Chapter 5
Decentralisation, Pluralism, Indigenous Communities and Popular Power in Latin America between Unitary States and Federal States

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1. Methodological premises and terminological clarifications: administrative decentralization and territorial autonomies between the unitary state and the federal state

In the comparison of public law, the investigation aimed at determining the “identity” of a state requires a methodological framework that allows us to read the fundamental rules, at the basis of the state legal order, in the light of

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the historical, philosophical and political substratum of reference, to objectively understand their modalities of intervention in the sphere of reality. The division of powers, the form of state and the form of government make up the structure that gives birth to political-institutional objectives, capable of satisfying the request for social organization of a dominant group, whether it is an élite, a religious community, or a political community, capable to some extent of being the spokesperson for majorities and citizen / popular compromises. If the unifying role of constitutions is observed in the light of legal families and the role of various cultures in the processes of law production, it is possible to frame specific areas of micro-comparison, considering at the same time, on the one hand, the processes of global interconnection and, on the other, the living law. Thus, the convergence between comparative law and comparative constitutional law is also noted, while at the same time maintaining, as has been noted, their distinct structural autonomy (Pegoraro, Rinella 2017), distancing oneself from the “monist” perspectives of global constitutionalism, which would instead entail “a sort of dilution of the State in the mare magnum of globalization” (Amirante 2014).

The investigation into pluralism and decentralization requires reflections that intersect with the recognition of the role of the values of culture and tradition, understood as “a work of representation of reality based on a set of previously learned data” (Glenn 2011), of the related communities within a legal system. The observation of the territorial organization of the state in Latin American legal systems, between popular power in the new “socialisms”, participatory democracy, pluralism and indigenous community-nations, does not allow to delineate defined counterparts, but “hybrids” sculpted by history, by confrontation-clash of cultures and political economic processes. The forms of decentralization thus highlight, as has been noted, “centrifugal tendencies in the unitary states” and “centripetal tendencies in the federal states” (see above, chapter 4; Pavani 2019).

With the appearance of the nuevo constitucionalismo latinoamericano and with the democratic-revolutionary waves that, at the turn of the twentieth and twenty-first centuries, overwhelmed the American subcontinent through requests for substantial equality and guarantees of fundamental freedoms, there has been the implementation of organizational-territorial asymmetries in order to respond to the demands of pluralism and self-determination of local and / or indigenous communities, experimenting with innovative approaches to participatory democracy and specific policies for the decentralization of power. The “type of state” concentrates the study and reflection precisely on national identification in relation to a higher or lower
decentralization. This also includes the constitutional investigation on the role of local cultural communities, as well as populations both non-sedentary and specifically rooted in a territory, such as indigenous peoples (Pegoraro, Rinella, 2017; Lanchester 1990).

Here, the analysis of the types of state will move between the “State-Regions / Federated States-local communities” relations in Latin America, where certain powers are expressed differently, over associated life of entities or social groups within a limited and recognized territory, or a rural spatial area.

The type of state has become an independent field of study for the horizontality of the form of state. The expansion or limitation of more or less incisive policies of territorial decentralization, and the constitutionalisation of community rights, increasingly take place independently from the horizontal relationship between authority and freedom. Western public law, in analysing the vertical relationship of the form of state, has moved exclusively between federalism and regionalism for a long time, excluding the equally relevant relationships between, for example, power and territories, clans and tribes, as happens in many geographical areas of the world. Not only is it the state-apparatus confronted with peripheral institutional entities, but also with groups and communities structured differently from the centre, overcoming the mere reproduction of the central model on a portion of the territory. The colonial residues or the pro-West proposals that remain or prevail in the constituent processes in other latitudes of the world, just like for the forms of state and the forms of government, do not always achieve perfect adherence with the receiving juridical-political culture. As far as the types of state are concerned, decentralization is not always contained in the unitary, federal or regional models understood in the West. The imposed territorial models clash with different ethnic groups, religions, indigenous and political-economic paradigms, creating original legal-social structures, largely born from the superimposition of pre-existing legal-social structures, often through forms of colonialism.

