

## **VI. ANALYTIC SUMMARY**



**Alli Aranguren, Juan Cruz** (Universidad Pública de Navarra / Nafarroako Unibertsitate Publikoa): **El tratamiento constitucional y estatutario de las relaciones con la Comunidad Foral de Navarra. Entre las instituciones y el partidismo.** (Constitutional and Statutory Treatment of Relations with the Chartered Community of Navarre. Between Institutions and Partisanship). (Orig. es).

In *Iura Vasconiae*, 16, 131-162.

Abstract: There is a certain legal/institutional cooperative framework amongst the Autonomous Communities through service management agreements and cooperation agreements that have a greater scope. When the government of Navarre was negotiating such an agreement with the Basque Autonomous Community, it was hindered by partisan politics aiming to avoid the mere creation of official spaces of dialogue. Political interests were placed above those of the institutions.

Key words: Spanish Constitution. Chartered Community of Navarre. Basque Autonomous Community. Basque Statute. Improvement of *Fuero* (Charter of Navarre).

**Álvarez Rubio, Juan José.** (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **Las garantías del autogobierno.** (The Guarantees of Self-Government). (Orig. es).

In *Iura Vasconiae*, 16, 349-376.

Abstract: In addition to defining a list – or roster – of powers, it is essential to determine the mechanisms and instruments that ensure and shield the effective exercise of said powers. The new Basque Statute must ensure that the powers exercised by Basque institutions are protected, and it must support bilateralism. The text of the statute must mediate a system of guarantees that ensures a certain bilateralism of a confederate nature in the relations between the Spanish State and the legal/political subject – and this system should be based on cooperation.

Key words: Guarantees. Self-Government. Bilateralism. Ad intra and ad extra agreement. Concerted System. Competences.

**Aurtenetxe Goiriena, José Luis** (Juntas Generales de Bizkaia): **La jurisprudencia del Tribunal Constitucional sobre los derechos históricos de**

**los territorios forales: aspectos generales y proyección sobre las competencias estatutarias de raíz histórica.** (The Constitutional Court's Case Law on the Historical Rights of the Regional Territories: General Aspects and Projection of the Statutory Powers with Historical Roots). (Orig. es).

In *Iura Vasconiae*, 16, 201-305.

Abstract: Over nearly four decades, the Constitutional Court has been interpreting and applying, through the power vested therein, both the First Additional Provision of the Constitution and the provisions of the Statute of Autonomy of the Basque Country and the Statute of Autonomy of Navarre, which update historical rights belonging to traditional regional territories. The number of decisions reached is already quite high and covers both the more general aspects of the regional clause of the supreme law and the scope of the most important historic rights in an updated version. As a consequence, legally studying the historic rights today implies, to a great extent, a critical dialogue with the judgements and orders of the Constitutional Court. The aim of this paper is to offer an overview of that case law doctrine.

Key words: Historical Rights. Regional Territories. Statute Update. Powers Reserved to the State. Regional Laws. Policing Arrangements. Basque Economic Agreement. Tax Law.

**De la Hucha Celador, Fernando** (Universidad Pública de Navarra / Nafarroako Unibertsitate Publikoa): **La cuestión competencial interna en materia de Hacienda: instituciones generales y territoriales.** (A reading between the lines of the book *Escudo de la más constante fe y lealtad*). (Orig. es).

In *Iura Vasconiae*, 16, 413-449.

Abstract: The book titled *Escudo de la más constante fe y lealtad de Vizcaya* (*Shield of the most constant faith and loyalty of Biscay*) was printed in Bilbao on the initiative of the Council of Biscay in 1762. After the edition of 2015, with an extensive introductory study, a presentation took place in the Basque Parliament in which we presented an attempt to explain the «mysteries» of the book. In this article a further step is taken which involves a reading between lines to address issues within the *Escudo* that lack the required clarity. We return to the problem of authorship and the manner in which the publication took place, but special attention is paid to what, reading between the lines, can be said about the fourth part of the book, the protectorate regime, the mechanism for the concession for use, and, finally, the 852 notes and thousands of citations included in the text.

Key words: Bizkaia. Biscay. Fuero. Foral system. Andrés de Poza. Juan Gutiérrez. Consultants. Legal doctrine. Protectorate. Concession for use.

**Gagnon, Alain-G. (UQAM): The Urgency to Develop a Sense of Togetherness in Divided Societies : Thinking Outside of the Box.** (La necesidad de desarrollar un sentido de unidad en las sociedades divididas: pensar con creatividad). (Orig. en).

