Within this situation that all Venezuelans will face in the near future, I want to specifically comment on the situation of the State that the new President will encounter, specifically from the standpoint of the Constitution, which in spite of all the propaganda, seems to have lost all its value as a fundamental law of the country.

In this regard, the first problem that the next President will have to manage, is the catastrophic consequences of the so called “Bolivarian Revolution,” the result of which has been, on the one hand, what I have called the process of de-constitutionalization of the Constitutional State, and on the other hand, the result of the conduction of the Constitutional State permanently ignoring the Constitution.

The common aspect of these two situations is that all the political changes that have been introduced in the country during the tenure of the late President, have been made in contempt of the Constitution and of its supremacy. This means, first, that all the changes introduced in all the basic principles of the organization of the State, and of the political system of the country set forth in the Constitution, have been made without following its formal review procedure; and second, that the functioning of the organs of State even when they were not changed, have been gravely distorted, in contempt of the Constitution.

The first of these situations, that is, the changes introduced on the State organization without formally changing the Constitution, can be considered as the basic trend of the government policies during the past decade.¹⁴

The 1999 Constitution defines the Venezuelan State as a Democratic and Social State of Law and Justice (Article 2), organized as “a decentralized federal State” (Article 4),¹⁵ theoretically

¹⁴ See Allan R. Brewer-Carías, “The process of “deconstitutionalization” of the Venezuelan Constitutional State as the Most Important Current Constitutional Issue in Venezuela,” in *Duquesne Law Review*, Vol 51, No. 2, Spring 2013, Duquesne University School of Law, Pittsburgh, pp. 349-386.

¹⁵ 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., Editorial Jurídica

based, among other well known principles, on the principle of separation of powers, with five and not only three different powers, each of them with their supposed autonomy and independence.

In the Constitution, in addition, the State power is also divided in a vertical way in three territorial levels of government (National, States and the Municipal) according to the federal principle (Art. 136), each of them with a government that according to the Constitution must be of an “elective, decentralized, alternative, responsible, plural, and of revocable mandate” character (Article 6).

On the other hand, the political system of the country is arranged in the Constitution based on the principles of representative democracy, political decentralization, participation, human rights protection, and political pluralism, according to which no political institution of the State can be created without ensuring its representative character by means of universal, direct and secret suffrage; without guaranteeing its political autonomy, and without guaranteeing its plural character in the sense that it cannot be linked to a particular ideology.

Regarding the economic system, it is conceived in the Constitution as a mixed one, guaranteeing economic freedom and free private initiative and enterprise, altogether with private property rights, and allowing the State to participate in the economy in order to satisfy social justice.

All these principles are the ones embodied in a rigid way in the Constitution, in the sense that they cannot be changed without formally reviewing its text.

Nonetheless, and without any constitutional review procedure, the fact is that what the country has inherited from the late President, is that all those basic principles have been changed in the name of the so-called “Bolivarian Revolution,” in order to progressively implement a new so-called 21st century “Communist State,” without reviewing the Constitution

That is why, this process of de-constitutionalization of the Constitutional State, is the most important current constitutional feature in the country¹⁶ that the next President will have to face; and that has been progressively implemented using the name of Bolívar to serve as the support of a political socialist doctrine, that of course was completely unknown in Bolívar's times.¹⁷

We have to recognize that the initial intention of the late President was to have implemented his "Bolivarian Revolution" by formally reforming the Constitution. For such purpose, in 2007 he proposed before the National Assembly¹⁸ a Constitutional Reform Draft¹⁹ in order to incorporate in the same text of the Constitution, not only the "Bolivarian socialist doctrine"²⁰ as the official doctrine of the country, but the framework of the new Socialist State that he intended to establish.²¹ That 2007 Constitutional Reform Draft,²² in effect, formally sought to substitute the Constitutional State by a new "Communal State" or State of the "popular power" (*Estado del poder popular o del poder communal, o Estado comunal*) organized based on the creation of

¹⁶ See Allan R. Brewer-Carías, "The process of "deconstitutionalization" of the Venezuelan Constitutional State as the Most Important Current Constitutional Issue in Venezuela," in *Duquesne Law Review*, Vol 51, No. 2, Spring 2013, Duquesne University School of Law, Pittsburgh, pp. 349-386.

¹⁷ One of 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 the late 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.

¹⁸ 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.

²⁰ All his proposals to construct socialism were linked by Chávez to Simón Bolívar's 1819 *Discurso de 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.

