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Abstract: The paper start with the classical theory of the separation of powers, and explain how this system was broken in the new century in Latin America, especially in the Andean countries, because of huge political and economic crises which destroyed the traditional system of political parties. That rises a new activism which try to find new spaces of participation in the public management.

In Ecuador’s case, the citizen power force the government to call a Constituent Assembly in 2007 that redacted a new Constitution which was approved with a large majority in October of 2008.

This Constitution configure a new system of the separation of powers, with two new powers, one in charge of the electoral system, and the fifth power configured to represent the citizens with the special function of Transparency and Social Control of the public institutions.

The paper makes a special emphasis in how this new function changes its true role of citizen representation to a new one dependent the huge power of Executive in a hyperpresidentialism system.

Key words: Transparency; Citizen Participation; Social Control; Citizen Revolution; Latin America; Ecuador.


\(^1\) The original paper was written in Spanish, so the present document is a translation. It could contain mistakes because English is not my native language.
I. Introduction.

This paper has four sections, where we try to explain the concept of the fifth power in Ecuador and how it could be only a fictitious construction of the actual regimen. It starts with the classical view of separation of powers, and then analyzes the most important elements of it, especially with Montesquieu theory. Then we explain the position of the Ecuadorian constituent assembly and what they tried to do with the position against the classical view of separation of powers. In this part, we explain the idea of citizen participation and how it has been important in the new constitutional regimen.

In the second part, we study the reality of Latin America, especially the evolution of constitutional regimen, and how all the European ideas of Welfare State has been changed and adapted with the local reality. The papers focuses in two elements, first in the influence of the Bolivarian Revolution, because it has been the start of citizen participation around the continent, in a initial moment with the Constitution and then with the influence of Colonel Chávez in the ALBA movement. After, we discuss the idea of Ecuadorian Citizen Revolution, the role of Correa and his political movement, PAIS. We explain the political project and its execution during Correa’s administration (2007-present) and, present a critical view of the citizen participation system and how it had been used in his benefit.

In the third part, we focus in the new institutions that have been created associated with the Fifth power. We describe the Transparency and Social Control Power, how it has been contemplated in Ecuadorian Constitution, which institutions are part of it, and then we explain the idea of a critical institution, Council of Citizen Participation and Social Control, the concept, its functions, and why this new organism has “institutionalized” the citizen participation. At the end of this epigraph we try to explain others form of citizen participation: national and local.

The last chapter studies if the citizen has a real participation with Ecuadorian model, and how the Executive intromissions (hyperpresidentialism) contribute to affect the separation of powers, especially in the new fifth power.

In the conclusions, we try to extract the principal ideas and recommendations to give a real citizen participation in Ecuador and some reflections of how the model could be break up if the hyperpresidentialism model continues in the country.
II. Separation of powers.

a. Classical view.

The classical view of separation powers was developed by Montesquieu, Locke and Hume, but their arguments should be contextualized in a historical moment, because we could make mistakes if we try to interpret it directly into our reality. This interesting theory had an essence, be the limit against the tyranny and a brake for the autoritarism which was in the control of the power in that moment (XVII and early XVIII century) especially the monarchy. (Jellinek, 2000).

In this context, we can found many interpretations of this classic view and the need of a separation of powers, because it is better to be submissive at law (government based in law), than be submissive at mans desire (despotic government). This is the origin of Rule of Law or German definition of Rechtsaat.

Montesquieu was the author that explains the problems and deficient's of despotic government. All will be in damaged, if one person or a group of it (monarchy, noble or people) have at the same time the three powers of the State: a) make rules (Legislative); b) execution the public resolutions (Executive); and, c) judge the crimes and the differences between the citizens.² (García Roca, 2000).

However, the reality was different at that moment, because one was the doctrine statements (separation of powers), and the new States had other reality. Always one of the powers had more privileges in each power, all depends which system they choose (presidentialism, parliamentarism). During all the history this dispute and tension were present especially between executive and legislative power, and in less grade the permanent intromissions of the Parliament in judicial decisions.

When Rule of Law was introduced and be strong in the States, the governments tried to be present the following elements: i) rule of law (application of the law); ii) control of the power; iii) legality principle; iv) further responsibilities of public officials; v) legal security; vi) separation of powers; vii) human rights protections.

