



ISSN: 2036-5438

# Civil participation policy and democratic innovation in the autonomous community of Aragon

by

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Perspectives on Federalism, Vol. 4, issue 1, 2012



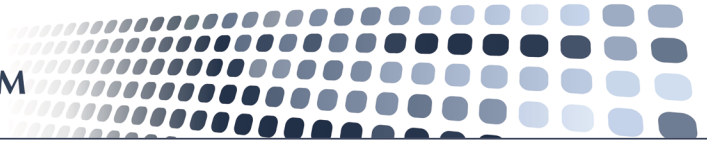


## Abstract

The increasing complexity of our society requires mechanisms of democratic innovation that enrich the system of representative democracy to increase citizens' knowledge and experiences, thus improving the quality of democracy and the efficiency of public decision-making. It is necessary to assume that governments cannot face these complex transformations without taking into account all voices and interests. In the face of this reality, over the last few years civil participation has been promoted in the Autonomous Community of Aragon, a strategy aimed at extending the spaces of active participation, and stimulating its own instruments of a participative democracy, allowing citizens to influence decision-making processes. In this paper, the main aspects of this experience will be analysed

## Key-words

Autonomous Community of Aragon; citizen participation; participatory democracy; democratic deepening



## 1. Reflections on the Autonomous Policy of Democratic Innovation: the Statute of Autonomy of Aragon

The aim of this paper is to analyse the civil participation policy promoted over the last few years in the Autonomous Community of Aragon from a legal-political perspective. This autonomous policy, whose aim is to incorporate the citizens' voice and opinion in decision-making processes, is founded on and validated by the democratic principle of the 1978 Spanish Constitution (1978 SC), in addition to the current economic, social and political context. In this respect, it is worth mentioning that due to the complexity of our society, democratic indifference and the multi-faceted reality of public matters, the stimulation of authentic participatory democracy through a process that is able to incorporate innovative mechanisms of civil participation is needed to complement the representative system<sup>I</sup>.

The search for instruments that increase the opportunities for participation and complement the exercise of electoral rights is based on many different arguments. It is beyond the scope of this paper to address them all, however, it is worth emphasising, without exhausting all the possibilities, the arguments based on the ideal of democracy as a way to make better public decisions. In this respect, it should be highlighted that democratic deepening is based upon spaces of active and deliberative participation that enrich public decision-making. In this way, the current multi-faceted situation may benefit from the intervention of interested parties, who represent positions that are different from that of the Administration, by incorporating their experiences and abilities, and allows for the integration of other points of view that enrich public decisions-making and improve its democratic legitimacy<sup>II</sup>. Greater support by those who are affected by these rules or public decisions, based on their participation, is another acceptable argument. When it is possible for those affected to intervene and issue opinions in the design of a rule, the deliberations generated and the motivated exclusion of some civil proposals, brings about greater internalisation and comprehension of the public decision eventually adopted<sup>III</sup>. Finally, the justification of this model of participation lies in administrative efficiency. The 1978 SC created a Public Administration that, in its unbiased service to the general interests, must



act in accordance with the principle of efficiency (Article 103 of the 1978 SC), with the understanding that this principle does not exclusively refer to an economic criterion - since it is observed in the private sector-, but also to adequate public action to meet social needs and demands. The authorities will be more effective if they manage to better satisfy and respond to these needs. The active participation of citizens, who define these demands - and put forward possible proposals through their debates with the authorities-, can contribute to fulfilling this constitutional requirement. Therefore, civil participation implies not only the exercise of a right, but also a key factor in connecting government action with citizens.

The recent Statutes of Autonomy, within the constitutional framework of a modern democratic society, have incorporated the legal-political trends based on participatory democracy<sup>IV</sup>, establishing a political framework that must promote the democratic principle that had justified, among others, the process of political decentralisation proposed for the 1978 SC<sup>V</sup>. In this context, the approval of Organic Law 5/2007, April 20<sup>th</sup>, on the reform of the Statute of Autonomy of Aragon (EAAr), is a normative milestone for the development of a democratic deepening process in the Autonomous Community. The innovation of the EAAr regarding participation does not lie so much in its content –already assembled-, but in the extension and intensity of its recognition, which denotes that the law-making process aims at promoting the participative nature of the institutions of Aragon, in order to favour stronger citizen participation in public policy-making. This is undoubtedly one of the most important legal-political innovations of the current EAAr<sup>VI</sup>.

Civil participation is present throughout the whole EAAr. This Statute does not offer a complete and unitary treatment of this matter, but regulates it in its diverse manifestations. On many occasions and without clear distinction, the statutory regulation refers to participation and the promotion of participation. According to the cases (see SSTC 119/1995 and 103/2008), it is a matter of a political participation (direct or representative democracy), and of a participation in the Public Administrations' actions (participatory democracy). Some statutory provisions envisage generic citizen participation, while others limit its recipients to concrete categories of individuals (the elderly, Article 24; the disabled, Article 25; immigrants, Article 29). Some rules take into consideration the participation of individual citizens, while others coordinate participation through representative associations (including, consumers' and users' association, Article 17.2).



Therefore, there is no consistency in the systematic order, and civil participation is regulated using a variety of different means. Nevertheless, there is still one common denominator: the obligation of the authorities to promote civil participation.

