

The making of the Basque political and representative institution (1853–1874), Part IV

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SUMMARY

During the liberal revolution in Spain the national parliament was formed. In the Basque provinces some aspects of the Historical Foral law remained in force, like the provincial representative assemblies, and in the same period the New Foral Law emerges. This paper analyses the dialectical and problematic relation between the Spanish and Basque public political powers before the dissolution of the representative assemblies in 1877.

At the Conference of the Commission held in Camerino (Italy) in 1994 I presented a general view of the abolition of the representative assemblies of the Iberian Basques. The paper, published in the Commission's journal, had the following sections:

1. Genesis and development of the assemblies or 'Batzar Nagusiak' (*Juntas Generales*) in the Basque Country.
2. The French revolution and the dissolution of the assemblies of Vasconia Aquitana or Pays Basque Français.
3. Iberian Vasconia: liberal revolution and the reformulation of the assemblies.
4. The restoration and disappearance of the representative assemblies in the struggle between revolution and counterrevolution.
5. Impact of the civil war (1833–39) and new political and ideological formulations concerning the foral laws and the assemblies.
6. The debate in Great Britain.
7. Legal development designed to adapt the foral system to the Spanish Constitution of 1837.

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This research was financed by the Ministerio de Ciencia y Tecnología, PB98-0144.

Parliaments, Estates and Representation 22, November 2002. Published for the International Commission for the History of Representative & Parliamentary Institutions by Ashgate Publishing Ltd, Gower House, Croft Road, Aldershot, Hampshire GU11 3HR, Great Britain. © International Commission for the History of Representative & Parliamentary Institutions, 2002.

8. The Carlist war, a new civil war and the definitive abolition of the *Juntas Generales* in the nineteenth century (1872–76).¹

Starting in 1995, at a succession of conferences I have presented analyses that, under the generic title 'The making of the political and institutional Basque Country', have aimed at deepening our understanding of the sections mentioned above, with special emphasis on the representative assemblies, the direct agents of legal and political legitimacy. This paper should therefore be considered as a continuation of the chronological series that I have been publishing in several volumes of the Commission's journal.

Our interest is centred not only on the chronological analysis of historical events in the dynamic development of the representative assemblies, but on the political and ideological discourses expressed within them during the process of liberal revolution in the Spanish composite monarchy. From being an empire, Spain became a nation state, but one which, at the end of the nineteenth century and at the time of the independence of Cuba and the Philippines, was being called into question in Catalonia and the Basque Country. Within the nation state different nationalist movements and views of the Spanish nation state were emerging, such as the federal concept and the opposing centralist and unitary one.

The clear-sighted vision of Humboldt, following his visit to the Basque Country exactly 200 years ago and arising from his study of its public institutions, already predicted that in the future the problem would reside in how particularity and universality should be articulated in the practical order of socio-political organization, in states or monarchies which grouped together different political collectives, with differentiated legal and political bodies. The Napoleonic model of the nation state, the juridical-political construction *par excellence* exported to the entire world, assigned a role as direct agent of political and economic modernization to the public administration, which was identified as a kind of single and centralized administration.²

The representative assemblies and their constitutional recognition were the sources that would permit the collectives within the composite monarchies to create their own, exclusive constitutional law. In the case of the Basques, their particular *foral* law was denominated historical law, which neither begins nor ends with the constitutional text of the nation state to which they belong. Following the establishment of the Liberal Constitution and the Law of 25 October 1839 (this Law recognized the *foral* political legality of the Basque territories but within the Spanish constitution), a problem arose concerning the devolution of the legality deriving from the representative assemblies, the *foral* legality, which was different or (depending on the interpretation) opposed to the legality of the new national parliament as the single source of the new constitutional legality.

¹ J. Agirreazkuenaga, 'The Abolition of the Representative Assemblies in the Basque Provinces during the Rise of the Liberal Revolution (1789–1876)', *Parliaments, Estates and Representation*, 14 (1994), pp. 109–25.