²² The first Draft circulated in June 2007 under the title *Consejo Presidencial para la Reforma de la Constitución de la República Bolivariana de Venezuela, "Modificaciones propuestas."* The complete text was published as *Proyecto de reforma constitucional. Versión atribuida al Consejo Presidencial para la reforma de la Constitución de la República Bolivariana de Venezuela*, Editorial Atenea, Caracas 2007, 146. The presidential proposals were published as *Proyecto de Reforma Constitucional. Elaborado por el ciudadano Presidente de la República Bolivariana de Venezuela, Hugo Chávez Frías*, Editorial Atenea, Caracas 2007

communes and communal councils (*consejos comunales*) as the primary political units of social organization, trying to resuscitate the one hundred year old soviets of the Russian Revolution.

Considered globally, the proposed reform sought to establish a socialist, centralized, militaristic, and police State,²³ for which purpose all the most essential and fundamental principles and aspects of the political organization of the Democratic and Social State of rule of law and justice were proposed to be modified.²⁴

That is, *First*, the reforms proposed to convert the democratic and decentralized State regulated in the Constitution into a centralized state of concentrated power that under the illusory guise of a popular power, sought to definitively replace the federal form of the state,²⁵ as well as any form of political decentralization; thus, rendering political participation impossible, and progressively eliminating representative democracy.²⁶ The main aspect of the reforms as was expressly affirmed in its text was 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.” That is to say that representative democracy and territorial political autonomy was to disappear, substituted with a supposed “participatory democracy” that, in fact, in a very

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ For such purpose, the reform established a new “popular power” (*poder popular*) (art. 16), composed by communities (*comunidades*), each of which were to constitute “a basic and indivisible territorial 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*). The communes were later created in the Law on the Federal Council of Government. See *Ley Orgánica del Consejo Federal de Gobierno*, *Gaceta Oficial* N° 5.963 Extra. of Feb. 22, 2010).

undemocratic way, was to be controlled by the National Executive.²⁷ In this respect, it must be mentioned that anticipating to the expected results of the proposed constitutional reforms, perhaps being sure of its approval – which did not occur –, the previous year, in 2006, the National Assembly sanctioned the Law on the Communal Councils (*Consejos Comunales*)²⁸ along the same undemocratic and unconstitutional trends, seeking since then, the dismantling the traditional local governments or municipalities of the country.

The *second* global change proposed in the 2007 Constitutional Reforms Draft, was to convert the Constitutional Democratic and Social State 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 – the supposed “Bolivarian doctrine” – denying pluralism and allowing the possible formal official criminalization of all dissidence, legalizing political persecution.

The *third* main change proposed in the same 2007 Constitutional Reforms Draft, along with the Socialist doctrine, tended to convert the mixed economic system of the country into a wholly state-owned, socialist and centralized economy by means of eliminating economic freedom and private initiative as constitutional rights, as well as the constitutional right to private property; conferring all the means of production to the State, to be centrally managed; and configuring the State as an institution on which all economic activity was to depend.²⁹

²⁷ 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 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.

²⁸ 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.

²⁹ 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,

And finally, the *fourth* constitutional reform proposal of 2007, was to convert the State into a repressive or police state, given the regressive character of the proposed reforms on matters of human rights, and also into a militarist state, based on the role assigned to the “Bolivarian Armed Force” (*Fuerza Armada Bolivariana*), configured to function wholly under the direct control of the President of the Republic, creating a new very dangerous and phantasmagorical “Bolivarian National Militia” (*Milicia Nacional Bolivariana*), as a political military force.

As the late President himself explained, the motivation for the drafting of the constitutional reforms in 2007, was to construct –in his own words- 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.”³⁰

That is why I have said that the proposed constitutional reform tended to formally alter the basic foundations of the Democratic Constitutional State,³¹ and the economic system of the country,³² the consequence being that they needed to approve only by convening a National Constituent Assembly and not by means of a “constitutional reform procedure” which was the one chosen by the President and the National Assembly.

Notwithstanding, the authoritarian way to govern imposed the use of a wrong constitutional review procedure,³³ as one additional sign of the “permanent coup d’état” that since 1999

“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.

³⁰ See *Discurso de orden pronunciado por el ciudadano Comandante Hugo Chávez Frías*, op cit., 32, 34, 35.

³¹ 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.

³² See on these reforms, Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, 2010.