In this respect and regarding the study under discussion, the most significant legal-political innovation is the mandate included in Article 15.3 (“right to participation”): “*the public authorities of Aragon will promote social participation in the design, execution and evaluation of public policies, as well as individual and collective participation in the civic, political, cultural and economic fields*”<sup>VII</sup>. Here, two essential points must be highlighted and interpreted. First, the imperative nature of this declaration must be noted, i.e., the authorities of Aragon *will promote* participation; and second, the definition of its recipients is broad -all *the public authorities of Aragon-*, not only the autonomous institutions, but also the local authorities. All this is within the context of a culture of “*democratic values*”, recognising the obligation of the authorities of Aragon to promote the culture of peace, by incorporating values such as “*participation*” (Art. 30). In addition and from a legal perspective, the new regulation regarding two classic instruments of participation stands out: popular consultations and popular legislative initiative. Regarding the first one, the Statute attributes competence in matters of surveys, public hearings, participation fora and any other instrument of popular consultation to be called by the Autonomous Community or local authorities, with the exception of the regulation of referenda<sup>VIII</sup>. Therefore, this rule allows for the approval of a specific legal regime, within the assumed competences and taking into account the recent judgements of the Constitutional Court concerning popular consultations (see SSTC 103/2008 and 31/2010) and without forgetting the forecast of a referendum on the reform of the Statute of Autonomy (Article 115.7)<sup>IX</sup>. The statutory provisions regarding popular legislative initiative also deserves special attention. As in the previous text, Title II of the current EAAR (“Institutional Organisation of the Autonomous Community of Aragon”) only includes popular initiative among the different modalities of legislative initiative<sup>X</sup>. The innovation lies in Article 15.2, under the Title dedicated to citizens’ civil rights which recognises the right of the Aragonese people to present legislative initiatives to the Parliament and participate in the law-making process, in accordance with that which has been established by the Law and the Parliamentary Rules of Procedure. This new systematic article is a unique expression of the civil right of the Aragonese people to participate in public matters, and of the mandate of the authorities to promote their

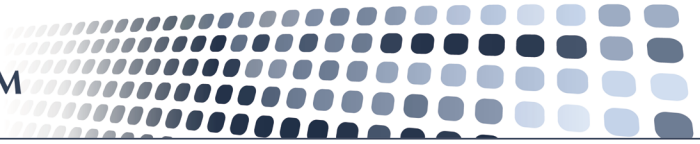


participation in political, economic, cultural and social life. Ultimately, the new Article 15 is the normative foundation for the definition and development of a real autonomous policy of civil participation.

After the 2007 autonomous elections, in keeping with this statutory spirit, the Government of Aragon (the *Partido Socialista-Partido Aragonés* coalition) encouraged a policy of democratic innovation, hoping that the new government would continue with it after the 2011 elections (the agreement between the *Partido Popular-Partido Aragonés* coalition). This policy can be defined as a set of processes, institutions and strategic actions created by the autonomous government to pave the way for the promotion of active citizen participation in the decision-making processes that affect them. Therefore, its goal is to improve democratic quality by creating a new way of governing and managing public matters, listening to the citizens' voice and opinion. Starting from this concept, it might be argued that the Aragonese policy of civil participation is characterised by an *integrationist trend or dual nature*, in that it integrates not only the coordination and management of the classic mechanisms of semi-direct democracy, -i.e., popular legislative initiative or popular consultations-, but also the instruments of a participatory democracy that are based on the deliberative principle, -i.e., participative processes-. Starting with these arguments, the study of the global nature of Aragonese policy must be analysed on the basis of three fundamental pillars: its administrative organisation, relational action and normative policy.

## 2. The Administrative Organisation of Civil Participation Policy

The autonomous policy of civil participation needs organisation to manage its material content. This primary decision -administrative organisation- is extremely important. The structure of this organisation, its functions and instruments, as well as the criteria connecting it with other administrative units, determine what sort of policy it intends to develop. From this perspective, Aragonese policy rests on two principles related to its organisational design: its integral vision and its cross-cutting nature. The impulse to design measures that integrate this policy requires a specific administrative unit that is exclusively responsible for democratic innovation. In addition, the location of this unit within the Executive must possess a vision of the Department that is strategic and allows



for cross-cutting action throughout the whole governmental structure. This is the first characteristic of the administrative organisation of the Autonomous Community of Aragon, i.e., its location within the Department of the Presidency, an issue which is extremely important. It implies the definition of a global policy of civil participation that is a proposal on behalf of the whole Government, a new way of public decisions-making that involves all the Departments<sup>XI</sup>.

Along this same line, in 2007 the *Dirección General de Participación Ciudadana* (Department of Civil Participation, DGPC) was created within the Department of the Presidency, which is responsible for coordinating a strategy that includes the whole autonomous Executive and allows for the establishment of quality participation based fundamentally on the principle of deliberation<sup>XII</sup>. In concrete terms, by means of Decree 224/2007, September 18<sup>th</sup>, of the Government of Aragon, on the Organic Structure of the Department of the Presidency, the DGPC was assigned the following competences (Article 10.1): “*a) to promote the values and practices of civil participation that enrich the quality of democratic life; b) to promote spaces and processes of civil participation in the design, execution and follow-up of public policies; c) to favour experiences of civil participation among institutions, entities and citizens which collaborate to prevent conflicts and improve the efficiency of decision-making; d) to promote the creation, research and awareness of society within a culture of democratic participation*”. After the 2011 autonomous elections and the change of government in the Autonomous Community of Aragon, the current Department of Civil Participation, Exterior Action and Cooperation continues to be under the authority of the Department of the Presidency (currently the Department of the Presidency and Justice). The line of continuity in this matter is clearly reflected in the competences attributed by Decree 315/2011, September 27<sup>th</sup>, of the Government of Aragon, on the organic structure of the Department of the Presidency and Justice (Article 18.1): “*a) to promote the values and practices of civil participation that enrich the quality of democratic life; b) to promote and coordinate spaces and processes of civil participation in the design, execution and follow-up of public policies; c) to stimulate projects that provide advice on and support to the civil participation initiatives of the local authorities; d) to study and propose a normative framework for the promotion of civil participation; e) to favour experiences of civil participation among institutions, entities and citizens which collaborate to prevent conflicts and improve the efficiency of decision-making; f) to favour the creation, research and awareness of society within a culture of democratic participation*”.





