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Legal Histories & Modern Identities

The Emergence of Nationalisms in the Historical Territories of the
Kingdom of Navarre, Basque Provinces and State of Spain

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Declaration

This is certify that the work contained within has been composed by me and is entirely my own work. No part of this thesis has been submitted for any other degree or qualification.

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Abstract

This thesis proposes a legal and organizational approach to better understand processes of modernisation and the emergence of nationalist conflict. Theories of nationalism tend to be significantly influenced by state-centred and rather abstract positivist interpretations of law. Legal perspectives that have proposed understating law in relation to findings developed through the empirical study of law, such as legal realism or legal pluralism, have questioned positivist conceptions of law, emphasising the historical processes that created such conceptions of law, and the relationship between legal praxis and conceptions of society. Presumptions about personhood and society such as those influencing nationalist conflict may not be unrelated to legal existence and legal practice. Social actors' interpretations of law, and the capacity of social authorities to mobilize human and material resources in defence of certain conceptions of law, may have been able to influence legal and political histories of European states, as well as the national or regional identities that would develop in relation to legal recognition and legitimate exercise of types and degrees of social powers. The historical study of Spanish and Basque nationalisms, although generally involving constant references to law – especially to constitutional law and to the *fueros* – tends to overlook the influence that social actors' perceptions of legal order may have had in shaping the emergence of nationalist conflicts. Often, the focus is directed towards factors related to ethno-linguistic features or political ideologies. This thesis studies a historical puzzle, one that appears to have been influenced by legally defined entities, that have influenced the legal and political history of the state, and that may have influenced the development of a Basque-Spanish nationalist conflict: the different jurisdictional and ideological paths followed by key social majorities in Navarre and Euskadi between 1876 and 1936 after at least a century of displaying a rather similar position in regards to the state.

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List of Terms and Names

Rationale

This thesis endorses a jurisdictional perspective; ‘jurisdiction’ meaning legally existing entities. Three main jurisdictions are here studied, those nowadays identified with the titles of Chartered Community of Navarre (Comunidad Foral de Navarra), Basque Autonomous Community (Comunidad Autonoma Vasca, Euskadi or Pais Vasco) and Kingdom of Spain (Reino de Espana). If jurisdictional existence is going to be a reference to be associated with legally established social realities, the complete titles that identified existing jurisdictions are to be used. Legally, Navarre is likely to have been the Kingdom of Navarre, the Province of Navarre or the Foral Province of Navarre. Although the term ‘Spain’ or ‘Kingdom of Spain’ is likely to have existed in certain legal contexts, such as international treaties (Artola 1999: 31), the social structure that usually is referred to by the term ‘Spain’, jurisdictionally, was a list of all the titles of all the territories over which the monarchy of Castile had jurisdiction. Additionally, roughly up to the nineteenth century, the term ‘Spain’, was a geographic term to identify what nowadays is called the Iberian Peninsula (see Beaumont 1809: 1 for an example). The use of any of these terms is not considered to be per se wrong, what it is necessary is to use them in their appropriate context, not as analytical or descriptive concepts. What terms were used where, and how such uses should be interpreted needs to be analysed.

Using the appropriate title identifying each jurisdiction in its time, in what jurisdictional context and in what wider context of uses of the term, is necessary as the titles had legal and practical consequences that affected the lives, interests and views of peoples, as well as the justifications and disputes regarding the existence of jurisdictions and their relationships. The use of proper titles, although analytically important, it can become problematic for effective communication. On the one hand it requires a constant attention and explanation of the use of one or another title at times where the focus of analysis might be elsewhere. On the other hand, the titles can be very long and using complete titles can easily become unnecessary and tedious.

In order to address these issues working definitions of key terms used are provided. The working definitions incur in many inaccuracies, and cannot be thought to define

in any sense social realities. The proposed working definitions only aim to clarify how they are used in this thesis and for the reasons here explained.

In order to minimise the political implications associated to the use of terms this thesis will use the English terms when they exist (guided by the Encyclopaedia Britannica). If the existing English term is problematic, the reasons for the rejection of the term will be explained and the use of alternative terms will be justified. When English terms do not exist, the official term approved by the relevant institution of each community will be used. Other proposals to use terms and for other reasons could be justified. The proposed working terms here respond to their usefulness in the framework of this thesis. In order to avoid creating impressions of hierarchical importance, the order in which names will be presented will be randomly varied throughout the thesis.

List

- ❖ ‘*State*’ or ‘*State of Spain*’: These terms will be used to refer to the jurisdictional context created by the Castilian monarchy throughout its history. The use of these terms does not attempt to define what the State or Spain has thought to be by one or another social actor; their use only intends to identify the governing administration associated with the interests generated around the jurisdictional scope of the Castilian monarchy, and it should not be associated, unless explicitly stated, to any particular meaning about what being either a state, or Spanish, implied in any given time and to any particular social actor. I consider that the study of the State of Spain could be fruitful if approached as the study of a transition from Empire to State. What the State of Spain is and is not has been defined by a variety of factors, including war, law and politics.
- ❖ ‘*Navarre*’: The English term will be used. The term ‘*territory*’ will be used as well in reference to Navarre instead of using appropriate titles, such as province or kingdom. The use of appropriate titles will be done when it is relevant for the argument or the point being made.
- ❖ ‘*Basque Country*’: This English term will not be used, as it does not distinguish between the current political space defined by such term and the territories traditionally considered to be Basque. In order to distinguish between these I will use the term ‘*Euskal Herria*’ to refer to territories traditionally

conceptualised to be Basque, and the term '*Euskadi*' to refer to the current political territories legally identified as the Basque Country. The term '*territory*' will also be used to refer to Euskadi to ease the narrative.

- ❖ '*Biscay*': The English term will be used to refer to this territory. As in the case of Navarre, it has had different titles throughout history and the same solution, using the term '*territory*', will be applied.
- ❖ '*Gipuzkoa*': There is no English term to identify this territory; the *Encyclopaedia Britannica* for instance only offers the Castilian term '*Guipúzcoa*' (Encyclopaedia Britannica Online 2015). In this thesis the official term approved by the parliament of Gipuzkoa will be used. Although Gipuzkoa was continuously referred to as a province, this had secondary titles, which are associated with different legal rights. Hence, the term '*territory*' will be used.
- ❖ '*Araba-Álava*': As there is not a conventional English term, the official term approved by its parliament will be also used. In this case it combines both Basque and Castilian terms. The term '*territory*' will be also used, and for the same reasons that applied to Gipuzkoa.

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List of Archival Sources

Physical sources

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Archivo del Territorio Histórico de Álava (ATHA)

Archivo Histórico Foral de Bizkaia (AHFB)

Archivo real y General de Navarra (AGN)

Fondo Antiguo- Biblioteca General de Navarra

Fondo de Reserva- Koldo Mitxelena Kulturenea

National Library of Scotland

Centre for Research Collections – The University of Edinburgh’s Library

On-line sources

Hispana – Gobierno de España. <http://hispana.mcu.es/>

Europeana – National Library of the Netherlands. <http://www.europeana.eu/portal/>

Boletín Oficial del Estado – Gobierno de España. <http://www.boe.es/>

Biblioteca Virtual Miguel de Cervantes – Fundación Biblioteca Virtual Miguel de Cervantes. <http://www.cervantesvirtual.com/>

Google Books – Google. <https://books.google.com/>

Servicios on line – Koldo Mitxelena Kulturenea. <http://www.kmliburutegia.net/>

Biblioteca Navarra Digital (BINADI) – Navarre’s Government.
<https://administracionelectronica.navarra.es>

Bibliothèque Nationale de France – French Government. <http://www.bnf.fr>

The Internet Archive – Non-profit organisation. <https://archive.org/>

Memoria Digital Vasca-Euskal memoria Digitala – Fundación Sancho el Sabio.
<http://www.memoriadigitalvasca.es/>

Biblioteca Virtual Del Patrimonio Bibliográfico – Gobierno de España.
<http://bvpb.mcu.es/>

Hathi Trust Digital Library – University of Michigan.

<http://www.hathitrust.org/home>

Minerva – Repositorio Institucional de la Universidad de Santiago de Compostela.

<http://dspace.usc.es>

Galiciiana – Xunta de Galicia. <http://galiciana.bibliotecadegalicia.xunta.es>

1. The Historical Puzzle

The jurisdictional and ideological trajectories of Navarre and Euskadi during modernity produce a historical puzzle. Throughout history, the jurisdictional authorities of both territories have traditionally defended their legitimacy to exercise types and degrees of social power regardless of the social system adopted by the state's government. During most of the nineteenth century, key influential majorities in both jurisdictional contexts together defended a similar conception of the State of Spain, that associated with carlism, and they were each thought of as being both Basque and Spanish. In 1936's military coup however, the jurisdictional authorities of Navarre and Euskadi defended different conceptions of the state. Navarre's supported the military coup, whereas Euskadi's stayed loyal to the Republican government, with a more ambivalent position in Araba-Álava. By then, the meanings of both 'Basque' and 'Spanish' had been reinterpreted in relation to the new social conditions, and important differences in how these concepts were interpreted had emerged between Basque nationalists and Navarre's carlists, such as Victor Pradera. This split has somehow continued and has re-emerged in the contrasting national identities defended by the political parties that have dominated governance in these territories since the re-establishment of democracy in 1978. Basque national identity has been dominant in Euskadi and a regionalist Spanish nationalism called *navarrismo* in Navarre. What factors produced the split in the conceptions of state defended by jurisdictional authorities in war, and the different ideological trajectories followed by key influential social majorities in these territories have formed the subject of study of this investigation.

1.1. A Research Diagram

A diagram to illustrate the formulated research question has been produced (see Figure 1). Although choosing any date to indicate the beginning and end of an ongoing process can be argued to be more or less accurate or appropriate, I have chosen to study the period between 1839 and 1936. These two particular dates relate to the first Carlist War (the former) and the Civil War (the latter). Between them, 1876 is highlighted due to its importance in the jurisdictional histories of Euskadi and the political history of the State, as is normally identified as the time after which modernity developed. The

Carlist Wars were fought on pre-modern ideologies; the civil war on modern ideologies. The main ideological developments that would mark the political and ideological future of the state were seeded in this period.

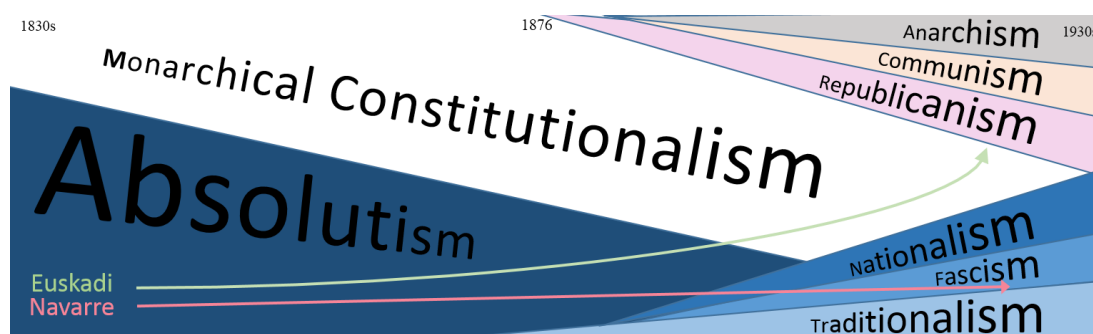


Figure 1: Graphic representation of ideological developments with the trajectories of Navarre and Euskadi (Source: ideological background based on Álvarez-Junco & Shubert 2000: 12).

The horizontal axis represents time, covering the period between 1830s and 1930s, which can be seen at either extreme of the top of the diagram, with 1876 between. The background presents some of the key ideological trends that are normally argued to have dominated different periods. The displayed ideological evolutions loosely follow the ideological trajectories illustrated by Álvarez-Junco & Shubert (2000: 12). Each political tendency is highlighted by a colour, on which the label of the tendency is written. The intention has not been that of including all the ideologies noted by Álvarez-Junco and Shubert, it rather attempts to provide a visual image of the main tendencies identified and how they tend to be related.

Starting at the left bottom of the diagram there are two lines, the red (Navarre), and green (Euskadi), each associated to a jurisdictional context. The trajectory of these lines over the diagram attempts to illustrate how the evolution of political thought in these territories tends to be interpreted. These trajectories show how in these territories the same political ideology dominated during much of the nineteenth century, yet preferences would shift between 1876 and 1936, leading to the different positions that each territory adopted in 1936's military coup.

The diagram is of course a simplification of reality. It does not try to imply that everyone favoured carlism in those regions, neither that by 1936 carlism did not exist. In fact, the position represented by Euskadi in the diagram can only be associated with

the dominant tendency in the three territories, as Araba-Álava would be better represented by a different line, closer to that of Navarre. The diagram only tries to show key dominant ideological shifts that are considered relevant to better understand nationalism in the area.

1.2. Research Questions

One leading question and four secondary issues were formulated in order to further define what would be investigated. The leading research question was formulated as:

What factors led key influential sectors of Euskadi's and Navarre's populations to take different sides in 1936's civil war after a century in which they had defended together the same conception of the state?

The secondary issues were:

An analysis of the constitutional history of the state, particularly focused in the changes that may have been introduced in 1876, in order to understand how jurisdictional entities would have been affected, and what social actors, in what ways, and to what degrees.

Reconstructing the institutional realities of Navarre and Euskadi before and after 1876's constitution, so the impact of constitutionalism could be evaluated.

Identifying how economic, political and military powers were exercised in Navarre and Euskadi before and after 1876's constitution. What social groups participated in the exercise of power, and how were they affected by constitutional change?

Identify the discourses and world-views held by social and political elites before 1876, followed by an analysis of how Navarre and Euskadi political elites' world-views were affected by and reacted to the changes introduced by 1876's constitution.

1.3. Historical Overview and Key Issues

Historical records of the studied jurisdictional trajectories contain evidence suggesting the existence of key continuities and discontinuities. Often, these are emphasised as evidence in support of one or another theoretical claim. The emphasis of discontinuities produces narratives closer to modernist conceptions of nationalism; highlighting continuities appears to get closer to primordialist or ethno-symbolic approaches. Although different arguments have been proposed to account for evidence that is problematic in one or another theoretical hypothesis, empirical research often leads to paradoxes or contradictions that theoretical perspectives of nationalism have problems explaining.

This thesis is an attempt to contribute to the development of novel theoretical perspectives from which a less problematic understanding of nationalism can be proposed. It recognises merits in modernist theories of nationalism, yet it highlights key continuities that question some modernist hypotheses and assumptions; it emphasises historical continuities, yet it does not attempt to explain these in relation to ethno-symbolic features.

1.3.1. Historical Discontinuities

Modernist theories of nationalism tend to depart from a conception of modernity generally defended by liberals. Although it has been noted that there is not a generally accepted definition of modernisation (He 2012: 61), a description that contains key elements generally present was provided by Reinhard Bendix (1978). He defined modernisation ‘as a breakdown of the ideal-typical traditional order: Authority loses its sanctity, monarchy declines, hierarchical social order is disrupted. Secular authority, rule in the name of the people, and an equalitarian ethos are typical attributes of modern society’ (Bendix 1978: 10). Modernity is defined in the political, ideological and theoretical processes that struggled to replace absolutist monarchies with constitutional democracies. The meaning of political action shaping modernity tends to be interpreted in relation to such a theoretical framework.

Modernist approaches to the study of nationalism normally relate the causes of the emergence of national identities to three main themes or factors. ‘The demands of

industrial and capitalist economies...the modern state as a bureaucratic and legal organization... [and]...The spread of literacy, linguistic homogenization and standard education' (Hearn 2006: 67). Most of these developments took place across Europe once the French Revolution and the Napoleonic wars had shaken the absolutist social system. It was then that new state-wide social systems and new technologies consolidated, producing new social contexts, new social classes, new needs, new possibilities; economic, political, judicial, ideological. Socialism, communism, nationalism, anarchism and capitalism are some of the new ideologies thought to have articulated the newly emerging interests and perceptions.

This narrative can be clearly seen in interpretations in the case of the State of Spain. Most of the political history of the nineteenth century is normally associated with doing away with the Ancient Regime. A paragraph by Isabel Burdiel (2000) illustrates what this is thought to have implied:

Between 1808 and 1843 the entire socio-economic order of the Spanish Ancient Regime was dismantled. The nobility and the clergy lost their legal privileges and the equality of all male citizens before the law was proclaimed. Entails, seigniorial rights and the tithe were abolished. The lands of the Church were disentailed and sold at public auction, the guilds were suppressed and economic freedom established. The Inquisition was dissolved and the Church's legal jurisdiction in civil affairs terminated. The absolute power of the monarch was replaced by a parliamentary system based on popular sovereignty (Burdiel 2000: 17).

The period between 1843 and 1876 is sometimes interpreted 'as the definitive consolidation of a political system controlled by the middle classes' (Cruz 2000: 33).

Since 1875 a new process emerged, one in which the State of Spain would be modernized (Vincent 2007: 52). In 1876 a new period of the State of Spain's modern history, known as the Restoration, and that lasted until 1923, is generally thought to have started (Carr 2000: 223). The Restoration produced a period of political stability, achieved by a pact between the two main political parties to alternate in government (Jacobson & Moreno-Luzón 2000: 98). The pact was designed to replace the political instability that characterised state politics between 1808 and 1874, which involved

military action and revolution (Fontana 2007: 433-434). Despite the electoral corruption generated, the political system created was, 'on paper, one of the most democratic polities in Europe' (Carr 2000: 223). A political system that would have allowed the modernisation of the state:

Spanish society changed greatly between 1875 and 1915. The Restoration had provided the country with stability which allowed for sustained, though uneven, industrial development and economic growth. The country still remained largely agricultural. Cities increased in population and generated phenomena previously unthinkable. New mass parties...displaced parties composed of old monarchist notables (Jacobson & Moreno-Luzón 2000: 109).

It was indeed after 1876 that the political parties representing modern ideologies and identities were created. The Spanish socialist party, PSOE, was created clandestinely in Madrid in 1879; in 1888, in Barcelona, official constitutive congresses of the PSOE and the trade union *Unión General de Trabajadores* took place (García Venero 1979: 259-260). In Biscay in the year 1895 Sabino de Arana y Goiri created the Basque Nationalist Party (Elorza 2001: 181) which would be established in Gipuzkoa in 1908, and in Araba-Álava and Navarre in 1911 (Basque Nationalist Party (EAJ-PNV) [online]). In 1901 Catalan nationalism was articulated in a political party – the *Liga Regionalista* (Harty 2002: 349).

At the turn of the twentieth century the population grew, localized rapid industrialization took place; new migratory routes emerged, technological innovations such as the train, electricity or the telegram were implemented, banks and financial institutions raised, and an increasing number of political, civic, cultural and recreational associations were being created in villages, towns and cities as the freedoms of press and association consolidated. If one follows Pérez-Díaz's (1998) definition of 'civil society' as 'an ideal type referring to a set of political and social institutions, characterized by limited, responsible government subject to the rule of law, free and open markets, a plurality of voluntary associations and a sphere of free public debate' (Pérez-Díaz's 1998: 220, 221), one can associate that period of the history of the State with the emergence of a modern civil society.

However, it needs to be noted that, as Alexander (1998) has argued the concept of ‘civil society’ can be and has been differently understood since the seventeenth century (Alexander 1998: 3).

Disputes between constitutionalists and traditionalists, progressives and conservatives, entered the twentieth century, but permeated with modern ideas and social projects.

1.3.2. Modernity and War

The differences between the nineteenth century until 1876, and the time that followed, are illustrated in war. Four wars, three in the nineteenth century (1833-40; 1846-49; 1872-76) and one in the twentieth (1936-39) are often described as civil wars. There exist key differences between the wars that took place within each century.

Those of the nineteenth century are normally called Carlist Wars, and ultimately were wars between two monarchical dynasties claiming their legitimacy to occupy the throne. The war in the twentieth century is known as the Civil War, and was ultimately a war between a republic and a military coup. The legitimising references in which war took place changed.

Moreover, the changes in the legitimising references correlate with changes in war patterns. The social, political and military action that most determinedly supported one of the contending dynasties known as carlism (which is associated to absolutism), between 1833 and 1876, were roughly located in the same geographical locations. These locations were Navarre, Euskadi, Catalonia, Aragon and Balears (Carr 2000: 205; Vincent 2007: 12; García de Cortazar 2005: 409, 431, 433). The localised character that carlism showed during the nineteenth century up until 1876 would not re-emerge in 1936. Two visual representations by Mary Vincent (2007: 12: 138), one showing the areas in which carlism found most support during the nineteenth century, and the other showing the support that the two contending sides had in 1936’s Civil War, illustrate this (see Figures 2 and 3).

Carlist Wars

(1833-1840)

(1846-1849)

(1872-1876)



Figure 2: Graphic representation of Carlist Wars (Source: Vincent 2007: 12).

Civil War

(1936-1939)



Figure 3: Graphical representation of the Civil War (Source: Vincent 2007: 138).

1.3.3. Historical Continuities

Theories of modernity tend to present modernity as a somehow radically different historical period to that preceding it, and the social transformations are normally associated with the ideological and technological changes that followed the ideas of the Enlightenment. However, Jonathan Hearn (2006) has argued that ‘our tendency to make sense of history through stadial models is driven partly by the historical record, partly by our cognitive need for simplification and partly by our normative perspective’ (Hearn 2006: 106). Indeed, there is a significant amount of data showing important historical continuities that modernist theories of nationalism find problematic to explain, suggesting that such stadial models cannot be entirely justified by historical evidence.

1.3.4. Jurisdictional Behaviours

Historical continuities can be identified in the views and actions performed by some jurisdictional authorities. Inspired by the idea of ‘jurisdictional politics’ proposed by Lauren Benton (2002), I use the term ‘jurisdictional behaviours’ to refer to the interests, values and actions that can be identified in the official actions and discourses of jurisdictional authorities throughout history. It does not suggest that jurisdictions should be thought of as having ‘behaviours’, or that jurisdictional authorities always defended the same values and ideas, for the same reasons or in the same ways. It is, however, a useful term in the context of this thesis to make reference to views and social actions that reappear throughout history linked to certain jurisdictional authorities.

Although potentially motivated by a variety of factors, jurisdictional authorities have often defended their legitimacy to exercise types and degrees of social powers throughout history. In some cases, different jurisdictional authorities have engaged in long historical disputes over the right of one or another authority to exercise types or degrees of social powers. These disputes have involved legal, political and ideological debates over the legitimacy of different institutions and/or authorities to exercise types and degrees of social powers, including legislative and executive powers; to design electoral systems, to elect and/or to appoint social authorities, to tax, to decide what

legal codes would be applied, to decide who would legislate in what area, to decide what institution and/or authority would govern, where and over whom.

These behaviours were exercised by some of the jurisdictional entities that made up the absolutist State of Spain, which was originally ‘formed by the federal union of smaller units’ (my translation¹) (Jauregui Bereciartu 1988: 13). These ‘smaller units’ making up the European states were kingdoms, provinces, landlords, churchmen and cities, among others: those entities that Charles Tilly (1993) associated with the ‘indirect rule’ that characterised European states’ governance until the second half of the eighteenth century (Tilly 1993: 29-36).

The current State of Spain is the outcome of a long history of jurisdictional relations between a variety of jurisdictions existing in the Iberian Peninsula and elsewhere. In the context of the peninsula, there seems to be a general agreement about the disassociated origin of some of these legal entities, such as the kingdoms of Aragon, Castile, Navarre or Portugal; the Seigniorship of Biscay or the Principality of Catalonia. There was not any initial hierarchical relationship between them either.

In the eleventh century for instance, Sancho III Garcés (992-1035), King of Pamplona (that would become Navarre), ‘established Navarrese hegemony over all the Christian states of Spain’ (Encyclopædia Britannica Online, 2014). This Empire would be short lived, as the king broke the Empire apart in his will, and elevated ‘Castile from county to kingdom’ (Encyclopædia Britannica Online, 2014). Navarre maintained monarchical jurisdiction over Euskadi during the tenth, eleventh and twelfth centuries (García-Sanz et al 2002: 27), when it lost jurisdiction to Castile. In 1512 Castile conquered the part of Navarre to the South of the Pyrenees. Since then, the Kingdom of Navarre would be split in two: one part would be under the authority of the monarchy of Castile and the other under the monarchy of France (De Francisco Olmos 2000: 184).

Traditionally, the degree of voluntary or forced participation of some of these jurisdictions under the jurisdictional umbrella created by the monarchy of Castile has

¹ estaban formados mediante adiciones federativas de unidades más pequeñas

been debated: an issue that has been often perceived as illustrative of national identity. A better understanding of how jurisdictional relations started, important as it may be to clarify some issues, is not considered to be key to make sense of modern nationalist conflict. More relevant to make sense of modern nationalist conflict are considered to be the conditions under which each jurisdiction accepted or had to accept the created legal relationships. In the negotiation and establishment of these conditions the legitimacy of particular social authorities to exist, with what competences, and over what social actors were defined. Such terms that came to regulate jurisdictional legal relations are those that formed the legal and jurisdictional organization of the state, and have been a matter of jurisdictional disputes up to modern times.

1.3.5. The *Fueros*

The created relations between jurisdictions were legally materialised in jurisdictional bilateral compacts that would often be given the name of *fueros*. Originally, the term *Fuero* comes from the Latin term *forum*, and among the different meanings attributed to the term, there is that of jurisdiction and law (O'Callaghan 2001: xxx; Galán Lorda 2009: 19). However, the legal term 'fueros' has been used throughout history with more than one meaning and different types of *fueros* have existed, including personal, municipal, provincial, monarchical, military and ecclesiastic (Galán Lorda 2009: 20-22). Those that will be referred to throughout this thesis have been described by Galán Lorda as follows: 'Each locality, small or large, even some groups or persons, had their *fuero*, their legal regime or own rules...the expression *fueros* had the same meaning that nowadays those of constitutions or codes, that is to say, the texts that collected a community's own rules' (my translation²; her emphasis) (Galán Lorda 2009: 24).

The *fueros*, or the differentiation of legal codes to be applied in different territories and the institutions and authorities that would exercise different types and degrees of governance, were not exceptions to the state's legal and jurisdictional features - they were the norm. There was a common legal formula used to establish jurisdictional

² Cada localidad, pequeña o grande, e incluso determinados grupos de personas, tenían su *fuero*, su régimen jurídico o normativa propia. En aquella época, la expresión *fueros* tenía el mismo sentido que hablar hoy en día de constituciones o códigos; es decir, los textos que recogían la normativa propia de una comunidad

relations; a formula in which social actors recognised each other and established the terms that defined their relationship.

1.3.6. Fueros in Navarre and Euskadi

The historical continuities in jurisdictional disputes that are the subject of this study are those that took place between the authorities of the monarchy of Castile, eventually the government of the State, and the jurisdictional authorities of Euskadi and Navarre. The first documental sources noting the jurisdictional existence of Navarre, Araba-Álava, Biscay Gipuzkoa and Castile tend to be identified around the ninth century. Miguel Artola (1999) finds, for instance, documental evidence about Biscay and Araba-Álava in that century, and in it one can already appreciate the emphasis given to the kind of legal form associated with the fueros, which suggests the referred disassociated origin of jurisdictional existence. It stated that ‘it is known that Araba-Álava, Biscay, Alaone and Orduña have always been held by their inhabitants’ (my translation³) (Artola 1999: 176).

The jurisdictions identified in such an early period would evolve towards the legal and institutional features that have characterised these territories until modernity. Some of these features can be seen roughly present in publications of the fueros made towards the late Middle Ages: in Navarre in 1330 (Galán Lorda 1989), in Biscay in 1452 (Monreal Zia 2005: 13), and in Araba-Álava in 1463 (Bisso 1868: 69). In the case of Gipuzkoa general fueros for the territory were not officially printed until 1696 (Llorente 1807: 11-12). Before however, there can be found *Ordenanzas de la Provincia* (Provincial ordinances), such as those accorded by the General Assembly of Gipuzkoa in Cestona in 1527 (Soraluce 1866: 163).

Historically, attempts to alter the agreements made in legal compacts such as the fueros resulted in rebellions; in Euskadi in 1631 and 1634, in Portugal in 1628, 1629, 1637 and 1640, and in Catalonia in 1640 (Jauregui Bereciartu 1988: 13). García-Sanz et al note a possible secessionist movement in Navarre in the 1640s (García-Sanz et al 2002: 30). Similarly, Artola argues that ‘(t)he frequent and important conflicts, were always between the kingdoms and the Crown – the communities of Castile, the secession of

³ se sabe que Álava, Vizcaya, Alaone y Orduña han estado siempre en poder de sus habitantes

the Low Countries and of Portugal, the failed insurgencies of Catalonia, the riots of Aragon and Naples' (My translation⁴) (Artola 1999: 37).

However, the eighteenth century is the time in which the legal disputes between the monarchical government and the jurisdictional authorities of Navarre and Euskadi started to acquire notoriety. An important issue was that of the location of these territories' custom posts. These had traditionally been along Navarre's and Euskadi's boundaries with Castile and other adjacent jurisdictions under the latter's authority. The monarchical government wanted to move them to Euskadi's and Navarre's boundaries with France, and it did so in 1717. By 1722 however, following protests from these territories, customs were taken back to their traditional locations (García-Sanz et al 2002: 33). Another attempt to move customs took place in 1757, which also failed (Galán Lorda 2009: 101).

By the end of the century the foral regimes (from 'Fuero', the social regimes they created) of Euskadi and Navarre would be systematically attacked by the absolutist monarchy (Pérez Núñez 1996: 35; García-Sanz et al 2002: 33; Galán Lorda 2009: 102). The cause of the intense campaign against the fueros has been associated with the behaviours shown by these territories' authorities during the War of the Pyrenees (1793-1795), in which they did not show much determination to fight the French army (Monreal Zia 2005: 19-20). On top of this, in 1794, the jurisdictional authorities of Gipuzkoa approved the abandonment of the Spanish absolutist state and negotiating with French authorities to become part of the French republic (Monreal Zia 2009: 256).

These performances by jurisdictional authorities in Euskadi and Navarre during the war of the Pyrenees were followed by a series of intellectual initiatives set in motion by the monarchy to discredit the foral regimes and increase the State's claims to legitimate governance. Part of these was Juan Antonio Llorente's *Noticias Históricas de las tres Provincias Vascongadas*, 'published in three volumes in 1805 and 1806' (Monreal Zia 2005: 20). Another text directed to the same objective would be the *Diccionario Geográfico-Histórico de España* (1802) (Pérez Núñez 1996: 36). These

⁴ Los conflictos, frecuentes e importantes, fueron siempre entre los reinos y la Corona – las comunidades de Castilla, la secesión de los Países Bajos y de Portugal, los fracasados levantamientos de Cataluña, las revueltas de Aragón y Nápoles

attacks produced the contrary effect to that intended in the Basque territories, which led to responses by intellectuals, historians and politicians such as Miguel y Astarloa, Francisco Aranguren y Sobrado, Juan Antonio de Zamácola or Pedro Novia Salcedo (Basurto Larrañaga 1986: 665; Jimeno Aranguren & Tamayo Salaberria 2005: 33). If the State questioned the legitimacy of foral authorities, those defending the *fueros* questioned the legitimacy of monarchical claims to sovereignty.

Fernández Sebastián (1990) for instance, states that Aranguren argued that the *fueros* were ‘the *fundamental laws* of the Biscayans, who were already constituted as a State when they created a voluntary link with the Castilian crown. Therefore, the Spanish king has over Biscayans a *protective*, not an absolute, sovereignty’ (his own emphasis, my translation⁵) (Fernández Sebastián 1990: 81).

In the context of the history of the State of Spain, Navarre and Euskadi probably entered the nineteenth century standing as the strongest jurisdictional contexts able to resist state centralization. The legal position of Navarre in relation to the state can be described to be between that of Aragon, which had lost its *fueros*, not without complaint and resistance, between 1707-1714 (Lopez de Mendoza 1882: 365), and that of Portugal, which had ended its union with the State of Spain in 1640 (Encyclopædia Britannica Online, 2014). Navarre entered the 19th century with its status, institutions, legislative powers, body of law, tribunals, boundaries, currency and veto to royal law. The legal position of the jurisdictions forming Euskadi was slightly different, as they did not have the status of kingdom. Nonetheless, they enjoyed similar degrees of legitimacy over the exercise of legislative and executive powers. Their legal positions undermined royal claims to absolute power and disempowered the absolutist monarchy’s centralising projects. It also, given the monarchy’s decision to exclude Euskadi and Navarre from the economic market of the State, led them to increasing problems in accessing economic markets.

The arrival of constitutionalism in the early nineteenth century would not bring such jurisdictional disputes to an end. The jurisdictional representatives sent by Navarre and

⁵ los *fueros* son las leyes fundamentales de los vizcaínos, ya constituidos como Estado cuando se vincularon por pacto voluntario a la corona de Castilla. En consecuencia, el rey de España tiene soberanía protectora, no absoluta, sobre los vizcaínos

Euskadi to Bayonne in 1808 to discuss and approve the constitution for the State of Spain drafted by French authorities, presented their *fueros* as constitutions and defended their existence within a constitutional state (Monreal Zia 2009: 258). Cadiz's constitution of 1812 praised in its preamble these territories' *fueros*, and at the time, it was frequently asserted that the constitution expanded foral liberties (Sánchez Arreseigor 2007: 770). In the Peace Treaty of Vergara (1839), which put an end to the first Carlist War in Euskadi and Navarre, and which has been described as signifying 'more than anything else the triumph of liberalism over the Ancient Regime' (my translation⁶) (Mina Apat 1990: 89), the Carlists negotiated their personal and material safety, and the maintenance of the *fueros*.

