

IV. ANALYTIC SUMMARY

THIRD SYMPOSIUM

INAUGURAL LESSON

Zabalza, Alexandre (Universidad de Burdeos): La tierra y la propiedad (Land and property). (Orig. es).

In: *Iura Vasconiae*, 1, 25-42.

Abstract: Property is the fundamental institution by which mankind juridically connects itself to land. This relationship has evolved throughout history, both in terms of its structure and its form, which has evolved from individualism to collectivism. The study of documents on land property demonstrates how this essentially patrimonial relationship also includes both a political dimension, that connects man to land, and a metaphysical dimension, which has to do with the identity feelings and cultural determination of each person towards their land.

Key-words: Property. Land. Sovereignty. Patrimony. Collectivism. Culture.

FIRST SESSION

Galán Lorda, Mercedes (Universidad de Navarra/Nafarroako Unibertsitatea): El régimen de la Propiedad en el Fuero General de Navarra, Fuero Reducido y disposiciones de Cortes. (Property Regime in the General Statute of Navarre, Reduced Statute and Parliamentary (cortes) decisions). (Orig. es).

In: *Iura Vasconiae*, 1, 45-101.

Abstract: The complex nature of medieval property is present in the General Statute of Navarre (*Fuero General de Navarra*). In it, it is possible to see the existence of different forms of *dominium*, together with a varied scheme in terms of the subjects who are the title bearers of those forms of *dominium*: it is possible to distinguish a “*property of the royal patrimony*”, belonging to the lords, to knightly orders, families, communities, or indeed, properties free of bonds of any kind.

Although throughout the Modern Age, a new model of property is slowly being conceived, in the juridical level, evolution is slow and medieval juridical structures basically remain, especially in early times. This is a fact that can be seen in the Reduced Statute (*Fuero Reducido*) and in the legislation in the first years of the Parliament (*Cortes*), although, throughout this long period there are important changes brought about by a change in mentality, in principle in philosophers and political theorists, but which are reflected in popular mentality and, later on, in the juridical world.

Key-words: General Statute of Navarre. Property. Reduced Statute. Parliament (Cortes) of Navarre. Dominion. Navarran Civil Statutory Law. New Statute. Codification. Common property. Family Property. Seignory. *Facería*.

Soria Sesé, Lourdes (Universidad del País Vasco/Euskal Herriko Unibertsitatea): La recepción en Vasconia Occidental de la normativa castellana sobre propiedad (Reception in Western Vasconia of the Castilian Legislation on property). (Orig. es).

In: *Iura Vasconiae*, 1, 103-126.

Abstract: The property regime in Castile is elaborated by conceptually using the battery of dogmas provided by the *Ius Commune* doctrine. Therefore, in order to understand its reception we have to bear in mind the double current it brings along: its own norms and the foreign concepts. The main matter here is to elucidate which are its effects, which is the use it is going to be given in terms of the purposes it serves, and on which juridical bases are the relations established between a common law, that of the Kingdom of Castile, and certain autochthonous laws like those of the Basque territories.

Key-words: Common Law. Property. *Mayorazgo*. Vertebration. Old Statute of Bizkaia. New Statute of Bizkaia. *Usucapión*. Civil law.

Galilea Salvatierra, Pedro (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): Los conflictos en torno a los derechos de propiedad en la revolución liberal: algunas particularidades del Régimen Foral Navarro. Una aproximación económica. (Conflicts on property rights in the liberal revolution: some particularities of the Navarran foral regime. An economic approach). (Orig.es).

In: *Iura Vasconiae*, 1, 127-157.

Abstract: This work is an economic analysis of the juridical regime of property rights both in Navarre and in the common civil regime, in view of the changes brought about by the liberal revolution and their different evolution in each juridical system. Special attention is paid to the institution of encumbrances, in order to appreciate such transformations in more detail.

Key-words: Law. Property. Land encumbrances. Statutory Law. Passage encumbrances. *Usucapio*.

