VENEZUELA[†]

Allan R. BREWER-CARÍAS[*]
Jan KLEINHEISTERKAMP[**]

I. OVERVIEW OF THE HISTORY AND DEVELOPMENT OF THE FEDERAL SYSTEM IN VENEZUELA

Venezuela was the first Latin American country to gain independence from the Spanish Crown in 1810. A general congress of representatives of the former colonial provinces of the *Capitanía General de Venezuela* enacted on 21 December 1811 the Federal Constitution for the States of Venezuela, the first constitution on the South American continent. This Constitution followed the general principles of modern constitutionalism derived from the North American and French Revolutions, such as the republican system; supremacy of the constitution paired with constitutional judicial control; organic separation of powers; territorial distribution of power; and declaration of fundamental rights. The 1811 Constitution established a federal form of government. Venezuela was thus the second country after the United States of America to adopt a federal system, which enabled the construction of an independent state that united the former colonial provinces. Today, the territory of the republic is divided into 23 states, a Capital District (that covers parts of the city of Caracas), and federal dependencies that comprise the islands located in the Caribbean Sea. The municipalities with jurisdiction in Caracas are organized in a Metropolitan District (*Distrito Metropolitano*), with a two tier municipal government.

Following a period of dissolution in Simón Bolívar's *Gran Colombia* as of 1821, the "State of Venezuela" re-emerged as a separate country in 1830 with a rather mixed (centralized-provincial) form of government, but lived intense struggles between the central region and provincial forces. This period ended three decades later with a five-year "Federal War" (1858-1863), from which the Federation re-emerged with the establishment of the United States of Venezuela (1864). From that moment on, the form of government in Venezuela has always been federal, at least on paper. During the second half of the nineteenth century, successive civil wars led to various constitutional reforms in which the federal system of government was kept, yet with a progressive tendency of centralization regarding numerous elements that historically had characterized the federal system. For instance, regarding unification of laws, the states accepted in the 1864 Constitution, as part on the "Basis of the Union", "to have for all of them one same substantive legislation on criminal and civil matters".[1] In 1881, the words "the same laws on civil and criminal procedure" were added.[2] Accordingly, the Civil, Criminal, and Commercial Codes, but also the Codes of Civil and Criminal Procedure have always been federal laws.

During the first half of the twentieth century, dominated by autocratic regimes, Venezuela saw a continued process of centralization in the fields of the military, administration, taxation and legislation. The territorial distribution of power and territorial autonomy of the component states had almost disappeared, in spite of the Constitutions' continuing formal proclamations of federalism.[3] The second half of the twentieth century was characterized by democratization,[4] especially under the constitution of 1961, which upheld the federal form of government, albeit with highly centralized powers at the national

[*] Professor, Central University of Venezuela; former Simón Bolívar Professor, University of Cambridge UK; former Vice President of the International Academy of Comparative Law.
[**] Senior Lecturer, Department of Law, London School of Economics; Visiting Professor at the University Panthéon-Assas – Paris II.
[1] Article 13 n° 22 *Constitución de los Estados Unidos de Venezuela* of 22 April 1864. The texts of all the Venezuelan Constitutions are published in A.R. Brewer-Carías, 1-2 *Las Constituciones de Venezuela* (Caracas 2008).
[2] Article 13 n° 19 *Constitución de los Estados Unidos de Venezuela* of 27 April 1881.
[3] *See also* J. de Galíndez, "Venezuela: New Constitution", 3 *American Journal of Comparative Law* 81-82 (1954): "Only in theory does Venezuela continue to be a federal republic".
[4] See M. Kornblith, "Constitutions and Democracy in Venezuela", 23 *Journal of Latin American Studies* 61, 63 (1991).

level. A political decentralization process sparked by the democratic practice began in 1989 with the transfer of powers from the central government to the federal states.[5] For the first time since the nineteenth century, the governors of the federal states were elected directly,[6] and regional political life began to play an important role in the country.

Hugo Chávez, a former military officer whose *coup d'état* had failed in 1992 and who was elected as the President of the Republic in 1998, convened a National Constituent Assembly that sanctioned today's Constitution, which was submitted to a referendum in 1999.[7] This 26th Constitution of Venezuela has caused the pendulum to swing back. Instead of undertaking the changes needed for reinforcing democracy, namely the effective political decentralization of the federation and the reinforcement of state and municipal political power, it re-launched the centralization process under an authoritarian government.[8]

II. FEDERAL DISTRIBUTION AND EXERCISE OF LAWMAKING POWERS

1. *Areas of Law Subject to (Legislative) Jurisdiction of the Central Authority*

A. *Matters Attributed to the Central Government*

Article 156 of the Constitution of 1999 enumerates all the areas of jurisdiction of the *Poder Público Nacional*, i.e., the central public power in Venezuela. As regards the legislative jurisdiction, Article 165 n° 32 explicitly provides that the central authority (National Assembly) has jurisdiction for the legislation in the areas of:

- Constitutional rights, obligations and guarantees;*
- Civil law, commercial law, criminal law, the penal system, procedural law and private international law;*
- Electoral law;*
- Expropriations for the sake of public or social interests;*
- Public credit;*
- Intellectual, artistic, and industrial property;*
- Cultural and archeological treasures;*
- Agriculture;*
- Immigration and colonization;[9]*
- Indigenous people and the territories occupied by them;*
- Labor and social security and welfare;[10]*
- Veterinary and phytosanitary hygiene;[11]*
- Notaries and public registers;*
- Banks and insurances;*
- Lotteries, horseracing, and bets in general;*

[5] For the political background of this decentralization reform and its impact on the political scene in Venezuela, see M. Penfold-Becerra, "Federalism and Institutional Change in Venezuela", in: E.L. Gibson, *Federalism and Democracy in Latin America* 197-225 (Baltimore 2004). See also Point II.2.a, below.
[6] See *infra* note 30.
[7] See on the 1999 constitution-making process: A.R. Brewer-Carías, "The 1999 Venezuelan Constitution-Making Process as an Instrument for Framing the development of an Authoritarian Political Regime," in: L.E. Miller (ed.), *Framing the State in Times of Transition. Case Studies in Constitution Making*, 505-531 (Washington 2010).
[8] *See* A.R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment* (Cambridge 2010).
[9] *See also* Article 156 n° 4: "the naturalization and the admission, extradition and expulsion of foreigners"; Article 38.
[10] *See also* Article 156 n° 22: "the regime and organization of the social security system".
[11] *See also* Article 156 n° 23: "the legislation in matters of … public health [and] food safety…"

- The organization and functioning of the organs of the central authority and the other organs and institutions of the state.[12]*