The exercise of these competences has led to the development of a policy based on five major goals, which are divided into sets of lines of action. These goals aim at favouring, advising and accompanying processes of participation for the design and evaluation of public policies, both at the autonomous and locals level; at promoting the values, education, practices, research and social awareness to generate a shared discourse on participatory democracy; at favouring suitable and accessible channels of information and participation throughout the network; at announcing and updating legislation concerning civil participation; and at creating a structure of support to DGPC action to offer quality, congruity and transparency in the development of its actions.

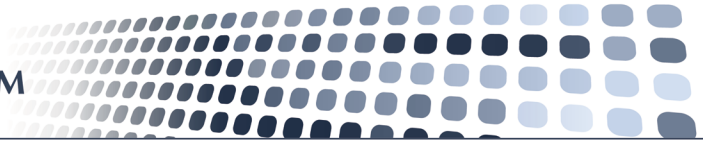
### 3. The Autonomous Government and its Intervention for a New Political Culture

The fulfillment of the objectives of this policy of democratic innovation requires intense administrative intervention. In this respect, we should take into account that this public policy does not base its action on the classic forms of administrative intervention proposed by Presutti and adopted in Spain by Jordana de Pozas: administrative police, promotion and public service<sup>XIII</sup>. The special nature of its objective -to promote quality civil participation- has directed this intervention to the area of promotion, development and education, launching an important action that can be analysed according to an administrative-territorial criterion: i.e., the autonomous and the local criterion.

#### A) Towards a Relational Autonomous Government

The policy developed within the autonomous government aims at the *promotion* of innovative spaces of civil participation and the construction of a new *politico-administrative culture* based on deliberation. Regarding the first aim –the promotion of spaces of participation-, there have traditionally been two main models of civil intervention in Spanish Law: the organic and the procedural model. Nevertheless, inflexibility, bureaucratisation and the low-profile of these models have led to their re-examination from the viewpoint of participation inspired by the principle of collaboration, responsibility





and deliberation<sup>XIV</sup>, i.e., active, quality participation that shifts from the formal organic model to an open and dynamic system.

The Spanish Administrative Law (Law 30/1992, November 26<sup>th</sup>, on the Legal Regime of the Public Administrations and the Common Administrative Rules of Procedure, as well as on sectoral administrative legislation) recognises a number of consultative organs with a mixed and plural composition that are meant to guarantee the representation of the economic and social interested actors, paving the way to stable and formalised participation. Nevertheless, these spaces have a composition and way of functioning that generate serious malfunctions, and prevent quality deliberation and effective participation. In order to improve the quality of these organic models, a methodological proposal has been elaborated to evaluate the functioning of the different bodies of participation, identifying their weaknesses and strengths in order to improve their internal democratic quality.

Besides the evaluation and review of the organic model, Aragonese policy has provided the stimulus for innovative instruments of participation. The DGPC *promoted* fourteen participative processes in its first legislature, where participative process is understood as a process whose objective is to fully involve citizens in the decision-making process related to a concrete matter, in three procedural phases: a) the information phase, i.e., informing the entire affected citizens about the matter or project that is to be developed; b) the debate and civil proposal phase, i.e., where citizens' assessment, debate and proposals are promoted using the appropriate methodologies; and c) the return phase, in which the results of the process return to the participants and the citizens. These processes have allowed the voice and opinion of the citizens to be taken into account on important issues such as: the Panel for the Mountains, the Law on Social Services, the Climate Change and Renewable Energy Strategy, the Plan for Intercultural Coexistence, the Decree on Students' Rights and Duties, the Master Plan for Development Cooperation, the Reform of the Regulation on Protected Housing, the Second Plan for the Prevention and Eradication of Violence against Women in Aragon, the Integral Road Safety Plan in Aragon, the Catalogue of Social Services, the Second Plan for Childhood and Adolescence in Aragon; as well as advice on planning participation in the Plan for Youth, the Model for Participation in Health and the Law on Public Employment in Aragon<sup>XV</sup>. This line of action has been a fundamental feature of the Aragonese policy of civil participation, not

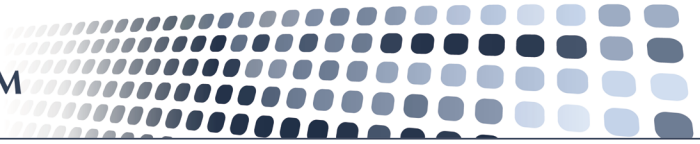


only because of the number of the participative processes above-mentioned, but also because they have facilitated the creation of a new political culture based on the experimentation of relational Government and deliberative Administration<sup>XVI</sup>. In order to assure the effectiveness of this strategy and the right to participation, transparency and advertising must be guaranteed, defining an advanced form of *transparent Administration*. New technologies can contribute to this purpose as channels that facilitates the flow of information and complements classic citizen participation. To this end, the website *aragonparticipa* was created. *Aragonparticipa* is an interactive website that opens up new channels of participation, connects citizens with public policies, and illustrates the activities developed in this area by providing access to all the draft documents of each meetings in the participative processes<sup>XVII</sup>.

The creation of a *politico-administrative culture* based on openness, participation and deliberation is the second pillar. One of the problems identified by several internal and external reports is the existing ignorance concerning the conceptual framework of civil participation, namely, what civil participation is and what it is not, its strengths and risks, as well as the existing channels and possible areas of innovation. For this reason, a training programme has been encouraged to promote civic education, to advance in towards a shared discourse on the need to develop quality civil participation and promotes a new culture among politicians, technical staff and citizens<sup>XVIII</sup>. Undoubtedly, this training policy contributes to the process of democratic deepening with the emergence of three key actors, offering them tools for fostering greater involvement and better relations among all of them.

