

SCOTTISH DEVOLUTION & BASQUE HISTORICAL TITLES

Devolución de poder en Escocia y Derechos históricos vascos
Eskoziako poterearen berrematea eta Euskal Eskubide historikoak

Xabier EZEIZABARRENA SAENZ
Universidad del País Vasco/Euskal Herriko Unibertsitatea

Fecha de recepción / Jasotze-data: 07-05-2010

Fecha de aceptación / Onartze-data: 13-05-2010

Esta ponencia resumirá fuentes y reflexiones legales y políticas comparadas sobre los Derechos históricos vascos y el proceso de Devolución de poder en Escocia para poder establecer una breve aproximación comparada. Se subrayarán los potenciales de estos sistemas para desarrollar el concepto de cosoberanía a través del reconocimiento constitucional mutuo dentro del Reino Unido, España e, incluso de la Unión Europea. En el caso vasco es importante considerar algunos datos históricos sobre el sistema legal que explican y presentan el problema de los Derechos históricos en los distintos contextos territoriales de Vasconia.

Palabras clave: Escocia. Reino Unido. Unión Europea. Comunidad Autónoma Vasca. Comunidad Foral de Navarra. Derecho constitucional. Derechos históricos.



Ponentzia honek Euskal eskubide historikoen eta eskoziar transferentzien iturri eta hausnarketa legalak eta politikoak laburbiltzen ditu, biak kasu «konstituzionalen» baitan; hurbilpen konparatua egin ahal izateko. Sistema hauen potentzialtasunak soberania konpartituaren kontzeptua garatzeko elkarri errekonozimendu konstituzionala eginez (Britania Handian, Espainian eta Europar Batasunean) azpimarratuko da. Euskal Herriko kasuan gainera, garrantzitsua dugu ikustea, labor bada ere, lege-sistemaren inguruko datu historiko batzuk Eskubide historikoen arazoa lurralde ezberdinen testuinguruetan azaltzen dutenak.

Giltza hitzak: Eskozia. Erresuma Batua. Europar Batasuna. Euskal Autonomia Erkidegoa. Autonomous Community of the Basque Country. Nafarroako Foru Erkidegoa. Zuzenbide konstituzionala. Eskubide historikoak.



This paper will resume certain legal and political comparative sources and reflections on Basque Historical rights and Scottish Devolution within both «constitutional» cases, in order to establish a brief comparative approach. It will underline the potentials of these frameworks to develop the concept of co-sovereignty through mutual «constitutional» recognition within the UK and Spain and even towards the EU. In the Basque case it is therefore important to consider some historical data concerning the legal framework that explains and presents the problem of Historical Rights in the different territorial contexts of Euskal Herria.

Keywords: Scotland. United Kingdom. European Union. Autonomous Community of Navarre. Constitutional Law. Historical rights.

SUMMARY

I. FOREWORD. II. A PIECE OF BASQUE HISTORY. III. SOVEREIGNTY & THE RULE OF LAW. IV. BASQUE HISTORICAL TITLES WITHIN THE SPANISH CONSTITUTION AND THE EC-EU CONTEXT. V. SOME CONCLUSIONS. VI. BIBLIOGRAPHY.

When, among the happiest people in the world, bands of peasants are seen regulating affairs of State under an oak, and always acting wisely, can we help scorning the ingenious methods of other nations...?

JEAN-JACQUES ROUSSEAU, *The Social Contract*

I. FOREWORD

The legal and political process opened with Devolution within the UK-Scottish relations contains similarities and potentials of remarkable real and comparative interest with the constitutional clauses of recognition of Basque Historical rights or titles within the Spanish Constitution. Nowadays the European Union (EU) framework is suitable in both cases to ease and foster this interest within a context of progressive co-sovereignty at the EU.

For the British case, the Devolution process could be easily considered as the last on time key moment in British «constitutional» history according to Wicks. This author has selected eight «key moments» as follows: the 1688 «glorious revolution», the 1707 Union of England and Scotland, Walpole's long tenure (1721-1742) as the first Prime Minister, the 1832 reform of Parliament, the Parliament Act 1911, the European Convention on Human Rights, the UK's accession to the European Communities and the aforementioned devolution legislation of 1998¹.

Even long time before the previous studies, Meadows states in 1976 the necessity to turn:

to the question of why devolution has become a political issue at this time. In general terms, the essence of the controversy is reflected in the following statement: «Devolution! The very word contains a threat. The English pronounce it to rhyme with evolution, the Scots with revolution»².

¹ WICKS, E., *The evolution of a Constitution: eight key moments in British constitutional history*, 2007.

² MEADOWS, M., Constitutional crisis in the United Kingdom: Scotland and the Devolution controversy, *The Review of Politics*, Vol. 39, No. 1 (January 1977), pages. 42 & 43. More clearly, in my view, with the concept of recovering and updating sovereignty for Scotland through Historical Rights or Titles.

However, authors like Bogdanor & Vogenauer recall to the words of Dicey in his «Law of the Constitution» who underlined that:

a British writer on the Constitution has good reason to envy professors who belong to countries such as France... or the United States, endowed with constitutions on which the terms are to be found in printed documents, known to all citizens and accesible to every man who is able to read. Britain remains, together with New Zealand and Israel, one of just three democracies which are still not «endowed» with a «written», or, more properly, a codified constitution³.

Nevertheless, written or codified, the principle of British parliamentary sovereignty:

is no longer an un challenged doctrine [...] and it is because there is scepticism concerning the value of the doctrine that voices have been heard calling for an enacted constitution. An enacted constitution would, however, have to confront at the outset the problem of whether or not the European Communities Act has limited the sovereignty of Parliament, and whether the practical limitation of sovereignty by the Human Rights Act and the devolution legislation should be registered in the Constitution. An enacted constitution would have to confront squarely the doctrine of the sovereignty of Parliament. We have been asked whether the enactment of a British constitution is feasible. Our answer is that there is no reason why it should not be feasible, no reason why, almost alone amongst democracies, Britain should be unable to enact a constitution. The problems involved in this enterprise are, however, formidable⁴.

This paper will resume certain legal and political comparative sources and reflections on Basque Historical rights and Scottish Devolution within both «constitutional» cases, in order to establish a brief comparative approach. It will underline the potentials of these frameworks to develop the concept of co-sovereignty through mutual «constitutional» recognition with the UK and Spain and even towards the EU.

In addition to the legal approach within the paper, there is indeed a different political consideration on both situations right now with extremely interesting consequences. A nationalist party ruling Scotland within the devolution process and after a long time out of the government, while Basque nationalism, even though winning clearly the March 2009 elections, is for the first time in democracy out of the Basque central government through a formal agreement between the two main Spanish parties: the Socialist party and the Popular party. Would this imply a different vision of Basque Historical Rights from the new Basque Government?

³ BOGDANOR, V. & VOGENAUER, S. Enacting a British Constitution: some problems, Public Law, 2008, page. 38.

⁴ *Ibid.*, page 56.

Indeed, the proposal designed by the former Basque Government and Parliament (approved by the Basque Parliament, December 2004) advocates direct participation by the Basque Country and Navarre in the EC⁵, not in independent terms, but in harmony with other Spanish interests based upon the EC and constitutional principles of solidarity⁶. This would mean participation of the Basque Country and Navarre within the Committees of the Commission, and within the Council of Ministers as well as in the different working groups, as bodies that are permanent designers of new policies and regulations, and both of which are bodies with powers in the enactment of future treaties⁷. In fact, a real example of a new path towards co-sovereignty as stated within the proposal for a new Political Statute for the Basque Country approved by the Basque Parliament (PSBC)⁸.

All these previous considerations are only a preliminary sketch for the different reflections that, *lege ferenda*, inspire the content of this study with a comparative approach towards the devolution process in Scotland.