Article 156 n° 32 also specifies that the central authority also has legislative jurisdiction for all matters of "national competence", i.e., for the implementation of all other matters enumerated in Article 156 n^{os} 1-31. In this list, the power to legislate is explicitly attributed to the central authority (National Assembly) for the following matters:[13]

- Those related to the armed forces (n° 8)* and civil protection (n° 9);[14]
- Monetary policies (n° 11);*
- The coordination and harmonization of the different taxation authorities; the definition of principles, parameters, and restrictions, and in particular the types of tributes or rates of the taxes of the states and municipalities; as well as the creation of special funds that assure the inter-territorial solidarity (n° 13);
- Foreign commerce and customs (n° 15);*
- Mining and natural energy resources (hydrocarbon);[15]* fallow and waste land; and the conservation, development and exploitation of the woods, grounds, waters,[16] and other natural resources of the country (n° 16);[17]
- Standards of measurement and quality control (n° 17);*
- The establishment, coordination, and unification of technical norms and procedures for construction, architecture, and urbanism, as well as the legislation on urbanism (n° 19);*
- Public health, housing, food safety, environment,[18] water, tourism,[19] and the territorial organization (n° 23);
- Navigation and air transport, ground transport, maritime and inland waterway transport (n° 26);[20]
- Post and telecommunication services and radio frequencies (n° 28);*
- Public utilities such as especially electricity, potable water, and gas (n° 29).[21]

Furthermore, the Constitution attributes to the central authority the powers to:

- Conclude, approve, and ratify international treaties (Article 154);*
- Legislate on antitrust and the abuse of market power (Articles 113 and 114).*

B. *Nature of the Jurisdiction Attributed to the Central Government*

The Constitution does not expressly specify whether the central authority (National Assembly) has exclusive powers in these areas or whether the legislative powers are shared with the component states

[12] *See also* Article 156 n° 31: "the national organization and administration of justice, the *Ministerio Público* and the *Defensoría del Pueblo*".
[13] See TSJ Sala Constitucional, decision n° 565 of 15 April 2008, file n° 07-1108, where the Supreme Tribunal interpreted the word "regimen" found in some of the provisions in Article 156 as indicating the power to legislate. See in 114 *Revista de Derecho Público*, 154-170 (2008).
[14] *See also* Articles 328-332.
[15] For the exclusive nature of the central authority's legislative power over the natural energy resources see in more detail the text accompanying note 37, below.
[16] See also Article 304, which provides that all waters are property of the Republic and that the law establishes the necessary provisions in order to guarantee their protection, exploitation, and recovery.
[17] Contrast with n° 23 (environment and water in the context of public health, housing and food safety).
[18] See also the concurrent power in this area of the municipalities, Article 178 n° 4.
[19] For the concurrent nature of this power, see TSJ Sala Constitucional decision n° 826 of 16 May 2008, file n° 08-0479.
[20] *See also* Article 156 n° 23: "the national policies and the legislation in matters of navigation".
[21] See Article 164 n° 8, which attributes "exclusive" power to the states for "the creation, regulation, and organization of public utilities of the states".

and the municipalities. The exclusive character of legislative powers has to be determined by interpretation for each of them separately. All of the areas of "general legislation" enumerated in Article 156 n° 32 can be considered to be of the exclusive power of the central authority, together with those other areas mentioned above that are marked with an asterisk (*), or those others where the central authority has already legislated.[22] Neither the component states nor the municipalities may legislate in these areas.[23] In all other areas that belong to the concurrent powers shared between the central government and the component states and the municipalities, the National Assembly always retains the power to enact "basic laws" ("*leyes de base*"), which establish the framework that must be respected by the component states when enacting local "laws of development" ("*leyes de desarrollo*"), Article 165(1).[24]

Article 156 can be considered the most important source specified in the Constitution that authorizes central government regulation. On its basis, practically all important areas of government are covered by central legislation. In summary, it seems fair to say that the central authority (National Assembly) has legislative jurisdictions in all areas of law, either for enacting central legislation or for enacting framework laws.

2. *Areas of Law Remaining to the (Legislative) Jurisdiction of the Component States*

A. *Overview*

Article 164 enumerates a list of matters that are formally designated to be of the "exclusive jurisdiction" of the component states. This designation, however, is misleading since none of these matters can be regarded as truly exclusive,[25] especially not as concerns the legislative powers.

Article 164 partially integrates the provisions of the "Decentralization Law" of 1989,[26] which already provided for the transfer of powers to the states. But different from Article 164 of the 1999 Constitution, Article 11 of the Law of 1989 had provided explicitly that the states would have the power to legislate on these matters.[27] With the entry into force of the 1999 Constitution, the states' pretensions to legislate in their areas of exclusive powers have been rejected and subordinated to national legislation.[28] The

[22] Cf. A.R. Brewer-Carías, "La descentralización política en la Constitución de 1999: federalismo y municipalismo (una reforma insuficiente y regresiva), 7 *Provincia* 7, 29-31 (2001).

[23] See, e.g., for the exclusivity of the federal jurisdiction for matters related to retirement and pensions on the basis of Article 156 n° 32, TSJ Sala Constitucional, decision n° 518 of 1 June 2000, file n° 00-0841; decision n° 1452 of 3 August 2004, file n° 02-2585.

[24] *See also Exposición de Motivos de la Constitución* (the official justification of the 1999 Constitution): "As regards to the concurrent powers, the Constitution adopts the experience of comparative law on decentralization and it provides that national laws have the nature of basic laws, in which general, basic, and guiding concepts are laid down; and that state laws are laws developing these basic principles, which allows for better conditions for the delimitation of competences"; G.O. n° 5908 Extra of 19 February 2009.

[25] Cf. Brewer-Carías, *supra* note 22 at 29.

[26] *Ley Orgánica para la Descentralización, Delimitación y Transferencia de Competencias del Poder Público*, G.O. n° 4153 of 28 December 1989. See on this law see A.R. Brewer-Carías, "Bases legislativas para la descentralización política de la federación centralizada (1990: El inicio de una reforma)", in *idem* (coord.) *et al*., *Leyes para la Descentralización Política de la Federación* 7-53 (Caracas 1990).

[27] Article 11, sole paragraph, of the Law of 1989 reads: "Until the states assume these powers through specific legislation, enacted by the respective legislative assemblies, the presently existing legislation continues in force".

