

THE METHODOLOGY OF THE CONSTITUTIONAL REFORM

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The Constitutional reform is, by itself, one of the features of the complicated political board because there are important elements of the political system that work badly, and in an indirect way, because a reform of the Autonomic Regime could make easier the management of the existing conflict in Catalonia. Some political parties (mainly PSOE, PODEMOS and CIUDADANOS) have expressed their position in favour of the reform of certain points of the Constitution, but everyone intuits that the PP concurrence as well as the main nationalist parties will be necessary. It is possible that the constitutional Reform will be an issue of debate in the next electoral campaign but it is more likely that it will be deeply discussed in the next legislature ,so it does not seem very important to develop the details of the possible reform whereas it would be very useful to get to an agreement about the method to follow.

The main elements of this agreement ,which can be implicit, could be: to reason the necessity of the Constitutional reform and carry out a nonpartisan pedagogy about it; to distinguish between a Constitutional reform and a constituent process; to establish the political and legal part of the reform; to respect thoroughly the reform process established in the Constitution (itself) and make it clear that consensus it is not necessary but the qualified majorities that the Constitution demands.

Therefore, is the Constitutional reform necessary? Everybody accepts that the Constitution should be reformed occasionally and that useless reforms should be avoided. In France, the Constitution of 1958 has been modified twenty times, in Germany the Fundamental Law of 1949 has had 60

reforms of different kinds. The Constitutional law (Hesse) usual answer is that the reform should be undertaken when a constitutional regulation generates problems which cannot be solved with the laws or jurisprudence. But the criteria is formal and takes us back to the political reasoning: the reform is appropriate when there are institutional problems which most of the political forces think should be solved.

It is key to distinguish between constitutional Reform and constituent process. The later takes place when the Constitution is approved for the first time and a constituent parliament is elected. There is a disruption with the past and the constituent parliament has the freedom to elaborate a Constitution with no limits or specific procedures. This is usually explained by saying that the power of the constituent process is primary while the power of the constitutional Reform is derivative and limited.

On the other hand, the constitutional Reform is planned in the Constitution itself which describes procedures and the required majorities to be carried out. In Spain, articles 166-169 introduce two different procedures according to this subject. Regulation provides answers to problems of 1978 and they should probably be included in the Reform. However, while this is not performed, modifications have to take place according to the current legislation. Moreover, the Constitutional Court could control the reform procedure leading to a weak Reform.

Against the swindling mentions of the consensus of 1978, which is often forgotten that it was the final result of many negotiations, it is necessary to highlight that the constitutional Reform only requires three fifths parts of the chambers (with equivalent alternatives and facultative referendum) for some matters while two thirds part of the chamber, dissolution and election, and again two thirds plus obligatory referendum for others. Maybe, it is time we stop converting consensus into a myth and start to dialogue.