

enriquecer a todos y nos estimule a la hora de afrontar reformas legislativas, la interpretación judicial y la investigación científica.

El interés por el Estado democrático ha quedado patente en varios artículos relacionados con el tema que se han recibido y que se publican en la sección «Estudios». Sin embargo, el número que ahora se presenta es forzosamente una obra inacabada. Algunos argumentos y experiencias extranjeras no han podido ser tratados por diferentes motivos y otros requerirían de una mayor profundización. Estoy seguro de que, de la lectura de lo que ahora se presenta, surgirán ideas y nuevas aportaciones.

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## Foreword

Questions on democracy have always been present in the scientific and social debate, albeit not always with the same intensity, and neither have the responses given over time always coincided. Since the Athens of Pericles, in the 5th Century BC –archetype of the «liberty of the ancients», according to B. Constant–, until the system of representation of the 19th Century and the representative democracy of the 20th Century –«the liberty of the moderns»–, thoughts on democracy have sought to answer two questions that K. Popper brilliantly synthesised: who governs?, and how do they govern?, in other words, the origin of political power and its limits.

In this special issue we have decided to return to a debate which, in Spain, since its constitution, has often taken a back seat in political, regulatory and doctrinal priorities, despite the emphatic constitutional declarations of popular sovereignty (art. 1.2 SC [Spanish Constitution]), the principle of participation (art. 9.2 SC) and the recognition of the basic right to participate in public affairs (art. 23 SC). Can we talk about a «liberty of the postmoderns» in terms that are different to the reflections of those who came before us in other historic and social contexts? Or, to put it another way, what is it that distinguishes the debate on democracy today, at the outset of the 21st Century? What profiles does «constitutional democracy» adopt? The questions pertaining to democracy are still largely the same as always, but, as may be deduced from the manifestations of the authors that participated in this issue of the *Journal*, perhaps the answers from other eras

no longer apply, including the most recent ones of the years of the so-called «participative euphoria» after 1968 (W. Schmitt Glaeser).

Indeed, in view of the situation of contemporary democratic states, one must wonder if political parties, the fundamental instruments of political participation, are in themselves structures that operate in accordance with the democratic principle; or on the action of the representative function attributed to parliaments and the problem involved in the insertion of the institutions of participative democracy –particularly popular initiative– in the exercise of legislative power and control by parliaments; or the role that may be played –and is actually played– by the referendum in our representative democracies; or to what extent participative mandates are efficacious in the sphere of government and the Administration; or if it is true that the territorial bodies which are closest to the life of the citizen –the autonomous communities and public corporations– have the most ideal institutional frameworks for regulations and a practice that are conducive to popular participation; or else to what extent the most recent statutory and legal reforms contribute or not to fulfilling this purpose. The texts of the participating authors refer to the legal assets that the democratic State must protect: political pluralism, citizens' participation, transparency and the control of power or accountability. In a few words, not only do they address the question of the legitimacy of decisions, but also of the responsibility for decisions taken, which entails the interconnection of the democratic principles with the principle of Rule of Law, as proclaimed by article 1.1 SC.

This special issue is based on two premises: 1) we sought to approach the situation of the democratic state, in accordance with the *Journal's* line, through an interdisciplinary approach, based on public law, where constitutional theory is combined with positive constitutional and administrative law, adding some data from practice to the analysis so as to draw more comprehensive conclusions, and also drawing inputs from political sciences, which illuminate the legal discourse and propose challenges that should be taken into account; and 2) since the debate goes beyond our borders, and there are common problems, we wished the reflection to focus on certain topics on which authors from different places would provide their experiences (as in the case of the primary elections) and/or methodological considerations (democratic audit in Australia) or dogmatic ones (the referendum in the constitutional system), generating a flow of ideas that will enrich

us all and spur us on when facing legislative reforms, judicial interpretation and scientific research.

The interest in the democratic State has been made clear in different articles related to the topic which have been received and will be published in the «Studies» section. However, this issue is by necessity incomplete. There are arguments and experiences from abroad which, for several reasons, could not be accommodated, and there are others that would need to be addressed in greater depth. Nevertheless, I am sure that this issue will generate further ideas and contributions.

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## Présentation

Les questions relatives à la démocratie n'ont jamais cessé d'être présentes dans le débat scientifique et social, quoique selon une intensité variable. Il en est de même des réponses apportées au cours du temps, qui n'ont pas toujours été coïncidentes. Depuis l'Athènes de Périclès, au V<sup>e</sup> siècle av. J.-C. – l'archétype de la « liberté des anciens », selon B. Constant –, jusqu'au système représentatif du XIX<sup>e</sup> siècle et la démocratie représentative du XX<sup>e</sup> siècle – « la liberté des modernes » –, les réflexions sur la démocratie ont tenté de trouver une réponse aux deux questions que K. Popper a magistralement synthétisées : « Qui gouverne ? » et « Comment gouverne-t-on ? », ce qui revient à poser le problème de l'origine du pouvoir politique et de ses limites.

Dans ce numéro monographique, nous avons voulu relancer un débat qui, en Espagne, depuis le moment constituant, a souvent été relégué au second plan des priorités politiques, réglementaires et doctrinales, malgré les déclarations emphatiques de la Constitution espagnole (CE) : la souveraineté populaire (art. 1.2, CE), le principe de participation (art. 9.2, CE) et la reconnaissance du droit fondamental de participation aux affaires publiques (art.23, CE). Pouvons-nous parler d'une « liberté des post-modernes » en termes différents des réflexions de ceux qui nous ont précédés, dans d'autres contextes historiques ou sociaux ? Ou, autrement dit, qu'est-ce qui singularise le débat sur la démocratie aujourd'hui, au début du XXI<sup>e</sup> siècle ? Quels profils adopte actuellement la « démocratie constitutionnelle » ?