

## **OLD AND NEW CONSTITUTION**

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The Spanish political system is undergoing a tumultuous period. The political institutions are dealing with a severe crisis, the economic crisis has not been overcome yet, there is a growing loss of democratic quality and the enormous territorial tensions even include secessionist threats in Catalonia. In this situation, the constitutional reform is often alleged as the necessary process that will allow for the recovery of social cohesion, the citizenship's confidence in their public institutions and the setting of the bases for economic growth within the EU and the globalized world.

It is also mentioned that the reform of the 1978 Constitution must be preceded by a new and broad consensus based on sacrifices on all sides and the finding of minimum common standpoints offering a response to the citizens' expectations.

One previous and essential question is however neglected. What does a constitutional reform imply nowadays? Who has the power to reform the Constitution? How to deal with a change from an old Constitution to a 21st century one?

The brilliant book of Professor Santiago Muñoz Machado "Vieja y nueva Constitución" (Old and New Constitution, Editorial Crítica, Madrid, May 2016) is a set of particularly interesting critical thoughts on this matter that should be read as a reference book.

The book starts with a reference to some issues that were controversial in the framework of the drafting of the 1978 Constitution and the solution of which is important to remember, such as if, and how, constitutions can be binding for future generations and the ideal period of application. Another aspect is the fact that sovereignty has been a recurring matter in these debates, in particular regarding the distinction between constituent power and power of constitutional reform. As the power of reform is different from the ordinary legislative power, a more or less rigid procedure of reform needs to be set forth in the Constitution, also with the possibility to include intangibility clauses (which in practice have proved to have few potential).

All this lucid analysis of constitutional reform processes, especially the Spanish one, needs to be reconsidered as the cosmopolitan context limits the power of the majorities formed in the different states. Indeed, other political situations at both supranational and subnational level need to be taken into account as well. The rigidity limiting the reform

process and characterized by the supranational values and principles and the reality of the subnational territorial powers will be imposed. And this way reforms will be a result of a combination of different sovereignties.

As for the meaning of the new territorial powers, it is said that, once the distribution system of territorial powers has been settled, it “is protected by an unwritten but certainly enforceable durability principle”. The Constitution was unitary at the beginning but has become multi-textual now that the Statutes of Autonomy complement it. “The Spanish Constitution is, in addition to multitextual, multipolar, diatopic given the territorial origin of the contents, and diachronic as it does not conclude in just one act.” All this leads the author to the conclusion that our continually changing constitutional system might end up as a “peculiar confederation based on the participation, as differentiated political units, of the historical nationalities that have been showing their disagreement over their political role within the State”.

The author’s largely significant words should be the object of an in-depth analysis for a future (and absolutely necessary) constitutional reform. This reason already justifies considering the book of Professor Muñoz Machado. However, other valuable thoughts are also worth mentioning such as the role of the Constitutional Court (Chapter VI) or secession within modern constitutional States (Chapter VIII), for which reason we recommend its reading.