[28] See, e.g., *Dictamen de la Procuraduría de la República*, Oficio N° D.A.G.E. 000019 of 20 October 2000, available at http://www.pgr.gob.ve/PDF/Dictamenes/CONSTITUCIONAL1.pdf, which rejects the possibility that the states can establish the legislative basis for the conservation, administration and exploitation of the national highways on the basis of Article 164 n° 10, and suggesting that, until a national law is enacted, the states and the federal government should conclude cooperation agreements. On these matters, the TSJ, Sala Constitucional Decision n° 565 of 15 April 2008, has eliminated the "exclusive" character of the states' jurisdiction, transforming it into a "concurrent" jurisdiction, available at http://www.tsj.gov.ve/decisiones/scon/Abril/565-150408-07-1108.htm.

constitutional provision in Article 158, which establishes that decentralization is a national policy, has been ignored by the central government and the "Decentralization Law" despite having been reenacted with virtually no changes in 2003 and again in 2009,[29] and can be considered dead letter.[30]

B. *Nature of the Jurisdiction Attributed to the Component States*

The only true legislative power of the component states is to organize their own constitutional structure by adopting their own constitutions (Article 164 n° 1) "in accordance with this [federal] Constitution". This provision limits this power of self-organization, since the federal constitution imposes a general organizational structure on the component states and establishes uniform rules for the state governors (Articles 159 to 163, and 166).[31] Moreover, the 1999 Constitution deprives the component states of establishing in their respective state constitutions the rules of organization and functioning of their legislative assemblies, which are instead governed by a federal law of the central authority (Article 162 *in fine*)[32] as well as the basic legislation on public Administration and public servants, which has also been enacted by the central authority.[33] The only exclusive legislative powers remaining with the component states thus concern the specific legislation on the details of the organization and functioning of the governors' office and states' administrative organization.[34]

The two other items of Article 164 which make reference to legislative powers by referring to the component states' right to enact a "*régimen*", which could be understood as conferring legislative powers,[35] are:

- The exploitation of non-metallic minerals that are not reserved to the central authority, salt mines and oyster beds (n° 5);
- The public utilities of the component states (n° 8).

The first of these two areas is –despite being labeled as an "exclusive power" of the component states by Article 164– by and large only a concurrent power, since the central authority retains the power over "the mines and natural energy resources (hydrocarbon) … and the conservation, development and exploitation of the … grounds … and the other natural treasures" according to Article 156 n° 16.[36] It follows from this provision, read in conjunction with Article 164 n° 5, that especially the exploitation of natural energy resources (hydrocarbon) –i.e. gas and petrol, the dominant source of income of Venezuela– are of

[29] G.O. n° 37753 of 14 August 2003; G.O. n° 39140 of 17 March 2009.
[30] J. Sánchez Meléan, "Pasado, presente y futuro de la descentralización en Venezuela", 9 *Provincia* 20, 26 (2002); A.R. Brewer-Carías, **"**La descentralización política. Un modelo de Estado," in F. Otamendi Osorio & T. Straka / Grupo Jirahara (eds.), *Venezuela: República democrática* (Barquisimeto 2011) 645-673.
[31] Cf. TSJ Sala Constitucional, decision 1182 of 11 October 2000, file n° 00-1410: "It is therefore clear that the states are constitutionally privileged by the principle of autonomy for the organization of their public power; however, it has to be understood that this autonomy is relative and therefore subject to numerous restrictions established by the Constitution and the Law". See also note 23 above. For the central regulation of the state governors see also Articles 22-32 of the "Decentralization Law" of 1989 and 2003, according to which, *inter alia*, state governors can be removed for "repeated disobedience of orders or decisions by the President of the Republic" (Article 31); for harsh criticism see A. Hernández Becerra, "Nivel territorial intermedio en Colombia y Venezuela", 15 *Provincia* 95, 105 (2006), but it has to be noted that prior to 1989, state governors were directly appointed by the President.
[32] *Ley Orgánica de los Consejos Legislativos de los Estados*, G.O. Nº 37282 of 13 September 2001.
[33] *Ley Orgánica de la Administración Pública*, G.O. N° 5890 Extra of 31 July 2008; *Ley del Estatuto de la Función Pública*, G.O. Nº 37522 of 6 September 2002.
[34] Cf. Brewer-Carías, *supra* note 22 at 27.
[35] For the meaning of "*régimen*" in the constitutional catalogues of jurisdictions see note 13 above.
[36] This constitutional provision thus undermines Article 11 n° 2 of the 1989 Decentralization Law (note 26 above), which provided that "in order to promote the administrative decentralization and according to the provision of Article 137 of the Constitution [of 1961] the following matters are transferred to the exclusive jurisdiction of the States:… the legislation, administration and exploitation of stones for construction and decoration or of any type other than precious … of the earthy substances, the salt-mines and the pearl producing oyster banks".

exclusive jurisdiction of the central authority and subjected to the legislation enacted by the National Assembly.[37] Only the administrative procedures for the exploitation of non-precious stone, salt mines and oyster beds thus seem to fall under a genuine exclusive legislative jurisdiction of the states.[38] Furthermore, the second of the areas enumerated above (public utilities) is also merely a shared competence, since Article 156 n° 29 provides that the "general legislation" on the public utilities (at least those offered to the citizens at home) falls within the power of the central authority.

In summary, there are no relevant areas of law making that are reserved to the states.[39] If at all, they only have exclusive administrative powers in some areas. The states possess merely concurrent powers for some few areas in which they may enact legislation (see those items not marked with an asterisk (*) above II.1).[40] In any event, all state legislation in matters of concurrent powers, which takes the form of "development laws" (*leyes de desarrollo*), is contingent upon the prior enactment of federal "basic laws" (*leyes de base*) (Article 165(1)). The latter set a binding framework for the former.[41] Article 165(1) commands that such federal "basic" framework laws have to respect the principles of interdependency, coordination, cooperation, shared responsibility and subsidiarity.[42] Yet this will not prevent the federal authority from also regulating specific details, at least as long as such detailed federal regulation can be justified under the principle of subsidiarity, i.e., if a need for centralized and thus uniform legislation can be shown. Articles 164 and 165(1) therefore only guarantee a kind of minimum core of legislative power of the states in the areas of shared competences.[43] This minimum core is rather restricted in the light of the constitutional case law which tends to interpret the powers of the central authority broadly.[44]

3. *Allocation of residual powers*

[37] The total control of the central authority over gas and petrol resources is complemented by Article 156 n°16(3), which provides that a federal law will establish a system of special economic attributions to the states in whose territory the exploited resources are found, yet without prejudice to the possibility to also establish special attributions in favor of other states, which means that the central authority has broad discretion in its decisions regarding at least gas and petrol.

[38] For the exclusivity of the jurisdiction over salt mines, albeit only in a conflict between a state and a municipality see TSJ Sala Constitucional, decision n° 78 of 30 January 2001, file n° 00-1556 ("una competencia originaria de los [Estados] … una competencia natural y exclusive"). For such a state law see *Ley de Régimen, Administración y Aprovechamiento de Salinas y sus Productos del Estado Sucre, Gaceta Oficial Extraordinaria del Estado Sucre* nº 10 of 29 November 1993.

