

**THE COMMUNAL STATE v. THE FEDERAL STATE.
RECENT UNCONSTITUCIONAL DEVELOPMENTS IN VENEZUELA ***

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The 1999 Venezuelan Constitution, following the provisions of the previous 1961 Constitution, instituted the country as a **Democratic and Social Rule of Law and Justice State**, “which holds as higher values of its legal system and its performance, life, liberty, justice, equality, solidarity, democracy, social responsibility and, in general, the preeminence of human rights, ethics and political plurality” (Art. 2). For such purposes it organized the Republic as “a **decentralized federal State**” which “is governed by the principles of geographical integrity, cooperation, solidarity, concurrence and shared responsibility” (Art. 4).

Such is the Constitutional State in Venezuela: a decentralized **Federal Democratic and Social Rule of Law and Justice State**¹, based on a vertical distribution of public powers in three territorial levels of government: National level, State level and municipal level (Art. 136), according to which each level must always have a government of an “elective, decentralized, alternative, responsible, plural, and of revocable mandate” character, as required by Article 6 of the Constitution.

Constitutionally speaking, therefore, it is not possible to create in Venezuela, by law, political institutions in order to empty the powers of other organizations of the State (at any level: national, States, municipal and other local entities), and, even less, to establish new political organizations without ensuring the elective character of their governments and people’s representatives by means of universal, direct and secret suffrage; nor without assuring their own political autonomy, which is essential to their federal and decentralized nature; and not guaranteeing its plural character in the sense that they cannot be linked to a particular ideology such as socialism.

An attempt was made to change this Constitutional model of the Federal State, through a constitutional reform draft that was sanctioned by the National Assembly in 2007, with the objective of establishing a socialist, centralized, militaristic, and police State², called the

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¹ See the study of the constitution regarding the regulation of this constitutional federal state model, en Allan R. Brewer-Carías, *La Constitución de 1999. Derecho Constitucional venezolano*, 2 vols., Caracas 2004; and *La Constitución de 1999 y la Enmienda Constitucional de 2009*, Editorial Jurídica Venezolana, Caracas 2011.

² 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; and “Estudio sobre la propuesta de Reforma Constitucional para establecer un estado socialista, centralizado y militarista (Análisis del anteproyecto presidencial, Agosto de 2007),” in *Cadernos da Escola de Direito e Relações Internacionais da UniBrasil* 7, Curitiba 2007, pp. 265-308.

“Popular Power State” or “Communal State”³, which, nevertheless, once it was put to popular vote, was rejected by the people on a referendum held on December 7, 2007.⁴

Nevertheless, in disdain of the popular will and defrauding the Constitution, even before the aforementioned referendum was held, the National Assembly in open violation of the Constitution began to dismantle the Constitutional Federal State, seeking its substitution by a Socialist State, by structuring in *parallel* a “Popular Power State” or “Communal State,” through the sanctioning of the Communal Councils Law of 2006⁵, later reformed and elevated to organic law rank in 2009⁶.

Nonetheless, the drive to establish a socialist State in Venezuela was rejected again as it resulted from the September 26, 2010 parliamentary elections, which the President and the governmental majority of the National Assembly, with a massive campaign for their candidates, posed such elections as a “plebiscite” on the President, his performance and his socialist policies, already previously rejected by the people in 2007; “plebiscite” which the President and his party lost overwhelmingly because the majority of the country voted against them.

As a result from such parliamentary election, the President and his party lost the absolute control they previously had over the National Assembly, preventing them in the future from imposing at will the legislation they want. Nonetheless, before the newly elected deputies to the Assembly took possession of office in January 2011, defrauding the popular will and the Constitution, the already delegitimized previous National Assembly, in December 2010, hastily proceeded to sanction a set of organic laws through which they have finished defining, outside of the Constitution, the legislative framework for a new State, parallel to the Constitutional Federal State, which is no more than a socialist, centralized, military and police State called the “Communal State.”

The organic laws that were approved in December 2010 are the laws on the **Popular Power**; the **Communes**; the **Communal Economic System**; the **Public and Communal Planning**; the **Social Comptrollership**.⁷ Furthermore, in the same framework of organizing the Communal State, based on the Popular Power, the reform of the **Organic Law of Municipal Public Power and the Public Policy Planning and Coordination of the State Councils**, and of the **Local**

³ 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*, 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)*, Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

⁴ 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

⁵ See *Official Gazette* N° 5.806 Extra. 04-10-2006. See on this Law: 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

⁶ See *Official Gazette* N° 39.335, of Dec. 28, 2009. See on this Law the comments in Allan R. Brewer-Carías, *Ley Orgánica de Consejos Comunales*, Editorial Jurídica Venezolana, Caracas 2010.

⁷ See *Official Gazette* N° 6.011 Extra. of Dec. 21, 2010. See on these Laws the comments in Allan R. Brewer-Carías, Claudia Nikken, Luis A. Herrera Orellana, J. M. Alvarado Andrade, José Ignacio Herández, Adriana Vigilanza, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal (Los Consejos Comunales, las Comunas, la Sociedad Socialista y el Sistema Económico Comunal)*, Editorial Jurídica Venezolana, Caracas 2011.

Council Public Planning Laws⁸ stand out. Finally, in 2012 the **Law on the States and Municipalities Power and Competencies Transfer System to Popular Power Organizations** was also approved but through a decree Law.⁹

In 2012, 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 June 2012.

The general defining framework of the Socialist State that is being imposed on Venezuelans, and for which nobody has voted, is supposedly based on the exercise of the “sovereignty of the people” exclusively in a direct manner through the implementation of the Popular Power and the establishment of a Communal State as contained in the Organic Law for Popular Power (LOPP), whose provisions, according to its Article 6 “are applicable to all organizations, expressions and areas of Popular Power, exercised directly or indirectly by the people, communities, social sectors of society in general and situations that affect the collective interest, accepting the principle of legality in the formation, implementation and control of public management.”

That is, the provisions of this organic law are all-encompassing; apply to everyone and everything, as an essential part of the new “socialist principle of legality” in the creation, implementation and control of public entities, in parallel of the Federal State.

I. THE COMMUNAL STATE, POPULAR POWER AND SOCIALISM

The main purpose of these laws is the organization of the “Communal State” which has the commune as its fundamental unit, unconstitutionally supplanting the municipality as the “primary political unit of the national organization” (Art. 168 of the Constitution). Through them, the Popular Power is exercised, manifested in the exercise of popular sovereignty only directly by the people, not by representatives. It is therefore a political system in which representative democracy is ignored, openly violating the Constitution.

The Socialist State sought through these laws, called the Communal State, in parallel to the Constitutional Federal State, is based on this simple scheme: as Article 5 of the Constitution provides that "Sovereignty resides untransferably in the people, who exercise it directly as provided in this Constitution and the Law, and indirectly, by suffrage, through the organs

⁸ See *Official Gazette* N° 6.015 Extra. of Dec. 28, 2010. Nevertheless by December 31st 2010 it had not yet been published.

