

Review

Marina del Pilar Olmeda García (2013). *Evolución de la constitución de Baja California*. México: Universidad Autónoma de Baja California. ISBN: 978-607-607-170

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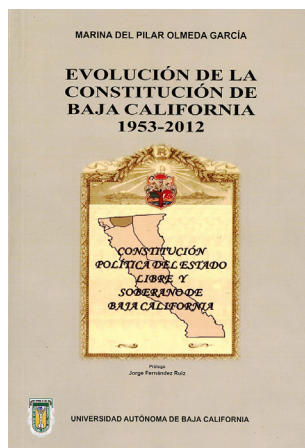
The main goal of the book is to present the results of an investigation about the development of the legislative process of the institutions that incorporate the Ley Fundamental de Baja California. This is made systematically, based on the structure and under the chronology and context of its evolution.

Within this book, the author describes an academic experience through an investigation where law, history and other sciences are deeply and interdisciplinarily involved. The author deals with both disciplines with much respect given the importance of both of them in the understanding of legal knowledge and the contributions that historical-sociological investigation provides.

This investigation is based on the evolution of the constitution from the state of Baja California as a written testimony of the legal-political history of this federative organization (entidad federativa) in each of its stages. The investigation advocates the analysis of the formation of our own public institutions according to the development of the sociocultural identity from this region of the country and based on the ontological, epistemological and axiological criteria from the design of the local constitutions.

Regarding the contents, the book is divided by two sections. The first one systemizes the constitutional history of Baja California from the 19th century by presenting an analysis of how this federative organization was treated by the Republic Constitutions of 1824 (Constituciones de la República de 1824), the Constitution of 1836 (Constitución de 1836), the Organic Bases of 1843 (Bases Orgánicas de 1843), the Border Agreements of 1848 and 1853 (Tratados de límites de 1848 y 1853), and it concludes with the Constitution of 1857 (Constitución de 1857). In this first thematic axis about the origins and the 19th century, the next topics are particularly reviewed:

- *Origins and first constitutions of Mexico (Orígenes y primeras constituciones de México)*: Within this chapter the first findings in the history of Baja California are described, including cultural, religious and social aspects. The historical journey starts with the Spanish expeditions, going through the normative background that was current since *novo* Hispanic times and until after the independency, just in the middle of the 19th century.
- *Border agreements of 1848 to 1853 (Tratados de límites de 1848 y 1853)*: In this section the impact that the North American invasion had in Mexican territory is presented, especially in Baja California, where after the split of the Alta California the following years would become complicated. Also, the economic use in the region by North Americans in terms of the state resources is mentioned.



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- *Constitution of 1857 (Constitución de 1857)*: Here is presented, that the fundamental law from 1857, in despite of having strengthened its federal system, Baja California was not rejoined as a federative organization once the precept 43 assigned it again as a territory of the Mexican federation. In the book, the consequences of this process are shown among others. By not acquiring state sovereignty they could not create a constitution and as a consequence they also were not able to build their own local government bodies.

As a second thematic axis of this work, it is presented the constitutional history of the state from the 20th century until the first decade of the 21st century. This section is structured by fifteen chapters, starting with the treatment that the current Constitution of 1917 (Constitución de 1917) granted to this region of Mexico. The first chapter of this section is closed explaining the origin and creation of the constitution of Baja California. Here stands out the strong part that the local groups took by making committees for the creation of this federative organization. It is described the making process of the first state elections for seven constituent representatives, which was celebrated on March 29th 1953.

The following 14 chapters present an analysis of the constitutional evolution of this federative organization that is the object of study. This is made by studying every single of their institutions. Specifically, in this second section named “20th century and first decade of the 21” (Siglo xx y primera década del XXI), the next topics are addressed:

- *Constitution of 1917 and origin of the Constitution of Baja California (Constitución de 1917 y origen de la Constitución de Baja California)*: It is joined in this thematic axis the analysis of the evolution of the article 43 of this new federal constitution. The integral parts of this federation are delimited, and starting from the transcendent federal constitutional reform published on the *Official Gazette of the Federation (Diario Oficial de la Federación)* on January 16th 1952, Baja California acquires the character of federative organization. It is constantly reviewed the general analysis of the institutions that are part of and created the Constitution of Baja California.
- *Territory of the State of Baja California (Territorio del Estado de Baja California)*: Here is presented the evolution of the territory bases of this federative organization. It is explained the objectives and contents of the three first constitutional precepts of the local fundamental law by studying the concept of state, and the analysis of the municipal legislation of this subject area.
- *State sovereignty, institutions and electoral process (Soberanía del estado, instituciones y proceso electoral)*: The complex concept of sovereignty is addressed in this chapter. As Hans Kelsen said: “in the idea of a form of state or society, the collective will or more precisely, the social order, will result generated by its own subjects, in other words, the people” (Kelsen, 2005, p. 30). Such peculiarities are expanded with the author ideas, as well as the definition by great jurists that sustain argumentation. It is also addressed the topic of the electoral process in Baja California. It begins with the acknowledgement granted to Mexico by the development of the election law and the design of its own electoral institutions; both administrative and legal.
- *Official symbols (Símbolos oficiales)*: In this section it is explained the particular situation of the bajacalifornian fundamental law that provides the regularization of official symbols of this organization since the Constitution of the Mexican United States (Constitución Política de los Estados Unidos Mexicanos) did not provided it in its content. Even though this omission has not significance, in the

fundamental law of Baja California this topic is constitutionalized, creating an interesting legal precedent.