[39] Brewer-Carías, *supra* note 22 at 29; K.S. Rosenn, "Federalism in the Americas in a Comparative Perspective", 26 *U. Miami Inter-Am. L. Rev.* 1, 16 (1994).

[40] See also Article 15 of the *Ley Orgánica de los Consejos Legislativos de los Estados*, G.O. 37282 of 13 September 2001, whose enumeration of the powers of the state parliaments, other than the power to enact and amend a state constitution and (restricted) budgetary laws, essentially mentions only the legislative power to enact "development laws" within the framework of federal "basic laws".

[41] For a case in which a state claimed to be unable to legislate on matters of concurrent powers because the National Assembly had not yet enacted the necessary federal laws see TSJ Sala Constitucional, decision n° 3203 of 25 October 2005, file n° 02-2984. See also A.R. Brewer-Carías, "Centralized Federalism in Venezuela", 43 *Duquesne Law Review* 629, 639 (2005).

[42] Cf. TSJ Sala Constitucional, decision 843 of 11 May 2004, file n° 03-1236, where the Supreme Tribunal affirms *obiter* that "the concurrent powers … have to be previously delimitated by a basic national law; … only the national legislator has the power for enacting basic regulatory laws (according to the principles of interdependency, coordination, shared responsibility and subsidiarity) in the areas of concurrent powers"; this is reaffirmed in TSJ of 15 April 2008, *supra* note 13, on the relation between Articles 156 n° 26 and 164 n° 10 regarding highways.

[43] See, e.g., TSJ Sala Constitucional, decision n° 2495 of 19 December 2006, file n° 02-0265, where the State of Carabobo claimed that Article 42 of the *Ley General de Puertos* (G.O. n° 73589 of 11 December 2002) violated its powers resulting from Article 164 n° 10 of the Constitution (which grants states the "exclusive" powers for the conservation, administration, and exploitation of commercial ports "in coordination with the national government") because the federal law obliges the States either to establish an autonomous entity for the administration of each port or to grant concession to private entities for that task. The Supreme Tribunal rejected this argument, and interpreted Article 164 n° 10 as conferring merely concurrent powers, with the reasoning that such obligation is "justified" (it follows from the preceding discussion of federalism in general that this justification is made with regards to the principle of subsidiarity, although it is not specifically invoked) "by the general interest, which the Republic has to protect, in the effective and also efficient administration of decentralized public services… The reservation of the administration to a specialized entity safeguards that services are rendered optimally and it is in this line of reasoning that said provision is justified".

[44] See note 46 below and note 28 above, and also Point IV.1.a, below.

In line with the previous constitutions, the 1999 Constitution generally allocates residual powers with the states. Article 164 n° 11 provides that the states have "exclusive" powers "for everything that, according to this Constitution, is not allocated to the national or municipal power". This general residual power is, however, undermined by two inverse attributions of residual power to the central authority. Article 156 n° 12 grants the central authority full control over all "other taxes, excises, and revenues not attributed to the states or the municipalities by this Constitution or the law". Furthermore, Article 156 n° 33 provides for the jurisdiction of the central authority "in all other matters that correspond to it [the federal government] due to their nature or kind". This provision has been copied from the 1961 Constitution, which was intended as an implicit powers clause in favor of the federal government.[45] The federal government's power is further strengthened by the Supreme Tribunal's willingness to accept inherent powers in favor of the national level.[46] In summary, the general residual power allocated to the states is a rather theoretical one.[47] In practice, it seems that – in case of doubt – the presumption in favor of federal powers will virtually always prevail.

4. *Conflicts between Central and Component State Law*

As mentioned above, the component states do not have any exclusive legislative powers. Any legislative activity by the states can thus only take place within the framework established by the "basic laws" (Article 165) that must have been enacted by the central government prior to the state's legislation.[48] By definition, these central "basic laws" must be superior to the state laws, since the latter have to remain within the framework of the former. Accordingly, in case of conflict between federal law and state law, the former will prevail.[49] The only – rather theoretical – hypothesis in which a state law could prevail over a federal law is when it can be shown that the central government did not respect the constitutional limits to its legislative powers, such as in particular the principle of subsidiarity of Article 165(1).[50]

5. *Law-making Powers of Municipalities*

According to Article 178 "[t]he powers of the Municipality are the governance and the administration of its interests and the management of the matters attributed to it by this Constitution and the national laws with respect to local life". For such purpose, Article 174 provides that the government and administration of the municipalities is attributed to the mayors; and Article 175 assigns the legislative function to the

[45] Cf. C. Ayala Corao, "Naturaleza y Alcance de la Descentralización Estadal", in A.R. Brewer-Carías *et al*. (eds.), *Leyes para la Descentralización Política de la Federación* 94 (Caracas 1990), referring to the *Exposición de Motivos* of the 1961 Constitution.

[46] Cf. TSJ Sala Constitucional 15 April 2008 (note 13 above), affirming, with reference to Constitutional provisions on some public services of national interest, "that the central government [the "Administration"] has an implicit general power or general clause of public order to condition, limit, or interfere with the rights or liberties on the basis of the doctrine of inherent or implicit rights … that allows [the interpreter]… to review the spirit of the provision attributing powers in such manner as to accept the existence of a power when this is the logical consequence of the legal provision and of the nature of the main activity exercised by the organ or entity".

[47] A.R. Brewer-Carías, *La Constitución y sus Enmiendas* 28 (Caracas 1991); *idem*, "El Sistema Constitucional Venezolano", in D. García Belaunde *et al*. (eds.), *Los Sistemas Constitucionales Iberoamericanos* 771, 778 (Madrid 1992); Rosenn, *supra* note 39 at 16; *see also* J.M. Serna de la Garza, "Constitutional Federalism in Latin America", 30 *Cal. W. Int'l L.J.* 277, 286 (2000): "the peculiar manner in which implicit powers have been understood, has created an additional instrument that can be used by the federal government to expand its powers".

[48] See text accompanying note 41 above.

[49] *See, e.g.*, TSF Sala Constitucional, decision n° 1495 of 1 August 2006, file n° 05-2448 in which the Supreme Tribunal, upon request by the national *Defensoría del Pueblo* (Ombudsman) suspended temporarily the *Ley de Defensa y Seguridad Ciudadana* of the State of Zulia, G.O. of the State of Zulia n° 659 Extra of 24 May 2004, due to the potential incompatibility with the *Código Orgánico de Procedimiento Penal* and the constitutional guarantees of freedom by allowing police forces to arrest suspect persons for 48 hours; a final decision is not yet published. For the legal analysis of constitutionality by the *Defensoría del Pueblo* see *http://www.defensoria.gob.ve/detalle.asp?sec=160104&id=110&plantilla=1*.