² S. Woolf, 'The construction of a European world-view in the revolutionary Napoleonic years', *Past and Present*, 137 (1992), pp. 95–7; S. Woolf, *Europe and the Nation-State* (European University Institute. Working Paper, HEC.no. 91/11. Florence, etc., 1991).

The period that is the object of analysis in this paper is of great interest because a public *foral* administration was organized by the representative assemblies, one that extended to the Basque territories and which replaced the direct presence of the new Spanish nation state. In this way a state within another state was forged in a juxtaposed form, like an 'associated state'. This view was a new interpretation of the traditional composite monarchy, with a new legal public space. But the experience came to an end in 1876 and the *foral* political legality was abolished by a new law of the national parliament.

And it was precisely within that process, in the final third of the nineteenth century, that the first Basque nationalist political organizations were set up, which in reality, in another language and in other terms, reinterpreted and outlined a new political *foralism*, in a radical sense. Their demands went as far as to request the application of the right of self-determination in 1918. And recently, since 1990, a new Basque government and the Basque parliament have called for its exercise. But at the time, in the final third of the nineteenth century in the Basque Country, Spanish nationalism, directed by the new industrial bourgeoisie, was the politically dominant option. Hence, in the debate opposing the representative legislative assemblies and their representatives to the national parliament and its government between 1844 and 1876, the so-called 'new *foral* law' took shape, rather like 'Historical Law'. This is not a law belonging to the past. It is recognized in the Spanish Constitution (1978), in the Autonomy Statute (1979) and the autonomy law of Navarre (1982); it is a law of *foral* reform with respect to the law of 1841. But the different levels should not be confused: a distinction must be made between autonomy and the devolution of the rights deriving from the will of the citizens, which in the final instance is the modern reading made of so-called historical law or of *foral* devolution, in so far as it is a differentiated constitutional and political construct.³

THE BIRTH OF A 'NOVISIMO FORAL LAW': 'AN ABSURD, DANGEROUS AND IMPOSSIBLE PRINCIPLE ... A STATE WITHIN ANOTHER STATE' (1860)

Once the commercial customs had been moved from the Ebro River to the coast and the Pyrenees by the Decree of 29 October 1841, the Basques lost a secular tradition of commercial freedom, an element that was consubstantial with the *foral* legislation. The new liberal judicial system contained in the 1837 Constitution was also applied, and the representative assemblies were abolished. However, these were re-established in 1844 so as to be able to appoint the representatives who would negotiate a *foral* agreement, to adapt *foral* legality to constitutional legality. From that date onwards a broad consensus emerged within the liberal leading élites and a sector of the Carlists, with the formation of a new political identity favourable to the *foral* regime that remained in force and was legitimized by the Basque representative assemblies of the *foral* territories, except in Navarre where the *Cortes* remained abolished. Meeting at a conference in 1842, the Pro-

³ In 2001 we created a University Institute for the study of Historical Law in the *foral* territories, that is to say in Vasconia, the Basque country. E-mail: skridhva@sk.ehu.es.

gressive Liberals had declared that, thanks to the Law of 25 October 1839, a 'new life' had commenced for the *fueros*. The Progressive Liberals of Bilbao, in their manifesto published in 1854, showed clear support for the *foral* system and even requested the re-establishment of the *foral* town councils. One of the leaders of Progressive Liberalism in Bilbao, Victor Luis Gaminde, evoked the American or German constitutions and referred to the recognition of the political bodies of Vasconia as states within the new Spanish state or Iberian Union:

the confirmation of the *fueros* according to the law of 25 October, is equivalent to proclaiming that the Vascongadas Provinces are allies of Spain by the pact of annexation ... moreover, outside the given cases of danger, they are independent states in fact and by convenience. Here the valley of Andorra ... in the New World the departments of the republic of Washington. Each fraction of these nations is in itself a government under the protectorate of a head, denominated absolute or constitutional monarchy, or republic. The Vascongadas provinces are to be found placed in this same rank. They are and they were states, not of today, but over the course of centuries, and if nationality is essentially rooted in the exercise of certain particular functions and in the celebration of treaties to which those that are not powers are not admitted, the three sister provinces are unquestionably [a nation] ... The law of 25 October 1839 forms the social contract between Vizcaya and the Castiles.⁴

