



CONSTITUTION

25 YEARS OF THE BASQUE STATUTE OF AUTONOMY

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The 25 of October marked the 25th anniversary of the referendum on the Basque Country's Statute of Autonomy. On 15 October, a vote was called for in the Basque Parliament on two proposals from the Popular Party (PP) and the Socialist Party calling for an institutional commemoration of the event. These proposals were defeated by the joint votes of the Basque Nationalist Party (PNV), Eusko Alkartasuna, Izquierda Unida-Ezker Batua and Sozialistak Abertzaleak (i.e. Batasuna). The Basque Government, which attended the debate on previous points on the day's agenda, entirely absented itself from this vote.

The spectacle outlined above is a fitting synopsis of the current situation. The Statute of Autonomy, indeed its mere mention, provokes a wide range of reactions: it receives automatic rejection by the members of the 'Estella Pact'; highlights contempt for a 'government by default' (A. Elorza); encourages the manipulation of history as a structural resource of nationalist policy; continues the destruction of the basic reference-points for harmonious coexistence; turns playing the victim into a refined and cynical art; and elicits the smirking complacency of murderers and their minions who, accept the work done by others in the name of harmony requires and limit themselves to murdering councillors in the streets and killing off statutes in Parliament. As harbingers of death, we should not be surprised that Otegui declared the Statute of Autonomy dead during the same session in which the signatories of the Estella Pact (there they all were, united by their desire to divide and exclude) paid frivolous deference to the excuses that fill ETA's pronouncements, whilst refusing to pay homage to the best thing Basques have ever done, a piece of legislation that forms part of the historic enterprise of peaceful coexistence undertaken by all Spaniards.

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Why should the Statute of Autonomy provoke such an uncommon degree of phobia, such a strong allergy, precisely among those who administer the autonomy and who govern the region's institutions? This pathological rejection of the Statute reveals that while the terrorism of ETA (which can claim copyright over the idea of breaking away from the constitution, statutory delegitimization and social division) has been defeated, its message now reigns supreme in the discourse and strategies pursued by those who still govern the Basque Country.

Historical Regional Privileges and the Constitution

As Juan José Solozábal has observed, 'Constitutions do not tend to be generous towards history.' This has much to do with the matter we are discussing, among other

reasons because the relationship between the historic regional privileges (*fueros*) and the Spanish Constitution represents an exception to the rule that Solozábal has formulated. However, there are other reasons that make this reflection even more pertinent, 25 or 200 years on, according to the way you look at it. First, the link between regional privileges and the constitution goes to the very core of the historical conflict of which nationalism has set itself up as an interpreter and which it uses to make its breakaway claims. Secondly, before the claims of sovereignty and self-determination came to dominate the nationalist discourse in the form of a post-modern reading of its history of demands, its position, especially during the constitutional debate, was defined by ‘the reinstatement of full regional privileges’. Thirdly, nationalism’s challenge to the very idea of the Constitution is evidence of its chronic maladjustment to any shared framework of coexistence, rather than the anti-Spanish phobia or racism of its founder. And fourthly, Spanish constitutionalism deserves to be rescued from the constant nationalist diatribe that makes it the source of all evil and suppresses historical reality, whilst also revealing the truly reactionary nature of the nationalist discourse.

The Constitution of Cadiz is our first point of reference. This constitution abolished the traditional regional privileges of the Basque territories. It was ‘the only really abolitionist legislation’ (T. R. Fernández). But this does not take us very far. The Constitution of 1812 was not the deliberate attack specifically aimed at self-government that its detractors say it was. The abolition of regional privileges was the result of a constitutional will to break away from the *ancien régime* as a whole, to establish a new structure of political power and a new legitimacy based on the idea of a nation founded on the equality of all Spaniards under a clearly defined sovereignty. In this respect, the Liberal contribution was as important as the need to strengthen national unity in the face of the Napoleonic invasion.

The dissolution of the *ancien régime* affected the system of regional privileges as well many other institutions that were just as old, if not older. In this respect, ‘The crisis over regional privileges was the form in which the Basque Country broke away from the *ancien régime*. In this respect, the Basque middle class, like the rest of the Spanish middle class, questioned the social, economic and political foundations of absolute monarchy.’ (García de Cortázar/Montero).