The analysis of decentralization, capable of moving beyond the bureaucratic-administrative aspect, will try to highlight the multifunctional link between the distribution of political power and sovereignty with historical, traditional and cultural pre-juridical elements. For the reasons just mentioned, the study of decentralization phenomena can concern both the relationship between authority and society in the broad sense of the term, insofar as the peripheral entities represent the latter politically, and the mere distribution of power to the inside of the apparatus, intersecting interdisciplinarily also with the form of government.
The term decentralization is used to mean organizational policies regarding the ownership of certain functions and their effective exercise, which can affect all the types of state briefly mentioned above. As established in the doctrine, it initially implied the “bureaucratic decentralization” and the “institutional decentralization” (Pegoraro, Rinella 2017). The first indicates the mere administrative organization of the state, in which the central system, holder of the powers of control and direction, in a hierarchical relationship, aims to satisfy certain local and peripheral needs. So-called “institutional decentralization”, on the other hand, attributes functions, usually purely technical, to entities that are separate from the state for the exercise of economic activities. With administrative decentralization, on the other hand, a power that is not merely executive or functional is transferred to the bureaucratic machine; furthermore, it is not only aimed at externalizing a technical role, but also an effective decision-making power. This attribution of powers takes place through a specific connection, normally constitutionalized, no longer hierarchical but based on the criterion of competence, establishing limited powers of call-back (Pegoraro, Rinella 2017). Authoritative action in the exercise of administratively decentralized functions represents the first step towards the socio-political evolution of autonomy, affecting the form of state and the relations between authorities, freedom and citizens, expanding the decision-making space for certain purposes, which affect the conquest of legal powers or the change of political-administrative orientations up to the attribution of territorial legislative powers. These indications, as a rule, are included in the constitutional provision, and represent one of the triggers, in the case of intolerance of the reference system, of the appearance of a new constituent power. In some countries of the Latin American subcontinent, it is interesting to notice how the implementation of the political direction, which does not always follow a hierarchical order, is more incisive in the lower territorial levels (municipios, comunas) compared to intermediate levels (regiones, estados miembros) or there is “almost a substantial institutional equality between Municipalities and States” (Pegoraro, Rinella 2017).

In the sections of the Latin American constitutions dedicated to territorial organization and the choice of the type of state, the two main forms of territorial organization are generally found: “The largest states in terms of size and population were inspired by the US federal archetype, while most were born under the unitary state paradigm and adopted the Franco-Napoleonic model of organization” (Pavani 2019; Véliz 1984; see above, chapter 4). Following this overview of Latin America, it will be possible
to see how the types of state are converging within increasingly blurred categorical boundaries.

As has been carefully noted, the rigid separation between the unitary state and the compound state, which characterized the legal doctrine of the nineteenth and twentieth centuries, can officially be considered obsolete today, especially if we analyse Latin American “federalisms” (Pavani, Estupiñan Achurry 2016), between decentralization, indigenous communities and popular power in the new “socialisms”. By “federalism” we mean “the movement of thought that advocates a form of social organization capable of combining two opposite tendencies of modern society: that of globalization of the economy and sharing of resources on the one hand, and that of the defence of the cultural-historical identity of groups and individuals, on the other” (Bagni 2002), finding fulfilment in the federal state but without exhausting itself in it. Federalist practice and federal philosophy also manifest themselves in the unitary and regional state, and in its intermediate variants (Mastromarino 2010).

As G. Pavani recalls, in analysing the types of state and their relations with decentralization policies, pluralism, and the role of local or indigenous communities, within the formants, regarding legal norms, doctrine or jurisprudence, it is possible to identify the rules that, in a legal system, contribute to the achievement of the legal order (Sacco 1991; Pavani 2019), also with a specific definitional need. The comparative approach thus makes it possible to evaluate the trends towards the abandonment of classical taxonomies and to verify the evolutionary peculiarities of certain states (Pavani 2019; see above, chapter 4), through diachronic analysis, in contexts where principles rooted in the territories, through political-social actions, manage to become an integral part of the legal system of reference, intersecting at the various territorial levels and at the distribution of powers.

2. The peculiarities of the unitary state

We are assuming that even the unitary state can articulate its territorial organization in favour of basic entities, such as municipalities; of intermediate bodies, such as the provinces; of higher entities, such as regions or metropolitan cities. Local authorities can also join in association forms for the management and administration of specific services (Pavani, Pegoraro 2006).

Here, we will examine prototype models of unitary states with a centrifugal tendency and characterized by an asymmetrical declination of the prin-
ciple of autonomy, in which the influences of the theories of the new democratic socialisms are also evident: the plurinational state and the “unitary socialist state (“rule of law and social justice”) of the 21st century”.