³³ 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 *idem.*, 21-25; Fortunato González, “Constitución histórica y poder constituyente,” in *idem.*, pp. 33-36; Lolymer Herández Camargo, “Los límites del cambio constitucional como garantía de pervivencia del Estado de derecho,” in *idem.*, 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 *idem.*, 51-58.

characterized the political situation in Venezuela.³⁴ The consequence was that the chosen procedure was challenged multiple times before the Supreme Tribunal on grounds of its unconstitutionality, but being the Tribunal completely controlled by the Executive, the result was also the issuing of multiple decisions by the Tribunal refusing to exercise judicial review on these matters, even declaring that the actions were not able to be filed (“*improponible*”).³⁵

But apart from the adopted unconstitutional procedure, the most important aspect of the 2007 constitutional reforms proposals is that eventually they were submitted to popular approval in a referendum that took place on December 2, 2007,³⁶ resulting in an overwhelming popular rejection of the reforms.

This was, without doubt, the most important political failure for Chávez, and of course the most important political fact - the expression of the will of the people – regarding his policies; the same expression that could manifest itself in the April 14th 2013 election, in which, due to the absence of Chávez, and the sort of campaign Maduro has made, the vote could be clearly for the continuation or not of the Bolivarian revolution, but without Chávez.

But the fact is that in 2007, the result of the referendum rejecting the reforms, had no importance whatsoever for the authoritarian government that refused to listen or to follow the peoples’ decision. The popular rejection of the reforms was in fact mocked by the Government, and not only did not prevent it to begin the implementation of the reforms without even bothering to try again to change the Constitution, but encouraged the Government to impose its decision over the people without any hesitation.

³⁴ See José Amando Mejía Betancourt, “La ruptura del hilo constitucional,” in 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.

³⁵ 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 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---

³⁶ 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.

And this is precisely what has occurred since 2008, having the country experienced and endured the following: **First**, a progressive political process of concentrating and controlling all public powers at the National Executive, which has been assured through the politically controlled National Assembly, and the political submission of the Judiciary to the Executive, having the latter been converted into one of its appendixes.³⁷ **Second**, a permanent process of enactment of the basic legislation of the country by means of laws issued by Decree-Laws of the President of the Republic, as delegated legislation, by-passing the process of sanctioning ordinary legislation.³⁸ **Third**, an indiscriminate process of nationalization, expropriation and confiscation of private industries, private assets and private properties, that have been implemented without guaranteeing the right to just compensation.³⁹ And **Fourth**, a constant process of constitutional “mutations” made through decisions issued by the Constitutional Chamber of the Supreme Tribunal of Justice, by means of constitutional interpretations, following the government’s will.⁴⁰

³⁷ 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

³⁸ 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 referendaria 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 Artiles, “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

³⁹ See 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.

⁴⁰ See Allan R. Brewer-Carías, “El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009),” en *Revista de Administración Pública*, No. 180, Madrid 2009, pp. 383-418; “La fraudulenta mutación de la Constitución en Venezuela, o de cómo el juez constitucional usurpa el poder constituyente originario,” en *Anuario de Derecho Público*, Centro de Estudios de Derecho Público de la Universidad Monteávila, Año 2, Caracas 2009, pp. 23-65; José Vicente haro, “La mutación de la Constitución ‘Bolivariana’,” in Gonzalo Pérez Salazar and Luis Petit Guerra, *Los retos del derecho procesal constitucional en Latinoamérica, I Congreso Internacional de Derecho Procesal Constitucional, 19 y 20 Octubre de 2011*, Vol I, Universidad Monteávila Funeda, Caracas 2011, pp. 93-141.

The result of such processes have been that absolutely all the previous mentioned general trends and basic purposes of the rejected 2007 Constitutional Reform Draft were in fact implemented in the country, in open contempt of the Constitution and of the popular will, originating the current de-constitutionalization process of the State.

That process, as already mentioned, began in 2006 with the creation of the Communal Councils,⁴¹ and particularly since 2007, with the creation of the Central Planning Commission in violation of the economic freedom established in the Constitution,⁴² leading to the approval of the 2007–13 Economic and Social Development National Plan, in which it is expressly provided, contrary to the pluralistic foundation of the Constitution, that the “planning, production and distribution system [must be] oriented towards socialism,” being “the relevant matter” of the economic system the progressive development of “social property of the production means.”