[50] See text accompanying notes 42-44.

Consejos Municipales (municipal councils), which they exercise through "municipal laws" in the form of *ordenanzas* in the matters attributed to them in Article 178.[51] These "own" areas of the municipalities are, according to Article 178, matters related to zoning, historic monuments, social housing, local tourism, public space for recreation, construction, local transport, public entertainment, local environmental protection and hygiene, local public utilities, funerals, child care and other community matters. Only the matters related to local public events (n° 3) and funerals (n° 6) can be regarded as exclusive powers of the municipalities, while the other areas are concurrent and thus limited to the framework of federal and state laws.[52] According to the Law on Municipalities of 2010, the lack of federal legislation (and by logical extension also of state legislation) is supposedly no obstacle to the legislative activity of the municipalities in concurrent matters.[53]

Nonetheless, it has to be pointed out that the Municipality as the "primary political unit of the national organization" (Article 168) has been virtually rendered moot since 2006 by the creation of a parallel structure of *Consejos Comunales* ("communal" councils), which are elected by local "assemblies of the citizens", *Asamblea de Ciudadanos y Ciudadanas*,[54] which can be formed by interested citizens. These *Asambleas de Ciudadanos y Ciudadanas* have been attributed jurisdiction to "approve the rules of the communal living of the community",[55] the scope of which is not further defined.[56] Although these structures that have been extensively regulated in 2010, [57] and are supposed to allow "self-governance" of local communities and are therefore a potential source of diversity,[58] their members are not elected by popular, direct and secret suffrage, thus violating the constitutional principle of representative democracy. Also, it can be doubted that they will balance the high degree of centralization of the country. These community structures, understood as vehicles for the advancement of socialism, are directly coordinated, supervised, and financed by the *Ministry for the Popular Power for the Communes and Social Protection* of the National Executive. Their leaders are appointed directly by the President[59] without the participation of the states or the municipalities.[60]

---

[51] For the definition of *Ordenanzas* see Article 54 n° 1 of the *Ley Orgánica del Poder Público Municipal*, G.O. n° 6015 Extra of 18 December 2010.

[52] *See, e.g.*, for tourism TSJ Sala Constitucional, decision n° 826 of 16 May 2008, file n° 08-0479.

[53] Article 57 *in fine* of the *Ley Orgánica del Poder Público Municipal* (note 51 above).

[54] The possibility to create such *Asamblea de Ciudadanos y Ciudadanas* is mentioned in Article 70 of the Constitution as one of the "means of participation and protagonism of the people in the exercise of its sovereignty", "whose decisions have binding character". The proposed reform of the Constitution, rejected in the Referendum of 2 December 2008, would have added "as long as they do not contradict the Constitution and the laws", which is probably the interpretation that has to be given to the present Article 70 anyway.

[55] Article 6 n° 1 of the *Ley Orgánica de los Consejos Comunales*, G.O. nº 39335 of 10 April 2009. "Community" is defined in Article 4 n° 1 as "the social conglomerate of families and citizens which live in a specific geographic area, which share a common history and interests, know each other and have relations with each other, use the same public utilities and share similar economic, social, urbanistic, and other necessities and potentials".

[56] It is worth noting that Article 6 n° 5 of the same law provide that Assembly of Citizens "exercises the social control". See in this regard the *Ley Orgánica de Contraloría Social*, G.O. nº 6011 Extra of 21 December 2010. Articles 9 and 16 of the *Decreto con Rango, Valor y Fuerza de Ley Orgánica del Servicio de Policía y del Cuerpo de Policía Nacional*, G.O. n° 5880 Extra del 9 April 2008 require the police only to inform and to consult the "communities", the *Consejos Comunales*, or the other "communitarian" organs, without mentioning the municipalities. Furthermore, Articles 47-48 provides "communities" with the possibility to create their own police force "committed to the respect of values, identity and the own culture of each community", with "the task to guarantee and ensure social peace, cohabitation, the exercise of rights and the fulfillment of the law". The National Police Law has been declared constitutional by TSJ Sala Constitucional, decision n° 385 of 15 March 2008, file n° 08-0233.

[57] See in particular, *Ley Orgánica del Poder Popular*, G.O. nº 6011 Extra of 21 December 2010; *Ley Orgánica de las Comunas*, G.O. nº 6011 Extra of 21 December 2010**.**

[58] *But see* note 54 above *in fine*.

[59] Articles 28 to 32 of the *Ley de los Consejos Comunales* (note 55 above).

[60] On this reform in general see A.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", [2007] *Revista de la Asociación Internacional de Derecho Administrativo* [Mexico] 49-67; A.R. Brewer-Carías, "*Introducción General al Régimen del Poder Popular y del Estado Comunal (O de cómo en el siglo XXI, en Venezuela se decreta, al margen de la Constitución, un*

III. THE MEANS AND METHODS OF LEGAL UNIFICATION

In view of the above sketched centralization of virtually all relevant law-making activity as well as the weakness of federalism in the country's history, legal unification is not an issue in Venezuela. The legal unification has been achieved exclusively through the central power of the federal government (top down). Attempts to decentralize the powers by transferring powers to the component states and municipalities have failed so far and have practically become obsolete. Voluntary coordination among component states or an impact of non-state actors on legal unification do not seem to have played a role and are rather unlikely to play one in the future in view of the tendencies to reduce federalism further more.

The curricula of the Venezuelan faculties of law, half of which are located in Caracas, are focused exclusively on federal law and are rather similar irrespective of their location.[61] In the absence of legislative diversity in Venezuela, legal education and training can be considered a factor that supports the centralization of the making and application of the law. The absence of legislative diversity also suggests that external factors are irrelevant for maintaining the high degree of centralization.

IV. INSTITUTIONAL AND SOCIAL BACKGROUND

1. *The Role of the Judicial Branch*

A. *The Role of the Supreme Tribunal*

The Constitutional Chamber of the Supreme Tribunal of Justice (*Sala Constitucional del Tribunal Supremo de Justicia*) is the court with jurisdiction over all disputes over the constitutionality of statutes and acts resulting from the direct application of the Constitution and over all disputes between the central government, the states and the municipalities ("*acción de resolución de conflictos entre órganos del Poder Público*") (Articles 266 n° 4 and 336 n° 9). Yet, the jurisdiction of this court has to be put into a larger political context created by the 1999 Constitution and subsequent laws that have put into question the impartiality of the court, which since 1999 has been dominated by the followers of the President.[62] It is therefore little surprise that conflicts over powers between the central government and the states are systematically decided to the detriment of the latter.[63]

The only known recent case in which the Supreme Tribunal effectively declared that a federal law violated the legislative powers of a state under the new constitution concerns a case in which no federal interests were at stake. The presidential *Decreto con fuerza de Ley General de Puertos* of 2002[64]

Estado de Comunas y de Consejos Comunales, y se establece una sociedad socialista y un sistema económico comunista, por los cuales nadie ha votado)," in idem (coord.) et al, Leyes Orgánicas sobre el Poder Popular y el Estado Comunal (Los consejos comunales, las comunas, la sociedad socialista y el sistema económico comunal) 9-182 (Caracas 2011).