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In fact, these foundations had begun to be questioned some time before. The crisis over regional privileges was heralded in the second half of the previous century. From an internal point of view, the regional institutions initiated a trend towards ‘a clear process towards an oligarchic structure of power’ (Madariaga Orbe). Freedom of trade already generated serious conflicts over the customs regime. As far as the structural relationship between the system of regional privileges and the Crown was concerned, the war against the Convention ‘shattered the illusion that the Basque territories guaranteed the military defence of the border in exchange for respect for its institutions’ (Madariaga Orbe). The ease with which the French Republic’s troops managed to occupy most of the Basque Country and Navarre and the proposal for an independent protectorate that the provincial authorities of Guipúzcoa (now under occupation) made to the French authorities created

a chasm of distrust towards the system of privileges and the credibility of its representatives' claims of loyalty to the Crown, a perception that 'the regional system of privileges created a peculiar sense of fragility with relation to the State.' (A. Elorza).

At the time of Cadiz, the system of privileges was in a mess, with bad reputation and a recent history with little to recommend it. But this was precisely the time when the country was once more facing the challenge of defending its independence against the French. It also has to be pointed out that the Liberal cause was supported by significant sections of Basque society, which accepted the commitments established by the Constitution of Cadiz. Later on, a Liberal system of privileges was created which benefited from the dissolution of the *ancien régime* to 'eliminate those aspects of the privileges that were incompatible with the aspirations of the Basque Liberals and, at the same time, consolidate many aspects of the privileges that the middle classes considered to be beneficial'. (García de Cortázar/Montero).

At any event, the war and the restoration of absolute rule two years later left the abolitionist effects of Cadiz unimplemented. They were subsequently taken up again during the three-year period of Liberal rule, although without being consolidated. After this, the story of the regional privileges in the history of 19th-century Spanish constitutionalism is based on an apparent paradox. What the radical advocates of regional privileges and later the nationalists presented as a story of Liberal or simply Spanish viciousness against the secular freedoms of the Basques, was really just a process of adjustment between the regional privileges and the Constitution. Its results are still visible today. Contrary to the claim of the anti-constitutional version, the truth is that 'the Liberal State maintained a system of regional privileges that the *ancien régime* appeared to be on the verge of eliminating' (Corcuera).

The difference between the real story of the regional privileges and the version given by the nationalists is illustrated by the Act of 25 October 1839. The Act was a result of the Vergara Agreement between Espartero and Maroto, and put an end to the First Carlist War. Article 1 of the Act, sanctioned by the Queen, solemnly stated: 'The Regional Privileges of the Basque Provinces and Navarre are hereby confirmed, without prejudice to the constitutional unity of the Monarchy.' Article 2 called on the Government to propose to Parliament the 'necessary modifications' to these privileges, 'after taking into account the view' of the provinces.

The military defeat of the Carlists was sealed with the Vergara Agreement, in which the Carlists of Álava and Navarre were not represented. The resulting Act was given the status of an amendment to the Constitution of 1837 (a progressive and, therefore, theoretically hostile document in terms of regional privileges) that expressly confirmed the special privileges of the Basque provinces and Navarre. The Law of 1839 has gone down in history as the 'abolitionist law'. It has retained this reputation to such an extent that, in order to clear the way for the recognition of the historical regional rights, the 1978 Constitution expressly repealed it 'to the extent that it may still retain some validity' and only 'insofar as it may affect the provinces of Álava, Guipúzcoa and Vizcaya'.

Two years later, in 1841, the updating procedure known as the 'arrangement on special privileges' culminated in the case of Navarre with the *Ley Paccionada* Act of 16 August. The Basque Provinces, as designated by the Act, became entrenched in their privileges in a way that blocked the process of 'indispensable modifications', proof that this was not as unilateral as some claimed. They also became involved in O'Donnell's attempted *coup d'état*. As a result of the frustrated coup, Espartero issued

a Decree that ended the *pase foral* (the need for the monarch to gain the prior approval from the provincial authorities in order to execute a law) and the internal customs regime (a measure largely supported by the urban middle classes whose belief in the special privileges did not prevent them from valuing the prospect of full integration into the Spanish market). Once again, appearance did not correspond to reality. The Decree left both the tax and military exemptions intact. Meanwhile, the special privileges of the Basque territories, unlike those of Navarre, remained in a state of limbo that lasted until 1876.