SECOND SESSION

Lafourcade, Maïté (Universidad de Pau y de los Países del Adour): La conception du droit de propriété en Vasconie Continentale sous l'Ancien Régime. (The concept of property rights in Continental Vasconia under the Ancient Regime). (Orig. fr).

In: *Iura Vasconiae*, 1, 159-184.

Abstract: The Basques, who have been installed in their lands since remote history, have conserved the natural regime of undivided property of the lands adapting it to their form of living, which was based on shepherding. Basque lands

inherited from ancestors was maintained united up to the end of the Ancient Regime, resisting the numerous attacks it was subjected to by local lords, especially in Navarre, and by the French Monarchy. These undivided lands belonged to the whole of the inhabitants of the parishes in Labourd, of the villages or valleys of Lower Navarre, and to the whole of the country in Zuberoa. They were managed in a very democratic manner, by a capitulary assembly formed by the parish lords in Lapurdi, by the general Court of the country or the valley in Lower Navarre, and by the *Silviet* in Zuberoa, right up to their suppression in 1730. The lands of houses that had belongings and installations were the property of the whole of the family; all members thereof were entitled to live or stay there up to their deaths. Their management was attributed to one couple per generation, formed by the eldest child (independently of gender) and his or her partner, and both couples had the same rights as co-owners. They were made responsible for all the members of the family, and for the whole of the property, which they had to transfer to the next generation in its integrity. This concept of the right of property created strong solidarity links between individuals, who would constantly place community interests above their own. This phenomenon would explain the exceptional success of cooperative companies in the Basque Country.

Key-words: Civil Law. Iparralde. Ancient Regime. Succession. Property. Private property. Collective property. Patrimony.

Usunáriz Garayoa, Jesús María (Universidad de Navarra/Nafarroako Unibertsitatea): De los señoríos del XV al ocaso del régimen señorial en Navarra. (From the Seignories of the 15th century to the fall of the Feudal System in Navarre). (Orig. es).

In: *Iura Vasconiae*, 1, 185-223.

Abstract: When, during the first half of the 19th century peoples, lords, lawyers, prosecutors and judges discussed about the rights of certain families to receive income from the old seignories, the History of the Kingdom of Navarre, of Spain and of Europe was a habitual resource for all to justify their pretences. And, as they well knew, comprehension of the feudal regime, its survival and its abolition meant analysing medieval seignories and their characteristics. For this reason, this work pretends to explain part of the process of abolition of the feudal system in Navarre and its results, through its close relationship with the formation and development of the seignories throughout the 15th century, since the bases were laid during this period and the circumstances that surrounded it –according to the main argument that is defended– contribute to explaining the reasons and the way in which a certain interpretation and enforcement of the laws of abolition of seignories took place during the 19th century.

Key-words: Tribute. Seignory. Feudal Law. *Mayorazgo*. Donation. Concession. Property. Abolition of Seignories. *Censo enfiteñtico*. Abolition of tributes.

THIRD SESSION

Zabalza Seguín, Ana (Universidad de Navarra/Nafarroako Unibertsitatea): Del concejo al municipio: la propiedad comunal en la Navarra Moderna. (From the council to the Municipality: Communal Property in Modern Navarre). (Orig. es).

In: *Iura Vasconiae*, 1, 225-252.

Abstract: Private and communal properties were an important part of the municipal territory throughout the north of the peninsula during the Ancient Regime. But they stood out not so much because of their extension but because of the benefits that could be extracted from them. In Navarre, it was necessary to be an inhabitant of the municipality to have the right to use them, and such a use was painstakingly regulated both by Laws from the Parliament (Cortes) and by more local limitations (*cotos* and *paramentos*). An analysis is made of the peculiar property regime they had and of the elements that contribute to the crisis of the system at the end of the Ancient Regime.

Key-words: Common properties. Property. Modern Era. Disentailment. Seignory. Pressure. Patrimony of Navarre. Town council. Municipality. *Concejo*. General Statute of Navarre. Reduced Statute of Navarre.