² In essence Montesquieu never referred to Executive, Legislative and Judicial powers in his work.
The Rule of Law and the control of power (monarchy and autocratic governments) was the basis to break and finish the excess of personal decisions of the monarch. These elements were the instruments for people (not yet citizens) against whims and decisions of the ruler at that time. (de Jouvenel, 2000).

Professor Elías Díaz (1981) explained four general characters of Rule of Law, these elements would be basic conditions for all regimen: i) Rule of Law; ii) Division of powers (Executive, Legislative, Judicial); iii) Public Administration legality; and, iv) Human Rights recognition and enforcement.

By the hand, professor Luigi Ferrajoli, has two different denominations when he explain Rule of Law. First, he identifies and gives a definition: i) formal, which allude for wherever type of juridical regimen where public powers would apply the law (at this time, every country would be Rule of Law, including the worst ones). And in the other hand, ii) Rule of Law would not be only who externally submit to what the law says, but who put limits against the different State Powers, including Legislative which in its norms will have present every time the essential constitutional lines and limits (Human Rights) (Ferrajoli, 2001).

One of the advances around the world was the conquest of Welfare State against Liberal regimens, this model has a double characters: i) It has the capitalism like production form; and, ii) The Welfare State is possible only through a Public Administration who privilege technique over ideology (administration vs. politics). 3

In Latin-America if we read the constitutions, we can find four common elements which define its own view of Welfare State: i) economical order in the constitution; ii) social benefits; iii) social participation system and Welfare State access for all citizens; iv) socio-economic human rights. Benefits and special rights are the synonym of this State model, which if the governments know how to apply would be a sure form to develop a country. (Quiroga Lavié, 1991).

Last it is very important to understand the contents of Welfare State, because in the Ecuadorian case we will see the change for a different model, a Constitutional, Rights and Justice State, which of course has another character and implications.

b. The idea of the fifth power.

In preview chapter of this paper we have explained the classical view of separation of powers, and how most part of the countries through the world try to apply a Rule of Law regime which help to govern in a better form and contribute to citizen development.

Montesquieu in his original form did not define specifically the three powers: executive, legislative and judicial, but his doctrine has been adapted and now it form part of the Constitutions through the world, because the governors find in it the balance and the form to share the power, and to have a system of checks and balances.

But, in our case of study (Ecuador) in its Constitution (2008), the statement is different of the classic view, because the constituent decided to extend three to five powers. This particularly point of view has been analyzed and criticized in academic forums, because with this extend, now Ecuador has two more powers: i) Electoral (before Supreme Electoral Tribunal) and, ii) Transparency and Social Control Function, which is called “fifth power”.

This new idea was an ideological-politic conquest of the Ecuadorian constituent, because he put it in the new Magna Chart in the line of the concepts on the “Citizen Revolution”, whose leader is the president, Rafael Correa Delgado (2007-present), who during campaign promised to the citizen new forms of participation in the Public Administration.

The fifth power was an idea to institutionalize the citizen participation and social control through a new institutional order (number of institutions established in the Constitution). In theory this new conception will guarantee the citizens participation spaces, where deliberate and control the rest of powers.

An important element in the historical context is that during the constituent period, the citizen was against the traditional forms of politics, especially political parties (partitocracy), and the concept of a new Constitution was the idea of a new institutionalism, because in the previews years the instability was provoked by coup d'état, strikes and social and indigenous protests.
III. New Constitutionalism in Latin America.

If we want to understand juridical-political reality of Latin-America, it is necessary to explain the historical and social context, because the process lived has made marks into juridical institutions which the region actually conserves. The most part of it was a settlers heritage processes.

That is the juridical reason that South-America had taken the Roman-German source of law, we can see how countries like: Venezuela, Chile o Ecuador, have been inspired theirs Civil Codes in the French version of Napoleon.

Thus, one of the principal points to know is that the State organization takes foreign models to build its own, it this sense we can difference four models: a) Liberal revolutionary model (XVIII); b) bureaucracy and aristocracy (XIX); c) democratic constitutionalism (Rule of Law) (XX); and, e) Welfare State (after Second World War), which search the answers to the problems of the age, for example: human rights violation, constitutional rigidity, direct application of the Magna Chart; and the respect to the constitutional norms.

