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CENTRALIZED FEDERALISM IN VENEZUELA*

*Allan R. Brewer-Carías***

Federalism in Venezuela reveals a very contradictory form of government. Typically, a Federation is a politically decentralized State organization based on the existence and functioning of autonomous States. The power of that decentralized state organization is distributed among the national State (the Union or the federation) and the member States. In contrast, the Federation in Venezuela is a Centralized Federation, which of course, is a contradiction in itself.

That is why, unfortunately, my Country is not a good example for explaining "Federalism in the Americas," being as it is a Federation based in a very centralized national government, with 23 formal autonomous states. Each of these 23 formal autonomous states is without their own effective public policies and without their own substantive sub-national constitutions.

But our Federation has not always been like it is now. The process of centralization of the Federation progressively occurred during the 20th Century, and has been particularly accentuated during the past five years.

The centralization process began with the installment of the authoritarian government of Juan Vicente Gómez, who ruled throughout a dictatorship that lasted approximately three decades, spanning the first half of the 20th Century. During these years no democratic institutions were developed.

The transition from autocracy to democracy began in Venezuela between 1945 and 1958, when a democratic regime, in accordance with the democratic Constitution of 1961, came into power. This democratic Constitution was the longest Constitution in force in all Venezuelan history. This Constitution, as it was of a product of a political pact signed by all democratic forces (*Pacto de Punto Fijo*, 1958), assured the dominance of a very centralized political party system. During the last 40 years of democratic develop-

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ment, this centralized political party system in fact impedes the reinforcement of federal institutions.

Nonetheless, important efforts were made during the Nineties in order to politically decentralize the federation. I have had the privilege of being an actor in that process by serving as the Minister of State for Decentralization (1993-1994). My efforts, however, were later abandoned, mainly due to the crisis of the centralized party system, and to the consequential political void it produced in the Country.

It was the generalized political crisis of our democratic party system that ultimately provoked the covenant of a National Constituent Assembly not regulated in the 1961 Constitution, resulting in the sanctioning of a new Constitution. The 1999 Constitution of the "Bolivarian Republic of Venezuela," as it is now called, was approved by referendum (Dec. 15, 1999).

This Constitution, which in fact covers with a democratic veil an authoritarian regime, regulates a very centralized system of government, where all powers of the State can be concentrated, as they now are. The Constitution has excellent declarations, including the "Decentralized Federal State," the enumeration of human rights, and the "penta separation" of State branches of government. However, each of these declarations is contradicted by other regulations in the same Constitution, which allow conduct to the contrary.

I have also had the privilege of being elected as an independent candidate to the National Constituent Assembly of 1999. Thus I personally know of its achievements from within, and that is why, in relation to its real centralistic and authoritarian framework, I extended dissenting votes, all of which were duly published along with my constituents' proposals.

Our Federation has not always been a Centralized Federation. During the 19th Century, notwithstanding the political turmoil derived from the building process of the National State facing the regional *Caudillo* powers, a federal system of government was established. We also had, as in many Federations, the development of the centrifugal and centripetal political forces, which provoked the classical political pendulum movement between centralization and decentralization experienced by many Federations. In general terms, it can be said that Federalism prevails, and it prevails particularly because of its historical roots.

I. SOME ASPECTS OF THE HISTORY AND DEVELOPMENT OF THE VENEZUELAN FEDERATION

We have to bear in mind, when studying Federalism in Venezuela, that the first Constitution of an independent Latin American State was the *Federal Constitution for the States of Venezuela*, sanctioned by an elected General Congress, on December, 21 1811, at the beginning of the Independence Wars. The Constitution declared the states or provinces as sovereign states, all of which in 1810-1811 had declared independence from Spain and adopted their own provincial constitutions or form of government.

