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INTERVIEW WITH:
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CARACAS, VENEZUELA
MARCH 10, 2000

FERNANDEZ: I'm printing a document that establishes, in a very general way, how the legislative process in Venezuela works. We have a new Constitution that's changed the structure of the National Legislative Power. The previous Constitution, of 1961, was a Constitution that recognized a Legislative Power known as the Congress of the Republic, which was bicameral; it had two houses (*cámaras*): the Senate House (*Cámara del Senado*) and the House of Legislators (*Cámara de Diputados*). In the last elections it had an integration of approximately 300 [people] between legislators and senators.

The new Constitution [of 1999] changes the name from Congress of the Republic to National Assembly. This Assembly's unicameral; it's transformed into a single house and is integrated from three different sources. On one hand, as a base, all of the States and the Capital District have three legislators, and then, according to the population, in a populational base of 1.1% of the national population, each State will have an additional number of legislators added to this base of three. The third source is an integration by some special electoral districts for the indigenous; there's a representation of three indigenous members in the National Assembly.

This unicameral structure has modified several things. It's modified the legislative initiative. Now there are more bodies (*órganos*) with legislative initiative. The Constitution of 1999 outlines five powers: the Legislative Power, the Executive Power, the Judicial Power, the so-called Citizen Power and the Electoral Power. The five powers have legislative initiative, so the number of institutional bodies (*instancias*) that have legislative initiative has increased. But also, for example, the States' Legislative Councils have legislative initiative. In other words, the States' legislative powers can also present bills to the National Assembly.

In addition to this, the law formation process has been modified a little. Here I'm going to explain to you a little about how the National Legislative Commission works at this time; what you should remember is that it's a transitional body (*órgano*) until the National Assembly's elections in May. However, it's necessary to point out that the National Legislative Commission has all of the capacities (*competencias*) of the National Assembly. So it can legislate, and in fact we've already legislated. Yesterday a general political amnesty law came out and there are already several bills that are being working on. Two particular (*puntual*) modifications have already been made to two laws: a bank debit law where the stock exchange is exonorated of that tax, and one on the budgetary regimen's (*régimen*) organic law that, since there's been a modification to the name (*denominación*) of some institutions and [the creation of a number of] new institutions, it's necessary to give an account *(el carácter de cuenta*) to some of these new institutions or to those that've changed their name, before they can execute their budget. To have the budget in form.

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However, this legislative budget that we're executing, is the same legislative process that's provided by the Constitution of 1999. It's a process that implies that there can be two or three discussions. The Constitution states that once any bill's admitted and a decision's made to pass it on to the plenary for discussion, that the first discussion of the project will be a general discussion regarding the reasons, the aims, purposes, and objectives of that law. It's a very general discussion and it's also a discussion that deals with the law's political and economic viability. Then, having approved that law with or without modifications, it's passed on to the specialized commission which deals with that topic and that Subcommittee, in a second discussion, presents a report on it. The Constitution orders that this second discussion must be an article-by-article discussion. So, it doesn't matter what the size of the law is, it has to be read article-by-article and approved on article-by-article. If the law's approved article-by-article in this second discussion, it's authorization (*sanción*) is declared and it's then remitted to the Executive for an "execute it" or "carry it out" and for it to be published in the Bolivarian Republic of Venezuela's Official Gazette (*Gaceta Oficial de la República Bolivariana de Venezuela*). If in the second article-by-article discussion there are modifications to that project, and there are differences from the project that was sent, it's remitted once again to the Commission that had been studying it and then a third report's presented to the plenary for it's discussion, and now there isn't a discussion of all of the articles, but only the articles which were modified. So the laws can have two or three discussions depending on whether there are modifications or not in the second discussion. This is a little of the general process of law formation in the 1999 Constitution.

JOHN: And why the transition from a bicameral to an unicameral legislature?