- *Human rights and their protection (Derechos humanos y su protección)*: Fundamental rights in Baja California are found constitutionalized under reminiscing criteria of the Federal Constitution. Therefore, we can confirm that in this chapter, every human right recognized by our constitution and the international agreements that the Mexican State is part of, is constitutionalized, as well as the guarantees for their own protection. Their own exercise could not be restricted or suspended, only in the cases and conditions that the same constitution dictates.
- *State inhabitants, duty and rights (Habitantes del estado, derechos y obligaciones)*: The chapter number v of the title I of the Constitution of Baja California is studied in this part of the book. The demographic element is carefully analyzed by the author. She made observations such as the omission in the development of precepts that regulates the acknowledgment of the inhabitant character of the state, or also the absence of determined residence demands for occupy public positions in the state.
- *Public power and form of government (Poder público y forma de gobierno)*: This chapter provides us the presentation of the investigation about the organic part of the bajacalifornian constitution. It is explained the characteristics of the form of government; republican, representative, popular, democratic and lay. It is given as well, an explanation about the three government bodies from the three structural functions of the state: legislative, executive and judicial.

The Legislative Power, which is part of title III of the Constitution of Baja California, is deeply studied in this section of the book. The author argument various observations about these normative contents. She qualifies them in general terms as over-constitutionalized, considering the themes and subthemes that refer to particular procedures and rules which could be established in regulatory laws.

This organic part continues with the Executive Power of the title IV of the Constitution of Baja California. The structure of the bajacalifornian public administration is explained, following the chosen methodology. Every reform and additions that had been added to the fundamental law are highlighted chronologically in this section.

Judicial Power is analyzed in the title V of the Constitution of Baja California. It abounds the content of the articles in the integration of judicial bodies, requirements to be functionary, highlighted reforms, and reviews, as well as commentaries form relative percepts.

- *Municipal regime (Régimen municipal)*: In this chapter the municipality is studied as an institution of public law of political-administrative character, which within a state is a territorial district from the public administration and represents the first authority to the citizen. It is highlighted that the municipality:

Is certainly a form of decentralization [...] it constitutes a primary and spontaneous community organization [...] within that zone lays the most elemental about the individual and group liberties, therefore, it can only be as long as a decentralized zone exist as a municipality (Tena, 2010, pp. 150 y 151).

- *Public finance and regimen of responsibilities in public sectors (Hacienda pública y régimen de responsabilidades de los servidores públicos)*: This two important constitutional themes are objects of study where the author makes mentions of doctrinal concepts which make her able to argue that “the fiscal coordination” and generally the fiscal federalism, were motives of multiple questionings that should be improved in our country in order to endow major tax powers and improve the distribution mechanisms of the fiscal resources to the federative entities. This is suggested in order for the local governments to access major resources and therefore, improve the obligations with their communities and impulse the regional development. Regarding the regimen of the responsibilities of public servers, some thoughts are presented about the necessity of reinforcing the professional ethic, the transparency and anti-corruption mechanisms as key elements of the public administration and of the justice system.

At the closure of her work, the author includes an annexes section which grants the reader a better understanding with an integral vision about the local constitution. It is presented the motives exposition of the Political Constitution of the Free and Sovereign State of Baja California (Constitución Política del Estado Libre y Soberano de Baja California), which was issued on August 16th 1953. It gives a lesson of the historical treatment through presenting the social realities in the bajacalifornian context. It is also systematized a “Historical synopsis of the constitution” (Sinopsis histórica de la constitución), wherein the exposed content of the work was comprehended and the addressed issues were correlated, placing by sections the constitutional precepts with their respective titles and chapters.

As a conclusion it is necessary to recognize that the mentioned book is sustained with quotes and references of classic and contemporary jurists. Therefore alongside the argumentation and investigate work of the author, it establishes a legal and historical contribution which will be of great help for students, scholars, lawyers, legislators, members of the court, those who deliberate about legal problems and the collective events of human development, and generally, everyone who finds itself interested by institutions and history of Baja California. This book will be a valuable source of information to be considered.

It is clearly established throughout the book, that law cannot be comprehended or studied without its history, because legal phenomena cannot be understood or interpreted if the past events, origin, and evolution through the different stages of human development are unknown.

In order to analyze, investigate, or make proposals about law, objective elements that permit us comprehend rationally and systematically the legal experience are needed. It must start with the historical facts, because it is needed to understand the human development in its different stages and places. These elements are sublimely examined in the work of the Dr. Marina del Pilar Olmeda García. Scientific information and explanations of history enlighten the law about the changes and evolution that it have passed since its origins.

It is worthy to remark the methodology carefully applied in this investigation. We can appreciate the respect and dedication of the author about the science of law and history as well. In this sense, the work ends up being an enlightening journey both as historical heritage, as well as legal work.

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