⁹ See *Official Gazette* No. 39954 of June 28, 2012. See on this Decree Law the comments of José Luis Villegas Moreno, “Hacia la instauración del Estado Comunal en Venezuela: Comentario al Decreto Ley Orgánica de la Gestión Comunitaria de Competencia, Servicios y otras Atribuciones, en el contexto del Primer Plan Socialista-Proyecto Nacional Simón Bolívar 2007-2013, (pp. 1290138); Juan Cristóbal Carmona Borjas, “Decreto con rango, valor y fuerza de Ley Orgánica para la Gestión Comunitaria de Competencias, Servicios y otras Atribuciones, (pp.139-146); Celilia Sosa G., “El carácter orgánico de un Decreto con fuerza de Ley (no habilitado) para la gestión comunitaria que arrasa lentamente con los Poderes estatales y municipales de la Constitución”(pp. 147-157), José Ignacio Hernández, “Reflexiones sobre el nuevo régimen para la Gestión Comunitaria de Competencias, Servicios y otras Atribuciones,”(pp. 157-164), Alfredo Romero Mendoza, “Comentarios sobre el Decreto con rango, valor y fuerza de Ley Orgánica para la Gestión Comunitaria de Competencias, Servicios y otras Atribuciones”(pp. 167-176), and Enrique J. Sánchez falcón, “El Decreto con Rango, Valor y Fuerza de Ley Orgánica para la Gestión Comunitaria de Competencias, Servicios y otras Atribuciones o la negación del federalismo cooperativo y descentralizado,”(pp. 177-184), in *Revista de Derecho Público*, No. 130 (Estudios sobre los decretos leyes 2010-2011), Editorial Jurídica Venezolana, Caracas 2012.

exercising Public Power”, being the Constitutional federal State structure based on the concept of representative democracy, that is, the exercise of sovereignty indirectly through the vote; the Communal State is now structured based on the direct exercise of sovereignty, ignoring representation.

This has even been “legitimized” by the Supreme Tribunal Constitutional Chamber’s decisions analyzing the organic character of the laws, such as the one issued in connection with the Organic Law of Municipalities, in which it stated that it had been enacted:

“developing the constitutional principle of participative and decentralized democracy postulated in the constitutional preamble and recognized in Articles 5 and 6 of the Constitution of the Bolivarian Republic of Venezuela, from whose content the principle of sovereignty is extracted, whose holder is the people, who is also empowered to exercise it “directly” and not only “indirectly” by Public Power organizations; as well as in Article 62, which governs the right of the people to participate freely in public affairs; and especially in Article 70, which expressly recognizes self-management means as popular and active participation mechanisms in the exercise of its sovereignty.”¹⁰

Based on these principles, Article, 8.8 of the LOPP defines the Communal State as:

"Social and political organization based on the democratic and social State of law and justice established in the Constitution of the Republic, in which power is exercised directly by the people, with an economic model of social property and endogenous sustainable development that allows reaching the supreme social happiness of the Venezuelan people in a **socialist** society. The basic unit forming the Communal State is the Commune.¹¹

What is being sought is to establish a Communal State alongside the Constitutional Federal State: the first one based on the supposedly direct exercise of sovereignty by the people; and the second, based 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, at the end, the exercise of sovereignty is indirect through “representatives” that are “elected” in Citizens’ Assemblies to exercise Popular Power in the name of the people, called “spokespersons”, but that are not elected by the people through universal, secret and direct suffrage.

The system that is being structured, in short, controlled by a Ministry from the National Executive Branch of Government, far from being an instrument of decentralization – concept that is indissolubly linked to federalism and political autonomy – is a centralized and tightly controlled system of the communities by the central power. That is the reason that explains the aversion to suffrage. Under this framework, a true participative democracy would be one that

¹⁰ See decision No.1.330, Case: Organic Character of the Law of the Communes 12/17/2010, in <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1330-171210-2010-10-1436.html>

¹¹ The new Organic Law of the Municipal Power, however, defines the Communal State as follows: “Form of sociopolitical organization, based on the democratic and social state of law and justice established in the Constitution of the Republic, whose power is exercised directly by the people through communal self governments, with an economic model of social property and endogenous and sustainable development that achieves the supreme social happiness of the Venezuelan people in a socialist society. Forming the basic unit of the Communal State is the commune” (Art.4.10).

guarantees members of the communal councils, the communes and all organizations of the Popular Power to elect their representatives through universal direct and secret suffrage, and not through a show of hands by assemblies controlled by the official party and the executive branch, contrary to the decentralized Democratic and Social Rule of Law and Justice Federal State established in the Constitution.

It is in this context, seeking to establish in parallel to the Constitutional Federal State in which the people exercise public power indirectly through representatives elected by direct universal and secret suffrage, that a Communal State is being imposed to the Venezuelans, in which the people allegedly would exercise Popular Power directly through spokespersons who are not elected by direct universal and secret suffrage, but in citizen's assemblies. In this regard, Article 2 of the LOPP, defines Popular Power as:

“The full exercise of sovereignty by the people in the political, economic, social, cultural, environmental, international, and in all areas of development of society through its diverse and dissimilar organization forms that build the Communal State.”

All of which is but a fallacy, because ultimately this “building” of the Communal State denies people the right to elect, by direct universal and secret suffrage, those who are going to “represent” them in all these areas, including internationally. It is rather a “building” of organizations to prevent people from really exercising their sovereignty and to impose on them through a tightly centralized control, policies for which they never have a chance to vote.

Moreover, under Article 4 of the LOPP, the purpose of this Popular Power that is exercised by the organs of the Communal State, is to “guarantee the life and social welfare of the people, through the creation of social and spiritual development mechanisms, ensuring equal conditions for everyone to freely develop their personality, direct their destiny, enjoy human rights and achieve supreme social happiness; without discrimination based on ethnicity, religion, social status, gender, sexual orientation, identity and expression of gender, language, political opinion, national origin, age, economic status, disability or any other personal, legal or social circumstance, which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and constitutional guarantees.” Of course all these principles of equality are broken since the Communal State system, parallel to the Constitutional Federal State, is structured on a unique concept which is **socialism**, so that anyone who is not a socialist is automatically discriminated. It is not possible, therefore, under the framework of this law to reconcile pluralism guaranteed by the Constitution and the principle of non discrimination on grounds of “political opinion” referred to in this article, with the remaining provisions of this Law pursuing the opposite, that is, the establishment of a Communal State, whose bodies can only act on the basis of socialism and in which any citizen who has another opinion is excluded.

The result from all these laws, after President Chávez confessed himself in January 2010 as a convinced Marxist, has been the resurrection, in the name of a supposedly “Bolivarian revolution,” of the historically failed “Marxist revolution,” although led by a president said he has never even read Marx's writings.¹² This public announcement, in any case, led to the adoption in April 2010, by the governmental United Socialist Party of Venezuela (which the

¹² 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.