Once the war was over, the social actors associated with liberalism who negotiated foral reform, who in theory were not the same people and did not represent the same interests, followed similar jurisdictionally organised praxis in the way they behaved towards each other and towards State authorities, and in their defence of the principles associated with the *fueros*. Some social actors displayed different degrees of willingness to reform parts of them, such as a political class in Navarre who negotiated a deep legal and institutional reform. Nonetheless, the willingness to reform included a conviction to maintain the essence of the pact character of the *fueros*, and the location of legitimacy in the agreement of both jurisdictional authorities.

Following the last Carlist War in 1876, the jurisdictional authorities of Navarre and Euskadi attempted to avoid making the reforms demanded by state government. Euskadi's authorities, facing the biggest pressure to reform, negotiated the *Concierto Económico* (from now on Economic Agreement) when they saw no other alternative than giving up. This 'Economic Agreement was enacted as the system for the contribution of the Basque provinces to the finances of the Kingdom of Spain; system which acknowledges the Foral Deputations the capacity to collect their own taxes in order to defray not only their own expenses but those which are common in the Spanish state as well' (Ad Concordiam [online]. <http://www.conciertoeconomico.org>, no date). In 1937, the alliance of Navarre's authorities with the military coup led the military state government to recognise its foral regime; Araba-Álava's 'privileges' were also

⁶ El Convenio de Vergara, que significó ante todo el triunfo del liberalismo sobre el antiguo régimen

granted ‘with less enthusiasm’ (Mina Apat 1990: 105). In the re-establishment of democracy following 1975 the *fueros* were again defended in these territories, leading to the current jurisdictional entities and relations.

Modernity, despite the many social changes that it has produced, has not brought to an end these jurisdictional interests, neither the jurisdictional disputes that these and those of the State generated. To different degrees at different times in history, and regardless of the enthusiasm with which jurisdictional authorities recognised the jurisdictional rights of each institution and authority, legal disputes between jurisdictional authorities have periodically re-emerged.

1.3.7. State Constitutionalism and its Rejection

As has been shown, the formation of the constitutional state of Spain can be said to be split into two main periods: one that more or less covers the nineteenth century, in which a social order based on feudal relationships was slowly dismantled, and one that followed, in which the state would achieve modernity. The social, political and military movements that have opposed the existence of a constitutional State of Spain can be seen to be split in two main similarly differentiated periods.

During the nineteenth century, opposition to state constitutionalism tends to be associated with the defence of absolutism, generally referred to as *carlism*. During the twentieth century, opposition to constitutionalism would be exercised from new ideologies, most notoriously fascism and separatist nationalisms. These movements have found support in different parts of the state during both centuries. There is, however, a geographical correlation between the areas that most determinedly defended *carlism* during the nineteenth century and those areas in which Spanish constitutionalism is most determinedly rejected since the re-establishment of democracy after the fascist dictatorship: Catalonia and Euskal Herria.

The historic jurisdictional continuities and the geographical correlation in the rejection of constitutionalism are sometimes interpreted from approaches that can be identified with rather primordialist perspectives, an example being the interpretation of them by Manuel Irujo (2004 (1945)). He conceived ‘Basque-ness’ in terms of race and interpreted the Treaty of Vergara and the law that followed as ‘(t)he political death of

the Euskal Herria (my translation⁷) (Irujo 2004(1945): 76). More recently Diego Muro (2009) has argued that Basque nationalism has generated a narrative linking the Carlist Wars, the civil war and E.T.A.'s terrorist actions, creating a historical continuity that justifies E.T.A.'s methods.

Interpreting jurisdictional continuities and correlations in the rejection of state constitutionalism in relation to factors such as 'ethnicity', 'culture', 'identity' or 'society', as these concepts tend to be conceived, I consider to be incorrect. Not only do they leave unaddressed important conceptual problems contained in such concepts, but it also happens that historical evidence exists that make such interpretations problematic.

For instance, there are differences between the ideologies associated with carlism and those related to separatist nationalisms. Importantly, whilst secessionist nationalisms reject the idea of the State of Spain and perceive it as somehow alien to them and their identities, carlists made the idea of the State of Spain a central part of their political agenda; carlism, in its totality, can only be understood in relation to an idea of the State. Another difference rests in that carlism defended the legitimacy of the legal entities defined in traditional law, whilst secessionist nationalisms base their political ambitions in the creation of new legal entities defined in contemporary law (though traditional elements or references may be present).

Moreover, continuities in jurisdictional behaviours producing legal disputes over jurisdictional legitimacy were not always associated to being, or not being, Basque or Spanish; they did not necessarily include a wish to be independent; neither did this always lead to the united action of all those territories traditionally considered to be Basque. Additionally, during the twentieth century Navarre's political elites have twice avoided the possibility of uniting Navarre and Euskadi in a single jurisdictional entity, yet most historical evidence suggests that at least up to the 1950s Navarre was generally thought to be Basque. For instance, two of the most influential persons in Navarre's modern history, José Yanguas y Miranda (1782 - 1863), and Juan Víctor

⁷ La muerte política del País Vasco

Pradera Larumbe (1873 – 1936), conceptualised Navarre as Basque (Yanguas 1832: 1; Pradera 1917: 26).

These continuities and correlations are considered to have played an important role in the jurisdictional and the ideological trajectories of these territories, and explanations that are articulated on simplistic conceptions of ethnicity, culture, identity or society are rejected.

1.4. From Empire to State

These continuities and discontinuities occurred simultaneously with processes of expansion and empire formation as well as of loss of territory and contemporary state building. In my view, the formation of the contemporary State of Spain is not to be uniquely or primarily explained in relation to ‘internal’ events and processes of reform and self-recognition. Another important factor might have been the capacity of the Monarchy to maintain or expand its jurisdiction over territories and peoples.

The State of Spain is not understood here in relation to a particular geographical extension, profile of person or idea. The state has changed over time in its geographical expansion as well as in how the people inhabiting it have been legally conceived. In this thesis the State of Spain is understood as the jurisdictional umbrella built around the monarchy and legal reference of the Monarchy of Castile. The formation of the State of Spain, including the emergence of some social issues that have been considered to be a matter of ‘internal politics’ is not unrelated to the fortunes of the Empire.

Since at least the end of the eighteenth century, there can be identified several examples that show the key importance that tests to the Empire’s strength had in the development of social issues that came to define the development of key features of the State.

A first example can be found in the War of the Pyrenees (1793-1795). The small military power achieved by Euskadi’s and Navarre’s authorities to resist the French invasion, led authorities of the State of Spain to launch a campaign advocating for profound legal and organisational changes of the State that would give the Monarchy

higher degrees of legislative and executive powers in the foral territories (Jimeno Aranguren & Tamayo Salaberria 2005:19-21).

Another important example unfolded during the first half of the twentieth century. This has to do with the loss that the State of Spain suffered of most of its colonies in America, which correlates with changes in conceptions of the State. The approach endorsed in the Constitution of Cadiz in 1812, which made equally Spain and Spanish the territories and peoples throughout the Empire, was abandoned in the constitutional texts that would be drafted in the 1830s. Spain was reduced to those territories that were closer to the jurisdictional centre in Madrid.

Later events, like the loss of Cuba and Philippines in 1898 have been also portrayed as having significant importance shaping political or ideological developments within the State. Gerald Brenan (2014 (1943)) for example, has argued that there is a time before and a time after 1898 in the State of Spain. In his view, the loss of the colonies represented ‘the lowest moment and the end of an era’, which in turn became a key moment from which ‘a new Spain begins’ (Brenan (2014(1943): 28).

The transition from Empire to State needs to be understood in relation to transformative events that occurred at different levels across the Empire and which could have triggered a variety of responses in social actors with different sociological profiles or inhabiting different parts of the Empire. As one of the examples shows, the existence of the *fueros* was not unaffected by such events.

1.5. The Structure of the Thesis

This section offers a summary of the chapters included in the thesis and an overview of the arguments made in them. The thesis is structured into eight chapters, which I treat under three headings: theory, methods and data analysis.

1.5.1. Theory

Chapter Two introduces the conceptual framework within which collected data have been interpreted. The perspective proposes that nationalism is a kind of social phenomena that needs to be studied in relation to the formative processes that have produced modernity, and not as isolated phenomena (Delanty & O’Mahony 2002;

Breuilly 2001). The sociology of Michael Mann (e.g. 1986, 1992, 1993) proposes such an approach. His perspective attempts to develop a sociological explanation for the prominent role acquired by states as the most important social actors during modernity. This approach allows theoretical space to identify the influence of social actors such as Navarre, often overlooked in the study of Basque and Spanish nationalisms.

The first part of the chapter argues that current conceptions of modernity that disassociate nationalism from modernity are a product of political and academic developments that took place during the second half of the twentieth century. Indeed, John Breuilly (2008) has noted important differences between dominant conceptions of nationalism since the mid-twentieth century and those before (Breuilly 2008: xvi-xvii).

Theories of modernity like Reinhard Bendix's (1978) and modernist theories of nationalism such as Ernst Gellner's (2008 (1983)) can be illustrative of ideas that became dominant during the second part of the twentieth century. Such conceptions often rely on two key assumptions. On the one hand, the absolutist social system is defined in relation to monarchical despotism, the absence of law and religious dogma; modernity is thought to relate to the Enlightenment and industrialization. On the other hand, they presume that people's perceptions somehow 'naturally' gravitated towards identifying the state's governments as the appropriate location to associate with the existence of social authority and its type with social justice and legitimacy.

In contrast, up to the mid-twentieth century, the concepts of 'modernity' and 'nationalism' were often thought of differently. Scholars such as Ramsay Muir (1918) or Charles Sanford Terry (1912) considered that modernity had to do not only with the Enlightenment, but also with the Renaissance; and nationalism was thought to have been a factor shaping the emergence of the European state-system, not a consequence of ideological or material developments that followed the eighteenth century. These authors used ideas of liberal values together with nationalism to offer explanations of modernity. Thus, their explanations of modernity included two factors: social actors' preferences towards one or another social system (values), and social actors' inclination towards one or another state, which were explained by a factor – national identity. Social actors' preferences towards one or another type of social system was

not thought to offer an explanation about what social context they conceived to be appropriate to locate representative government.

Nineteenth century's modernist approaches to the study of nationalism that can be associated with early liberal attitudes, such as those of John Stuart Mill (1861) and Lord Acton (1862) display similar features. They both related uses of the idea of national identity with processes of identifying the proper social context in which representative governments ought to be located. This suggests that nineteenth century's social action that had to do with constitutional change may not have uniquely involved disputes over values, but also about identifying what social contexts were those legitimate to be governed by a representative government.

I consider that a legal perspective can improve our understanding of processes of nationalism and modernisation. Two approaches to the study of law that interpret law from legal praxis bring to the fore important inaccuracies of legal positivism and popular liberal historiographic traditions. From both legal realism (Berman 1983) and legal pluralism (Benton 2002) it has been argued that the state was rarely an undisputed 'natural' centre associated by 'people' with legitimate governance. Instead, they suggest that legitimacy over governance has been disputed over centuries between existing jurisdictional entities, including monarchies, kingdoms, cities, provinces, seigneuries, and other possible entities. Law cannot be properly understood in abstract terms and disassociated from society.

The inclusion of law into a sociological study of modernity, such as Mann's, has important consequences. In Mann's analysis, the success of states comes from 'the state's unique ability to provide a *territorially centralized* form of organization' (his own emphasis. Mann 1992: 1). The study of legal context formed by the State of Spain suggests that this was not a unique feature of the State of Spain. This feature was also present in jurisdictional contexts such as Navarre or Euskadi. Such jurisdictional authorities disputed the legitimacy of the Spanish state to exercise types and degrees of social powers, and to organise social life. Taking the definition of state despotic power provided by Mann, as 'the range of actions which the elite is empowered to undertake without routine, institutionalized negotiation with civil society groups'

(Mann 1992: 5), it appears that these jurisdictional contexts can be conceptualised as fulfilling the role of civil society.

The interpretation of nationalism that emerges is close to that of Breuilly in the idea that ‘the modern state and the modern state system offer the key to an understanding of nationalism’ (Breuilly 1993: 2). However, the arena of law is preferred to that of politics to associate to the importance acquired by the idea of nationalism. Particularly, the legal reform that was necessary in order to transform European states from judicial and military organizations into modern political ones.

1.5.2. Methodology

Methodology is discussed in Chapter Three. Research design, influenced by the research questions and the theoretical perspective endorsed, can be identified as a *comparative historical analysis*. This perspective has been argued to suit investigations focused on the selection of cases to study particular issues rather than following ‘popular geographical categories’ (Mahoney & Rueschemeyer 2003: 14). It has also been identified as an appropriate approach for the study of nationalism, and to test theory (Breuilly 2001: 33). The chapter explains the methodological choices made; selection of cases, data collection and data analysis. Some of the benefits and risks that have been identified in the use of this approach will be addressed. A short review of the ethical procedures framing research closes the chapter.

1.5.3. Data Analysis: Chapters Four, Five, Six and Seven

Chapter Four explores existing complexities to develop a grounded definition of the key terms – carlism and fueros. Their solid and stable definitions are required in order to have a framework of references in relation to which social action can be interpreted and made meaningful. It is suggested that definitions of the fueros and carlism are normally heavily influenced by analysis made in secondary literature, and it is argued that the meanings of these terms cannot be deduced with confidence from such secondary sources.

In contrast with approaches that credit a particular historiographical narrative in order to vindicate one definition of such terms, the chapter proposes acknowledging the existence of different and contrasting claims, and exploring what the existence of the

whole context of evidence suggests. The chapter further argues that if secondary literature presents important problems to be used as an unbiased source of data, it may be an interesting source to become more aware of the influence that interpretations of the *fueros* might have had in shaping Navarre's and Euskadi's ideological trajectories. A correlation between changes in interpretations of the *fueros* during the Restoration and the development of modern national and regional identities such as Basque nationalism and navarrism since the late nineteenth century is noted. Common to these two ideological developments rests a re-interpretation of the meaning of the *fueros* in a changing social landscape.

Chapter Five is divided into three parts. The first part reviews data showing that during the 1830s the *fueros* were generally defended in Euskadi and Navarre by both carlists and liberals. The second part analyses two documents that relate to historical events normally considered to be illustrative of the political meanings of jurisdictional action and evidence of one or another theoretical perspective: (1) the process opened by the city of San Sebastian's jurisdictional authorities to abandon the jurisdiction of Gipuzkoa in 1832; and (2) a justification to negotiate the reform of Navarre's *fueros* that turned a kingdom into a province published in 1838 by Yanguas y Miranda (a key figure in the process of reforming Navarre's *fueros*). The third part points towards key differences that can be identified in the approaches to the organization of the state displayed by key figures of carlism and liberalism in the first part of the nineteenth century: José Canga Argüelles and Tomás de Zumalacárregui.

The analysis made suggests that jurisdictional behaviours and defences of the *fueros* are not accurately described in reference to normally used dichotomies: Basque vs Spanish national identity; liberalism vs absolutism. What can be identified as common to carlists and liberals in Euskadi and Navarre is a traditional interpretation of the *fueros*, which may have influenced jurisdictional authorities' conceptions of themselves as legitimate authorities to govern and make decisions.

Chapter Six focuses on Navarre. It analyses the evolution of Navarre's governing administration between 1841 and 1936, attempting to bring to the fore the main features that characterised its evolution and governing practices. The analysis suggests that in general, Navarre's own traditions and practices were considered to be key

reference points in assessing jurisdictional legitimacy and good administrative practice. Governance, although adapted to the circumstances and pressures of different times, was exercised following a similar behavioural pattern, largely defined by a constant reconciliation between traditional jurisdictional practices, the desire to achieve modernity and the necessity to comply with the demands produced in the larger legal context of the State.

These characteristics do not only constantly emerge, but they can also be identified in historical periods and in jurisdictional action and political discourse produced by social actors normally associated with different ideological preferences, including liberalism and carlism. The behaviour and performance of the Deputation of Navarre responds, in my view, more to an image of an institutional bridge, enabling the reconciliation between the interests of the Central Government and those existing in Navarre; rather as a pragmatic centre of governance that sought its strength in an interpretation and exercise of law, than to a centre of governance shaped by marked ideological positions.

Chapter Seven turns to the study of Euskadi, attempting to make sense of its jurisdictional trajectory. The analysis of Euskadi has brought to the fore features that although may also be present in other jurisdictional contexts, have been more evident in the study of Euskadi due to the need to interpret its jurisdictional and ideological trajectories.

Euskadi as a jurisdictional entity did not exist until 1936. Between 1876 and 1936 the jurisdictional entities that existed were mostly defined by state law. Before 1876, those existing were mostly defined by autochthonous law, the *fueros*. Rather than thinking in terms of Euskadi, what would become Euskadi in 1936 needs to be understood in relation to the jurisdictional entities that existed (the *Muy Noble y Muy Leal Señorío de Vizcaya*; the *Muy Noble y Muy Leal Provincia de Álava*; and the *Muy Noble y Muy Leal Provincia de Guipúzcoa*), to their interactions and to the political processes that led to its creation.

The chapter focuses on the processes of legal and institutional change that took place when the *fueros* of these territories were abolished in 1876. Attention is directed to process rather than to content, as it is in the processes of negotiation of legal reform

where key elements can be identified that may be influencing jurisdictional behaviours.

1.5.4. Conclusion

The Conclusion brings together the main ideas of the thesis. It proposes that key features identified in the governing and administrative practices of Navarre and Euskadi may have influenced jurisdictional behaviours and interpretations of jurisdictional history and legal existence related to ideological change.

Modernist theoretical frameworks, although granting meaning to specific instances of jurisdictional behaviours, do not provide theoretical space to explain centuries-long jurisdictional behaviours and practices. It appears that the political meaning of jurisdictional action has to be made meaningful in relation to a state-centred historiographical tradition.

The emergence of nationalist conflict during modernity is associated with social processes triggered by the model of state constitutionalism promoted by the French Revolutionaries, which entailed a deep transformation of the types of organizations that European states were. Such a transformation carried important implication to traditional jurisdictional relations, the meaning of state law and state governance, and conceptions of society that may be related to the existence of representative forms of governance.

2. Theory

The concept of ‘modernisation’ has been defined in the Introduction in relation to the ideas of Bendix. However, such definition is very narrow and can misrepresent what the processes associated with the concept of ‘modernisation’ have been conceived from the social sciences. A broader portrait that better captures the complexities and processes associated with the term has been proposed for example by Hess (2009):

the term modernization connotes a complex development, a process that in some Western European countries and regions lasted for more than three centuries. Its main feature is the transformation of predominantly rural world and small communities into an urban and industrialized society. The modern order is furthermore distinguished from the old one in that producing for the market has become central, technology and science occupy a prominent position, and a political pluralist system represents many interests and allows for modern forms of democracy (Hess 2009:161).

The idea of modernisation, understood in this broad sense, has been a central concern of sociological thought since its origins. The ‘fathers of social science, from de Tocqueville to Marx, from Weber to Durkheim, from Pareto to Simmel, focused their attention on analyzing the modern break and the contradictions and problems that spring from it’ (Martinelli 2005: 8-9).

Uses of the English term ‘modernisation’ have been dated back to the eighteenth century. Originally, it was not a concept generally used in academia. Gradually over time it would become ‘an academic term in the twentieth century’ (He 2012: 3). He argues that the term ‘modernisation’ has its origins in the term ‘modern’, which started to be used in the sixteenth century; the term ‘modern’ conveyed a similar meaning to that of ‘modernisation’, though in reference to changes taking place in a different historical time (He 2012: 4).

The term ‘modernisation’ refers a broad process of social change, the study of which has influenced the emergence of sociology and sociological theory. This thesis will not engage with the different understandings of modernisation that emerge from sociological theory. The goal here is not that of unfolding the complexities lying

behind the idea of ‘modernisation’ and developing a position in relation to them. Instead, a goal of the thesis is that of engaging with a currently influential understanding of modernisation often found beneath modernist theories of nationalism. In the same way in which different sociological interpretations of the idea of ‘modernisation’ exist, there is more than one way to understand nationalism from a modernist perspective. As an example, important figures such as Ernst Gellner (2008) or Benedict Anderson (1996) have differently interpreted the modernity of nationalism.

However, I want to bring to the fore the extent to which, often, modernist understandings of nationalism adopt a conception of modern European history significantly influenced by legal positivist conceptions of law or simplistic liberal narratives of modern European history. This aims at inviting us to reflect upon what conception of law rests beneath a modernist interpretation of nationalism more than at making a categorical generalisation about features always present in modernist understandings of nationalism.

2.1. Liberalism, Liberty and Nationalism

Edmund Fawcett (2014) has argued that ‘(t)here is no stable, uncontested understanding of the concept *liberalism*’ (his own emphasis) (Fawcett 2014: 6). Uses of the term ‘liberal’ and ‘liberalism’ have a history, one that started in the State of Spain in the early nineteenth century (Fawcett 2014: 7), and one that shows the differences and developments of the intellectual ideas and the political practices that have been associated with the label. Fawcett proposes that four broad ideas can be associated with liberal practice: ‘acknowledgement of inescapable ethical and material conflict within society, distrust of power, faith in human progress, and respect for people whatever they think and whoever they are’ (Fawcett 2014: xiii).

However, a tendency to create a simplified narrative of the achievements of liberalism through history has been rather common among liberal commentators. Such narratives have often in common an association of the triumph of liberty with liberal ideas. Fawcett reviews some of such narratives, arguing for instance, that ‘(l)iberty-driven history survives in the recent fashion for books that recount modernity’s unstoppable

success as a happy ménage à trois of free enquiry, unobstructed new technology, and liberal politics’ (Fawcett 2014: 3).

Similarly, Quentin Skinner (1999), in his book *Liberty before Liberalism*, has argued that the intellectual heritage of Western Europe is broader, richer and displays a more nuanced and complex history of ideas than what the study of a handful of classics could suggest. Like Fawcett, Skinner argues that the history of liberty cannot be reduced to the history of liberalism, or interests in liberty to the interests of liberals.

To illustrate this he rescued an influential intellectual and political perspective that dates back to the seventeenth century: neo-roman theory. Important concerns within this theoretical perspective included ‘the relationship between the power of the state and the liberty of its subjects’ (Skinner 1999: 5); or the issue ‘of the conditions that need to be fulfilled if the contrasting requirements of civil liberty and political obligation are to be met as harmoniously as possible’ (Skinner 1999: 17). It needs to be noted that concerns over liberty are also central to other intellectual and political traditions, such as republicanism. The history of liberty cannot be therefore reduced to the history of liberalism.

The centrality that liberalism acquires in this thesis does not attempt to reduce concerns over liberty to liberal ideas. It focuses on liberalism first because as Skinner noted, ‘(w)ith the rise of the liberal theory to a position of hegemony in contemporary political philosophy, the neo-roman theory [together with other perspectives] has been so much lost to sight that the liberal analysis has come to be widely regarded as the only coherent way of thinking about the concept involved’ (Skinner 1999: 113). The influence of such liberal narrative of history can be often found, more or less explicitly articulated, beneath many modernist interpretations of nationalism, such as the influential one of Gellner.

2.1.1. Liberal Theories of Modernity Today: Societies Created by Values

Modernist theories of nationalism often depart from a conception of modernity generally endorsed by liberals. In its political dimension, modernity is normally associated with processes that struggled to replace absolutist monarchies with

constitutional democracies. European states are the main protagonists in such narratives. The centrality of states in such a narrative of European modern history can be seen in how the key terms representing the key social change – the transition from absolutism to constitutionalism – tend to be conceived. For example, in the definition of constitutionalism provided in the *Encyclopaedia of Political Theory* (2010) it is stated that

The *raison d'être* of constitutionalism is the legalization of political rule, which it achieves by tying law making and law enforcement to positive law. Constitutions not only constitute, but also regulate, the highest power. In so doing constitutionalism promotes a normative understanding of law by focusing on attributes and qualities that law should possess (Murkens 2010: 294).

The importance of constitutionalism acquires its full meaning once it is compared with the social system it came to replace, absolutism. The latter is defined as ‘essentially a doctrine about the absence of limits to royal power’ (Antaki 2010: 3). The creation of systems of governance defined by the rule of law and political participation is presented as an achievement of the constitutionalism of the state. Social conflicts during the eighteenth and nineteenth century across Europe tend to be interpreted as concerning this change. The creation of constitutional European states is often thought to have been mostly influenced by a struggle over such values and the legitimacy of constitutional states relates to the values that produced them.

However imperfect states may be in their embodiments and materialisations of key principles – as has been argued by a variety of authors, including Kymlicka & Straehle (1999) and Margaret Canovan (1996) – European modern history presents states as the political triumph of values and principles. States’ legitimacy stems from their embodiment of political values, and relates to a key historical time in which sovereignty was transferred from monarchies to the people. Modernity itself is defined in relation to the European history of law. Regardless of the nationalizing features that European states may have acquired resulting in what Billig (1995) called banal forms of nationalism, the idea of nationalism is thought to have played no role in the processes that created them.

Indeed, many modernist scholars think that nationalism is a form of understanding personhood and social organization that is qualitatively different of other existing ones. The work of Gellner is an example. As noted by Dannreuther & Kennedy (2007), Gellner associated the modernity of nationalism with the demands produced by industrial societies; however, the emergence of the latter was associated with processes of replacing 'a violent and coercive ruling class, and closed noncumulative cognitive framework imposed by a self-perpetuating revelation-holding clerisy...[by an]...industrial society, characterized by affluence, dynamic and cumulative cognitive growth and the prospect, if not the guarantee, of liberty' (Dannreuther & Kennedy 2007: 344).

More recently, Maurizio Viroli (1997) has argued that since the late eighteenth century two distinct linguistic traditions developed in relation to the terms 'nationalism' and 'patriotism': patriotism associated with the French Revolution and ideas of freedom (1997: 95), and nationalism related to eighteenth century German Romanticism, and Herder in particular (1997: 119). Viroli presents the case as a moral one: you can chose to be patriot and have as your enemy 'tyranny, despotism, oppression, and corruption...[or be a nationalist, and have as enemies]...cultural contamination, heterogeneity, racial impurity, and social, political, and intellectual disunion' (Viroli 1997: 1-2).

The general tendency to disassociate nationalism with processes of state building has been noted by McCrone (1998), who stated that it is generally thought that 'we live in an age' in which 'centres of power' (presumably states), tend to disassociate themselves from nationalism. Instead, they generally propose that they 'employ the common-sense that they are patriotic while their enemies are nationalistic' (McCrone 1998: vii). Common sense patriotism is normally associated with attachments to political structures that represent liberal values, whilst nationalism tends to be perceived as something alien and that poses a threat to such values (Kissane & Sitter 2010: 2; Jean-Klein 2001: 85).

The legitimacy of the liberal state is related not to assumptions about social reality contained in the idea of nationalism, but to the values and principles materialised in constitutional states; a transition that is explained by the idea of modernity.

2.1.2. Liberal Theories of Modernity up to the Mid-Twentieth Century: Societies Created by Values and National Identities

Contrasting with currently prevailing liberal theories of modernity, those existing up to the mid-twentieth century embraced rather than rejected the idea of national identity. The historical point of reference was not the eighteenth century's revolutions, but the seventeenth century, when the consciousness of a European state system would have developed, materializing into an international legal order in the Peace Treaties of Westphalia (Lessafer 2004; Neff 2006; Fabry 2010). This tradition considered Westphalia to be a key event that 'laid down the basic principles of the modern law of nations, such as sovereignty, equality, religious neutrality and the balance of power' (Lesaffer 2004: 9). Nationalism, far from being conceived as alien to the process, was seen as a key feature making possible its emergence.

For example, Charles Sanford Terry (1912) related nationalism to the constitutive processes that led to Westphalia and produced a European state system. For him, modernity related to the decline of the medieval system, and was produced by two main processes: a loss of the authority exercised by Emperors and the Papacy, and 'the recovery of the lost culture of the ancient Greece and Rome' (Terry 1912: 2-3). This decline would have made it possible for a new system to rise, one which would have emerged 'when the two characteristics of modern civilisation came into play – the emergence of nationalities and national interests, and the release of the individual from the medieval bonds which restrained the free exercise of faculties' (Terry 1912: 1).

The relationship was more clearly stated by Ramsay Muir (1918). For Muir, the establishment of self-governing democratic states was the pinnacle of modern civilization, and in his view, 'parliamentary institutions had become almost universal, either as the controlling factor, or at least as an important element, in the government of civilised states' (Muir 1918: 1). This was unquestionably a rather novel phenomenon, with no more than a hundred years of history for all cases but Britain (Muir 1918: 1). For this to be possible, Muir considered that two conditions had to be met. First, citizens involved in governance required a degree of education 'in the practice of co-operation in common affairs' (Muir 1918: 7); secondly, 'there must exist a real unity of sentiment in the community which attempts it' (Muir 1918: 8). This last

condition in his view could be only achieved by one factor - what he termed 'national spirit'. Furthermore, he argued that the only those communities in which such a national spirit was dominant had been those in which self-governments had been successfully applied (Muir 1918: 9). The extent of the influence of such views can be seen in 1945, when Edward Hallet Carr felt confident enough to affirm, in a book titled 'Nationalism and After', that:

It is commonly assumed that nations in the modern sense are the product of the disruption of the international – or rather pre-international – order of medieval Christendom, and that they represent the projection on a collective national plane of the Renaissance spirit of adventurous and self-assertive individualism. It is further assumed that the international relations in the contemporary sense of the term date from the 16th and 17th centuries... These assumptions are broadly correct (Carr 1945: 1).

Thinking that normative defences of liberalism have always rejected the idea of nationalism is incorrect. On the contrary, it seems that the idea of nationalism has been thought to be, at least until the mid-twentieth century, a central concept thought to legitimise the very existence of liberal states. Why states had been formed in the first place was considered to require an explanation, and national identity was the concept thought to provide it.

2.1.3. Methodological Nationalism

The two conceptions of modernity reviewed above, despite their differences, both contain an assumption regarding social actors' perceptions of the state. It is the idea that social actors' inclinations, either produced by a 'natural' attachment to a monarchy, or by a commitment to democratic values and principles, 'naturally' considered the state to be the appropriate institutional context to be associated with legitimacy, sovereignty, political community, law and governance. The state seems to have always been conceived as the appropriate geographical, legal and institutional context within which the exercise of types and degrees of social powers ought to be located. This presumption has been called 'methodological nationalism' and has been argued to be a key problem in the study of nationalism today.

Indeed, Daniel Chernilo (2006) has argued that an on-going problem in the study of nationalism relates to what he says is known as ‘methodological nationalism’. He defines it ‘as the all-pervasive equation within the social sciences between the concept of ‘society...[which]...presupposes that the nation-state is the natural and necessary form of society in modernity and that the nation-state becomes the *organizing principle* around which the whole project of modernity coheres’ (Chernilo 2006:129). This does not necessarily mean that the nation-state should not be understood to have been a key factor influencing the evolution of modernity. He considers however, that methodological nationalism should be rejected because it does not allow identifying nationalisms’ own histories and the disputes they have endured against rivaling conceptions (Chernilo 2006: 131). The acknowledgement of different conceptualizations about the nation-state is the first step to ‘start disentangling the equation between nation-state and society’ (Chernilo 2006: 133). Chernilo’s rejection of methodological nationalism proposes to decontextualize the study of nationalism from its taken for granted - ‘natural’ – contexts, and proposes that its study also requires understanding the formation and disputes over the existence of such contexts in the first place.

2.1.4. Theories of Nationality in the Mid-Nineteenth Century: Historical Relevance and the Absence of Methodological Nationalism

The understandings of national identity proposed by Mill and Acton in the early 1860s are both interesting and relevant to this thesis. The relevance has to do with their theoretical importance in the study of national identity and with the similarities that can be observed between the theoretical debate and some of the social discourse and action taking place in nineteenth century Navarre and Euskadi.

The theoretical importance of Mill and Acton has to do with the perspectives they endorsed to understand what national identities are and what this means in relation to state building processes and the construction of societies defined by key values such as political freedom and social justice. Both Mill and Acton valued representative governments, which they associated with political freedom and social justice. They both, advancing modernist conceptions of nationalism, associated the existence of national identities to socially constructed features – mostly political, in the sense of a

community of people participating in the exercise of governance – than to natural or cultural factors. Another interesting feature of their interpretations of the idea of nationality is that neither involves methodological nationalism. The state for instance, was not assumed to be a ‘natural’ political context towards which people ‘naturally’ gravitated.

Their debate shows two early views that can be related to early liberal perspectives differently interpreting which state organisational transformation could turn illegitimate absolutist states into legitimate democratic ones. Issues of legitimacy, political liberty or social justice were not argued uniquely in relation to absolutist or democratic features, but also in relation to the organisational changes that could be justified in a given social context in the name of political liberty and social justice. What legitimises the existence of social authority in one or another social context or what state organisational changes would produce political liberty and social justice were key issues on which they disagreed upon.

These differences may partly originate in the different perspectives they endorsed. Mill’s approach may be seen as more philosophical, whereas Acton’s may be rather more historical. Be this as it may, their work shows that the transition from absolutism to democracy involved organisational changes that were perceived as problematic not only in relation to values of freedom and justice, but also in relation to jurisdictional transformations of the state and interpretations of law.

Bringing to the fore this theoretical debate is relevant because it displays in an academic form some of the key logics from which the transformation of the State of Spain during the nineteenth century was interpreted in Navarre and Euskadi. There are surely other authors who are also relevant in different ways. The work of Acton however, captures well the rationale and implications often expressed by social actors in Navarre and Euskadi regarding the transformation from an absolutist state into a democratic one.