By means of this 1811 Constitution, the country adopted a federal form of government, following the influence of the United States Constitution. At that time, we must remember, a Federation was the only new constitutional instrument different to the centralized monarchical states, which was recently invented in this country. That invention was followed by the Venezuelan framers of the new state in order to unite the seven former Spanish Colonial Provinces that formed the Venezuelan State, which had never been previously united. In our territory, we did not have Viceroyalties or *Audiencias* (until 1786), and a General Captaincy for military purposes integrating the Provinces was only established in 1777. Thus, it can be said that Venezuela was the second country in constitutional history to adopt federalism, which is an important aspect of our constitutional history.[1]

It was after the endless civil conflict that marked the history of Venezuela during the 19th Century, that the federal form of government began to be limited. The conflict stemmed from the permanent struggles between the regional *Caudillos* and the weak central power that was been formed. This was the consequence of the centralizing tendencies which were derived from the consolidation of the National State, a process that was particularly reinforced during the first half of the 20th century.

During those decades, the autocratic regimes of the Country, aided by the income derived from the new exploitation of oil by the National State (oil and the subsoil always has been the public property of the State) contributed to the consolidation of the national State in all aspects. Contributions included the creation of a national army, a public administration, taxation, and legislation.

1. After the North American independence (1776) and federation (1777), the first Latin American Country to declare independence and adopt a Constitution was Venezuela in 1811, adopting the federal form of State.

These centralizing tendencies almost provoked the disappearance of the Federation, the territorial distribution of power, and the effective autonomy of the 23 States and of the Federal District, which compose the federal formal organization of the State.

The democratization process of the country really began in the second half of 20th Century, and particularly after the adoption of the 1961 Constitution, in which the Federal form of the State was kept, but with a highly centralized national organization. Due to the democratization process of the country and according to express constitutional provisions, a political decentralization process was forced to be applied, beginning in 1989, when the party system crisis exploded, with the transfer of powers and services from the national level of government to the States level. The process was forced by the democratic pressure exercised against the political parties, all of which were in the middle of a severe leadership crisis.

One of the most important reforms then adopted, was the provision of the direct election of the States Governors which until that year were just public officials appointed by the President of the Republic. In December 1989, for the first time since the 19th Century, States Governors were elected by universal, direct and secret suffrage, and regional political life began to play an important role in the country, initializing the increasing appearance of regional and local political leaders, many of whom were from outside the traditional political parties.

Ultimately, this crisis in the centralized party system, gave rise to the 1999 Constitution; which if it is true that provoked a radical change in the political players nationwide, also started the reversal of the decentralizing political efforts that were being made.

For the sanctioning of the new Constitution, a National Constituent Assembly was then elected in 1999, exclusively promoted by an anti-party new leader that appeared in the middle of the political vacuum, the President of the Republic Hugo Chávez Frías, a former Lieutenant-Colonel who led an attempted *coup d'état* in 1992, and who had been elected the previous year, in 1998. The National Constituent Assembly then became, the main institutional tool used by the newly elected President to conduct the take-over of all the branches of government of the State, and to reinforce the centralization of the Federation. This Constituent Assembly was elected in July 1999, and was made up of 131 members. 125 of those members were blind supporters of the President and only four dissident voices, including my own, were heard during the six months the Constituent Assembly functioned. The four

dissidents were indeed, a very precarious "opposition."to the President.

Unfortunately, the 1999 constitution-making process was not conceived as an instrument of conciliation aimed at reconstructing the democratic system and assuring its effective governance. That would have required the political commitment of all the components of society and the participation of all political parties and sectors of society in order to design a new functioning democracy. Unfortunately, this did not occur. The constitutional process of 1999, in fact, served to facilitate the total takeover of all the branches of government by a new political group that crushed not only all the others, but also the autonomy of the States of the Federation.

As a result, almost all of the opportunities for inclusion and public participation vanished, and the 1999 constitution-making-process became an endless *coup d'état*, performed by the National Constituent Assembly. The Assembly began its activities by violating the existing 1961 Constitution by intervening and assuming all branches of government, over which it had no power, according to the referendum mandate that created the Assembly. The Constituent Assembly also intervened the federated States without any legitimate authority, by eliminating the States Legislative Assemblies.