Different Latin-American countries try to adapt the European constitutionalism to its reality, so there are a lot of constitutions which have a very long illusion catalogue, where politicians and citizen try to supply their deficiencies, but in these countries there are not enough resources for contribute to society development, so these concepts and proposals are unworkable. (Quiroga Lavié, 1991).

Another common mistake in the region is to think that a new Constitution every problem (social, economical, politics) will disappear, only if we have a new document. In this order, Ecuador has had 24 Constituent Assemblies and 20 Constitutions.

But the qualitative change in the last years of XX century was to try to identify and incorporate in the constitutions the vision of the indigenous peoples. This is how the Latin-America’s constitution could be adapted and not be only a copy of Europeans charts. Another change was the form how the State incorporate in its programs and policies several collectives (sexual minorities).

The new Latin-American constitutionalism has two concepts (since 1998 to present): a) neoconstitutionalism (law theory) and new constitutionalism (constitution theory).
In the first case, the norm definite the competences and the separation of powers, and has the values, material norms and substantives norms (Carbonell, 2006), with this model we pass from the Rule of Law to Constitutional Rule of Law (extensive list of rights and freedoms). For example: Brazilian Constitution (1998) or Colombian Constitution (1991).

In the second case, the new constitutionalism (Constitutionalism theory) give the norm fundament and try to be the effective explanation, where we can find the follow elements: a) democratic way for the constituent process and the subsequent constitution approve (referendum); and, b) Free positivization and the use of symbolic language (for example in Ecuador: “Sumak Kawsay” (well being in quechua), or in Venezuela: Bolivarian Revolution.

During the last decade, several politician models had changed its own vision to another paradigm, in many cases with radical system proposes (social democrat left): Tabaré Vázquez and now José Mujica in Uruguay; Nestor Kirchner and now her wife Cristina Fernández de Kirchner in Argentina; Lula da Silva in Brazil or Michelle Bachelet in Chile) (Gudynas, 2009), but, there were other neopopulism forms: Hugo Chávez Frías, Evo Morales and Rafael Correa, that in Venezuelan and Ecuadorian cases, they had tried to do it through plebiscitary presidency.

These countries are partners in the “Bolivarian Revolution”, this model has had several critics especially about its constitutional model, because it incorporate Andean visions of indigenous people; for example, in Ecuador the development model is based in good living “Buen Vivir” or “Sumak Kawsay”, which has bees qualified part of neopopulism. Because these new constitutions give long lists of new rights and freedoms, but not the form how it can be enforceable. Another critic goes in order to the new executive functions, in a model of total hyperpresidentialism. The executive power, the president in these models uses the referendums and elections like a way to measure his popularity or for plebiscites to approve different measures, model which could become in a delegative democracy. (O’Donell).

Boaventura de Santos Souza (2010), is very critic with texts of Latin-American New Constitutionalism because it is a good thing that it has long rights list, but the principal idea it´s to put them into the practice, that is the goal of the social movements, because they should fight to enforce them. Here we can find an important point of discussion, because the principal role is of the citizens and not of the governments, specially the new institutions like the fifth power or the institutionalized citizens.
a. The Bolivarian Revolution.

One of the most important dates in the new constitutionalism order in Latin America was, 6/12/1988, because it was the day when president Hugo Chávez Frías won his first election, and it represents the change into a new juridical and political paradigm in the region. In that date, Chávez started a national and regional revolutionary movement, and after a year (1999), he introduced the first constitutional change, where he established a: “Democratic Welfare State of Justice”, where they have a new configuration of separation of powers, with the following powers: a) Legislative; b) Executive; c) Judicial, d) Citizen; and, e) Electoral. In this constitution, Chávez tried to recover Simon Bolivar principles (1783-1830) and build the “Patria Grande”, with all the countries in the continent.

However, the most interesting issue during this process was the idea of power return to the citizens, with a large range of rights and new citizen’s participation mechanism, which are in the constitutional chart in articles: 6, 70, 72, 197 and 203.

But, our discussion would be if the direct democracy is the unique form that the citizens have to express their feelings and aspirations, or the idea of Venezuelan regimen was to delegitimize another type of measures (representative democracy mechanisms) which help the citizens. That is the reason how Chavez prefer citizens assemblies or politician meetings where the government through their structure could control everything. In 2007, Venezuela disapproved a new State Model “Popular Power State or Communal State”, but, after two years, Chavez and his National Assembly approved an organic law that gives a new category to the Communal Councils.