Hence the new liberal experience contributed to encouraging new political and ideological statements. From the camp of the Conservative Liberalism of R. Ortiz de Zárate and his defence of the 'Vascongada policy' emerged the defence of a new Basque political identity, above and beyond ideological standpoints; or the formulation of V.L. Gaminde cited above; or that of the traditionalist, and outstanding political leader, Pedro Novia de Salcedo who, in a work published in 1851, asserted that:

Whatever the authority or form by which [the states] were legitimately constituted, the state was formed and all of its individuals have a real and positive right to uphold and conserve it ... That this should be so in the Vascongadas provinces we have already demonstrated, as too their character as separate and independent states, and by this alone the right is fully proved that assists all peoples in the observance of their *fueros* and laws.⁵

In the new political period in Spain, following the failure of the Progressive Liberals, a new theoretical formulation of the Basque political, juridical and institutional reality emerged between 1856 and 1868; at the same time, this was made compatible with the defence of imperial Spain, with direct participation in the imperial wars of Morocco and Cuba.

The minutes of the *Conferencias*, the meeting of the representatives of the Basque provincial assemblies, give the best example of the body of doctrine

⁴ V.L. Gaminde, *Impugnación al proyecto llamado Arreglo de los Fueros de las Provincias Vascongadas presentado por la Comisión del Gobierno a las de las mismas Provincias* (Impugning of the project known as Agreement of the *Fueros* of the Vascongadas presented by the Commission of Government to those of the same provinces, Bilbao 1852), pp. 14–15 and p. 5.

⁵ P. Novia de Salcedo, *Defensa histórica legislativa del Señorío de Vizcaya y las provincias de Guipuzcoa y Alay* (Bilbao, 1851), vol. 4, p. 8.

that was forged in the debates of the representative assemblies concerning what was formulated as the 'new *foral* law'. In the *Conferencias* of 1857, the General Deputies protested at the intrusion and conflict of powers that were occurring over matters such as public instruction or education, statistics, notaries and the prohibition on building the 'iron road of Triano', when in their opinion these belonged within the scope of the '*foral* administration'. The *Conferencias* of 1859 defined themselves as 'part of the *foral* regime'. That is to say, from then onwards they were conceived as a further element of the *foral* edifice, to such an extent that in 1865 they would be described as an instance of 'the conservation of its institutions'. It can be affirmed that the project formulated in 1793 to integrate the three Basque provinces appears as something already assumed and fully realized in 1859. In the following years, facing the prospect of integration within the liberal Spanish state, the minutes of the *Conferencias* repeatedly denounced the danger of a double peripheral administration. In reality, the representatives of the liberal state, with the creation of its peripheral administration in the Basque Country, began unwittingly to strengthen a nationalist concept of the Basque *foral* system. The *foral* institutional construction came to appear as a creation peculiar to the Basque Country, but without constitutional recognition in political terms. The Spanish constitutional and nationalist concept was the heir to the exclusive Castilian political tradition. For example, the control that the government tried to introduce over the meetings of the Vascongadas Deputations is a clear illustration of this. The governor of the province of Alava was surprised that the *foral* Deputations held *Conferencia* meetings in Vitoria in 1859, without prior notification or communication. On 7 July 1860, the Home Office Minister, Posada Herrera (whose ministry employed the young Canovas del Castillo as well as Fidel de Sagarminaga, who was to be his opponent in 1877), whose juridico-political ideas were inspired by French Jacobinism, prohibited any meeting of the *Conferencias* that did not have the express permission of the governor. His arguments were as follows:

To suppose that the *foral* Deputations of the Vascongadas provinces can meet when, how and where they see fit to deal with the affairs that suit them without the intervention of the governors would be to sustain the absurd principle, and more than absurd, one that is dangerous and impossible in any good administration, that there can be a state within another state, and to consequently deny to the government the right that the constitution and laws give it of supreme vigilance in all the branches of the administration.⁶