2.1. The plurinational state

In the Latin American scenario, the concept of “plurination” is affirmed. The plurinational state, which is still difficult to define, emerged from the struggles and claims of indigenous communities-nations, carried out by indigenous movements, in particular in Ecuador and Bolivia, and sanctioned after the new constitutional reforms and the peculiar achievements of intercultural society. It embodies a model that is placed in the bed of the unitary state but composed of different nationalities within it: different cultures, traditions, languages and different peoples exist and are recognized with significant autonomy within a single state. Starting from the recognition of linguistic rights, the constitutional texts enunciate large declarations of collective rights and recognition of autonomies, allowing the drafting of very incisive detailed legislation, thanks to the extensive constitutional recognition. Specific competences are divided between the Legislative Assembly and the territorial and regional assemblies, from territorial economic management, and public finance, up to the recognition of specific procedural rights, with the establishment of special courts. While structuring itself on the liberal pillars of Western-style constitutionalism, the plurination proposes a strong evolution above because of the affirmation of the so-called “decolonized” social state, placing itself first of all as a claim of indigenous peoples (see above, chapter 4). The detachment from the concept of “minority” and its recognition, at the basis of liberal multiculturalism, highlights the affirmation of a fully intercultural society. Catalogued both within the types of state and among the forms of state, the plurination, structured on the regional-autonomía system, tries to distinguish itself from the federal systems, without, however, obtaining the hoped-for success, that is, the obvious detachment between the unitary and federal state. After the advent of multinational federalism (in which the prototype is recognizable in Canada), this is how plurinational regionalism in Latin America appears to be a mirror image. These experiments also create an interesting interconnection between neomunicipalism and regionalism (Pegoraro, 2016) an example of which is autonomía indígena originaria campesina (AIOC) in Bolivia, among the most combative and well-known in the area. In fact, it is also attributed to the
municipalities: “Son autonomías indígena originario campesinas los territorios indígena originario campesinos, y los municipios, y regiones que adoptan tal cualidad de acuerdo a lo establecido en esta Constitución y la ley” (art. 291, paragraph 1). This autonomia consists of “self-government, as the exercise of the free self-determination of nations and of the original peasant peoples, whose population shares their territory, culture, history, languages and organization or legal, political, social and economic institutions” (art. 289), and it is exercised through “its own rules and forms of organization, with the denomination corresponding to each people, nation or community, as established in the respective statutes and conformity with the constitution and the law” (art. 296). The plurination within the intercultural state, as also reiterated by the Bolivian Tribunal Constitucional Plurinacional, aims at re-organizing “unity in plurality”, through “plural structures of a community character” (SCP n° 1714/2012, 1 October 2012).

The role played by indigenous communities is one of the most significant elements of decentralization processes. Here, the fundamental directives are elaborated starting from the principles of pluralism and the rights of the original peoples: with the recognition in the constitutional texts of the rights of indigenous peoples, including territorial self-determination, and with the affirmation of the “intercultural” state (Bagni 2017), a break with the unitary model and assimilationist integration of the French type takes place, especially in Ecuador and Bolivia. In these countries, a territorial organization based on asymmetry has established itself, which is totally different from the process undertaken, for example, in Europe, which aims to recognize the rights of linguistic minorities or nationalities that pre-exist the formation of nation-states through pseudo-federalists built on the need for the mere division of the territory (Pavani, 2019). This “change of course” arises from the revolutionary and constituent thrusts of the most marginalized populations, especially indigenous ones, and from the needs of social inclusion and participation in the realization of social justice, to adhere to a single unitary state, and recognizing the ethnic element through a decentralized territorial organization. In these countries, the “political vanguards” of decentralization have made it possible to organize the unitary state in a renewed way, creating an intercultural national identity, recognizing the buen vivir-sumak kawsay (Baldin 2019). For instance, theories of “socialism sumak kawsay”/“Republican biosocialism” (Ramirez 2010) or “Andean community socialism”/“community socialism of vivir bien” (García Linera 2010), have been developed also to ensure that the constitutional structure allowed “the indigenous people of Ecuador and Bolivia, as well as oppressed peasants and workers, to have access to the insti-
tutional spaces of power and representation, and to contribute to the re-elaboration of the economic system; and to do this, they took into consideration the cultural and traditional peculiarities of the indigenous peoples of both countries. These governments have also organized meetings and promoted research to deepen the relationship between bueno vivir and socialism” (Hidalgo Capitán, Cubillo Guevara 2017). Intellectuals like Boaventura de Sousa Santos (2010) and François Houtart (2010) “have made a significant contribution to the development of the currents of Buen Vivir posdesarrollista and Buen vivir socialista” (Hidalgo Capitán, Cubillo Guevara 2017).