These violations of the 1961 Constitution, still in force at the time, were subsequently followed by the violation of the new 1999 Constitution voted on by the same Constituent Assembly. This took place after its popular approval by referendum held on the December 15th 1999. The violation began a week later, when the Constituent Assembly enacted a "Transitional Constitutional Regime" decree, which was not authorized in the new Constitution, and which was not submitted to, nor approved by, popular vote. It was that extra constitutional regime which allowed the Constituent Assembly to continue the endless *coup d'etat* initiated a few month earlier, affecting the separations of powers, and allowing the new National Assembly elected in 2000 to legislate outside the constitutional framework

The final result of that process is that the new Constitution of 1999 did not have the necessary provisions to undertake the democratic changes that were most needed in Venezuela, namely, the effective separation of powers, the political decentralization of the Federation and the reinforcement of States and municipal political powers. The Constitution of 1999, in fact, continued with the same centralizing foundation embodied in the previous Consti-

tution and, in some cases, centralizing even more aspects. For instance, if it is true that it defined the decentralization process as a "national policy devoted to strengthened democracy" (Article 158), in contrast the national public policy executed during the last five years can be characterized as a progressive centralization of government, without any real development of local and regional authorities. Consequently, in Venezuela, federalism has been postponed and democracy has been progressively weakened.

II. CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM IN THE 1999 CONSTITUTION

A Federation, above all, is a form of government in which public power is territorially distributed among various levels of government with autonomous political institutions. That is why, in principle, federalism and political decentralization are intimately related concepts. Specifically, decentralization is the most effective instrument not only to guarantee civil and social rights, but to allow effective participation by citizens in the political process. In this context, the relation between local government and the population is essential. That is why all consolidated democracies in the world today are embodied in clearly decentralized forms of governments, such as Federations, or like the new Regional States, as is the case of countries like Spain, Italy and France. That is why it can be said that the strong centralizing tendencies developing in Venezuela in recent years are contrary to democratic governance and political participation.

According to Article 4 of the 1999 Constitution, the Republic of Venezuela is formally defined "as a decentralized Federal State under the terms set out in the Constitution" governed by the principles of "territorial integrity, solidarity, concurrence and co-responsibility." Nonetheless, "the terms set out in the Constitution," are without a doubt centralizing, and Venezuela continues to be a contradictory "Centralized Federation."

Article 136 of the 1999 Constitution states that "public power is distributed among the municipal, state and national entities," establishing a Federation with three levels of political governments and autonomy (similar to Brazilian Federation): *a national level* exercised by the Republic (federal level); the *States level*, exercised by the 23 States and a Capital District; and the *municipal level,* exercised by the 338 existing Municipalities. On each of the three levels, the Constitution states that government must always be "democratic, participatory, elected, decentralized, alternative, re-

sponsible, plural and with revocable mandates." (Article 6). Regarding the Capital District, it has substituted the former Federal District which was established in 1863, with the elimination of traditional federal interventions that existed regarding the authorities of the former Federal District.

The organization of the political institutions on each territorial level is formally guided by the principle of the organic separation of powers, but with a different scope. On the *national level*, with a presidential system of government, the national public power is separated among five branches of government, including: the "Legislative, Executive, Judicial, Citizen and Electoral" (Article 136). Thus, our 1999 Constitution has surpassed the classic tripartite division of power by adding to the traditional Legislative, Executive and Judicial branches, the Citizens branch, which includes the Public Prosecutor Office, the General Comptrollership Office, and the People's Rights Defendant Office, as well as an Electoral branch of government controlled by the National Electoral Council.

The new Citizens and Electoral branches, as well as the Judiciary, are reserved only to the national or federal level of government. Therefore, Venezuela does not have a Judiciary at the State level. In fact, since 1945, the Judicial branch is reserved to the national level of government, basically due to the national character of all major legislation and Codes (Civil, Commercial, Criminal, Labor and Procedural Codes). Consequently, being that all the Courts are national or federal, there is no room for State Constitution regulations on these matters.

