

The making of the 'Basque' Political and Representative Institution (1839–1853): end of a protracted Civil War (1833–1839) first project to give continuity to the *Foral* regime (historical public law) and to the Basque representative assemblies within the Spanish constitutional framework, part III

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SUMMARY

In this article Joseba Agirreazkuenaga continues his account of the development of the Basque political institutions to the period following the settlement of the first Carlist war by the Convention of Bergara in 1839. This laid down a process for incorporating the Basque *foral* institutions into the framework of the new liberal constitution of the Spanish monarchy. It required negotiations between the Spanish Cortes and Basque representatives, which produced the institution of the Basque *Conferencias* to speak for the three Basque provinces. Once established these developed into the main institutional voice for the developing Basque national movement. By the 1860s the *Conferencias* had virtually acquired the function of a Basque provincial government.

The war, as every civil war, was a factor of general dissolution of Basque society, within which paradoxically the mechanisms of the institutional and social organisation appeared to be solidly rooted in the eyes of the population and of European travellers. Amongst the dimensions of the war we must mention of the structural political and economic problems that influenced its outcome; nor can we omit the social aspect, that of the individual protagonists. The sectors known as *menditarrak*, those from the mountains or highlands, were mobilized at the outset in defence of 'the familiar' against the unknown; efficient use was made of the armed militias organized by the *Diputaciones* (Deputations) of each of the provinces. ¹A civil war

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¹J. Agirreazkuenaga, 'La via armada como método de intervención política: análisis del pronunciamiento carlista, 1833' in, *150 años del convenio de Bergara y de la ley del 25-X-1839*. Vitoria, Eusko Legebiltzarra, Parlamento Vasco, 1990, 117–226. 'Emen Tolosatic Donostia bitartean ez degu

is always complex and multidimensional. Popular poetry, through the *bertsolaris*, has left testimonies of the social background according to which the war also served for giving vent to the conflict between tenants and landowners, as well as to the disturbing plebeian protest that had found uninterrupted expression in the successive wars that had taken place since the time of the War of the Convention.² A contemporary observer, the Count of Villafuentes, compared this to the counter-revolutionary war of the *Vendée*.³ Finally, we cannot omit the international aspect of the conflict in the European scenario of forces favourable to the liberal revolution and to the counter-revolution. In sum, this was a war with an unescapable political dimension and in the Basque Country it achieved an exceptional development because it was perceived that the political system organised from their particular representative assemblies was at stake.

On 31 August 1839, the so-called Convention of Bergara was signed. The intervention of the United Kingdom under the auspices of Lord Palmerstone was decisive in the preparations of the terms of the convention and article one of the Convention made reference to the *foral* question, to the political issue of inserting the Basque provinces into the liberal constitutional framework with which the Spanish State had been provided between 1833 and 1837. The remaining points dealt with questions concerning the combatants, particularly those of the Carlist side. Not all of the Carlists accepted the terms of the convention but it was enough that it should receive the support of some battalions for the military fronts to collapse, forcing the remainder to flee into exile. The war did not however end automatically, but without the support of the Basques the Carlist dynastic option no longer appeared to have any possibility of success.

In August/September 1839, the *foral* legal regime had been suspended according to the Spanish liberal Constitution of 1837. The provincial *Diputaciones* were left with a very limited administrative power in comparison to the traditional *Diputaciones* that had been subjected to the historical *fuero*. The representatives of the provincial *Diputaciones*, in particular those of Biscay, took an active part in the preparations and negotiation of the Convention of Bergara.

The *Diputados* (Deputies) of the three provincial *Diputaciones* met in Bilbao on 19 September 1839. In the course of the meeting they studied the economic conjuncture and the form by which the continuity of the *Foral* regime could be achieved in order to fulfil the compromise undertaken in the fields of Bergara, since they understood that the Convention accepted the continuity of the historical *Foral* regime, within the framework of the new Constitution.

ecer, baña Tolosatic Burgosañocoa menditarrena dago (...) Diyenez maquiñabat gende bildu da menditarretara', cit. In M. Lekuona, 'Cartas andoaindarras (de la Primera Guerra Carlista)', *Boletín de la Real Sociedad Vascongada de los Amigos del País*. San Sebastián, 1962, p. 383.