Art. 8 of the Bolivian constitution states that the state must also absorb and promote the ancestral/indigenous and ethical-moral principles of Bolivian plural society, such as: “ama qhilla, ama llulla, ama suwa (no seas flojo, no seas mentiroso ni seas ladrón), suma qamaña (vivir bien), ñandereko (vida armoniosa), teko kavi (vida buena), ivi maraei (tierra sin mal) y qhapaj ñan (camino o vida noble)”. In the past, the departments, an expression of the central state, did not have political autonomy in Bolivia.

With the new constitution and the proclamation of the plurinational state, the political self-determination of the regions has taken over, accompanied by a “paradigmatic model of the constitutional recognition of plurilingualism” (Buono 2016), providing for 37 languages, 36 of which are indigenous. In Bolivia there was also talk of “community democracy”, marking, as Carducci recalls, the difference between “consultation” or “information” of people, “endo-procedural” participation, and “holistic” and “biomimicry” participation (Carducci 2018). It is exercised “through the election, designation or appointment of the authorities and representatives of the nations and indigenous peoples of peasant origin” (Pegoraro, Rinella 2017), as reaffirmed pursuant to art. 11 paragraph 3 of the Constitution. They are provided for by art. 11, paragraph 2, of the Constitution, decision-making powers to meetings and cabildos. The people “through organized civil society, participates in the design of public policies and the control of the management of public affairs at all levels of government, as well as in public companies, with mixed participation and in private ones that manage tax revenues” (Pegoraro, Rinella 2017), as outlined in arts. 241 and 242 of the Constitution.

The jurisprudential formant, in particular of the Tribunal Constitucional Plurinacional, reaffirms the Bolivian paradigm of pluralismo jurídico egalitario opposed to unitary juridical pluralism: the state has not recognized “the (hetero) determination of recognized legal systems: it is the indigenous peoples themselves who - in exercising the right to self-determination - es-
establish the rules, procedures and institutions applicable to them, without state interference, in a constitutional framework that promotes the complementarity of functions and hierarchical equality between jurisdictions on equal terms” (Buono 2018).

Ecuador, in art. 57 of the Constitution, recognizes the right of minority groups to “maintain, develop and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization, and to exercise authority over legally recognized territories and community lands” (Pegoraro, Rinella 2017). Pursuant to art. 60, they can form territorial districts to preserve their culture, with the procedures established by law. Art. 171 of the constitution is dedicated to indigenous jurisdiction, offering communities legal institutions to resolve their conflicts (Baldin 2015; Pegoraro, Rinella 2017). Decentralization shows a highly developed local power for a unitary state, as confirmed also in this case by the jurisprudential formant, in particular of the Constitutional Court, in relation to the leading role of municipios (Tribunal Constitucional del Ecuador, Rol n° 050-2001-TC).

The constitutionalization of the principles of indigenous communities in Bolivia and Ecuador has also had an impact on the construction of new socio-economic models, allowing the development of new forms of state (Bagni 2013), modelled on the implementation of the concept of Welfare state (see above, chapter 3, § 6).

### 2.2. The socialist unitary state of the 21st century

Even following the transition from Estado socialista de trabajadores to Estado socialista de derecho with the new constitution in 2019, the Republic of Cuba shows interesting peculiarities, configuring what we can define as the “Socialist unitary state of the 21st century”. The Cuban constitution maintains the unitary and socialist form of state, and provides, after the enunciation of the principles governing the Gobierno provincial del poder popular, the institution of Organos locales del poder popular. Among the duties of the Municipal Assembly of People Power, the art. 191 of the constitution refers to the duty to guarantee the participation of the territories, in the wake of the new “socialisms of the 21st century”. As political-administrative demarcations divide the national territory, the Local Administrations direct the economic bodies and services to meet the economic, health, educational, cultural, sporting, recreational and environmental protection needs of the community of the territory affected by the jurisdiction of the respective Assembly. Pursuant to art. 192 of the Constitution, for the
exercise of their functions, the local Assemblies of popular power rely on work commissions, on initiative and wide participation of the population, and act in close coordination with mass and social organizations. In particular, they rely on the consejos populares, which are made up of cities, towns, neighbourhoods, rural areas. Invested with the highest authority in the exercise of their functions, they represent the territory in which they are established. Among their main objectives is the development of the production and supply of services and for the satisfaction of the assistance needs of the population, both economic and educational, cultural, environmental and social. This is done through the promotion of popular participation and local initiatives. The consejos, pursuant to art. 194 letter a) of the Constitution, are made up of the delegates elected in the constituencies of the district of the Municipal Assembly and subsequently elect the President from among them. The delegates, pursuant to art. 195 letter a) of the Constitution, have the duty to “mantener una relación permanente con sus electores, promoviendo la participación de la comunidad en la solución de sus problemas” (D’Andrea 2019). These consejos did not fail to demonstrate, however, signs of weakness due to a lack of accountability established by law, with the consequent limitation of autonomous powers. A radical transformation is expected, following the entry into force of the new constitution, in particular concerning a “bottom-up” mechanism of decentralization and democracy.