Zubiri Jaurrieta, Amparo *Facerías y faceros: una perspectiva histórico-jurídica.* (*Facerías* and *faceros*: a historical-juridical perspective). (Orig. es).

In: *Iura Vasconiae*, 1, 253-298.

The authoress pretends to clarify the historical-juridical entity of the *facerías* (pastures that are not integrated in any municipality and that are put to common use) and the *facera* community and the differences that constitute both institutions through the study of documental, regulation and bibliographical sources that justify the relationship between real estate, personal and juridical regulation, by outlining its nature by means of the contour and the content of both figures.

Key-words: *Faceria*. *Facero*. General Statute of Navarre. Municipality. Common Properties. Royal Properties. Pasture. Pasture. Waste. Navarran Civil Statutory Law. New Statute of Navarre. Cadastral Register. *Facera* community.

Arizkun Cela, Alejandro (Universidad de Navarra/Nafarroako Unibertsitatea): Las *facerías* en el Pirineo Navarro: una perspectiva Histórico-Económica. (The *facerías* in the Navarran Pyrenees: a historical-economic perspective). (Orig. es).

In: *Iura Vasconiae*, 1, 299-314.

Abstract: The *facerías* appear as agreements between neighbouring municipalities to regulate the common exploitation of certain resources, such as pastures or waters or to institutionalise the resolution of conflicts in that field. Their

economic role is analysed, which changes with the passing of time, in parallel with the changes in communal property within each community. These communities evolve due to the progressive commercialisation of economic activities, the growth of the population and the modification of the use of the land.

Key-words: Facería. Municipality. Property. General Statute of Navarre. Alduides. Private Statutory Law of Navarre.

Alli Aranguren, Juan Cruz (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): Las corralizas en Navarra. Historia, naturaleza y régimen. (The *corralizas* in Navarre. History, nature and regime). (Orig. es).

In: *Iura Vasconiae*, 1, 315-364.

Abstract: This is an institution of Navarran law that refers to the uses of pastures of private or communal terrains sold in order to obtain resources with which to pay the expenses of the War of Independence and the Carlist Wars. The demand of land for cultivation and social needs generated social tensions with the *corraliceros* on the scope of their rights, with much discussion on the nature of their rights: property or rights to limited use of public properties.

Key-words: Corralizas. Property. Encumbrance. Community of properties. Navarran Statutory Law. Disentailment. High Court of Justice of Navarre.

Alli Aranguren, Juan Cruz (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): El dominio concellar. (The *concellar* dominion). (Orig. es).

In: *Iura Vasconiae*, 1, 365-399.

Abstract: The *concellar* dominion is that which corresponds to the community of the valleys of Roncal and Salazar, the title deeds and disposal of which correspond to the entities, and the use thereof to the inhabitants. It is integrated by the forestry patrimony, properties, uses and rights recognised thereto, the purpose of which is to tend to the needs and direct or indirect conveniences of the valley as a community and of the inhabitants that compose it. Its regime is established by its ordinances and by rules from consuetudinary law.

Key-words: Civil Statutory Law of Navarre. Facería. Administrative Law. Concellar Dominion. Roncal Valley. Private properties. Common properties. Corralizas.

FOURTH SESSION

Serna Vallejo, Margarita (Universidad de Cantabria): Desamortización y ventas de bienes comunales. (Disentailment and sale of communal properties). (Orig. es).

In: *Iura Vasconiae*, 1, 401-436.

Abstract: This is an analysis of the significance of the disentanglement of communal properties, reviewing some of the conclusions that have been defended for decades from the point of view of History of Law and Administrative Law, situating that disentanglement within the social and economic reality of communal property not only as from the enactment of liberal legislation, but also beforehand, as it is clear that a simple study of Law is not enough to fully understand this process.

Key-words: Disentanglement. Property. Private properties. Common properties. Seignory. Dominion. Civil Code.

Lana Berasain, José Miguel (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): La desamortización foral (1841-1861). (Statutory disentanglement (1834-1861)). (Orig. es).