FERNANDEZ: I can't say that there's only one reason, nor that it's a completely rational reason. I believe that it was mainly the product [of a source (*matriz*)] of public opinion criticizing the Congress of the Republic for being very slow in decision-making, being very slow in the approval of laws and moreover, that it was very big and excessively onerous. I should say that it's fundamentally due to political reasons, not a typically rational one *(no propiamente por una racionalidad)*. From the rational point of view, it's contradictory that a State which declares itself as Federal doesn't have a house (*cámara*) of territorial representation that should be the Senate. That's contradictory. However, I believe that what moved it here -more than a rationality about the type of State- was a concern (*aprehensión*) regarding the opinion source that said that the Congress was slow, that the Congress was very big and that the Congress was very expensive. That's what I believe fundamentally moved us towards a unicameral legislature.

Of course, this is why the third discussion's born, as a balance to the existence of unicameralism (*unicameralismo)*. It's also the reason why the existence of an integration of the States where all equally have at least three legislators (*diputados*) is born. This is a little of what we could say was the equitable relationship that there was in the Senate; to try to impede the great populational inequalities that there can be between one State and another. Of course, it's simply an attempt to resolve the problem; it doesn't totally solve it. But that's why, that's the main reason.

JOHN: Do you believe that the National Assembly is going to be more important to the political process, that it'll have more autonomy before the Executive?

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FERNANDEZ: Yes, I believe so for several situations. There are two elements that should be analyzed in this. One, the particular political composition as the result of an election. It doesn't matter what type of parliament it is. If the absolute majoritiy of the parliament is from the same party or of the same force or political character (*signo*) as the President, for example, it doesn't matter, in any part of the world it doesn't matter. **[I DON'T UNDERSTAND THE FOLLOWING PART]** The "checks and bang" mechanisms that Carlos knows will always be a problem, except for some places like in the United States where the attribution (*adscripción*), the parties aren't understood as we understand them. A Democrat can vote perfectly well for the Republicans and the Republicans can vote for the Democrats. There's a flexibility, but it's almost a very unique case. If we speak of the English, European or the Latin American Parliaments where there's a structure of parties, which create the so-called sufficiently disciplined parliamentarian factions (*fracciones*), it's difficult in that case.

JOHN: But for example in Uruguay, there are divisions among the parties and ties to the States.

FERNANDEZ: Exactly. In the Venezuelan case, yes, a greater tendency has been seen to make the legislators' discipline more flexible or less rigid. It's a tendency that was already seen in the previous Congress. I believe that in the new National Assembly, which is composed of not very disciplined new parties, that that tendency may be more pronounced. However, there's still a certain party discipline. It's going to be a.....

In my opinion, the new Assembly's composition is going to be a composition of parties where a certain level (*rango*) of discipline will be respected and therefore, if this National Assembly -which is the most probable (*previsible*)- has the same majority or character (*signo*) as the President, evidently, possibly the controls won't be applicable, to say it in some way. However, the Constitution of 1999 establishes greater and more profound controls on the Executive than those of the previous Constitution. For example, we've passed from a presidential government system, to a semi-presidential system with some special characteristics, or in other words, a kind of a Venezuelan-type of semi-presidentialism (*semi-presidencialismo a la venezolana*).

The case of the Vice-president, really, he's the great national public administration coordinator and the National Assembly can present a censorship motion against him; if the motion's voted by a qualified majority, that Vice-president would be automatically dismissed and couldn't even be reincorporated in any other government position. The Assembly can do this; however, if the Assembly does it on three or more opportunities, as a balance -the same as in the French system- the President has the faculty to call for elections in advance *(elecciones anticipadas*) from the Parliament. It resembles Peru a little, but I'd say that it's more similar to France. The difference with France is that the French Prime Minister requires a vote of confidence (*voto de confianza*) from the Parliament and he's usually the National Assembly's main faction leader. In the case of Venezuela, the Vice-president - who's really like a Prime Minister - is designated by the President but he's controlled by the Parliament. This evidently commands a negotiation between the Vice-president and the Parliament in many cases, and it necessitates a greater relationship.