## B). Civil Participation and Local Authorities

By the 18th century, John Stuart Mill had already referred to municipalities as schools of citizenship, spaces of proximity between governors and the governed, and a way of spreading authorities out over the territory. From this perspective, municipalities are useful not only because of their contribution to administrative efficiency but also because of their ability to stimulate and improve democracy<sup>XIX</sup>. Today, bringing public matters and citizens closer together has become an essential building block to stimulate civil participation at the territorial level, with the local government acting as a mediator between



society and the political system, precisely in a moment when there is tension between local and globalised movements. From this perspective, it is necessary to form local relational Governments that facilitate the shift from managerialism -a City Hall like public services supplier based on technical and managerial principles- to politicisation based on participation as a response to diverse and complex demands. Local Government should be based on transparency and a direct relationship with its citizens, through processes of renovation that improve the quality of participation, stimulating participatory democracy as a complement to local representative democracy<sup>XX</sup>.

By recognising the importance of local authorities in this matter, the Aragonese policy of civil participation is developing a specific action geared to support local authorities in the promotion and consolidation of participatory democracy, in accordance with the directives resulting from a process of legal reform which has been stimulated over the last years, especially the Recommendation (2001 19) on citizen participation in local public life approved by the Committee of Ministers of the Council of Europe on December 6<sup>th</sup>, 2001 and Law 57/2003, December 16<sup>th</sup>, on the measures for the modernisation of local government. Therefore, during its evolution, the support to the local area has been characterised by three important phases of intervention. In the first phase (2008 and early 2009) an assessment of the innovative strategies developed in comparative Law and the state of civil participation within the local entities of Aragon was carried out. Once the initial demands of some municipalities and regions had been registered, and starting from this previous study, all local authorities directly involved in this issue were summoned to define the *Aragonese Strategy for the promotion of local civil participation* in collaboration with the DGPC. In respect of the constitutional principle of local autonomy, this Strategy includes, on the one hand, the lines of support offered by the autonomous Government to meet the demands proposed by the local authorities<sup>XXI</sup> and, on the other hand, the basic lines that must inform local action to stimulate the process of democratic deepening<sup>XXII</sup> in the territory.

Once this Strategy was defined, from 2009 to early 2010 the second phase was developed with the intention of initiating in the territory the first quality experiments aimed at evaluating the available opportunities and progressively internalising this political culture. During this phase, support from the autonomous Government was channelled through the shared financing of participative processes developed in the local area; advice on the



approval or reform of local Regulations and Programmes of civil participation<sup>xxiii</sup>; and subsidies granted in competition regime in order to carry out training courses aimed at improving the relevant local authorities' capacity of intervention and proposal as well as devising technical tools and developing experiences.

This experiment and the learning that ensued opened the way for the third phase: the progressive design of real local policies of civil participation. The heterogeneity of the local reality required every entity to design its own policy of promotion, so that the DGPC could develop a general and adaptable path for every entity by means of a pedagogical exercise to facilitate participation in this complex process. According to the model proposed, every local authority was to construct its own path based on *political Commitment with the participation of the citizens in public policy-making*, approved unanimously in the plenary session, which includes a political attitude that stimulates civil participation by establishing diverse measures of promotion<sup>xxiv</sup>. In February 2011, the consolidation of this strategy led to the creation of the *Aragonese Forum for Local Civil Participation*, a meeting place between the autonomous Administration and the local authorities of Aragon defined as a working tool designed for the exchange and sharing of experiences with the aim of enriching local policies on participation<sup>xxv</sup>.

#### 4. Normative Policy: Legislation as a Mechanism for Change

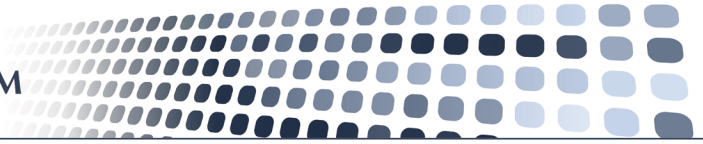
A particularly important element of the new civil participation policy is its regulation, the definition of a normative framework that arranges and organises this process of democratic innovation and institutionalises the methods of participative democracy. The debate focuses on the role played by legal norms in the promotion of civil participation. In this respect, the idea that the legislative formalisation of participative practices could replace a culture based on the concept of governance has been rejected. It is true that legislation is an important mechanism for change in the organisation of a relational Government and a deliberative Administration, but it is also true that the nature of the matter leads us to bear in mind one fundamental premise: civil participation has many different manifestations, every process is different and every context is singular. A Law -as a legal norm- does not guarantee effective, quality and real participation per se: there can be



a Law without participation, and participation without a Law. Nevertheless, some studies have concluded that although the existing share capital and the culture of the political authorities are relevant factors, the degree of openness of the legal-political system and the institutional opportunities it offers play a decisive role. Whether or not it is likely to work is probably dependent on these factors<sup>xxvi</sup>. Therefore, it is fundamental to understand that although the normative framework is an useful instrument for policies that promote civil participation, it must be accompanied by political leadership, and a pedagogic spirit, as well as be flexible enough to adjust to the situation in the territory to be fully effective.

These reflections define Aragonese policy in the context of autonomous normative strategies, which bring together normative policies referred to as “*experimentation*” policies, as opposed to those that use “*juridification and codification*” of the matter based on the enacting process of a Law on civil participation<sup>xxvii</sup>. The normative policy of experimentation does not initially pursue the approval of a legal text, but rather the implementation of innovative mechanisms and processes of participation, so that the experience, interiorisation and appropriation of deep cultural change take root throughout society and in its politicians and public employees. Therefore, normative Aragonese policy has been based on “non-regulation”.