² See the anthology that I published in *150 años del Convenio de Bergara y de la ley del 25 de Octubre de 1839* (Agirreazkuenaga, J. y Urquijo, J.R. ed.). Vitoria-Gasteiz, Eusko Legebiltzarra-Parlamento Vasco 1990.

³ J.C. Jiménez De Aberasturi, 'La guerra de la Vendée y la guerra carlista', in *Boletín de la real Sociedad Vascongada de Amigos del País*, XXI, San Sebastian, 1975, pp. 560-566. Transcription of notes by the Count of Villafuentes at the time of the Carlist War, in which he establishes a parallel between the latter and the Vendée War in France.

Amongst the representatives, Joaquín Calbetón, the representative of Gipuzkoa, was a leading figure of the progressive liberals from San Sebastian, who had been outstanding before the war in their support for moving the customs posts from the border between the Basque Country and Spain to the Basque coast. The representative of Biscay, Manuel Urioste de la Herrán, was a personality who had evolved from progressive liberalism to conservatism; in 1839 he was the ideologue of liberal *Fuerismo*. León Samaniego represented Alava. In the minutes of the meeting they made clear that they advocated the conservation of the *Foral* legal regime, but updated in conformity with the new constitutional situation. Given the importance of the document, as it was the first since the end of the war that tried to reconcile the traditional *Foral* regime and the Spanish Constitution, we reproduce a substantial part of the minutes.⁴ The central ideas that appear in this project were those that in the following months would encourage the members of the *liberal fuerista* tendency in their aspiration to conserve the representative assemblies in the Basque area and hence self-government. Meanwhile the Spanish *Cortes* began to discuss the legal formula that would fulfil the compromise acquired in the Convention of Bergara. In reality, they were discussing the organizational formula for the new Spanish Monarchy: in the past its nature as a composite monarchy had been evident. Only the Basque representative assemblies, and the organs of power derived from the same, provided this composite character in 1830. But the idea of a unitary and uniform monarchy was the dominant conception amongst the sectors of moderate absolutism as well as in the liberal constitutionalist ranks.

⁴ 'Que no obstante la persuasión en que está la conferencia de que ni en ellas ni las diputaciones de que emanan residen facultades suficientes para adoptar ni proponer modificación alguna a los fueros del país, pudiendo suceder que arrastradas por los acontecimientos fuesen aquellas llamadas a discutir esta interesante y gravísima cuestión, como única representación actual aunque imperfecta de las provincias vascongadas cree necesario fijar rápidamente las bases generales a cuyos límites en su opinión deberían circunscribirse esas modificaciones. Estas bases podrían ser: que se uniformase el país con el resto de la nación en el sistema judicial; - que suprimido así en Guipúzcoa y Vizcaya el encargo de corregidor quedasen confiadas sus atribuciones políticas y administrativas a los respectivos Diputados según la Constitución Alavesa; - que con objeto de hacer desaparecer la prevención hostil que en las demás provincias del reino excita contra estas la exención del servicio militar, se conviniese con el Gobierno en que se les designe en cada quinta su cupo redimible con dinero o con hombres presentados por ellas; - que reconocida la necesidad de que las provincias vascongadas contribuyan también al sostenimiento del estado, se fije, mancomunadamente en los términos más ventajosos posibles un encabezamiento invariable a lo menos por veinte o treinta años, por equivalente de todas sus contribuciones directas o indirectas; encabezamiento cuya distribución entre sí debe quedar a las mismas provincias;- que apareciendo de este modo que estas lejos de ser ya gravosas al resto de la nación contribuirían como todas las demás sin gastos de administración ni de gobierno, se solicitase la libertad de comercio con las colonias como lo hacen los demás puntos de España y aun extranjeros, y que nuestra industria no tuviese más gravamen que la misma industria Española; - y que conviene atendidas las circunstancias actuales, que no se haga mención ni de establecimiento de aduanas ni de otras medidas fiscales que siempre han excitado grande antipatía en el país.' Archivo Foral de Bizkaia (A.F.B.), Libros históricos, nº3. J. Agirreazkuenaga (ed.), *La articulación político-institucional de Vasconia. Actas de las Conferencias firmadas por los comisionados de Bizkaia, Gipuzkoa, Alava y eventualmente de Navarra*. Bilbao, 1995. Vol. 1, p. 287.