All these concepts and institutions of the Bolivarian Revolutions has been adopted to the rest of the countries which are part of ALBA (Bolivarian Alliance of Peoples for the Peoples of our America), specially in Nicaragua, Ecuador and Bolivia, in theirs constitutions or in intern laws.

In the Ecuadorian case, the first part of the Constitution has an important ideological-partisanship content, because it describe the form of how build and integrate the Latin-American region, like the original idea of Simón Bolivar and Eloy Alfaro.

Also, it give a reconfiguration of the classical concept of sovereign because for the constituent it concept was in relationship with neoliberalism, and to go into the good way to
Socialism of the XXI century, it should change into a nationalism concepts. For example, there are an especial repulse to Free Trade Agreements (FTA), which are sponsors by Washington DC, so the new position of “Bolivarian” countries is to use their owns international organizations, like UNASUR or CELAC, to cooperate and to have mutual support in different areas.

Ramirez (2010) explains that this type of elements and variants try to change the classical view to a “revolutionary” brand, the Bolivarian governments try to: “change the guide point from North to South”, change their economical and geopolitical dependence to the occidental countries, and trust in a regional (Latin-America) integration, where the view would be South-South, in a relationship between equals.

b. Citizen Revolution.

During the presidential campaign of 2006, the candidate Rafael Correa Delgado was an outsider, because he has never been before with the traditional politics parties, so he presented himself like an alternative to the continuity and with an anti-system proposals which has his principal idea in a “Citizen Revolution”, he could group different proposals which try to return the citizen the public power and search mechanism to extend de citizen participation in a new model. In his government program he had the idea to install a Constituent Assembly with the proposal of write a new Constitution, where everybody could participate and share their knowledge and their aspirations. The idea of a new model was enjoyed by Ecuadorian people because it could bring a stability period with a presidentialism regimen.

Middle and lower class were the support of Mr. Correa, because they have been excluded in the last governments, so with that politic platform Correa made his political movement, with different sectors and collectives, especially left parties, indigenous people, young people, etc., These variety of people want a different model of State, and they hope that Correa could change it into a Plurinational and Multiethnic State like the reality of the country.

Correa and his political movement had a good idea, they associated his political program and proposal with the idea of a: “Citizen Revolution”, where there are no site to the partitocracy, and they try to give a reconfiguration of the State, especially through different symbolic changes, for example he put into the new Constitution a new name to the National Congress, because now it called National Assembly (Legislative).
Correa had the talent to take advantage of an historical moment, because Ecuadorean people has a high level of political disaffection, so the “Citizen Revolution” project, was a no traditional movement, and that was the reason that a lot of people believed in his proposal and Correa and his political movement have had greats results in the period (2007-present) elections.

IV. Fifth power: New Institutions.


Every democratic society tries to have an appropriate system which could control the power of each function of the State, where the citizens could be part of this process. However, not always the governments in functions are habitual to this control, that it’s the reason why they put trammels and obstacles for prevent the mission (control) is done.

Canales Aliende (2012), says that there are several elements which we have to be presents: a) legality; b) representativeness; c) efficiency; d) transparency; and, e) dedication to service. These elements altogether could contribute to the citizens to have a better provision of public goods and services.

In the case of study, Ecuador with its constitutional innovation called “Fifth Power”, gives a new support to the citizens, because this figure was thought to give more power to the citizens. That is the reason that in the Ecuadorean constitution the norm development this capacity and others mechanism of citizen participation.

In a political view the incorporation of a “fifth power” could be a conquest of social movements, because they claimed for these spaces during years. But it could be too, only a political and ideological tactic of Correa’s movement, PAIS, because it was a promise during his first campaign (2006) and then, when he started his presidency he transformed it into public policies through “National Development Plan” (2007). That is the reason why citizen participation it is so important for his political program.

However, the public policies which benefit the citizens, especially the citizen participation was a movement that started in the 90’s in Brazil through participatory budgeting. All these ideas were taken by the Ecuadorean “Citizen Revolution” and executed by the fifth power, Transparency and Social Control, which try to be a new function with social control and
accountability facilities, important elements to give more independence and autonomy inside the new State structure. (Ramírez, 2011).