Contemporary theories of nationalism can provide great insights to better understand the social phenomena associated with the concept, yet do not necessarily reflect the ways in which the idea of nationalism may have been understood in the past. I consider

that theories of nineteenth century nationalism, especially that of Lord Acton, may illustrate some of the logics from which the existence and legitimacy of the fueros were interpreted in Euskadi and Navarre.

2.1.5. John Stuart Mill and Nationality

Mill (1861) associated the existence of national identities to socially constructed features – mostly political, in the sense of a community of people participating in the exercise of governance – than to natural or cultural factors. National identities were the product of political organization, and could therefore be changed, merged or modified. However politically produced, Mill considered that national sentiments played an important role in facilitating the establishment of representative governments. States were not thought to be naturally existing political contexts, though he associated social benefits, progress and a better future to the social contexts created by states.

For Mill, what nationalities should exist was a moral dilemma and a political issue. Given that states were the ultimate centres of power, that representative government was the best type of social system, and that he considered that generally national identities were a necessary condition enabling the existence of free institutions, he concluded that it was beneficial creating a single nationality for states, and he used the case of France to illustrate his point (Mill 1861: 294-299).

2.1.6. Lord Acton and Nationality

Acton's (1862) paper on nationality may have been a reaction to Mill's ideas, which had been published the previous year. With Mill, he endorsed values associated with liberalism, yet disagreed when Mill defended 'that the boundaries of governments should coincide in the main with those of nationalities' (Mill 1861: 299 in Acton 1862: 14). In Mill's eyes, the theory of nationality, though socially constructed, exercised a positive and beneficial effect to the establishment of systems of governance based on liberty and representative government. Acton thought the contrary. For Acton, such a claim was more an example of the views generated by the theory of nationality than a result of valid analyses of Europe's social and political history.

Acton argued that three modern theories about society had come to question the legitimacy of the absolutist social order. They would have done so by ‘impugning the present distribution of power, of property, and of territory, and attacking respectively the aristocracy, the middle class, and the sovereignty. They are the theories of equality, communism, and nationality’ (Acton 1862: 3). He considered that the theory of nationality was becoming the most popular of the three.

He argued that previous to the rise of the three new modern social theories, nationality did not present a significant problem for the existing social order. ‘In the old European system, the rights of nationalities were neither recognised by governments nor asserted by the people’ (Acton 1862: 4). The awakening of the modern theory of nationality would have had one of the first moments in the partition of Poland in 1772; however, he emphasised the significance of the French revolution as an influential event that, by transforming the organizational features of the state, took modern theories of nationalism to the fore. A long paragraph by Acton is worth quoting, as it illustrates the organizational changes promoted by the French revolutionaries that he identified with the wrongs of modern theories of nationality.

The France of history fell together with the French State, which was the growth of centuries. The old sovereignty was destroyed. The local authorities were looked upon with aversion and alarm. The new central authority needed to be established on a new principle of unity. The state of nature, which was the ideal of society, was made the basis of the nation; descent was put in the place of tradition, and the French people was regarded as a physical product: an ethnological, not historic, unit. It was assumed that a unity existed separate from the representation and the government, wholly independent of the past, and capable at any moment of expressing or of changing its mind. In the words of Sieyès, it was no longer France, but some unknown country to which the nation was transported. The central power possessed authority, inasmuch as it obeyed the whole, and no divergence was permitted from the universal sentiment. This power, endowed with volition, was personified in the Republic One and Indivisible. The title signified that a part could not speak or act for the whole, - that there was a power supreme over the State, distinct from, and independent of, its members; and it expressed, for the first time in history, the notion of an abstract nationality. In this manner the idea of the sovereignty of the people, uncontrolled by the

past, gave birth to the idea of nationality independent of the political influence of history. It sprang from the rejection of the two authorities, - of the State and of the past. The kingdom of France was, geographically as well as politically, the product of a long series of events, and the same influences which built up the State formed the territory. The Revolution repudiated alike the agencies to which France owed her boundaries and those to which she owed her government. Every effaceable trace and relic of national history was carefully wiped away, - the system of administration, the physical divisions of the country, the classes of society, the corporations, the weights and measures, the calendar. France was no longer bounded by the limits she had received from the condemned influence of her history; she could recognise only those which were set by nature. The definition of the nation was borrowed from the material world, and, in order to avoid a loss of territory, it became not only an abstraction but a fiction (Acton 1862: 7).

For Acton, true republicanism, true freedom, was not to be associated with the claims contained in the theory of nationalism, nor to the social project launched by the French revolutionaries. Instead, it had to be associated with a different historiographic tradition; one which departed in Jean Jacques Rousseau and which had, in the English revolution of 1688, an empirical example of its practical applicability. The superiority of the English example rested in that its revolution had not denied the existence of different nationalities within it (Acton 1862: 6-7). Regardless of the principles associated with the French revolution, Acton considered that these were both denied and contradicted by the legal and organizational transformations made by the French revolutionaries. The wrongs of the modern theory of nationality stemmed from its centralizing tendencies. 'For true republicanism is the principle of self-government in the whole and in all the parts' (Acton 1862: 6). This led him to think that federalism was a necessity to create large states, 'a great democracy must either sacrifice self-government to unity, or preserve it by federalism' (Acton 1862: 7). Denying nationality, or rather states' monopolisation of nationality, implied 'the denial of political liberty' (Acton 1862: 23).

Acton interpreted the Napoleonic wars and the counter-revolutionary movement not as a dispute between revolutionaries defending the creation of free and just social systems confronting those defending the maintenance of a despotic social system.

Instead, he thought that the fiercest opposition that the French revolutionary movement had encountered across Europe had been led by the jurisdictional, legal and organizational social spaces that had historically disputed legitimacy for the exercise of types and degrees of social powers to absolutist monarchies (Acton 1862: 10).

Comparing Mill's and Acton's views on nationalism shows the importance attributed to the idea of nationalism in relation to European states' social changes during the nineteenth century. It suggests that in the process, it was not only at stake absolutism or constitutionalism. Nineteenth century social action related to state transformations also had contrasting approaches to locate and legitimise the existence of representative governments in one or another social context. Mill's philosophical perspective favoured the location of representative governments in states. He conceptualised free societies in relation to the existence of representative governments, and thought that national identities were sentimental outcomes of politically constructed institutions. States, as ultimate recipients of power and governance, should be founded over such qualities.

Acton's historical approach highlighted some of the contradictions produced when such an interpretation of the state was endorsed. He attached ideas of freedom and liberty to the social contexts that had generated them, and to the social actors that had been associated with their defence. Acton's interpretation of nationalism related nineteenth century social conflict to revolutionary state transformations and the reactions these triggered. These reactions were not uniquely related to concerns over liberty, but also to historical disputes about the legitimacy of different organizational contexts to exercise types and degrees of social powers, how these were justified and what they meant.

2.2. Disputes in Interpretations of Law

There is a historical dispute over how law should be interpreted. Legal positivism is an approach to understand law that has traditionally been confronted with natural law. Both these perspectives have long histories: the 'idea of natural law derives from antiquity' (Olivecrona 1971: 7), whereas 'the term *ius positivum* was in general use in the thirteenth century' (his own emphasis) (Olivecrona 1971: 7). Perhaps, it should not

be too surprising that given such long histories the terms have been used to mean different things. The different meanings that the term legal positivism can be associated with has been described as being ‘embarrassing’ (Olivecrona 1971: 57).

Modernist interpretations of nationalism are often influenced by a legal positivist conception of law. There are two characteristics of currently dominant understandings of legal positivism that I want to highlight as I consider them to be influencing how nationalism is being understood from many modernist interpretations. The first of these features has been noted by D’Aspremont & Kammerhofer (2014), who in the context of International Law have argued that generally

‘old school’ positivism is claimed to be focused nearly exclusively on the state. States, so the argument is reconstructed, are the exclusive makers of international law and the only originary subjects of international law...The most specific, powerful and controversial expression of this mentality can be found in the idea of consensualism: state consent is the (pre-legal) criterion giving law its binding force and legitimacy (D’Aspremont & Kammerhofer 2014: 4).

The state becomes a key pillar over which International Law can be constructed. On top of this, states are associated with the consensus of their citizens, naturalising and legitimising their existence.

The second characteristic I want to notice has to do with what has been described as the main concern of legal positivism, ‘the necessity of separating law, politics, and morals entirely from one another’ (Shklar 1964: 29). Judith Shklar (1964) related ‘the isolation of legal theory’ to a tendency towards ‘specialization which is now a permanent feature of our intellectual life’ (Shklar 1964: 222). Particularly, she noted that a feature of legal positivism suggests that ‘social experience must be neatly divided into distinct parcels. History is a matter of separate “spheres”, each dedicated to some “factor”: economic, legal, ethical, aesthetic, and political’ (Shklar 1964: 123). The history of law can be therefore studied and conceived disconnected from that of politics, or the history of nationalism in isolation from that of law.

Natural law, on the contrary, has at its core the idea ‘that law and morals intersect’ (Shklar 1964: 30). Although the influence of natural law has never completely ceased,

and the two approaches may be better understood in a continuum rather than in opposition (Shklar 1964: 15), legal positivism, by the late nineteenth century, became ‘the leading school of thought in international legal scholarship’ (D’Aspremont & Kammerhofer 2014: 12).

I want to review two legal perspectives, legal realism and legal pluralism, that can be associated with interpretations of law closer to the natural law tradition. Legal realism and legal pluralism, although being different, can be seen to exist in a continuum rather than in contradiction with each other. An important implication of their approaches is an interest in understanding European states’ histories more in relation to legal practice than in reference to conceptions of law. The legal histories of Europe are thought to be not only about the discovery of positive law, but also about the creation and definition of legal orders, including the structuration of global legal orders around a conception and supremacy of states. In doing so, they bring to the fore legal disputes as an important source of social dispute that enables interpreting historical data differently (in relation to law and the different implications this could have for how states, society and belonging might have been interpreted), a factor normally overlooked from modernist studies of nationalism.

2.2.1. Legal Realism: Law and Legal Praxis

Legal realism is a term that started to be used during the interwar period in the U.S. in reference to the work of a group of academics and justice practitioners who ‘developed and sought to implement a novel approach to law, adjudication and legal education’ (Fisher et al 1993: xi). Although a variety of views and ideas have developed in relation to legal realism, a single interest has been identified in the work of its most notable figures; who ‘shared an interest in understanding judicial decision-making and, in particular, shared certain substantive views about how adjudication really works’ (Leiter 2007: 61). It was a rather empirical approach to develop an understanding of what law really is in practice (Leiter 2007: 63).

Wilfred E. Rumble (1968) in a revision of the influence of American legal realism argued that legal realists ‘demonstrated the limitations of established rules as means to determine decisions...they opened juristic eyes to the often unpredictable and

subjective character of the process by means of which the facts of a case are determined' (Rumble 1968: 236). The exercise of law is conceived as involving the influence of whole social contexts, not uniquely guided by law itself as an independent source of principles. This approach to understanding law has been described as 'widely understood to pose a substantial challenge to a traditional conception of law and legal (especially judicial) decision making' (Schauer 2013: 752).

The idea that law is not an independent social domain exercised by experts and disconnected from the people, politics, culture or morality was fully endorsed and explored by Harold J. Berman. In *Law and Revolution* (1983) he argued that prevailing conceptions of law in Western Europe defined it too narrowly around the modern nation-state's own historical narrative, which presents law as a mainly technical matter exercised in distinct technical fields. Such a view of law, and the implications it carries for conceptions of society, is for Berman more a metaphor of our own time than an accurate description of social reality.

Following the ideas of legal realism, Berman proposed an alternative definition of law, focusing less on the production of legal rules and more in the praxis of legal action. 'Law in action consists of people legislating, adjudicating, administering, negotiating, and carrying on other legal activities. It is a living process of allocating rights and duties and thereby resolving conflicts and creating channels of cooperation' (Berman 1983: 4-5). Berman's open definition of law has no boundaries. It does not define law in relation to the production of a particular type of regulation, by a particular type of authority or in accordance to a particular type of principle. Instead, law is defined in relation to social action and to the different ways that European peoples have negotiated and settled their interests and differences. This view of law, directed leads Berman to state that:

To speak of the Western legal tradition is to postulate a concept of law, not as a body of rules, but as a process, an enterprise, in which rules have meaning only in the context of institutions and procedures, values, and ways of thought. From this broader perspective the sources of law include not only the will of the lawmaker but also the reason and conscience of the community and its customs and usages (Berman 1983: 10).

Rule-of-law is no longer an achievement of constitutionalism; it is instead a defining feature of how European peoples have regulated their relationships, defining themselves and their societies in the process. It is the very existence of this diversity ‘that makes the supremacy of law both necessary and possible’ (Berman 1983: 9). Such a jurisdictional and legal diversity produced technical questions such as ‘Which court has jurisdiction? Which law is applicable? How are legal differences to be reconciled? Behind the technical questions lay important political and economic considerations: church versus crown, crown versus town, town versus lord, lord versus merchant, and so on. Law was a way of resolving the political and economic conflict’ (Berman 1983: 9). Law does not only concern technical matters; law resolves and institutionalises social relations. In doing so, it defines social reality. Current conceptions of law, by defining it in relation to states, have ‘swallowed up’ all ‘the different legal regimes of all these communities local, regional, national, ethnic, professional, political, intellectual, spiritual, and others’ that are all part of Western European history of law (Berman 1983: 17).

2.2.2. Legal Pluralism: From Empires to States

Legal pluralism tends to be used as a term to describe legal practices rather than as a term that identifies a particular interpretation of law. M. B. Hooker (1975) proposed that ‘(t)he term ‘legal pluralism’ refers to the situation in which two or more laws interact’ (Hooker 1975: 6). It has been argued that contexts of legal pluralism have been studied without making use of the term itself (Benton & Ross 2013: 1). This approach may have led to emphasising more than obscuring contexts of legal plurality. A result has been that, contrasting with discourses that present states as having enjoyed jurisdictional authority throughout their histories, European states are described as primary examples of legal pluralism. Conceptions of the state that present it as a legal and political entity that emerged fully formed and conceived in a singular moment of genesis have been questioned. Instead, European legal history requires the inclusion of an explanation of how European empires and contexts of legal pluralities came to be thought of in terms of states and legal singularity (Benton & Ross 2013: 1).

Lauren Benton (2002) has proposed an approach to study European states’ legal histories in relation to, rather than obscuring, legal pluralities. In line with legal

realism, she considers that there exist important differences between how state law is currently conceived and how state law has been thought of and practiced (Benton 2002: 8). She argues that the state is generally imagined as a 'fully formed entity with a coherent view of law and of its own place in the legal order' (Benton 2002: 9). Influencing such a conception, she identifies an assumption regarding the direction of legal change. On the one hand the inevitability of 'the dominance of state law' it is presumed; on the other, the idea that state law has 'independent origins' (Benton 2002: 9).

She points at the existence of two different narratives that come to explain the genesis of such states. The first of these narratives is based in the acceptance of European states' historical claims to absolute sovereignty. Arguably, these claims consolidated following the Peace Treaties of Westphalia. The second relates the formation of states to the institutional changes triggered by the eighteenth century's revolutions and the Napoleonic wars. A fully formed state, however, cannot have emerged twice in relation to different processes and ideas (Benton 2002: 9). These two narratives attempting to account for the emergence of a fully formed state coincide with the two conceptions of modernity reviewed above.

Benton proposes that a better approach to study states' legal histories requires interpreting state law in relation to how law has been thought and practiced. This may lead to a more accurate description of states' legal histories, able to map out the debates, negotiations and conflicts involved in the processes. An alternative methodology is put forward around what she calls three 'points of entry' to study 'global legal regimes' (Benton 2002: 11). These points of entry identify social actors and legal concerns that in her view may have influenced the evolution of legal thought and practice.

First, she coins the term 'jurisdictional politics' to broadly 'mean conflicts over preservation, creation, nature, and extent of different legal forums and authorities' (Benton 2002: 10). These jurisdictional conflicts confronted states' governing authorities with those of other existing jurisdictions. The existence of jurisdictions were not conceived to merely have a legal technical character, they were also 'crucial

to changing notions of cultural boundaries, in part because “jurisdiction” itself implied a certain sharing of identities and values among subjects’ (Benton 2002: 10).

Second, she uses the idea of ‘cultural and legal intermediaries’. With this she notes the role that local authorities and administrations acquired in their bridging positions between local and state’s interests and possibilities. This bridging position would in cases lead to surprising behaviour; also, to interpretations and representations of legal boundaries that challenged the state’s promoted views (Benton 2002: 10).

Third, ‘Law of property’ is highlighted as an important factor to consider. She argues that there existed a connection between property, law and jurisdiction. Changes in property law may have been perceived ‘by social actors as primarily about changes in the ordering of legal authorities, rather than about property per se’ (Benton 2002: 11). Similar logic may have developed in relation to a variety of legal concerns. What may nowadays be considered to be technical legal matters may have been perceived in historical times as questions that concerned the legitimacy of different authorities or institutions to legislate and govern over such matters.

These ‘points of entry’ are introduced more as references than as a foundation to develop theory. They offer, however, useful analytical tools for this study to identify significant legal actors and to interpret interests, motivations or behaviours.

2.2.3. European States: From Pluralities to Singularities

If states did not emerge fully formed and conceived there must exist a process showing how states came to be thought of and act as such. Randall Lesaffer (2004) offers an account of European states’ histories which is able to partly explain the processes by which states increasingly monopolised the exercise and definition of law. His findings emerge from comparing the Peace Treaties of Westphalia with those that preceded it.

Contrary to traditional interpretations of Westphalia, Lesaffer finds that these treaties were not innovative in any sense and did not signify much of a legal breakthrough either in their intellectual underpinnings or in its implications regarding legal behaviour. Instead, they mostly ‘drew on sixteenth-century and even late medieval practices’ (Lesaffer 2004: 407). In the Peace Treaties of Westphalia a novel, agreed

and defined conception of states and Europe's legal order did not emerge. Instead, the emergence of the nation-state as a sovereign organization, far from being the result of a novel reconceptualization of the exercise of power somehow accepted as valid and legitimate, is the result of a series of processes that show how monarchical authorities managed, over time, to monopolize sovereignty (Lesaffer 2004:13).

Lesaffer suggests the need to distinguish between internal and external sovereignties. By external sovereignty he means 'the absence of any higher political authority than the sovereign ruler or state'. By internal sovereignty he refers to the idea that 'that the central ruler within a certain territory is the sole power enjoying the autonomous legitimisation of power. It also means that all other territorial powers – the nobility, clergy and towns – are subject in more or less the same way and through a similar sovereign authority to the central power' (Lesaffer 2004: 13-14).

International peace treaties during the fifteenth and sixteenth centuries show that European monarchies did not enjoy internal sovereignty (Lesaffer 2004: 15). In international peace treaty practice the distinction between internal and external sovereignty did not yet exist (Lesaffer 2004: 16). There was not one way to relate between sovereign nation-states and another way between other entities, instead, similar legal practices were applied to regulate all legal relationships. The clear distinctions we think of nowadays between international, national or municipal law did not exist.

Princes would sign treaties, but this had a personal character, as they 'did not act as a representative institution of an abstract political body; they acted in their own name. Only indirectly, through their internal power and authority, did they oblige their territories and subjects to the treaty' (Lesaffer 2004: 17). In some important cases the treaties even stipulated that some authorities, such as towns or nobles, had to ratify the treaty (Lesaffer 2004: 19). These practices that Lesaffer calls 'co-ratification' would practically disappear by the second half of the sixteenth century (Lesaffer 2004: 20). Legal relationships, whether private, public, municipal or international, were all thought of in relation to the same legal reference – *ius commune*. 'Treaty law as an autonomous discipline would only emerge from the seventeenth century onwards' (Lesaffer 2004: 404-405).

The state, as a concept that structures the legal order in a particular way, does not have a moment of genesis. The importance of Westphalia has more to do with the influence that thinking of Westphalia as the birthplace of a European state system had as it was considered ‘as such by key legal and diplomatic authorities’ (Lesaffer 2004: 408).

2.2.4. Influences that Interpretations of Law have on the Study of Nationalism

Some of the effects that interpretations of law exercise in people’s conceptions of society, and how different current perceptions may be from previously existing ones have been noted by Paul D. Halliday (2013). He argues that the way one may think of states today is completely different to the way states may have been thought about before the eighteenth century revolutions. These conceptual differences relate to legal realities and social practices. ‘The modern legal-political imagination is sustained by an illusion of neat boundaries containing internally coherent entities, each dealing with the others as theoretical equals in an international “order”’ (Halliday 2013: 269). In contrast, early modern subjects would have understood the state as ‘a patchwork of tiny, often overlapping spaces’ (Halliday 2013: 269). Understanding these differences and the implications they may have to how nationalism tends to be understood is important because the development of concepts, ideas, interests, policies and motivations took place in relation to and in order to have an effect in such social contexts, not in those thought of today. Bodin’s or Hobbes’ theories of sovereignty ‘arose...to counter insistent discourses of divided sovereignty and plural legality in the world they inhabited’ (Halliday 2013: 268).

This invites us to revise the state-centred perspectives that have dominated the study of European social and political thought. Generally, the influence of ideas and material progress are assumed to take place within defined and unquestioned legal contexts: the state. It is presumed that European social and political thought has largely concerned what systems of governance was to govern states; key moral and ethical questions are thought to have gravitated around the type of organization states ought to be. Nevertheless, key moral and ethical questions contained in social and political thought did not necessarily depart, or were structured, around the type of organization states were or ought to be. Ethical and political analyses were made in relation to different

types of existing social organizations, including different types of possible state systems.

Montesquieu, for example, in *The Spirit of the Laws* (1989 (1748)), contextualised ethical evaluations of society in reference to the social system in which social phenomena would exist. Ethics did not uniquely concern whether state governance should be a monarchy or a republic. Ethical evaluations included discerning what was thought to be beneficial or detrimental within different social contexts. So Montesquieu considered it best, when a monarchy conquered a territory or a kingdom, that ‘things must be left as they were found: the same tribunals, the same laws, the same customs, the same privileges. Nothing should be changed but the army and the sovereign’s name’ (Montesquieu 1989 (1748): 145). The existence of jurisdictions was not simply seen as a result of despotism: it could be even the contrary, an instance of resistance to despotism. Ecclesiastical jurisdiction was not thought to be universally negative: he considered ecclesiastical jurisdictions to be harmful in a republic, yet beneficial in a monarchy (1989 (1748): 18).

Not only conceptions of the legal context may have been different, but also the meanings associated with different institutions or ideas. For example, nowadays it is generally thought that ecclesiastical institutions and religious ideas colluded with absolutist monarchies and the nobility in the perpetuation of a despotic social system. Nevertheless, an important part of ecclesiastical thought, at least up to the seventeenth century, has been identified as one of the main social and political forces opposing monarchies’ absolute powers.

McIlwain (1918), for instance, noted that up to the seventeenth century political thought in Europe was part of ecclesiastical thought, and that a central debate revolved around what was to be considered the valid source of legitimacy to exercise social power: the king or the people (McIlwain 1918: xv). McIlwain pointed towards the book *Vindiciae Contra Tyrannos* (1579) as one of the best examples of anti-monarchical positions (McIlwain 1918: xvi), and argued that in both Protestant and Jesuit thought, the defence of legitimacy to exercise social authority was placed in God and translated to society through the people (McIlwain 1918: xxii-xxxiv). Similarly, Michael Wilks (1963) noted that many theologians at the time would have found the

implications of considering rulers as direct representatives of God on earth horrifying. At times, he argued, 'the extreme papalist becomes almost indistinguishable from his most savage lay opponent' (Wilks 1963: viii).

An example of a pro-monarchical view in such a contention can be found in the book *Patriarcha*, published by Robert Filmer most likely before 1631 (Burgess 2009). The purpose of the book was captured in its subtitle: 'A defence of the natural power of kings against the unnatural liberty of the people' (Filmer 1949 (1631): 53). Filmer argued that in the Europe of his time, some 'Schoolmen', in contradiction with 'the doctrine and history of the Holy Scriptures', and in order to put the authority of the Pope above that of kings, argued that 'the people or multitude have power to punish or deprive the Prince if he transgress the laws of the kingdom' (Filmer 1949 (1631): 53, 55). One of these 'schoolmen' against whom Filmer argued, was 'Suarez the Jesuit' (Filmer 1949 (1631): 74).

Overall, a more complex social setting of institutions, views and ideas emerges. Jurisdictional disputes, the symbolism of existing institutions and the meanings of their relationships may have included many nuances that tend to be erased by endorsing simplified conceptions of law, modernity and the meanings of social conflict.

2.3. Conclusion

A legal and organizational approach to the study of European states' histories could help us to better understand the processes of modernisation and the political importance acquired by national identities. Contrasting with presumptions of state law contained in theories of modernity, the study of legal practice suggests that such conceptions of state law does not correlate with what European states have been in legal practice. States have not been necessarily regarded as a legitimate centre for the exercise of law and governance, and states' administrations were one among other social actors claiming jurisdiction to exercise social powers. The legal histories of Europe have to do with the creation and definition of legal orders, including the structuration of global legal orders around a conception and supremacy of states.

The political significance acquired by the idea of nationalism during modernity relates to the legal and organizational transformations taking place throughout European

states since the late eighteenth century. Particularly as the constitutional model pushed by the French Revolutionaries proposed a deep transformation in the type of organization that states were, by turning historically created and legitimised judicial and military organizations into political ones legitimised by modern theories of knowledge.

Europe's legal order was not 'naturally' conceived as formed by defined hierarchies of law structured around the figure of the state. States were legal and organizational products of history, and contained a variety of legal entities, views and meanings, including jurisdictional disputes over the right to exercise types and degrees of social power. The uses of the idea of nationalism correlate with state-centred transformative organizational projects justified in the establishment of social systems based on the rule of law, combined with the negation of the importance of history-defining social reality and the existence of social authority.

3. Methodology

The research design has been influenced by the research question and the theoretical perspective, resulting in a comparative historical analysis. A historical comparative perspective has been argued to be appropriate for the study of nationalism as well as to test theory (Breuilly 2001: 33).

As explained in the introduction, the thesis investigates a historical puzzle: the jurisdictional and ideological trajectories of Euskadi and Navarre within the constitutional history of the State of Spain. During much of the nineteenth century, key social majorities in both Euskadi and Navarre defended a similar vision of the State, leading them to join carlism, most notoriously in war. At the turn of the twentieth century, as social changes associated with modernity unfolded, new ideologies and political projects developed, producing modern ideologies and identities. A result of this process was that key majorities in Navarre and Euskadi took different sides in the 1936 Civil War, and the different visions of the State they defended.

The proposed research questions aimed at focusing the investigation in key social changes – constitutional – and to compare and evaluate how the social contexts of Euskadi and Navarre would have been affected by them and how key social actors may have reacted to them.

3.1. Selection of Cases

The selection of cases has been influenced by the sets of social actors and institutions identified to have had an influential role in the events and developments forming the puzzle being investigated. This has meant selecting the cases to compare not in relation to the usual references to study the development of nationalisms in the territories, like the State of Spain/Spanish nationalism, or Euskal Herria/Basque nationalism. Instead, the selection of cases has been influenced by the jurisdictional authorities governing each of the territorial institutions identified. Today they form three main jurisdictions identified with the titles of Chartered Community of Navarre (*Comunidad Foral de*

Navarra), Basque Autonomous Community, Euskadi or Basque Country⁸ (*Comunidad Autónoma Vasca*, *Euskadi* or *País Vasco*) and Kingdom of Spain (*Reino de España*).

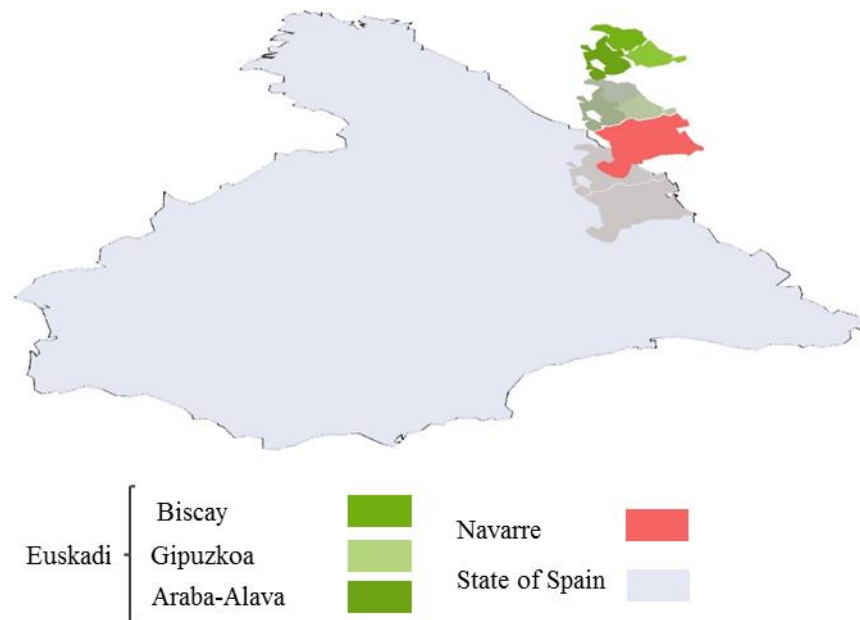


Figure 4: Graphic representation of the legal entities within the Iberian Peninsula.

The institutional contexts selected for this study presented some challenges that were addressed during the process of research. These challenges had two related aspects: the study of each of the jurisdictional context as a distinct case on the one hand, and the study of their relationships and what these are normally interpreted to mean on the other. One of the identified social actors, Euskadi, did not exist as an institution until 1936, and it was therefore not a suitable institutional reference to study prior to that date. This somehow turned what initially was conceived as a ‘case’ into a ‘context’.

This same problem was faced, and possible solutions were proposed, by the generation of researchers who, since the 1970s, tried to make sense of the history of Euskadi. How to conceive and how to approach the study of Basque historiography was explored in an issue of the journal *Historia Contemporanea* (Contemporary History), which

⁸ Basque country has been used at this point due to the inadequacy of using Euskal Herria in this context.

focused on Basque contemporary historiography and which was edited in 1992 by the Universidad del País Vasco.

José Luis de la Granja Sainz (1992), endorsing a positivist perspective, considered that only research done with an ‘objective investigation of the sources and a scientific methodology’ could be considered to be historiography; work not meeting such standards would better correspond to the term ‘historic literature’ (De la Granja Sainz 1992: 210). For De la Granja Sainz this meant that all the history-related work done prior to the 1970s was historic literature, and could be better seen as nationalist or antinationalist propaganda than as historiography. Also, De la Granja Sainz associated the study of Basque historiography to the history of Basque nationalism, thus reducing Basque historiography to the history of Basque nationalism. This overlooked prior uses of terms related to ‘Basque-ness’ as well as the histories of the governing institutions existing in these territories prior to the emergence of Basque nationalism in the 1890s.

Iñaki Agirreazkuenaga (1992) proposed a different solution. He also endorsed a positivist paradigm, yet he disagreed with De la Granja Sainz in the idea that the work before the 1970s could not be considered to be historiography; he thought that in the past both good and bad research existed (Agirreazkuenaga 1992: 259). In the absence of a Basque institutional reality to associate with a Basque historiography, he did not turn to Basque nationalism for a reference. Instead, he conceived Basque historiography as fragmented in a variety of ways, including the political fragmentation of the territories traditionally associated to ‘Basque-ness’ as well as the Basques who went into exile during or after the civil war that began in 1936 (Agirreazkuenaga 1992: 257-266). Basque historiography is conceived as including the historiographical traditions emerging from the variety of social actors who looked at history from a conception of themselves and the territories they wrote about as Basques. There existed historical, territorial governing institutions as well as intellectual articulations of the meaning of ‘Basque-ness’ which are considered to make Basque historiography.

This thesis is not concerned with the study nor formulation of a Basque historiography. Nonetheless, Agirreazkuenaga’s approach is considered appropriate, partly because

good historiography is thought to have existed before the 1970s and partly because it identifies relevant social actors in relation to institutional realities and social action rather than in relation to ideas about society. Within contemporary Euskadi, there are three clear historically significant institutional contexts to associate with jurisdictional histories, governance and distributions of social powers: Gipuzkoa, Araba-Álava and Biscay.

Thinking in terms of Navarre's historiography is less problematic, as it can be associated with the interpretations of history made from the institutional context of Navarre. Sánchez-Prieto & Nieva Zardoya (2004) argue, in fact, that there exists in Navarre a close relationship between historiography, politics and identity (2004: 22). In this sense, the history of Navarre had clear political objectives from its origins, and as a discipline had a close relationship with political structures. The authors find it necessary to highlight the existence of good historiography in Navarre, as they claim that the work of Navarre's historians has been disregarded to favour other historiographic traditions.

3.2. Data Collection

Data collection was mostly influenced by two factors: the social contexts selected, and the institutional realities that needed to be addressed. The most appropriate archival sources for data collection were thought to be the archives of the administrations that had governed the respective institutional contexts.

In order to keep a record of research, archive diaries were written. In them, records of the work done, including descriptions of searched sources, the relevant documents discovered, or copies of important sections of documents were kept. Those documents that were considered especially relevant were scanned, photocopied, photographed or downloaded, depending on the conditions and possibilities offered by the different sources and archives used. In practice, influenced by the different circumstances and possibilities resulting from collecting data from digital or physical sources, significant differences exist between the records from the work done on physical and digital archives. Keeping archive diaries was a central aspect of data collection from physical sources, whereas work done in digital archives involved doing systematic searches in selected sources and keeping relevant material or references to access it in different

software, including compiling documents in relevant files, or keeping relevant references of sources in software such as Zotero.