THE SPANISH PARLIAMENTARY LAW OF 25 OCTOBER 1839

From 1839 new terms of debate and a new institutional decision-making framework were established for the Basques: this was Spanish *Cortes* or the Parliament of Spain. The Basque districts were represented in the *Cortes*, but in October 1839 other representative assemblies that had existed in Basque Country were suppressed by virtue of the new administrative and political system provided for in the Spanish Constitution of 1837. Thus the individuals of the Basque territories now lacked a collective political representation, which had been provided in previous centuries through the *Juntas Generales*.

The law of 25 October 1839 meant, on the one hand, recognition of the *Foral* regime but it had to be updated within the framework of the Spanish constitutional unity. In this sense the law provided once again a constitutional basis for Basque historical rights, both in their facet as public law and as private law. Now they implicitly confirmed that the representative instance that would evaluate this updating should be the *Cortes*. In the background the argument revolved around the type of constitutional monarchy for Spain: until now it had been a type of composite monarchy. The moderate liberal *Fueristas* wanted to repeat the formula, giving continuity to the composite monarchy incarnated in the figure of Isabel II. Nonetheless, the practice that was to be institutionalized tended towards a conception of unitary and uniform monarchy.

The Law, in its second article, required the modification or adjustment of the traditional *fueros* to make them compatible with the constitutional system. To this end the government had to begin a negotiation. Given that in article one the *fueros* of Biscay, Gipuzkoa, Alava and Navarre were ratified, it seemed essential to restore, if possible, their most characteristic institution, that which could legitimize a process of internal modification: the *Juntas Generales* or representative assemblies of each of the Basque territories. Thus the decree of 16 November 1839 once again re-established the traditional representative system in Biscay, Gipuzkoa and Alava, that is, the *Juntas Generales* and their *Diputaciones*, principally in order to elect the representatives who would negotiate the modification or adjustment of the *Fueros*. However, for the Basque political élites this meant that the historical *Foral* regime would be restored once again and they thus interpreted the law as a political victory, which was capitalised politically by the liberal *Fueristas*. In this way the representative assemblies received a renewed confirmation within the Spanish constitutional framework. This was not the case in Navarre. In this territory the historical *Cortes* of Navarre were not convened. Elections were called by districts and a new provincial *Diputacion* was constituted following the provisions of the Spanish Constitution, and it was these provincial *Diputados*, not subjected to the control of any representative assembly, who were to represent Navarre. In reality, the traditional *Cortes* of Navarre answered to a representative scheme of the Ancien Regime, divided into its three characteristic wings: military, ecclesiastical and the townships. The *Juntas Generales*, however, bore more resemblance to the representative system in force in the liberal parliamentary states where a census system was in effect.

Henceforth the *Juntas Generales* were to promote a dynamic of autonomous political power and of legitimation of this power; they would elect the representa-

tives to negotiate the formula for the constitutional modification and adaptation of the *Fueros* or historical rights.