If we look the Ecuadorian Constitution, Title IV, concentrated exclusive for the fifth power, Transparency and Social Control, which is organized with the following organizations: Citizen Participation and Social Control Council, General State Comptrollership, Superintendents and the Ombudsman.

This power has the function of promote and control public organizations and private organizations where the State has public affairs. The control consists to verify the principles of: responsibility, transparency and equal, citizen participation and fight against corruption.

Since the life of the new Constitution (2008), the norm gives a new process to access to public office, meritocracy. This new system works through a public merit and opposition and citizen’s challenge. Of course, all the members of the fifth power have been elected through this new process.

b. Citizen Participation and Social Control Council (C.P.C.C.S.)

One of the principal ideas of the Ecuadorian constituent was institutionalized the citizen participation, that is the reason why they designed several citizen participation mechanism, but the constituent thought in an organism which could control this participation and promote it through different values like: transparency, fight against corruption, etc. All these reason were configured a new institution, Citizen Participation and Social Control Council, which will have new functions but it took another functions of another organization, Civic Control of Corruption Commission.

The new organism has two principal roles: i) promote and stimulate the exercise the right in relationship to the citizen participation; and in the other hand, ii) design the social control mechanism (for example during public merit and opposition and citizen’s challenge).

But, the new Council has an enormous problem which solution it’s not easy, because it institutionalized the citizen participation. So that spaces which is exclusive for the citizens (men and women could have a direct participation) now has the control of a State institution (fifth power). The risks are that the Council has been conformed with a majority of members whose are in the same line of Correa’s political movement. So now the institution which in theory is
neutral, at the moment has a defined ideological line without the independency of the others State powers. Where are the independency and the access for the citizens?

The Council should promote the citizen participation in different public deliberation spheres. All those spaces that where only for an elite in the past, will befor the citizens (Ramirez, 2011), and not only for a party or movement.

At the moment the Council seems like another Executive dependence, not only for their structure. In addition to the pleasure of the Council to the actions of other state functions (such as the Electoral power) which have limited citizen participation, sacrificing participatory democracy for the organization of referendums, by the omission of formal requirements (firms) in the case of the exploitation of the Yasuni ITT (2014).

c. Other forms of citizen participation:

The citizen participation cannot seem like the constitutional recognized (2008), it should be the real capacity of the citizen to be part during the process of the public policies (formulation, decision and subsequent evaluation). In this view real participation cannot be measure in the number of constitution references into the Chart, but in the number of real citizen participation into the Public Administration.

One of the news of citizen participation is the possibility to open spaces to the citizens who were excluded and which are only accessible for the elites (social and economical). And it is the best complement to the democracy, because it is not enough to have the classical system of political participation (elections).

In Ecuador, the Constitution (2008) and the Organic Law of Citizen Participation and Control (2010) creates new citizen participation mechanisms (nationals and locals), which should take in care at the moment to analyses and debate the incidence of the opinion of the citizen in the public policies construction.
<table>
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<tr>
<th>Citizen Participation Mechanism in Ecuador</th>
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<tr>
<td><strong>Citizen participation mechanism:</strong></td>
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<tr>
<td>No electoral devices which let popular movement and connect to politic deliberation and the possibility for the citizen to take decision into public policies, give new opportunities for forgotten sectors (indigenous people, youngster, women, etc).</td>
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<tr>
<td><strong>Sectorial Citizen Council:</strong></td>
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<tr>
<td>In each ministry this sectorial council try to open the dialogue, deliberation and evaluation. It integrates civil society to each area of action (ministry. For example health, education, etc)</td>
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<tr>
<td><strong>Advisory Council:</strong></td>
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<tr>
<td>This mechanism was designed like a citizen advice council where the people could be in contact with observatories and other agencies. This council generates dialogue and gives citizen opinion to the public offices to try to help it into the decisions in public policies.</td>
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<tr>
<td><strong>Public hearings:</strong></td>
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<tr>
<td>There is a classical citizen participation mechanism which is inspired in transparency and accountability principles at Public Administration. This model is bidirectional, so it has an open channel to communication between citizens and Administration.</td>
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<tr>
<td><strong>Participatory budgeting:</strong></td>
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<tr>
<td>This mechanism was original from Brazil (Porto Alegre, 1989 - “orçamento participativo”), it consist in a process where the people (individual or in group) could give his opinion and help to take concern decisions to the local budget. This process is interesting because has the participation of the citizens and the different authorities of each level of government.</td>
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<tr>
<td><strong>Citizens Assemblies:</strong></td>
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<td>It could be national or at local governments. This space of deliberation was thought for local debate public policies and others decisions which have an important repercussion into the citizens live. These Assemblies have functions, for example they control the levels and quality of public services; accountability, etc.</td>
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<tr>
<td><strong>Popular Lobby:</strong></td>
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<td>A group of a particular region (for example a local government) which be together through a meeting where they procure mutual support for the members. This mechanism was born at the neighborhoods organizations, because they wanted to take decisions into the local governments direction and to give their opinion of the public services.</td>
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<tr>
<td><strong>Empty chair:</strong></td>
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<td>Ecuadorian Constitution created this new mechanism of citizen participation in every sub national governments. The principal idea is that in every council there will be an empty chair, which could be use by the citizen's representative of a group of citizen who wants to give their opinion in a discussion or debate that could be affect to their interests. This mechanism gives the possibility to talk during the session and to vote into the discussion topic.</td>
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Source: Own elaboration.
At last, we cannot forget that local governments have been designed to benefit the citizens with a nearby institution, which knows the environment and meet the people, two important conditions to build together their development. In this propose, the local government will work through the principles of: effective and efficient. But, the classical political participation like elections, and citizen participation will be very important for the people who want to be part of his government. (Canales, 1999).