President presides), in its First Extraordinary Congress, of a “Declaration of Principles” in which the party was officially declared as a “Marxist,” “Anti-imperialist” and “Anti-capitalist” party. According to the same document, the party’s 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.¹³

Consequently, through the Organic Law on the Popular Power, the defining framework of a new model of a Socialist State parallel and different from the Constitutional Federal State, has been established, called the Communal State, based exclusively and exclusionist on Socialism as the political doctrine and practice, which is the political organization through which the exercise of Popular Power is produced which in turn is “the full exercise of sovereignty by the people.”

This Popular Power is based, as declared in Article 3 of the LOOP, “in the sovereign principle of progressiveness of rights established in the Constitution, whose exercise and development is determined by the level of political and organizational consciousness of the people” (Art.3). With this statement, however, far from the universality, prevalence and progressiveness of human rights as guaranteed by the Constitution, what has been established is the total disappearance of the universal concept of human rights, the abandonment of its prevalent character and the deterioration of the principles *pro homines* and *favor libertatis*, by conditioning its existence, scope and progressiveness “by the level of political and organizational consciousness of the people”, that is, by what the organizations of Popular Power which seek to “organize” the people, all subjected to Socialism, stipulate and prescribe. With it, the conception of human rights as areas that are innate to man and immune against power disappear, moving to a conception of human rights dependent on the orders of the central power, which ultimately controls the entire “building” of the Communal State or Socialist State, as a clear demonstration of totalitarianism which is at the basis of this Law.

In the same sense, Article 5 of the LOPP states that “people’s organization and participation in exercising its sovereignty is based on Simon Bolivar the Liberator’s doctrine, and is based on socialist principles and values”,¹⁴ thus, as has been mentioned, relates the organization of the Communal State in parallel to the Constitutional State, with the socialist political ideology, that is, with **socialism**, which is defined in Article 8.14 as:

“a mode of social relations of production, centered in coexistence with solidarity and the satisfaction of material and intangible needs of all of society, which has as fundamental basis, the recuperation of the value of work as a producer of goods and services to meet human needs and achieve supreme social happiness and integral human development. This requires the development of social ownership of the basic and strategic means of production, so that all families, Venezuelan citizens, possess, use and enjoy their

¹³ 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>

¹⁴ The same expression was utilized in the Organic Law of the Communes with respect to their constitution, shaping and functioning (art.2), in the Communal Council’s Law (Art.1) and in the Organic Law of Social Comptrollership (Art. 6)

patrimony, individual or family property, and exercise full enjoyment of their economic, social, political and cultural rights.”¹⁵

The first thing that must be observed in relation of this provision is the untenable claim of linking "the doctrine of Simon Bolívar" with socialist principles and values. In the work of Bolívar and in relation to his conception of the State nothing can be found about socialism.¹⁶ On the contrary, Karl Marx himself would have detected it when he wrote the entry on “Simón Bolívar y Ponte” for the *New American Cyclopaedia* published in New York in 1857,¹⁷ eleven years after publishing his book with Fredrick Engels on *The German Ideology*.¹⁸ It was in this 1847 book were they used the word “communism” perhaps for the first time;¹⁹ and the fact is that ten years later, in the 1857 article on Bolívar, Marx made no mention at all regarding any “socialist” ideas of Bolívar, being that article, by the way, one, if not the most critical work on Bolívar ever written.

Consequently the name of Bolívar is used only as a pretext to continue to manipulate the Bolívar “cult” to justify authoritarianism, as has occurred so many times before in the history of the country,²⁰ although in the past, it has been used “at least more or less respecting the basic thought of the Liberator, even when they misrepresented its meaning.”²¹ The fact is that never before, the adherence to Bolívar had led to changing the republic’s name, and to the invention of a new “Bolivarian doctrine” in order to justify the government’s policies, as it has happened with

¹⁵ The same definition is found in Article 4.14 of the Organic Law of the Communes. Many are the definitions of socialism, but in all, its basic elements can be identified: (i) a system of social and economic organization, (ii) based on collective or State ownership and administration of the means of production, and (iii) State regulation of economic and social activities and distribution of goods, (iv) seeking the gradual disappearance of social classes.

¹⁶ See Allan R. Brewer-Carías, “Ideas centrales sobre la organización el Estado en la Obra del Libertador y sus Proyecciones Contemporáneas” in *Boletín de la Academia de Ciencias Políticas y Sociales*, N° 95-96, January-June 1984, pp. 137-151.

¹⁷ 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>

¹⁸ The book was written between 1845 and 1846. The Communist Manifest was published in February 1848.

¹⁹ See in Karl Marx and Frederich Engels, “The German Ideology,” in *Collective Works*, Vol. 5, International Publishers, New York 1976, p. 47. See the pertinent text at http://www.educa.madrid.org/cms_tools/files/0a24636f-764c-4e03-9c1d-6722e2ee60d7/Texto%20Marx%20y%20Engels.pdf

²⁰ It has been the case of Antonio Guzmán Blanco in the nineteenth century and Cipriano Castro, Juan Vicente Gómez, Eleazar López Contreras and Marcos Perez Jimenez in the twentieth century. John Lynch has noted that: “The traditional worship of Bolívar has been used as a convenient ideology by military dictators, culminating with the regimes of Juan Vicente Gómez and Eleazar López Contreras, who at least more or less respected the basic thoughts of the Liberator, even when they distorted their meaning.” Lynch concludes by noting that in the case of Venezuela today, to proclaim the Liberator as basis for policies of the authoritarian regime is a distortion of his ideas. See John Lynch, *Simón Bolívar: A Life*, Yale University Press, New Haven 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*, Alfail, Caracas 2008; Ana Teresa Torres, *La herencia de la tribu. Del mito de la independencia a la Revolución bolivariana*, Editorial Alfa, Caracas 2009. About the history related to these books see Tomás Straka, *La épica del desencanto*, Editorial Alfa, Caracas 2009.

²¹ See John Lynch, *Simón Bolívar: A Life*, Yale University Press, New Haven, CT, 2007, p. 304..

the so-called “Bolivarian Revolution” linked to the idea of a “21st Century Socialism,”²² as well as to the creation of the Communal State.

On the other hand, the already mentioned provision of article 8.14 of the LOPP defining socialism openly violates the Constitution’s guarantee to the right to property (Art. 115) which does not allow for restrictions to only collective or social property, excluding private ownership of the means of production

Article 5 of the LOPP, moreover, defines as “socialist principles and values” the following:

“participatory and active democracy, collective interest, equity, justice, social and gender equality, complementarity, cultural diversity, human rights, shared responsibility, joint management, self-management, cooperation, solidarity, transparency, honesty, effectiveness, efficiency, effectiveness, universality, responsibility, social duty, accountability, social control, free debate of ideas, voluntariness, sustainability, environmental protection and defense, guarantee of the rights of women, children and adolescents and of any vulnerable person, geographical integrity and national sovereignty defense.” (Art. 5)²³

This catalog of “principles”, of course, is not necessarily linked to socialism, nor is it an exclusively catalog of “socialist principles and values” as it aims to show, in a misappropriation made by the legislator. What the drafter of the rule did, in fact, was to copy the entire set of principles that are defined throughout the Constitution (Preamble and articles 1, 2, 3, 4, 6, 19, 20, 21, 22, 26, 84, 86, 102, 112, 137, 141, 153, 165, 257, 293, 299, 311, 316, 326, for example), which are the values of the Constitutional Federal State. Only in some cases they have not dared to use the classic terminology such as “freedom of expression” and have wanted to replace it with “free discussion of ideas”, which of course is not the same, especially since that freedom is not tolerated in a socialist State which knows only a single ideology.