MODIFICATIONS IN RELATION TO THE REPRESENTATIVE ASSEMBLIES

With the law of 25 October 1839, the institutional system of the *Conferencias* entered its period of greatest dynamism and maturity, to such a point that in the decade of the 1860s they could be compared to a sort of common representative assembly for the adoption of common agreements and political strategies. All the same, in practice, the organ of the *Conferencias* (the system of common representation of the assemblies of Biscay, Gipuzkoa and Alava) came over the years to resemble a Basque confederal government, since the representation of the *Juntas Generales* was replaced by that of the *Diputaciones*, their executive bodies.

The principal reason for the leading role played by the *Conferencias* was the need to harmonize the positions and options of the *Diputados Generales* and the *Comisionados* of the *Juntas Generales* with regard to the projects of adjustment. Facing the pressure of the State and the constant limitations placed on the political powers that the *Diputaciones* had traditionally enjoyed, the *Conferencias* became the political instrument for exercising a greater degree of influence and pressure in defence of the internal constitution of the Basque provinces. They became the guarantor and safeguard of the 'special regime in its politico-economic-governmental administration', to use the expression coined by the *consultor* (legal consultant) of Biscay, Casimiro Loizaga.

But, on the other hand, we cannot ignore the renovation that was taking place in the world of ideas in the wake of historical research and political reflection that stimulated a surpassing of the provincialist conception; the new *Vascongada* (the union of Biscay, Gipuzkoa and Alava) subject had already established himself, and the *Conferencias* were to be the politico-institutional correlation of the new situation. Works such as *La nación vascongada* (The Vascongada Nation) by Erro (1815), an absolutist minister in 1823 under Fernando VII, *La Historia de las naciones Vascas* (History of the Basque Nations) by Zamácola (1818), the reflections on 'the Basque nationality' in the decade of the 1830s amongst the intellectuals of the town of Bayona, the *Defensa histórica del Señorío de Vizcaya y provincias de Alava y Guipúzcoa* (Historical Defence of the Seigniorship of Biscay and the Provinces of Alava and Gipuzkoa) by P. Novia Salcedo, published in 1851–52, although he had finished writing it in 1829, all mark a renewed vision of the past and present of the Basque provinces.⁵ We can note that a unitary conception of the *Vascongadas* provinces was becoming increasingly widespread. The titles of journals that were founded in the Basque Country also reflect this notable change of perception; they go beyond a provincial vision to one of a more general Basque character: in Bilbao *El Vascongado* was published in 1813; in 1820 *El Liberal Guipuzcoano* appeared and in 1840 *El Vizcaino Originario*, both with a progressive liberal tendency; in 1837 *El Bilbaino* was published, whose editors were to be behind the founding of *El Vascongado* in

⁵ A.E. Mañaricúa, *Historiografía de Vizcaya*. Bilbao, 1973.

1840 and later of the *Irurac bat*, (three in one) a liberal fuerista journal that was a compulsory political reference point from 1856 until its disappearance following the Second Carlist War.

In the French Basque Country, with the suppression of the traditional *foral* institutions and the creation of the Department of Basses Pyrenées, there was a blossoming of the Basque linguistic-cultural dimension. All reflections were made in terms of Basques, a word which frequently encompassed the inhabitants of both sides of the Pyrenées. The French Basque Country is the place where the general histories of the Basques were written and diffused. The Basque became a new historical subject and therefore a political subject. These theoretical and ideological constructions about the Basque community were to influence the conception and imagery of the new ruling élites of the post-civil war period.⁶

Returning to the law of 25 October 1839, we should recall that this parliamentary agreement had made the liberal constitutionalisation of the *foral* historical regime, necessary. In 1840, a common front was established between the four *Foral* provinces, known as *Foral* Spain, in order to attend the negotiations. But this unity of action broke down due to disagreements between, on one side, the representatives of Navarre, who had prepared their position on the modification from a progressive liberal viewpoint, which preserved what was positive about the *fueros* (fiscal autonomy). The principal ideological leader was Yanguas y Miranda. On the other side were the rest of the representatives of the Basque provinces, whose aim was the full political restoration of the *fueros*.