In the Basque case it is therefore important to consider, if only briefly, some historical data concerning the legal framework that explains and presents the problem of Historical Rights in the different territorial contexts of Euskal Herria (The Basque Land)⁹. There are many perspectives in this context through which we could analyse the meaning of the historical rights or titles of the Basque territories. Any of them might be considered valid, as long as the bases are solid and reasonable. However, I should underline here that my study chooses to follow the premises and their historic or legal evolution as a true example of a legal framework that has been active until today, and still governs a good part of the public legal relationships of the Basque territories with Spain, such as the domestic structure of the Basque territories and their particularities vis-

⁵ Relations with Navarre and the Basque provinces within French territory (Lapurdi, Basse Navarre and Zuberoa) are also reflected by the Proposal for a new Basque Statute (PSBC) in articles 6 and 7. This is a direct implication arising from the recognition of Basque Historical Titles in the First Additional clause of the Constitution.

⁶ In the same sense we have the opinion of MURILLO DE LA CUEVA, E. L., *Comunidades Autónomas y política europea*, IVAP-Civitas, 2000, pp. 133, 143 and 146. This author argues for a new implementation of autonomic participation based upon criteria of exclusive competencies in relation to interests affected by EC decisions.

⁷ See MURILLO DE LA CUEVA, E. L., *Comunidades Autónomas y política europea*, IVAP-Civitas, 2000, pp. 123 and 124.

⁸ Plenary session of 30-12-2004. Proposal later rejected by the Spanish Parliament (February 2005). See the full text of the Proposal passed at the Basque Parliament in its English version (PSBC).

http://www.nuevoestatutodeuskadi.net/docs/dictamencomision20122004_eng.pdf

⁹ Preface and articles 1 & 2 of the PSBC.

à-vis the rest of the common Spanish provinces¹⁰. If in the Basque case we are talking from the pointview of a constitutional provision (1st Additional clause of the Spanish Constitution), the Scottish case is based upon the idea of Devolution (not necessarily written) but within the context of full historical national recognition of the Scottish nation.

According to Bengoetxea, from the Basque viewpoint, the interest of the Scottish process is not new¹¹. In his view, it seems clear that Scotland is leading the path forward towards a higher degree of self-government within a general acceptance of it by the British establishment. In that sense, he quotes at least three advantages such as a large democratic tradition, the absence of a written constitution and, therefore, the sovereignty of Parliaments according to their own powers, together with an independent judiciary which normally avoids to interfere in politics.

Bengoetxea stands that there is no only one process but two constitutional processes which may become one within the future. One is referred to the National Conversation launched by the Scottish National Party (SNP), while the other is based upon the report of the Calman Commission created by the Scottish Parliament without the participation of the SNP.

In this line, the National Conversation implies a constitutional process for permanent consultation with Scottish society. And, within this context, Bengoetxea states three different options:

- A. To maintain the current process of Devolution;
- B. To increase Scottish self-government with new powers and, in particular, with financial and tax autonomy;
- C. To decide towards independence, while remaining the sovereignty of the British Crown, the Sterling Pound and the linkages of the Commonwealth.

This third option is the one maintained by the Scottish National Party and the Scottish Government, and it is known as «Independence in the EU». Meanwhile, the Calman Commission delivered its report in June 2009 underlining the necessity of a whole new tax and financial public system which are limited nowadays. These proposals have been welcomed by the Scottish Parliament.

And this option towards independence within the EU requires for the Scottish Government to comply with the commitment of organising a referendum in

¹⁰ This is the point of view of many previous authors. Among them, mention should be made of T. R. FERNÁNDEZ, in his work *Los Derechos Históricos de los territorios forales*, Madrid, 1985, as a true and fair view of the whole process.

¹¹ BENGOETXEA, J., Escocia: enseñanzas para el País Vasco, *El Diario Vasco*, 12-3-2010.

2010¹². This should imply a new open treaty on the Union agreement among Scotland and the UK in force since 1707. A clear result in favour of such a negotiation would give reason and more legitimacy to the independence of Scotland. In my view, there are at least two main bones of the Scottish proposal:

The mutual recognition of Scotland as a nation.

The example of Quebec.

Within the first item, proclaiming a recognition of the right to self determination upon the previous existence of Scotland as a nation until 1707. In the second one, following the principles and rules stated by the Supreme Court of Canada on Quebec (Consultative Opinion, 20-8-1998). In both cases, there is key role of concepts like negotiation, agreement or treaty (1707) and referendum within a context of new or post-sovereignty through the ideas of Scottish professors like Neil MacCormick or Michael Keating, inter alia.

According to Keating,

Scotland is perhaps unique in facing no legal or constitutional bar to independence, nor much opposition in principle within the host state. [...] I argue that, total independence being impossible in the modern world, the key issue is how to manage interdependency in the (British) Isles, Europe, the Atlantic community, and the world. Even more difficult is the political economy of independence [...]. For some years I have argued that we have moved from a world of absolute sovereignty to a post-sovereignty era, in which power is shared at multiple levels and self-determination does not necessarily imply statehood¹³.

Moreover,

concepts of statehood and political order in the eighteenth century are not what they were in the twentieth century, and in the present century they are changing again. So while it is justifiable to trace a Scottish polity and sense of common identity back to the Middle Ages, it is a mistake to confound this with modern nationalism or to assume that a timeless Scottish frame is available to take over whenever the British one fails. Scottish identity is, rather, reformed and re-invested with political significance in different historical epochs. What we are seeing at present is a new Scottish nation-building project, contrasted with

¹² Although this was the political commitment, the recent news from Scotland during September 2010 seem to recognise at least a delay on the dates of the referendum. The Scottish National Party decided recently against introducing its planned referendum bill in Parliament, being aware that if it did so the bill would be defeated and fearing that this might be seen as settling the matter. Instead, they seem likely to make it a key feature of their election campaign in 2011. Meanwhile Wales is expecting a constitutional referendum in March 2011.

¹³ KEATING, M., *The independence of Scotland*, Oxford University Press, 2009, page VII.

the old Union and in competition with an attempt at rebuilding a British nation. That is taking place in circumstances far removed from the classic nation- and state-building era of the nineteenth century¹⁴.

It jars with the sociological fact that some states contain more than one group whose members see themselves as a nation. [...] The «Jacobin» form of democracy, with its assumption of a single demos, has to be abandoned in favour of a more complex and pluralist understanding of democracy, citizenship, and solidarity. [...] In the United Kingdom, state and nation have long been in tension, and neither has a shared meaning¹⁵.

MacCormick has a similar approach to the historic meaning of the British Union:

the United Kingdom is commonly referred to as «England», «Angleterre», «Inghilterra», and the like, and we may in due course reflect why this should be so. But this «England» is properly the British State, at present the United Kingdom of Great Britain and Northern Ireland¹⁶.

MacCormick did not see therefore a real legal reasoning or practical decision within the 1707 Treaty, but a sort of negotiation result of unequal forces. An example of non written «constitutional» anomaly with certain federal profiles¹⁷, without statehood formal recognition but indeed maintaining several structures of statehood or real sovereignty, in particular concerning the whole judicial system¹⁸. This might be as well a common ground shared as by the remarkable institution of Basque Historical titles or rights.

The proposal of the current Scottish Government is useful and remarkable in four main concepts as well:

A. Democratic: because is based upon the principle of self determination internationally recognised;

B. Constitutional: even though there is no written UK Constitution, it belongs to the mutual recognition as nations such as stated by the 1707 treaty;

C. Social: because it is an open process to the whole society;

D. European: recognising the clear will of participation within the EU process according to the EU Treaties in force.

¹⁴ *Ibid.*, page 10.

¹⁵ *Ibid.*, page 11.

¹⁶ MacCORMICK, N., *Questioning sovereignty*, Oxford University Press, 2001, page 49.

¹⁷ *Ibid.*, page 60.

¹⁸ *Ibid.*, page 183.

This is also important because the Scottish proposal is based on the same rules and principles of the EU¹⁹. Moreover, the result of the referendum may depend on the debate about the economic and financial model for Scotland.

In any case, this formal process towards the sovereignty of Scotland is fairly fulfilling the rules of democracy and, in particular, of an agreed Union through the 1707 Treaty. In fact, one of the characteristics in this context is the acceptance by both parties of the core part of their non written «constitutions»: Human Rights and democratic principles.