However, the precarious state of the special privileges in the Basque provinces was considerably easier to bear than was feared. The confirmatory Act of 1839 was still in force and the moderate governments in power in Madrid corresponded in time with the moderate exercise of special privileges in the Basque Country. Neither the *pase foral* nor the customs regime were reintroduced, but the legal vacuum that Navarre had resolved in 1841 was filled with an understanding, based (surprisingly) on the ‘abolitionist’ Act, that ushered in an extremely privileged period from a financial point of view. Given the lack of regulation governing the financial relations between the State and the Basque provinces, the State did not collect, and the Provincial Authorities did not pay. At the same time, first in Álava and then in Vizcaya and Guipúzcoa, the provincial authorities began to gain pre-eminence over the municipal areas, and this became incorporated into the institutional culture (a fact that nobody questions today), thus becoming one of the most typical features of the system of special privileges. This gave rise to a disconcerting development. In spite of the fact that ‘the basis of regime of special privileges was always municipal’ (T. R. Fernández), ‘as the constitutional order was consolidated, the special privileges were redefined within the provincial sphere of a State defined by the Constitution’ (Corcuera/García Herrera).

We are not trying to mythologize this period or ignore the real tensions that were generated by a chronic constitutional problem. But we cannot overlook the combination of factors which produced a regime of special privileges in a way that is quite unrecognizable when compared to the nationalist version of events. The moderate government, the link between this government and the dominant movement for special privileges in the Basque Country, even in the conspiracy against Espartero, combined with the mere risk of a Carlist uprising and the weakness of the State itself, all worked in favour of the regime of special privileges.

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However, there are other conclusions to be drawn. One might be that there is no overwhelming form of ‘Spanish nationalism’ determined to demolish the institutions sustaining regional privileges. Even following a series of frustrated acts of force against the constitutional regime or government –the first Carlist War, support for a *coup d’état*– the legal rhetoric that may have seemed somewhat aggressive was in practice toned down to the demands of a constitutional system. This cannot be attributed solely to the weakness of the State, which acted more by default than by virtue. The system of regional privileges in the Basque Country and Navarre were inseparable from the idea of Spain, with its own respectable institutional framework and a sha-

red historical path. This idea was accepted by many who saw the regime of privileges as a problem difficult to manage in constitutional terms.

Furthermore, Basque society already showed signs of internal pluralism that prevented the question of special privileges from being reduced to a simple confrontation between the Basques and the rest of the Spanish nation. This pluralism created a margin in which to search for a regulatory and political compromise between the system of special privileges and the Constitution. The silence of successive constitutions regarding the special privileges issue, commonly interpreted as a form of contempt, helped to widen this margin. But although society may not have considered it feasible to resolve the question of special privileges by changes to the Constitution, it did believe it could be resolved using the Constitution.

The derogatory provision in the current Constitution, mentioned above, includes not only the Act of 25 October 1839, but also the Act of 21 July 1876. This sense of unity in constitutional legislation, with its gesture (always one-way) towards nationalism, mirrors the symbolic unity with which nationalism has dressed both Acts in order to demonize Spanish constitutionalism. According to the nationalists, 1839 represents the centralist onslaught of a constitutionally unified monarchy and 1876 is the final defeat, with two civil wars marking the beginning and end of this sequence. (Reliable historical research does not accept that the defence of regional privileges played a decisive role in these wars.)

The emotional impact of what was perceived as the definitive abolishment of the system of privileges in 1876 is debatable. Its political impact was virtually non-existent, judging by the comfortable adaptation to the new system of 'neo-privileges'.

Once again, a new Constitution, this time of the restored monarchy, and the conclusion of another civil war, also featuring the defeat of the Carlist camp, gradually opened up the question of regional privileges. The Carlist rejection of the offer made by Alfonso XII, who guaranteed the preservation of the regional privileges in exchange for an end to hostilities, confirms the secondary importance, or at least the merely tactical importance, given to the defence of the regional privileges in the Carlist uprising. However, above all it meant that a strictly military conclusion was imposed on the war.

This time there was no embrace or agreement. However, once more what was held up as a threat of abolition of privileges in fact represented a new form of defining the system based on terms that were favourable to the interests of Basque society and favourable with regard to the consolidation of the regime of privileges as a unique legal and political entity within the constitutional State.