In *Iura Vasconiae*, 16, 25-44.

Abstract: In the context of divided polities, this article discusses the urgency to challenge the dominant centralist stand in favor of a vision founded on the principles of coordination, non-subordination, and consent. Such an endeavor would contribute to appease political tensions as states – formed of distinctive demoi – would give a fairer and more equal hearing to its constitutive parts. The argument is made that it is crucial not to satisfy oneself with an approach based solely on the «right to choose» since, in such a scenario, political communities would be trapped in a legal straitjacket limiting their ability to act. It is important to assess conflicts of claims based first and foremost on the very notion of legitimacy rather than legality.

Key words: Divided societies. Living Constitution. Majority nation. Minority nation. Self-determination. Self-rule. Shared rule. Sovereignty-association.

**Hernando Arranz, Pedro (Economist): El déficit y la deuda: atribuciones de la Hacienda y el Parlamento Vasco.** (Deficit and Debt: Responsibilities of the Treasury and the Basque Parliament). (Orig. es).

In *Iura Vasconiae*, 16, 391-411.

Abstract: Although these notions really came earlier, the recession that began in 2008 has made the matters of the deficit and its corollary, the public debt, come to the forefront of current affairs. This article starts by noting basic concepts that define the surplus/deficit. It then sets out the basic regulations of both European Governance and at a State level. Likewise, the article's central theme revolves around how budgetary stability is intertwined with the Basque Economic Agreement, placing an emphasis on the erosion that the Judgements of the Constitutional Court in relationship with State appeals have brought about under the argument of budgetary stability and in terms of self-management of budgetary aspects in the Basque Autonomous Community and in Navarre, as the regional individuality that the Agreement and the legal provisions on budgetary stability dictate is not recognised as it should be. Lastly, some reflections are made on the intricacies of the surplus/deficit that bring about a coexistence between the Basque Government and the Regional Councils.

Key words: Basque Treasury. Economic Agreement. Basque Government. Regional Councils. Constitutional Court. Public Debt.

**Jiménez Asensio, Rafael** (Universidad Pompeu Fabra): **Poder Judicial y Administración de Justicia**. (The Judiciary and the Justice Administration). (Orig. es).

In *Iura Vasconiae*, 16, 459-501.

Abstract: This piece is divided into two different parts. In the first part, the different models of the Judiciary and of the rule of judges in contemporary constitutionalism are analysed, as that initial approach is required in order to fully understand the constitutional position of the Judiciary and the Justice Administration. The second part aims to analyse how the Judiciary and Justice Administration question fits into the 1978 constitutional system and into the evolution of the judicial model from the Organic Law of the Judiciary of 1985 to the present day – placing special emphasis on the regional organisation of the State. The Judiciary and Justice Administration have been constitutionally organised in a centralist way, with a gradual opening to the Autonomous Communities in terms of their model for management – although only partially. In this study, the difficulties of the process are analysed. The conclusion discusses the complexity implied, within the current legal and political/institutional context, by a greater expansion of the Judiciary at the regional level.

Key words: Basque Autonomous Community. Judiciary. Justice Administration. Spanish Constitution. Organic Law of the Judiciary.

**Larrazabal Basañez, Santiago** (Universidad de Deusto): **El cumplimiento del Estatuto de Gernika de 1979**. (Compliance with the Statute of Autonomy of the Basque Country of 1979). (Orig. es).

In *Iura Vasconiae*, 16, 307-347.

Abstract: This work studies the evolution of the transfer of powers from the State to the Basque Autonomous Community in compliance with the Statute of Autonomy of the Basque Country from the time of its approval in 1979 to today. Some considerations are made about the legal/political context of the process of compliance with the Statute over the course of its 39-year life; a chronological look at said process is provided, and the pending power transfers as of today are listed and briefly analysed.

Key words: Statute of Autonomy of the Basque Country of 1979. Statute of Gernika. Compliance. Transfers.

**Monreal Zia, Gregorio** (Universidad Pública de Navarra / Nafarroako Unibertsitate Publikoa): **Los derechos históricos vascos: poder constituyente**

**limitado o instituciones concretas.** (Basque Historical Rights: limited constituent power or specific institutions). (Orig. es).

In *Iura Vasconiae*, 16, 45-120.