Keating underlines as well that «since the 1990s a whole genre of literature has emerged about the question of Britain and the crisis of the Unión»²⁰.

The shock of a resurgent Scottish nationalism in the 1970s provoked a sharp reaction. Many English scholars refused to take it seriously, arguing that nationalist voting was a mere «protest», implying that it represented a form of deviant behaviour, while voting Labour or Conservative was somehow normal. [...] The problem here is that pre-British identities were not fully national in the modern sense... [...] Scotland existed before the Union but not as a modern state and society²¹.

Meanwhile, it seems also important to underline that a clear voice of the Scottish society on the new model may also imply certain effects and impacts for close situations either in Spain or in the EU, inter alia. In the Spanish context, for example, the legal approach by the Spanish Government and the Constitutional Court made impossible the Basque Parliament Act for a consultative referendum in 2008²². Therefore, what it seems void under the rules of a modern and written Constitution like the Spanish, is perfectly viable without written constitution and under pre colonialism rules. In my view, it seems to be a question of democratic culture and State vision from and old democracy like the one ruling during centuries in Great Britain.

¹⁹ According to KEATING, M., «*Britain has come apart under the influence of European integration as Scots have embraced Europe while the English reject it. The question of Europe does indeed touch the debate about Scotland's place in the United Kingdom*», *Ibid.*, page. 4.

²⁰ M. KEATING, *The independence of Scotland*, Oxford University Press, 2009, page 1.

²¹ *Ibid.*, page 2 to 9. Within these lines he underlines as well the important participation of Scots in the Empire, something that is also present in the Basque context, in particular along the most powerful periods of the Spanish empire and worldwide navigation and expeditions. In historical terms he believes that the UK is very different from France while common grounds with Spain are easy to be found. This idea is also clear, as we will see, within the studies made by J. ARRIETA.

²² Spanish Constitutional Court Judgment 103/2008 (STC 103/2008).

II. A PIECE OF BASQUE HISTORY

The nature of the *foral* (particular)²³ Basque regime has been constantly present within any historic analysis of our constitutional and legal texts²⁴. As a starting point, I also have to underline the curious and relevant observation made by Loperena²⁵ regarding the very similar terms of the First Additional Clause of the Spanish Constitution (1978) and the Act of 25-10-1839²⁶. If, as quoted by this author, the Act of 25-10-1839 confirms the Basque and Navarrese *Fueros* (Rights) at the same time and through a common system, the First Additional Clause of the Constitution confirms and also respects the historical rights of those territories²⁷. All the aforementioned contains basic legal consequences for a contemporary and practical interpretation of the various perspectives and consequences deriving from the concept of Historical Rights²⁸.

²³ And, in that sense, based upon Historical Rights within the Constitution.

²⁴ In a surprising sense, a most important historic landmark was probably set by Antoine D'ABBADIE, as has been recently explained to us by G. MONREAL in his interesting work *El ideario jurídico de Antoine d'Abbadie*, *Euskonews & Media*, n° 16, <http://euskonews.com>.

²⁵ D. LOPERENA, *Derecho histórico y régimen local de Navarra*, Pamplona: Gobierno de Navarra, 1988, p. 37.

²⁶ Act of 25 October 1839.

Artículo 1º. Se confirman los Fueros de las provincias Vascongadas y de Navarra sin perjuicio de la unidad Constitucional de la Monarquía.

Art. 2º. El Gobierno tan pronto como la oportunidad lo permita, y oyendo antes a las provincias Vascongadas y a Navarra, propondrá a las Cortes la modificación indispensable que en los mencionados fueros reclame el interés general de las mismas, conciliándolo con el general de la Nación y de la Constitución de la Monarquía, resolviendo entretanto provisionalmente, y en la forma y sentido expresados, las dudas y dificultades que puedan ofrecerse, dando de ello cuenta a las Cortes.

²⁷ D. LOPERENA, *Derecho histórico y régimen local de Navarra*, *op. cit.*, p. 37.

²⁸ This is a concept that, in the French Basque Country, within a different perspective and without any constitutional clause at all, is also present in the words of M. LAFOURCADE with regard to the peculiar identity of the French-Basque territories (*Iparralde* in Basque): *Dans une Europe en pleine mue, les Etats-nations, constructions artificielles, semblent aujourd'hui dépassés. Les revendications identitaires des minorités sont universelles. Pour éviter toute homogénéisation culturelle, chaque peuple doit prendre conscience de sa réalité et, pour cela, connaître son passé et retrouver son identité qu'il doit conserver tout en s'adaptant à la société moderne. Or, le peuple basque, plus que tout autre, possède des caractères propres qu'il a préservés tout au long de son histoire, du moins en Iparralde jusqu'à la Révolution de 1789.*

*Son système juridique, qui servait de fondement à son organisation sociale, ne fut pas influencé par le Droit romain qui, partout ailleurs en Europe occidentale, modifia profondément la tradition juridique populaire. Conçu par et pour une population rurale, il a été élaboré à partir des maisons auxquelles s'identifiaient les familles et qui, comme elles, se perpétuaient à travers les siècles, donnant à la société basque une grande stabilité (see her work «Iparralde ou les provinces du Pays Basque nord sous l'ancien régime», *Euskonews & Media*, no. 3, <http://www.euskonews.com>).*

Another curious aspect leads us once more to the Constitution that is presently in force, for a brief mention of its Second Derogatory clause in relation to all the above. This indeed represents a paradox within the whole analysis. When the Second Derogatory clause of the Constitution annuls the Act of 25 October 1839 for Alava, Guipuzcoa and Vizcaya, the Constitution shows the difficulties experienced by central governments when interpreting the Basque and Navarrese regimes, as well as the problems of a section of Basque nationalism in its understanding of the relationship of the Basque territories with the State itself, according to the Constitution²⁹. As an outcome of all these disagreements, we might be facing one of the most important paradoxical items within the process of Spanish constitutionalism.

If the Second Derogatory clause of Constitution annuls the Act confirming the «foral» system of 1839, it incurs in a direct and express contradiction of the recognition of and respect for the «foral» Historical Rights assumed by the First Additional clause of the Constitution. The approach is difficult to understand if we do not take into account the political perspective previously mentioned. But the failing might have an even wider reach, because the Derogatory clause only affects Alava, Guipuzcoa and Vizcaya, as Navarre is not mentioned at all. Should we understand, then, that the Act confirming the «foral» system of 25-10-1839 is still in force for Navarre? There might be various legal answers too, if we forget the political course of the disagreements and fights that have coloured Basque reality up until now. Similar fights and disagreements were also the order of the day during the constitutional process, using arguments that were more political than legal in most of the cases³⁰.

In my view, the Historical Rights of the Basque Country constitute the logical transit from the historic concept of *Fueros* to the constitutional integration of certain territories which maintained during the whole of that process a voluntary, uninterrupted political and juridical public will of identity³¹. That is also present very clearly in the case of Scotland.

²⁹ We have to remember here that the Act to «confirm the *fueros*», of 25 October 1839, was considered by a sector of Basque nationalism as an abolishment ruling, even though its sense and aims were simply to adapt the particular regimes in the Basque territories to the new Constitution at that time.

³⁰ An interesting example of this was quoted by V. TAMAYO SALABERRÍA in her impressive work *La autonomía vasca contemporánea. Foralidad y estatutismo 1975-1979*, Oñati: IVAP, 1994, p. 617. The author recalls a relevant event from our *foral* and constitutional history during the debate in the Spanish Parliament on the First Additional Clause of the Constitution about the Basque Historical Rights. At that time, the representatives of the Spanish Socialist Party (PSOE) refused to concede more explicit recognition of the Historical Rights of the Basque territories.

³¹ This is the core idea of the First additional clause of the Constitution and the whole PSBC.

The common point for both situations is the nature of agreement between two parties throughout history³², (in Scotland since 1707)³³. Also in common we can underline the current difficulties in recognising that situation from the State and EU perspectives. One of our jurists, Herrero de Miñón, has brilliantly demonstrated possible regimes for integration of the Basque Historical Rights within constitutional reality, while leaving to one side all sorts of political disagreements upon which many of the other studies were based³⁴.