Among the general provisions of the electoral system, art. 204 crystallizes precisely the paradigm of participation combined with the representative one, as “todos los ciudadanos, con capacidad legal para ello, tienen derecho a intervenir en la dirección del Estado, bien directamente o por intermedio de sus representantes elegidos para integrar los Órganos del poder popular, y a participar, con ese propósito, en la forma prevista en la ley, en elecciones periódicas y referendos populares, que serán de voto libre, igual y secreto”. The rights de petición y participación are regulated by art. 200 of the Constitution, in the section relating to Garantías a los derechos de petición and participación popular (D’Andrea 2019). Pursuant to art. 176 of the new electoral act of 2019, n. 127, 50% of the total pre-candidates to be elected for the Provincial Assemblies and for the National Assembly must be constituted among the delegates of the municipal assemblies. The art. 153.1 also provides that: “The nomination commissions are made up of representatives of the Central Workers House of Cuba, the Committees for the Defense of the Revolution, the Federation of Cuban Women, the National Association of Small Farmers, the Federation of University Students and the Federation of Middle-High School Students, nominated by the respective national, provincial and municipal directorates”. It should be noted that “the overwhelm-
The majority of the nearly 8 million citizens over the age of 16 with the right to vote belongs to these mass organizations. They represent an element of particular significance on the front of political participation, as a real link between the electorate and the representative bodies” (Sciannella 2020).

A historical institute theorized by Fidel Castro, to implement popular participation and for the continuous renewal of Cuban socialism, is the “Consulta popular”. We also find it in the new constitution ex art. 108, lett. c). The National Assembly may submit legal texts to him if it deems it appropriate “regarding the nature of the legislation in question”. In the legislative history of Cuban socialism, this institution has been used to elaborate, with popular participation, the legislative contents then proposed in the consequent referendums, to make the people participate beyond the mere approval or repeal of an act or statute. “It represents one of the most significant institutions of participation in the constitutional architecture of Cuban socialism, used by Fidel Castro to strengthen ties with his people” (Sciannella 2020). The most varied political-legislative projects were discussed by means of the Consulta popular, from the 1976 reform of the constitution, up, for example, to the Criminal Code of 1979, the Labor Code of 1984, the Act on agricultural cooperatives of 1982, etc. Under the influence of the Marxist and Leninist doctrine, democracy cannot and must not be exhausted, in the Republic of Cuba, in the mere exercise of voting in cyclical elections, but in the participatory practice and popular control, through that decentralization aimed at the construction of popular power.

The new Cuban constitution of 2019 was certainly not born from the emancipation from the conditions of exploitation and marginalization of indigenous communities, as happened in other Latin American countries. Consider the lack of indigenous “continental” social conflicts (in particular Andean) and the central role played by indigenous nationalism in contemporary Cuban history and mestiza culture, guiding philosophy extrapolated from the intellectual contribution of José Martí, poet and national hero, a symbol of the struggle for Cuban independence. In Cuba, characterized by “socialist legality” (art. 9 of the Constitution), there are different declinations of the concepts of participation and pluralism as compared to, for example, the new unitary states of the nuevo constitucionalismo latinoamericano (D’Andrea 2019). As in the previous constitutional text, there is no reference to pluralism and multiculturalism in the constitution. The prohibition of discrimination is reiterated in art. 42, which includes gender, sexual orientation, gender identity, age, skin colour, and disability, among the reasons that prohibit any discrimination concerning the previous constitution. But, as T. Volpato recalls, the
perception of multiculturalism in Cuba is detached from the strictly political conception, unlike the principle of equality and non-discrimination, “being (on the contrary) a vision aimed at evaluating the mentality and the use of cultural diversity as elements of exchange and syncretism which, on the island, seem to represent the most developed practice of cultural coexistence. From this perspective, Cuba embodies a clearly multicultural socio-cultural environment, of which integration and intergroup practice are its most relevant elements” (Volpato 2013). The pluralism “underlying this model represents a theoretical meta-dimension that despite ignoring the demographic-descriptive, programmatic-political and ideological-normative meanings (internationally recognized as multicultural reference models for the implementation of policies in modern liberal-democratic states), perpetuates the principle of relative self-ascription as an essential condition for the production of a certain type of ethnic classification which, if recognized institutionally, would almost automatically assign a specific position and status to the participants to the Cuban social structure” (Volpato 2013). The cultural integration of the late nineteenth century went far beyond a simple form of cultural contamination, transforming itself into a social mutation which, at its origins, affirmed the existence of “revolutionary traditions that proclaimed that all Cubans were equal” (De la Fuente 2000) and that guaranteed the same right to claim the birth of a new nation, generated by their collective action. Sticking to the mere constitutional text, the same concept of balance and equity is increasingly consistent with the concept of socio-cultural absorption and assimilation. But sociological observation tries to confront itself with its most intimate aspects, highlighting in the constitutional text the common revolutionary resistance of cultures within the same territory, of the same unitary state. In these terms, “the diversity and the different needs of each national cultural group coexist without mixing, in a symbolic universe that includes diversity, not as a limitation to integration and coexistence”, but highlighting an “innovative perspective of the contemporary multicultural phenomenon” (Volpato 2015).