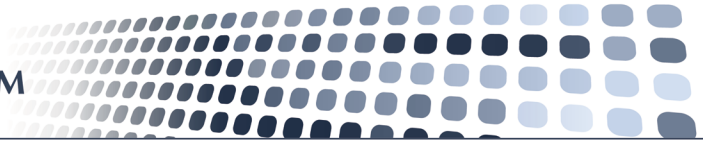
After this first phase of learning, the normative framework must be approved so that the initiated model becomes institutionalised, assuming that the dual-nature of civil participation policy requires the normative strategy to pursue an dual objective: to renew the legal regime in order to facilitate the access to and use of the classic channels of participation, and to introduce the normative framework for an advanced democracy based on deliberation. In this respect, at the end of the previous legislature, the need to reach an autonomous Agreement on civil participation arose. This led to the subsequent draft of a White Paper. This agreement should establish the right and duty to promote participation, be adopted by all the autonomous institutions and political parties, and define a global policy for the Autonomous Community with an interdisciplinary body which is competent to coordinate the actions of the various different departments of the Government at that moment. In this respect, it is worth listening to Weimer and Vining when they claim that electoral cycles are “failures of the public sector” and a problem inherent in representative government: many political actions require periods that last longer than a legislature, whose future costs or insufficient benefits can be used by competitors in the polls to gain



votes<sup>xxviii</sup>. It is necessary to assume that since civil participation is an essential question in the political structure of the Autonomous Community and must not be affected by the current *legislative "motorisation"* a significant autonomous agreement among all interested parties is needed. Along this premise, a Motion (*Proposición no de Ley*) has recently been approved by the Plenary session of the Parliament of Aragon regarding Law 20/11-VIII, on civil participation, which reminds us of the following: "The Parliament of Aragon urges the Government of Aragon to present a normative model which develops Article 15.3 of the Statute of Autonomy of Aragon for debate and approval within no more than eighteen months, resulting from an active participation process involving all Parliamentary Groups, starting with the initial entities and citizens, and which coordinates the promotion, practice and necessary instruments to facilitate citizen participation in public policy-making".

This is a challenge that must provide answers to the questions raised by the legal-political theory, whose in-depth analysis is outside the scope of this paper. The answers fall into three broad areas<sup>xxix</sup>. First, the need for a Law on civil participation, bearing in mind the aforementioned premises concerning the potentials and weaknesses of legal regulations in the promotion of participation<sup>xxx</sup>. In addition, there is no doubt that the legal regulation of civil participation poses great difficulties, and that a complex normative is required that restricts the analysis of the main difficulties of its definition: the need to approve a Law of principles or a procedural norm; the convenience of gearing the normative policy to processes of a deliberative advanced democracy, or a codifying rule that also includes the regulation of instruments of direct or semi-direct democracy; the possibility of fixing rules that are common for all or, in order to account for territorial differences, giving every governmental department a margin in which to define its participative tools; or the definition of a policy that promotes the interest of the citizens in their participation in public matters and allows the economic costs implied by this participation to be met<sup>xxxi</sup>. The normative debate arises only when it is preceded by the possibility of regulating it by law. There are alternatives such as the adoption of autonomous legislation that establishes a very loose obligation of participation for the design of particularly significant sectorial policies -such as the Water Framework Directive- or soft law legislation that involves all the political groups, a text that inspires "the methods" of public policy-making. The latter option would allow the experimentation phase to be overcome and would usher in the





adoption of protocols on voluntary and open action and the formation of a precedent, a right obtained.

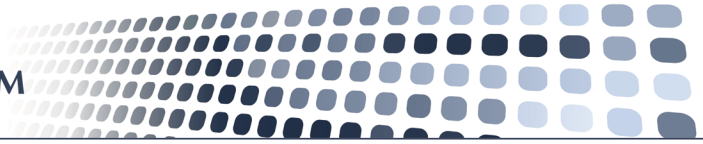
The normative model of civil participation also requires the analysis of the legal reform of the mechanisms of semi-direct democracy. This is the case of popular legislative initiative, whose current regime recommends reforming its regulation<sup>xxxii</sup>. The principle of political autonomy and the new statutory predictions regarding popular legislative initiative (Article 15.2) lead to the re-definition of this instrument with the aim of innovating its legal arrangement<sup>xxxiii</sup>. It is necessary to analyse the real nature of this mechanism of participation, assuming that popular legislative initiative is far from being an instrument of direct- or semi-direct democracy in order for it to be used in the Parliament's decision-making procedures. What should be done: reform the current Law or create a new regulation, with the ultimate aim of eliminating obstacles to its free exercise and facilitating its use by the citizens? Or should we go beyond this and develop a new philosophy, so that this instrument does not merely represent the right to present propositions of Law for their approval, but a right on which a debate arises concerning the presented proposition<sup>xxxiv</sup>. Another important instrument of participation that deserves special attention is popular consultation. The effective exercise of the right to participation entails providing this instrument with juridical protection, although in order to provide this the possibilities it offers must be analysed beforehand. Regarding the exercise of the competence of the Autonomous Community of Aragon (Article 71.27 of the EAAr), it is necessary to create distinctions among consultations, referenda, hearings, fora and surveys, considering the conceptual limitations established by the STC 103/2008<sup>xxxv</sup>, and respecting the area of competences assigned to Autonomies after the STC 31/2010<sup>xxxvi</sup>. It is necessary to think not only about what regime will inform future regulation, but also about the purpose and meaning behind each of these instruments of consultation. For example, the obligatory nature of certain matters or the possibility of raising a deliberation-information summoning organisers and citizens to clarify the fundamental points of the question raised, since the mere formulation of a question does not allow citizens to express the intensity of their concerns and limits the possibility of affecting real change in the decision that is to be adopted. Undoubtedly, deliberation-information allows the possibilities regarding the issue to be clarified.