V. ¿Is it a real citizen participation in Ecuador?

We have to accept that Ecuadorian Constitution (2008) represented a brake into the country juridical and political tradition, not only for the new model of the State, but also is true that the new Chart open the door to the participation of thousands of Ecuadorians, who during decades were excluded from the essential mechanism of citizen participation (indigenous people, young people, social movements, etc). Before the Constituent process there are no institutionalism into the participation process, so the citizens move away the daily politic live, because the people consider it like “impure”. That it is the reason why the representative democracy could not work and started a local crisis in relationship with the social movements.

In that context, Correa and his political movement, PAIS, used into his political speech the topic of citizen participation. First, he defined his revolution like “citizen”, and then into the constituent process and in the Constitution of course, the principal element was citizen participation. But, the doubt is if the real intention was to give the citizens the possibility to decide into the public policies, or in contrast, all these arguments were part of a political strategy designed by Correa and his political movement for institutionalize and politicize the citizen participation and create a fifth power.

We can found the citizen participation in 65 of 444 articles of the Ecuadorian Magna Chart, and an exclusive Title (The Constitution has nine titles) dedicated exclusively to this topic. If the participation could measure only for quantity, we can say that in Ecuador we have a real participation democracy, but the reality is totally different.

If we consider the labor of the constituent was correct with the criteria of development the citizen participation through the Constitution, is necessary to analyses if the elements and mechanisms which are in relationship to the citizen participation are effectives or there are only a
political construction to hold the Executive project, where the participation could be a necessary mechanism to be in all the powers of the State through the “official citizen participation” (Council of Citizen Participation and Social Control). The question could be: PAIS really wanted a change in the balance of powers between state, market and citizens,

**a. Politicized citizenry.**

Aristoteles said that human is a *zoon polotikon* or political animal for excellence (IV. B.C), which means that in all their activities use the politics, for example in the different forms to organize or participate, common parts of their life.

But the danger is present when the citizen is institutionalized into an organism that depends to the central power, because it takes only one ideological line and decides for everybody with only one point of view. There are no spaces to other diversity forms of citizen expressions which could be against the official.

In the practice, the problem is that the representative positions into the different citizen participation mechanisms are in charge of persons who are in the same ideological line to the central government. And they only repeat the official speech in each institution or mechanism, that is how the Executive could control the rest of the Powers of the State (Judicial and Electoral), because with the fifth power control, he has the control of the rest because this institution has the faculty to elect the rest of the members of the others institutions through public merit and opposition and citizen’s challenge.

**b. The executive and its influence in the new institutions of the fifth power.**

The idea to change the classical view of separate powers (Executive, Legislative and Judicial) into the new (five) already explained in this paper had the principal goal to maintain balance and independency between the different powers and to open to the presence of the citizen in the decision of the public policies.