Regarding judicial review, the Constitutional Chamber of the Supreme Tribunal of Justice is the constitutional organ with power to review and annul with *erga omnes* effects (Art. 336) all laws (national, state and municipal) including state constitutions, when contrary to the national Constitution. This concentrated method of judicial review has been exercised since 1858 through popular actions, and is also combined with the diffuse method of judicial review, similar to the United States model, which allows all courts to declare the unconstitutionality of statutes In these cases, an extraordinary recourse for revision can be brought before the Constitutional Chamber, which can make "imperative and obligatory interpretations" of the Constitution (*stare decisis* principle). In practice, these powers have even allowed the Constitutional Chamber to review decisions of the other Supreme Tribunal

Chambers, like the Cassation Chambers and the Electoral Chamber, with very grave political consequences.[2]

Pertaining to the Legislative branch, it must be noted that the Constitution of 1999, established a one-chamber National Assembly, thus ending the country's federalist tradition of bicameralism by, eliminating the Senate. As a result, Venezuela has also become a rare federal state without a federal chamber or Senate, where the States, through its representatives, can be equal in the sense of equal vote. In the National Assembly there are no representatives of the States, and its members are global representatives of the citizens and of all the States collectively. Theoretically, these global representatives are not subject to mandates, or instructions, but only subject to the "dictates of their conscience" (Article 201). This has effectively eliminated all vestiges of territorial representation.

Regarding the States branch of government, the 1999 Constitution established that each State has a Governor who must be elected by a universal, direct and secret vote (Article 160). Each State must also have a Legislative Council, comprised of representatives elected according to the principle of proportional representation (Article 162). According to the Constitution, it is the responsibility of each states' Legislative Council to enact its own Constitution in order "to organize their branches of government" along the guidelines of the national Constitution, which in principle guarantees the autonomy of the States (Article 159).

III. LIMITS TO THE CONTENTS OF THE SUB-NATIONAL CONSTITUTIONS

Consequently, each State has constitutional power to enact its own sub-national constitution, in order to organize the state Legislative and Executive public branches of government, and to regulate the states' own organ for audit control. In spite of these regulations on the organization and functioning of the State branches of government, the scope of States powers has also been seriously limited by the 1999 Constitution. Specifically, for the first time in federal history, the 1999 Constitution refers to a national legislation for the establishment of the general regulation on this matter.

2. The Supreme Tribunal of Justice is composed by six Chambers: Constitutional Chamber, Civil Cassation Chamber, Criminal Cassation Chamber, Social Chamber, Politico-Administrative Chamber and Electoral Chamber.

In effect, and in relation to the States Legislative branch of government, the 1999 Constitution states that the organization and functioning of the States' Legislative Councils must be regulated by a *national statute* (Article 162), which was a manifestation of centralism never before envisioned. Just imagine, what it could mean for Federalism in the United States and in other Federations, if the Congress would have the power to enact legislation in order to determine the organization and functioning of all of the State legislatures.

In contrast, in Venezuela, according to the Constitution, the National Assembly has sanctioned an *Organic Law for the State Legislative Councils* (2001) in which detailed regulations were established. These regulations were related not only to the organization and functioning of the States Legislative Councils (as the national Constitution only allowed), but also to the Council members status and attributes, as well as to the general rules for the exercise of the legislative functions, or the law enacting procedure itself. With this national regulation, the effective contents of the State Constitutions regarding their Legislative branch have been voided, and are limited to repeat what is established in the said national organic law or statute.

Additionally, the possibility of organizing the Executive branch of each states' government is also being limited by the 1999 Constitution, which has established the basic rules concerning the Governors as head of the executive branch. The Constitution has additional regulations referring to the public administration (national, states and municipal), public employees (civil service), and the administrative procedures and public contracts in all of the three levels of government. All of these rules have also been developed in two 2001 national *Organic Laws on Public Administration and on Civil Service*. Therefore, state constitutions have also been voided of real content, and their norms tending also to repeat what has been established in the national organic laws or statutes.

Finally, regarding other states organizations, in 2001, the National Assembly also sanctioned a *Law on the appointment of the States' Controller*, which limits, the powers of the State Legislative Councils without constitutional authorization. I must also point out that the national intervention regarding the various state Constitutions and their respective regulations in relation to their own state organizations, has been completed by the Constitutional Chamber of the Supreme Tribunal of Justice. Specifically, the Constitutional Chamber of the Supreme Tribunal of Justice's rul-

ings during the past years (2001-2002), included the annulment of the articles of three state constitutions creating an Office of the State Citizens Rights' Defendant, on the grounds that citizens rights is a matter reserved to the national (federal) level of government.