The words of Nieto Arizmendiarieta are also clear in this respect³⁵. But my aim here is not to go deeper into the historic analysis of the concept of Historical Rights, but to mention, at least briefly, some of the real possibilities of this singular legal institution at a domestic level, in order to go further into its particular integration at the EU level as well taking the Basque and Scottish examples as relevant ones in terms of identity, history and recognition of public Law towards co-sovereignty or even sovereignty.

³² Authors like T. URZAINQUI clearly disagree with the idea of agreement, whereas they consider absolutely evident that the Basque territories were conquered in their entirety through military and violent means at different moments of history. See his enormous historical and legal works clarifying the identity of Navarre as the Historical Basque State, while *Euskal Herria* continues as its cultural global identity, principally through language. In other words, both are the same body with different titles:

T. URZAINQUI and J. M. OLAIZOLA, *La Navarra marítima*, Pamplona: Pamiela, 1998.

T. URZAINQUI, *Recuperación del Estado propio*, Pamplona: Nabarralde, 2002.

T. URZAINQUI, *Navarra sin fronteras impuestas*, Pamplona: Pamiela, 2002.

T. URZAINQUI, *Navarra Estado europeo*, Pamplona: Pamiela, 2004.

³³ 1707 Act of Union between Scotland-England, article 1: «*that the Two Kingdoms of Scotland and England shall upon the first day of May next ensuing the date hereof and forever after be United into One Kingdom by the Name of Great Britain And that the Ensigns Armorial of the said United Kingdom be such as Her Majesty shall appoint and the Crosses of St Andrew and St George be conjoined in such manner as Her Majesty shall think fit and used in all Flags Banners Standards and Ensigns both at Sea and Land*».

³⁴ HERRERO DE MIÑÓN, M., La titularidad de los Derechos Históricos vascos, *Revista de Estudios Políticos*, no. 58 (1987). Charged with drafting and reporting on the 1978 Spanish Constitution he was the first to interpret Basque Historical Titles in terms of the right to self-determination, understood as voluntary integration within a different political-legal framework.

M. HERRERO DE MIÑÓN and E. LLUCH, *Constitucionalismo útil*, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.

M. HERRERO DE MIÑÓN, *Autodeterminación y Derechos Históricos*, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.

M. HERRERO DE MIÑÓN, *Derechos Históricos y Constitución*, Madrid: Taurus, 2000.

M. HERRERO DE MIÑÓN, *El valor de la Constitución*, Barcelona: Crítica, 2003.

M. HERRERO DE MIÑÓN, *España y Vasconia: presente y futuro (consideraciones en torno al Plan Ibarretxe*, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.

³⁵ NIETO ARIZMENDIARRIETA, E., Reflexiones sobre el concepto de Derechos Históricos, *RVAP*, 54 (1999), pp. 142 and 143.

III. SOVEREIGNTY & THE RULE OF LAW

Both the Basque proposal for a new political statute and the Scottish process led by the Government of Scotland are based upon certain common grounds:

A. The legal and political structure of a State is not something eternal³⁶. Nowadays, the undeniable legal issue is the requirement of protection and assumption of Human Rights and democratic principles. A possible solution to these questions could be present, to a certain extent, within the Proposal for a Political Statute for the Basque Country (PSBC) approved by the Basque Parliament (30-12-2004) but rejected by the Spanish Parliament without any kind of previous negotiation (February 2005)³⁷: «Sharing sovereignty, democratic principles and also Human Rights» is the essence of the PSBC and its drafted text to amend the current regime³⁸. The rest of the issues pending could perfectly well be the subject of negotiation in a democratic system. In a sense, this is also the general consideration made by the Supreme Court of Canada in 1998 regarding the case of Quebec³⁹.

B. Both History in the British case and the Spanish Constitution in the Basque one are suitable tools to push forward the idea of sharing sovereignty with full legitimacy or even claiming for self-determination within the context of protection and fulfilment of International Human Rights and within the EU framework.

C. The idea of written or non customary historical rights is present in both cases in despite of the important details to be subject of mutual negotiation, inter alia, the basical elements of public constitutional law: organisation, territory and population.

D. Any political or legal approach to both cases should be taking into consideration the EU new framework as a new relevant context of sov-

³⁶ Nevertheless, the 1707 Union Act stands that the Union is «forever».

³⁷ In this case very clearly, once again, in breach of the Spanish Constitution, specifically, article 151.2. In the same sense, this also went against the provisions recognising a right to negotiate this text through article 137 of the Spanish Parliament Statutory Regulation.

³⁸ See the full English version of the proposal approved by the Basque Parliament (PSBC).

http://www.nuevoestatutodeeuskadi.net/docs/dictamencomision20122004_eng.pdf.

³⁹ More specifically in the principle of the right to negotiate a possible different status for Quebec recognised by the Canadian Supreme Court (Decision of 20-8-1998). See as well arts. 12 & 13 PSBC with a very concrete approach to self-determination based upon the principles stated by the Canadian Supreme Court in 1998 (the right to a bilateral negotiation on the Basque political status).

ereignty or even post-sovereignty according to Scottish professors like MacCormick⁴⁰ or Keating⁴¹.

This common general ideas are indeed present in Scotland within the Devolution process, in particular through the Scotland Act 1998 and notwithstanding of the referendum proposed by the Government of Scotland.

Even within the context of the 1707 Act or Treaty of Union between England and Scotland, the later maintained certain particular institutions and bodies such as the judiciary, education, universities, the presbyterian church and its systems of Civil and Criminal Law⁴², based upon Roman Law, but influenced as well by common Law. In this sense, the legislative projects concerning Scotland have been historically considered and analysed mainly by members of Parliament coming from Scotland.

In any case, and even within the devolution context, the system adopted is clearly limited and under the control of Westminster. There is, in fact, an essential principle of British Constitutional Law stating that Westminster Parliament is sovereign. No institution or body can abolish an Act except the same Parliament and this one can intervene in any matter whatsoever. Hence, article 28 of the Scotland Act 1998 assumed the competence of the Scottish Parliament to approve Acts, stating as well the competence of the British Parliament to approve Acts for Scotland.

For the British case that is all in force without a formal Constitution. Feldman, for example, questions if the «*United Kingdom have no constitution, one constitution, or several competing constitutional visions?*»⁴³. Despite of the formal data, Feldman is clearly more in the idea of shared or co-sovereignty while there is not only a single source of authority for constitutional rules. That is indeed part of the current situation within the EU framework whereat both Scotland and the Basque Country are involved. In this line, he believes in a non static view of constitutions stating that:

for the United Kingdom's constitution (or any other constitution) to work successfully in this way, there must be a commitment to peaceful methods of re-

⁴⁰ Inter alia at MacCORMICK, N., *Questioning sovereignty. Law, State and Nation in the European Commonwealth*, Oxford University Press, 2002.

⁴¹ Inter alia at KEATING, M., *The independence of Scotland*, Oxford University Press, 2009.

⁴² See in this regard the interesting comparative approach made by J. ARRIETA between the Spanish 1707 and the British one, in *El 1707 español y el británico*, in *Conciliar la diversidad. Pasado y presente de la vertebración de España*, Arrieta, J. & Astigarraga, J. (eds), University of the Basque Country, 2009, page. 28.

⁴³ D. FELDMAN, *None, one or several? Perspectives on the UK's constitution (s)*, Cambridge Law Journal, 2005, page. 350.

solving, temporarily and contingently, a constantly changing set of conflicts between visions⁴⁴.

Another interesting approach was made by McLean & McMillan, even concluding one of his most interesting studies with the idea of the UK as a Union State without Unionism or quoting his view as «The Death of Unionism»:

Unionism was an elite creed before it was a popular one. English politicians needed Union in 1707 because of the Scottish threat to the security of England after the death of Queen Anne. Scots politicians, their state bankrupt and subject to economic and military threats from England, had no realistic choice but to accept Union. However, they secured safeguards for their religion and law, safeguards that have been (more or less) honoured ever since⁴⁵.