3.2.1. Data collection in the State's Administration

The goal of researching the state's administration involved mapping out the social transformations produced by the state's constitutional history. This required collecting constitutions from each state and other relevant related material. There are online resources enabling searching for digitalised documents through a number of linked digital archives, from which constitutional texts and other related materials have been consulted. The most relevant ones have been *Hispana: Directorio y recolector de recursos digitales*, run by the Ministry of Education, Culture and Sport of the Spanish Government, which 'brings together the digital collections of archives, libraries and museums...with respect to Spanish digital repositories' (Hispana, <http://hispana.mcu.es/en/inicio/inicio.cmd>, no date); and *Europeana*, which offers access to an ample number of European digital resources. According to the contact information of the website, *Europeana* has its physical offices in the National Library of the Netherlands in The Hague' (Europeana <http://www.europeana.eu/portal/contact.html>, no date). The government of the State of Spain offers digital access to constitutional texts and other relevant documents through a number of online resources,

The *Boletín Oficial del Estado* (State's Official Gazette) has been an important digital resource to study State's legislation. The gazette has been digitalised and is accessible online. From it, state legislation regarding administrative reform that affected distributions of social powers, especially the legislation regarding the four studied territories was consulted. This has been a valuable resource to see how the different organizational conceptions of the state can be associated to different political projects; and further, how these conceptions affected features and practices of the studied territories, and how the latter in some cases responded to state legislation.

Since its creation in 1661 the publication has been given various titles, sometimes more than one title at any one time. Perhaps the name associated with the publication that has the longest history is that of *Gaceta de Madrid* (Madrid's Gazette), used between 1697 and 1934. Other titles used during the studied period include *Gazeta de*

la Regencia de España e Indias (Spain and India's Regency's gazette), from March 1810 to January 1812; *Gazeta de la Regencia de las Españas* (Spain's Regency's Gazette), from January 1812 to May 1814; *Gazeta Española* (Spanish Gazette), from April 1823 to October 1823; or *Gaceta de Madrid: Diario Oficial de la República* (Madrid's Gazette: Republic's Official Diary), from April 1934 to November 1936. These name changes largely correlate with the studied period and with organizational changes associated with constitutional change. The changes in title show a certain relationship between the use of names and conceptions of the state.

Other sources have been the *Biblioteca Virtual Miguel de Cervantes* (Miguel de Cervantes' Virtual Library), in which the Journals of Sessions of Cadiz's Cortes between 1810 and 1813 can be found which drafted and approved the 1812 constitution. *Google Books* has been a useful resource to find and access a surprising collection of nineteenth century publications, including compilations of legislation, history, politics, geography and so on, that have proved to be valuable sources to better understand the jurisdictional, organizational or intellectual features of the state or relevant social actors.

Given the centrality of constitutionalism as a key transformative force influencing the studied puzzle, mapping out the state's constitutional history was thought to be the first important task to carry out. Constitutions were collected and studied. The effort was challenging, as it highlighted the difficulties involved in understanding what constitutional change involved, where and for whom. It became clear that a variety of issues needed to be comprehended in order to make sense of how the different constitutional projects affected different social actors and existing conceptions of society.

3.2.2. Data Collection in Navarre

There have been two main archival resources used in Navarre: the *Archivo General de Navarra* (Navarre's General Archive, from here on AGN); and Navarre Public Libraries' services, especially *BINADI* (Navarre's Digital Library); and the *Fondo Antiguo* (historical section).

These resources have been used differently. The most important resource has been AGN. It is the archive of Navarre's Kingdom's institutions as well as the historical

archive of Navarre's administration once it became an autonomous region of the state during the nineteenth century. The AGN is a rich source of documental data of Navarre's institutions, holding documents dating back to the tenth century. The archive's data are not accessible on-line, and it therefore has to be visited in order to know what exact data could be collected as well as accessing them. Due to the expected depth and quality of the documentation held, as well as due to logistical reasons, it was selected as the first archive to work on.

The first task in the archive was that of understanding the documentation, as well as assessing those useful for the study. This process was facilitated by archivists, with whom the research project was discussed, and who were able to explain the organization of the archive and point to those sections they considered more promising to find relevant data. They also suggested the study of secondary literature produced by researchers who had recently investigated related areas.

The archive contains nineteen main sections, which correlate broadly with the institutional history of Navarre's governing administration. The period relevant to this study coincides best with the history of Navarre's *Diputación* as the main governing institution. Most documentation regarding governance and the administration during this period is kept in the section *Administración Provincial/Foral*, which contains documents between 1841 and 1982. This is further divided in two sections, one of which, that of *Diputación Foral y provincial de Navarra*, was relevant to the study. It contains fourteen sections, each being further divided into a number of sections. The quantity of available documentation to study can be overwhelming. The first of those fourteen sections for example – *Vicepresidencia* – contains three thousand eight hundred and sixty four boxes of documentation. The second – *Hacienda* – has twelve thousand seven hundred and forty boxes. The third – *Administración Municipal-Gobernación* – eleven thousand eight hundred and four boxes. It was therefore necessary to be selective and direct focus to the most promising areas.

Although interesting data were found, a similar problem to that encountered when studying the state's constitutions emerged: that of being able to understand what it all meant in relation to constitutional reforms and conceptions of society. In order to address this issue, greater emphasis was placed on the study of secondary literature,

and some of the scholars referred to by archivists were contacted in order to seek their advice and guidance. The assistance of researchers with expertise in the field such as Juan María Sánchez-Prieto (Professor of Sociology at the Public University of Navarre), Angel García-Sanz Marcotegui (Professor at the Department of Geography and History of the Public University of Navarre), and Emilio Majuelo Gil (Associate Professor of the Department of Geography and History at the Public University of Navarre), needs to be recognised and highlighted.

The process led to an awareness of some of the problems that emerge when conducting comparative historical research, and to the benefits, or necessity, to follow what Michael Mann has called the ‘zig-zag’ method, which involves combining the analysis of primary data with the study of secondary literature (Mann 1993: ix). Increasingly, it appeared that the interpretation of data was rarely guided uniquely by data themselves, as it generally required to be contextualised in relation to historical narratives or theoretical perspectives in relation to which data became meaningful.

3.2.3. Data Collection in Euskadi

Due to the difficulties noted above, and to the higher amount of work that the process had generated, the collection of data in Euskadi was delayed, reducing the time and resources available to collect meaningful data from relevant sources. Three main archival sources were identified for data collection, related to the governing administration of each of the territories forming it. In Araba-Álava, the *Archivo del Territorio Histórico de Álava* (ATHA) was identified; in Gipuzkoa, the *Archivo General de Gipuzkoa-Gipuzkoako Artxibo Orokorra* (AGG-GAO); and in Biscay the *Archivo Histórico Foral de Bizkaia* (AHFB). Although a degree of primary data or descriptions of data held can be accessed online, gathering relevant documentation required working in the archives.

Other important sources to collect data were San-Sebastian’s library *Koldo Mitxelena*, which holds relevant historic documentation, some of which it is accessible on-line. Finally, the documental search engine *Badator*, created by Euskadi’s government to offer access to a number of ecclesiastical and private archives was also used in the search for useful data.

Work on these archives showed additional difficulties that needed to be addressed in order to gather data that would enable systematic comparisons with Navarre. Two factors were mostly responsible. First, the historical relationship between keeping archives and institutional existence. As noted previously, structuring research around Euskadi as an institutional reality had already been a problem, which had been solved by identifying and selecting to structure research around the institutional contexts from which governance had been exercised within each of the three territories forming Euskadi. Nevertheless, studying these governing administrations turned out to solve the problem only as far back as 1878. Before then, governance within these three territories was exercised in different institutional contexts. This problematized the collection of data to make systematic comparisons, because research needs to account with an increasing number of institutional bodies, each containing its own idiosyncrasies and implications regarding who kept data, why and what such distributions of competences between different institutions meant to create particular interests and conceptions of society. It also requires identifying where such data are kept nowadays, as archives may be holding data which are currently associated with public administration, but this may not have been the case in the past.

Secondly, the policies regulating the organization under which data are kept in each archive as well as the different systems each archive offers researchers to browse or search for data. Differences in such matters make it problematic to find data that may enable systematic comparisons. The collaboration of archivists has been essential to locate relevant material.

Some of the problems related to keeping and researching historical archives have been highlighted by Borja Aginagalde (2003), Head of Documentary Heritage of the Basque Government. He has argued that the organization and study of archive material needs to acknowledge the historical and practical character of archives. In this sense, the histories of archives say something about the organizational structures, relationships and features of society. What archives' histories may be able to say about the societies and processes that produced them easily becomes lost if archives are organised or studied in relation to current conceptions of what an archive is and the implications this has regarding what society is.

As a result, the better the implications and problems related to working in the archives were known, the more it increased the necessity to adapt the design of the original research plans to the circumstances, opportunities and difficulties emerging during data collection. Time constraints also meant that a more refined approach to collecting data than that performed in Navarre's archive was required. In order to be able to compare the evolution of the governing administrations of these territories, three epochs were selected for primary study: at both possible chronological extremes of the researched institutions, and a time in the middle – roughly the 1880s, 1900s and 1930s. In order to assess the development of these administrations those sources that had proved effective during data collection in the context of Navarre were prioritized, including budgets of the administration, departmental memoirs and internal regulations. Additionally, archives were explored in search of unique data that each may have contained due to territorial idiosyncrasies or particularities of an archive. Work in the archives of Gipuzkoa and Biscay was prioritized.

In Gipuzkoa, the AGG-GAO has three main sections as well as other smaller sections. One of the larger sections, *Juntas y Diputaciones*, is formed by the documents generated and received by the territory's main political governing local institutions. It appeared, therefore, the most relevant. A meeting with an archivist allowed for further narrowing down of the search for relevant data to more concrete areas or specific boxes. It also served to identify related secondary literature.

The archive contained a rich amount of documentation regarding the *fueros*, the legal and institutional reference around which the territory's self-governance and legal rights were articulated. Especially interesting was a compilation of files under the title *Departamento Central Fueros*, which contained a record of those cases that the administration of Gipuzkoa considered to relate to their legal rights. These files started to be created in 1885 and continued until the 1930s. There would have been files numbered from one to one hundred and forty, though not all of them were found. Each contained a different amount of documentation depending on how long each particular case took to be resolved and the amount of documentation that the process generated. They are kept in sixteen different boxes, each containing different number of cases depending on their length and subject. Although the boxes are loosely kept with a sense of chronological order, they also seem to be organised according to subject matter.

Locating and accessing these files was only possible due to the collaboration of the archivist, who printed lists with their descriptions and signatures.

The archive of Biscay was searched differently, as it required following the options provided by the search engine facilitated to find data, instead of allowing browsing through the organisation of the archive itself. Even though a description of the organization of the archive is provided, the search engine allows searching for specific words, topics, signatures or other parameters across all the sections, showing where the relevant material is located. This provided some advantages as well as created some inconveniences, as which data were found depended on the references set in the search engine.

Given the often argued relationship between industrialisation and nationalism, and due to Biscay's rapid industrial growth between the 1870s and the 1890s normally associated with the emergence of Basque nationalism, an important effort was directed towards collecting data able to show relationships between political governing authorities, industrialists and social conflicts that may have implications for theoretical arguments. The collected data suggested that a main focus of interest of industrial and economic organizations was that of the state administration and the commercial and economic networks developing at state level. The peculiarities of the interests of these elites are suggested by the emergence of organizations of industrialists who sought to influence state policy, and their participation in wider organizational structures of industrialists in defence of their interests. This interest towards state politics may be partly related to the limits of the *Fueros* and the Economic Agreement. These traditionally linked legitimacy to legislate over issues already contained in the traditional law (or issues that had been negotiated), and the legitimacy to legislate over issues not addressed in traditional law was claimed by State authorities. Some issues, importantly many of those associated with the provision of liberal rights in industrialised societies, were legislated by the government of the state.

The archive in Araba-Álava did not show content in the initial overview that stood out as particularly relevant at first sight. Therefore, a key selection of required data were listed in order to be able to compare key aspects of the evolution of its administration and collected from the archive with the help of an archivist. In retrospect, this decision

may have contributed to obscure the significance of the case of Araba-Álava, which may be a good reference to better understand how institutional practices and linguistic uses may have combined to influence the creation of the currently existing institutional contexts and distributions of national and political preferences among their populations. The case of Araba-Álava is in this sense interesting because even though it forms part of institutional Euskadi, it resembles in the linguistic and political profiles of its population more to Navarre than to Gipuzkoa or Biscay.

However, during data analysis it became clear that the collected data included social actors, events and issues that formed an excessively broad context for a doctoral thesis. Therefore, the analysis of some materials were prioritised and others discarded. It was considered most relevant to focus the analysis around the need to better understand the processes that led to the creation of Euskadi as a legal entity, and hence the focus was directed to that end.

3.3. Data Analysis

Two related methods have guided the analysis of primary data. First, a study of each document: identifying its relevance, in relation to what issues and social actors. Second, recording such features in relevant electronic tables that represented timelines for different institutional contexts and/or issues. This produced tables that displayed chronologically ordered lists of relevant documents regarding particular institutional contexts and/or issues. Such tables enabled the elaboration of analytical descriptive narratives around particular cases or issues. Work with secondary literature has produced rather historiographic analyses in the form of essays. Finally, the analyses of data have been structured in four chapters.

3.3.1. Analysing the State: Chapter Four

The study of the context of the State was initially approached in relation to two related aspects: understanding the state as a type of organization that evolved during the studied period, and comprehending what this implied for different social actors and their conceptions of themselves and the State.

Regarding the analysis of primary data, this involved the study of constitutions and state legislation that affected Euskadi and Navarre, especially legislation regarding

provincial and municipal government. Although state legislation is a good source to analyse the evolution of the State as a type of organization, it needs to be used with caution. On the one hand, law cannot always be used as a merely descriptive and unbiased source of information. On the other, it cannot be assumed that the issue of law resulted in the social change sought by state authorities.

This becomes particularly relevant in the cases of Navarre and Euskadi, as their jurisdictional authorities sometimes interpreted that state legislation did not affect them, as such competences were theirs to manage, being protected by the *Fueros*, and they could on occasions quietly ignore the law. When State authorities monitored or demanded legal change, jurisdictional disputes over the legitimacy of one or another authority to govern over the issue at hand could emerge. An event taking place in 1892, for instance, suggests the important degree to which this might have happened, and also indicates the possibility that a variety of factors could have led to the practical application of state law.

On the 20th of September of 1892 a Royal Order issued by the Ministry of Governance was directed to ‘correct’ a legal ‘abnormality’ that had been happening in Navarre between 1882 and 1892. During that time, territorial deputies in Navarre had been elected in relation to constituencies that no longer legally existed. The issue had been denounced by Navarre’s Governor (an authority appointed by and representing the State’s Government in Navarre). However, two rather contrasting attitudes can be identified in the legal text; the concern of the Governor over the rightful exercise of law on the one hand, and an attitude, which may be attributed to the Ministry of Governance, that combined the willingness to correct the abnormality with what seems to be a desire to cause as little trouble as possible in doing so. The penultimate paragraph stated that the illegal practice had to end, though it noted that it had not lead to complaints other than that made by the Governor, and that it had to be corrected ‘in the way that produces least disturbance’ (my translation⁹) (Real Orden de 20 de

⁹Considerando que si bien desde el año de 1882 hasta la fecha se han venido verificando en Navarra las elecciones bienales para la renovación de su Diputación provincial de manera anormal en lo relativo a la división de distritos, a pesar de lo cual no tiene conocimiento el Gobierno de que, antes ni ahora, haya protestado nadie de la expresada anomalía, que de debe naturalmente corregirse en la forma que menor perturbación produzca

Septiembre de 1892. Published in the *Gaceta de Madrid* on the 30th of September 1892).

The effect that State legislation had during the nineteenth century in different locations needs to be checked from other sources, otherwise one cannot accurately understand what kind of impact law had, where, and among what social actors. Relatedly, a single legal document cannot be assumed to necessarily offer an accurate description of social structures. This comes to the fore, for example, in the controversies generated around the *Novísima Recopilación* (1805), the latest compilation of laws published by the monarchy of the State of Spain before constitutionalism.

Before constitutionalism, these compilations were the most similar thing to a constitution. These legal compilations attempted to ‘at least compile the actual royal law and to spread it, facilitating access to that knowledge to judges, officers, attorneys and jurists in general’ (my translation¹⁰) (Tomás y Valiente 2005: 265). They showed the political and jurisdictional features of the law and how the exercise of social powers was distributed among the recognised legal actors and institutions. Such compilations were not a unique feature of states. Navarre, for example, had its own compilations; the last official one was published in 1735 (Santamaría Ansa 1956: 95-101).

The *Novísima Recopilación* (1805) attempted to portray a social order dominated by the monarchy and the church that matches dominant conceptions of absolutism as a social system characterised by the despotic power of the monarchy in collusion with the Church. This was achieved by compiling laws in relation to topics that appeared to portray the legal structure of the State, which was presented in a hierarchical order of importance. Nevertheless, this image created in the compilation may better illustrate the ambitions of the monarchy than the legal realities of the state.

This is partly suggested by the controversies that the compilation generated, which received more criticism than praise (Tomás y Valiente 2005: 397). Francisco Martínez Marina was one of the most important critics, and published a book arguing his position (Tomás y Valiente 2005: 398). One of the main criticisms of Martínez was that the compilation presented law as forming branches, when in fact the laws

¹⁰ se trataba en principio y como mínimo de reunir el Derecho real vigente y de difundirlo facilitando el conocimiento del mismo a los jueces, oficiales. Abogados y juristas en general

compiled within each branch were not all of general application, but were instead a mixture of laws and decrees that regarded different legal entities. Part of the book was dedicated to showing how different laws that were presented in relation to the State were misrepresenting the legal structures of the State, as such legislation affected particular locations, issues or parts of the population (Martinez 1820: 210-241). Arguably, this compilation had been edited with a greater emphasis on its political ambition than on its utility as a working tool for practitioners of law.

On top of these, collected data contained many references that were unknown, producing another obstacle to interpret meanings of social action solely in reference to primary data, and increasing the necessity to study secondary literature. The study of secondary sources was necessary to better understand social contexts and the kind of issues that these generated.

Nevertheless, rather than creating a stable referential frame to enable interpretations, secondary sources have shown the existence of distinct historiographical traditions, which interpret social phenomena and their meanings differently. Especially in relation to the meanings of the *fueros* and carlism, secondary literature does not offer convincing frameworks in relation to which the meanings of primary data can be inferred.

Although secondary literature did not provide a stable framework that could help the interpretation of primary data, it appeared to show the extent to which interpretations of the *fueros* may have influenced the production of the meanings attributed to key social conflicts, such as the Carlist Wars. Moreover, interpretations of the *fueros* made from secondary sources at the turn of the twentieth century were identified in association with the ideological and political roots of the national identities that became most popular in Euskadi and Navarre.

The chapter finally engages in an analysis of secondary literature studying carlism and the *fueros* in order to bring to the fore problems related with approaching secondary sources as reliable sources of information, and to notice the importance that interpretations of the *fueros* could have had in the development of popular modern identities. There are many different sources that can be used in order to illustrate the different interpretations of the *fueros* and carlism that existed during the nineteenth

century. This comes to the fore in the five volume bibliography compiling publications related to the Carlist Wars across Europe published between 1814 and 1936 by Jaime Del Burgo (1953).

This five volume bibliographic dictionary compiles world-wide published secondary sources interpreting carlism and/or the Carlist Wars, which shows the level of interest and debate that interpreting these wars acquired throughout Europe during the nineteenth century, as well as the resulting large amount of secondary sources that exist and can be used to elaborate an overview of the studied processes. There are therefore many sources that can be used in order to provide an overview of the context. This thesis' focus in British commentators is justified in two reasons:

The first one is the strong involvement that the British government had with the politics of the State of Spain during the first half of the nineteenth century. The British government aided that of the State of Spain in the wars it faced in the Peninsula, and even promoted and enabled the creation of what is often considered the first constitution of the State in Cadiz 1812 (Crawley 1939: 176). On the other hand, it aided secessionist movements in the Spanish colonies in America.

The involvement of the British government not only had important consequences to the way that the Spanish Empire was transformed into the Spanish State, but it also meant that British politicians and commentators of the time had close knowledge of facts on the ground as well as they were aware of some of the interests that were played out in the events, including their own.

The second reason is that the debate shows the centrality that interpreting the *fueros* (interpreting legal relations), carried to how the State was understood and the ramifications one or another interpretation had for debates over political liberty and social justice. Interestingly, the legal debate about the *fueros* led British politicians in the 1830s to interpret the war in quasi-nationalist terms more than fifty years before the emergence of Basque nationalism and the creation of a modern nationalist conflict. This shows the centrality that interpreting law may have had in the ideological choices preferred in Euskadi and Navarre.

The chapter suggests that up to the late nineteenth century traditional interpretations of the *fueros* remained strong, and similar interpretations of the *fueros* dominated the views of many inhabitants in both Euskadi and Navarre. Although it is not true as a categorical assertion (since it would not be true for everybody), it seems right to associate each of these positions with traditional interpretations of law promoted by the different jurisdictional interests of State and Foral governance.

The debate between the Whig government and the Tory opposition illustrates how influential resulted at the time interpretations of the *fueros* and of carlism, bringing to the fore its centrality in State building processes and in defining a State out of Empire. The debate also illustrates that legal discussions about the *fueros* – what these were in principle and in practice – and how populations' views and interests may have been affected by different conceptions of the *fueros*, could lead to debates about what type of state regime represented social justice and political liberty, that acquired quasi-nationalist character half a century before modern nationalist conflicts would emerge in the State of Spain.

During the late nineteenth century key social changes associated with modernity took place. Together with them, the meanings of the *fueros* were reinterpreted. Reinterpretations of the *fueros* made in Navarre and Euskadi by key intellectual and political figures, such as Sabino Arana and Victor Pradera, rest beneath central ideas that sustain the modern national identities that became most popular in these territories. This suggests that modern national identities in Euskadi and Navarre have developed in relation to conceptions of society that departed from traditional conceptions of the *fueros*.

Finally, the chapter looks at contemporary studies of carlism, and argues that despite important progress made from research performed from a variety of theoretical and methodological perspectives, current discussions about what carlism was or was not closely resemble those taking place in 1830s Britain. This could be being partly due to the rather covert influence that current understandings of law may be producing in analyses of society and the meaning of social action.

3.3.2. Interpreting Meanings of Jurisdictional Behaviour: Chapter Five

This is the first of three chapters analysing primary data. The three work together promoting an interpretative approach that brings to the fore the influence that interpretations of law (the *fueros*) exercised shaping individuals' views and/or actions during the studied period. The resulting analyses differ from those made from more traditional perspectives, such as those endorsed by Alfonso de Otazu (1986) or Molina Aparicio (2005).

Generally, such interpretative approaches contain the assumption that social actors' conceptions of law were primarily influenced by their socio-economic profiles. The focus of analysis is often placed in the universal nobility enjoyed by the populations of Biscay, Gipuzkoa and parts of Navarre; in the tensions regarding foral reform that emerged at the turn of the nineteenth century between urban and commercial centres such as Bilbao or San Sebastian and their respective territorial authorities; or in the commercialization of land tenure and the social disputes that such a process created.

There are three important reasons that have led me to endorse a different interpretative perspective. The most significant difference is that I do not interpret the meaning of social action primarily in relation to the sociological profiles of the studied social actors. This does not attempt to suggest that different sociological profiles may not influence individuals' preferences. However, it implies considering interpretations of law not uniquely a consequence of interests produced by sociological profiles. Interpretations of law are also considered to be an influential factor, together with sociological profiles, shaping people's views and attitudes regarding state politics. In my view, sociological profiles need to lose their primacy as the only or necessarily the most influential factor influencing individuals' conceptions of the *fueros* and of the state at all times, all places, and with the same meanings. What legal relations of one or another kind meant, where, to whom, and why needs to be re-considered.

The first reason relates to the fact that historical continuities associated with interpretations of law emerge across periods of time in which social actors with different sociological profiles could have held office, democratically elect political leaders or lobby policy making. This suggests that sociological profiles may have not

been a central factor shaping interpretations of law. This is particularly true of the studied period, in which the traditional customs that had been used to govern these territories suffered important changes.

These changes included, although at different times in the contexts of Navarre and Euskadi, reforms in issues such as how political representatives were elected, who could be elected, who could vote, who had legislative powers, who and how owned the land, rapid industrialisation, the formation of working urban classes, the emergence of financial institutions, or the appearance of new possibilities and interests to lobby policy making. Despite the occurrence of such social changes, historical continuities can be seen to re-emerge in historical periods in which the social system had different features.

The second reason is that, in my view, the tendency to interpret the meanings of social action in relation to socio-economic profiles is partly the result of the influence exercised by legal positivism and simplistic liberal narratives of European history. These tend to portray eighteenth and nineteenth centuries' social conflicts as a clash between an emerging urban and commercial class, a bourgeoisie leading the Enlightenment, with a backward looking status quo dominated by monarchies, nobilities and the church and articulated over feudal economic relations. The social conflicts associated with the transition from absolutism to democracy get intrinsically linked to socio-economic differences. Therefore, the interest in interpreting primary data in reference to socio-economic profiles can be associated with the influence exercised by partial and problematic theoretical perspectives.

At the same time, an emphasis on sociological profiles as a key factor causing interpretations of law can lead to obscuring the role and significance that interpretations of law might have had as a causal factor shaping social actors views and actions.

The third reason has to do with the risk to incur in anachronisms that endorsing such approaches produce. This can happen for example, when the meaning of social actors' discourse and action is interpreted in relation to ideological, legal and political contexts existing today. An instance of this can be seen in the work of Molina Aparicio (2005).

He judges eighteenth and nineteenth centuries' social action in Euskadi in relation to currently existing ideas and legal and political structures.

This can be seen when he argues that the discourses of egalitarianism that existed in Euskadi during the eighteenth and nineteenth centuries misrepresent the social reality that truly existed. In his view, the foral territories (he makes the claim in relation to Biscay), constructed a 'society that was articulated as a community of violence and exclusion to anyone lacking local ethnicity' (my translation¹¹) (Molina Aparicio 2005: 70). He judges the past in relation not to social structures and ideas existing back then, but in relation to a conception of the past produced in the present.

The conception of the past supporting Molina Aparicio's argument can be associated with the historical narratives created by legal positivism or simplistic accounts of liberalism. This comes to the fore when he argues that 'foralism glided over the great humanist conquests of the Enlightenment: Hobbes' conception of the State, Voltaire's freedom of thought, Montesquieu's divisions of powers, Rousseau's pact democracy' (my translation¹²) (Molina Aparicio 2005: 80). His evaluation of what constituted a truly progressive attitude, and the ideas of society that are to be properly associated with forward looking interests, are based on legal positivist conceptions of law or accounts of European history made from simplistic liberal narratives.

These three important reasons have led me to choose a different interpretative perspective; one that attempts to show the important role that interpretations of law could have played influencing social action and ideological developments. This does not mean that data analysis overlooks the socio-economic backgrounds of the social actors studied. In fact the three chapters bring to the fore the limited impact that socio-economic differences have had shaping interpretations of the *fueros* in Euskadi and Navarre during the studied period. The focus of the chapters however, is not that of engaging in an in-depth analysis of the socio-economic profiles of the individuals who participated in the studied social action, instead, the chapters attempt to highlight the

¹¹ Esta sociedad quedaba articulada como una comunidad de violencia y exclusion del extranio a la etnia propia, "vizcaína"

¹² el foralismo acabo planeando por encima de las grandes conquistas humanistas del siglo de las Luces: el concepto de Estado de Hobbes, la libertad de pensamieto de Voltaire, la division de poderes de Montesquieu, la democracia pactista de Rousseau

presence of another factor influencing social action: interpretations of law and the obstacles that legal practices and structures might have created for individuals to govern according to their own ideologies.

This first chapter attempts to highlight the existence of important factors influencing the views, motivations and actions of key social actors identified in primary data that are generally unaccounted for from modernist theoretical hypotheses. The analysis made attempts to contextualise the meaning of key social change in relation to interests and motivations that relate to the circumstances faced by social actors, which included (not necessarily uniquely) concerns over belonging, legitimacy, economic interests, progressive or conservative attitudes, but also analysis of the circumstances and possibilities within the social context in which they lived, including local as well as global contexts.

The chapter brings together documents collected in sources related to the jurisdictional contexts of the State, Euskadi and Navarre. The events and documents analysed have to do with social action and analyses of social phenomena that took place during the first half of the nineteenth century, and which are normally considered to be examples that support one or other theoretical perspective.

It is divided in three parts. The first part reviews data showing that during the 1830s the *fueros* were generally defended in Euskadi and Navarre by both carlists and liberals. The second part analyses two documents: 1) the process opened by the city of San Sebastian's jurisdictional authorities to abandon the jurisdiction of Gipuzkoa in 1832; and 2) a justification to negotiate the reform of the *fueros* in Navarre that turned a kingdom into a province (Yanguas y Miranda 1838). The third part points towards key differences that can be identified in the approaches to the organization of the state displayed by symbolic figures of carlism and liberalism in the first part of the nineteenth century: José Canga Argüelles and Tomás de Zumalacárregui.

3.3.3. Analysing Navarre: Chapter Six

Chapter six offers a narrative of the historical evolution of Navarre's governing administration between 1841 and 1936. It mostly uses data collected in Navarre's archives, and the analysis offers a narrative of change within a defined institutional

context, producing a narrative that resembles traditional historical research more than the other chapters.

The analysis of the data focuses in mapping out the evolution of the governing administration, in identifying key features and developments, and in evaluating how this affected distributions of social powers. The analysis suggests that in general, Navarre's own traditions and practices were considered to be key references to associate with jurisdictional legitimacy and good administrative practice. Governance, although adapted to the circumstances and pressures of different times, was exercised following similar patterns, largely defined by a constant reconciliation between traditional jurisdictional practices, the desire to achieve modernity and the necessity to comply with the demands produced within the larger legal context of the State.

Interpreting the meaning of the main characteristics identified has been far from straightforward. The meaning of these factors is disputed by competing historiographical traditions, often implying accounts and leaving important issues present in data unaddressed. These problems in interpreting the political meanings of jurisdictional behaviour relate to the meanings associated with labels like 'liberal', 'carlist' or 'moderate', which seem to take their meanings more in relation to the State's politics than to that of Navarre's.

3.3.4. Analysing Euskadi: Chapter Seven

This chapter attempts to develop an interpretation of the jurisdictional history of Euskadi, seeking to make sense of it not in relation to what Euskadi is thought to be by one or another social actor, but in relation to what it has been in practice, and how this has influenced its history.

The analytical approach made for Navarre has not been followed. This decision has been partly influenced by the jurisdictional idiosyncrasies of Euskadi, which present a more complex landscape. In the context of this thesis it appears to be more productive and meaningful to direct focus to the social processes and behaviours that appear to have been central to the creation of the legal framework of the Economic Agreement, which has been since its conception associated with that of the *fueros*, and which led in 1936 to the creation of jurisdictional Euskadi. In order to do so, documents collected in the archival sources of Gipuzkoa and the State have been analysed.

3.4. Validity in Academic Research

A key methodological feature validating research is empiricism. Arguably, this is generally agreed across academic disciplines and theoretical perspectives today. Despite this apparent agreement regarding the validity of empiricism, there is no similar agreement regarding what can be known through its exercise; epistemological differences have carried important implications for how validity in empirical research is justified. It has been argued that the ‘definition and the way to establish of validity have evolved as epistemology of science changed’ (Çakir 2012: 664).

In the history of the social sciences two rather opposite epistemological extremes, with a number of ‘in-between’ positions, can be associated with distinct approaches to validate empirical research. On the one hand positivist perspectives, resting on a conviction that objective knowledge of social reality can be achieved, tend to argue that rigorous methodologies need to be developed, or the contextuality of knowledge differently conceived, in order to overcome problems of subjectivity and bias (e.g. Radcliffe-Brown (1958 [1931])); Carl Gustav Hempel (1966); Harold Kincaid (1996)).

On the other hand, from perspectives such as post-positivism or social constructivism, it is normally considered that objectivity is not achievable, and it tends to be argued that all that can be known with certainty are social actors’ perceptions of it. The idea of knowledge is often associated with accurate descriptions of subjectivities, or with descriptions of social contexts created by a number of subjective views. The validity of research, although in cases may include rigorous methodological features, tends to be associated with the studied subjects’ acceptance of research conclusions, or with the efficacy that research may have in contributing to the accomplishment of a particular social goal, such as in Action Research (e.g. Michael Root (1993); Steinar Kvale (1996)).

A perspective that may be considered to be between these two extremes is realism. Hammersley and Gomm (1997), for instance, acknowledged the problems involved in claiming certainty over knowledge, yet they still considered it beneficial to have ideas of truth and objectivity as references and goals of research; the community of researchers being the most appropriate social body to evaluate the validity of research.

In relation to such general epistemological concerns, this thesis endorses a realist perspective.

3.4.1. Validity in Historical Research

During the last few decades, new approaches and interests have emerged in the study of history. Peter Burke (1991) has called this tendency ‘new history’. Traditionally, validity in historical research has been associated with a number of features, including conceiving history as able to describe objective truths; as a discipline mostly concerned with politics – politics meaning the state; in relation to a portrait of society made ‘from above’; in the use of official documentation as the primary source of data; and with more interest in creating historical narratives of particular subjects than in mapping out features of society (Burke 1991: 2-6).