For the purpose of developing and strengthening the Popular Power, ignoring the basic constitutional principles and values that all levels of government in Venezuela (for instance that they be “elective, decentralized, alternative, responsible, pluralistic and of revocable mandates” as required by article 6 of the Constitution), is that the LOPP has been issued, to supposedly generate:

“Objective conditions through various means of participation and organization established in the Constitution, in the Law and those that may arise from popular initiative so that citizens may exercise their full right to sovereignty, participatory and active democracy, and the establishment of forms of community and communal self-government for the direct exercise of power” (Art. 1).”

²² 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.

²³ These same principles are listed in relation to the communes in Article 2 of the Organic Law of the Communes, and in relation to social comptrollership in Article 6 of the Organic Law of Social Comptrollership.

According to the Constitution, the “creation of new decentralized organs at the parish, community, ‘barrios’ and neighborhood levels”, is only possible with “a view to guaranteeing the principle of shared responsibility in the public administration of local and state governments, and to develop self-management and joint management processes in the administration and control of states and municipal public services” (Art. 184.6). This means that the mechanisms of participation that can be established under the Constitution are not to empty the Constitutional Federal State structures, that is, the “local and states governments” (like the municipalities), but to strengthen them in governance. Moreover, under the Constitution, there can be no other government than *elective, decentralized and pluralistic*, yet in the LOPP a parallel State is defined which is the Communal State, structured on "governments" or "self-governments" that are neither elected nor decentralized nor pluralistic.

On these, Article 14 of the LOPP, merely defines “the communal self-government and aggregation systems that arise among their instances” as “a field of action of Popular Power in the development of its sovereignty, by the direct involvement of organized communities, in the formulation, implementation and control of public functions, according the law regulating the matter.”

In this context, moreover, the “community” is defined in the LOPP as a “basic and indivisible spatial nucleus made up of people and families living in a specific geographical area, linked by common characteristics and interests who share a history, needs and potentialities on cultural, economic, social, geographical and other measures”(art. 8.4).²⁴

II. THE PURPOSE OF POPULAR POWER

Article 7 of the LOPP defines the following purpose of Popular Power, that is, supposedly “the full exercise of sovereignty by the people” through “its various and dissimilar organization forms that build the communal State.” (Art. 2):

First, “promote the strengthening of the organization of the people, in order to consolidate the revolutionary democracy and build the bases of a **socialist** society, democratic, of law and justice.” In relation to what the Constitution provides about the organization of the State, the addition of "socialist" imposed by this provision breaks the principle of pluralism, which is guaranteed by the Constitution, paving the way for political discrimination against any citizen who is not a socialist, who is denied, therefore, the right to political participation.

Second, “Create conditions to ensure that popular initiative, in exercising social management, assumes duties, responsibilities and competencies for administering service delivery and implementation of work, by transferring from the different political and geographical authorities to community and communal self-governments, and aggregation systems which may arise thereof.” Under Article 184.1 of the Constitution, this transfer of competences can only refer to “the transfer of services in the areas of health, education, housing, sports, culture, social programs, the environment, maintenance of industrial areas, maintenance and upkeep of urban areas, neighborhood prevention and protective services, public works and provision of public services.” To this end, “they shall have the power to enter into agreements, whose content shall

²⁴ The same definition is repeated in the Organic Law of the Communes (Art 4.4) and in the Organic Law of the Communal Councils (Art. 4.1)

be guided by the principles of interdependence, coordination, cooperation and shared responsibility.”

Third, “Strengthen the culture of participation in public affairs to ensure the exercise of popular sovereignty.”

Fourth, “Promote values and principles of socialist ethic: solidarity, common good, honesty, social duty, voluntary nature, defense and protection of the environment and human rights.” Again, these, really, are not the values of any “socialist ethic”, but as mentioned earlier, they are values of democracy and of Western civilization and typical of the Constitutional State.

Fifth, “Contribute with State policies in all its instances, in order to work in coordination with the implementation of the Economic and Social Development Plan of the Nation and other plans established in each of the geo-political levels and in political-administrative levels established by law.”

Sixth, “Establish the bases that allow organized communities exercise social comptrollership to ensure that the investment of public resources is efficiently performed for the collective benefit; and monitor that the activities of the private sector with social impact develop within legal rules that protect users and consumers.” For the purposes of this provision, Article 8.6 of the LOPP, defines social comptrollership as the exercise of the prevention, surveillance, supervision, monitoring and control functions, practiced by individual or collective citizens, over the management of Public Power and of instances of Popular Power and of private activities that affect collective interests (Art. 8.6). However, nothing in the Constitution authorizes the allocation of competencies to public entities of the community dependent on the national executive, and to individuals in general to practice surveillance, supervision or social comptrollership over private activities. This is a feature that can only be exercised by political authorities of the State in a limited way. As it has been established in these laws on the Popular Power, it is no more than a general system of social espionage and surveillance to be developed among peoples in order to institutionalize the denunciation and persecution of any deviation regarding the socialist framework imposed on the citizenship.

Seventh, “Deepening shared responsibility, self-management and joint-management.” For the purposes of this rule, the Law defines co-responsibility, as the “shared responsibility among citizens and State institutions in the process of formation, implementation, control and evaluation of social, community and communal management, for the welfare of organized communities” (Art. 8.7). Self-management is defined as the set of actions by which organized communities assume direct management of projects, implementing public work and services to improve the quality of life in its geographical area” (Art. 8.2). And joint management, is defined as “the process by which organized communities coordinate with public authorities at any level or instances, joint management for implementation of work and services needed to improve the quality of life in its geographical area” (Art. 8.3).

Moreover, for the purposes of these rules, “organized community” is defined in the LOPP as one “made up of popular organizational expressions, councils of workers, peasants, fishermen and any other social grassroots organization, coordinated with an instance of Popular Power²⁵ duly recognized by law and registered in the competent Ministry of Popular Power on matters of citizen participation” (Art. 8.5). The Constitution, however, referring to community organizations subject to decentralization, conceived only the following as geographical entities:

²⁵ The definition of "organized community" is similar in the Organic Law of the Communes: formed by “popular organizational expressions, councils of workers of, peasants, and fishermen and any other grassroots organization, linked to an instance of Popular Power”(art. 4.5)

“parishes, communities and neighborhoods,” without any subjection to the National Executive, which are those that are allowed, under Article 186.6, to assume "co-responsibility in the governance of local and state governments and develop self and joint management processes in the administration and control of state and municipal public services."

