



CONSTITUTION

CONSTITUTIONAL REFORM: IS THERE ANYONE THERE?

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As time passes and the debate theoretically advances, the prospect of constitutional reform moves further away from that image of a healthy updating, a renewal that is little more than a routine event; a dry-dock Constitution begins to loom in which the reformists seek to revise key elements of the democratic framework to which Spaniards granted sovereign approval some twenty-five years ago.

Is Constitutional Reform Necessary?

To undertake a rigorous and sober analysis of what is actually on the table is, undoubtedly, much more uncomfortable than simply jumping on the bandwagon of what the reformists intend to impose as the politically correct solution in these times of changing moods. However, there is no doubt that this is the most responsible and essential contribution we can make in terms of our political, intellectual and academic commitment, faithful to the democratic values and principles that are enshrined in our Constitution.

We might ask ourselves the following question: who is clamouring for reform? The real eagerness for reform emanates from certain sensitive minorities - today leaders - who are openly infected with a nationalist discourse that is intent on conveying the idea that the Constitution has failed with regard to what is known as the “territorial question” and who seek to transform the constitutional framework into a precarious arrangement or, according to one well-known phrase, a “huge temporary provision”. Contrary to this reformist fever, what nobody is able to detect is any social climate of criticism or general dissatisfaction with the constitutional set-up. In fact, there is **a wide-ranging and sustained level of satisfaction on the part of the public with the Constitution and with the model based on Autonomous Regions.**

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Llera highlighted the fact, unique in our milieu, that **the voters have adopted much more “moderate” positions than the parties.** In this case, it is the political groups that are promoting constitutional reform initiatives; it is they who detect a need to reform, whilst their constituents detect no special need or attribute little priority to the matter. Furthermore, we might highlight the existence (once again unique) of “territorial hinges”, nationalist parties that play this role, exercising their bias in order to influence government decisions and maximizing confrontation among the national parties. We can confidently state that **“reform is not on the electorate’s agenda”.**

What problems are sought to be resolved with reform? If there is something we can state with some assurance, it is the fact that there is a unanimously favourable opinion of our constitutional experience. This does not mean that we cannot find aspects of the way our State functions that cannot be improved. **Rafael Arias-Salgado** highlight four areas relating to the workings of the territorial model that are susceptible to improvement: **the insufficient mechanisms for cooperation, the participation of the Regional Governments** in decision-making processes **vis-à-vis the EU, the role of the Senate** and the incorporation of **federal procedures to plan and define State-Regional Government relations** in some areas. However, having stated this, Arias-Salgado himself denied that these aspects called for constitutional reform or new Statutes.

At first sight, **it may seem quite innocuous that the Constitution should enumerate the Spanish Regions.** At closer sight, however, we should ask ourselves what sense there is in the Constitution incorporating a matter that has been attributed to the mechanism of the Statutes. There is even less sense in this reform going a step further in order to **establish a discriminatory “ranking” among the regions or to call into question, at the very least, the national character** - not pluri-national character - **of the State**, as enshrined in Article 2 of the Constitution as a founding principle of the text. **Blanco Valdés** warned us against any

“**de-constitutionalization of the model of the State**” and other attempts to **establish differences in order to justify privileges in the future**, which, in his opinion, “**would blow the autonomous region model to smithereens**”.

The Reform of the Senate

The objective of “making the Senate a true chamber of territorial representation” has become a pet phrase that says very little. The truth is that this archetypal chamber does not really exist. What we find is a range of different models - ranging from the United States Senate to the *Bundesrat* - characterized, by the way, by a founding document that reflects the principle of equality of representation.

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As far as the Senate is concerned, we are faced with two competing truths One is political and academic, considering the Senate to be **a chamber that can be evidently improved**. The other is historical, which teaches us that all **serious attempts to reform the Senate** - not necessarily constitutional reforms - **founder on the nationalists’ radical refusal to promote a cooperative model** that would affect the bilateral model that they obsessively seek to impose on relations with the State. The fixation with the *Bundesrat* does not resolve this question. The Secretary of the Federal Reform Committee in Germany, **Dr. Horst Risse**, expressed his surprise at the wish to emulate the German system, making the point that the *Bundesrat* represents a unique and special model, whose make-up can be explained by the gradual formation of the German State and nation. Dr. Risse described how one of the key elements of reform, currently being studied in Germany, consisted in substantially reducing the percentage of federal laws that must be passed by the *Bundesrat* from the current rate of 55% to 35%. The contributions made by **Esperanza Aguirre** and **Pío García Escudero** encouraged a balanced debate on the Senate, demonstrating that there is ample margin when it comes to improving the chamber and that the instrument of constitutional reform is not that essential - on the contrary, it implies a profound alteration of institutional equilibrium and the parliamentary system itself - and that the real problem, as highlighted by other speakers, **does not lie in the institution itself, but in the consensus on which measures must be adopted**.

The Spanish and European Constitution

Approval of the Constitutional Treaty of the European Union has served to open up a new front with regard to the various initiatives that exist to reform the Spanish Constitution. Without going into details regarding the scope of this reform, it seems clear that its effects will not be limited to a simple constitutional mention of Spain’s status as a Member of the Union. Whatever the case may be, two issues raised by various speakers deserve to be mentioned here. The first relates to the question of **linking constitutional reform to a process whereby the Treaty would be approved** in the other twenty-four States, including different ratification procedures and uncertain results. The second aspect relates to the substance of the reform itself. If the EU Treaty requires constitutional reform, it would be necessary to consider, at the very least, whether it should be the Spanish Constitutional Court, through the consultative procedure that its founding law created precisely for this purpose, that defines the Treaty’s legal impact on the Constitution and, therefore, what the material scope of this reform should be.

The debate on constitutional reform is open, but it cannot be said that it is moving towards a mature and clear culmination **There is no general social demand for reform, but a high level of public satisfaction with the Constitution and the autonomous region model**. It would be necessary to make sure of the need to use the instrument of reform for objectives that could be achieved as effectively, or even more effectively, without recreating a constitutional consensus. In this respect, going beyond the question of legal-constitutional engineering, it is the consensus on which Spanish democratic life is founded that we should not only seek to preserve, but strengthen.