During the last few decades, the above has been questioned, and this ‘new history’ has proposed new interests, views and procedures. Contrasting with traditional historical scholarship, the influence that social contexts and theoretical ideas may have in historians’ interpretations of data has been recognised; history has no longer thought to relate uniquely to politics, nor politics solely to the state. Instead, politics may be encountered in all domains of social life, and historical research can be done about any topic related to human activity. History can also illustrate visions of society made ‘from below’ as well as ‘from above’. Also, there is more interest in mapping out social structures than in producing narratives, and broader and more varied sources to collect documentation may be used (Burke 1991: 2-6).

Such novel historical perspectives have raised significant methodological concerns. These partly relate to not taking the state as the necessary reference to focus research, which has produced new needs to justify the selection of cases, the use of relevant sources to study different cases/topics, or how to analyse data without distorting the historical contexts in which they were produced (Cohen & O’Connor 2004: x). The new historical interests have not arrived with rigorous, neat and recognisable methodological practices (Cohen & O’Connor 2004: xi).

Comparative historical research produces its own particular tensions and contradictions with traditional historical scholarship, especially with traditional conceptions of the validity of empirical historical research (Haupt & Kocka 2004).

Haupt & Kocka (2004) have argued that the more cases are compared, ‘the less possible it is to work closely with primary sources, and hence the greater our dependence upon the secondary literature’ (Haupt & Kocka 2004: 25). This necessity to rely on a combination of primary and secondary sources means that a comparative historical approach is always partly at odds with traditional conceptions of validity in historical research (Haupt & Kocka 2004: 25).

Haupt & Kocka consider that both the ‘risks’ as well as the ‘benefits’ generated by comparative historical research should be recognised. They propose minimising risks by selecting the smallest possible number of cases to compare, two often being selected by comparative researchers (Haupt & Kocka 2004: 26). The benefits of taking a comparative historical analysis include making researchers more aware and reflective about the selected cases and the meanings of these choices. This can lead to a constant revision of the methodological choices made, and may result in important methodological changes during the process of research (Haupt & Kocka 2004: 33). In contrast with research that is uniquely concerned with understanding a single isolated case, which may be described as an unproblematic social unit, a comparison of cases may show ‘that the very same phenomenon can have different meanings in different contexts’ (Haupt & Kocka 2004: 30).

3.5. Research Ethical Procedures

The process of research has followed the ‘Postgraduate Research Ethical Procedures’ set by the School of Social and Political Science at the University of Edinburgh. This has three different levels, each identifying a different level regarding the risks involved in different research proposals.

The ethical assessment made of the research proposal did not identify major ethical issues, and the risk of research was set to level one. The absence of major direct ethical implications to the well-being of individuals or institutional participants in the research has not led to neglecting a diversity of potentially damaging ethical aspects that emerged during research.

Although primary data were uniquely collected from archives, data collection has involved the participation of persons as well as institutions, including archives, archivists and local scholars who were contacted personally. In all cases each

individual or institution willingly participated in research and transparency about the purpose and methods of research has been maintained in interactions with all participants.

The process of research, its developments, problems and progress, have also been communicated to the relevant institutions within appropriate time-frames and with necessary detail. There has not been at any stage of the research an instance in which the integrity, reputation, safety or confidentiality of any of the participants has been at risk for one or another reason. Once the thesis is complete, copies will be handed to the persons and/or institutions that have collaborated and requested it.

3.6. Conclusion

The study has endorsed a comparative historical perspective, which has brought to the fore the extent to which theoretical perspectives and methodological choices overlap in the historical study of nationalism. Often, designing research in relation to contemporary social realities and theories results in anachronisms, as the past is studied in relation to presently existing entities and ideas, whereas in the past these, if they existed, may have meant different things.

This became especially noticeable in the study of the institutional context of Euskadi, highlighting how the plan of research had been influenced not only by identified relevant social actors, but also by the ways in which these actors exist and tend to be thought of today. The approach, as it identified relevant social actors in relation to their legal existence, increasingly found the need to address these methodologically. As a result of this methodological recognition, the lack of theoretical space to make them meaningful became increasingly apparent and problematic.

Theories of society that overlook these methodological niches risk overlooking the meanings that social action and social change had in these social contexts. In so far as theory does not take these into account, historical research is likely to result in contradictions when carried out in certain contexts. This can be interpreted to suggest that research carried out from very rigid methodologies anchored in theoretical presumptions of society risk overlooking important nuances in the meanings of social action that are present in historical records and histories of knowledge and ideas.

In the same way in which taking Euskadi (or arguably any currently existing jurisdiction) as a subject of historical study can become problematic, analysing class conflicts and issues of social equality in relation to contemporary ideas may be similarly problematic. This is not because such issues may not have been influential, but because the meanings of social struggles that had to do with such issues could have taken place within the social structures influencing the social praxis that existed. These could have influenced conceptions of personhood, society and social relations and the meanings that social change may have had in different places or among different populations.

4. Secondary Literature and Ideological Developments

The interpretation of primary data requires the study of secondary literature. This facilitates building an image of existing social structures and a better understanding of how these influenced key social action associated with processes of modernisation and nationalism. However, in the cases and times studied, rather than sketching a stable referential framework in relation to which the meaning of collected data could be interpreted, secondary literature showed the existence of competing interpretive approaches portraying social structures and their influence in social action differently. Significantly in relation to meanings of carlism and of the *fueros*, secondary literature does not offer robust interpretations in relation to which the meanings of primary data can be understood.

Secondary sources present significant problems when used as unbiased sources of data to describe social structures and meanings of jurisdictional action. In contrast, it may be an interesting means to become more aware of the influence that interpretations of the *fueros* made in secondary sources may have had in shaping Navarre's and Euskadi's ideological trajectories.

Arguably, since the first Carlist War and until the late nineteenth century, traditional interpretations of the *fueros* remained strong, and similar interpretations of the *fueros* dominated the views of many inhabitants in both Euskadi and Navarre. Reinterpretations of the *fueros* made in Navarre and Euskadi during the Restoration correlate with changes in Euskadi and Navarre's jurisdictional and ideological trajectories. These interpretative changes occurred at a time of significant social change, the epoch in which modernisation is thought to have taken place. The correlation may illustrate what features contained in reinterpretations of the *fueros* may have become popular in particular locations and among particular types of social actors.

4.1. The *Fueros* and Carlism

Fuerismo (Fuerism) is a term often used to identity a historiographical tradition defending the existence, significance and validity of the *fueros* in Navarre and Euskadi.

This tradition preceded the nineteenth century and carlism. Fernández Sebastián (1990) has argued, for instance, that it has a long historical trajectory over four centuries, from the sixteenth century to the emergence of Basque nationalism in the late nineteenth century (Fernández Sebastián 1990: 62). This tradition combined a jurisdictional and institutional angle interpreting the legal validity of the *fueros* with ‘historians’ perspectives of ideas and culture’ (my translation¹³) (Fernández Sebastián 1990: 64). Fernández Sebastián identified two contrasting traditions of interpreting the *fueros*, which start showing the difficulties associated with interpreting the meaning of defences of the *fueros*:

a) a traditionalist vision, which makes equivalent the maintenance of the *fueros* with the preservation of religion, the healthy inequality between intrinsically different groups, pure patriarchal customs of an idealized rural life etc...[and]...b) a progressive vision, leftist, which will *a posteriori* associate the foral system with features of liberalism, democracy, republicanism, federalism or communism, depending on the case (my translation¹⁴) (Fernández Sebastián 1990: 64).

Regardless of the long defence of the *fueros* over centuries, the turn of the nineteenth century tends to be presented as a period of social crisis (Feijóo Caballero 1991: 17), equally affecting foral and absolutist regimes. Any potentially existing factor influencing defences of the *fueros* tends to be watered down among the weight given to the socio-economic factors hypothesised from modernist perspectives. This tendency contextualises social actors’ views about the *fueros* more in relation to historical narratives and meanings of European states than in relation to the narratives of foral historiography. Interpreting the meanings of the *fueros* in relation to state-centred historiographical traditions produces an important problem.

The particular features of the war, and the defence of the *fueros* made by carlists when their ideas were visible in political action, have created a significant link between defences of the *fueros* and carlism. This is problematic. Carlism and defences of the

¹³ la perspectiva de los historiadores de las ideas y de la cultura

¹⁴ a) una visión tradicionalista, que hace equivaler el mantenimiento del fuero a la preservación de la religión, la saludable desigualdad entre colectivos intrínsecamente diferentes, las costumbres puras y patriarcales de una vida rural idealizada etc...b) una visión progresiva, izquierdante, que atribuirá posteriormente al sistema foral caracteres de liberalismo, democracia, republicanism, federalismo o comunismo [sic], según los casos

fueros were different things, and the study of one cannot be thought to represent the other. Nonetheless, in so far as the defence of the fueros is associated with carlism or conservatism, interpreting defences of the fueros has little theoretical space to become meaningful other than via carlism or conservative attitudes opposing progressive views.

The crisis faced by absolutist and foral regimes is normally argued to have ended with the consolidation of constitutionalism in the late 1830s. Constitutionalism created a novel institutional context, including important legal and economic reforms, which would have ended the crisis generated by the absolutist regime. However, constitutionalism did not result in a generally agreed conception of the fueros. Instead, the debates over the fueros and their social meanings would continue.

In this new context, debates over the meanings of the fueros developed through debates over the meanings of carlism. What carlism was or was not, what the carlists defended and why, became the centre of political and academic debates since the emergence of carlism in the 1830s. Right from its origins, two rival interpretative perspectives emerged, influencing their differences; contrasting interpretations of the type of social structures the fueros created and the extent to which the defence of the fueros motivated the support to carlism in Euskadi and Navarre.

4.1.1. The Origins of Carlism

Carlism is a term used to refer to those individuals and organizations that supported the legitimacy of Carlos (1788-1855), the brother of the King Fernando VII (1784-1833), to succeed him as king of the Spanish monarchy. Although the term itself started to be used in the 1820s (Aróstegui et al 2003: 15); its use acquired the meaning and dimension it tends to be described with when the king died in 1833. Until 1830 Carlos had been the successor to the throne. In 1829 the king's wife became pregnant, and a legal reform – 31st of March 1830 – reinstituted women's right to reign, taking away Carlos' immediate right to become king. He never accepted this and continued to claim his legitimacy to the throne. When the king died, the two pretenders (and/or their followers), claimed the legitimacy of their preferred pretender.

If carlists were those supporting Carlos, *cristinos* were those in support of the legitimacy of the king's daughter, Isabel II (1830-1904), materialised in the Regency

of her mother, Maria Cristina (1806-1878). The dispute between these two dynastical lines was never entirely settled, and has continued until today. Carlism currently exists in the form of a political party, the *Partido Carlista*. Jordi Canal (2000), argues that the long existence of carlism is partly caused by its capacity to adapt to changing political landscapes (Canal 2000: 17).

Although carlism is ultimately defined by support for the legitimacy of a pretender to the throne of the Spanish Monarchy, the social conflicts that developed during the nineteenth century in relation to uses of the term carlism are rarely interpreted as having taken place solely around a dynastical dispute. In this sense, interpreting why some social actors supported carlism for reasons other than purely dynastical preferences, has been debated since its emergence in the 1830s, and it continues to be debated today.

In 1837, the Major Herbert Byng Hall, a British military official who had been fighting in the first Carlist War, stated that ‘(a)s regards myself, I am far from believing that the rising of the great mass of the Carlists, which first took place at Bilbao in the month of October, 1833, had its origins in the actual wish of establishing Don Carlos on the throne of his ancestors, although such is generally believed to be the case, – and in some measure it is correct’ (Byng Hall 1837: 330). In the twenty-first century, Julio Aróstegui, who has been argued to be one of the key figures that led the ‘historiographic renewal’ of carlism since the 1970s (Rubio Pobes 2005: 304), stated, together with other key carlism scholars, that ‘carlism was always more, or much more than the whole of the followers of a particular dynastical option’ (My translation¹⁵) (Aróstegui et al 2003: 16). Today, the Carlist Party on its official website does not present its political project in relation to a line of succession, instead, it states ‘The Carlist Party is a political, democratic and popular organization that fights for replacing the current Spanish State, of liberal-capitalist structures, by a new socio-political frame based in the free confederation of the Peoples of the Spains’ (my

¹⁵ el carlismo fué siempre algo o mucho más que el conjunto de los seguidores de una determinada opción dinástica

translation¹⁶; their own emphasis) (Partido Carlista [online]. <http://partidocarlista.com>, no date).

4.1.2. Debates of Carlism During the First War

Debates about the meaning of carlism emerged in the 1830s as carlism itself took shape during the first war. Although this is generally known as first Carlist War, it has also been given another name: the War of Navarre. Uses of this name to refer to the war can be seen in different types of social actors.

The name was used, for instance, by Antonio de Urbiztondo y Eguía in his pamphlet (1841) 'Notes on the War of Navarre in its later years, and especially on the Treaty of Vergara' (my translation¹⁷) (De Urbiztondo y Eguía 1841). De Urbiztondo y Eguía had been born in Gipuzkoa, was a high military official of the carlist army during the war (1833-1840), and would be Spanish Governor of the Philippines Islands between 1850 and 1853 (Fernández, T. <http://www.biografiasyvidas.com>, no date). The same name to refer to the war has been associated with Joseph-Augustin Chaho (1811-1858) (Sánchez-Prieto & Nieva Zardoya 2004: 39). Chaho is often introduced as a first instance of Basque nationalist ideas, and is described as a republican and defender of democratic values (De la Granja Sainz 2002: 26).

The centrality that interpreting the fueros had influencing conceptions of the war, the state, and the wider European political and ideological context, came to the fore in a debate between the Whig Government and its Tory opposition in Britain. The British interest in the war was caused by the support of the Government to one dynastical line, that of Isabel II. The British involvement in war included the promotion of an international treaty, The Quadruple Alliance, signed in London in 1834 by Great Britain, France, Spain, and Portugal, intending to eliminate any support to the carlist cause, and the deployment of a twelve thousand man legion in the Iberian Peninsula to fight carlism (Clemente 2001: 56).

¹⁶ El Partido Carlista es una organización política, democrática y popular que lucha por la sustitución del actual Estado Español, de estructuras liberal-capitalistas, por un nuevo marco socio-político basado en la libre confederación de los Pueblos de Las Españas

¹⁷ Apuntes sobre la guerra de Navarra en su última época y especialmente sobre el convenio de Vergara

The war began with the death of the king in September 1833, when social actors mobilised in defence of the legitimacy of one or another of the two claimants. Those supporting the legitimacy of Isabel included high officials of the army and the civil administration (Canal 2000: 56), as well as members of the wealthiest nobility, 'the Grandees of Spain' (Southern 1837a: 10). The backbone of the state supported the candidacy of Isabel. Carlos' support emerged as a series of disconnected insurrections throughout the peninsula that proclaimed him king as the news of the death of the king spread (Aróstegui et al 2003: 51; Canal 2000: 62). These scattered and disorganised insurrections were easily repressed, and by the beginning of December the carlist movement seemed to be under control (Canal 2000: 68). Contrary to the expectations however, the Queen's army failed to do away with all the explicit support for Carlos, and the insurrection turned into war. The developments and features of the war raised concern in Britain, as the expected easy victory did not arrive and news about the war reached the British public.

The British public was being informed by constant correspondence between British soldiers and newspapers (Southern 1837a: 3). The war was often portrayed as barbaric and lacking any features of humanity. Captain Henningsen, for instance, stated that it was 'a contest carried on in the face of the European civilization of the nineteenth century with all the ferocity, the cruelty, the utterly savage ruthlessness of the wildest barbarians of the darkest ages' (Henningsen 1836: 514, 515). Sir Charles Shaw in his *Memoirs* called it an 'unnatural war' (Shaw 1837: 589), and confessed in a letter to his mother his guilt for having committed, and perhaps continuing to commit, 'many evils' (Shaw 1837: 617).

The character that the war had taken turned the early optimism regarding the end of the war into deep concern. The insurgency had not only turned into a savage war, but also into one which resolution, in 1837, was not at all clear. It was argued that the geography of the territories and the support of the civil population to the carlist troops 'may make it eternal' (Southern 1837a: 16). The harshness of the war, combined with the localised characteristics that it was displaying, was perceived by some Tory members as an opportunity to attack the Whig government's foreign policy. Partly, the debate was carried out through anonymous publications, though the authors and interests behind the different views were soon exposed.

In 1836 a two volume pamphlet was published under the title ‘Portugal and Galicia, with a review of the social and political state of the Basque Provinces and a few remarks on recent events in Spain’. This was contested by a pamphlet published in 1837, titled ‘The Policy of England towards Spain’. These would be followed by further pamphlets and articles that engaged in the debate.

The first publication was soon acknowledged by Lord Carnarvon (1800-1849). He was a member of the Tory party, and was elected to the House of Commons in 1831 and became member of the House of Lords in 1833 (Anon. rev. Elizabeth Baigent 2004). The second pamphlet was attributed to someone close to the Foreign Office or to Lord Palmerston – who denied it (Carnarvon 1837: xv). It was also attributed to members of the Spanish government (Anon. 1837: 281). Nowadays, some websites like The Internet Archive attributes this pamphlet, as well as its sequel ‘Sequel of the Policy of England Towards Spain’ (1837b), to Henry Southern (1799–1853) (The Internet Archive. <https://archive.org/details/policyofenglandt00soutrich>, no date). He was a ‘journalist and diplomatist’ who would be in ‘close contacts with the Spanish, particularly the liberals’ (Healey 2004).

At a discursive level both pamphlets shared key characteristics: the defence of political representation, liberties, private property and justice; rejection of the French revolution as a way to achieve social change; defence of empiricism and reason as best sources to establish truth; and a higher regard towards positivism than towards romanticism. Both accused the other of deliberately lying or misrepresenting reality. Nevertheless, they interpreted carlism and the war in almost opposite ways¹⁸.

4.1.3. Lord Carnarvon’s Interpretation

The War, as it had developed, became for Carnarvon an opportunity to defend the righteousness of his view of society. Carnarvon’s agenda included portraying the institutions of the territories dominated by carlists as pristine examples of ‘natural’, ancient social systems creating liberty; to argue that the war was being fought in defence of those liberties; to attack the British government for helping State’s government to put an end to these legitimate institutions; and to demonstrate that

¹⁸ In what follows the term Basque Provinces is occasionally used to refer to both Navarre and Euskadi. This is done to match the uses of the referred authors.

French revolutionary ideas destroy, rather than create, justice and liberty. In his mind, it was the British political example which ought to be followed, not the French.

Carnarvon began his analysis of the war by arguing that there was a contradiction between the way the government was portraying carlists – as bandits – and the way the war was developing, localised and with an uncertain end. For Carnarvon this contradiction was resolved when one realised that the war was not being fought by bandits, but by a whole population colluding with the carlist troops in defence of their liberties, a view that he claimed was confirmed by the testimonies of the returning soldiers and people that had been living in the territories (Carnarvon 1836: 183).

In order to support this claim, he argued that the Spanish constitutionalists had been rather explicit about their wish to abolish the *fueros*; that Carlos had allegedly defended the *fueros* in a Council of State, awakening Basque's sympathies (Carnarvon 1836: 264); and that the support for carlism in these territories had been mild until 'Castañón [a military official of the Queen's army] formally put down the *fueros*... From that moment the people rose en masse; the insurrection, till then partial, became general and irrepressible' (Carnarvon 1836: 207).

Once Carnarvon had associated the defence of the *fueros* with the war in these territories, he illustrated in detail why the *fueros* were instances of ancient proto-liberal societies. He started with a historical analysis of these territories' political systems and their relationship with the Castilian crown. Although Carnarvon approached the analysis of each territory separately, as there was no legal relationship between these territories other than each one's own bilateral agreements with the same monarchy, he justified using one example to illustrate them all with the argument that their 'constitutions' do not 'substantially' differ from each other (Carnarvon 1836: 211). This same reason was used to articulate an explanation to why these legally unrelated territories appeared to be fighting together. He stated that the 'Basque Provinces were bound to each other by strong ties of interest and affection...[and it is their]...nearly similar constitutions...which required, by precise and positive enactments, every Basque subject, from the highest to the lowest, to resist, even unto death, any encroachments upon their liberties, whether proceeding from the Spanish Government

or from any other power' (Carnarvon 1836: 219). Carnarvon offered a summary of the social system produced by Biscay's *fueros*:

[Biscay] yields contributions to the Sovereign as a free gift; its arranges its own taxation; it is exempt from the odious system of impressment for the navy; it furnishes its own contingent of soldiers; it appoints its own police in peace; it provides for its own defence in war; no monopoly, royal or private, can be established in Biscay...their Alcaldes are freely chosen by the people. No Biscayan, resident in any province of Spain, can be tried, either civilly or criminally, by the laws of Castille...The house of the Biscayan is his castle...he cannot be arrested for debt, or subjected to imprisonment upon any pretext whatever, without a previous summons to appear under the old tree of Guernica, where he is acquainted with the offence imputed to him, and called upon his defence...This, the most glorious privilege that freemen can possess...was enjoyed by the Basque for centuries before that far-famed guarantee of British liberty had an existence in our islands (Carnarvon 1836: 213-215).

In Carnarvon's eyes, these territories functioned not only as self-governing and efficient social organisations, but also as social systems that guaranteed appreciated values. For Carnarvon, Biscay's General Assembly was the 'Biscayan Parliament', in which almost all towns in Biscay had representation, and all citizens could vote to choose their representatives (Carnarvon 1836: 215). Carnarvon was interested in providing an image of Basque territories as self-governing, effective and legitimate social systems because he wanted to create in the mind of the reader the notion that a legal framework worth defending, even dying for, existed; as his ultimate goal was to argue that the war was being fought to defend the *fueros*. He listed the main functions of this body, of which I quote those that are most relevant to the argument:

The Biscayan Parliament possesses exclusively the right to legislate for Biscay...to propose the budget, to adjust taxation...the external defence of the provinces...It also grants letters of naturalization to foreigners...No order of the Spanish Government is directly received by the Basque Parliament...any order...is addressed to the executive authorities of the province...[whose]...veto upon any resolution of the Spanish Government is absolute, and the seemingly inconsistent, but not uncourteous formula of "Obedecida, pero no cumplida" (Obeyed, but not carried into

execution) is their peculiar but decisive mode of rejection (Carnarvon 1836: 216, 217).

His analysis regarding the degree of self-government that these territories had, and the efficiency of the organisations and institutions looking after and executing social order, led him to conceive the relationship between these territories and the state about sixty years before the emergence of a nationalist conflict, in nationalist terms. 'It may then be justly said that before the Queen's accession, the Basque Provinces were freer than the freest canton in Switzerland...like the Cantons, the Basque Provinces were bound to each other by strong ties of interest and affection; no change could take place in any of the provinces without the previous consent of its own inhabitants' (Carnarvon 1836: 218, 219). He pondered, '(h)ow can we plead with Russia against Polish persecution, after our treatment of the Basques?' (Carnarvon 1836: 292)

Lord Carnarvon's emphatic portrait of the Carlist War in the Basque territories as a product of Basque's defence of the *fueros* is likely to respond to reasons different than a real concern over the liberties of the Basques in these territories. He was perhaps more concerned with a much larger contention about what was happening throughout Europe: confronting revolutionary ideas with traditional views. And in that contention, carlism had suddenly appeared as an instance in which tradition and customs could be associated with values of liberty, the destruction of which could not be justified on the basis of creating equality and freedom. In the following statement this can be clearly seen:

To their rights and privileges, erected on the broadest basis, the Basque adhered with an affection which no words can express; those were no rights of yesterday, but rights associated with every deeply-cherished recollection, interwoven with their traditions, connected with every stirring incident in the public annals of their little state, and hallowed by the proud remembrance that they had been maintained for ages by their Fathers against outnumbering enemies: at a time, too, when the night of despotism weighed heavily on the surrounding world, and when their star was the only light of liberty, which shone in the European heaven (Carnarvon 1836: 225).

4.1.4. Henry Southern's Interpretation

Carnarvon's views were contested by Henry Southern. Southern accused the Tories of trying to take political advantage of the little progress made in the war (Southern 1837a: 3), and Carnarvon of mixing facts with fiction (Southern 1837a: 17).

Southern argued that he did not question the historical narrative presented by Carnarvon, but he objected 'to the process of induction by which he [Carnarvon] seeks to make that history applicable to the present times...a charming picture of all the rest of modern Spain, as well as of Biscay, might easily be drawn...But what would this prove as to their actual state?' (Southern 1837a: 18). Southern associated Carnarvon's views and references to history with romanticism. This is almost explicitly articulated when he asserts:

'(n)o part of the "Romance" upon the Basque Provinces is further removed from reality than the episode about Don Carlos and the Council of State (p. 264), in which the Infant is made to rise and state, "that the ministerial scheme (to abridge materially, if not entirely to suppress, the liberties of the Basques) involved a manifest breach of the compact solemnly entered into between the Crown of Spain and the people of the free Provinces – that the Crown was bound to respect the established rights of the meanest subject of the realm, &c. &c.'" (Southern 1837a: 32).

For Southern, endorsing a 'fuerist' viewpoint about the legal foundations of the state had to be explained mostly in relation to a romantic vision of society, which offered, in his view, little insight into real social problems.

The insinuations that Carnarvon's analysis was tainted with romanticism rather than with empirical analysis was perhaps an attempt to discredit Carnarvon's work. This is suggested by a response to Southern's insinuations in an anonymous article published in the journal *Quarterly Review* that same year. In it, the anonymous author directly denied that Carnarvon's analysis was romantic, and to somehow show his mastering of empiricism, proposed a 'logic-based' analysis to attack Southern:

But he [Southern] would have us to believe that his lordship [Carnarvon] is led astray by a generous enthusiasm, and that his account of the Biscayan constitution is strongly tinctured with 'romance.'...we can exhibit a few of the larger and more

important questions, on the issue of which must rest the credit of the antagonist statements; and from what we have hinted of the birth and parentage of the pamphlet, our readers will not be surprised to find that its admissions defeat its assertions – its assertions are at variance with its facts – and its facts are contradictory to its conclusions (Anon 1837: 282).

It appears that if Carnarvon had found in the Basque case an example to attack French revolutionary ideas, Southern had found in Carnarvon's work an opportunity to attack history and traditionalism by associating it with romanticism. For Southern, it was the present that had to be taken into account in order to make social analyses, and in his view, '(t)he question, stripped of its history and its poetry, and analysed with reference to the bearings upon it of public opinion in the Basque provinces, resolves itself into the highly unromantic one of a tariff' (Southern 1837a: 24).

The *fueros* that had been emphasised by Carnarvon were minimised by Southern. He portrayed them as elements of outdated social systems; they had not only lost efficiency in governing society (Southern 1837a: 20), but also they 'have been virtually set aside with the tacit consent of the people' (Southern 1837a: 19). Southern interpreted the emphasis made of the *fueros* in carlist-dominated territories with a political strategy to cover real interests. The *fueros* would 'have been exaggerated into an importance which they do not possess, with relation either to the war of the government, or to the interests of the provinces' (Southern 1837a: 20, 21). Illustrating how the *fueros* in no way influenced people's views or choices, and that they only covered illegitimate economic interests, he argued:

There accordingly exists throughout the exempted provinces every variety of opinion respecting their privileges, some desiring to be altogether assimilated to the rest of Spain, others claiming to be put upon a commercial equality with the neighbouring provinces; while a third, and the most numerous party, not venturing to put forward their real motives against any change of a commercial system which is manifestly injurious to their country, clamour for the absolute maintenance of the privileges, and under the mask of patriotism advocate their right to fill their own pockets by smuggling (Southern 1837a: 23).

Southern provided some examples to show how people did not care about the *fueros* any longer, and how little these influenced social praxis. One of them described how in 1818 ‘a general levy of troops was made’ by the central government, to which the Basques did not offer any resistance, and ‘offered to give money instead of men, and the money was more acceptable to the king’ (Southern 1837a: 19). The second argued that these territories had not escaped the jurisdiction of the Inquisition as Carnarvon had suggested, as they were under the tribunal of Logroño. The third example was drawn from Navarre, where according to Southern, the *fueros* ‘were equally disregarded’, not on a single occasion, but rather systematically (Southern 1837a: 19-20).

Southern published a sequel to the pamphlet in 1837. In it, he responded to a claim made by Carnarvon in the second edition of his own pamphlet (1837), where he had stated that his defence of Basque rights, that is, his argument supporting the claim that Basques defended their ancient and valued social structures, had not been questioned or shown to be wrong. Responding to this claim, Southern discredited Carnarvon for building his argument ‘from books’, which give ‘a most vague and unpractical view of the laws and administration in Biscay’ (Southern 1837b: 80), and argued that the image produced by those written rights had little to do with social praxis. I will highlight below some of the examples he provided.

Regarding jurisdictional powers to manage taxes and the idea that contributions were given as a free gift, Southern stated that the memorial practice was that ‘the Government of Spain has required the contribution which correspond to the donatives of the Provinces in a sum, under the polite names of subsidies and *donatives*, and has left to the Provincial Deputations the task of distributing the burthen and collecting the tax’ (his own emphasis. Southern 1837b: 83). Denying the claim that *Alcaldes* (municipal mayors) were freely chosen by the people, he provided several examples showing the many different election procedures that existed in different municipalities, some of which may have included the participation of some non-elected authority figures (Southern 1837b: 84, 85). Considering Biscay’s privilege not to be tried by law other than Biscay’s *fueros*, regardless of where they lived in the State, Southern argued that such custom was a curse rather than a virtue, which in practice was not respected (Southern 1837b: 87). Biscay’s citizens’ right to trial in front of the General Assembly

in Guernica was portrayed by Southern as completely ineffective in practice: ‘stripping this ancient tree of its romance, it happened to grow exceedingly near the gaol door, so the invitation to meet the magistrate...was merely a piece of Biscayan politeness’ (Southern 1837b: 87).

The legislative powers of the Parliament of Biscay that had been emphasised by Carnarvon, were relativised by Southern by the argument that the laws approved in Biscay required royal sanction to become law. Legal power did not emerge from these territories’ institutions as Carnarvon argued, legal power resided in the monarchy: ‘Royal sanction, given at the commencement of each reign to the *fueros*, which confers upon them the character of a code of laws’ (Southern 1837b: 89). Identifying the historical source from which law was made was portrayed differently, as it was perceived to support the claims made in association with different jurisdictional interests.

What seemed incomprehensible to Southern was how anyone could argue that the British Government was attacking the Basques. If the British troops were fighting in the Basque territories it was not because they went there to do so, but because it was there that the war was taking place (Southern 1837a: 37-38). Nor could he understand how anyone could reduce the war to the interests of the Basques, when what was at stake was ‘a choice between despotic or representative Government, between the Inquisition and national improvement’ (Southern 1837a: 37-40). Southern argued that if such an interpretation were true, if carlism was Basque-ism, it would mean that a small part of the population of Spain wanted to impose law upon the rest of the Peninsula; an unacceptable ambition that Europe should be happy to eradicate (Southern 1837a: 38). For Southern, the frame of reference for British foreign policy was not that of the Basques, but that of recognised nations, and in that context ‘England holds out her hand to help an ally to take that place among the nations of Europe to which she was destined by nature’ (Southern 1837a: 38).

The past, history, old customs and institutions are associated with romanticism, to emotional and un-empirical analyses of social reality; instead, a natural order is proposed, one with clearly defined entities in which empirical analyses of social reality

can be performed. History is replaced by nature; this frees the researcher from having to address history: from having to become a romantic.

For Southern, the war had to be interpreted in one sense: ‘(t)he mighty problem was to be solved whether it be possible for a nation to pass securely, and with advantage, from a despotic to a constitutional form of Government; whether a people, long and perseveringly kept in darkness, can bear the light of improvement, and whether men who, during a long course of years have been slaves, are fit for comparative freedom’ (Southern 1837a: 39). The British government’s foreign policy was not only fighting despotism, but it was also strengthening its interests and alliances in Europe. The result of applying the foreign policy suggested by the Tories would be detrimental for British interests, since it would mean that:

The reign of reason will cease, and an era of violence ensue, we shall see a spirit of federalism arise, the frontier provinces will place themselves under the protection of France – other provinces will declare themselves independent. There will be distinct governments and conflicting interests, until society is reduced to its original elements, and the Peninsula, instead of being a source of strength to England and France, will be a festering wound in their political system (Southern 1837a: 62, 63).

4.2. The Fueros in Modernity: The Emergence of Modern National Identities

Southern and Carnarvon presented social structures and their meanings very differently. For Carnarvon, the fueros were a legal instrument that emerged and somehow protected a ‘bottom-up’ perspective. This turned them into a valuable example to defend – that revolutions indiscriminately destroyed anything that resembled the past, regardless of liberty and justice. Southern saw them as a strategy used by the absolutist monarchy to divide the people, reducing the danger ‘of their uniting together against the Crown’ (Southern 1837a: 19). The fueros were interpreted as a ‘top-down’ instrument manufactured by the Castilian Monarchy. These debates indicate that British politicians of the 1830s interpreted the fueros from a legal-constitutional point of view. However, as they were interpreted in relation to a war in which regime change was at stake, the legal perspective acquired traces of modern political thinking, including in regards to nationalist conflicts.

Arguably, the contrasting interpretations of the *fueros* made by Carnarvon and Southern can be associated with prevailing interpretations of the *fueros* in Navarre and Euskadi during the nineteenth century, and those made by state authorities. This can be identified in their work, and it also comes across in their biographies. As noted above, Southern is normally associated with a close relationship with the Government of the State of Spain that opposed to carlism. In contrast, Carnarvon is presented as having travelled to North Africa and having spent ‘many years in Portugal and in Spain, where he was imprisoned by the Christinos for displaying active sympathy with the Carlists’ (Anon. rev. Elizabeth Baigent 2004).