IV. BASQUE HISTORICAL TITLES WITHIN THE SPANISH CONSTITUTION AND THE EC-EU CONTEXT⁴⁶

First Additional Clause of the Spanish Constitution:

La Constitución ampara y respeta los derechos históricos de los territorios forales.

La actualización general de dicho régimen foral se llevará a cabo, en su caso, en el marco de la Constitución y de los Estatutos de Autonomía⁴⁷.

As quoted by Herrero de Miñón and T. R. Fernández, the Basque Historical Rights are much more than a mere accumulation of competencies and public bodies. They represent a real legal and political concept, previous to our current constitutional reality (common ground as well with Scotland) and, in that sense, not liable to derogation through any unilateral decision, once the legal nature of contract or agreement has been proven⁴⁸. Co-sovereignty is also present in this idea. Moreover, according to Herrero de Miñón, these titles are indeed a constitutional recognition of the right of the Basque Country to self-determination

⁴⁴ *Ibid.*, Page. 351.

⁴⁵ McLEAN, I. & McMILLAN, A., *State of the Union*, 2005, page. 239.

⁴⁶ See EZEIZABARRENA, X., *Los Derechos Históricos de Euskadi y Navarra ante el Derecho Comunitario*, Donostia-San Sebastián: Sociedad de Estudios Vascos, 2003, together with the interesting foreword to the book by M. HERRERO DE MIÑÓN.

⁴⁷ *The Constitution protects and respects the Historical Rights of the «foral» territories. The general updating process of this regime shall be enacted, when appropriate, within the framework of the Constitution and the Acts of Autonomy.* The four foral territories quoted, within the context of this article, had been defined by the Spanish Constitutional Court as Alava, Guipuzcoa, Navarre and Vizcaya.

⁴⁸ See their works, HERRERO DE MIÑÓN, M., *Derechos Históricos y Constitución*, Madrid: Taurus, 1998 and FERNÁNDEZ, T. R., *Los Derechos históricos de los territorios forales*, Madrid: Civitas, 1985.

in terms of a possible voluntary integration or an open demand for a different political status for the Basque territories⁴⁹.

In this sense, I would also like to include the words of J. Cruz Alli (former President of Navarre), during his speech in the debate in the Spanish Senate on the General Commission of Autonomous Communities in 1994. He warned the Senate and the Spanish Premier of the possible consequences deriving from a breach of those agreements due to the actions of the Spanish Government, namely, against the common institution of the Historical Rights of the Basque Country and Navarre; specifically, with regard to a constitutional conflict presented by the central Government and another autonomous community, against some competencies of the government of Navarre in terms of its Historical Rights as expressed in the First Additional Clause of the Constitution⁵⁰.

If we consider the EC-EU system to be the global sum of different approaches by the various states to the question of integration, the domestic particularities of which are expressed in their respective Constitutions, might be the right formula, in my view, for the EC-EU to accept all the above. It would be a productive way of testing the political will of States, both at an internal national level and in relation to the specific constitutional ambit of the EC-EU either for the case of Scotland or the Basque Country.

In order to get this into focus and assume its real dimension we may use the institution of Human Rights as an example. They are an inherent prerequisite for membership of the EC-EU system and characteristic of every single one of the member States. Article 6.1 of the Treaty of de EU (TEU) is clear in this sense. This is an essential matter because the EU assumes *ab initio* that the nuclear part of its legal regime is not going to be controlled by the EC-EU itself, but through the common constitutional traditions of the Member States. This is indeed directly linked with sovereignty and the rights of individuals who are entitled to demand these rights before any administrative or jurisdictional body.

So, the real existence of a sum of constitutional agreements seems here to be a suitable procedure for recognising those Human Rights at the EC-EU level, even though the EC-EU itself lacks the tools to protect them directly. There is

⁴⁹ See HERRERO DE MIÑÓN, M., *Derechos Históricos y Constitución*, Madrid: Taurus, 1998. See as well EZEIZABARRENA, X., *La ciaboga infinita. Una visión política y jurídica del conflicto vasco*, Alberdania, 2005.

⁵⁰ *Diario de Sesiones del Senado* (Spanish Senate), V Legislatura, Comisiones, No. 128, 1994, pp. 62 and 63, Comisión General de las Comunidades Autónomas (26-9-1994). J.C. ALLI's speech proved again the peculiar nature of Historical Rights and the eventual consequences of their breach by central Government, contributing at the same time some other historic references. (*Diario de Sesiones del Senado*, V Legislatura, Comisiones, No. 129, 1994, p. 31, Comisión General de las Comunidades Autónomas, 27-9-1994.)

a principle of mutual trust for the protection of Human Rights at each domestic level. If this is so in such a core matter in our legal systems, there should be a similar principle of mutual trust to recognise and assume the participation of nations like Scotland or the Basque Country within the whole process, specially in the case of entities possessing powers of legislation and enforcement, or that even take collective Historical Rights as the fundamental starting point for the powers with which they are vested (Scotland & Basque Country, *inter alia*). Such nations are singular both in terms of the material content of their competencies, and of the procedures they are endowed with for upgrading them⁵¹. Such a process took place without significant problems within the context of Human Rights, whereas previously there was a huge distance between the different systems for protection within each Member State. Today, at last, there is a growing mutual impact in this area through the enforcement of the general principles of Law and the jurisprudence of, principally, the European Court of Human Rights (ECHR).

This has not been an obstacle against the EC-EU system developing certain frameworks for the protection of Human Rights in matters directly linked with the principles and objectives of European Law. Thus, Human Rights continue to be a relevant part of the EC-EU tradition as a core point with at least three sources of recognition and assumption of Human Rights:

- A. EC-EU Law with the limits mentioned.
- B. International Law, particularly through the ECHR.
- C. The domestic Law of each Member State.

It was actually the existence of a common constitutional tradition that substantially helped to produce the developments mentioned in Human Rights. And this may serve as well to adopt similar approaches in cases where the Historical Rights of certain sub-state entities might be lacking in protection, even though they have direct constitutional recognition as in the Spanish case. This lack might also be considered as a breach of EC-EU Law so long as those Historical Rights do not contravene European Law. Indeed, as against the previous theoretical distance between the Spanish Constitutional Court and the CJEC, we are now facing a mutual situation of interlinkages within the context of Human Rights. And this process was based upon the implementation in both bodies of the general principles of Law as an interpretative pillar for all matters relating to European Law. Non-existence of a real positive charter of Human Rights at the

⁵¹ Historical Rights that would find their limits in Human Rights (arts. 9, 10 & 11 PSBC); rights that are recognised within the EC-EU context and as a relevant part of their tradition. Even more now with the constitutional project pending. That is the real will behind the proposal for a new status (PSBC). For Scotland with the Devolution Act as a clear point of reference.

EC-EU level, despite the recognition expressed in TEU article 6, did not prevent the EC-EU from assuming its responsibilities in this area, even through CJEC jurisprudence that was also inspired, *inter alia*, by the common general principles of Law of the Member States.

So, if in a matter such as Human Rights, the importance of the domestic regime is extremely clear for real protection at EC-EU level, the European bodies, member States and, eventually, the CJEC should also take up the challenge to define the extent to which Basque Historical Rights should be considered, in this case before the EC-EU, in order to perceive where their limits lie. In brief, to find those common grounds and limits would be a task of the CJEC, whose opinions would undoubtedly follow the grounds supported by the Spanish Constitutional Court, just as that body did in direct enforcement of article 10.2 of the Spanish Constitution⁵².

Within this process, the domestic jurisdictional bodies have been adapting themselves to the portrait made by the CJEC of the relationship between the EC-EU and the domestic level. The conclusion is clear and may suggest to us some considerations in order to adequately interpret the figure of Basque Historical Titles in relation to the whole European system:

1. The CJEC made clear that European law has direct prior enforcement effects. This means that any damage or impact caused by a Member State to citizens and in breach of EC-EU Law will produce liability to be assumed by the Member State.