Abstract: The text examines some of the significant milestones of the evolution of the regional nature of Public Law in the Basque Country during the nineteenth and twentieth century. Said review attempts to discern the most characteristic element of regional law culture. More particularly, if regional law culture consists of a sum of traditional institutions subject to update, or if the relevance of historic rights rests on the attribution to their bearer of genuine constitutional capacity – although this may be limited by acceptance of the State’s political unity. In terms of the relationship between the State Constitution and Basque Regional Law, the text distinguishes four phases: the «Foral» or «Regional Law» era itself, which culminates between 1839 and 1841, the «Neoforal» period that goes up to 1876, and the period of Economic Agreements, removed in 1936 in Biscay and in Gipuzkoa. It concludes with the happenings of the constituent process that started with the transition to democracy. That was when the First Additional Provision of the Current Constitution was formulated, which recognised, in a tempered way, the historical rights of the territories of the Basque Country and which has likewise been subject to a singular case law interpretation.

Key words: Spanish Constitutions. Basque Regional Laws. Regional Charter Law of October 25, 1839. Treaty Law of Navarre of 1841. Regional Charter Law of July 21, 1874. Basque Statute. First Additional Provision of the 1978 Constitution.

**Urrutia Badiola, Andres M.** (Universidad de Deusto): **Implicaciones del tratamiento legislativo y jurisprudencial de la lengua propia.** (Implications of Legislative and Case Law Handling of the Regional Language). (Orig. es).

In *Iura Vasconiae*, 16, 503-540.

Abstract: The approach of the self-government reform in the Basque Autonomous Community has the Statute regulation on Basque language as one of its key parameters, viewing the language as an inherent, distinctive feature of Basque society. Thus, an analysis of both the regulatory framework and the case law on the matter of the Basque language’s official status is accompanied by a historical balance of the last forty years and a series of policy proposals for the future that will enable significant advances in the achievement of a normalisation of the Basque language in the Basque Autonomous Community through the use of relevant legal techniques in Linguistic Law.

Key words: The Basque Language. Regional Language. Official Language. Co-Official Languages. Linguistic Law. Linguistic Case Law. Constitutional Court.

**Urteaga, Eguzki.** (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **La Comunidad de Aglomeración del País Vasco y las posibilidades de cooperación con Euskadi y Navarra.** (The Communauté d'Agglomération du Pays Basque and Possibilities for Cooperation with the Basque Country and Navarre). (Orig. es).

In *Iura Vasconiae*, 16, 163-188.

Abstract: Within the current legal framework, both at the Autonomous Community level and at the State level, and along with the regional reform carried out by the Government of France which contemplates the merger of the Regions and the strengthening of the Commonwealths, the French Basque Country has its own institution, the Communauté d'Agglomération du Pays Basque (CAPV), which is capable of developing cross-border cooperative efforts in the fields of its powers alongside similar institutions both in the Basque Country and Navarre. Even so, beyond the powers of compulsory, optional, elective, and additional nature referred to by the law and the delegation of powers through prior agreement with France, the New Aquitaine Region, and/or the Pyrénées-Atlantiques Department, the CAPV has appropriated to itself certain shared or unrelated competences in the fields of peace and coexistence and in terms of language policy – all of which goes to show the CAPV's political will, its desire to assert itself as the main representative institution of the region, and its eagerness to assume an institutional leadership role. These areas can also lead to cooperation with the governments of the three Basque territories, provided cooperation is multi-level in nature and the numerous obstacles which currently exist are overcome.

Key words: Basque Country. Navarre. French Basque Country. Basque Commonwealth. Cross-Border Cooperation.

**Zelaia Garagarza, Maite.** (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **Algunas claves del encaje del modelo autonómico en el escenario de la Unión Europea.** (Some Keys to How the Autonomous Model Fits In at the European Union Level). (Orig. es).

In *Iura Vasconiae*, 16, 541-569.

Abstract: The Spanish Constitution and the Statutes of Autonomy set the design of the powers of the Autonomous State. But they do so without specifying



ing the substantive parameters to be applied in the *ad extra* exercise of sovereignty by the State. In this scenario in which the constitutionality block does not include guarantees for State action aligned with the internal parameters, and the Law of the European Union also does not impose any rules to make Member States with decentralised structures rethink their model for the exercise of external sovereignty, it is necessary to analyse whether we are really dealing with two structures that are compatible or if they sustain themselves, in essence, based on principles that are contradictory. Or, without being so categorical, what level of contradiction or compatibility occurs amongst the principles on which each of the structures rests.

Key words: State of the Autonomies. European Union. Network Governance.