But there are other changes in the model, because several institutions had been intensified, for example the Executive into a presidentialism regimen. This decision was taken because in the last decades, Ecuador lived several instability episodes. Seven presidents in one decade (Bucaram 1996-1997; Arteaga 1997; Alarcón 1997-1998; Mahuad 1998-2000; Noboa
2000-2003; Gutierrez 2003-2005; and, Palacios 2005-2007), and three coup d’etat during the same period of time.

In this order, we can remit to professor O’Donell (1994) with his theory which says that one of the factors could affect the Rule of Law is the excessive leadership of the Executive over the rest of the powers. Because it concentrates too much the power in one person, so it could be the origin of a delegative democracy. [17]. (O’Donell, 1994) and, of course this situation could bring the distortion of the democratic system and an unequal distribution of the State powers.

The origin of hiperpresidentialism regimen in Latin-America could explain through the different pre-Columbian and colonial regimen, where there was an important presence of the conqueror and leader, which will replace by the figure of president. (Quiroga Lavié, 1991).

The Ecuadorian Constitution (2008) develops the presidentialism regimen in the same line of the Latin-American constitutional models. The role of the President in the State live is so important, because the goal is to avoid constant institutional crisis into the State (Krsticevic, 1992); The Executive with this model become stronger and avoids the constant political blackmail principally of the Legislative power.

The Executive faculties are so wide, so it could call to popular referendum to the citizen (it could be part of participative democracy or populism constitutionalism), but in fact with this mechanism the leader search to goals: i) he can measure his popularity, and use it against the opposition (delegative democracy); and, ii) open a free way to approve polemical decisions if the Parliament doesn´t collaborate.

One of the most important faculties, it is the privilege of design public policies through the National Development Plan which it does not need popular approval. The Executive has the monopoly of the planning and structure the State.

Another common faculty in presidentialism regimen it is the Executive has the right of veto the norms, in this case the laws go back to the National Assembly for a new debate.

Finally, the Executive has the faculty of dissolve the National Assembly (Legislative), in the following cases: i) if the Parliament had used functions over the constitutional mandate, this situation should be preview certificate by the Constitutional Court; ii) if the Legislative become in an obstruction of the National Development Plan; or; iii) If there are a serious political crisis and civil commotion. This Executive privilege is called “muerte cruzada”, because after the
Legislative dissolution, the Elector Power (fourth power) should call to new legislative and executive elections, so it is like a political hara-kiri.

One of the most common mistakes in Ecuadorian political analysis concern to presidentialism or hiperpresidentialism is to use the figure of the actual president, because the constitutional norm should be understand in abstract, not around a leader or a leadership. In a correct analysis it is better to verify the fulfillment of: i) high level of governance; ii) verify separation of powers; and, iii) respect to human rights.

VI. Conclusions.

Always change a classical view or a doctrine it is a challenge, in our case, the Ecuadorian constituent try to go against the current with their particularly argument of two new powers of the State, especially the fifth power or Transparency and Social Control Function. But one thing is the political speech and another is the reality and how the citizen participation works.

The Ecuadorian Constitution has created new mechanism of citizen participation, and it works especially at local or subnational regions, but in our opinion the real participation does not need to be institutionalized, because when it is happens, it is so easy that the regimen of political forces takes those spaces that were designed for the citizens and they impose a single political doctrine.

A reality is that the citizen participation system does not have one decade, but the Council of Citizen Participation and Social Control is so slow in its development and in be operating. In two polemical cases (Yasuni referendum⁴ and Executive Order No. 16⁵) the Council does not make its works and be with the criteria of the actual regimen, so it could be a problem with its independency and autonomy.

Finally, Ecuadorian Constitution and the rest of the norms are so advanced, but in a democratic society it is important that the citizen could be benefit by these rights, not only privileged elite. So, in the future years the challenge in Ecuador is for social movements and for citizens in general, because with a strong legal framework it is time for the people to empower

⁴ [http://www.elcomercio.com/actualidad/politica/cne-descarto-pedido-de-yasunidos.html](http://www.elcomercio.com/actualidad/politica/cne-descarto-pedido-de-yasunidos.html)
⁵ [http://www.eluniverso.com/opinion/2013/12/31/nota/1972061/descentralizando-libertades](http://www.eluniverso.com/opinion/2013/12/31/nota/1972061/descentralizando-libertades)
the citizen participation in a real form and to change that wrong idea to institutionalize it by the “fifth power”.

VII. Bibliography.

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