This situation, which would have been perfectly compatible in federal states, was in the opinion of the minister a retrocession to feudalism to the detriment of royal authority. The Jacobin concept of the exercise of power prevailed in the thinking

⁶ J. Agirreazkuenaga, *La articulación político institucional de Vasconia: Actas de las Conferencias firmadas por los representantes de Alava, Bizkaia, gipuzkoa y eventualmente de Navarra (1775-1936)* (Bilbao, 1995), vol. I, p. 61. The Spanish academic Francisco Tubino wrote in 1880 that Navarre and the Vascongadas provinces 'had lived until 1812, relative to Spain, in a sort of confederation ... conserving the category of independent states with regard to the interior, while recognising themselves as Spanish on foreign questions'.

of the moderate Liberals; hence, as a result, the primacy of the power of the representatives of the State should prevail, subordinating the rest of the powers.

The *foral* authorities decided to appeal to the queen, given that the royal order meant the derogation of one of the traditional *foral* attributes. They drew up a collective petition signed in August 1860, but without success, since the queen, in another royal order of 15 February 1861, rejected the arguments of the Deputations and ratified the royal order of the previous year. According to this, every time the Deputation met 'it must be with the knowledge of the governor of the province', since such meetings have a 'true political character'.

While this debate was taking place, the élites established in the Basque public offices showed themselves on repeated occasions to be in solidarity with the projects of the state, expressing themselves in defence of the sacred interests of the nation: the throne, religion, liberty and 'Spanish honour'. Hence the direct participation in the Moroccan War and later in that of Cuba, in order to 'contribute to upholding the Spanish name'. Spain was a 'flourishing empire', or at least aspired to be one. Although they mistook their wishes for reality, this was their particular form of adherence to and participation in the Spanish political project. These interventions served to justify the peculiar form of participation of the Basques in the Spanish army. Even the continuity of the *miqueletes* and the *foral* armed forces were justified as a second reserve of the Spanish army. The ruling elites understood that this full integration in the project of the Spanish liberal state should find its correspondence in recognition by the state of the juridical order of the *foral* system that was in force, and that the governors should thus act in conformity with this principle. The minutes of the *Conferencia* of 22 June 1868 clearly defined the system to which they aspired: 'the general laws are not applicable to these provinces without the modifications counselled by the exceptional situation'. In reality this was a reaffirmation of the principle of the *Pase Foral* (legislative control), abolished in 1841, but which updated the autonomous system in force, within the new framework of the liberal state. The minutes of the 1860s include a growing interest in the defence of Euskera, the Basque language, which had no presence in the public sphere or in education, when the organization of a new administration of services was debated. Thus, the argument was to arise against Moyano's Law of Public Instruction, that the bilingual reality of the country be recognized in such a way that the teachers should be bilingual. A similar concern was expressed in the case of medical professionals in the exercise of the profession of surgeon. The *foral* administration argued that the new services should be offered by persons able to perform them in both languages. In the cultural and scientific sphere it was planned to hold narrative competitions that would relate Basque stories and the idea was even defended of restoring the Royal Basque Society of Friends of the Country.

In the same period the Basque dioceses were created. The ecclesiastical institutionalization of the three provinces sanctioned the common policy that had been inaugurated through the *Conferencias*. The Deputations collaborated efficiently in the creation and economic support of the new dioceses.⁷ Thus, with the

⁷ S. Manteli, *Relación de las funciones con que las tres provincias Vascongadas celebraron la erección de su diócesis y el recibimiento de su primer Obispo en los días 27, 28 y 29 de abril de 1862* (Vitoria, 1862).

coming of the Revolution of 1868, a system of powers and administration was developed that aspired to build an autonomous political and institutional structure, specific to the Vascongadas provinces, with broad powers within the Spanish liberal state. From being termed the three sisters, on 10 May of 1868 they became known as 'the three twin provinces'.