2. To enforce compliance with the above, the domestic courts have a leading role – expressed at its highest level via Constitutional Courts or similar figures – in the constitutional monitoring of possible violations, and in ensuring the pre-eminence of the domestic Constitutions, as well as the practical implementation of EU Law. That is indeed the task of domestic jurisdictions (i.e. the Spanish Constitutional Court, for the cases of Human Rights and Basque Historical Rights)⁵³.

However, current reality does not provide real consideration for those Historical Rights within the EC-EU as a substantive part of one of the agree-

⁵² Article 10.2 of the Spanish Constitution: «*Las normas relativas a los derechos fundamentales y a las libertades que la Constitución reconoce, se interpretarán de conformidad con la Declaración Universal de Derechos Humanos y los tratados y acuerdos internacionales sobre las mismas materias ratificados por España*».

⁵³ Both the Spanish Constitutional Court and similar European domestic bodies are obliged to guarantee European Law, and must even request, for example, a preliminary ruling from the CJEC when they need an interpretative ruling from the European Court (article 234 of the EC Treaty). See also arts. 14, 15 & 16 of the PSBC.

ments or covenants that are now present at the EC-EU. This is because of a lack of political will at the Spanish domestic level. An example of this situation is the way Germany, Belgium or Austria dealt with the issue in an absolutely different way from Spain.

Finally, implementation at the European level of constitutional reality within every social, territorial and legal ambit makes it vital to distinguish the existence of these sub-state complexities that are not easily defined under the general concept of «Regions». We find here that domestic realities with a constitutional recognition within Member States may require peculiar treatments in order to implement that constitutional scope and singular approach. This can be seen in particular for entities with legislative powers, such as in the cases of the Basque Country and Scotland in accordance with, *inter alia*, their written or customary Historical Titles and within some of the most significant competencies in force⁵⁴.

These ideas are very in force nowadays right 50 years after the first Basque Premier died in Paris. The deep Europeanism of José Antonio Aguirre y Lekube is once again present within his thoughts and writings. Indeed, the EU, regardless of the contents of Lisbon Treaty now in force, is still facing important transformations. And many of these ideas and proposals were seen by Aguirre y Lekube as a pioneer Statesman since the 40s⁵⁵.

Moreover, Aguirre y Lekube made a forecast on the necessity of Europe underlining the protection of Human Rights as a clear limit of any modern political system. Even in 1944 Aguirre wrote that, «*la garantía de los pueblos, principalmente de los pequeños, reside precisamente en estas más amplias estructuras supraestatales*». Only a year later, Irujo, in his book, «*Inglaterra y los Vascos*», calls to Saint Luis: «*todas las libertades son solidarias*». Therefore, Europe must be an space of rights and freedom. And for Aguirre, the Basque Country played and plays a key role through our Historical Rights, even as a real exercise

⁵⁴ It is obviously necessary to distinguish the situations and specificities of the German Länder, Basque Country or Scotland for example, and some other cases such as those of the French *départements* or the British counties. The case of Basque Historical Rights and Scottish demands at least three main approaches (article 65 PSBC for the Basque case):

- A. More participation of the Basque and Scottish Parliaments in the EC-EU institutional activities;
- B. Participation of both delegations within the EU Council of Ministers;
- C. Direct right of standing (*locus standi*) of both entities in appeals to the CJEC in matters affecting their respective competencies.

⁵⁵ See MEES, L., *El profeta pragmático*, Alberdania, 2006, and, particularly his constant letters with Manuel de Irujo.

of sovereignty to be updated towards the new EU. This legal reality foreseen by Aguirre and Irujo, *inter alia*, is far away from the Spanish approach during the semester of Spanish Presidency of the EU. There is not even a single proposal of Sub-State real participation within the EU context.

Meanwhile, Germany, Belgium and Austria had constitutionally recognised Sub-State participation before the EU. That is remarkable and important in those countries or in Spain because the subsidiarity principle should become a basic requirement for the relationships among the EU and States and even among States and its Sub-State levels. So to say for the respect of national identities of the member States which are in many cases clearly plurinational as seen by Aguirre y Lekube. Even the UK, without a written Constitution, but with the power of Scotland and Wales, is fostering tools of its nations within the EU.

There are Sub-State proposals to ease one of its representatives within the State delegations negotiating rules and treaties. In fact, that is the path followed by Germany, Belgium and Austria with representatives from the different *Länder*, Wallonia or Flanders. Within the Spanish context, Historical Rights should legitimate similar possibilities for the Basque Country.

The bilateral nature of these Historical Rights would be useful to ease Basque participation before the EU. And this may imply participation within the Committees of the Commission, within the Council of Ministers and within the working bodies. In the German case, the *Länder* are taking part as observers within the different bodies, while in the case of Belgium there is a rotary representation. In this case, a Minister of Flanders could even chair a EU Council of Ministers. This is politically very far away from the opinion of certain member States or even from the approach made by the current Basque president who define the Basque Country as a «Region» during a recent official visit to Brazil.

In my view, the example of Historical Rights should be useful to reconcile both approaches updating the Europeanism of Aguirre y Lekube to the requirements of the present days. If Sub-State participation is not directly regulated in the European Treaties it does not mean at all to become forbidden. And therefore we have the very illustrative cases of Germany, Belgium, Austria and the UK, which representatives can eventually compromise their member State in certain matters.

And all these has nothing to do with the nostalgia of certain nationalism or looking for political advantages; it is indeed positive Law coming from the source of a pioneer of Europeanism since the 40s like the Basque first premier, José Antonio Aguirre y Lekube.

V. SOME CONCLUSIONS

The Basque Historical Titles have been unable to formally present their peculiarities at the EC-EU level, while some other sub-state entities did so within their respective Member States. In the cases of the Basque Country and Navarre in Spain, their respective scopes of competencies have sometimes been disregarded by the EU-EC system. Even though many authors recognise the federal approach of the European Treaties, this is not so easily seen from the perspective of the Historical Rights analysed here. The principle of respect for the national identities of the Member States (Article 6 of the EU Treaty)⁵⁶ should be a useful tool for granting the legitimacy of the Spanish constitutional agreement on Historical Rights expressed in the Spanish Constitution in terms of a real path towards co-sovereignty between Spain and the Basque territories. A similar theoretical approach could be useful as well for the Scottish case within the context of devolution of powers or customary «historical rights». The referendum in Scotland may imply a step forward on the abolishment of the 1707 Act or Treaty of Union within a real exercise of self determination.

«Useful constitutionalism», in the terms of Herrero de Miñón and Lluçh⁵⁷ for Spain, requires an implementation of this question at the EC-EU level, and that is clearly (but only formally) granted by the Spanish Constitution⁵⁸. Herrero de Miñón reaffirms his support for this idea in very clear terms⁵⁹. A similar approach is followed by J. Cruz Alli, who even suggests linkages to connect with the EC-EU process⁶⁰.

In that sense, the proposal for a new Political Statute approved by the Basque Parliament (30-12-2004), assuming the right to self-determination through Historical Titles and bilateral negotiation⁶¹ remains a unique opportunity in order to resolve the situation of the Basque territories within the Spanish Constitution and, in particular, where the EU constitutional process is concerned. Of course, in this regard, the point of view of the new Basque Government since

⁵⁶ Article 5 for the failed Project of Constitution.

⁵⁷ Former socialist politician and Spanish minister killed by ETA in 2000 in the city of Barcelona.

⁵⁸ HERRERO DE MIÑÓN, M., & LLUCH, E., *Constitucionalismo útil*, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000, p. 17.

⁵⁹ HERRERO DE MIÑÓN, M., *Autodeterminación y Derechos Históricos*, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000, pp. 219 & 220; see *Ibid.*, p. 221.

⁶⁰ ALLI, J. C., *Paz y Fueros. Los Derechos Históricos como instrumentos de pacificación*, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000, p. 329.

⁶¹ Afterwards, during 2008 the Basque Parliament enacted an Act regulating public consults in this regard, and the consultation organised for the 25-10-2008 was banned by the Spanish Constitutional Court Judgment 103/2008 (STC 103/2008).

2009 is totally different. The Scottish approach led by the SNP will have an important test in terms of the aforementioned referendum.