Nationalist historiography has written its darkest lines against Cánovas and the Act of 21 July 1876, which was designed, as the Royal Order that preceded it stated, to 'resolve the question definitively'. The truth is that Cánovas possessed a predominantly conciliatory attitude and wanted a 'definitive' solution to the question of privileges to provide a factor of stability in the restored monarchy, and to exclude the possibility of making the regime of privileges an object of reprisals. The military exemption was ended (its survival up until that time had been only too obvious in view of the willingness of its beneficiaries to enlist against the constitutional system) and the tax exemption was also ended. This exemption had been absolute for Basque taxpayers and institutions since the 1840s.

And yet the Act of 21 July 1876 even gave rise to an institutional system of self-government which, at least in jurisdictional terms, 'bore no comparison to what the former regio-

nal privileges system offered' (T. R. Fernández). Cánovas' law resulted in financial agreements based on the powers that the provincial authorities had acquired, which consolidated the privileged regions' powers of taxation, defined the share that these regions were to make to the State and, as a result of the financial power that they gained, extended the scope of their administrative and management authority.

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Basque politics chose a moderate path as a result of the satisfactory arrangement that had been obtained, which was politically shielded when necessary by an ad hoc recourse to radical demands. A few years later, Sabino Arana criticized the Basques harshly for what he considered to be their conciliatory attitude, one that placed their very survival as a people in danger. As Juaristi has pointed out, what bothered Arana was that others were not as melancholy as he was. The truth had been revealed to him alone: The regional privileges were not what the Basques had believed they were up until that time. The search for a reinterpretation of the regional privileges which would lead them into the modern era took a turn for the worse, a form of reactionary, racist and anti-Spanish nationalism, a pathological opposition that, in times of turbulent economic and social transformation, served both those who had convinced themselves that they were not Spanish and those who wanted to be first-class citizens.

Abolition of the Regional Privileges, Abolition of the Constitution

Over a century later we are the heirs to the dispute, much to our regret, although the terms have now changed. For at least half the Basques and for the immense majority of Spaniards who analyse the matter, the question is longer whether the regional privileges can be accommodated within the Constitution, but whether the Constitution can be enshrined in the regional privileges. Nationalism, which has appropriated the regional privileges and the ideas of autonomy and ‘Basqueness’, has made its response very clear through the ‘Ibarretxe Plan’, and the answer is ‘No’.

The Constitution can no longer be accused of disdainful silence with regard to the historical self-government of the Basques. There are no Liberal revolutionary dogmatists prepared to sweep away the regional privileges and make them the victims of a new political order. On the contrary, the new political order enshrined within the Constitution is built on the right of autonomy of the nationalities and regions and respect and support for the historical rights of the privileged regions.

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The threat of abolition of the privileges now comes from the nationalists, although now it is much more real than the threat that the holders of these privileges perceived from constitutional Spain during the 19th century. In institutional terms, the future map-

ped out by the Basque president's project for the historically privileged regions has no precedent even in the worst centralist tendencies of the 19th century. The split within Basque society is not an effect of the plan, but the necessary condition for its success. In political terms, it represents an historical justification of terrorism and its redemption, to the extent that it adopts the terrorists' objective of destroying the State.

However, we cannot ignore the skill with which nationalism has managed to distract its audience: the ingenious manner in which it is capable of producing messages that seem to be quite self-evident; its mastery of the art of presenting itself as victim, which draws it fatally towards a final confrontation; the precision with which it measures its gestures, defiant among its own supporters, inclined towards dialogue in Madrid, or showing signs of sorrow at mournful occasions. In this respect, the more we hear about the supposed threat of autonomy being abolished, the more the doctrine of breaching the Statute is accepted uncritically, the more speculation exists regarding the alleged legion of 'moderates' within the PNV (a real lost Atlantis of Basque politics), and the greater the apparent approval for a nationalist leader preaching the virtues of the 'civic nation' (as happens about once every fifteen years), the less clearly will nationalists state their objective (though it has already been declared and formulated into a legislative project), which is none other than to abolish the Constitution in the Basque Country.