Subsequently, since 2008, by means of other Laws and Decree Laws, the State assumed all powers in order to control farming, livestock, fishing, and aquaculture, and in particular, the production of food,⁴³ allowing the State to directly assume the distribution and commercialization of all goods, and the occupation of private industries without compensation.⁴⁴

⁴¹ *Ley de Consejos Comunales*, *Gaceta Oficial*, Extra. 5.806, of Apr. 10, 2006. This statute was replaced by *Ley Orgánica de los Consejos Comunales*. See *Gaceta Oficial* N° 39.335, Dec. 28, 2009. 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

⁴² Decree Law No. 5,841 was enacted on June 12, 2007, *Gaceta Oficial* N° 5.841, Extra., of 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

⁴³ 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.

⁴⁴ 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

The same year 2008, the Law regulating the Promotion and Development of the Popular Economic System was sanctioned following the “socialist model,”⁴⁵ establishing a “socio-productive communal model,” with different socio-productive organizations; and the general law on matters of Consumer and User Protection was reformed with the same openly socialist orientation.⁴⁶

These Laws extended the state control powers to the point of establishing the possibility of confiscating private industries and services by means of their takeover and occupation only through administrative decisions,⁴⁷ also violating the Constitution that on the contrary requires for such actions judicial participation. Accordingly, since 2008, the process of State appropriation of private assets has been systematically applied in the country, with no possibility at all for any judicial surveillance.

All of these “constitutional reforms” adopted by means of ordinary legislation, have also distorted and dislocated the federal form of government by centralizing the power assigned to the states, in some cases creating national administrative entities in order to assume such attributions, and authorizing the President of the Republic to interfere in regional and local affairs; and also, by voiding the states and municipal entities of powers forcing them to compulsory transfer their competencies to the newly created communal councils as local non

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.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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

representative institutions controlled by the central power.⁴⁸ These reforms were complemented with the approval in 2010 of the Law on the Federal Council of Government,⁴⁹ providing the means to force the states and municipalities to such transfers of their constitutional attributions.

The last set of legislation implementing the rejected Constitutional Reform Draft of 2007, was approved two years ago, in December 2010, by formally creating the “Communal State” framework as a Socialist or Communist State, not in substitution of the Constitutional Decentralized State as was intended in 2007, but parallel to it, and to its existing National, State, Municipal levels of government.⁵⁰

For such purposes, five important and very unconstitutional Organic Laws were sanctioned, referred to “the Popular Power;” “the Communes;” “the Communal Economic System;” “the Public and Communal Planning;” and “the Social Comptrollership;”⁵¹ and three important statutes were reformed in the same framework of organizing the Communal State:⁵² the Organic Law of Municipal Public Power, the Law on State Councils for Public Policy Planning and Coordination, and of the Law on Local Council Public Planning.⁵³

The main purpose of these Laws on the Communal State, is to organized it, based in the “Communes” as its fundamental unit, seeking to supplant in a unconstitutional way the municipalities that are the ones conceived in the Constitution as the “primary autonomous political units of the national organization” (Art. 168). These new Communes, on the contrary, are conceived without any autonomy, being directly controlled by a Ministry of the National Executive, so instead of being instruments for participation and decentralization, its organization in a centralized system of entities tightly controlled by the National Executive, is conceived to be the instrument for the imposition of a unique official socialist doctrine of the government,

⁴⁸ See 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.

⁴⁹ See *Ley Orgánica del Consejo Federal de Gobierno*, *Gaceta Oficial* N° 5.963 Extra. of Feb. 22, 2010.

⁵⁰ 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.

⁵¹ See *Gaceta Oficial* N° 6.011 Extra. Dec. 21, 2010.

⁵² See on all these organic laws, Allan R. Brewer-Carías (Coord.) *et al.*, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal*, Editorial Jurídica Venezolana, Caracas 2011, 719 pp.

⁵³ See *Gaceta Oficial* N° 6.015 Extra. Of Dec. 28, 2010.

contrary to any sort of pluralism, so that all those that are not socialist are automatically discriminated and excluded.

These Laws on the Communal State are particularly important regarding the economic communal system created, ignoring the mixed economic system established in the Constitution, and establishing in parallel a system based only on “socialist productive model”⁵⁴ only based as it is expressly defined in the Law (art. 3.2) - I quote - , as a “production model based on *social property*, oriented towards the *elimination of the social division of work* that appertains to the capitalist model,” and based on the principle of the *reinvestment of social surplus*” (art. 6.12).