FROM 'IRURAC BAT' (ALAVA, BISCAY, GIPUZKOA) TO 'LAURAC BAT' (ALAVA, BISCAY, GIPUZKOA, NAVARRA) (FROM THREE IN ONE TO FOUR IN ONE)

As we have pointed out in the previous section, from 1840 onwards the political strategies of the ruling élites of Vascongadas and Navarre followed different courses. Certainly, the political realities were incompatible in numerous respects. But after twenty years, in 1860, it appeared that the need for a confrontation had once again arisen, because the problems that were posed within the Spanish liberal state affected them in a similar way. Navarre, thanks to its economic and administrative autonomy, found itself in a condition to assume new challenges in public administration. In 1866, when the Deputation of Navarre was headed by Nicasio Zabalza, who two years later was to become an elected deputy to the *Cortes* and leader of the Carlist party in Navarre, with the valuable collaboration of the Secretary Juan Cancio Mena, an ambitious project of convergence with the other provinces of Vasconia was proposed with the aim of promoting five objectives. At this time the Vascongadas *Conferencias* had formed themselves into a type of common public institution for the coordination of the government activity of the Vascongadas provinces in the face of common problems, with the Deputation of Navarre invited on occasions as a sister Deputation. The document that was sent by the Deputation of Navarre to the other three Deputations on 18 August 1866 opened with the following affirmation:

The history and the tradition of the Vascongada provinces and Navarre, their character and their physiognomy, their customs and their beliefs, their feelings and their interests are identical. One and the same are the features of their territories and one and the same the appearance that they give. The Basque language which is its original and universal language is preserved and will be preserved perpetually in this country and it will serve as a glorious shield for the Basque-speaking people to save them from the poisonous doctrines that are scattered with a nervous hand by the revolutionary spirit throughout all the areas of the world ... it is when the peoples that are conscious of their dignity and faith in their providential destinies must associate and unite through the closest links that, without losing their respective autonomy, they achieve unity in their most important utterances.⁸

The theses contained in this declaration are similar to those spread by the traditionalist press organs, in particular *Euscalduna* or the *Seminario Católico Vasco-Navarro*, written enthusiastically by Ramón Ortiz de Zárate. In 1855 he had already started to diffuse the theoretical foundations of the so-called 'Vascongada,

⁸ Archivo Foral. Bizkaia, Bilbao, Regimen Foral, Reg. 7, leg. 3.

Basque policy⁹ and in 1867 he began publication of a series of articles to defend and popularize the *Laurac bat*. In his correspondence with the Secretary of the Deputation of Navarre, Juan Cancio Mena, he confessed that he was a firm partisan of the Basque-Navarrese Union. He even held discreet meetings in Alsasua with the effective president of the Deputation of Navarre, Nicasio Zabalza, and with Juan Cancio Mena. In the first place, they proposed the project of a Basque-Navarrese university. But their memorandum was more ambitious and included the following subjects: suppression of tolls and direct taxes on all types of vehicles in the area of the four Deputations, a reduction of the tax on the export of Navarrese wines, the creation of a house for the poor and the education of orphans, the establishment of a Basque-Navarrese mental asylum and the incorporation of the three provinces into the Pamplona law court. The Secretary of the Deputation of Navarre lamented the indifference with which his projects were received: 'I suspect that they have been scorned and I console myself that certain projects, which, while immensely useful, would also serve as a bond of union to re-establish old and cordial relations between twin provinces, have been viewed with such deplorable indifference.'¹⁰

With the aim of promoting the projects, the president of the provincial Deputation of Navarre and the secretary each made personal visits to the other Deputations. The subjects were discussed within the framework of the ordinary *Conferencias*, but they did not find the necessary interest, nor was there sufficient time for them to take root. Perhaps the project for the university would have aroused a common interest, but in reality there was not the necessary time needed to launch it, because the Revolution of September 1868 upset the political panorama and all priorities. But the effort undertaken to coordinate action between 'the four sister provinces' expressed the start of a climate of Basque solidarity extending beyond the three Vascongada provinces. In Navarre a pamphlet soon appeared, attributed to C. Escudero, that criticised the *Laurac bat* thought of the Deputation.