III. THE INSTANCES OF POPULAR POWER

1. The diverse instances of popular power and their legal status

The instances of Popular Power for the “full exercise of sovereignty by the people” and that make up the “diverse and dissimilar organization forms that build the communal State” (Art. 2), as specified in Article 8.9 of the LOPP, are “made up of the different aggregation and articulations of communal systems, to expand and strengthen communal action for self-government: communal councils, communes, communal cities, communal federations, communal confederations and, in accordance with the Constitution and the law and its regulation governing the matter, may arise from popular initiative²⁶, “being grassroots organizations of Popular Power” those “consisting of citizens in pursuit of collective welfare” (Article 8.10).

All these Popular Power instances recognized by the LOPP, as provided in Article 32, acquire legal status through their registration in the Popular Power National Executive Ministry of the Communes, taking into account the procedures that are to be established in the regulations of the Law. Consequently, the decision to register a communal council, a commune, or a communal city, hat is its existence, is ultimately in the hands of the National Executive, who, of course, strictly applying the letter of the law, that if it is dominated by “spokespersons” who are not socialist, there will be no registration, nor, therefore, its recognition as a legal entity, even if it’s the result of a genuine and popular initiative.

2. The Popular Power instances’ spokespersons and their non representative character

None of the persons exercising the authority over Popular Power instances, and who are called “spokespersons” are expected to be elected in elections made through direct, universal and secret ballot. They are not even expected to be elected by “indirect” suffrage, as in no case they have root in a previous and initial direct election.

In fact, the LOPP does not indicate how the spokespersons of Popular Power instances are to be designated. What is stated in the regulations of the laws enacted regarding the instances of Popular Power, is a designation by bodies that do not have their origin in direct, secret and universal elections. In particular, for example, the Organic Law of Communal Councils, provides that spokespersons are "elected" by citizen’s assemblies (Articles 4.6 and 11), and not by means of a direct, universal and secret ballot as prescribed by the Constitution, but by an alleged “popular vote” which is not organized by the National Electoral Council, and is performed in open assemblies in which there is no guarantee of suffrage or secrecy. The Law, however, does indicate that all levels of Popular Power that are “elected by popular vote”, are revocable from the first half of the period for which they were elected, under the conditions established by law (Art. 17).

²⁶ The Organic Law of the Communes, however, defines Popular Power instances as those “constituted by an aggregation of different communal systems: communal councils, communes, communal cities, communal federations, communal confederations and others that according to the Constitution and the law may arise from the initiative.”(Article 4.12)

In fact, It should be said that Citizens Assemblies are at the base of these instances of Popular Power, which, while not specifically regulated by the LOPP, nor named in any of its articles, are defined as the “highest instance of participation and decision of organized communities, established in accordance to the law regulating the form of participation for the direct exercise of Popular Power, by the integration of people with legal quality, whose decisions are of a binding nature for the community, for different forms of organization, for the communal government and for the instances of Public Power, according to what is established in the laws that develop the creation, organization and operation of community self-governments, and the aggregation systems that may arise” (Art. 8.1).

3. Communal aggregation systems

Article 15.4 of the LOPP, defines communal aggregation systems, as those instances that may arise from popular initiative, from community councils and among Communes, on which Article 50 of the Organic Law of the Communes (LOC) specifies that “the instances of Popular Power may constitute communal aggregation systems among them with the purpose of articulating the exercise of “self-government”(although not elected), strengthening the capacity for action on geographical, political, economic, social, cultural, ecological and security and defense of national sovereignty aspects according to the Constitution and the law.”

The purpose of communal aggregation systems under Article 59 of the LOC, are to:

- A. Expand and strengthen communal “self-government” action.
- B. Carry out investment plans in its geographical area, following guidelines and requirements set forth in the respective communal development plans.
- C. Assume the competencies granted to them by the transference of administration, and implementation of public works and public services.
- D. Encourage the development of the communal economic system, through the articulation of networks for production and service areas, by social organizations in the community of direct or indirect communal property.
- E. Exercise social comptrollership functions on various plans and projects implemented within its geographical area by the instances of Popular Power or Public Power.

The LOC, however, says nothing about the conditions for the creation of communal aggregation systems and their operation, which is referred to by what will be established in the Regulations of the LOC and the guidelines issued by the Popular Power Ministry of the Communes.

In any event, the LOC lists in Article 60, the various types of communal systems as follows:

- A. The Communal Council: an instance for the articulation of social movements and organizations of a community.
- B. The Commune: an instance for articulation of several communities organized in a specified geographical area.
- C. The Communal City: established by popular initiative, through the aggregation of several Communes in a specified geographical area.

- D. Communal Federation: an instance for articulation of two or more cities corresponding to an instance of a Development District.
- E. Communal Confederation: articulation instance of communal federations within the scope of a development axis within a geographical area.
- F. All others formed by popular initiative

In particular, regarding the Communal City and the Communal Federation and Confederation, the conditions for their creation must be developed in the Regulation governing each Law.

However, all these instances of Popular Power envisaged for “the exercise of self-government”, Article 15 of the LOPP only refers in some detail to the Communal Councils and to the Communes, which have otherwise been regulated by the Organic Law of the Communal Councils and by the Organic Law of the Communes; and to the Communal Cities.

4. The Communal Councils.

The communal councils are defined in the Law as the “instance of participation, articulation and integration among citizens, and various community organizations, social and popular movements that allow organized people exercise community government and direct management of public policy and projects aimed to meet the needs, potentials and aspirations of communities, in the construction of the new model of the socialist society of equality, equity and social justice”²⁷(art. 15.1)

This legal definition highlights the fact that Community Councils can only and exclusively have as an objective to contribute to “the construction of a new model of **socialist** society”, in violation of the principle of pluralism established by Article 6 of the Constitution, so any citizen who does not follow or accepts the socialist doctrine has no place in this new parallel State that is sought with this Law.

This instance of Popular Power constituted by the Communal Councils is regulated by the referred Law of the Communal Councils²⁸, whose “spokespersons”, also by reforming the Organic Law of Municipal Public Power of December 2010, have been assigned the function of appointing the members of the Parish Councils, which were therefore “degraded” by ceasing to be the “local entities” they were when their governments were elected through universal, direct and secret suffrage; becoming now mere “advisory, evaluating and coordination bodies between the Popular Power and the Municipal entities of Public Power”(Art. 35), whose members are also appointed by the spokespersons of the community councils of the respective parish (Art. 35), and only from among those supported by the Citizens' Assembly “of the respective municipal council” (Art. 36).

For such purpose, in an evident unconstitutional manner, the Reformed Law of Municipal Power ordered the “cessation” in their roles of “members and their alternates, and secretaries of the existing parish councils, being the Mayor’s Office responsible for the management and future of the staff, as well as the corresponding assets. (Second Repeal Provision)

5. The Communes

²⁷ The same definition is established in Article 2 of the Organic Law on Communal Councils (art. 2).

²⁸ See *Official Gazette* N° 39.335 of Dec. 28, 2009.