Regarding the EU framework for sub-state participation, the path followed already by Germany, Belgium or Austria and their sub-state entities offers clear examples of real participation, integration and co-sovereignty in terms of national and European solidarity.

VI. BIBLIOGRAPHY

AJA, E., *El Estado autonómico. Federalismo y hechos diferenciales*, Madrid: Alianza Editorial, 1999.

ALDECOA LUZARRAGA, F., En busca de un pacto político a favor de la acción exterior y comunitaria de las Comunidades Autónomas, in *La acción exterior y comunitaria de los Länder, Regiones, Cantones y Comunidades Autónomas*, Vol. I, Oñati: IVAP, 1996.

ALLI, J.C., Paz y Fueros. Los Derechos Históricos como instrumentos de pacificación, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.

-*La cooperación entre la C. A. del País Vasco y la Comunidad Foral de Navarra*, Donostia-San Sebastián: Fundación para el Estudio del Derecho Histórico de Vasconia, 2004.

ARRESE, J., *Descentralización universal o el fuero vascongado*, Madrid, 1873.

ARRIETA ALBERDI, J., Las imágenes de los derechos históricos: un estado de la cuestión, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.

-Oxford Basque visiting fellowship seminar and materials 2005/06, *RIEV*, Eusko Ikaskuntza (in press), 2009.

-El 1707 español y el británico, in Arrieta, J. y Astigarraga, J. (eds.), *Conciliar la diversidad. Pasado y presente de la vertebración de España*, Bilbao: University of the Basque Country, 2009.

BEDJAOU, M., La Charte des Nations Unies, in Cot, J.-P. and Pellet, A. (eds.), *La Charte des Nations Unies*, 2nd ed. Paris: Economica, 1991.

BELAUSTEGUIGOITIA, R., *Reparto de tierras y producción nacional*, Madrid: Espasa-Calpe, 1932.

BENGOETXEA, J. R., El futuro de Euskadi y el futuro de Europa. ¿Quién tiene miedo de Europa?, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.

- La Europa Peter Pan. El constitucionalismo europeo en la encrucijada*, Oñati: IVAP, 2005.
- BOGDANOR, V., Federalism and the nature of the European Union», in Nicolaidis, K. and Weatherill, S. (eds), *Whose Europe? National models and the Constitution of the European Union*, Oxford: Oxford University Press, 2003.
- Devolution*, Oxford University Press, 1979.
- Regionalism, devolution and education, *Oxford Review of Education*, III, 2 (1977).
- BOGDANOR, V. & VOGENAUER, S., Enacting a British constitution: some problems, *Public Law* (2008, september).
- BROTCHIE, N., The Scottish Law Commission: promoting law reform in Scotland, *Legal Information Management*, 9.1 (2009).
- CABALLERO HARRIET, J., *Temas pretexto para una reflexión*, Donostia: Colección Laboratorio de Sociología Jurídica, 1993.
- CAÑO, J., Los derechos históricos en el Siglo XX, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.
- CASTELLS ARTECHE, J. M., Europa-Euskal Herria, *Euskonews & Media*, no. 31, <http://www.euskonews.com>.
- CLAVERO, B., Derechos humanos (individuales) y derechos históricos (colectivos), in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.
- COELLO, C., La Propuesta del Presidente Ibarretxe: ¿Del etnos al demos? Hacia un nacionalismo performativo, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- DUNBAR, R., The Gaelic language (Scotland) Act 2005, *Edinburgh Law Review*, 9. 3 (2005).
- EVANS, A., UK devolution and EU Law, *European Law Review*, 28. 4 (2003).
- EZEIZABARRENA, X., Brief notes on the Historical Rights of the Basque Country and Navarre with regard to Community Law, *Ius Fori*, Revista de la Facultad de Derecho de la Universidad del País Vasco, nº 1 (primer semestre 1999).
- Derechos Históricos y Derecho Comunitario ante la Propuesta del Lehendakari, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- Los Derechos Históricos de Euskadi y Navarra ante el Derecho Comunitario*, Donostia-San Sebastián: Eusko Ikaskuntza, 2003.

- Europe & Co-sovereignty, *Oxford Magazine*, no. 226, Oxford, May 2004.
- La ciaboga infinita. Una visión política y jurídica del conflicto vasco*, Irun: Alberdania, 2005.
- FERNÁNDEZ, T. R., *Los Derechos Históricos de los territorios forales*, Madrid: Civitas, 1985.
- FELDMAN, D., None, one or several? Perspectives on the UK's constitution (s), *Cambridge Law Journal*, 64.2 (2005).
- FINLAY, R., New Britain, New Scotland, New History? The impact of devolution on the development of Scottish historiography, *Journal of Contemporary History*, 36 (2001).
- FOSTER, S., Finally: a Bill of rights for the UK?, *Coventry Law Journal*, 13.2 (2008).
- GAGNON, A., *Québec y el federalismo canadiense*, Madrid: CSIC, 1998.
- GARCÍA URETA, A., La transferencia de poderes a las Regiones en el Reino Unido: el caso de Escocia, *Revista Vasca de Administración Pública*, 55 (1999).
- GAY MONTALVO, E., La integración europea y las nacionalidades históricas, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.
- GÓMEZ ISA, F., El derecho de autodeterminación en el Derecho Internacional contemporáneo, in *Derecho de autodeterminación y realidad vasca*, Vitoria-Gasteiz: Gobierno Vasco, 2002.
- GROS ESPIELL, H., Un nuevo pacto político por la convivencia. Un enfoque internacional, in *Hermes*, febrero 2003.
- HERRERO DE MIÑÓN, M., La titularidad de los Derechos Históricos vascos, in *Revista de Estudios Políticos*, 58 (1987).
- Autodeterminación y Derechos Históricos, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.
- Derechos Históricos y Constitución*, Madrid: Taurus, 2000.
- El valor de la Constitución*, Barcelona: Crítica, 2003.
- España y Vasconia: presente y futuro (consideraciones en torno al Plan Ibarretxe, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- El pacto con la Corona ¿ocasión perdida u opción abierta?, in *Homenaje al Profesor D. Pablo Lucas Verdú. (Estudios de Deusto, vol. 51/1 enero-junio 2003)*, Bilbao: Universidad de Deusto, 2003.

- Constitución española y Constitución europea*, Madrid: Instituto de España, 2004.
- HERRERO DE MIÑÓN, M. & LLUCH, E., *Constitucionalismo útil*, in *Derechos Históricos y Constitucionalismo útil*, Bilbao: Fundación BBV, 2000.
- IRIONDO, X., *Europa y Euskal Herria: luces y sombras*, *Euskonews & Media*, 29, <http://www.euskonews.com>.
- IRUJO, M., *Inglaterra y los vascos*, Ekin, Buenos Aires, 1944.
- JALLAND, P., UK devolution 1910-14: political panacea or tactical diversion?, *The English Historical Review*, Oxford University Press, Vol. 94, 373 (1979).
- JAMIESON, N., The Scots Statute, *Statute Law Review*, 27.3 (2006).
- JÁUREGUI, G., La actividad internacional de la CAPV. La implicación europea, *Euskonews & Media*, 36, <http://www.euskonews.com>.
- La globalización y sus efectos en el principio de soberanía, in Castells, M., Jáuregui, G., & Iriondo, X., *La institucionalización jurídica y política de Vasconia*, Donostia-San Sebastián: Eusko Ikaskuntza, Colección Lankidetzan, 1997.
- Los nacionalismos minoritarios y la Unión Europea. ¿Utopía o ucronía?*, Barcelona: Ariel, 1997.
- El Estado, la Soberanía y la Constitución ante la Unión Europea, *Revista Vasca de Administración Pública*, 53, II (enero-abril 1999).
- JENKINS, D., Common law declarations of unconstitutionality, *Internacional Journal of Constitutional Law*, 7.2 (2009).
- JURADO, E., Estonia, una experiencia independentista, *Claves de Razón Práctica*, 138 (diciembre 2003).
- KEATING, M., Plurinational democracy and the European order, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- The Minority Nations of Spain and European Integration. A new framework for autonomy?, *Spanish Cultural Studies*, 1.1 (2000).
- Self-determination, multinational states and the transnational order, in Van der Valtt van Praage, M. and Seroo, O. (eds), *The Implementation of the Right to Self-determination as a Contribution to Conflict Resolution*, Barcelona: UNESCO Catalunya, 1998.
- So Many Nations, So Few States. Accommodating Minority Nationalism in the Global Era, in Gagnon, A.-G., and Tully, J. (eds), *Struggles for Recognition in Multinational Societies*, Cambridge: Cambridge University Press, 2001.