THE DEMOCRATIC SEXENIUM (1868-74)

The *Fueros*, or the *foral* system, during the first phase of the liberal state in Spain, had become 'the "new law" that arranges the relations of these peoples with the nation to which they belong'. This definition is far different from the formulations of the 1840s. In the first elections involving universal male suffrage in 1869, the Carlist Traditionalists, under the Catholic banner, won all but two of the seats to the Madrid *Cortes* for the Basque Country.¹¹ The articles of the journal *País Vasco-Navarro*, edited by R. Ortiz de Zárate, presented a renewed scenario of Basque politics, even reaching the point of formulating, from a religious Traditionalist standpoint, Basque nationalist theses.¹² From a Liberal standpoint, the

⁹ R. Ortiz de Zárate, *Escrito* (Bilbao, 1899), vol. I, p. 205.

¹⁰ Letter sent by Juan Cancio Mena to R. Ortiz de Zárate on 31 December 1866.

¹¹ M. Urquijo, *Liberales y carlistas. Revolución y fueros vascos en el prelude de la última guerra carlista* (Bilbao, 1994).

¹² J. Extramiana, 'Elites vascas en busca de una nación: segunda mitad del siglo XIX', in *Les élites espagnoles à l'époque contemporaine* (Université de Pau, 1983), pp. 17-26.

work of Juan Eustaquio Delmas¹³ argued against the articles that refuted the independence of Bizkaia. Hence, in 1869 the Basque Liberal leaders understood that the *foral* arrangement or adaptation had already taken place to a certain extent and by a *de facto* route. This belief found juridical justification in the constitutional quality of the Law of 25 October 1839, interpreted as additional to the Constitution, and in the specific development it had acquired over the years.

Meanwhile, the Traditionalists placed emphasis on the *counter-fueros*; they understood the *foral* system to be a result that had been produced historically during the *ancien régime*, and they requested the integral restoration of the *Fueros* of the year 1839. This interpretation closed any avenue for the evolution of the *foral* system, and thus endorsed the positions of the Spanish Constitutionalists.¹⁴ In this way, the evolution sanctioned by the *Juntas Generales* was the only course open for updating and adapting the *foral* system, a vision that was not shared by the Traditionalists, who began to diffuse a theocratic vision of the *Fueros* against Constitutional 'alienation'. In the discourse of the Liberal *Fueristas*, as they expressed it in 1872, exemption from taxes 'forms the essence of *foral* organization'. This was not the case for those of Absolutist inspiration.

The breakdown of internal consensus in the Basque Country and the rise of Carlism are without doubt the two events that had most influence on the weakening of the juridical and institutional system of the Basques. In fact, the Carlist formulations contributed to undermining the foundation of the Basque juridical and political status. The Liberal *Fueristas*, who supported the legitimate Deputations, were conscious of the incursion into their powers that was taking place. In 1874 Manuel María Gortázar and Francisco Cariaga, Liberals who were open to compromise in the conjuncture of 1876, declared: 'it is a vulgarity that the *fueros* should be respected'. The *Conferencia* held on 4 September 1875 was attended by Liberals who were to align themselves with the party of compromise in the crisis of 1876, and who pointed to the progressive restrictions imposed on local government.

In summary, during this period the *Conferencias* were a common institution that coordinated the external and internal government action of the three Basque provinces.

¹³ J.E. Delmas, *Refutación a los artículos que contra la independencia del Señorío de Vizcaya ha publicado en el Irurac bat el Sr. D. Eduardo de Orbea e Ibarra* (Bilbao, 1868).

¹⁴ Lorenzo Arrieta Mascuarúa led this tendency but it was Arístedes de Artiñano who best synthesized and propagated it. See M. Urquijo, *Liberales y carlistas*.