In: *Iura Vasconiae*, 1, 437-452.

Abstract: The purpose of this intervention is to characterise the process of communal property sales that took place in Navarre before the application of the Madoz Law. The value of the properties sold was far beyond that of the properties sold during the Napoleonic wars and the properties auctioned since 1862. The control of the process remained in the hands of the local corporations and the Provincial and Statutory Diputations. The breakdown of local finances by the war was the immediate cause and justification, although it was not the only reason for the liquidation of municipal patrimony. The nature of the sales and the conditions in which they took place prepared the grounds for the intensification of peasant conflicts. In this sense, certain ill-conceived topics in Navarran historiography are revised in this work.

Key-words: Navarre. Statutory Disentanglement. Common properties. Municipality. Corralizas. Communal Property.

Aizpurua Agirre, José María (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): Derechos de propiedad y bienestar: una aproximación económica. (Property and welfare rights: an economic approach). (Orig. es).

In: *Iura Vasconiae*, 1, 453-484.

Abstract: This work introduces the explanations that economists and historians of occidental economic growth have given on the effects that the property rights maintained in a society have on the economic incentives of the individuals that constitute it, together with the consequences in the assumption of initiatives and in the economic growth.

A reflection is made on the explanation given by some of those authors on the appearance and evolution of private property rights. Examples are given of societies that have solved important economic problems maintaining communal property rights. Recent evidence is presented on the consequences in terms of economic growth of certain privatising policies carried out in various countries.

Key-words: Property right. Private property. Economy. Society. Institutions. Common properties.

Erdozáin Azpilicueta, Pilar y Mikelarena Peña, Fernando (Universidad de Zaragoza): Las estrategias familiares a través de los contratos matrimoniales en el Norte de Navarra: Lesaka, 1790-1879. (Family strategies through wedding contracts in the north of Navarre: Lesaka, 1790-1879). (Orig. es).

In: *Iura Vasconiae*, 1, 485-520.

Abstract: In this work we analyse family strategies in Lesaka by means of the wedding contracts written by the notary in that town between 1790 and 1879 and conserved in the General Archives of Navarre. The municipality of Lesaka is situated in the district of Cinco Villas or Bortziriak, in the northwest of Navarre, in the frontier of this province with Gipuzkoa and France. Through the statistical consideration of various wedding contract clauses family strategies are studied with reference to various aspects such as the transmission of patrimonies, co-residence rules, the choice of heir, the position of the elderly, of unmarried relatives, relationships with the matrimonial market and the social mobility of the *segundones*, those who were not to accede to inheritance. The degree of representation of the sample is also studied, since the main actors of matrimonial contracts were peasants with properties.

Key-words: Marriage contract. Inheritance. Lesaka (Navarre). Patrimony. Heir. Vertebration. Dowry. Donation.

PAPERS

Noaín Irisarri, José Joaquín Nobleza media y transmisión del patrimonio familiar en la Navarra Moderna. (Middle-level nobility and transmission of patrimony in Modern Navarre). (Orig. es).

In: *Iura Vasconiae*, 1, 521-550.

Abstract: Throughout the Middle Ages, middle-level nobility in Navarre, composed of *cabo de armería* palace lords, saw the need to maintain its patrimony undivided, as their own survival and socio-economic prestige depended greatly on that patrimony. UIT the purpose of avoiding its dispersal, a considerable

nable part of that nobility adopted the *mayorazgo*, in its diverse modalities, as a system of patrimonial transmission, especially in the 15th and 17th centuries. On one hand, that institution provided the solution for a material need related with that nobility's survival, and on the other hand it satisfied the wish to exist throughout time last that has animated nobility throughout its existence. The *mayorazgo*, which allowed for maintaining economic bases intact while avoiding their dispersal in successive generational distributions, coexisted with another form of undivided transmission of inheritances, which was the single-heir system, which was solidly installed in the middle and northern part of Navarre. This system had the same purpose as the *mayorazgo*, although it did have certain differences. The adoption of the mentioned undivided patrimony transmission systems, in which patrimony is inherited by only one of the children, exerted a strong influence on family structure and organisation, and brought about various strategies directed towards providing means of living for the rest of the children without affecting the properties that constituted the economic bases of family and lineage.