3. The peculiarities of the federal state and the “socialist federalism of the 21st century”

The doctrine has always included Argentina, Brazil, Mexico and Venezuela among the Latin American federal states, as per the constitutional dictate, highlighting the goal of limiting central power along the lines of the North American system, where anything that is not attributed to
Federación is reserved for Entidades federativas (Carpizo 1973; Pavani 2019; see above, chapter 4).

In Latin America it is customary to speak of “centralist federalism” (see above, chapter 4). As Pavani recalls, he does not refer to the mere centralization of power, already common to the evolution of modern federalism after the First World War, as a consequence of the new conditions of modern society and increasing industrialization, but to that federalism in which the state, provincial or regional powers, and local authorities are entirely oriented by the decisions taken at the national level by the central power, where the impact of provincial or regional and local power centers on political decisions is often irrelevant (Pavani 2019; Fernández Segado 2002). This tendency towards the centralization of power has often been supported also by the jurisprudential formant, through a “centralist jurisprudence” (Pavani 2019; see above, chapter 4).

In the observation of Latin America, the country that traces the federal state in a particularly different way is Venezuela, where the peripheral bodies are above all without a representative chamber. The art. 136 of the constitution establishes that “public power is divided into municipal power, state power and national power”, thus identifying the three levels of power.

Since 1901, when the liberal federal state system established in 1864 collapsed, Venezuela gradually began to become a “centralized Federation” through the national concentration of almost all powers; a situation that essentially continued until the new constitution, despite the political-institutional changes of 1946 and 1958 (Brewer-Carías 2003). With the constituent process of 1999 the art. 4 states that “La República Bolivariana de Venezuela es un Estado federal descentralizado en los términos consagrados en esta Constitución”, recalling the wording of art. 2 of the 1961 constitution, according to which “La República de Venezuela es un Estado Federal, en los términos consagrados por esta Constitución”. However, many principles of the Ley Orgánica de descentralización, delimitación and transferencia de competencias del poder público of 1989 are constitutionalised (Brewer-Carías 2003; Brewer-Carías et al. 1994). These measures were followed by others, such as the elimination of the senate, establishing, pursuant to art. 186 of the Constitution, a unicameral parliament: the National Assembly. The redistribution of power must take place, pursuant to art. 4, “por los principios de integridad territorial, cooperación, solidaridad, concurrencia y corresponsabilidad”.

In addition to the above principles, art. 165 of the Constitution, which refers to the concurrent competence between the three territorial levels of public power, refers the development of institutions to the ordinary law,
through leyes de bases issued by “poder nacional, y leyes de desarrollo aprobadas por los Estados”, specifying that “Esta legislación estará orientada por los principios de la interdependencia, coordinación, cooperación, corresponsabilidad y subsidiariedad” (Brewer-Carías 2003).

Concerning the principle of interdependence, the territorial levels, in the exercise of concurrent powers, must express relationships of dependence on each other, on a reciprocal basis and through coordination. This coordination is then in practice controlled and managed by an intergovernmental body set up by the new constitution ex art. 185: the Consejo Federal de Gobierno (Brewer-Carías 2003). As reiterated in art. 136, each of the branches of Public Power has its own functions, but the bodies responsible for its exercise must collaborate for the realization of the objectives of the state, under the validity of the cooperative principle and solidarity between political entities, thus establishing cooperative federalism as opposed to dual federalism, which on the contrary is based on an agreement between the different political-territorial entities and which would embody the principle of the intangibility of action of federal power. An institutional expression of Venezuelan cooperative federalism is given precisely by Consejo Federal de Gobierno. It is from this body that it depends, pursuant to art. 185 of the Constitution, the inter-territorial compensation fund, “intended to finance public investments aimed at promoting the balanced development of the regions, the cooperation and complementarity of the policies and development initiatives of the various local public bodies, and above all to contribute towards essential works and services to less developed regions and communities. The Federal Council of Government, based on regional imbalances, annually discusses and approves the resources to be allocated to the Territorial Compensation Fund and the priority investment areas to which these resources should be allocated”.