The Communes, on the other hand, which are conceived in the LOPP as the “basic unit” of the Communal State is defined in Article 15.2 as the “**socialist space** that as a local entity is defined by the integration of neighboring communities with a shared historical memory, cultural traits and customs that are recognized in the territory they occupy and in the productive activities that serve as their support and over which they exercise sovereignty principles and active participation as an expression of popular power, in accordance with a regime of social production and the model of endogenous and sustainable development contemplated in the Economic and Social Development Plan of the Nation”.²⁹ This same definition of the Commune as a **socialist space** is in Article 5 of the Organic Law of Municipalities; notion which implies that it is forbidden for anyone who is not a socialist or who does not believe in socialism or is in communion with socialism as a political doctrine. The legal concept of the Commune, therefore, is contrary to democratic pluralism guaranteed by the Constitution, being openly discriminatory and contrary to equality as guaranteed in Article 21 of the Constitution.

On the other hand, the LOPP defines the commune as a “local entity” and the same description is in Article 1 of the Organic Law of the Communes, which defines it “as the local entity where citizens in exercising Popular Power, exercise the full rights of sovereignty and develop active participation through forms of self-government for the construction of the Communal State under the Social Democratic State of Law and Justice” (Art. 1). Also in the December 2010 reform of the Organic Law of Municipal Public Power, the communes were included in the list of “local territorial authorities”, providing, that being governed by different Popular Power legislation, and having to be constituted “among various municipalities”, are exempted from the provisions of the Organic Law of Municipal Public Power.

Now, as to qualify communes as “local entities”, the delegitimized legislator of December 2010 forgot that under the 1999 Constitution (Articles 169, 173), this expression of “local entity” can only be applied to political entities of the Constitutional Federal State which necessarily need to have “governments” composed of elected representatives by universal, direct and secret ballot (Articles 63, 169) adhered to the principles laid down in Article 6 of the Constitution, that is, that “shall always be democratic, participatory, elective, decentralized, alternative, responsible and pluralist, with revocable mandates.” According to the 1999 Constitution, therefore, there can be no “local entities” with governments that are not democratic in the mentioned terms, especially if “representatives” are not directly elected by the people and are appointed by other public bodies.

And this is precisely what happens with the so called “governments of the communes”, which under this legislation on Popular Power and its organizations, their origin is not guaranteed through democratic election by universal, direct and secret suffrage, thus being an unconstitutional conception.

It should also be stressed that, as provided in Article 28 of the LOPP, the government of the communes can transfer its management, administration and services to organizations of Popular Power. To this end, grassroots organizations of Popular Power must make their respective formal requests, fulfilling the preconditions and requirements established in the laws governing the matter.

²⁹ The same definition is established in Article 5 of the Organic Law of the Communes

This instance of Popular Power made up by the communes has been regulated by the Organic Law of the Communes.³⁰

6. Communal Cities

Communal cities, according to the Law, “are those created by popular initiative through the aggregation of several communes in a given territory” (Art. 15.3). Being the communes, according to the Law, the “socialist space” and “basic unit” of the Communal State, Communal Cities as aggregation of several communes or several socialist spaces are also designed under the law as “**socialist**” Cities, which as such, are forbidden, in fact, to any citizen or neighbor who is not a socialist.

IV. THE ORGANIZATIONS AND ORGANIZATIONAL EXPRESSIONS OF POPULAR POWER

In addition to Popular Power instances, the law establishes some provisions tending to regulate two organizational forms which are specific to Popular Power: the organizations and organizational expressions of Popular Power

1. Organizational Forms of Popular Power

A. The organizations of Popular Power

Under Article 9 of the LOPP, Popular Power organizations “are the various forms of organizing people, constituted from the locality by popular initiative, which integrate, citizens with common goals and interests, to overcome difficulties and promote common welfare so that the people involved assume their rights and duties and develop higher levels of political awareness. Popular Power organizations will act democratically and will seek popular consensus among its members”.

These Popular Power organizations are constituted at the initiative of citizens, in accordance to their nature, common interests, needs, potentialities and any other common point of reference as set out in the law governing their area of activity (Art. 12).

These Popular Power Organizations, like Popular Power instances, under Article 32 of the LOPP, acquire their legal status by registering with the Ministry of Popular Power competent on matters of citizen participation, taking into account the procedures established in the Regulations of the law. It’s in the hands of the National Government, therefore, the formal recognition of these organizations, so that all those who are not socialists because they are contrary to the purposes prescribed in the Law (Article 1) would be rejected. In those registered organizations, citizens who do not share the socialist ideology, would not be accepted.

B. Organizational expressions of Popular Power

With respect to the “organizational expressions of Popular Power”, as provided in Article 10 of the LOPP, they are "the integration of citizens with common goals and interests, constituted

³⁰ See *Official Gazette* N° 6.011 Extra. of Dec. 21, 2010)

from the locality, their location or social area development reference, which temporarily and based on the principles of solidarity and cooperation, seek the collective interest.”

These expressions of Popular Power are constituted by popular initiative and in response to the needs and potentialities of the communities, in accordance with the Constitution and the law. (Art.13)

Under the Third final provision, the exercise of people's participation and the stimulus to the initiative and organization of Popular Power established by Law should apply in indigenous towns and communities, according to their habits, customs and traditions.

2. The purpose of organizations and organizational expressions of Popular Power

These organizations and organizational expressions of popular power, according to Article 11 of the LOPP, have as their purpose the following:

First, “strengthen participatory and active democracy, according to Popular Power insurgency, as a historical event for the construction of the **socialist** society, democratic, of law and justice.” As noted above, the addition of “socialist” that this provision imposes on society, breaks the principle of pluralism guaranteed by the Constitution, paving the way for political discrimination against any citizen who is not a socialist, who is denied the political right to participate.

Second, “promote the development and consolidation of the communal economic system, by establishing socio-productive organizations for the production of goods and services to satisfy social needs, the exchange of knowledge and expertise and the social reinvestment of the surplus.” The LOPP, for these purposes, defines as “communal economic system” a set of social relations of production, distribution, exchange and consumption of goods and services, as well as knowledge and expertise developed by the instances of Popular Power, Public Power, or by agreement among them, through socio-productive organizations under communal forms social property”(Art. 8.13).

Third, “promote unity, solidarity, primacy of collective interests over individual interests and consensus in their areas of influence.”

Fourth, “promote research and dissemination of values, historical and cultural traditions of the communities.”

And Fifth, “exercise social control.”

V. AREAS OF POPULAR POWER

The LOPP identifies the following "areas of Popular Power" that are defined in the Organic Law and that in the traditional terminology of public law is nothing more than competencies that are assigned to Popular Power: Public Policy Planning, Communal Economy, Social Comptrollership, Organization and Management of the Territory and Communal Justice.

1. Public Policy Planning

Public policy planning in the terms established in the Organic Law of Public and Popular Planning,³¹ is defined in Article 17 of the LOPP as “an area for action that assures, through shared government action among the public institutions and the instances of Popular Power,

³¹ See *Official Gazette* N° 6.011 Extra. of Dec. 21, 2010.

the implementation of the strategic guidelines of the Economic and Social Development Plan of the Nation for the use of public resources and achievement, coordination and harmonization of plans, programs and projects to achieve the country's transformation, balanced territorial development and fair distribution of wealth.”