The last major pillar in the normative debate is focused on the introduction of new forms of participation in order to create a deliberative Government and Administration. The participation of citizens in the normative process of the Executive is regulated by Law 2/2009, May 11<sup>th</sup>, of the President and of the Government of Aragon, that provides for citizen audience and public information regarding the process of designing regulations, with an open clause that allows other innovative instruments of participation (Article 49) to be applied<sup>xxxvii</sup>. However, this Law does not recognise instruments of participation in the formulation of draft Law. At the Parliamentary level, the Regulation of the Parliament of Aragon does not recognise the specific channels of participation, for example, the parliamentary hearings provided for in the Regulation of the Parliament of Andalusia, Catalonia, Cantabria and Asturias. Undoubtedly, the new draft of Article 15.2 of the EAAR, which includes the right “to take part in the law-making process, in accordance with that which has been established by the Law and the Regulation of the Parliament”, leads to the reform of the regulation in force in order to create new instruments of participation at the parliamentary level. In addition, trends in the new public management, based on participation, transparency and the right to good Administration, have led to re-designing the normative formulae that allow for deliberative Administration. A normative process needs to be created that updates the functioning of the Administration, turning civil participation into an inspiring principle<sup>xxxviii</sup>. In addition, we must not forget that every area of public intervention is unique, every sector requires individual treatment to guarantee quality civil participation, and that *specialisation* is required to design specific mechanisms in the sectorial legislation to satisfy the needs of every economic and social area.

In conclusion, it is true, as part of the Spanish doctrine indicates, the system’s failure to represent the citizens along with the socio-political and socio-economic circumstances have caused political disenchantment that has been reducing the role of society in politics, a weakening the legitimacy of the system that was organised according to the concept of national sovereignty and political representation<sup>xxxix</sup>. This affirmation makes the search for channels that improve and perfect the representative model possible, with strategies of civil participation that complement its shortcomings and inaccuracies in such diverse and complex societies as the current one, however, it does not justify its substitution. One of the axes in this process of democratic deepening is the regulations and



institutionalisation of the instruments that allow for more active participation in the current, complex political processes. In this respect, the regulation of the right to participation in public matters has undergone a deep transformation over the last years, with the approval of rules meant to make the principles and mechanisms of participative democracy more concrete. These normative trends go hand-in-hand, the legal reform of traditionally recognised participation channels in order to facilitate access to them and improve their functioning and normative innovation to adopt the instruments that have been internalised through experimentation.

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<sup>I</sup> In this respect, Archibugi argues that “democracy is an endless journey, and, therefore, it may be more appropriate to speak, not so much about total democracy, but about the democratic route, that is, a progressive evolution of political systems to meet citizens’ demands for participation”, Archibugi, 2000. In the same spirit, the extension of participative spaces in the evolution of the democratic systems has also been defended by Jáuregui: “democracy does not exist without democratization, that is to say, without a constant renewal of the forms of participation”, Jáuregui Gurutz, 2000, 13.

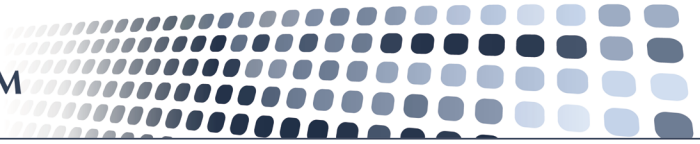
<sup>II</sup> It has already been pointed out that modern Administration, due to its extensive growth and strong determination in the definition of public interest, is suffering a “crisis of democratic legitimacy”, and what the administrative side of civil participation is trying to do is offer an outlet for the expression of social demands that can give citizens some control in the decisions that administrative authorities adopt within their discretionary power. However, this is not a question of taking the place of political representation and the primacy of law; the citizen, as the depository of sovereignty, is not ready to leave the definition of the general interest solely in the hands of the Administration, especially when decisions are solved in terms of opportunity. Muñoz, 1977, 528-534.

<sup>III</sup> Cuesta, 2008, 34-35.

<sup>IV</sup> For a detailed analysis of the right to participation in the latest Statutes of Autonomy, see Aparicio, Castellá, and Expósito (eds.), 2008.

<sup>V</sup> Three decades after the approval of the constitutional text and the beginning of the autonomous process, it is possible to affirm that although the consolidation of the Autonomous State has made some public policies more efficient, this closeness has not favoured real and effective citizen participation in public matters, apart from the classic right to political representation. Once consolidated the political and territorial system - without prejudice to the debates that define the current agenda-, it is necessary to improve the democratic quality of the autonomous State via a process that consolidates the functioning of participatory democracy. The recent statutory reforms have been drafted in line with this, including not only issues related to competences or inter-administrative relations, but also to the organisation of the authorities and the form in which these decisions must be adopted, making citizens participants in the decision-making process. Castel, 2011, 187.

<sup>VI</sup> For a specific study of the Statute of Autonomy of Aragon see Sáenz and Contreras, 2008, 267-286. On



civil participation in the Statute of Aragon, see also Castel, 2010, 831-860.

<sup>VII</sup> This is one of the common notes of the latest Statutes: Articles 9.4 EA Comunidad Valenciana; 43 EA Cataluña; 10.3.19 EA Andalucía; and 15 EA Islas Baleares.

<sup>VIII</sup> Article 71.27 EAAr: The Autonomous Community has exclusive competence in the following matters: popular consultations, which, in any case, entail the establishment of the legal regime, the modalities, the procedure, the accomplishment and the way in which the Autonomous Community or the local entities can, within their realm of competences, can hold surveys, public hearings, participation fora and any other instrument of popular consultation, with the exception of the regulation of referenda and of what is provided for in Article 149.1.32 of the Constitution. It is here that one of the principal differences in the latest Statutes in the Aragonese text takes root: the extension of assumed competences -the Statute of Aragon expressly excludes the regulation of popular consultations through referendum referenda, though this exclusion is generalised after the STC 31/2010-, and the absence of a rule expressly including the citizens' right to promote the organisation of popular consultations on issues of general interest related to the competences of their Community (Art. 15.2 EA Baleares, Art. 29.6 EA Cataluña, Art. 11.5 EA Castilla-Leon, Art. 30.1 EA Andalucía). In any case, this silence -also in the Statute of Valencia- does not prevent the future legislation on popular consultations from determining the right of the Aragonese people to promote the organisation of popular consultations.