The arrival of modernity would significantly change to this interpretative framework. Between 1876 and 1936 social life would experience significant material and social developments, and in this context of social change the meanings of the *fueros* would be reinterpreted. The interpretations proposed by Sabino Arana and Victor Pradera would lay the foundations of ideas that would structure the most popular national identities in Euskadi and Navarre.

4.2.1. The Emergence of Basque Nationalism

Modern Basque nationalism was politically articulated during the 1890s, when Sabino Arana Goiri, a member of a carlist family from Biscay, decided to advance his ideas in the political arena. Arana’s first nationalism would not be Basque, but Biscayan. This was articulated in a series of papers published in the magazine *La Abeja* in 1890. Two years later, these papers were compiled and published in a book titled *Bizkaya por su independencia* (Biscay for its independence) (García Venero 1979: 264). The political career of Arana lasted ten years: from 1893, when he announced his intention to politically promote the ideas contained in the book, to 1903, when he died (Elorza 2001: 168; De la Granja Sainz 2002: 34). Arana’s political career seems to display a changing trajectory; first proposing the independence of Biscay, widening this to Euskal Herria, and, in the last year of his life, evolving ‘towards Spanish-ness’ (De la Granja Sainz 2002: 16).

Generally, rapid industrialisation taking place in Biscay between the 1870s and the 1890s is emphasised as a critical factor influencing the emergence of Basque nationalism (Elorza 2001: 140-191; De la Granja Sainz 2002: 15). Industrialisation

produced social and demographic transformations that led to a decline of Basque traditional culture, and whilst some influential Basque intellectuals such as Miguel de Unamuno considered the change as positive and inevitable, for Arana it was ‘a testimony of the political disappearance of the Basque village’ (my translation¹⁹) (Elorza 2001: 154-155).

Central to Arana’s nationalism was his desire to ‘maintain’ the ‘purity’ of what he considered was the Basque race. In fact, he thought that race was a key characteristic defining not only Basque nationalism, but also the concept of nationality. He conceived the latter as composed of five hierarchically ordered elements: ‘Race, language, government and laws, character and customs, and historical personality’ (Elorza 2001: 155; De la Granja Sainz 2002: 73). Race was a key concept associated with social distinction, and Arana’s political project can indeed be seen to be motivated by a desire to ‘maintain racial purity’. Language was perceived to be an effective tool in creating social boundaries that prevented ‘contamination’ (Elorza 2001: 154). Douglass (2002) has argued that Arana’s racism should be understood and judged in reference to the social and ideological contexts in which it developed, where racism was the norm, and not in relation to current views.

In fact, it was not race itself that Arana associated with the legitimacy to exist as self-governing jurisdictions, first Biscay, and then Euskal Herria. Although history was listed by Arana at the bottom of the hierarchy of elements composing national identity, legitimacy was associated with history, and the latter was his most widely used argument to claim the independence of Biscay first and then Euskadi (De la Granja Sainz 2002: 73). For Elorza, the element around which Arana justified the political personality of Euskal Herria was the *fueros* (Elorza 2001: 192).

The centrality of the *fueros* influencing the emergence of Arana’s nationalism can be seen in the discourse in which Arana announced his political career in 1893. He explained that he had been a carlist, like his father, ‘as a medium to recover the *fueros*’; he linked the new ideas he was proposing to two principles: *Jaun-Goikua eta Lagi Zarra* [God and ancient law] (García Venero 1979: 269-270). These would indeed become the cornerstone of his political project. This can be seen in the document that

¹⁹ es el testimonio de la desaparición política del pueblo vasco

initially defined the political doctrine of the Basque Nationalist Party. Its first article stated: ‘Biscay, as it organises in a republican confederate regime, does so having accepted the political doctrine enunciated by Sabino Arana Goiri in the slogan “Jaun-Goikua eta Lagi Zarra”, which is declared in the following articles’ (my translation²⁰) (García Venero 1979: 282). Arana considered that the agency, the legitimacy granted by the *fueros* to Biscay and to each of the Basque territories, did not stem from the State of Spain, nor that of France, but from God and traditional law.

The centrality of interpreting the *fueros* in Arana’s ideological trajectory can be further seen in that Arana’s nationalism was not only a response to the social changes produced by industrialisation, but also a reaction to public debates over interpretations of the *fueros*. Although Arana’s linguistic work already contained a political angle (Elorza 2001: 154), his first work with a marked political character, *Pliegos Historico-Políticos* (1888), was a response to a debate over the *fueros* held in the newspaper *El Noticiero Bilbaino* in 1886. The debate had confronted Miguel de Unamuno, an ‘educator, philosopher, and author whose essays had considerable influence in early 20th century Spain’ (Encyclopaedia Britannica Online. 2015), and Ismael de Olea, who would be councillor in Bilbao towards the end of the nineteenth century (Auñamendi Eusko Entziklopedia. 2015).

On the 14th April 1886 Unamuno published an article in response to a previous one by Olea, in which the latter had accused Unamuno of attacking the *fueros*. A quote from Unamuno’s text illustrates his position:

I did not attack the foral autonomy defended by the majority of *vascongados*²¹ (not *bacongados*²²) and do myself with them; and I did not attack it because I am convinced of its utility...It is true that I will never defend it with historical reasons, because on my view historical rights are not rights. Autonomy is a natural right, founded not in history, but in its utility and practical convenience and in human nature. What I attacked and will continue harshly attacking were the historical tales...the aberrations of the neo-*euscaristas*²³...and the

²⁰ Bizkaya, al organizarse en régimen de Confederación republicana, lo hace previa la aceptación de la doctrina política enunciada por Arana Goiri ‘tar Sabin en el lema “Jaun-Goikua eta Lagi Zarra”, que se declara en los artículos siguientes

²¹ Basques – as traditionally written in literature; with ‘v’, letter not contained in Basque alphabet.

²² Basques written with ‘b’- with minor presence in literature; letter existing in Basque alphabet

²³ Euskera is the word used in Basque language to identify itself

Basque literature in *vascuence*²⁴, cold, false, sterile and written in a dialect only understood by their inventors... Certain things do not excite me; my loves are not romantic. If the form was harsh, harsher than the content, is because I do not use flowery oratory, nor do I know how to sugar the pill, nor to speak other than a dry, terse, tough and hard Castilian (my translation²⁵) (my emphasis. *El Noticiero Bilbaino* 14/04/1886: 2).

Unamuno argued that he had not attacked the *fueros*. What Unamuno had done was to interpret them from a perspective not only different to that traditionally used to defend them, but from that which had traditionally attacked them: that identified in Southern's discourse. However, in contrast with Southern, Unamuno valued the *fueros*. They both similarly held to positivism, which led them to believe that it was nature and the present, not historical romanticism, which legitimised the existence of social authority. For Unamuno the *fueros* had a valid place in society in the 1880s, for Southern they did not in the 1830s.

Unamuno defended the autonomy associated with the *fueros*, yet he did it from an interpretation of them that jeopardised the whole legitimising structure on which the defence of the *fueros* had been traditionally sustained; and with it, he did away with many of the cultural and ideological features with which it had been traditionally constructed, including those that portrayed Basques as a unique race with a distinct history. At the time, a movement promoting a revival of Basque culture was strong across Euskal Herria, and Unamuno's ideas could be read as partly reacting to this.

Arana's interpretation of the *fueros* followed the opposite direction to that taken by Unamuno. He associated the legitimacy of the *fueros* not with the present or their utility, but with elements present in traditional defences of the *fueros*. He considered, however, that all sectors of Biscayan society, including carlists, had endorsed the

²⁴ A Castilian term to identify Basque language, normally disliked today by Basque speakers

²⁵ Yo no atacué la autonomía foral que defienden la mayoría de los vascongados (no bascongados) y yo con ellos; y no la atacué, porque estoy convencido de su utilidad... Verdad es que yo no la defenderé jamás con razones históricas, porque a mi juicio los derechos históricos no son derechos. Tenemos á la autonomía un derecho natural, fundado, no en la historia, sino en la utilidad y conveniencia práctica y en la naturaleza humana. Lo que atacué y seguiré atacando con dureza fué las patrañas históricas... las aberraciones de los neo-euscaristas... y esta literatura vascongada en *vascuence*, fría, falsa, estéril y escrita en un dialecto que solo sus inventores entienden... No me entusiasman ciertas cosas; mis amores no son románticos. Si la forma fué dura, más dura que el fondo, es porque no manejo la oratoria florida, ni se dorar píldoras, ni hablar más que un seco, escueto, recio y duro castellano del siglo X IX.

interpretative framework of the *fueros* created by the State of Spain, restricting and corrupting their real meaning. Arana's abandoning of carlism had to do with their interpretation of the *fueros* and the legal context in relation to which the agency produced by the *fueros* ought to be framed. He thought that Basques had forgotten their real nationality, 'the authentic meaning of their *fueros* and their truthful history' (my translation²⁶) (Mina Apat 1990: 101). Arana's interpretation of the *fueros*, presenting them as a source of independent legitimacy, and associating the idea of 'Basque-ness' as a race, visible in features such as surnames and protected by linguistic differences with the right to form an independent nation, would be that in relation to which Basque nationalism would develop.

It can be identified, for instance, in the work of the aforementioned Manuel Irujo (1945), a Basque nationalist and politician from Navarre. He conceived Basque people in relation to their unique racial features, and he associated carlism with a defence of the *fueros* (the latter being key elements that had allowed Basques to maintain their racial characteristics). Irujo conceived 'Basque-ness' not only in relation to racial distinction, but also in relation to values. In his view, throughout history Basques had maintained a social philosophy that he thought characterised the Basque race. The Basques, he claimed, 'preserved intact the philosophy of their race, without letting the Aryan spirit of conquest win their soul' (my translation²⁷) (Irujo 2004 (1945): 27). He presented a rather homogeneous, defined culture, nurtured and defended throughout history, and constantly threatened by outside forces and influences.

The centrality of this historical narrative to contemporary Basque national identity has been emphasized by Manuel Montero (2005). He has argued that 'Basque nationalism has its own and exclusive version of history, and this informs or closely impregnates all its ideology' (my translation²⁸) (Montero 2005: 249). He identifies five historical presumptions around which Basque Nationalist Party leaders have constructed their projects: 1) presenting Euskal Herria as ever present (in one form or another) in history; 2) claiming that Basques enjoyed an original sovereignty which was

²⁶ han acabado por ignorar "su verdadera nacionalidad", el significado auténtico de sus *fueros* y su verdadera historia

²⁷ conservaron intacta la filosofía de su raza, sin que el espíritu ario de conquista, ganara su alma

²⁸ El nacionalismo vasco tiene su propia y privativa versión de la historia, y ésta informa o impregna de cerca toda su ideología

maintained through pacts (*fueros*) with the central government; 3) a particular interpretation of carlism as a movement in defence of this sovereignty; 4) The emergence of Basque nationalism at the end of the nineteenth century as a consequence of the loss of sovereignty; and 5) an interpretation of twentieth century's Basque history in relation to the history of the PNV/EAJ itself (Montero 2005: 259, 260). For Montero, although such an interpretation does not have 'scientific support' (Montero 2005: 276), it is related to a historiographic tradition that he dates back to the seventeenth century, which would be reinterpreted by Arana to create Basque nationalism (Montero 2005: 266-267).

4.2.2. The Emergence of Modern Navarrism

The roots of modern navarrism have been argued to date back to the 1890s, when the *Gamazada*, a unanimous rejection by all Navarrese politicians and media to Madrid's centralising policies took place (Aliende Urtasun 1999). However, navarrism, as an ideology or identity, defined by the same tenets as current navarrism, developed following the views of early twentieth century public figures such as Victor Pradera (Izu 2001: 287; Sánchez-Prieto & Nieva Zardoya 2004: 251).

Victor Pradera, like Sabino Arana, was a carlist; from Navarre rather than Biscay, who moved during his childhood to Gipuzkoa. His political career was split in two periods, one between 1899 and 1910, when he was elected in Tolosa as Deputy for the Spanish Parliament as well as deputy in Gipuzkoa; followed by the second period, starting in 1917 and ending on his death in 1936, in which he was, for instance, elected in 1918 as a Deputy for the Spanish Parliament in representation of Pamplona (Carballo 2013: 98-105). If Arana's nationalism was partly a response to debates over the meanings of the *fueros* occurring in the 1880s, Pradera's navarrism was partly a response to Basque nationalism (Carballo 2013: 98-102).

Both Pradera and Arana departed from a traditional conception of the *fueros*, one which associated legitimacy with history. In fact, Pradera considered that the *fueros* were 'Basque's personal identity' (my translation²⁹) (Pradera 1918b: 8). For Pradera, the wrongs of separatist nationalisms were not in the recognition of the historical personality and distinctiveness of their territories, but in associating racial and

²⁹ la identidad personal vasca

linguistic difference with the right to exist as an independent nation. In his view, this entailed promoting a modern idea, that of constructing Euskal Herria as a sovereign state, which had no precedent in history. He claimed that contrasting with Basque nationalists, he loved '*Vasconia*' as it was (Pradera 1918a: 5). For Pradera, the *fueros* represented the 'real' and 'ideal' organisation of the State of Spain, which could be described as a federal monarchy (Pradera 1918a: 31).

Basque nationalists would have incurred at least two mistakes, both related to claims made in relation to race and language. The creation of a Basque nation, united by shared racial features, incurred for Pradera a contradiction, as he conceived that such uses of the concept of race led to centralism, which was at odds with the republican and federal character associated with the *fueros* (Pradera 1917: 32, 33). He also argued that Basque nationalists erred in linking race and language with 'the philosophical justification of people's independence' (my translation³⁰) (Pradera 1917: 29). For him, the primitive sovereign social units were municipalities – arguably the cornerstone of the *fueros* – and he pondered rhetorically whether Basque nationalists would recognise municipalities' independence (Pradera 1917: 28).

Basque nationalists, in the name of tradition and truth, were making claims and associations that Pradera considered illegitimate. History was the validating and legitimating feature valued by Pradera, and he found no indication of the existence of the racial and linguistic issues or political implications emphasised by Basque nationalists in historical records. He argued that although the Basque language was most appropriate for Euskal Herria, Basques had used both Basque and Castilian through time, and in official matters uniquely the latter (Pradera 1918a: 13, 14). In Pradera's federalist monarchist conception of the state, each territory ought to maintain its idiosyncrasies; and regarding language, he thought that 'it is the expression of the collective soul, and hence, the national language is the expression of the national soul, and regional language is the expression of the regional soul' (my translation³¹) (Pradera 1918a: 29).

³⁰ el fundamento filosófico de la independencia de los pueblos

³¹ que la lengua es la expresión del alma colectiva, y que, por tanto, la lengua nacional es la expresión del alma nacional, y que la lengua regional es la expresión del alma regionalista

Pradera and Unamuno might have had the defence of the *fueros* and a preference towards Castilian language in common, features that might have influenced their rejection of Basque nationalist ideas. They differed, however, in their ideological and theoretical ideas: Unamuno's positivism contrasted with Pradera's traditionalism: an absolute rejection of history on the one hand, and a complete embracement of history on the other.

The interpretation of the *fueros* made by Pradera in opposition to that of Basque nationalists would influence the traditionalist vision of the state embraced by the 1936 military coup and fascism, as well as the development of navarrism, the ideology or identity that has dominated Navarre's politics since 1978. Franco himself asserted that his political thought had been influenced by Pradera (Sánchez-Prieto & Nieva Zardoya 2004: 253).

Franco thought that a historical tradition of pure and real Spain existed, which had rejected foreign and contaminated liberal ideas. He presented carlism and the military coup of 1936 as reactions of that 'ideal Spain...against the bastard Spain, frenchified and eurocentric of the liberals' (my translation³²) (Franco in Peña e Ibáñez 1940: 3). Peña e Ibáñez (1940), who would endorse the exact same idea, argued that the localisation of carlist support in the 'Basque-Navarrese country' was associated with the character of the *fueros*: a 'purely counterrevolutionary institution' (my translation³³) (Peña e Ibáñez 1940: 48). However, the *fueros* were not seen as the cause of the war, which he argued was demonstrated by the failure of a campaign to end the war led by Muñagorri in 1838 and 1839 under the motto 'Paz y Fueros' (Peace and Fueros) (Peña e Ibáñez 1940: 175).

Eladio Esparza Aguinaga was a Navarrese journalist who contributed to disseminate a 'navarrist' interpretation of Navarre that was similar to those of Franco and Peña e Ibáñez. He did so especially after the Civil War, from important academic offices, such as that of Director of the journal *Príncipe de Viana* (Aznar Munárriz 2003), the most important academic journal in Navarre.

³² la España ideal...contra la España bastarda, afrancesada y europeizante de los liberales

³³ institución netamente contrarrevolucionaria

Esparza also related carlism with resistance to liberalism, and like the Basque nationalist Manuel Irujo, he was aware of the variety of existing interpretations about the war. He acknowledged that some British and Spanish officials such as Baldomero Espartero and Lord John Hay had explicitly stated that ‘the fundamental reason that pushed Basques to war was the defence of the fueros’ (my translation³⁴) (Esparza 1941: 87-88). Contrary to Irujo however, and adhering to Peña e Ibañez’s thesis, he discredited such opinions and justified his position on the argument that Muñagorri’s campaign to end the war had failed.

The close relationship between navarrism and fascism has been noted by Sánchez-Prieto & Nieva Zardoya (2004), who have argued that ‘the living memory of Francoism formed ideas and an important element of Navarre’s own collective identity’ (my translation³⁵) (Sánchez-Prieto & Nieva Zardoya 2004: 261). Franco’s military dictatorship might not have only maintained the foral regime, ‘but even increased and strengthened it’ (my translation³⁶) (Baraibar Etxeberria 2006: 9).

This interpretation of Navarre’s identity and its history is the one that came to define the official identity embraced by Navarre’s institutions in the legal status produced after 1975 (Izu 2001: 393). This navarrism has been described as ‘nothing more than Navarre’s version of twentieth century Spanish nationalism’ (my translation³⁷) (Izu 2001: 287).

4.3. Carlism in Academia Today

Currently in academia, such interpretations of carlism have been questioned. According to Rubio Pobes (2005), Basque historiography has been particularly active in the production of new reinterpretations of carlism. A large amount of research, made ‘from rigorous scientific perspectives’, has made substantial progress to better

³⁴ el motivo fundamental que empujó a los vascongados a la Guerra fué la defensa de los Fueros

³⁵ la memoria viva del franquismo conformaba ideas y elementos importantes de la propia identidad colectiva navarra

³⁶ sino que incluso la acrecentaba y fortalecía

³⁷ el navarrismo no es sino la versión Navarra del nacionalismo español en el siglo xx

understand carlism, which has ‘destroyed rooted myths’ (my translation³⁸) (Rubio Pobes 2005: 302).

Despite this progress, little agreement or consensus can be found regarding the localised support given to carlism and the variety of interpretations made of it. Jordi Canal (2008) has described the current academic context of studying carlism as one experiencing a ‘light crisis’ (Canal 2008: 19). Canal suggests that the crisis is being produced partly by methodological tendencies to study carlism that shape and constrain its meanings towards one or another direction. He notes four main methodological approaches; they include understanding carlism: 1) in a subordinate position to liberalism; 2) in relation to either socioeconomic or political factors; 3) within a particular period of time; or 4) almost exclusively in relation to a ‘national’ or ‘regional’ scale (Canal 2008:19-22).

Contradictions have been also noted by Jesus Millan (2008), who has argued that there are important contradictions in the meanings of social action emerging from two bodies of literature: that studying carlism, and that studying Spanish contemporary history. In his view, ‘the hypothesis that carlism was a precarious social mix, opposed to a liberalism seen as an agent of the bourgeoisie, has led to a notable alteration of the terms of the problem’ (my translation³⁹) (Millan 2008: 67).

Examples of this can be found in the work of Bartolomé Clavero (1974). For Clavero, more than anything else, it was the *Vínculo* or *Mayorazgo*, which defined the pre-liberal economy and sustained the pre-liberal social system. The *Vínculo* or *Mayorazgo* was an institution that linked goods ‘so tightly together, that they can never be separated, nor enter in another family whatever its kind, or be possessed by any other person than that called between cognation or affection’ (my translation⁴⁰) (De Castro 1787: 1). Clavero argues that the interest of the bourgeoisie, ‘as a class’, lay in bringing the institution of the mayorazgo to an end, substituting it by capitalist relationships of

³⁸ realizados desde rigurosos enfoques científicos y militando en novedosas corrientes de investigación histórica, han enriquecido notablemente el conocimiento de los siglos XIX y XX vascos y han destruido arraigados mitos

³⁹ la hipótesis del carlismo como precaria amalgama social, opuesta a un liberalismo visto como agente de la burguesía, ha llevado a una notable alteración de los términos del problema

⁴⁰ Vínculos y Mayorazgos llamamos á aquellos bienes unidos, y tan estrechamente ligados entre sí, que jamás puedan separarse, ni entrar en otra familia por cualquier título que sea ó poseerse por otra persona que la llamada entre los de la cognación ó afecto

property (Clavero 1974: 418). He concluded that his findings did not match a conventional representation 'that conceives the crisis of the eighteenth century as a conflict between the nobility and the bourgeoisie', and proposed that such a conceptualisation 'could be the result of the effect of images created by the industrial bourgeoisie historically posterior' (my translation⁴¹) (Clavero 1974: 301).

Other authors coincide with the idea that reforms that transformed the Ancient Regime into a liberal order did not result in the significant detriment of the nobility's wealth and social position. Virto Ibáñez, for instance, notices the different terms around which reforms were discussed, depending on whose interests were at stake: the nobility's, the Church's or the Municipalities'. The term 'expropriation' was used in reference to the properties of the Church and the Municipalities, yet it was never used in reference to those of the nobility. This 'is why Spanish nobility as a whole was in favour of the moderate liberalism that sustained the throne of Isabel II' (my translation⁴²) (Virto Ibáñez 2002: 337). Similarly, Miguel Artola (1973) argued that the nobility 'passed through the revolutionary experience without significant detriment of its *status*' (my translation⁴³) (his own emphasis. Artola 1973: 135).

Important contradictions also arise from studies done in relation to Euskal Herria or Basque nationalism. Pre-constitutional foral societies have often been portrayed as examples of proto-liberalism, and the ambition to achieve modernity is argued to have materialised in an early form of association in the State of Spain dedicated to the promotion of the sciences, arts and progress in general – the *Real Sociedad Bascongada de Amigos del País*; a model that would be copied by State authorities during the second half of the eighteenth century to promote the Enlightenment. Nonetheless, within two decades or so, foral societies became not only the symbol of traditionalism and conservatism, but also the geographical space in which opposition to constitutional reform materialised in concrete and effective political and military resistance. Maximiano García Venero (1945) argued that there is in 'Basque's

⁴¹ que concibe la crisis del XVIII como un conflicto entre la nobleza y la burguesía...puede resultar de un efecto de proyección en la misma de la burguesía industrial históricamente posterior

⁴² De ahí que la nobleza española como conjunto fuera partidaria del liberalismo moderado que sustentaba el trono de Isabel II

⁴³ La nobleza, al menos la nobleza titulada, pasó por la experiencia revolucionaria sin sensible detrimento de su status

behaviour towards the liberal constitution...a sudden mutation that no-one can still exactly explain. The country, which slumbered liberal, dawned absolutist (my translation⁴⁴) (García Venero 1945: 57). The figure of Joseph-Augustin Chaho (1811-1858) noted previously, is sometimes presented as ‘controversial’ because his ideas brought together Basque nationalism and liberalism (De la Granja Sainz 2002: 26).

Supporting Canal’s call to endorse less constrained methodological approaches, interpretations made of counterrevolutions in different states such as France and Spain can even today produce debates that resemble those taking place between Southern and Carnarvon in the 1830s. An example of such contemporary interpretative differences can be seen by comparing an interpretation of the counterrevolutionary movement made in the context of the State of Spain by Aróstegui et al (2003), with one made in the context of that of France, by Alan Forrest (1995).

Both works can be seen to have common elements that can be associated with contemporary perspectives. They both share a vision of the social conflict that interprets it as the result of complex social, political and economic contexts, and thus they argue that there was not a single or unique goal shared by all counterrevolutionaries. Both note a clash of progressive and traditional cultures (Forrest 1995: 8; Aróstegui et al 2003: 20), as well as tensions between urban and rural interests (Forrest 1995: 150; Aróstegui et al 2003: 25), both concluding that the urban/rural dichotomy is not sufficient to fully explain the features of the counterrevolutionary movements (Forrest 1995: 152; Aróstegui et al 2003: 27). They also coincide in not conceiving the counterrevolution as a merely subordinate position to liberalism, but instead as a movement that was able to influence events, policies and ideas (Forrest 1995: 157; Aróstegui et al 2003: 19).

Differences in their views are to be expected and are not necessarily due to interpretative differences, as they are researching different times and contexts. Nevertheless, the differences that emerge out of their interpretations pretty much reproduce key historical disputes over the influence of the *fueros* as the key factor

⁴⁴ Hay una súbita mutación que nadie sabe todavía concretamente a qué móviles obedeció. El país, que se acostó liberal, amaneció absolutista

producing the counterrevolutionary movement. The main feature that defines carlism for Aróstegui et al can be seen in the following paragraph:

The emergence of socioeconomic forms, and a new world of cultural perceptions that liberalism brought with it, which ruined the predominant historical structures before the great upheavals of the early nineteenth century, is the last explanation of the whole movement of the counter-legitimism and ultimately, anti-liberalism that carlism represented (my translation⁴⁵) (Aróstegui et al 2003: 20).

The counterrevolutionaries are identified as those who had ‘a well-defined position in the old social structures’ (my translation⁴⁶) (Aróstegui et al 2003: 20); who have ‘always represented the ancient society of traditional stratification, of theocratically inspired social order, of pre-liberal economy...the prevention in the face of urban culture and the resistance to change in traditional ways of life’ (my translation⁴⁷) (Aróstegui et al 2003: 17). The paragraph is open enough to be able to reflect some complexities behind carlism; nonetheless, key ideas underlying the proposed perspective can be identified. Carlism were those who defended a ‘stratified society’, those who conceived and explained society in reference to religious dogma, and inhabitants of traditional rural economies, who perceived new urban cultures as a threat to their material and cultural universes.

For Forrest, the counterrevolution in France seems to be more influenced by the resistance that some peripheral communities presented to centralising and cultural homogenising projects:

The French Revolution was not, after all, a single, tidy entity, coherent in its objectives...the meaning of the Revolution was very different for peasants and businessmen, soldiers and artisans; and it meant different things depending on whether

⁴⁵ La irrupción de formas socioeconómicas, y de un mundo nuevo de percepciones culturales que traía consigo el liberalismo, que arruinaban las articulaciones históricas predominantes antes de las grandes conmociones de principios del siglo XIX, es la explicación última de todo el movimiento de la contrarrevolución, el legitimismo y, en definitiva, en antiliberalismo que represento el carlismo

⁴⁶ facciones todas ellas con una posición bien definida en las viejas estructuras sociales

⁴⁷ El Carlismo en España representó siempre la defensa de la antigua sociedad de tradición estamental, del orden social de inspiración teocrática, de la economía preliberal, de las formas culturales y religiosas fuertemente informadas por la preeminencia ideológica de la Iglesia, la prevención frente a la cultura urbana y la Resistencia del campesinado a cambiar sus formas tradicionales de vida

one lived in Paris or Perpignan, Lyon or the Vendée (Forrest 1995: 11-12).

Forrest argues that the rejection of the revolution 'was not necessarily associated with a royalist ideology or with a desire to restore the social hierarchies of the *ancient regime*...(t)here was even a sense in which the insurgents were rebelling in the cause of order, of their traditional autarchy and custom' (his own emphasis. Forrest 1995: 152).

There are clear differences between the compared interpretations, which resemble historical debates over the role of the *fueros*, influencing the appearance of the counterrevolutionary movement. Forrest's interpretation of the counterrevolution can easily accommodate 'Basque historiography's' interpretation, whereas Aróstegui et al's hardly leaves any space for it.

4.4. Conclusion

Secondary sources studying the *fueros* and carlism do not provide a stable framework of meaning in relation to which primary data can be analysed with confidence. They show instead the existence of competing interpretative approaches, that differently portray social structures and which describe the meanings of social action.

What Navarre's and Euskadi's *fueros* were, how they were valued by the population and what all of these meant, has been of central importance to support one or another claim about the meaning of social action and the historical narratives of Navarre, Euskadi and the State of Spain.

The importance that providing convincing interpretations of the *fueros* may have had for the populations of Navarre and Euskadi is suggested by the fact that the modern national identities that became popular in these territories since the turn of the twentieth century have their origins in interpretations of the *fueros* made by key intellectual and political figures.

5. Jurisdictional Interests and Evaluative Logics in Defences of the Fueros

I suggested in the introduction that modernist interpretations of the history of the State of Spain usually look at the nineteenth century (especially until 1876) as a time in which the Ancient Regime was institutionally reformed, and carlism as the counter-revolutionary movement that opposed such change and defended absolutism. Carlism tends to be associated with factors such as religious beliefs, the interests of the nobility or rural lifestyles. The localised support that carlism had in Euskadi and Navarre is often explained in relation to the presence in these territories of such factors. On the other hand, the influence exercised by socio-economic factors is generally associated with attitudes displayed by some municipal and territorial authorities (or political actors associated with them), such as municipal authorities of the cities of Bilbao and San Sebastián, or the decision to reform the fueros defended by a political sector in Navarre during the first Carlist War. Such interpretations tend to reinforce the historical narrative that presents the nineteenth century as a time dominated by a clash between a religious and conservative absolutism with a secular and liberal constitutionalism, which clashes with competing narratives, often leading to conceiving social conflict in relation to dichotomies such as Basque vs Spanish national identity or secular liberalism vs religious absolutism.

This chapter will suggest that interpreting key jurisdictional conflicts in relation to such dichotomies is not entirely accurate. The chapter is divided in three parts. The first part reviews data that show how the fueros were defended by both carlists and liberals in Euskadi and Navarre. The second part analyses two documents issued by social actors generally associated with liberal attitudes in Euskadi and Navarre: the process opened by San Sebastián's jurisdictional authorities to abandon the jurisdiction of Gipuzkoa in 1832; and Navarre's justification to negotiate the reform of the fueros that turned a kingdom into a province in 1838. The third part points towards key differences that can be identified in the approaches to the organisation of the state displayed by symbolic figures of carlism and liberalism in the first part of the nineteenth century: Jose Canga Argüelles and Tomás de Zumalacárregi.

The analysis suggests the existence of a more complex social context. Generally, factors that have to do with socio-economic interests, culture or belonging can be identified in the discourse of key social actors. However, central to their arguments and justifications rests a common denominator: a defence of the *fueros* from a rather traditional perspective, and to legitimise upon it their jurisdictional autonomy to exercise types and degrees of social powers.

Regardless of the liberal or conservative character associated with social actors in Euskadi and Navarre, they seem to have in common a defence of the *fueros* combined with a defence of the legitimacy of jurisdictional authorities to decide certain issues. This suggests the presence of another factor, which can be associated with Benton's idea of 'jurisdictional politics'. Jurisdictional authorities justified their views in relation to the powers they considered were granted to them by the *fueros*.

In my view, the interpretations of the *fueros* made by social actors show their ability to justify particular positions within contexts of possibility. Actions of jurisdictional authorities may not always reflect the world views or conceptions of society of social actors; on occasions, they may have instead been outcomes of the situations in which social actors found themselves, having to make decisions that required different kinds of compromises in order to avoid their perceived worst-case scenario⁴⁸.

5.1. Carlist and Liberal Defences of the *Fueros* in the 1830s

A general appreciation of the *fueros* and an interpretation of them (largely shaped by traditional conceptions) seems to have been common during the first half of the nineteenth century in the conceptions of society held by both self-proclaimed liberals and carlists in Navarre and Euskadi.

5.1.1. Liberal Defences of the *Fueros*

An instance of liberal defences of the *fueros* can be seen in an anonymous document printed in Bayonne in July 1836, by what seems to have been a citizen from Gipuzkoa, who had escaped the war, and engaged to some degree in territorial politics. The

⁴⁸ In what follows, and in order to match social actors' uses, the term 'province' might be used in reference to Gipuzkoa, that of Kingdom to Navarre and that of Basque to refer to the four territories.

document was titled ‘Considerations about the election of procurators to Cortes [State’s parliament] in Gipuzkoa and the political question of the conservation of the fueros in the Basque provinces’ (my translation⁴⁹) (AGG-GAO JDSM 28, 12_2).

The writer began by explaining that an incident had inspired him to think about the fueros of Euskadi, an issue that in his eyes was a ‘(g)rave subject, transcendental for the sacred cause of Spanish liberalism’ (my translation⁵⁰) (AGG-GAO JDSM 28, 12_2: 1). The incident occurred when two procurators from Gipuzkoa had been unilaterally excluded from participating in the parliament of the State by the monarchical government. Gipuzkoa’s Deputation complained about this, and stated that in such a context it would not participate at all, as such action was seen to be ‘as humiliating as a violation of its representation and its rights’ (my translation⁵¹) (AGG-GAO JDSM 28, 12_2: 1).