It is enough to read carefully this legal definition to understand that what has been legally imposed in Venezuela, is simply a “communist system,”⁵⁵ being such legal definition nothing else than the copying of isolated phrases of a perhaps forgotten old manual of a failed communist revolution using the same words that Karl Marx and Friedrich Engels wrote 150 years ago (1845-1846) in their book on *The German Ideology*.⁵⁶ In that book they used perhaps for the first time, the word “communism,” and they defined the “communist society”⁵⁷ precisely by using the three phrases copied in the aforementioned article of the Law: *social property of production means, elimination of social division of work, and social reinvestment of surplus*.

All these statutes were approved in just one session of the Legislative Assembly after the late President, himself, confessed a few months earlier, that his supposedly “Bolivarian revolution,” in fact was not other than the historically failed “Marxist revolution,” but in this case led by a president who – he said - never even read Marx’s writings.⁵⁸ Three months after this presidential announcement, the governmental United Socialist Party of which the former President used to

⁵⁴ Organic Law of the Communal Economic System .See *Gaceta Oficial* N° 6.011 Extra. Dec 21, 2010.

⁵⁵ See Allan R Brewer-Carías, “Sobre la Ley Orgánica del Sistema Económico Comunal o de cómo se implanta en Venezuela un sistema económico comunista sin reformar la Constitución,” in *Revista de Derecho Público*, No. 124, (octubre-diciembre 2010), Editorial Jurídica Venezolana, Caracas 2010, pp. 102-109

⁵⁶ 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

⁵⁷ The book was written between 1845 and 1846. The “Communist Manifest” was published in February 1848.

⁵⁸ 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.

preside, adopted in its First Extraordinary Congress a “Declaration of Principles” in which it officially declared itself as a “Marxist,” “Anti-imperialist” and “Anti-capitalist” party; establishing that its actions are based on “scientific socialism” and on the “inputs of Marxism as a philosophy of praxis,” in order to substitute the “Capitalist Bourgeois State” with a “Socialist State” based on the Popular Power and the socialization of the means of production.⁵⁹

This is, my friends, the government and the State that the former President Chávez left as his most valuable institutional legacy when he died,⁶⁰ with which the next President will have to deal with; a State and a political system that were imposed in an authoritarian way upon the Venezuelan people without reforming their Constitution, only through ordinary legislation, defrauding the popular will expressed in the December 2, 2007 referendum,⁶¹ and, above all, for which nobody in the country have ever voted for, nor approved.

This means that being the “Communal State” created and organized in parallel to the Constitutional State, we Venezuelans, including the next President to be elected, are going to deal not only with one State organization, but with two State organizations that are functioning in parallel in the same national territory: On the one hand, a Socialist State based on the supposed direct exercise of sovereignty by the people through Citizens Assemblies, Communes and non elected Communal Councils; and on the other hand, the Constitutional State, based on representative democratic principles exercised through elected representatives by universal suffrage, but with a very distorted system of separation of powers.

⁵⁹ 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>

⁶⁰ See, in particular, the Report issued by Human Rights Watch, regarding the institutional aspects and the situation of human rights the day when the death of Chávez was announced, in Human Rights Watch, “Venezuela: El legado autoritario de Chávez. Notable concentración de poder y abierta indiferencia por los derechos humanos fundamentales,” New York, March 5, 2013, available at <http://www.hrw.org/es/news/2013/03/05/venezuela-el-legado-autoritario-de-chavez>

⁶¹ The definitive voting figures in such referendum have never been informed to the country by the government controlled National Electoral Council. See Allan R. Brewer-Carías, “Estudio sobre la propuesta de Reforma Constitucional para establecer un estado socialista, centralizado y militarista (Análisis del anteproyecto presidencial, Agosto de 2007),” *Cadernos da Escola de Direito e Relações Internacionais da UniBrasil* 7, Curitiba 2007, pp. 265-308. 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.

These parallel systems of two States have been conceived, not only in a way contrary to the provisions of the Constitution, but in a way designed to allow for the Socialist or Communal State to take control and gradually strangle the Constitutional State, by progressively emptying its powers and competencies. For such purpose the Organic Law of the Popular Power simply provides that all organs of the Constitutional State are subjected to the mandates of the organizations of Communal State, establishing for such purpose a “new” principle of government, the so-called in the Law as the principle of “govern obeying” (*gobernar obedeciendo*), which is no other than obeying the wishes of the central government⁶² through the controlled organization of the Communal State. This is, of course, again, an unconstitutional limitation to the political autonomy of the elected bodies of the Constitutional State such as the National Assembly itself, the States’ Governors and the Legislative Councils, as well as the Mayors and the Municipal Councils, upon which ultimately is imposed an obligation to obey any provision made to enforce the socialist doctrine, through the organization of a non elected Communes and Communal Council currently controlled by the Government and the ruling party.