[61] *For a list of, and internet links to, most of the law faculties in Venezuela see* http://venezuela.justia.com/recursos/universidades/.

[62] *See, e.g., Decreto de la Asamblea Nacional Constituyente sobre la Reorganización del Poder Judicial y el Sistema Penitenciario*, G.O. n° 36805 of 11 October 1999 (intervening in the Supreme Tribunal and allowing the removal of justices by a Special Commission created by the Constituent Assembly); Human Rights Watch, "Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela", 16/3b *HRW Reports* 17-20 (2004), available at http://www.hrw.org/reports/2004/venezuela0604/venezuela0604.pdf. *See also* A.R. Brewer-Carías, *supra* note 8 at 226-244.

[63] Other than the following examples, for the bias of the Supreme Tribunal in favor of the federal government see also A.R. Brewer-Carías, "El juez constitucional vs. la supremacía constitucional", *mimeo*, available at http://www.allanbrewercarias.com, on the systematic rejection of all constitutional actions against the reform of the Constitution, which was eventually rejected in the referendum of 2 December 2007.

[64] G.O. n° 73589 of 11 December 2002.

provided, among other things, that the entities created by the states for the administration of commercial ports are obliged to transfer 12.5% of their gross income to the municipality in which the port is located. The Supreme Tribunal declared this provision unconstitutional, *inter alia*, because it would violate the states' exclusive right to dispose of the "exploitation" of the ports according to Article 164 n° 10, and thus of the revenues obtained thereof.[65]

Examples for the Tribunal's bias in favor of the central government may be found in its refusal to hear cases in which the Central Government in 2003, after significant tensions between the President and states governed by the opposition had cut off payment of the constitutionally guaranteed share of the *Situado Constitucional*, the federal financial transfer to the states (Article 167 n° 4).[66] The Tribunal justified its refusal by stating that the alleged lack of payment is merely a question of the application of ordinary law and therefore not of constitutional nature, thus forcing the states to restart their claims before the Administrative Chamber.[67]

Another illustration is a case concerning the disarmament of the state police by the national armed forces after violent clashes between followers of the President and state police force.[68] *Inter alia*, the National Armed Forces, which are under the control of the President (Article 156 n° 8, 236 n° 5), confiscated in 2003 the assault rifles of the state police of Zulia, who had bought them in 2001 with the authorization of the federal Minister of the Interior and with federal funds for decentralization.[69] The State of Zulia requested the Supreme Tribunal to declare that the action violated the State's powers to organize the state police and to guarantee the protection of public order (Articles 164 n° 6 and 332(3)), justifying the need for armory with the fact that the central government had not yet established the national police as required by the 1999 Constitution.[70] The Supreme Tribunal simply rejected the request with the argument that there was no conflict of power because the Armed Force has the powers to regulate the possession of "war weapons", which a law of 1939 defines as "all those which are used or could be used by the Army, the National Guards and the other security agencies for the defense of the Nation and the protection of public order",[71] which effectively covers all type of weapons.

B. *Component States' Law Applied by Courts*

Since 1945 Venezuela has had no state courts, since the judicial system falls within the exclusive jurisdiction of the central government (Article 156 n° 31). The only exception is the *justicia de paz*, a local system of judges for the conciliatory proceedings in neighborhoods that falls under the jurisdiction of the municipalities (Articles 178 n° 8 and 285).
All courts have jurisdiction to interpret state laws just as any another law and the recourse of cassation against their decisions eventually leads to the Supreme Tribunal's *Sala de casación* (Article 266 n° 8). The different chambers of the Supreme Tribunal can also decide on requests for the interpretation of laws (Article 266 n° 6). These interpretations are, in principle, not actually binding. Formally, only the interpretations of constitutional provisions made by the Constitutional Chamber (*sala constitucional*) of the Supreme Tribunal, which is the ultimate guarantor for the uniform interpretation and application of

[65] TSJ Sala Constitucional, decision n° 2495 of 19 December 2006, file n° 02-0265, *see also* note 43 above.
[66] See below Point IV.2.b.
[67] TSJ Sala Constitucional, decision n° 1682 of 18 September 2003, file n° 03-0207 (State of Monagas); and decision n° 1109 of 8 June 2004, file n° 03-0725 (State of Apure).
[68] See TSJ Sala Constitucional, decision n° 1140 of 9 June 2005, file n° 03-0969.
[69] For the parallel case of the destitution of the head of the metropolitan police of Caracas by the Armed Forces see TSJ Sala Constitucional, decision n° 3343 of 19 December 2002, file n° 02-2939.
[70] Transitional Provision 4 n° 9 of the Constitution, according to which this law should have been enacted within one year after the entry into force of the new Constitution. The *Ley Orgánica del Servicio de Policía y del Cuerpo de Policía Nacional* was only enacted in 2008 through a presidential decree, G.O. 5880 Extra of 9 April 2008.
[71] Article 3 of the *Ley de Armas y Explosivos*, G.O. 19900 of 12 June 1939.

the constitution, are "binding on the other Chambers and the other courts of the Republic" (Article 335).[72] In practice, however, the interpretations of national, state and municipal laws made by the other chambers of the Supreme Tribunal are *de facto* highly persuasive for the lower instances due to the Tribunal's authority and the system of recourses.

The Constitutional Chamber, when deciding actions on unconstitutionality regarding (national, state, and municipal) laws and regulations, has the exclusive power to review and to annul any kind of legislation – including state law and municipal statutes (Article 336 n° 2)[73] – with *erga omnes* effect (Article 334(3)). Lower courts may declare the unconstitutionality of national, state and municipal statutes and regulations in particular cases and controversies; but this will only have effect *inter partes* (Article 334(2)). In these latter cases, an extraordinary recourse for revision can be brought before the Constitutional Chamber of the Supreme Tribunal so as to obtain a binding interpretation of the Constitution on the question of constitutionality of the challenged legal provision (*stare decisis* principle) (Article 334(4)).[74]

2. *Relations between the Central Government and Component States*

A. *The Component States and Federal Law*

Although deprived of most exclusive legislative powers, the states are nevertheless declared to be politically "autonomous" (Article 159). Accordingly, the central government cannot force the states to legislate, such as to enact "development laws" within the framework of central "basic laws" in matters of concurrent powers. So long as the states have not assumed their responsibility to legislate, the existing legislation will continue to apply,[75] and, in case of lacunae, courts will apply federal law by way of analogy.