<sup>IX</sup> Article 115.7: The approval of the Parliamentary reform, by means of an Organic Law, will include State authorisation for the Government of Aragon to hold a referendum on its ratification by the voting population of Aragon no later than six months after the final voting in the Parliament. The Government of Aragon will hold the referendum if it is approved by the Parliament of Aragon by a two-thirds majority of its members.

<sup>X</sup> In this way, Article 42.2 establishes that the Law enacted by the autonomous Parliament regulates the form and the conditions of the exercise of this right. In concrete terms, Chapter I ("The Parliament of Aragon"), having regulated the legislative legal authority, establishes that popular legislative initiative will be regulated by the Law of the Parliament of Aragon.

<sup>XI</sup> The need to guarantee this integral and cross-cutting vision of civil participation is shared by the majority of the Autonomous Communities. Therefore, while in the 2007-2011 legislature only the Canary Islands and Aragon were integrating the matter in the Department of the Presidency, nowadays, Andalusia, the Valencian Community, Navarre and the Basque Country have also adopted this strategy. Catalonia locates civil participation in the Department of Government and Institutional Relations, while the Balearic Islands locates it in the Department of Public Administrations. In both cases, these Departments also allow for cross-cutting action.

<sup>XII</sup> According to Bohman, deliberative democracy is broadly defined as any set of opinions according to which the public deliberation of free and equal citizens is the core of legitimate political decisions-making and self-government, Bohman, 1998, 401. Therefore, political legitimacy is not based exclusively on the polls or majority rule, but rather on providing reasons, explanations and defensible motives to public decision-making, Saward, 2003, 120-124.

<sup>XIII</sup> Jordana de Pozas, 1949, 41-54.

<sup>XIV</sup> On the malfunctioning of organic and functional participation, see Sánchez, 2008, 223-245.

<sup>XV</sup> These participative processes have developed with considerable success, as seen in the following findings: 2.063 participants, 576 entities, 551 hours of debate, and 2.747 civil contributions, of which about 70 % has been adopted.

<sup>XVI</sup> The fulfillment of the objectives of civil participation policy requires the creation of political culture through learning and experimentation. Regarding deliberative democracy, reconnecting some citizens to politics makes it possible to promote a broad network that could give rise to a wide-ranging culture of civic participation, Ackerman and Fishkin, 2003, 25.

<sup>XVII</sup> This webpage has 350 registered users, has received more than 500.000 hits and citizens have consulted 10 million pages (information retrieved in June 2010).

<sup>XVIII</sup> On the need for a programme of civic education, see Gutmann and Thompson, 1996.

<sup>XIX</sup> Stuart Mill, cited by Brugué, Font and Gomá, 2003, 109-132.

<sup>XX</sup> For a study of the importance of participation in local areas and a comparative analysis, see among others: Colino and del Pino, 2008, 247-283; Gomá and Font, 2007, 61-76; Pindado, 2009.

<sup>XXI</sup> The lines of support can be organised along three broad axes: a) *Technical advice*: for the implementation and development of participative processes, the reform and production of local Regulations on civil



participation, the design of a participative website, the review and creation of deliberative bodies, etc.; b) *Financial assistance*: economic support for the implementation of participative mechanisms; c) *Training*: in order to internalise local participative culture.

XXII The general axes of local policy are: a) *Organisational action*: to develop a structure inside the local Administration to promote participation and focus on the demand for participation by the citizens, through an ad hoc Councillorship or by having the Mayor take over formal political leadership in the competent area of human and economic resources; b) *Normative action*: to design a normative framework that it favours, regulates and establishes stable and formal mechanisms of participation, and that can consist of the approval of a local Regulation of Civil Participation, or a normative policy based on non-regulation; c) *Relational action*: to facilitate instruments and initiatives to intensify the relationship between the government and citizens through participative processes and other channels of participatory democracy.

XXIII According to Article 70.bis.1 of Law 7/1985, of April 2<sup>nd</sup>, regulating the basis of the local government, the municipality must establish and regulate, via organic rules, procedures and organs suitable for the effective participation of the parties involved in matters relating to local public life, in the municipality as a whole and in the districts, with the implication that the abovementioned local government organisations exist within the municipality. This new rule has resulted in the approval of numerous local Regulations on civil participation, though a deeper interpretation of this article suggests a different conclusion. The mandate proposed by this rule envisages procedures and organs of participation via organic rules, and not the approval of specific Regulations on civil participation. This interpretation stems from a break with the traditional regime, stipulated by Law 57/2003, December 16<sup>th</sup>, on the measures for the modernisation of local government, that has traditionally characterised the local Spanish regime. From this perspective, there is not consistency in the need for local Regulations on civil participation in all the municipalities, considering the different sizes and characteristics of our local reality. The second factor concerns the analysis of local Regulations on participation. The normative flexibility contained in the 2001 Recommendation adopted by the Spanish legislation on local regimes, allows for the adjustment of and innovations in the mechanisms of participation according to the requirements and needs of every local authority. However, one of the characteristics of the local regulation of our country is its mimetism. Local authorities have the option of forgoing a good part of the legal regime, thereby, facilitating and introducing the exercise of the right to participation in their territorial area. Castel Sergio, *op. cit.*, 189-192.

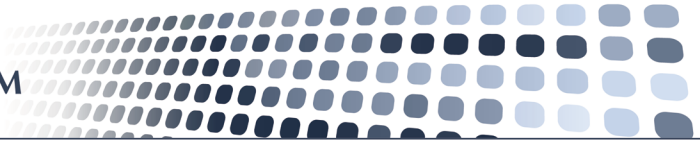
XXIV In 2010, seventeen local authorities of Aragon undertook the *political Commitment with citizen participation in the construction of public policies*. These agreements, based on a preamble that justifies its adoption within the current, complex political and social context, include many different measures that must progressively shape local policy on democratic innovation: assessing the state of civil participation in the local entity; training authorities and citizens; experimenting with participative processes; collaborating with the autonomous Government; designing a specific normative framework; locating the policy within the local organisation; creating participative budgets; and creating a citizen support office.