JOHN: Does he have constitutional powers?

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FERNANDEZ: Yes, he has powers. For example, the Vice-president has the jurisdiction (*potestad*) to propose the appointment and dismissal of Ministers to the President. He appears in the Constitution as the national public administration coordinator. He can even gather the Ministers' Council (*Consejo de Ministros*) together, autonomously, upon the President's instruction, and he can carry out any of the President's activities that are delegated to him. Also, how much more or less autonomous the Vice-president is will depend on the confidence that the President has in that Vice-president and the delegation of competence (*delegación de competencia*) that the President gives him. In any event, it's also clearly established that the Vice-president presides over the so-called Federal Government Council which gathers both the Ministers and Governors in equal representation; in addition, the Territorial Compensation Fund is established in this Federal Goverment Council. So, it's a body (*instancia*) for resource distribution based on a coordination of public policies. This gives great strength to the Vice-president because he's also the great coordinator, for the decentralizing process (*proceso descentralizador*), of the three political territorial levels with resources.

The Vice-president also presides over the so-called State Council (*Consejo de Estado*) which is kind of an advisory body to the President of the Republic, made up by the different national public powers, whose mission is that of proposing State policies to the President. So, constitutionally the Vice-president has a series of attributions that give him great autonomy and great weight, but also, constitutionally, he's the one who's responsible for the relationship with the Parliament. The Vice-president has the capacity (*competencia*) to interelate (*relacionar*) the Executive with the Parliament. This means that it's not the classic figure of Vice-president in Latin America or in the United States whose purpose is presidential succession. Here its purpose is also presidential succession, but in addition he has many functions that are similar to those of a prime minister. I repeat, the difference with the systems, like the French system, the difference is that the Venezuelan Vice-president doesn't require the Parliament's vote of confidence (*voto de confianza*). But all the rest is extremely similar.

So, this means that the Parliament will have greater faculties of control over the public powers and mainly on the public administration than those that it had before. In that sense, one could say that the Parliament, institutionally, can end up having much more weight, more strength than the Congress of the Republic had before. But of course, this element of institutional design must be challenged with the element of political integration. Both of these elements will tell us whether it'll have a greater weight or not. In my opinion, it'll have a lesser weight if the next National Assembly's very homogeneous and if it's heterogeneous, it'll have a greater weight. In any event, the control mechanisms that it has over the other public powers are clearly established in the 1999 Constitution.

JOHN: What about the ties (*vínculo s*) between the representatives and the electors in their districts? I understand that in the previous period the tie was very close with the voters and very strong with the parties, with the parliamentary factions. Will it change? In the new National Assembly will a stronger tie be made with the voters?

FERNANDEZ: Here, once again we'll have to see. There's a new institutional design that specifically seeks to link the representatives more with those they represent and to create a control by the voters' grassroots (*base*) over those who're elected. In that sense, for example, in the Constitution of 1999 the

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possibility of the so-called abrogative referendum (*referéndum revocatorio*) appears; this makes possible for -at the middle of the [representatives'] term (*periodo*)- a percentage of the voters to request of the National Electoral Council the opening of an abrogative referendum to dismiss a representative of the National Assembly, for example. This creates certain control mechanisms over them. In addition, the candidates' obligation to present government programs, as well as their obligation to render accounts (*presentar cuentas*) to their voters appears in the Constitution.

Besides the abrogative referendum, it's clearly established what could be other voters' control mechanisms over the representatives, but that would have to be left to the law's development, which hasn't taken place yet. Nevertheless, it seems that yes, there's a greater inclination in the institutional design for that to take place. However, in any case, it should be pointed out that this is also a cultural problem.