“The way forward for the defence of freedom has to be based on a commitment to defeat ETA and a sense of responsibility in making it possible to provide the pluralist alternative the Basques deserve; not through confrontation but through a democratic need to show us the value of freedom and how it teaches us to distinguish between the demands of a group and the rights of all”

It is said that during the constitutional debate, the PNV was very close to supporting the new 'arrangement for special privileges' by means of the First Additional Provision. The nationalist spokesman at that time, Xavier Arzallus, was obliged by Carlos Garaicoechea, the president of the PNV, to vote No to the proposed agreement. In any event, the agreement was not approved. The historical paradox was repeated. As Corcuera has stated, 'the fundamental cause of the rejection was precisely the additional provision that recognized the historical rights and provided for a general updating of the regime of special privileges within the framework of the Constitution and the Statute.'

A concession that would have made diverse supporters of the special privileges (except for the most redoubtable nationalists like Sabino Arana) pinch themselves with incredulity deserved nothing more from Arzallus than a scornful recital of the traditional mantra. 'That recognition,' snapped the future President of Euskadi Buru Batzar, 'has remained purely theoretical, purely Platonic ... rejecting the traditional form of agreement, it emerges from a unilateral act of concession on the part of the absolute power of the State.' Given the fact that the autonomous system has been governed uninterruptedly by the nationalists since then, the reference to Plato is only accurate to the extent that it reflects a cavernous shadow of the truth. This gratuitous dismissal of the form of self-government recognized by the Constitution is simply more of the same. In the constitutional debate, 'the PNV participated in formulating the definition of a model of regional autonomy which ensured the greatest possible self-government, but it did so by searching, at the same time, for some mechanism that would enable the PNV to avoid committing itself politically to the Spanish constitutional project' (Corcuera). A few

years later, the nationalist spokesman made it very clear: 'We would not sign a Spanish constitution even if they cut our hands off.' At last, a tiny bit of honesty!

In 1986, Patxo Unzueta wrote that 'the pessimists have an advantage in Euskadi, because the implausible does not exist.' Shortly before, Unzueta stated that 'The virulence of terrorism does not always subside when the causes that give rise to it are addressed; it is often precisely these attempts to solve the original problem that provoke the most violent reactions.' In the land of implausible reality, which has, for so long, been more concerned about the causes of terrorism than its victims, after 25 years nationalism is preparing to bring the curtain down itself. The cruel final performance is a project to break away that can only prosper in the Basque Parliament with the support of an organization that has been made illegal due to its involvement in terrorism, and defined as such by the European Union and the United States. If it does not prosper there, the challenge will remain.

The period of nationalist power has not created any new nationalists. On the contrary, Basque society has strengthened its pluralist character. ETA, still a criminal group but with no way out, is in decline, and no longer serves as an alibi for those who want to continue selling the idea that peace depends on satisfying nationalist demands. What is more, it leaves nationalists exposed when someone asks them what they were doing while others were laying down their lives in the cause of freedom. Europe only promises disappointment. The European Constitution builds the Union on the legitimacy of States and citizens. Yet another Constitution, in fact, which seems to be against Basque freedom, though just a year ago the Basque regional president Ibarretxe was boasting about the European nature of his Plan. The 'secular conflict with Spain' is failing. But the fact that things have not gone the way the nationalists hoped simply means that the time has come for the stakes to be raised.

Time has shown that it was no mistake to associate 'constitutionalism' with the active defence of the Statute against the ethnic nationalism of the Estella Pact and the Ibarretxe Plan, with an uncompromising will to defeat ETA and with a commitment to create an alternative that might supplant nationalism democratically. Because once nationalism reaches the point where ETA has always stood, the destruction of the Statute then affects the Constitution. We might continue to believe that 'it is necessary to seek a means of fitting the Basque Country within Spain' and we can continue to fantasize with a range of alleged solutions which, at the best of times, are mere wishful thinking. This fiction has been shown up for what it is by the anti-constitutionalist nationalist mindset and the moaning of so many who consider themselves to have been deceived. The way forward for the defence of freedom has to be based on a commitment to defeat ETA and a sense of responsibility in making it possible to provide the pluralist alternative the Basques deserve; not through confrontation but through a democratic need to show us the value of freedom and how it teaches us to distinguish between the demands of a group and the rights of all, and liberates us from the ethnic obsession the nationalists are attempting to impose.