The disregard that Gipuzkoans felt towards what they considered was their legitimate institutional representation led the author to analyse what he identified as the origin of such an undermining attitude towards Gipuzkoa’s institutions: a tendency to portray the fueros as aristocratic privileges. He considered it absurd to portray Gipuzkoa’s governing system as aristocratic, ‘because it has always been popular, and because it has only been concerned with the happiness of the villages that constitute the brotherhood and not that of some particulars’ (my translation⁵²) (AGG-GAO JDSM 28, 12_2: 2). He associated the support that carlism had encountered in Euskadi with the need of the carlist pretender to make allies:

the Pretender, depleting the resources of his circumstances and wanting to win at any cost, regardless of the contradiction that they [the Fueros] produce in his system of despotism and divine rule, has associated the most flattering promises of maintaining the fueros and liberties of those provinces with the insufficient seductions of religious fanaticism, ... This way of proceeding, shocking everywhere, it is much more so in a country used to the exercise of civil rights on a much larger

⁴⁹ Reflexiones sobre la elección de procuradores a cortes en Guipúzcoa y sobre la cuestión política de la conservación de los fueros en las provincias Bascongadas

⁵⁰ Materia grave; transcendental a la santa causa del liberalismo español

⁵¹ bajo una forma tan humillante como violadora de su representación y de sus derechos

⁵² porque siempre ha sido popular, y porque solo ha tenido por objeto la felicidad de los pueblos que constituyen la hermandad y no la de algunos particulares

and popular scale than that which is tried to be imposed now as progress (my translation⁵³) (AGG-GAO JDSM 28, 12_2: 2).

The writer was convinced of the liberal value of Gipuzkoa's foral system, and associated tendencies to abolish or deeply reform the fueros with an existing tendency to label the fueros as privileges (AGG-GAO JDSM 28, 12_2: 4). For the author, if such qualities represented liberalism, the fueros of Gipuzkoa should not be abolished. If liberalism was the source of legitimacy to change society, such a change was not justified in Gipuzkoa precisely because of the liberal value of its political system. In his view, the legitimacy of Gipuzkoa's fueros rested on their liberal character, and the existence of political representation did not necessarily have to take place in any particular geographical or political context. This led him to ponder:

but what difference exists between these and the advantages that the nations called free elsewhere in the globe enjoy?...they will not seem hateful to any liberal, who deserving such title wants to examine them with impartiality, the large extension of the exercise of political rights...that of voting taxes, that of electing all the authorities who perform their jobs without salary, only during a year...that of monitoring at the end of each term all the acts of the executive powers performed by the deputation; the power to judge following certain requirements, even to the agents of the King who dare to attack the foral institutions; that of obeying but not practising the commands that may violate them, of the civil government and even the ecclesiastic one; and lately all the guarantees that protect individual liberty and the sanctity of property (my translation⁵⁴) (AGG-GAO JDSM 28, 12_2: 4).

⁵³ El Pretendiente, apurando los recursos de su situación y queriendo vencer a toda costa, sin reparar en la contradicción que producen en su sistema despótico y de derecho divino, ha asociado a las seducciones insuficientes del fanatismo religioso, las promesas más lisongeras de conservar los fueros y libertades de esas provincias...Este modo de proceder, chocante en todas partes, lo es mucho más en país acostumbrado al ejercicio de los derechos civiles bajo una escala mucho más extensa y popular que la que se pretende imponer ahora como progreso

⁵⁴ pero qué diferencia hay entre ellos y las ventajas que gozan las naciones llamadas libres en el resto del globo?...no parecerán odiosos a ningún liberal digno de este título que quiera examinarlos con imparcialidad, la mayor extensión del ejercicio de los derechos políticos...la de votar todos los impuestos, la de elegir todas las autoridades que sirven sin sueldo sus empleos, solo durante un año, quedando reducidos después a la condición general de sus conciudadanos, la de revisar al fin de cada ejercicio todos los actos del poder ejecutivo que desempeña la Diputación; la potestad de juzgar después de ciertos requerimientos, aun a los agentes del Rey que se atrevan a atentar a las instituciones forales; la de obedecer y no cumplir las órdenes del gobierno civil y aun eclesiástico que puedan violar aquellas; y últimamente todas las garantías que protegen la libertad individual y el sagrado de la propiedad

He related the desire to create institutional unity in the context of the State not to liberal values, but to a wider European political and intellectual context that associated state-centralised administration with an ideal form of social system. ‘The uniformity in administration and legislative prescriptions indeed offer a simple, brilliant and seductive theory, but no doubt that its application presents grave obstacles...Only France, between the great States, after a prodigious but terrible revolution, has been able to destroy such anomalies and plan a homogeneous and centralised system, which although it has some acknowledged advantages, does not lack inconveniences’ (my translation⁵⁵) (AGG-GAO JDSM 28, 12_2: 5).

Similar interpretative logic can be found in other testimonies. For example, in two speeches made on the sixth of October of 1839 in the Congress of Deputies convened in Madrid that discussed and eventually approved the law confirming the *fueros* on the 25th of October of 1839.

One was made by Salustiano Olózaga. Born in Araba-Álava, he was a ‘lawyer and a liberal politician who participated in the creation of the constitution of 1837 and who would hold high state office in the 1840s’ (Biografías y Vidas [online]. <http://www.biografiasyvidas.com>, no date). Olózaga argued that if the *fueros* were examined in reference to the values defended by either of the two contesting political tendencies at the State level, one could say that:

Those who respect the work of the ages with a kind of religiosity; those who respect tradition over living law, these will say: we abide by those *fueros*...[and]...Those who wish the intervention of the people in all public businesses, those who recognise rights in all citizens and who want their will to be consulted in some cases...these will say: yes, we have the proof in our own house that freedom is older than despotism: that liberty is stronger and more powerful than the despotic

⁵⁵ La uniformidad en las formas administrativas y en las prescripciones legislativas ofrece a la verdad una teoría sencilla, seductora y brillante, pero sin duda su realización presenta graves obstáculos...La Francia sola, entre los grandes Estados, después de una prodigiosa pero terrible revolución, ha podido destruir tales anomalías y planificar un sistema de homogeneidad, y centralización, que con algunas ventajas reconocidas, tampoco carece de inconvenientes

empire and domination, let's keep unharmed those testimonies that credit it (my translation⁵⁶) (AGG-GAO JD SM 28, 12_1).

However, Olozaga considered that some aspects of the *fueros* had to be reformed within the constitutional context of the state. An unequivocal association of the *fueros* with liberalism was made in the same setting by Luis Antonio Pizarro y Ramirez, *Conde de las Navas*, born in Valladolid and deputy for Cordoba and Salamanca among other territories between 1834 and 1854 (Casas 2010: 356). Pizarro y Ramirez associated the *fueros* with a quote by Jean Jacques Rousseau (1762) in which the later had praised 'the peoples who give themselves institutions under the shadow of a tree' in reference to the famous tree of Guernica, glorious symbol of Biscay's liberties' (my translation⁵⁷) (AGG-GAO JD SM 28, 12_1).

Some of the liberal qualities contained in the *fueros*, as well as how interpreting these could influence the legitimacy perceived in the State centralising constitutional reform, can be seen in the views of foreigners who came to value the *fueros*. This can be seen, for example, in the work of John Francis Bacon, a British consul who lived for two years in Castile and for five in Bilbao between 1831 and 1837, and reflected about the war in his book *Six Years in Biscay* (1838). Bacon's views are interesting because he is a British citizen whose position come to support some of the claims made by Carnarvon and some of those made by Southern. Like both these authors, Bacon positioned himself within an empirical perspective, and stated that his analysis was guided by evidence (Bacon 1838: 2).

Like Carnarvon, he linked the *fueros*, the societies they created and their autonomy with jurisdictional histories (Bacon 1838: 58, 59). Features of traditional fuerism that related the *fueros* with idiosyncrasies of the idea of 'Basque' were also present in Bacon's analysis. He stated that '(t)he population of these provinces form, at the

⁵⁶ Los que respetan con una especie de religiosidad lo que es la obra de las edades; los que respetan la tradición sobre la ley viva; los que tratan de conservar antes de crear e innovar, estos dirán: nosotros acatamos esos *fueros*... Los que desean la intervención popular en todos los negocios públicos, los que reconocen derechos en todos los ciudadanos y quieren se consulte su voluntad en ciertos casos... estos dirán: sí, tenemos nosotros la prueba en nuestra casa de que la libertad es más antigua que el despotismo: de que la libertad es más fuerte y poderosa que el imperio y las dominaciones de los déspotas, conservemos ilesos esos testimonios que lo acreditan

⁵⁷ Benditos los pueblos que se dan instituciones a la sombra de un árbol "aludiendo al famoso árbol de Guernica, símbolo glorioso de las libertades Vizcaínas

present day, the most compact and ancient race in the Spanish peninsula' (Bacon 1838: 53).

Bacon coincided with Carnarvon in describing the autonomy of these territories and he also noted a difference between the character of these institutions and those of the State; 'in a word, in the Basque provinces the inhabitants are free citizens, in the rest of Spain they are mere flock, who are squeezed and beaten at the will of their masters' (Bacon 1838: 65). This positive interpretation of the *fueros* led him to think, as Carnarvon, that they could not be abolished in the name of liberty and justice, '(a) representative government will endeavour to raise Spain to a level with the Basque provinces, - a despot, to whom the very name of freedom is odious, would strive to reduce the provinces to the same low level with the rest' (Bacon 1838: 80).

The similarities between Bacon's and Carnarvon's analyses can be seen in regards to their approaches to understand Foral societies, which include reconciling historical analysis with empiricism, to positively value the *fueros*, to perceive them as effective constitutions to autonomously govern societies and to consider that they are valued by inhabitants of these territories.

The similarities between Bacon's and Southern's analyses can be seen in regards to their interpretation of the war. For both, the war was not about the *fueros*; but a war at state level between absolutism and liberalism. Bacon valued the *fueros* for their liberal features, and for the same reason he appreciated those values for a constitutional Spain. If analysing the *fueros* led him to conclude that a representative government should try to raise the State of Spain to match Foral territories and not the contrary, when analysing the war he concluded:

When, after three centuries of uncontrolled and absolute power on the part of their kings, the people of the peninsula endeavoured to ameliorate their social system...the most deadly opposition they experienced was from those favoured provinces which, exempt from taxes, free from the conscription, unmolested by that swarm of employees which devour the substance of the rest of Spain, had flourished at the cost of their less favoured brethren – then did these provinces, so far from sympathising with their oppressed countrymen, in

their attempts to regain their freedom, exert all their efforts to prevent it (Bacon 1838: 126, 127).

Even though Bacon shared views with both Southern and Carnarvon, some of his ideas distinguished him from both. For Bacon the *fueros* were law: not old and useless, neither understood only as a protection against external powers; and that law had not been respected by either side before the war. This led him to criticise those writers who portrayed Foral territories as paradigms of freedom and equality: ‘Sorry am I to destroy the illusion, but truth obliges me to say that from 1830 to 1833, I witnessed more acts of cruelty and oppression for political offences, than probably have occurred in Great Britain ever since the peace of 1815’ (Bacon 1838: 74). Not only had the carlists in Euskadi and Navarre been responsible for some of these attacks on foral law, elsewhere in the State there was a tendency among both carlists and liberals to dislike the *fueros*; ‘the Spanish nation’, he argued, find the Basque *fueros* ‘odious’ (Bacon 1838: 80).

The carlist war resulted in a contradiction that was hard to explain because on the one hand, those who considered themselves to be an example of liberalism were fighting in support of a symbol of absolutism; and on the other hand, because those who symbolised liberalism wanted to abolish existing political systems that were considered examples of liberal societies.

5.1.2. Carlist Defences of the *Fueros*

The clearest evidence of carlists’ defence of the *fueros* in the 1830s can be found in the peace treaty ending the war in Euskadi and Navarre. On the 29th August 1839, in Oñate, Gipuzkoa, a peace treaty was reached and signed by *Capitán General* Baldomero Espartero, commander of the Queen’s liberal army, and about a dozen carlist leaders. Two days later, in Vergara, Gipuzkoa, the treaty was ratified by Espartero and the *Teniente General* Rafael Maroto, leader of the carlist army (Rubio Pobes 2003: 208, 209). The end of the war had begun. On September 14th Don Carlos, the pretender, escaped to France with his remaining eight thousand men (Urcelay Alonso 2006: 171); the war would be considered to be finished when on the 5th July 1840, the carlist general Cabrera, still resisting in Catalunya, crossed the border into

France (Urcelay Alonso 2006). The war ended as it had started, with the decision of disconnected authorities to support, or not, the carlist cause.

The *Abrazo de Vergara* (Embrace of Vergara), as the ratification of the treaty would be generally called, acquired great symbolic, legal, political and ideological significance. Eguiguren Imaz (2008) feels confident to follow Antonio Pirala (1868 volume 5) stating that ‘it will be one of the most notorious and popular political facts of Spanish contemporary history’ (my translation⁵⁸) (Eguiguren Imaz 2008: 46). Among other things, it became the basis for the reconciliation of the fueros with constitutional Spain, which was formalised in the *Ley de 25 de Octubre de 1839*. This law became the key reference for Basque politics until the civil war of 1936, and is still in force today, though for Navarre alone (Eguiguren Imaz 2008: 49).

Contrasting with the symbolic and popular representation of the peace treaty - the embrace of two commanding generals sealing peace between two fighting armies, the reality of the treaty was different. It had not ended the war; it had not been accepted by Don Carlos (ultimate leader of the carlists), and carlist authorities in Araba-Álava and Navarre had not publicly adhered to it. The degree to which carlists from Araba-Álava and Navarre adhered to it is largely unknown. Generally it has been thought that they did not (e.g. Izu 2001 in reference to Navarre). García-Sanz (2009), however, recently argued that ‘at least half of the chiefs and officials of Navarre’s battalions stayed in Navarre once the War of the Seven Years was over’ (my translation⁵⁹) (García-Sanz 2009: 65), a number that increased as others returned in the following months.

The fragmented and institutional unilateral decision-making that shaped the process can be seen in the treaty itself. The text on which the peace treaty was formalised contained ten articles, and it covered four main issues: 1) The maintenance of the fueros (first article); 2) A series of articles regulating the conditions under which the carlists adhering to the treaty – from Castile, Biscay and Gipuzkoa – would be treated (articles 2,3,4,5,6,9,10); 3) The permission to Navarre’s and Araba-Álava’s carlists to

⁵⁸ será uno de los hechos políticos más conocidos y populares de la historia contemporánea española

⁵⁹ parece que, como mínimo, la mitad de los jefes y oficiales de los batallones navarros permaneció en Navarra tras finalizar la Guerra de los Siete Años

adhere to the treaty should they want to (seventh article); and 4) Carlists had to surrender their weapons and fortresses (eighth article) (BINADI Sign: CA4/137).

The treaty had been negotiated by several carlist leaders in representation of their territories and their inhabitants (Castile, Biscay, Gipuzkoa, Araba-Álava and Navarre). Yet Navarre and Araba-Álava decided not to immediately adhere to it. The treaty nonetheless allowed them to do so in the future. The influence that each of these jurisdictional spaces had stems from each one's own jurisdictional control, and from their own conviction that they themselves were the unilateral and legitimate social actors to decide. This location of political influence in decision-making contrasts with other legal documents and discourses, in which these distinct jurisdictional entities were addressed and identified as if they were a single jurisdiction.

The *Ley de 25 de Octubre de 1839*, for example, which came to reconcile the existence of the *fueros* within a constitutional State of Spain, used the term *provincias Vascongadas* to refer to three jurisdictions as one entity with no direct legal relation between them. The first article reads 'the *fueros* of the Basque provinces and Navarre are confirmed, without detriment to the unity of the constitutional Monarchy' (my translation⁶⁰) (BINADI Sign: CA4/137). The second article states that the government, as soon as it is possible, and after having heard Euskadi and Navarre, will propose to the Parliament the required modifications on the *fueros* (BINADI Sign: CA4/137).

Contrasting with war treaties, this political document only distinguished between two political spaces, that of Navarre and that of Euskadi. This was surely influenced by the three territories of Euskadi presenting themselves united in defence of the same interests. In fact, representatives of Navarre and Euskadi met to discuss their positions before addressing the government, resulting in Navarre negotiating and reforming its *fueros* alone (Sánchez-Prieto & Nieva Zardoya 2004: 84, 85). If the four jurisdictional authorities had decided to act together, a different term might have been used to identify the four in the document. It also suggests that conceptual simplifications of complex realities coexisted with the fragmented political praxis produced by such

⁶⁰ se confirman los *fueros* de las provincias Vascongadas y Navarra, sin perjuicio de la unidad constitucional de la Monarquía

complexities. The peace treaty ultimately illustrates what carlists in Euskadi and Navarre found most important to protect: their lives, their properties and the fueros.

5.2. Jurisdictional Interests in Social Action

Early nineteenth century instances of jurisdictional behaviours are often used as evidence in support of different theories of modernity and nationalism. Two important examples of such jurisdictional action are analysed in this part. First, the conflicts taking place at the turn of the nineteenth century between a main urban and commercial centre and territorial authorities. Second, the willingness displayed by an influential part of Navarre's political class to negotiate foral reform and change its status from kingdom to province.

5.2.1. Foral Crisis in Gipuzkoa

This part will analyse a key document issued by the city of San Sebastián in 1832 justifying their proposal to end its legal relationship with the territory of Gipuzkoa, to directly relate with the State. At first sight, the document seems to support standard interpretations about social conflict produced by the different worldviews and interests held by urban and rural populations. A closer analysis of the document, however, suggests that the conflict, and the reasons leading to it, cannot be understood following interpretations regarding the meaning of the fueros often found in modernist narratives.

The document is a pamphlet published by the Council and the Committee of Commerce of San Sebastián in 1832 under the title: 'Report justifying what the city of San Sebastián has argued and requested for the promotion of the industry and commerce of Gipuzkoa' (my translation⁶¹) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434). It is a 192 page document, divided into an introduction and three parts, which are followed by a 75 page appendix compiling documental evidence to support its arguments. The length and depth of the document illustrates the importance of what was at stake: *the union of Gipuzkoa*.

City authorities, in order to increase commerce and industry, had presented a proposal to reform aspects of the economic system to the General Assembly of Gipuzkoa on the

⁶¹ Memoria justificativa de lo que tiene expuesto y pedido la ciudad de San Sebastián para el fomento de la industria y comercio de Guipúzcoa

2nd July 1832. In their view, the proposed reform was beneficial for the welfare of Gipuzkoa as a whole, and it was also just, and 'in accordance with the duties of the brotherhood of Gipuzkoa and its fueros' (my translation⁶²) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: V). The General Assembly received the argument and the proposal positively (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: III). Nonetheless, the Particular Assembly that convened a month and a half later (on the 18th August), considered such a proposal 'inadmissible, sinister, indecorous, worthy of a dishonour warning, as well as sanctioning all the errors, injuries and unreasoning that abound in that report ' (my translation⁶³) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: III).

It was the opposition of the second assembly to the city's proposal, and the accusations directed at the city, which had pushed city authorities to reconsider 'the conditions of its union' with Gipuzkoa. The city had been portrayed as selfish and seeking its own interests against the welfare of the territory; accusations that were considered unreasonable and an unfair attack (my translation⁶⁴) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 97).

City authorities highlighted the different response that their proposal had received in the two different assemblies, and they seemed to suggest that the views expressed in the second were not representative of the entire territory. In theory, however, the same villages had the right to send representatives to both assemblies. Key to differentiating these assemblies was when they convened rather than who had the right to participate in them (Echegaray 2009 (1924): 75-81). Be this as it were, throughout the document city authorities continuously directed their arguments against the second assembly, and referred to the General Assembly of Gipuzkoa as the legitimate union of all villages for decision-making.

The lack of selfishness of the city's proposal was partly defended in reference to 'modern' economic theory. The population of a territory was presented as a sign of its

⁶² y su concordancia con los deberes de la hermandad guipuzcoana y con sus fueros

⁶³ inadmisible, siniestra, indecorosa, digna de un apercibimiento infamatorio, sancionando además todos los errores injurias y sinrazones que pululan en aquel informe

⁶⁴ Este empeño de divorciar a San Sebastián de la Provincia provoca naturalmente el examen de las condiciones de su unión

prosperity – the greater the population, the more prosperous the territory. The size of the population was related to the sum of the production available and it was argued that increasing production and commerce would allow a higher population to live and prosper. In their view, there was not a balance in Gipuzkoa between the population and the labour market. ‘The immediate effect of such lack of balance is that there is not enough capital to occupy all the arms [in labour]; and the law of competition, whose power is as strong in the domain of the economy as gravity is in that of physics, makes the price of labour drop, a working class cannot exist, and has to emigrate’ (my translation⁶⁵) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 27, 28).

In the view of city authorities boosting industry and commerce would directly increase the wealth of everybody in Gipuzkoa; not doing so not only prevented wealth from increasing, but it also benefited one sector of Gipuzkoa’s population: land owners. City authorities argued that land owners were benefiting from the decrease in commerce and industry because the lack of industry and commerce forced parts of the population to gravitate towards the agricultural contexts controlled by them, where they could impose law (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 29-32). Land owners were accused of preventing everybody’s welfare in order to maintain a *status quo* that in the existing context greatly benefitted them (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 63, 64). Also, the influence that they were able to exercise in Gipuzkoa’s politics was associated with forms of social privilege that were at odds with liberal ideas; land owners were associated with despotic legal practices. The existence of which was argued to be originated in land linkages and perpetual accumulations of land within families (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 34).

At the same time, city authorities interpreted that certain elements of foral law had been legitimate in a context of general poverty, in reference to which some of the *fueros* had been traditionally justified. Once the context of poverty was no longer present in some classes, the justification for that particular element of foral law was

⁶⁵ El efecto inmediato de este desnivel es que no quedan bastantes capitales para ocupar todos los brazos; que la ley de la concurrencia, cuyo poder es tan fuerte en el dominio de la economía como lo es la de gravedad en el de la física, hace bajar el precio del trabajo, que no pudiendo existir la clase trabajadora, tiene que emigrar

gone. It was considered unfair that some would benefit, whilst others impoverished, from a social setting traditionally justified in the welfare of all. ‘Until the 20th August 1831 the managers of the government of the province had not flaunted their prosperity, their welfare and luxury; on that day a new epoch began’ (my translation⁶⁶) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 36-40). The argument that the *fueros* could not be changed at all, which was being used by this social class, was seen as a manipulation of reality made by in order to promote particular interests.

The existence of this conflict should not be interpreted, however, as a conflict between different conceptions of law associated with liberalism and absolutism, divided by their opposing conceptions of the *fueros*. In fact, the political system of the territory is presented as the voluntary union of all the villages in defence of their interests, and the legitimacy of decision-making at territorial level was located in the assembly of them; ‘the current state is that of an association of all the villages of Gipuzkoa that equally enjoy the same franchises and the same municipal government. The custody and vigilance of such precious exemptions is in charge of the community, to which all the twinned villages should turn for protection’ (my translation⁶⁷) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 97). Far from considering the social system unjust, city authorities declared that ‘San Sebastián values the true and useful franchises of the country as much as anyone...Far from letting down the *fuego*, which we venerate as much as others who praise it...we are the first to maintain that...[the *fueros*]...may have contributed to maintaining decency and greatly expanding the population of this country’ (my translation⁶⁸) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 43).

⁶⁶ Hasta el 20 de Agosto de 1831 no se había oído a los encargados del gobierno de esta Provincia hacer ostentación de su prosperidad, de su bienestar y de su lujo; en ese día empieza una nueva época

⁶⁷ el estado actual es el de una asociación de todos los pueblos de Guipúzcoa que gozan en común las mismas franquizas y el mismo gobierno municipal. La custodia y vigilancia de esas preciosas exenciones está al cargo de la comunidad, á la cual deben acudir todos los pueblos hermanados por la protección que necesiten.

⁶⁸ San Sebastián precia tanto como el primero las franquizas verdaderas y útiles del País, y en ese camino nos hallará siempre la comisión. Lejos de defraudar al *fuego*, que veneramos tanto como otros lo ensalzan, de la parte que ha tenido quizás en el acrecentamiento de la población, y en su conservación, somos los primeros á sostener que las libertades de tributos y de servicio militar son concausas que unidas á las otras ventajas indicadas, han podido concurrir á multiplicar y mantener con decencia a los habitantes de este país.

The city's problem with the *fueros* did not relate to their existence, or the social system they created. Instead, city authorities opposed locating legitimacy to decide upon what they considered to be their private businesses in the authorities of Gipuzkoa. In their view, the foral system was the result of the voluntary union of the villages in defence of their interests, which led to treating some of their interests as common, *but always respecting the particular rights of each village* (my emphasis) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 91, 92). City authorities argued that the passage of time had led to perceptions and practices that approached any administrative change in a village as if it were of general interest, and thus the approval of all villages was required to allow changes in any one (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 93).

This was perceived as a problem for two reasons. First, because each municipality was seen to exist in different natural and social contexts, which offered different possibilities, which each municipality had the right to exploit; 'denying to San Sebastián the means to commerce... would be as contrary to that maxim of public right, as it would be to insist on a system that would prevent Azpeitia and Azcoitia from planting their fields' (my translation⁶⁹) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 134). Second, city authorities considered that the city had its own particular and exclusive legislative history, not related to that of the union of all villages materialised in Gipuzkoa's General Assembly (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 1-23).

There is one more argument addressed in the document that contextualises the conflict and suggests the existence of other factors for motivating the conflict. The lack of commerce and industry within the city were presented as rather new circumstances. These were associated with a series of causes, including the preponderance of foreign powers on the seas due to their technological superiority or the outcomes of European wars (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 1). Two factors were highlighted as key: fiscal changes made by the monarchy during the second half of the

⁶⁹ Ahora bien, impedir a San Sebastián los medios de comerciar... sería tan contrario a esa máxima de derecho público, como lo sería empeñarse en un sistema que impida a Azpeitia y Azcoitia sembrar sus campos

eighteenth century that led to considering as foreign the products and goods from Euskadi and Navarre, and the rebellions in the American colonies (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 60). For city authorities the situation was clear: Gipuzkoa had no other place to engage in commerce but the State of Spain, and in the existing context this could not happen until some aspects of the *fueros* were reformed. This is why they had proposed to Gipuzkoa the ‘Spanish-alisation, if one wishes to say it this way, of our commerce and industry: to obtain it without harm to the persons interested in the current administrative order’ (my translation⁷⁰) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: III). According to this document, the reasons that led the city to propose such a reform do not relate to values, cultural bonds or sentiments of belonging (although all of these may have been present in one way or another in people’s sentiments); but motivated by the loss of the city’s commercial markets and their ambition to access new or lost ones.

Some people in Gipuzkoa considered that the *fueros* were not responsible for the loss of the economic market of the State of Spain. Instead, they defended that ‘according to the *fueros*, those domains [Spanish economic market] had to remain open for us’ (my translation⁷¹) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 61). They seemed to be arguing that the monarchy had illegitimately altered the legal relationship that existed between the territory and the monarchy. In their view, it was not the territorial authorities that were impeding commerce (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 135), and it was therefore not their responsibility to change aspects of the *fueros* that benefitted other sectors of society.

City authorities considered that such an argument had perhaps become ‘more impertinent than anything else’ (my translation⁷²) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 61), and labelled such discourse as a sophism (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 135). City authorities considered the position of the monarchy reasonable, as they understood that State authorities attempted to prevent smuggling by making sure that all products entering its economic market had been

⁷⁰ la españolización, si se sufre decir así, de nuestra industria y comercio: para conseguirla sin daño de las personas interesadas en el actual orden administrativo

⁷¹ es de fuero que se mantengan abiertos esos dominios para nosotros

⁷² esa cuestión que hoy tiene quizás más de impertinente que de otra cosa

produced within the economic market of the State or else pay the required taxation (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 61).

The argument in any case points towards an ongoing dispute over legitimacy to alter legal relationships between Gipuzkoa (perhaps Euskadi in general and Navarre), and the State of Spain. The city of San Sebastián seems to have found itself 'trapped' between opposing interests, dominating the governance of these two authorities. The third part of the documents begins by stating that San Sebastián is 'subjected to the colliding actions of two authorities, impelled in opposite directions by precepts that oppose inwardly...is the victim of the collision of discordant obligations' (my translation⁷³) (Koldo Mitxelena. Sign: Fondo de Reserva J.U. C2434: 87). One can assume that such issues had confronted the interests of the territory with those of the monarchy for decades. Its origins may have been in the attempts made by the monarchy during the first half of the eighteenth century to move Navarre's and Euskadi's customs from their boundaries with Castile to those with France (e.g. Alli 2004 for Navarre).

The proposal to reform the *fueros* made by city's authorities, and its subsequent warning about 'leaving' the territory, are to be understood in relation to the context of possibilities faced by social actors. This foral crisis does not seem to have been mostly produced by different national identities or by opposing interpretations of society produced by progressive or conservative conceptions of law. Instead, a general tendency to associate the *fueros* with legitimate legal existence and the right to jurisdictional autonomy can be identified. City authorities did not seek giving up their autonomy to govern the city; on the contrary, they wanted higher degrees of autonomy that were being denied by what was seen as an illegitimate increase of centralisation in the territory's politics. Having had alternative commercial markets, the city may have not wanted to end its jurisdictional relation with Gipuzkoa.

Thus, although the city's authorities acknowledged a degree of institutionally-grounded inequality in the *fueros*, the system was generally understood as a fair and

⁷³ Un pueblo sometido a la acción encontrada de dos autoridades, impelido en direcciones opuestas por preceptos que se oponen entre si...es la víctima de la colisión de obligaciones desacordes

egalitarian union of the villages. Although science, commerce and industry were valued, history was also used and valued as a source of legitimacy. Ultimately, city authorities associated their legitimacy to alter legal relationships to historical narratives. In 1832, the liberal urban sectors of Gipuzkoa wanted to abandon a political space they valued for its liberal qualities in order to access a larger economic market, even though at that particular time it was still an absolutist monarchy (though perhaps the constitutional transformation that would occur was already known). Be this as it may, one can hypothesise that if the positions of the two institutions (monarchy and territory) affecting the province's interests were swapped, the city would have continued defending the same ambition to access a commercial market yet in relation to the opposite institution.

5.2.2. Foral Reform in Navarre, from Kingdom to Province

Navarre's pact to reform the *fueros* that materialised in the law of 1841 is often presented as evidence of liberal tendencies and/or Spanish national identity. If San Sebastián's pamphlet illustrated the city's reasoning to propose legal and political changes in its relationship with the territory, another pamphlet published in Pamplona in 1838 shows the reasoning of the political elite of Navarre who negotiated and managed Navarre's institutional transformation. It was written by Yanguas y Miranda (1838), who was an influential Navarre representative in the negotiations to reform the *fueros* with the monarchical government, and who would be the Secretary of Navarre's deputation between 1839 and 1867. The pamphlet had the title 'Critical and historical analysis of the *fueros* of Navarre' (my translation⁷⁴) (Yanguas y Miranda 1838).

Yanguas analysed Navarre's situation and evaluated what he considered to be the best alternative for the kingdom. From the start he stated that he considered Navarre's *fueros* as Navarre's constitution (Yanguas y Miranda 1838: 3). Yanguas' view of the *fueros* was re-stated at the end of the document. 'I have loved the *fueros* of my country, and I have never considered them as privileges, but as institutions that an originally free people gave to themselves' (my translation⁷⁵) (Yanguas y Miranda 1838: 49). He

⁷⁴ Análisis histórico-crítico de los *fueros* de Navarra

⁷⁵ he amado los *fueros* de mi país, y nunca los he considerado como privilegios, sino como instituciones que se dio a sí mismo un pueblo libre en su origen

also clarified that he would focus on the existing legal context, avoiding debates about the ‘origin of the fueros of the Basque peoples’, an issue that in his view was considered controversial by those with an interest in suppressing the fueros ‘in order to flatter the absolute power’ (my translation⁷⁶) (Yanguas y Miranda 1838: 3).

Yanguas considered that the fueros, as a constitution, had both good and bad characteristics. He related the good ones to the institutional and legal empowerment of Navarre, which meant that as a political institution it could govern itself without having to obey the arbitrary orders of the monarchy (Yanguas y Miranda 1838: 3-12). The bad characteristics were structured around five issues: 1) Navarre’s Parliament as a legislative institution; 2) the system of justice; 3) political government; 4) contributions to the monarchy; and 5) commerce (Yanguas y Miranda 1838: 13). Of particular interest for the argument here are some of his arguments in reference to the parliament, political governance and commerce.

The institution of the parliament, whose main feature was the exercise of legislative power, was seen as too conservative. Although in theory it contained representatives of different estates of society (clergy, nobility and villages), the need to obtain the agreement of each estate to legislate meant that some issues were constantly vetoed by an estate. Yanguas mentioned how the clergy made it impossible for policies inspired in the enlightenment to be approved. On top of the limitations that such a structure was created to legislate, the monarchy, through its five entitled representatives, also tried to promote its own particular interests that often clashed with those of the territory (Yanguas y Miranda 1838: 13-17). For Yanguas, the reforms of key institutional features that would lead to a better system of governance could not be achieved in Navarre. The words of Yanguas illustrate why he considered the existing parliament to be an inefficient political assembly and point to key factors impeding the institutional reform.