From this provision, the distinction between constitutional State bodies that are designated as “public institutions” and Popular Power instances stand out, confirming the intent of the law to establish a parallel State, the Communal State, with the purpose of emptying the content and ultimately stifle the Constitutional Federal State.

On the other hand, in connection with this planning competence, in terms of “participatory planning” the LOPP defines it as the “form of citizens’ participation the design, formulation, implementation, evaluation and control of public policies” (Art. 8.11), and in terms of “participatory budget” it is defined “as the mechanism through which citizens propose, debate and decide on the formulation, implementation, monitoring and evaluation of public budgets, in order to materialize the projects leading to the development of communities and the general welfare” (Art. 8.12).

All this public policy planning, in any case is to be developed within a centralized planning system completely controlled by the Central government. For such purpose, even before the 2007 draft constitutional reforms were submitted to the National Assembly, in June 2007, a Decree Law No. 5,841 was enacted,³² containing the Organic Law creating the Central Planning Commission. This was the first formal state act devoted to build the socialist state,³³ so once the 2007 constitutional reform was rejected in referendum, a few days later, on December 13, 2007, the National Assembly approved the 2007–13 Economic and Social Development National Plan, established in Article 32 of the Decree Law,³⁴ in which the basis of the “planning, production and distribution system oriented towards socialism” was established, providing that “the relevant matter is the progressive development of social property of the production means.”

2. Communal Economy

Communal economy, as defined in Article 18 the LOPP, is an “area of Popular Power that allows organized communities the establishment of economic and financial institutions and means of production, for the production, distribution, exchange and consumption of goods and services, as well as of knowledge and expertise 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 in accordance with the

³² *Gazette* N° 5.841, Extra., of June 22, 2007.

³³ 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.

³⁴ *Official Gazette* N° 5.554 of Nov. 13, 2001.

provisions of the Economic and Social Development Plan of the Nation and the law governing the matter”.

This area of Public Power has been regulated by the Organic Law of the Communal Economic System,³⁵ which is defined in the Organic Law of the communes as a set of social relations of production, distribution, exchange and consumption of goods and services, as well as knowledge and expertise developed by the instances of Popular Power, Public Power, or by agreement between them, through socio-productive organizations under communal forms social property” (Art. 4.13). This Communal Economic System,³⁶ on the other hand, 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.

This system radically changes the mixed economic system of the 1999 constitutional framework, substituting it with a state controlled economic system, mixed with provisions belonging to primitive societies, and even allowing the creation of local or “communal” currencies in a society that must be ruled only “by socialist principles and values” that the Law declares to be inspired, without any historical support, on the “Simón Bolívar’s doctrine” (art. 5).

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 phrases perhaps of a forgotten old manual of a failed communist revolution, paraphrasing what Karl Marx and Friedrich Engels wrote 170 years ago (1845-1846) on the “communist society,”³⁷ precisely 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).

3. Social Comptrollership

In terms of social **comptrollership**, Article 19 of the LOPP defines it as a “area of Popular Power designed to carry out surveillance, monitoring, supervision and control over Public Power management, Popular Power instances and activities of the private sector that affect the common good, practiced individually or collectively by citizens, in the terms established by the law governing the matter. This area of Public Power has been regulated by the Organic Law of Social **Comptrollership**,³⁸ where it is defined as “a function shared among instances of

³⁵ See *Official Gazette* N° 6.011 Extra. of Dec. 21, 2010

³⁶ See the comments on this matter in 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. *Official Gazette* N° 6.011 Extra. of Dec. 21, 2010

³⁷ See in Karl Marx and Frederick Engels, “The German Ideology,” en *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

³⁸ See *Official Gazette* N° 6.011 Extra. of Dec. 21, 2010

Public Power and citizens, and organizations of Popular Power, to guarantee that Public investment is carried out transparently and efficiently for the benefit of the interests of society, and that private sector activities do not affect social or collective interests”. (Art. 2)

This Law, imposing the socialist doctrine as an official and compulsory one, by organizing this social comptrollership system, what eventually has created is an obscure general system of social espionage and surveillance, which is attributed to individuals or to communal organizations, based on the denunciation and persecution against any private person that could be considered as not acting in accordance with the socialist imposed doctrine, and that for such reason could be considered as acting against the “common good” or affecting the “social or collective interests.”

4. Organization and Management of the Territory

The organization and management of the territory under Article 20 of the LOPP, is an “area of Popular Power, with the participation of organized communities, through their spokesmen or spokeswomen, in the various activities of the organization and management of the territory, in the terms established by law governing the subject.”

5. Communal Justice

With respect to Communal justice, Article 21 the LOPP defines it as an “area of Popular Power, through alternative means of justice of the peace that promote arbitration, conciliation, mediation and other forms of conflict resolution in situations resulting directly from the exercise of the right to participation and communal coexistence, in accordance to the constitutional principles of Democratic and Social State of Law and Justice, and without violating the legal competencies of the ordinary justice system.”³⁹

Article 22 of the LOPP, refers to a special law, the regulation of the special communal jurisdiction, which must establish the organization, operation, procedures and rules of communal justice and its special jurisdiction. The Organic law of the communes is more explicit in stating that “the pertinent law shall determine the nature, legal procedures, rules and conditions for the creation of a special communal jurisdiction, which envisages its organization and operation, as well as instances with jurisdiction to hear and decide at the communal level, where communal judges shall be elected by universal, direct and secret suffrage from communal area residents over the age of fifteen ”(art. 57).

The action of this communal jurisdiction, as required by Article 22 of the LOPP, “will be framed within free, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious principles, without undue delay and without formalities for useless repetitions.”

With these provisions Municipalities are totally emptied of their assigned constitutional competence on matters of justice of peace (Art. 178.7), idea which was attempted before in the rejected constitutional reform of 2007, seeking to control the justices of peace that according to Article 258 of the Constitution shall be elected by universal suffrage, directly and by secret ballot.⁴⁰

³⁹ The same definition is established in Article 56 of the Organic Law of the Communes.

⁴⁰ See the Organic Law of Justice of the Peace in *Official Gazette* N° 4.817 Extra. of Dec. 21, 1994.

VI. RELATIONS BETWEEN PUBLIC AND POPULAR POWER (OR THE “MATAPALO” - KILLER TREE- TECHNIQUE”)

As noted, the Communal State established in the LOPP, whose bodies directed by “spokespersons” that are not “representatives” directly elected by the people exercise Popular Power, has been established as a “Parallel State” to the Constitutional State whose bodies on the contrary are elected through direct universal and secret popular vote and exercise Public Power. These two established Parallel States, one in the Constitution and the other in an unconstitutional Law, with provisions that, if implemented, will enable the Communal State to drown and empty the Constitutional State, behaving as does in botany the *Ficus benjamina L.* tree, native of India, Java and Bali, known as the “killer tree” that can grow as a strangler surrounding and choking the host tree, forming a hollow tree, destroying it.