The vertical distribution of public power between municipal, state and national power, in the terms defined in art. 136 of the Constitution, makes it possible to distinguish between the powers assigned to the bodies of the three territorial levels and the matters of respective competence, pursuant to art. 156, 164, 178 and 179 of the constitution (Brewer-Carías 2003). As for the municipios, the constitution also establishes the normative distinction between “atribuciones” and “materias”; art. 178 regulates “la competencia del Municipio” translated into a series of not exclusive materias; and in articles 174 et seq. are specified atribuciones of the organs of the municipal public power, which are exclusive: the competence to exercise the legislative function of the municipality is attributed to the Town Hall
Council, and to the Mayor the competence to exercise “the government and administration of the municipality”, pursuant to art. 174 of the constitution (Brewer-Carías 2003).

A central role, in the legislative deployment that has structured popular power, is covered by art. 184 of the Constitution, which establishes that the law defines open and flexible mechanisms to ensure that states and municipalities decentralize and transfer certain services to organized communities and groups of citizens. This has allowed an innovative ramification, the expression of a specific federalist practice inspired by the constitution, through forms of institutional decentralization in other territorial spaces, influenced by the evolution of times and internal migrations, going beyond municipal decentralization. Currently, the consejos comunales and the comunas have a central role in Venezuela.

Starting in 2007, with the announcement of the government to build the “21st-century socialism”, a series of considerations were formulated, which directly influenced the political-territorial division of the Republic, since they included the creation of comunas, entities modelled by the aggregation of communities and constituted as forms of self-government and direct democracy, to build that effective territorial decentralization in which popular power could be expressed.

In the establishment phase, in particular with the reform of the Ley Orgánica de descentralización, delimitación y transferencia de competencias del poder público in 2009, the control of the reorganization process was transferred to the central state. Then, with a series of acts on popular power of 2010, the system of interrelationships of the comunas is realised, which fuels the political-territorial decentralization and the distribution of power at the local level. In carrying out the project of this federalism of “21st-century socialism”, socialism, in Venezuela, becomes a non-partisan value closely linked to the concept of “suprema felicidad social”, of autonomy and protagonism.

Socialism is precisely defined by the Organic ley of the poder popular of 2010 as “a kind of social production relations, focused on solidarity coexistence and on the satisfaction of the material and immaterial needs of the whole society, whose fundamental basis is the recovery of the value of work as a producer of goods and services to satisfy human needs and achieve the suprema felicidad social and integral human development. For this, it is necessary to develop social property concerning the basic and strategic factors and means of production, which allow all Venezuelan families and citizens to use and enjoy their individual or family assets or property and exercise the full enjoyment of their economic, social, political and cultural rights” (art. 8.14).
This development is possible through Popular Power, defined in art. 2 as “The full exercise of sovereignty by the people at the political, economic, social, cultural, environmental, international level and in all areas of desenvolvimiento y desarrollo of the society, through its diversas y disímiles forms of organization, which build the Estado comunal”. The *Estado comunal* is defined as a “Form of political-social organization, based on the democratic and social rule of law and justice established in the constitution of the Republic, in which power is exercised directly by the people, with an economic model of social ownership and sustainable endogenous development, which makes it possible to achieve the supreme social happiness of Venezuelans in socialist society. The *comuna* is the fundamental conformation cell of the *Estado comunal*” (art. 8.8).

The *comuna* would therefore be the ideal space to form self-government: a space with a smaller territorial dimension than the *Municipio*, but greater than the area of the *Consejo comunal*: it must be economically self-sustainable and must receive the transfer of certain functions and services performed up to now by municipios. This proposal was contained in the *Primer Plan Socialista de Desarrollo Económico y Social de la Nación* (2007-2013) which contemplated the creation of a new institutional framework in which the *comunas* were to become “the fundamental cell for the formation of the *Estado comunal*”, as required by art. 8.8 of *Ley orgánica del poder popular*. The *consejos comunales* are conceived as organs for the direct exercise of popular sovereignty and the *comunas* are framed in the geographic and population area that allow the deployment of *consejos* themselves. The construction of popular power represents the fundamental objective, and has, as its purpose, pursuant to art. 4 of the *Ley orgánica del poder popular*, to “guarantee the life and social well-being of people, creating mechanisms for their social and spiritual development, seeking equal conditions so that everyone can freely develop their personality, direct their destiny, enjoy human rights and achieve supreme social happiness; without discrimination based on ethnicity, religion, social status, sex, sexual orientation, gender identity and expression, language, political opinion, nationality or origin, age, economic position, disability or any other personal, legal or social circumstance, and which has the consequence of cancelling or compromising the recognition, enjoyment or exercise of human rights and constitutional guarantees”.