As mentioned, the National Constitution establishes three levels of territorial autonomy and regulates the distribution of state powers, directly regulating the local or municipal government in an extensive manner. Therefore, the states constitutions and legislations can regulate municipal or local government only according to what is established in the national Constitution, and the *National Organic Law on Municipal Government,* which leaves very little room for the state regulation.

Thus, without any possibility for the state legislatures to regulate anything related to civil, economic, social, cultural, environmental or political rights; and with the limited powers to regulate their own branches of government, as well as other state organizations including the General Comptroller and Citizens Defenders, very little scope has been left for the contents of sub-national constitutions.

IV. THE CONSTITUTIONAL SYSTEM OF DISTRIBUTION OF POWERS WITHIN THE NATIONAL, STATE AND MUNICIPAL LEVELS OF GOVERNMENT

Federalism is based on an effective distribution of powers within the various levels of government; in Venezuela's case, between the national, state and municipal levels. Accordingly, the National Constitution enumerates the competencies attributed in an exclusive way to the national (Article 156), state (Article 154), and municipal (Article 178) levels of government. Under these regulations, however, these exclusive matters[3] are almost all reserved to the national level of government, and an important portion of the exclusive matters are attributed to the municipalities. In contrast, very few of the exclusive matters are attributed to the States.

According to Article 156, the National Power has exclusive competencies, in the following matters: 1) international relations, 2) security and defense, nationality and alien status, 3) national police, 4) economic regulations, 5) mining and oil industries, 6) na-

3. Exclusive matters: Matters only attributed to only one of the state level.

tional policies and regulations on education, health, the environment, land use, transportation, industrial and 7) agricultural production, 8) post, and 9) telecommunications. The administration of justice, as mentioned, also falls within the exclusive jurisdiction of the national government (Article 156.31).

Regarding local governments, Article 178 assigned the municipalities competencies, including, urban land use, housing, urban roads and transport, advertising regulations, urban environment, urban utilities, electricity, water supply, garbage collection and disposal, basic health and education services, and municipal police. Some of the powers regarding these matters are of an exclusive nature, but most of them are concurrent with the national government. The autonomy of municipalities is set forth in the constitution, but without any constitutional guarantees because municipal autonomy can be limited by national statute (Article 168).

Regarding state competencies, the National Constitution fails to enumerate substantive matters within exclusive state jurisdiction, and rather concentrates on formal and procedural ones. Furthermore, the competencies related to a limited number of matters are established in a concurrent way common to all levels of government. This applies to municipal organizations, non-metallic mineral exploitation, police, state roads, administration of national roads, and commercial airports and ports (Article 164). Nonetheless, the possibility for the state legislature to regulate its own local government is also very limited, being subjected to what is established in the national *Organic Municipal Law* or statute.

According to the Constitution, State Legislative Councils can enact legislation on matters that are in the States' scope of powers (Article 162). However, these powers are refered to concurrent matters, and according to the National Constitution their exercise depends on the previous enactment of national statutes and regulations. As a result, the legislative powers of the States are also very limited.

These concurrent matters formerly provided a broad scope for possible action by state bodies. However, now subjecting their exercise to what the National Assembly must previously establish by means of national "general statutes," the possibilities for states to regulate are very small. The National Constitution also states that this legislation that refers to concurrent competencies must always adhere to the principles of "interdependence, coordination, cooperation, co-responsibility and subsidiary," which theoretically allows for a wide possibility for judicial review (Article 165).

On the other hand, in terms of residual competencies, the principle of favoring the states as in all federations, also has been a constitutional tradition in Venezuela. Nonetheless, in the 1999 Constitution this residual power of the states has also been limited by expressly assigning the national level of government a parallel and prevalent residual taxation power in matters not expressly attributed to the states or municipalities (Article 156.12).

Another aspect that must be mentioned is that the 1999 Constitution, following the provisions of the 1961 Constitution, has also established the possibility of decentralizing competencies via their transfer from the national level to the states. This process was regulated in the 1989 *Law on Decentralization and Transfer of Competencies*. Even though important efforts for decentralization were made between 1990 and 1994 in order to revert the centralizing tendencies, the process, unfortunately, was later abandoned. Since 2003, the transfers of competencies that were made, including health services, started the reversion process.