To this end, in the LOPP, provisions are established to regulate relations between the State of Public Power (Constitutional State) and State of Popular Power (Communal State), which generally provides that “are governed by the principles of equality, territorial integrity, cooperation, solidarity, co-responsibility, within the decentralized federal system enshrined in the Constitution of the Republic ”(art. 26). These provisions are:

First, a legal obligation established on organs, entities and agencies of Public Power to promote support and accompany people's initiatives for the creation, development and consolidation of various forms of organizations and self-government of the people (Art. 23)⁴¹ . In particular, even the Organic Law of the Communes stipulates that “bodies of the Citizen Power branch of government will support community control councils for the purpose of contributing to the fulfillment of their duties” (Art. 48).

Second, all organs of the Constitutional State that exercise Public Power, are subjected to the mandates of the organizations of Popular Power, establishing a new principle of government, to “govern obeying”. Article 24 of the LOPP, in fact states:

Article 24. 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.

As 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 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, ultimately this "govern obeying" principle is a limitation of 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. Popular will, expressed in the election of representatives of the Constitutional State, therefore, has no value

⁴¹ A similar regulation is in article 62 of the Organic Law of the Communes, for the “establishment, development, and consolidation of the communes as a self-government form”

whatsoever, and the people have been confiscated of their sovereignty by transferring it to assemblies who do not represent them.

Thirdly, in particular, an obligation is established for the Executive Branch “in accordance with the development and consolidation initiatives originated from Popular Power,” to plan, articulate and coordinate “joint actions with social organizations, organized communities, communes and the aggregation and articulation systems that may arise among them, in order to maintain consistency with the strategies and policies at the national, regional, local, municipal and community level” (art. 25).

Fourthly, an obligation is established for the agencies and entities of Public Power in their relationships with Popular Power, to give “priority to organized communities, the communes and the aggregation and articulation systems that may arise among them, in response to the requirements they formulate to fulfill their needs and exercise their rights under the terms and periods established by law” (Art. 29). It also provides that authorities of organs, entities and agencies of Public Power in their different territorial political levels, should take “measures to ensure that socio-productive organizations of socio-communal property have priority and preference in government procurement processes for the acquisition of goods, services and execution of public works” (art. 30)⁴²

Fifth, an obligation is established for the Republic, states and municipalities in accordance to the law governing the process of transference and decentralization of powers and competencies. The obligation of transferring “to organized communities, communes and aggregation systems that may arise among them: management functions, administration, service control and implementation of public works attributed to them in the Constitution of the Republic, to improve efficiency and results in benefit of the collective” (art. 27)⁴³ With it, legally emptying the competencies of states and municipalities, leaving empty structures with government representatives elected by the people but have with no matters on which to rule.

Sixth, the Law. establishes that agencies and grassroots organizations of Popular Power covered by the LOPP, are exempt from any kind of payment of national taxes and registration fees, and for that purpose, laws and ordinances may be established in the states and municipalities, respectively, for the exemptions provided here for grassroots organizations of Popular Power (Art. 31).

FINAL REMARKS

With this Organic Law of Popular Power framework, there is no doubt about the political decision taken in December 2010 by the completely delegitimized National Assembly that was elected in 2005, and that no longer represented the majority of the popular will as it was

⁴² In particular, article 61 of the Organic Law of the Communes, states that “all the organs and entities of the Public Power committed to financing projects for the communes and its aggregation systems, will give priority to those that aim to promote communities with less relative development, to guarantee a balanced development

⁴³ The same rule is repeated in the Organic Law of the Communes (art. 64). By December 31, 2010, the second discussion of the draft organic law of the System of Competencies and Power Transfer from the States and Municipalities to Popular Power organizations was still pending before the National Assembly.

expressed on the 26 September 2010 parliamentary elections against the President of the Republic, the National Assembly itself and socialist policies they have developed; to impose on Venezuelans, against popular will and defrauding the Constitution. The political decision has been to impose in Venezuela a Socialist State model, called “the Communal State,” conceived as a Socialist State, in order to supposedly exercise Popular Power directly by the people, as an alleged form of direct exercise of sovereignty (which is not true because it is exercised through “spokespersons” who “represent” them and who are not elected in universal, direct and secret suffrage).

This Communal State has been established in parallel to the Constitutional Federal State (the Decentralized Federal Democratic and Social of Law and Justice provided in the Constitution of 1999) established for the exercise of Public Power by people both indirectly through elected representatives in universal, direct and secret elections, as well as directly through mechanisms authorized in the Constitution, which includes Citizens Assemblies.

This regulation, in parallel, of two States and two ways of exercising sovereignty, one, the Constitutional State governed by the Constitution and the other the Communal or Socialist State governed by unconstitutional organic laws, has been arranged in such a way that the latter will act as the “killer tree,” strangling the former, surrounding it in order to destroy it. That is why, in 2012, a Decree Law has been enacted for the “Communitarian Management of Competencies, Services and other attributions”⁴⁴ in order to regulate the process of transfer of powers, competencies and resources, from the National Power and the political entities (States and Municipalities) to the organized people, which will assume such powers through Social Property Communal Enterprises. The result of the application of this Law will be the voiding of powers and competencies of the Constitutional Federal State in the benefit of the Communal State.

In this way, 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 Venezuelan Constitution,⁴⁵ now adds fraud to the popular will, by imposing on Venezuelans through organic laws, a State model for which nobody has voted and that radically and unconstitutionally changes the text of the 1999 Constitution, which has not been reformed as they had wished, and in open contradiction to the popular rejection that the majority expressed in the attempt to reform the Constitution in December 2007, even in violation of the Constitution, and the popular rejection that the majority of the people

⁴⁴ See *Oficial Gazette* No. 39954 of June, 28, 2012

⁴⁵ See on the 1999 constitutional making process: Allan R. Brewer-Carías, *Golpe de estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico City 2002; “The 1999 Venezuelan Constitution-Making Process as an Instrument for Framing the development of an Authoritarian Political Regime,” in Laura E. Miller (Editor), *Framing the State in Times of Transition. Case Studies in Constitution Making*, United States Institute of Peace Press, Washington 2010, pp. 505-531; “Constitution Making in Defraudation of the Constitution and Authoritarian Government in Defraudation of Democracy. The Recent Venezuelan Experience”, in *Lateinamerika Analysen*, 19, 1/2008, GIGA, German Institute of Global and Area Studies, Institute of Latin American Studies, Hamburg 2008, pp. 119-142; *Reforma constitucional y fraude a la Constitución (1999-2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009; and *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010. See also Alessandro Pace, “Muerte de una Constitución,” in *Revista Española de Derecho Constitucional*, Año 19, No, 57, Madrid 1999, pp. 271-283.

expressed regarding the policies of the President to the Republic and his National Assembly on the occasion of the parliamentary elections of 26 September 2010.

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.

New York, December 2012