In the Venezuelan case 60% of the legislators are foreseen to be elected nominally, but there are 40% of the legislators who're elected according to the proportional representation that each party obtains. So that not all of the legislators will be related also, let's say, with their electoral base. It's not a system like the majority system that's established in the United States or in some parts of Europe or in England, where all the representatives are elected uninominally (*uninominalmente*), since the tie with its electorate's very strong. Here it's a bit weaker, but the tendency in the country is that the people are voting for persons for the most part, for people who they know by both first and last names and less for political parties. What could occur, and it's what's been felt lately with this new process over the last two years, is that if there's what we call an "*entubamiento*" in the case of President Chávez and the *Movimiento Quinto República* (Fifth Republic Movement) -that indeed have a great popularity in the country- there may possibly be votes for many legislators who the people don't necessarily know. In other words, in this case these legislators owe their seat (*curul)* to the party and President Chávez rather than to the populational base. But I think that it's a momentary situation because the tendency in the country, or what we seem to be seeing, is that more and more the people want to know the candidates to a greater extent and want to vote with first and last names.

JOHN: A question on the legislative procedure. About two or three years ago electronic voting machines were installed in the Senate and in the House, but I've been told that the old Congress never used them nor were they used during the National Constituent Assembly. Why didn't they use them?
FERNANDEZ: Several things. First, the electronic system that was established was established for the Congress and indeed it's installed. It wasn't used by the National Assembly because a reprogramming was necessary which implied a cost and they didn't want to incur that expense. At this time the same thing occurs with the National Legislative Commission, but I imagine that the National Assembly can use it. Nevertheless, in the case of Venezuela it's necessary to point out that we're just barely entering into the computer science culture. I'll explain, here the use of computer science has existed for many years and I think that we have a good technological performance in the country, however, in public matters and with regard to politics there are some apprehensions on its use, about if it's intervened or not, etc., etc. There's some mistrust about this. Here, curious situations have occurred where, for example, they were going to use some electronic machines in some elections at the University

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and, for example, the Science Faculty, the professors, refused to use them. [Imagine that] they being science professors.

However, it must be said, that the last four elections have taken place with an absolutely automated totalization (*totalización*). And in the universities and in many places they're using totalization machines already. Voting machines still haven't been used in the elections, but rather totalization machines.

In the Venezuelan case, this system still hasn't totally been used in the Parliament. It was used on a few opportunities, but the system's there. The hardware, the software is there and what needs to be done is simply an adaptation to the new National Assembly and really, I believe that it can be used without any problem. But, I repeat, I think that they're more apprehensions of mistrust in the political case and they prefer to vote the votes hand by hand than use this automatic voting.

JOHN: I have a personal interest [in this] because I use this type of data from many countries in my research, but it also interests me because around two or three years ago in Peru, similar to Venezuela, they installed machines. At the beginning they didn't use them but there was a debate in the plenary of the Peruvian Congress; they put the argument of government transfer *(en debate de transferencia de gobierno*) to debate and there was a division between the government party of the change of 1990, of Fujimori, with those who agreed with the government's decision, but eventually they had to use these machines. Now they use them and immediately afterwards they put all the votings on the Internet. Similar to Brazil, similar to Chile, it's similar to Nicaragua which installed them some months ago. Immediately this history of the votings is a political resource for the journalists, for other politicians and sure, for enemies, too. But it seems to me that the argument in favor of the transfer has strength.

FERNANDEZ: Yes, it interests me the same as you, because those of us who're researchers in political science or public law we're really very interested in knowing what the behaviors are in the votings and how they can modify [the votings] and also, the reasons why they can modify the voting of a matter to another or why at a given time the political faction's discipline is achieved and in the other case it's not. One could even try to ascertain the voting with regard to the attributions (*adscripción*) of the legislators to different regions of the country. It would give us a lot of data and indeed, it would be very rich. I believe that that's going to come. I repeat, in the Venezuelan case, the hardware and software's installed, the only thing that's needed is to adapt it to the new Assembly. It's a system that's voted on; it's a laser reader of the fingerprint *(es una lectora láser de la huella digital*). You place your thumb down and immediately you proceed to the voting. I think it will be an useful tool, but it's been very underestimated and used very little.

JOHN: Well, these are all of my questions.