Central government law is applied not only by the central government through specific federal agencies located and functioning in any part of the country, but also by the states and the municipalities when deciding on matters therein regulated.

Prior to 1999, Venezuela always had a bicameral Congress. In the Senate, the federal chamber of Congress, each state and the Federal District were represented by two directly elected senators, and additional senators represented minorities.[76] The 1999 Constitution eliminated the Senate and, in consequence, component states and municipalities are no longer represented in law-making at the central level. The component states' influence on the central legislative process is retained, according to the Constitution, by the National Assembly's obligation to consult the States' Legislative Council before passing laws on matters which could be of interest to the states (Article 206). Unfortunately, this provision has been systematically ignored in practice.[77]

---

[72] On this point see also A.R. Brewer-Carías, "Instrumentos de justicia constitucional en Venezuela (acción de inconstitucionalidad, controversia constitucional, protección constitucional frente a particulares)", in: J. Vega Gómez & E. Corzo Sosa (eds.), *Instrumentos de Tutela y Justicia Constitucional* 75-99 (Mexico City 2002); and A.R. Brewer-Carías, "Judicial Review in Venezuela", 45 *Duquesne Law Review* 439-465 (2007).

[73] See, e.g., TSJ Sala Constitucional, decision n° 843 of 11 May 2004, file n° 03-1236, whereby a law by which the State of Guárico intended to decentralize to the municipalities more areas than provided for in Article 165(2) was annulled.

[74] See Brewer-Carías, *supra* note 72 at 84: "Accordingly, any interpretation by the Constitutional Chamber of any law or any other legal provision of the rank of a law or regulation does not have binding effect".

[75] Article 11, *Parágrafo Único*, of the 1989 and 2003 Decentralization Law (see notes 26 and 29 above).

[76] Article 148 of the 1961 Constitution.

[77] The 2003 law on the reform of the 1989 Decentralization Law was allegedly never submitted to the States' Legislative Council, see TSJ Sala Constitucional, decision n° 1801 of 24 August 2004, file n° 04-0331; and decision n° 966 of 9 May 2006, file n° 04-0331 (recourse of nullity eventually rejected due to inactivity of the claimants for more than one year). See also the allegations made by the State of Carabobo in its action against the *Decreto con Fuerza de Ley General de Puertos* (G.O. 37589 of 11 December 2002), which were rejected by the Supreme Tribunal with the argument that, in the meantime, the Decree had been substituted by a law for which the states allegedly have been consulted; TSJ Sala Constitucional, decision n° 2495 of 19 December 2006, file n° 02-0265.

Furthermore, the 1999 Constitution required the creation of an intergovernmental entity called the Federal Council of Government for the purpose of planning and coordinating the policies and actions for the development of the decentralization process and transfer of powers from the central government to the components states and municipalities. The Federal Council of Government was to be headed by the Vice President of the Republic and integrated by Ministers, governors of the component states and one mayor from each component state, as well as of representatives of the civil society (Article 185). Such entity was finally created in 2010, but rather as an instrument designed to reinforce the centralization process through a central planning system.[78]

B. *Public Finances*

Virtually everything concerning the taxation system has been centralized even more in the 1999 Constitution, so that the powers of the component states in tax matters have been basically eliminated. The Constitution lists in detail all the central government powers with respect to basic taxes (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, and taxes on the consumption of liquor, alcohol, cigarettes and tobacco) (Article 156 n° 12), and also expressly attributes to the municipalities some taxation powers with respect to local taxes (Article 179). In addition, as mentioned above, the Constitution gives to the national government (not to the states) residual competencies in tax matters (Article 156 n° 12). The Constitution does not grant the component states any power on matters of taxation, except with respect to official stationery and revenue stamps (Article 164 n° 7). Thus, the component states can only collect taxes when the National Assembly expressly transfers to them, by statute, specific taxation powers (Article 167 n° 5), which has never happened so far.

Therefore, due to the state's lack of resources from taxation, their financing is basically provided by the transfer of national financial resources through three different channels. First, it is done by means of the so-called *Situado Constitucional*, (Constitutional Contribution by the Federal Government) provided in the national Constitution, which is an annual amount within the National Budget Law equivalent to a minimum of 15% and a maximum of 20% of total ordinary national income, estimated annually (Article 167 n° 4). Second, a national law has established a system of special economic allocations for the benefit of those component states where mining and hydrocarbon projects are being developed. According to this statute, these benefits have also been extended to include other component states (Article 156 n° 16).[79] And third, financing for states and municipalities also comes from national funds such as the Inter-Territorial Compensation Fund, which was created by the Federal Council of Government Law of 2010 and substitutes the former Intergovernmental Fund for Decentralization (FIDES), created in the Decentralization Law of 1993 (Article 167 n° 6). According to the Constitution, this Fund is administered by the Federal Council of Government (Article 185(2) *in fine*) and wholly controlled by the central authorities.[80] In fact, the central government has repeatedly and over some period of time retarded the transfer payments, thus causing serious financial problems to some states.[81]

[78] See *Ley Orgánica del Consejo Federal de Gobierno*, G.O. nº 5963 Extra of 22 February 2010**.** See the comments of Penfold-Becerra, *supra* note 5 at 220: "If this Federal Council is not properly regulated by the law, it could be used by the central government as a means to divide the governors through the political use of resources accumulated in [the Intergovernmental Fund for Decentralization]". *See also* Sánchez Meléan, *supra* note 30 at 26.

[79] *Ley de Asignaciones Económicas Especiales para los Estados y el Distrito Metropolitano de Caracas Derivadas de Minas y Hidrocarburos*, G.O. 37086 of 27 November 2000; substituted by *Ley de Asignaciones Económicas Especiales Derivadas de Minas y Hidrocarburos*, G.O. 5991 Extra of 29 July 2010. See A. Vigilanza García, *La Federación descentralizada. Mitos y realidades en el reparto de tributos y otros ingresos entre los entes políticos territoriales de Venezuela* (Caracas 2010).

[80] See note 78 above.

[81] Sánchez Meléan, *supra* note 30 at 28-2; see also text accompanying note 67 above.

3. *Other Institutions for Resolving Intergovernmental Conflicts*

Except the Constitutional Chamber of the Supreme Tribunal of Justice, which has jurisdiction to resolve constitutional and administrative conflicts between the central government and the component states and the municipalities, and the Federal Council of Government, which is called to plan and coordinate policies and actions for the process of decentralization and transfer of competencies, there are no other institutions (political, administrative, judicial) to help resolve conflicts between component states or between the central government and component states.