This is the entire framework of the “Communal State” created in parallel to the Constitutional State that the new government will face,⁶³ that was imposed by the government having the assurance that no judicial review would ever be exercised regarding the statutes creating it, due to the very strict and tight political control exercised by the Executive upon the Supreme Tribunal.

And it has been, because of this absence of an autonomous and independent Supreme Tribunal that in parallel to the de-constitutionalization of the Constitutional State, during the past decade the government has openly distorted the most essential pillar of democracy and of the Constitutional State, which is the principle of separation of powers that has lost all value in Venezuela.

⁶² 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.”

⁶³ 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.

That means that the new President will also have to face a system of government where there is no separation of powers, having that principle been completely demolished,⁶⁴ with the result that all the powers of the State have been entirely controlled by the former President, within a grid of loyalties that he personally constructed – which again, in my opinion, nobody can really inherit -, including the Legislative and the Judicial Power, as well as the Public Prosecutor Office, the General Comptrollership Office, the People’s Defendant and the National Electoral Council (Citizens and Electoral Powers). This, of course, is another of the most complicated political problem and situation that all Venezuelans have inherited from the late President.

The problem was highlighted by the Inter American Commission on Human Rights in its 2009 *Annual Report*, when after analyzing the situation of human rights in Venezuela and the institutional deterioration of the country, said that it “reveals the absence of due separation of and independence between the branches of government in Venezuela.”⁶⁵ This situation, on the other hand, is the one that explains why the President of the Supreme Tribunal of Justice, simply exclaimed in a Press Conference, the same year, that “the separation of powers weakens the State” and that such principle “has to be reformed.”⁶⁶

Perhaps the assertion of the President of the Supreme Tribunal was made in order to support what in August 2008 the late President Chávez when he affirmed: “*I am the Law ... I am the State,*”⁶⁷ (*Yo soy la Ley... Yo soy el Estado*) when he announced that despite the general opposition against his abusive use of delegate legislation, he was going to enforce forty statutes through Decree Laws, threatening to persecute all those that could oppose him. And this was not the first time he used such expression; also in 2001, when he approved the first forty eight

⁶⁴ See Allan R. Brewer-Carías, “The Principle of separation of Powers and the Authoritarian Government in Venezuela”, en *Duquesne Law Review*, Volume 47, Spring 2009, Pittsburgh, pp. 813-838.

⁶⁵ See IACHR, 2009 *Annual Report*, para. 472, available at <http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.f.eng.htm>

⁶⁶ See in Juan Francisco Alonso, “La división de poderes debilita al estado. La presidenta del TSJ [Luisa Estela Morales] afirma que la Constitución hay que reformarla,” *El Universal*, Caracas December 5, 2009, available at http://www.eluniversal.com/2009/12/05/pol_art_morales:-la-divisio_1683109.shtml. The complete text is available at http://www.tsj.gov.ve/informacion/notasde_prensa/notasdeprensa.asp?codigo=7342

⁶⁷ “*Yo soy la Ley..., Yo soy el Estado!!*” See the quotation in the Blog of Gustavo Coronel, *Las Armas de Coronel*, October 15, 2008, available at: <http://lasarmasdecoronel.blogspot.com/2008/10/yo-soy-la-leyyo-soy-el-estado.html>

executive DecreeLaws, he affirmed, although in a different way: “*La Ley soy yo... El Estado soy yo.*”⁶⁸

I am sure that to hear these expressions that as we know were attributed to Louis XIV although he never expressed them in such a way, is enough to realize and understand the tragic institutional legacy left by the former President, which the country is currently facing, precisely characterized by a complete lack of separation of powers and, consequently, of a democratic regime, a situation that has been achieved through a permanent and subsequent process of defrauding or perverting the Constitution, and the rule of law.

Consequently, whoever results elected President of the Republic in the next election, will have to face this institutional situation that for sure, will prolong itself well beyond the next electoral exercise.

New York, April 9th, 2013.

⁶⁸ “*La ley soy yo. El Estado soy yo*”. See in *El Universal*, Caracas December 4, 2001, pp. 1,1 and 2,1.