The representatives from Navarre opted for the immediate modification of their traditional political status, in accordance with the position agreed upon by the provincial *Diputacion*.⁷ On the other hand, the *Comisionados* of the three *Juntas Generales* of Alava, Biscay and Gipuzkoa applied the strategy of postponing the modifications to the *Foral* system since it was their understanding that as long as the traditional *Foral* regime remained in effect, they could contribute to the continuity and consolidation of the institutions based on *Fuerismo* within the new constitutional framework. It is not surprising that the latter should have lamented the position taken by Navarre since it contributed to a weakening of their strategy.

Nonetheless, the law made it obligatory to elucidate the content of the *fueros*, according to the version of the 1837 Constitution. The *foral corpus*, which in origin was closer to a treaty of private law, began to be interpreted by the *consultor* of Biscay, Casimiro Loizaga, from the perspective of public law. According to the version of the conservative liberal *Fueristas*, the *Foral* regime also contemplated in its development its own public law, differentiating this from the dimension of private law.

The representatives of the three provinces put into play a common strategy to negotiate with the Spanish Government. At one point Pidal, a minister, dared to

⁶ J.M. Sánchez Prieto, *El imaginario vasco. Representaciones de una conciencia histórica nacional y política en el escenario europeo. 1833-1876*. Barcelona, 1993.

⁷ 'Correspondencia de F. Hormaeche, Comisionado de las Juntas Generales de Bizkaia para el arreglo foral' (A.C.J.G., Reg. 2). R. Rodríguez Garraza, *Navarra, de Reino a Provincia (1828-1841)*. Pamplona, 1968. M.C. Mina, *Fueros y Revolución liberal en Navarra*. Madrid, 1981.

propose a negotiation province by province, but this was turned down.⁸ The *comisionados* to the *Cortes* met assiduously to unify their positions and to put forward common answers. In 1840, they created a book of minutes of the meetings and Conferencias held in Madrid by the *comisionados* to the *Cortes* of the three *Vascongadas* provinces for the *foral* adjustment.⁹ The general *foral* adjustment, and the interior politico-administrative management, were to be the priority subjects of discussion of the *Conferencias* of the 1839–1877 period. The decisions taken in the *Conferencias* acquired a referential political value of the first order, we would say of almost obligatory observance. Henceforth, the *Conferencias* would become a full *foral* institution and a compulsory instance of debate before any significant decision was taken. This period, in its turn, can be subdivided into others: the first, between 1839 and 1854, during which the minutes of the *Conferencias* show us the deterioration of the old *foral* edifice, and the concern about a *foral* adjustment in which the faculties or powers of a politico-administrative character would be left diminished; although parallel to this the public administrations were to have a greater capacity for public intervention. But this evolution, similar to that shown by the European states, should not hide the deterioration of the political principles on which they were attempting to base the politico-administrative legitimacy of the *foral* regime. In the second period, from 1854 onwards, one can speak of the *Conferencias* as an organ of political leadership and administrative management, a sort of confederal government of the three provinces. Sufficient to confirm this are the complex agendas that were drawn up from 1856 onwards, and the authority they acquired within the respective *Diputaciones* and *Juntas Generales*. The *Conferencias* were not only concerned with the analysis of the relations with the public powers of the state, but also with administrative and political aspects inherent in giving a modern backbone to Basque society.

⁸ M. Vázquez De Prada, *Negociaciones sobre los fueros entre Vizcaya y el poder central. 1839–1877*. Bilbao, 1984.

⁹ Reference is made to this book in an old inventory of records concerning the 'Conservation of the foral system and legislation' (A.C.J.G., *Inventarios e Indices*, Reg. 2, leg.4). We have been unable to find the mentioned book, however, using correspondence we have been able to reconstruct the content of some of these common meetings.