4. *The Role of Bureaucracy*

Even though national legislation on public servants was enacted in 2002,[82] which is applicable to all levels of civil servants, each level of government has its own civil service system. Thus, the civil service of the central government is separate from the civil services of the component states and of the municipalities. Being separate civil service systems, there is no formal lateral mobility (or career advancement) between them. Yet for retirement purposes (pensions), a matter falling under exclusive federal jurisdiction,[83] the length of time worked in any of the three levels of government counts for the purpose of retirement.

5. *Social Factors*

Venezuela is a multicultural and mixed (*mestizo*) country where no important racial, ethnic, religious, linguistic or other social cleavages in the federation exist. There is a very small population of indigenous peoples (approximately 1%), whose rights have been expressly recognized in the Constitution (Articles 119-126). The most important indigenous peoples group is located in the southern State of Amazonas, and its members have actively participated in the political process of the state and its municipalities. The Constitution also guarantees that in addition to the members of the National Assembly elected in each state, three separate members must be elected by the indigenous peoples (Article 186).[84]

There are very significant asymmetries in natural resources, development, wealth and education between the component states. The main oil exploitation (the main source of income of Venezuela) is located in the States of Zulia and Anzoategui, and the main mining exploitations in the State of Bolívar. Since the component states are dependent on national financial allocations, one of the factors established in the Constitution for the distribution of the resources from the *Situado Constitucional* is related to the population of each state. Yet, the Constitution allows the assignation of special economic advantages to the states in whose territory the natural resources are located (Article 156 n° 16).[85]

V. CONCLUDING REMARKS

Federalism has always been a most sensitive and controversial topic in Venezuela and accordingly has developed in a rather particular way, often described as "centralized federalism".[86] Already the *Exposición de Motivos* of the 1961 Constitution reflected the peculiarity of the Venezuelan conception of federalism:

[82] *Ley del Estatuto de la Función Pública*, *supra* note 33.
[83] *Ley del Estatuto Sobre el Régimen de Emolumentos, Pensiones y Jubilaciones de los Altos Funcionarios y Altas Funcionarias del Poder Público*, G.O. Nº 39592 of 12 January 2011; *see also* note 23 above.
[84] See also note 76 above.
[85] *Ley de Asignaciones Económicas Especiales Derivadas de Minas y Hidrocarburo* (note 79 above).
[86] See Brewer-Carías, *supra* note 41.

"'Federation' in Venezuela, properly speaking, represents a peculiar form of life, a bundle of values and feelings that the Constituency is obliged to respect to the degree that the interests of the people allow. Therefore, the following definition has been adopted: 'The Republic of Venezuela is a federal state in the terms established by this Constitution'… In other words, it is a federation to the degree and with the particular form in which this idea has been lived by the Venezuelan society".[87]

The decentralization process initiated in 1989 had brought about – probably for the first time – some new dynamism into the political landscape of Venezuela by granting new opportunities at state level to counterbalance the power of the central government. Yet the 1999 Constitution and especially the political evolution since 2002 have more or less dried out the buds of living federalism created by the 1989 decentralization process.[88] Some go as far as affirming that, *de facto*, Venezuela is no longer a federation.[89]

As concerns the legislative powers, the finding that the component states of Venezuela do not have any significant legislative powers outside the restricted framework of federal laws also has to be put into the broader picture of legislative activity in Venezuela in general. In 2007, the National Assembly enacted a total of 19 laws, not including 62 approvals of treaties concluded by Venezuela with foreign countries.[90] The first of these laws was enacted by unanimous vote; it empowered the President in Article 203(4) to regulate a significant number of matters by way of "decree with force of law" for periods of 18 months.[91] The same occurred in 2010 with the approval of another enabling law authorizing the President for 18 months to regulate another significant number of matters by way of the same "decree with force of law".[92] Taken together with the broad legislative powers attributed to the central government, this means that the country is primarily governed directly by the President through decree. All in all, the discussion about federalism in Venezuela is by now virtually meaningless.

[87] *Exposición de Motivos de la Constitución de la República de Venezuela* (1961), cited by M. Arcaya, *Constitución de la República de Venezuela* 35-36 (Caracas 1971). This passage is partially also cited by M. Kornblith, "The Politics of Constitution-Making: Constitutions and Democracy in Venezuela", 23 *Journal of Latin American Studies* 61, 86 (1991).

[88] Sánchez Meléan, *supra* note 30 at 27 (citing the President himself as having declared in his weekly television show "Aló Presidente" that Venezuela is a "unitary republic"); J. Biardeau R., "El proyecto de reforma y la destrucción del Estado Federal Descentralizado", *mimeo* (20 October 2007), available at http://www.aporrea.org/ideologia/a42897.html (criticizing the planned reform of the Constitution [failed due to the negative referendum on 2 December 2007] as "not containing any elaboration of the principles of the decentralized federal State in the new geometry of power. Much is being said about popular power [*poder popular*], but the cruel reality is that it is born as an appendix of the national executive power and without any autonomy". More optimistic in 2002 was Penfold-Becerra, *supra* note 5 at 221: "Venezuela's federal system might help counterbalance presidential power, continue to modify legislators' behavior, and even undermine the coalition that keeps Chávez in power. It is still too early to tell the impact of federalism on the eventual shape of Venezuelan democracy, but evidence indicates that federalism remains a critical source of political change in the country".

[89] Serna de la Garza, *supra* note 47 at 283.

[90] Asamblea Nacional, *Informe de Gestión 2007 – Balance Legislativo* (18 December 2007), available at http://www.asambleanacional.gov.ve/uploads/biblio/Balance_Legislativo%202007%20.pdf.

[91] *Ley que Autoriza al Presidente de la República para Dictar Decretos con Rango, Valor y Fuerza de Ley en las Materias que se Delegan*, G.O. nº 38617 of 1 February 2007. See on the Decree Laws enacted according to this 2008 enabling law, 115 *Revista de Derecho Público* (2008). Previously, the President had been given fast track powers for one year by the *Ley Habilitante* of 2000, G.O. nº 37077 of 14 November 2000; on this law see A.R. Brewer-Carías, "Apreciación general sobre los vicios de inconstitucionalidad que afectan los Decretos Leyes Habilitados" in: Academia de Ciencias Políticas y Sociales (ed.), *Ley Habilitante del 13-11-2000 y sus Decretos Leyes* 63-103 (Caracas 2002).

[92] *Ley que Autoriza al Presidente de la República para Dictar Decretos con Rango, Valor y Fuerza de Ley en las Materias que se Delegan*, G.O. nº 6009 Extra of 17 December 2010.