In the third final provision, as far as indigenous communities are concerned, it is established that “the exercise of the participation of the people and the encouragement of the initiative and organization of popular power
established in this act, will be applied in indigenous cities and communities, according to their uses, customs and traditions”.

As established in the definitions referred to in art. 3 of Reglamento de la Ley Orgánica del Consejo Federal de Gobierno (Gaceta Oficial No. 39.382 of 9 March 2010, Decree No. 7.306 09 of March 2010), Venezuela establishes a cooperative federalism that we can define as “21st century socialist federalism”.

In Venezuela, “federalism” is clearly defined in Reglamento as “a system of political organization of the Bolivarian Republic of Venezuela, governed by the principles of territorial, economic and political integrity of the Venezuelan nation, cooperation, solidarity, competition and co-responsibility between the institutions of the state and the sovereign people, for the construction of socialist society and of the democratic and social rule of law and justice, through participation protagonica of the organized people, to perform functions of government and administration of factores and medios de producción de bienes y servicios of social property, as a guarantee of the full exercise of popular sovereignty against any attempt by national and regional oligarchies to concentrate, centralize and monopolize the political and economic power of the Nation and the regions”.

It is defined, in Reglamento, also the descentralización: “Strategic policy for the full restitution of power to the sovereign people, through the gradual transfer of competences and services from national, regional and local institutions to organized communities and other basic organizations of popular power, aimed at promoting popular participation, realizing authentic democracy by restoring the government’s capacities to the people, establishing efficient and effective practices in the distribution of financial resources and promoting complementary and balanced development in the regions of the country”.

4. Conclusions

If we look at the new constitutions of Ecuador and Bolivia, the objectives of creating a plural society, always within the figure of the unitary state, as stated in the constitution, characterize in full the political processes and, therefore, also the processes of decentralization and recognition of the original nations, through the elaboration of the “plurinational” state.

Cuba, a unitary state “socialista de derecho” ex art. 1 of the new constitution of 2019, proposes different and innovative declinations of the concepts of decentralization, participation, and pluralism linked to its historical, po-
itical, economic and cultural substratum, innovating both the contempo-
rary multicultural phenomenon and the democratic participation of local
populations-communities.

In Venezuelan federalism we can see a promotion “from the center” of the
process of transfer of power, with an active impact on the planning, execution,
control and evaluation of public policies, and a specific form of implementation
of participatory democracy and of “popular power”. The art. 25 *Ley orgánica del
poder popular* specifically provides: “The national executive power, in accordance
with the development and consolidation initiatives originating from popular
power, will plan, articulate and coordinate joint actions with social organiza-
tions, organized communities, municipalities and systems of aggregation and art-
iculation that arise among them, with the aim of maintaining consistency with
national, regional, local, municipal and community strategies and policies”. The
national central government also puts into practice mechanisms for the attain-
ment of national unity through central management aimed at implementing
the model of cooperative federalism, in particular on the fiscal level to reduce
the economic discrepancies between federated states. At the same time, through
an innovative process of construction of participation, linked to the new theo-
ries of “21*-century socialism” and to the new acts on popular power of 2010, a
completely new experiment is put into practice aimed at creating mechanisms
of self-government, pluralism and popular power through which, together with
“states” and “municipalities”, local and indigenous communities also participate
according to their uses, customs and traditions.

In all the cases analysed, the theoretical influence of the new “democratic
socialisms” - “21*-century socialisms” is evident.

We can conclude, therefore, not only by confirming that in the Latin
American subcontinent, the federal state has by now distanced itself from
the North American archetype, just as the unitary state has distanced itself
from the Franco-Napoleonic model, but also that states and peoples, with
their own historical, political and cultural peculiarities, can deploy innova-
tive forms of organization of the state, of popular power, of decentralization
and pluralism, in relation to local and/or indigenous communities, deliver-
ing, in the presence of the legal scholar, increasingly numerous and frequent
“defining oxymorons”.

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