Key-words: *Mayorazgo*. Inheritance. Heir. Patrimony. Landed Property. Seignory. Usufruct. General Statute of Navarre. Donation. Tribute. Old Statute of the General Statute of Navarre. Partition of the inheritance. Marriage contract. Testament. Executor. Dowry. Celibacy. Marriage.

González Dios, Estíbaliz El acceso al aprovechamiento de los montes comunales en comunidades rurales de época moderna. (Access to the use of comunal mountain pastures in rural communities in the Modern Era). (Orig. es).

In: *Iura Vasconiae*, 1, 551-570.

Abstract: In rural communities, institutional agreements limit the use of communal pastures to those people who have the *status* of being a neighbour, but the real uses by the community go beyond the legal framework. Internal community rules allow for access to non-neighbours, so the objective of regulations in favour of neighbours was therefore not to conserve properties for their own use. However, the neighbours do conserve the right of use.

Key-words: Countryside. Property. Communal Use. Modern Era. Common properties. Municipal Law.

COOPERATION BETWEEN BASQUE AUTONOMOUS COMMUNITY AND FORAL COMMUNITY OF NAVARRE

Bengoetxea Caballero, Joxerramon (Universidad del País Vasco/Euskal Herriko Unibertsitatea): Las ocasiones perdidas: La vertiente europea de las relaciones entre la CF Navarra y la CA de Euskadi. (Lost opportunities: The European side

of the relations between the Statutory Community of Navarre and the Autonomous Community of the Basque Country). (Orig. es).

In: *Iura Vasconiae*, 1, 573-598.

Abstract: The author analyses the impact of the process of European integration and the European Union, concretely, have had on the competencies and actions of the Autonomous Community of the Basque Country and the Statutory Community of Navarre, starting from a assumption, according to which both communities have participated, in a different manner, in the constituting processes in which they have been and are immersed, since the 1978 Constitution to the European Constitution. It also analyses the scarce avenues of institutional participation allowed for regions in European matters, both due to the concept itself of European juridical architecture and because of the adverse will of several member states, amongst which is Spain. We then analyse the existence of a real emptying of competencies that has harmed both Autonomous Communities of Vasconia, a situation which has become even more serious because of the absence of minimum institutional relations between both communities. The main people affected by this lack of relations are the people administrated, the citizens of the Basque Autonomous Community and the Statutory Community. This situation contrasts with the new forms of understanding European governance, based on regional and trans-frontier cooperation and coordination between the various levels of the administration, from local to supra-state levels and both in the vertical sense - between Administrations in different levels – and horizontal (between equals), and implying other actors and stakeholders not necessarily connected to the Administration. It also contrasts with the evolution of modern political thinking in terms of policy networks where public policy processes are analysed from their conception and design (participated processes) to their implementation and execution (subcontracted processes). Each time there is more importance attached to non-institutional forms of regional cooperation, without, at the same time, undervaluing institutional channels. The author concludes saying that cooperation between the Autonomous Community of the Basque Country and the Statutory Community of Navarre is a history of lost opportunities, with a single interruption that was, precisely, that of the Cooperation Agreement signed between both communities in May 1996, as an instrument foreseen by the legislation and which, in spite of everything, was not implemented. In this sense, the Presidents of the Statutory Community, Mr. Otano, and of the Basque Autonomous Community, Mr Ardanza, signed in Vitoria, on 25th October 1995, a Protocol *declaration of intentions* on the convenience of propitiating and developing *relationships of permanent collaboration within the framework of their respective competencies*.

Key-words: Statutory Community of Navarre. Autonomous Community of the Basque Country. European Parliament. European Constitution. European Union. Court of Justice of the European Communities. Trans-frontier cooperation.