Constitutional Reform as a Legal-Philosophical Problem

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Constitutional change can take place in different ways. All of them raise a host of challenging conceptual and normative questions.

Nowadays most legal systems have written constitutions with a certain degree of rigidity. Sometimes they even have unamendability clauses. Is there any justification for constitutional entrenchment? How does it relate to the principle of democratic legitimacy? Which values, rights, and institutions ought to be constitutionally entrenched—if any—and which issues should be left to ordinary legal reform? How should constitutional amendment rules be designed? Can they be validly amended through procedures laid down by themselves (the well-known Ross' constitutional puzzle)? As unamendability takes constitutional entrenchment to its extreme, is there any justification to have it? Could it be said that there are implicit substantive limits—pertaining to so-called constitutional identity—to constitutional reform? Should this kind of limits be enforced through judicial review of constitutional amendments?

Besides constitutional reform through formal amendment procedures, the substantive content of the constitution can also mutate through interpretation of constitutional provisions by the courts (Jellinek's *Verfassungswandel*). How should courts reason when adjudicating fundamental rights? How could reasoning by the courts be constrained by the way in which fundamental rights are formulated in constitutional texts? What kind of judicial review powers should courts have?

Constitutional change can also be brought about outside the channels of constitutional amendment or despite the existence of unamendability provisions, as an exercise of constituent power. A proper understanding of constituent power, however, remains conceptually and normatively puzzling. Among other things, any claim on behalf of the people presupposes that the people can be identified beforehand—otherwise, were the people constituted by the constitution, it would be difficult to say where the legitimate constituent power lies. All this reminds us that constitutional change can also be produced by secession, and this raises thorny questions about the ultimate locus of sovereignty and the legitimacy of the *demos*.

Finally, constitutional change can also happen because of supranational integration. This raises several contentious issues as well. How and under what conditions could a treaty become a constitution? When supranational integration falls short from constitutional unity, how do domestic and supranational or international legal systems interact? In a context of so-called multilevel constitutionalism or constitutional pluralism the content and scope of fundamental rights is said to be determined through judicial dialogue and constitutional synthesis. How are these concepts to be understood and what legitimacy concerns do they raise? Would it really be possible to control how legal systems interact merely by means of integration clauses enshrined in domestic constitutions?

The aim of this Workshop is to bring issues such as these into focus through an open discussion on constitutional reform from a legal-philosophical perspective. Some scholars have already been personally invited to this Special Workshop by the conveners, but it is also open to additional participants. If you would like to join, please send an abstract (max. 500 words) to juancarlos.bayon@uam.es or josemaria.sauca@uc3m.es by February 28, 2019. The selected presenters (up to 8) will be informed by March 15t^{h} and kindly requested to submit their final paper by June 1st.

Languages: English, French, Italian or Spanish.