V. THE FINANCING RULES OF THE FEDERATION

The constitutional rules regarding the financing of the federation should also be mentioned. Virtually everything in the 1999 Constitution concerning the taxation system is more centralized than in the previous 1961 Constitution, and the powers of the states in tax matters has essentially been eliminated.

The National Constitution lists the national government competencies with respect to basic taxes, including, income tax, inheritance and donation taxes, taxes on capital, production, value added, taxes on hydrocarbon resources and mines, taxes on the import and export of goods and services, taxes on the consumption of liquor, alcohol, cigarettes and tobacco (Article 156.12). The National Constitution also expressly allocates local taxation powers to the municipalities including property, commercial, and industrial activities taxes (Article 179). The National Constitution gives the national government residual competencies in tax matters (Article 156.12).

In contrast, the Constitution does not grant the states competencies in matters of taxation, except with respect to official stationery and revenue stamps (Article 164.7). Thus, the states can only collect taxes when the National Assembly expressly transfers the power to them, by a statute, which contains specific taxation powers (Article 167.5). No such statute has yet been approved and likely none will not be approved in the near future.

Lacking their own resources from taxation, state financing is accomplished by the transfer of national financial resources through three different channels, which are all politically controlled by the national government. The first channel is by means of the "Constitutional Contribution," via the national level of government, which is an annual amount established in the National Budget Law equivalent to a minimum of 15% and a maximum of 20% of total ordinary national income. This percentage regarding the total ordinary national income estimated annually (Article 167.4), must be distributed among the states, according to their population. The second channel is through a nationally etablished system of special economic allotments for the benefit of those States in the territories of which mining and hydrocarbon projects are being developed. The benefits that accompany this statute have also been extended to include other non-mining states (Article 156.16). The third channel of financing for states and municipalities also comes from national funds, such as the *Intergovernmental Fund for Decentralization*, created in 1993 as a consequence of the national regulation of VAT, or the Interstate Compensation Fund, which is foreseen in the National Constitution (Article 167.6).

On the other hand, following a long tradition, the states and municipalities cannot borrow nor have public debt; due to the requirement of a special national statute to approve state borrowing.

VI. FINAL REMARKS

As it can be deduced from what I have said, the declaration of Article 4 of the 1999 Constitution regarding the " Federal Decentralized" form of the Venezuelan government, is not mere wording. It is a formula that is contradicted by all the other regulations regarding the federalism contained in the Constitution, which, on the contrary, shows that the, Federation in Venezuela is a very centralized Federation. This situation, of course, affects our democratic regime and governance deeply.

Federalism and decentralization in the contemporary world are matters of democracy. There are no decentralized autocracies, and there have never been decentralized authoritarian governments, only democracies can be decentralized. Autocracies and authoritarian governments have been, and will remain, centralized.

The reality of the political situation in Venezuela is that democracy is very weak. Although democracy is based on elections, it

cannot be consolidated without a real separation of powers, and without the real possibility of political participation due to the lack of decentralization. Because of an existing controlled judiciary, and a judicial review organization also controlled by the Executive, in stead of enforcing the democratic constitutional principles embodied in the National Constitution, they have acted, including the Supreme Tribunal of Justice, as the main instrument of authoritarian government.

Over the past years, the most important democratic element which has existed in the Venezuelan political process has been our weak Federalist system, which nonetheless, in the recent past, has allowed more than half of the municipal Majors and one third of the elected states' governors to be opposition leaders, assuring some kind of political pluralism. Unfortunately, all of this has been recently erased in the regional elections held on October 31 2004, in which, with an abstention of more that the 75% of the electorate, the candidates supported by the President of the Republic, were elected in all but two state Governor positions.

Ultimately, this has resulted in a concentration of powers which is almost complete. In addition to the horizontal concentration of powers caused by the predominance of the national Executive over the Legislative, Judicial, Citizens and Electoral branches, the Venezuelan Government has also developed a vertical concentration of powers, conducted by the same national Executive, due to the centralized form of government.

Within this framework, it is very difficult to talk about Federalism in Venezuela, as well as of democracy in Venezuela. This difficulty explains the title of my paper referring to the "Centralized Federalism in Venezuela", rather than "Federalism in Venezuela" as was originally proposed in the Program of this International Seminar.

Many thanks.

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