- Nations without States: minority nationalism in the global era, in Requejo, F., (ed), *Democracy and National Pluralism*, London: Routledge, 2001.
- Europe's Changing Political Landscape: Territorial Restructuring and New Forms of Government, in Beaumont, P., Lyons, C. and Walker, N. (eds), *Convergence and Divergence in European Public Law*, Oxford: Hart, 2002.
- Reforging the Union: Devolution and constitutional change in the United Kingdom, *The Journal of Federalism*, 28.1 (1998).
- The independence of Scotland*, Oxford University Press, 2009.
- LACASTA-ZABALZA, J. I., *España uniforme*, Pamplona: Pamiela, 1998.
- LASAGABASTER, I., La experiencia estatutaria y la vía soberanista, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- LEGARRETA, J., *Desde el futuro. Nacionalismo es más democracia*, Irun: Alberdania, 2004.
- LESTER, N., *Le Québec vers l'indépendance?*, Paris: La Documentation Française, 1978.
- LETAMENDÍA, F. (coordinador), *Nacionalidades y Regiones en la Unión Europea*, Oñati: IVAP, 1999.
- LOCKE, J., *Segundo tratado sobre el gobierno civil* [1690], Madrid: Alianza Editorial, 1994.
- LOUGHLIN, J., The regional question, subsidiarity and the future of Europe, in Nicolaidis, K. and Weatherill, S. (eds), *Whose Europe? National models and the Constitution of the European Union*, Oxford: Oxford University Press, 2003.
- LOPERENA, D., Navarra y el nacionalismo compatible, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- MANCE, Lord, Constitutional reforms, the Supreme Court and the Law Lords, *Civil Justice Quarterly*, 2006, 25.
- MacCORMICK, N., *Questioning sovereignty. Law, State and Nation in the European Commonwealth*, Oxford University Press, 2002.
- MacQUEEN, H., Legal nationalism: Lord Cooper, legal history and comparative Law, *Edinburgh Law Review*, 9.3 (2005).
- MacLEAN, I. & McMILLAN, A., *State of the Union*, Oxford University Press, 2005.
- MacKILLOP, A. & O'SIOCHRU, M., *Forging the State: European State formation and the Anglo-Scottish Union of 1707*, Dundee University Press, 2008.

- MEADOWS, M., Constitutional crisis in the UK: Scotland and the devolution controversy, *The Review of Politics*, 39, 1 (1977).
- MEES, L., *El profeta pragmático*, Alberdania, 2006.
- MISHLER, W. & MUGHAM, A., Representing the celtic fringe: Devolution and legislative behavior in Scotland and Wales, *Legislative Studies Quarterly*, III, 3 (1978).
- MONREAL, G., La base foral del Plan del Lehendakari Ibarretxe, in *Jornadas de Estudio sobre la Propuesta Política para la convivencia del Lehendakari Ibarretxe*, Oñati: IVAP, 2003.
- NIETO ARIZMENDIARRIETA, E., Reflexiones sobre el concepto de Derechos Históricos, *Revista Vasca de Administración Pública*, 54 (1999).
- NICOLAIDIS, K. and WEATHERILL, S. (eds), *Whose Europe? National models and the Constitution of the European Union*, Oxford: Oxford University Press, 2003.
- ORTUETA, A., *Nabarra. Estado político de Vasconia*, Pamplona: Pamiela, 2003.
- RANJEVA, R., Peoples and National Liberation Movements, in Bedjaoui, M. (ed), *International Law: Achievements and Prospects*, Paris and Dordrecht: Unesco-Nijhoff, 1991.
- REID, S. & EDWARDS, J., The Scottish legal system, *Legal Information Management*, 9.1 (2009).
- RENYER, J., L'autodeterminació del poble catalá, Editorial Mediterrania, 2001.
- ROBBINS, K., Britain and Europe: devolution and foreign policy, *Internacional Affaire*, 74 (1998).
- ROUSSEAU, J.-J., *Del contrato social* [1762], Madrid: Alianza Editorial, 1991.
- ROSS, A. & SALVADOR, M., The effect of devolution on the implementation of EC law in Spain and the UK, *European Law Review*, 28.2 (2003).
- SCOTTISH GOVERNMENT, *Choosing Scotland's Future, A nacional Conversation*, 2007.
- SETIÉN, J. M., *Unidad de España y juicio ético*, Donostia-San Sebastián: Erein, 2004.
- SORAUREN, M., *Historia de Navarra, el Estado vasco*, Pamplona: Pamiela, 1999.
- SOROETA, J., El Derecho Internacional y el Derecho interno canadiense ante el desafío de Québec, *Cursos de Derechos Humanos de Donostia-San Sebastián*, Bilbao: UPV-EHU, 2002.

- SUDUPE, R., Intervención del Diputado Foral de Gipuzkoa, sobre el Estatuto de Autonomía de Gernika ante la Comisión especial sobre autogobierno del Parlamento Vasco, Donostia-San Sebastián: Diputación Foral de Gipuzkoa, 2002.
- TAMAYO, V., *La autonomía vasca contemporánea. Foralidad y estatutismo 1975-1979*, Oñati: IVAP, 1994.
- TIERNEY, S., Living with one hand: Scottish devolution within a unitary state, *Internacional Journal of Constitutional Law*, 5 (2007).
- TIERNEY, S., Reframing sovereignty? Sub state national societies and contemporary challenges to the nation state, *International & Comparative Law Quarterly*, 54.1 (2005).
- Constitutional Law and National Pluralism, 2006.
- URZAINQUI, T., *Recuperación del Estado propio*, Pamplona: Nabarralde, 2002.
- Navarra sin fronteras impuestas*, Pamplona: Nabarralde, 2002.
- Navarra Estado europeo*, Pamplona: Pamiela, 2004.
- URZAINQUI, T. and OLAIZOLA, J. M., *La Navarra marítima*, Pamplona: Pamiela, 1998.
- VV.AA., *Derecho de autodeterminación y realidad vasca*, Vitoria-Gasteiz: Gobierno Vasco, 2003.
- VV.AA., *Derechos Históricos y co-soberanía en la UE*, Donostia-San Sebastián: St. Antony's College Oxford-Sociedad de Estudios Vascos-Diputación Foral de Gipuzkoa, 2005.
- VV.AA., *Soberanías y pacto*, Bilbao: Herria 2000 Eliza, 2005.
- VV.AA., *La protecció de les minories i els Tribunals Constitucionals*, Andorra: Tribunal Constitucional, 2003.
- VV.AA., Sub-State entities and co-sovereignty within the EU, *RIEV Cuadernos 3*, Xabier Ezeizabarrena & Jeremy MacClancy (eds.), Eusko Ikaskuntza, 2008.
- WATHLEY, C. A., *The Scots and the Union*, Edinburgh University Press, 2006.
- WEATHERILL, S. & BERNITZ, U., *The role of regions and sub-national actors in Europe*, 2007.
- WICKS, E., *The evolution of a Constitution: eight key moments in British constitutional history*, 2007.
- WOEHLING, J., The Quebec secession reference: pitfalls ahead for the federal government, *Canada-Watch*, 6 (October 1997).

-El juicio del Tribunal Supremo de Canadá sobre la eventual secesión de Québec, *Revista Vasca de Administración Pública*, 54 (1999).

-The Supreme Court's Ruling on Quebec's Secession: Legality and Legitimacy Reconciled by a Return to Constitutional First Principles, in Mellon, H. and Westmacott, M. (eds), *Political Dispute and Judicial Review*, Scarborough: Nelson, 2000.