XXV The other participants in this Forum are the DGPC, the *Federación Aragonesa de Municipios, Comarcas y Provincias* (FAMCP) and the local authorities of Aragon that have formally committed to civil participation policies. The functions of the Forum are the following: a) to share, analyse and evaluate the strategies of the civil participation policies promoted by the local governments; b) to analyse, define and share the mechanisms of information and civil participation implemented by local governments, making the exchange of experiences as source of information in order to improve the efficiency of the relevant actions; c) to think about policies, techniques and practices of civil participation from a comparative perspective, analysing the most innovative trends in quality and their application by the local authorities of Aragon.

XXVI Colino and del Pino, 2008, 261-262.

XXVII Castel, 2009, 418-419. The Autonomous Communities of Catalonia and Aragon have adopted a policy of experimentation: they have not approved a legal norm for participation, but have chosen to experiment through participative processes. The Communities of the Canary Islands and Valencia have developed policies of juridification and codification: they have approved a Law on civil participation (Law 5/2010, June 21<sup>th</sup>, on the Canary Islands Promotion of Civil Participation, and Law 11/2008, July 3<sup>th</sup>, on the Valencian Community Promotion of Civil Participation), whose application should allow for the development of participative instruments.

XXVIII Weimer and Vining have identified the problems inherent in direct democracy, i.e., the paradox of the vote, the intensity of preferences, and those inherent in representative government, i.e., the influence of interest groups, territorial clienteles, the limited, short-term prospects of electoral cycles and restricted



agendas, as well as problems related to bureaucracy and decentralisation. Weimer and Vining, 1999.

XXXIX In 2009, the “Panel for the definition of the normative policy of the Government of Aragon on civil participation” was established. The purpose of this panel was the study and discussion of: a law on civil participation; popular legislative initiative; participation in Parliament; popular consultation; administrative legislation and participation; as well as local civil participation. See *Revista Deliberación*, 2010, Departamento de Presidencia del Gobierno de Aragón, 1.

XXX For an analysis of the potentials of and need for a Law on civil participation, see Tur Rosario, 2010, 19-41.

XXXI This debate requires an exhaustive analysis of the content of the Law. A comparison with autonomous Laws on civil participation allow the importance of the participative process as a predominant means of citizen intervention to be verified. Nevertheless, there are many different things that can improve the functioning of this instrument: recognising civil initiative to stimulate the participative process, based upon the interests of society and that cannot be addressed by the government; the obligation to adopt the participative process in certain matters; or the obligation to approve an annual plan of participation for the processes that are to be started, as an instrument of information and advertising to increase awareness of the opportunity for participation.

XXXII This mechanism of participation is regulated by Law 7/1984, December 27<sup>th</sup>, on popular legislative initiative before the Parliament of Aragon. Since its entry into force, in Aragon nine bills have been presented; however, only one has finally been approved: Law 2/1992, March 13<sup>th</sup>, on the creation of the Council of Protection of Nature. As Víctor Cuesta indicates, the autonomous legislation of the civil legislative initiative has reproduced the model established in the state regulation. The reproduction of the subjective, formal, procedural and material conditions goes far beyond the due observance of the essential content of the state legislation, and is a clear sign of the apathy of the autonomous legislator, in Cuesta, 2008, 309. Maria Jesus Larios considers this desirable and more suitable for the participative requirements of a few decentralised entities that are closer to the citizens. Therefore, the autonomous Parliaments have made innovations so that it is easier for citizens to access parliamentary institutions, in Larios, 2003, 246.

XXXIII Traditionally, according to Spanish doctrine the regulation of popular state legislative initiative is linked somehow to autonomous regulation, either regarding material limitations or other aspects of the development of the right to participation. Regarding material limitations, see Viver i Pi-Sunyer, 1981, 105; Aragón, 1987, 597. Regarding the development of the right to participation, see Larios, 2003, 244-245.

XXXIV On the re-definition of popular legislative initiative and the possibilities of creating new relevant regulations in Aragon, see Tudela, 2010, 71-87.

XXXV For an analysis of the STC 103/2008, see Uriarte, 2008, 227-257; López, 2009, 202-240; and Tajadura, 2009, 363-385.

XXXVI Regarding the STC 31/2010, see Castellá Andreu, 2001, 197-236.

XXXVII Article 49.2: “By law, citizen *participation will be able to take place using any admissible means including telematics*”.

XXXVIII In Spanish Law, a process of normative renovation may be observed that promotes the creation of innovative channels of participation. Here we may mention the right to a regulation of civil initiative (Article 31 of Law 5/2010, June 21<sup>th</sup>, on the Canary Islands Promotion of Civil Participation); the presentation of proposals concerning draft regulations and the Administration’s obligation to respond as a phase of return (Article 9 of Law 4/2006, June 30<sup>th</sup>, on transparency and good practices in the public Administration of Galicia); to promote civil participation in administrative actions, in order to collect the offers, suggestions and initiatives of the citizens by means of a previous process of information and debate (Article 22.2 of Law 26/2010, August 3<sup>th</sup>, on the legal regime and procedure of the public administrations of Catalonia); or the obligation to promote participative or consultative processes in the processing of draft Laws and in the evaluation of public policies (Article 6 of Law 4/2001, March 31<sup>th</sup>, on the good administration and good government of the Balearic Islands).

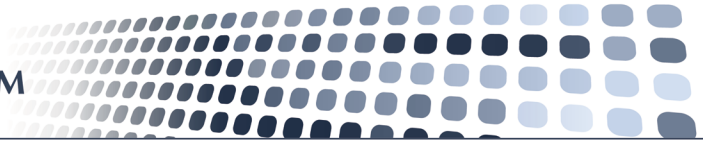
XXXIX Rubio Rafael, 2007, 81.

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