By little reflection it is known that it did not exist, nor could in fact exist the Navarrese’s national representation; and even if it existed it was inefficient to produce goodness due to the

⁷⁶ Sin internarnos en el oscuro laberinto de la antigüedad y del origen de los fueros de los vascones, tan controvertido por opiniones casi siempre interesadas en deprimirlo para lisonjear al poder absoluto, nos limitaremos al estado legal según la legislación peculiar de Navarra

vices it suffered in its own constitutive essence. These vices were irremediable: a recast of the estates, a new arrangement that would vary the way of exercising attributions, could not be done without the consent of three estates to give up their ancient rights; and such a phenomenon could only be produced by a popular revolution that the Castilian absolutist government could not tolerate, as the natural enemy of public liberties. Besides, the fortune of Navarre depended on that of the Peninsula and of the vicissitudes of its politics. The chains of its coat of arms, memory of past glories...were tightly linked to the Spanish sceptre; either free of or slave to the Peninsula, Navarre had to be involved indispensably in its freedom or its yoke. This small kingdom could not either, neither it would be convenient for it, to be independent: locked between two powerful nations, had to be the toy of both, succumbing to the whims of their will: neither navarrese's customs or sympathies could be merged with those of the French, their neighbours, to receive their laws: Navarre could not stop being Spanish, and their local situation necessarily demands so (my translation⁷⁷) (Yanguas y Miranda 1838: 27-29).

Yanguas' analysis of commerce was influenced by similar logic. On the one hand, Navarre had no external commerce. This situation had been provoked first by France's decision to allow their products to enter Navarre but not *vice versa*, and afterwards by the Castilian government's decision to forbid goods and manufactured goods from Navarre, as they considered that French products were being introduced into their economic market through Navarre. On the other hand, Yanguas argued that in Navarre there were no legitimate traders left, because those who existed had become, due to

⁷⁷ Por poco que se reflexione se conocerá que no existía, ni podía existir de hecho la representación nacional de los navarros; y que aunque existiese era ineficaz para producir el bien por los vicios que adolecía en su propia esencia constitutiva. Estos vicios eran insubsanables: una nueva refundición de los estamentos, un nuevo arreglo que variase el modo de ejercer atribuciones, no podía hacerse sin que los tres estamentos consintiesen en ceder sus antiguos derechos; y este fenómeno solo podía producirlo una revolución popular que no podía tolerarla el gobierno absoluto castellano, enemigo natural de las libertades públicas. Además, la suerte de Navarra dependía de la de la Península y de las vicisitudes de su política. Las cadenas de su escudo, recuerdo de sus pasadas glorias aunque símbolo ominoso, estaban fuertemente eslabonadas al cetro español; ya fuese libre o esclava, la Península, Navarra debía participar indispensablemente de su libertad o de su yugo. Este pequeño reino tampoco podía, ni le conviene ser independiente: enclavado entre dos naciones poderosas, tenía que ser el juguete de ambas, sucumbiendo a los caprichos de su voluntad: ni las costumbres ni las simpatías de los navarros podían amalgamarse con las de los franceses, sus vecinos, para recibir sus leyes: Navarra no podría dejar de ser española, y su situación local lo exige de necesidad

those changes in policy, smugglers (Yanguas y Miranda 1838: 42-44). Navarre's commercial enterprises required access to an economic market.

Like city authorities in San Sebastián, the reasons impelling a sector of the population towards favouring foral reform associated with the State's interests was produced by a mixture of reasons. Importantly, the possibilities to exercise social change in Navarre were perceived to be constrained by the legal position and real power that Navarre had in relation to the larger and more powerful states of France and Spain. These were seen as the inescapable contexts within which and in reference to decisions that had to be made, not the considered appropriate or ideal contexts. Decisions were guided by pragmatic analyses, which are normally overlooked in order to emphasise the presence of one or another value.

This is not to say that Yanguas' preferences were not also influenced by the qualities of the options. In fact, if he supported the institutional transformation to become a province of the State of Spain this was due to the features that he valued in the Spanish constitutional project materialized in the 1837 constitution. He valued its revolutionary character as well as key principles it represented, which he could relate with the institutional changes he considered were necessary in Navarre.

One of the characteristics of this constitution valued by Yanguas was the political system of governance that it proposed. This was structured around elected municipal councils and provincial deputations as key organisms to govern their own public affairs. This would allow 'those most enlightened individuals of each country...to promote all the branches of political government, which include agriculture, the arts, the industry and commerce' (my translation⁷⁸) (Yanguas y Miranda 1838: 38, 39). Another argued benefit of being part of a constitutional State of Spain was that the contributions made to the monarchy lost the obscure character they traditionally had had, and became contributions made to causes defended and presented with honesty and good faith (Yanguas y Miranda 1838: 41). Yanguas concluded his analysis by stating: 'I seek public convenience where I think I can find it, and I consider to have

⁷⁸ los individuos más ilustrados de cada país...que promuevan todos los ramos del gobierno político, en que deben comprenderse la agricultura, las artes, la industria y el comercio

found it in the representative government of the Spanish nation' (Yanguas y Miranda 1838: 49).

The reasons to favour either Navarre's independence, (the constitutional union with the State of Spain), with that of France, or not to change at all, were motivated by a series of factors. In no case the choices made can be seen to be produced by an intrinsic desire of social actors to favour a governing institution other than that which they were part of. Instead, their decisions related to pragmatic analysis made of the circumstances in relation to their values and aspirations. So far, these values cannot be seen to relate to a perception of the Spanish, the Basque or the French nation as a legitimate or natural political context to which they belonged. Yanguas' liberalism can neither be understood in relation to a worldview that differently legitimised the existence of social authority, including where this ought to be located. Navarre's and Euskadi's social actors during the studied period, however, seem to have generally valued their own legal and institutional traditions and structures. This positive regard seems to have inclined them towards locating legitimacy to govern and decide upon their own authorities and institutions.

5.3. State Constitutionalism and the Fueros

I have argued so far that there was in Navarre and Euskadi a general appreciation of the *fueros*, which tended to be interpreted from a rather traditional perspective. Such interpretations of the *fueros* carried important implications to what kind of constitutional reform could be legitimised in reference to liberal values. The logic and implications emerging from such approaches contrast with the different interpretation of the *fueros* made by an influential liberal class existing elsewhere in the State during the first part of the nineteenth century. Comparing the different visions of the State displayed by key figures of carlism in Navarre and Euskadi (Tomás de Zumalacárregi) and constitutionalism at state level (José Canga Argüelles), suggests the weight that the jurisdictional interests that emerged around different jurisdictional authorities could have had in shaping the different approaches to the *fueros* displayed by Foral and State authorities.

José Canga Argüelles was one of the important figures influencing the constitutional project of 1812, who would be appointed Minister of finance in 1820 during the constitutional period (1820-1822) (Oviedo Enciclopedia [online]. 2013). In 1811 he published ‘Social reflections or idea for the Spanish constitution that a patriot offers to Cadiz’s representatives’ (my translation⁷⁹). In it he argued that the *fueros* of some territories were like the rest of the ancient legislation of the State, which may have been fine for their time, but needed to be reformed (Canga Argüelles 1811: 98-101). The elimination of such legal particularities was seen by Canga Argüelles as a priority, and their existence as a danger:

Nothing would be more fatal than carrying isolated pretensions of privileges and graces to Parliament...it would be proscribed as a crime any persistence directed to maintain specific laws for each province; the system from which would precisely be born federalism, disunity and our misfortune. The attachment still retained by some provinces to the *fueros* that they had when each composed a separate nation, forces me to make this warning when it regards the constitution. All measurements, all work and all efforts should be directed to unity: united the provinces together by a wise and comprehensive legislation for all, will be able to successfully resist the conqueror of Europe (my translation⁸⁰) (Canga Argüelles 1811: 104-105).

Traits of a similar vision of the State can be detected in the justification to abolish the *fueros* in Euskadi made by Federico Castañón, a leading military official of the monarchical government’s army, in a governmental military command issued on the 30th of November of 1833. In its preamble he argued that the people of Euskadi, as a consequence of their ‘liberty, *fueros*, franchises and privileges’, enjoyed a significant prosperity, because they did not contribute like the rest of the territories of the kingdom they formed part of, to the expenses of the government and its administration, ‘so

⁷⁹ Reflexiones sociales o idea para la constitución española que un patriota ofrece a los representantes de Cortes

⁸⁰ Nada habría más funesto que llevar a las Cortes pretensiones aisladas de privilegios y de gracias...se proibirá como un delito todo empeño dirigido a mantener leyes particulares para cada provincia; de cuyo sistema nacería precisamente el federalismo, la desunión y nuestro infortunio. El apego que aún conservan algunas Provincias a los *fueros* que han tenido quando cada una componía una Nación separada, me obliga a hacer esta advertencia, quando se trata del arreglo de la constitución. Todas las medidas, todos los trabajos y todos los esfuerzos deben dirigirse a la unidad: unidas entre sí las Provincias con una legislación sabia y general a todas, podrán resistir con buen éxito al conquistador de la Europa

necessary to maintain it in the rank and the powers of the other cultured European powers' (my translation⁸¹) (AGG-GAO JD SM 36, 11). The abolition was not justified in terms of liberal or despotic values, but in terms of the interests of the monarchical government in its international enterprises.

Tomás Zumalakárregi was a carlist general who led the military success of the carlist army until he died following an injury received in combat in 1835 (Museo Zumalakarregi Museoa [online]. <http://www.zumalakarregimuseoa.net>, no date). A different image and conception of the State can be identified in some of the documents signed by or issued in reference to him. In the act of Zumalakárregi's appointment as the military leader of the forces of Navarre in Estella on the 14th of November 1833, one can read 'naturals who have armed themselves to support and defend the rights to the crown of Spain of the king Mr Don Carlos VIII of Navarre and V of Castile' (my translation⁸²) (Pirala 1868: 610). The same treatment of the monarch, as king of Navarre and of Castile, can be found in a circular issued by Zumalakárregi on the 9th of February 1834 (e.g. Pirala 1868: 611-612). And the same is true for the 'Lord Eliot Convention', a treaty promoted by the British government in an attempt to 'humanise' a cruel war in which they were militarily involved, which Zumalakárregi signed in 1835. The first article states: 'The Commanders-in-Chief of the two Armies now engaged in Hostilities in the Provinces of Guipuscoa, Álava, and Biscay⁸³, and in the Kingdom of Navarre, agree to preserve the lives of all Prisoners who may be made on one side or the other, and to exchange them as stipulated below' (Eliot St Germain 1871: 70). This neat differentiation between the institutional spaces governed by the monarchy comes to represent the dangers that Canga Argüelles was warning against.

This inclination to value the legal order produced by the *fueros* can also be seen in other documents issued by the carlist forces in Euskadi. In a document published on

⁸¹ordenada libertad, Fueros, franquezas y privilegios...tan necesarios para mantenerse en el rango y en el poder de las demás potencias cultas de Europa

⁸² cuyos naturales se han armado para sostener y defender los derechos a la corona de España del señor rey don Carlos VIII de Navarra y V de Castilla

⁸³ The terms used in the original text have been maintained instead of replacing them with those used in this thesis.

the 6th of July 1836, in Hernani, Gipuzkoa, an order was issued by the carlist faction to the villages of the province. In the preamble it argued:

When the heroic achievements of the Gipuzkoans in this glorious fight are admired by the whole of Europe, when our adored King, the undefeated, the just and desired Don Carlos V considers them as perhaps his best support...when our wise laws, these venerated fueros, undeniable testimony of the heroic events and the glories of our ancestors, are menaced in their roots...and when above all our Saint-Sacred religion is in imminent danger of being proscribed in this country (my translation⁸⁴) (AGG-GAO JD SM 36,11).

The centrality, not of liberalism, but of constitutional unity is further suggested in the preamble of a Royal Order issued on the 16th of December of 1840 and published in Gipuzkoa on the 22nd of the same month. The order concerned the progress made in the negotiations to reform the fueros between Navarre and Madrid, and it came to regulate some aspects of governance in Navarre until the definitive law would be published. In the preamble one can identify some of the key issues that were perceived as potentially problematic to reaching an agreement. The minister highlighted the favourable predisposition of Navarre's authorities to reach an agreement, and described them as:

Animated by the liveliest wish to identify with the Nation, to which the province naturally forms part, their demands always being rational and prudent; those associated with them regarding their opposition to the principle of unity have never been insisted upon, and having unequivocally demonstrated their Spanishness, they have shown that the Embrace of Vergara was not a lie nor contained sinister intentions (my translation⁸⁵) (*Real Orden 16 de diciembre de 1840*).

⁸⁴ Cuando las heroicas hazañas de los Guipuzcoanos en esta gloriosa lucha tienen admirada a toda Europa: cuando nuestro adorado Rey el invicto, el justo y el deseado Don Carlos V les considera quizá como su mejor apoyo...cuando nuestras sabias leyes, estos venerados Fueros, testimonio incontrastable de los heroicos hechos y de las glorias de nuestros antepasados, se ven amenazados en su raíz...y cuando sobre todo nuestra Sacro-Santa religión se ve en inminente peligro de ser proscrita de este País

⁸⁵ Animados del más vivo deseo de identificarse con la Nación, de que naturalmente forma parte de aquella provincia, sus exigencias han sido siempre racionales, y prudentes; jamás han insistido en las que se les manifestaba eran opuestas al principio de la unidad, y en tanto han demostrado de un modo inequívoco su espanolismo, y que no fue mentido ni encubrió siniestras miras el abrazo de Vergara.

The perceived issue that could have created most difficulties in the negotiation seems to have been that of constitutional unity more than the more or less liberal character of the reform. Moreover, the documents may also suggest the existence in Navarre of a more consensual approach to decision-making than that contemplated by State liberal authorities, as the latter felt it appropriate to explain that once an agreement had been reached, and even though Navarre's Commissioners had more than enough powers to complete the deal, 'it was considered appropriate to refer it to the Deputation [of Navarre] for its approval' (my translation⁸⁶) (AGG-GAO JD SM 28, 15-0001-0095).

5.4. Conclusion

The data analysed in this chapter have attempted to show that the key jurisdictional conflict taking place in Navarre and Euskadi during the first decades of the nineteenth century was not uniquely influenced by the generally emphasised factors that produce dichotomies such as Basque vs Spanish; liberal vs carlist.

In Euskadi and Navarre the legitimacy of the legal order created by the *fueros* does not seem to have been questioned by the main political actors. Moreover, existing differences regarding the extent to which the *fueros* should be reformed did not stem from their interpretations made from ideological positions that can be associated with the Enlightenment and Romanticism. A positivism uniquely linking legitimacy to nature and social utility combined with a determined rejection of history, such as Southern's or Unamuno's, can be seldom identified in Navarre's and Euskadi's key political actors during the first half of the nineteenth century.

In my view, interpreting the meanings of political action in Navarre and Euskadi requires combining factors such as ideologies and identities with that of jurisdictional politics. In this dimension the pragmatic analyses made by social actors of their circumstances acquires meaning. Social actors' conceptions of law and interpretations of the *fueros* seem to have been influential in shaping their evaluations of the legitimacy of reform proposed by State authorities. Positive interpretations of the *fueros* appear to have influenced the analyses and evaluative logic of Navarre and

⁸⁶ se creyó oportuno remitirlo a la Diputación para su aprobación

Euskadi, and often directed perceptions over legitimacy to govern and decision-making over their own institutions and authorities.

6. Navarre's Governance within State Constitutionalism (1839-1936)

This chapter analyses the evolution of the Deputation of Navarre between 1839 and 1936. The foral reform of 1841 turned the institution of the Deputation into Navarre's highest institutional authority, and the institutional centre around which a modern bureaucratic administration would grow and develop. The analysis of data attempts to identify and bring to the fore key features that may have influenced or characterised its evolution and governing practices. The analysis suggests that governance from the Deputation, although adapted to the circumstances and pressures of different times, was exercised following a similar behavioural pattern. This was largely defined by a constant reconciliation between traditional jurisdictional practices, the desire to achieve modernity and the necessity to comply with the demands produced in the larger legal context of the State. Influencing such tendencies seem to have been Navarre's own traditions and practices, those associated with the *fueros*, which may have been generally considered to be key points associated with jurisdictional legitimacy and good administrative practice.

Interpreting political meanings during this research has been far from straightforward. This has been partly the result of the lack of theoretical space to interpret the meanings of the *fueros* other than carlism and State-centred narratives that associate it with absolutism. The problems in interpreting the political meanings of political action include the meanings associated with labels like 'liberal', 'carlist' or 'moderate', which seem to take their meanings more in relation to State politics than to those of Navarre. In so far as attitudes towards the *fueros* are interpreted uniquely in relation to modernist narratives of the State, the political and ideological meanings of the views of many peoples from Navarre are likely to be misrepresented.

6.1. Institutional Transformation: 1839-1841

Navarre would experience key jurisdictional and institutional transformations just after the first Carlist War or the War of Navarre. The willingness expressed by Yanguas in 1838 to negotiate a foral reform within the framework of the project of State presented in the 1837 constitution, materialised in a legal sense between 1839 and 1841. In the

latter year in Pamplona, a pamphlet was published compiling the legal documents associated with foral reform. The pamphlet was compiled of three documents: the Peace Treaty of Vergara of 31st of August 1839; the Law of 25th of October 1839 confirming the fueros within a constitutional State; and the Law of Foral Reform of 16th of August 1841. It argued that two other laws, the Royal Decree of 16th of November of 1839 and the Provincial regency of 15th of December 1840, were not included due to their temporary character (BINADI Ca 4/137).

This compilation of documents suggests what events and legal documents were considered by Navarre's jurisdictional authorities to have been crucial for the key institutional changes that took place. Luis Oroz Zabaleta (1885-1962), who held positions within the Deputation of Navarre since the 1910s and became its secretary between 1921 and 1945, saw the *Ley de confirmación de fueros* of 25th of October 1839 as that which led to Navarre's loss of its status as a kingdom (1917: 17, 18). Other authors have interpreted that it was the *Ley de Modificación de Fueros de Navarra* of 16th of August of 1841 which did this, such as Rodríguez Garraza (Martínez Beloqui 1999: 39).

The Law of Foral Reform of 16th of August 1841 is that which came to define the newly created institutional context that would exist. It contained twenty six articles, which came to define in general the newly created institutional context. The first five articles made clear the authority that State government would have over the military (Art 1), justice (Art 2, 3 and 4), and Municipalities' electoral systems (Art 5). The sixth article noted that the competences of municipalities would be those defined by Navarre's legislation and would be supervised by Navarre's Deputation. The eighth article defined the deputation, which would be composed of seven deputies, elected in the five traditionally existing 'constituencies' (*Merindades*), one from each, and each of the remaining two from the most populated constituencies; they would be elected through State electoral law (Art 9), and would inherit the competences previously exercised by the Royal Council and Deputation of the Kingdom of Navarre (Art 10). The composition of the Deputation copied that of the previously existing Deputation of the Kingdom of Navarre (Oroz 1917: 18). An authority appointed by the State Government would preside over the Deputation (Art 11).

The main authorities that would exist, their relationships, responsibilities, rights and hierarchies, and the bodies of law that would be applied, were generally defined. However, '(t)he powers of the three authorities designated to Navarre...were not detailed with full specification, nor carefully delimited' (my translation⁸⁷) (Alonso 1849: 231). The law itself is ambiguous about what had exactly changed, and what these changes meant, and to whom.

Soon after 1841 different authors offered interpretations of these issues, and attempted to clarify what had changed, where and to what degree. Some were rather technical and specific to the execution of law in particular concrete areas, like the pamphlet in 1846 by Diego Pegenatue, a public notary in the court of first instance in Estella (Pegenatue (1846) BINADI BCC00R47-6-02p11). Other authors offered a broader interpretation of the legal and institutional modifications that had been created, like Jose Alonso's (1848, 1849) two volume 'Collection and comments of the Fueros and Laws of the Old Kingdom of Navarre that have been made applicable after modification of the Treaty Law of August 16th, 1841 (my translation⁸⁸) (Alonso 1848, 1849). Alonso had occupied different high rank offices within the State justice system, like that of Attorney and Judge of the Superior Court of Justice among others. Carlos Sola Ayape (2003), who wrote a paper on Alonso's economic views, described him as a liberal (Sola Ayape 2003: 615).

Alonso considered that in order to provide a detailed assessment of the legal reform, a historical assessment of Navarre's jurisdictional relationship with the State was necessary, and he referred to both the fueros and the new law to evaluate what had changed and to what degree. Alonso carefully described the competences that the different authorities in Navarre would have following 1841. His work is detailed and long; later authors offered more concise summaries. One such summary can be found in the work of Luis Oroz (1917). He stated that according to the new legal context, Navarre's Deputation had to:

⁸⁷ Las atribuciones de las tres autoridades designadas a Navarra...no fueron detalladas con toda especificación, ni deslindadas minuciosamente

⁸⁸ Recopilación y Comentarios de os Fueros y Leyes del Antiguo reino de Navarra que han quedado vigentes después dela modificación hecha por la Ley paccionada de 16 de agosto de 1841

know about the appeals initiated against the resolutions of...the rest of municipal entities; to approve the budgets and accountancy of villages and authorise the excise taxes and exploitation that they themselves may request; to concede permission for sale, trade or tax of the goods and rights of the municipalities...watching over their administration in the form established by the laws, regulations and other dispositions of the foral legislation...As administrator of the province, its action extends to looking after and administering the goods and rights of Navarre; to the conservation and development of mountains and woods; construction and repair of roads; looking after beneficence and provincial instruction; development of the public wealth by the creation of the services directed to the progress of the different branches of the productivity of the country and to the development of the moral interests of its administered people. They correspond to it also verifying the distribution and collection of both the provincial contribution, as well as of the different incomes that the province may have, applying them to the needs of the common goods. Over all the faculties listed, an exceptional one, watching over the defence and conservation of the foral rights (my translation⁸⁹) (Oroz 1917: 81, 82).

Both Jose Alonso and Luis Oroz had studied law and were from Navarre, they both valued the fueros, and considered the foral reform to be Treaty Law (*Ley Paccionada*).

However, from the 1840s an alternative interpretation of the law emerged, proposing a rather opposite approach. If one of the approaches considered it to be a treaty law, a compact between two parties that could not be unilaterally modified; the other defended that the law did not have such a pact character, and that it was the ordinary law of the State with no special features (Martinez Belouqui 1999: 34-39). These two

⁸⁹ conocer de los recursos de alzada que se promuevan contra las resoluciones de aquellos organismos y demás entidades municipales; aprobar los presupuestos y cuentas de los pueblos y autorizar los arbitrios y aprovechamientos que los mismos soliciten; conceder permiso para la venta, permuta o gravamen de los bienes y derechos de los Municipios...vigilando su administración en la forma dispuesta por las leyes, reglamentos y demás disposiciones de la legislación foral...Como administradora de la provincia, su acción se extiende al cuidado y administración de los bienes y derechos de Navarra; a la conservación y fomento de los montes y arbolado; construcción y reparación de las carreteras; cuidando de la beneficencia e instrucción provincial; fomento de la riqueza pública mediante la creación de servicios encaminados al progreso de los diferentes ramos de la producción del país y al desarrollo de los intereses morales de sus administrados. Le corresponde también verificar el reparto y cobro, tanto de la contribución provincial, como de los diferentes ingresos que cuente la provincia, aplicándolos a la necesidad de los bienes comunes. Sobre todas las facultades enumeradas, otra excepcional, velar por la defensa y conservación de los derechos forales

different approaches in interpreting the legal relations created by the *fueros* between Navarre and the State have continued since then until the present. This can be seen as the reproduction within a legal constitutional framework of different interpretations of the legal relationship between Navarre and the State that has existed since at least the eighteenth century.

The Deputation, which had been created and was an executive and subordinate institution to Navarre's legislative chamber, became the highest territorial authority in 1841, subordinate only to the State's legislative chambers. This institutional change was not approved by the legitimate jurisdictional authority over the matter at that time, Navarre's Parliament. This, together with the fact that a feature of the institutional reform was that of excluding estates formed by religious authorities and the nobility from legislative and executive powers, suggests that conceiving such a change in relation to the concept of a liberal revolution is not entirely inaccurate.

However, such revolutionary transformation may be inaccurately portrayed if conceptualised uniquely in relation to state politics and state regime change. Revolutionary change in Navarre was not conceived uniquely in relation to state politics and state regime change; the degree to which it was conceptualised as such and the fact that this happened at the same time has to do not only with how society was conceived, but also with the jurisdictional opportunities that existed within the larger contexts of legal relations.

Social actors in Navarre, those who opposed foral reform and those who willingly accepted it in the late 1830s, seem to have similarly considered Navarre and its people as the legitimate context and social actors to decide over foral reform. If legal change in Navarre was not entirely exercised unilaterally, this was not due to pre-existing conceptions of society that located legitimacy in State authorities, but due to the circumstances faced by Navarre's authorities. Importantly, Navarre's legal and political existence was directly influenced by its military and economic powers, which restricted the real possibilities of what could be achieved from the governance of the institution.

6.2. Departmental Growth

The newly defined institutional framework, which had been temporary since November 1839 and permanent since August 1841, would turn the Deputation into the pivotal institution that would manage and regulate the growth of the public administration. The new Deputation that was legally defined in 1841 inherited a small structure that facilitated the Deputies' work. This deputation would evolve in order to provide, manage and regulate the competences it had retained, developing a bureaucratic administration that would govern the processes of modernisation in Navarre. The extent to which the deputation was able to exercise governance over certain competencies was a direct consequence of the rights defined in the *fueros* and maintained in the 1841 reform. Also important to the same end may have been the capacity of Navarre's authorities to interpret law in their favour and to their abilities to passively resist legal dispositions coming from the central government that were considered to undermine the *fueros*.

The evolution of the administration can be partly seen in internal documents of the Deputation: pay sheets, budgets, internal regulations or memoirs and reports written at different times. The Deputation did not keep territorial budgets regularly until the 1870s. Before then, the evolution of the structure of the administration can be traced by the pay sheets of the staff. In 1837, pay sheets of the staff working for the then Deputation of the Kingdom listed nine people. In 1842, the Deputation had a new status, and was integrated differently into the institutional context of the State, and listed a slightly higher number of employees. Fourteen were paid by the Secretary department, and a small number of people also worked in the departments of Accountancy and Janitors.

The employees salary records show that from 1837 until 1859 the management of the Deputation used a similar way to structure pay sheets: under the heading 'Employees of the Deputation' there was a single list, listing staff members, their roles and salaries. The Deputation consolidated itself with an administration structured around four main areas: 1) Secretary; 2) Accountancy; 3) Road Management; and 4) Custodians, Janitors and Gardeners (AGN DFN, Caj 501).

The Secretary managed all the practical issues that decision-making required, including looking after the archive, keeping records of all issues dealt with and efficient internal and external communication between departments, and with other administrations, authorities and citizens. Accountancy dealt with accounting issues. Road Management was in charge of maintaining and developing the road system. Custodians, Janitors and Gardeners looked after the buildings of the Deputation. To these it should be added *Depositaria* (Depository), or at least the position of *Depositario* (Depository), exercised by Benito Ribed between 1848 and 1868 (AGN, DFN Caj 1).

This administrative core that formed Navarre's central administration would progressively evolve, including a constant departmental growth and specialisation to govern over the maintained competencies. Since the late 1850s a tendency towards differentiating staff working from the Deputation itself and those in charge of managing different social issues developed. In the year 1859, a new department was structurally defined under the heading 'Directors of Roads', listing staff and roles previously listed as part of the Deputation with no departmental distinction. By the year 1867, the list of salaries distinguished six different departments: Print; Custodians Janitors and Gardeners; Employees of the Deputation; Management of Public works; Employees of Mountains; and Pensions. In 1868 a new one was listed, the Provincial board of Public Instruction and the Provincial Board of Welfare (AGN DFN, Caj 501).

The use of territorial budgets started to be considered in the late 1860s. An undated template for a territorial budget can be found in a box containing documents within the years 1867-1870 (AGN DFN, Caj 2457). The template started to be filled out but was left unfinished, and presented data in a way that would not be repeated in later budgets. It attempted to present data structured as income and expenses, but in a way that would permit the reader to directly compare the incomes and expenses generated by each department (AGN DFN, Caj 2457). This suggests the existence of a rather small organisation, the finances of which it was thought could be structured in a comparative fashion within departments.

The key areas governed by the deputation would not change significantly throughout the period studied. Internal regulations drafted in 1921 stated that the deputation was

structured within the following areas: ‘Secretary, Accountancy, Depositary, Roads, Mountains, Agriculture, Provincial Treasury, Urban Works, Hospital and *Inclusa*, Navarre’s Madhouse, Provincial Print and Mechanical Services (AGN DFN, Caj 1996/1). However, the administration would significantly grow in the departments and personnel employed to manage those areas, especially since the late nineteenth century. In 1909, although there were not necessarily major departmental novelties, a significant growth can be seen in the number of specific departments that had been created. In the expenses section alone, thirty four administrative bodies existed (AGN DFN Caj 2464/1). The same tendency appears to have continued, and in 1928 the departments listed did not vary dramatically, yet the budget had grown considerably in its physical size, reflecting the growth of the administration as well as the increasingly detailed accounts provided (AGN DFN, Caj 2474/2).

The growth of the departments, which were increasingly specialised and less generic, happened together with a continued growth in the number of personnel working for the Deputation. The number of employees listed as staff to be paid grew from around a dozen in the 1830s, to 45 in 1848, 56 in 1871 (AGN DFN, Caj 503), 67 in 1873 (AGN DFN, Caj 503), 82 in 1889 (AGN DFN, Caj 507/4), 90 in 1905 (AGN DFN, Caj 513/3), 209 in 1915 (AGN DFN, Caj 521) and 260 in 1930 (AGN DFN, Caj 536).

The budgets of 1909 and 1928 list a number of employees or people paid by the Deputation that is larger than those recorded in pay-sheets: 633 in 1909 and 782 in 1928. The different number of people paid by the administration displayed in pay sheets and territorial budgets may reflect a difference between staff per se and people hired to work or provide one or other service. For instance, in 1909, 297 of these employees were listed in the section ‘Road Maintenance’ as *Camineros* (road men); in 1928, 339 men had the same role. These positions had existed since at least the eighteenth century, traditionally with the duty of maintaining roads, and since 1790 also with the duty of ensuring that laws and regulations were respected. In 1869, a ‘road man’ had to be placed every three kilometres and a foreman every thirty kilometres along a road (AGN DFN, Caj 199/2). These men however, were not listed in the deputation’s pay sheets.

Throughout the period studied Navarre's public administration maintained a working relationship with religious authorities and organisations. In 1869, in order to access the post of 'road man', candidates were required, among other conditions, to submit certifications of their good conduct issued by the Mayor and the Priest of their residency (AGN DFN, Caj 199/5). Territorial budgets also show that there was a significant presence of religious organisations working as part of the public administration's structure, especially in the provision of health. In 1909, seventy three of the listed staff members belonged to religious organisations. Twenty one of these staff worked in the hospital, twelve in the Maternity House, and forty in the Mental Hospital. In 1928 sixty nine employees also belonged to religious organisations, distributed among the same institutions. The importance given to religion from the Deputation is also suggested by the economic contributions made to a number of religious public events that are shown in the Deputation's economic records.

The new Deputation, as legally defined in 1841, started as a small administration to facilitate Deputies' resolution of the cases over which they had jurisdiction, to exercise the economic obligations of the Deputation with the State and to manage the development of particular social areas. The responsibility and willingness to govern produced a constant increase in the structural and human size of the Deputation., Navarre's public administration gradually grew more rapidly since the late nineteenth century as it attempted to provide, manage and regulate the competences it was responsible for. This growth produced, to a degree, centralising tendencies. These, as will be later analysed, could produce jurisdictional conflicts that were discussed in relation to the *fueros*.

6.3. Modernisation

The desire to achieve and to manage progress and modernisation can be seen as part of the objectives of the managers of the Deputation since the 1840s. This included a perception that the deputies had of their role, and that of the institution they governed, as a central institution that existed with the goal to maintain or improve the welfare of the social context it created. Such tendencies can be identified in deputies elected in representation of political parties with both liberal and conservative character. Documents produced by deputies and administrative managers, including public

proclamations of the Deputation and internal reports and regulations, provide some evidence about the views, values and objectives held by managers of the administration.

On the 3rd of October of 1840, the newly formed temporary Deputation of Navarre, which has been associated with liberal tendencies (García-Sanz 1996: 49), issued a public proclamation in which it stated the objectives that this government had for society. The first part explained its commitment to safeguard public order, property and its adherence to the constitution of the State. The second part stated:

Navarrese: your ancestors gave themselves and guarded for centuries free institutions; but the passage of time and moreover, kings' despotism has reduced them to almost nothing; and, having lost the memory of what you once were, soon you would have suffered the same fortune. The day of regeneration has arrived; and in entering the great Spanish family you will recover and improve your liberty and dignity; and the justice of the Nation will not forget your material interests, as it has offered it in a solemn law (my translation⁹⁰) (AGN DFN, Caj 20268/3).

This document suggests that the notion of Navarre having been a historical instance of liberty that contrasted with the despotic governance of monarchies had existed, that it was valued, and that it was presented to the inhabitants of Navarre who had generally fought for it up until a year before supporting Carlos, as a key value that had been secured in the new state of things rather than lost. The same idea, with a more clear emphasis on an institutional commitment to achieve modernity, was transmitted in another proclamation by the Deputation on the 18th of June of 1855, which has also been portrayed as liberal (García-Sanz 1996: 48). It re-stated that the old institutions had been worn by time, and that the new institutional and legal context had only resulted in benefits for Navarre. The last part of the proclamation stated:

⁹⁰ Navarros: vuestros mayores supieron darse instituciones libres, y conservarlas por dilatados siglos; pero la mano del tiempo y más aún el despotismo de los reyes las redujeron casi a la nada: y, perdido el recuerdo de lo que fuisteis, pronto hubierais sufrido la suerte común. El día de la regeneración es llegado; y al entrar en la gran familia española recobraréis mejoradas vuestra libertad y dignidad; y la justicia de la Nación no olvidara tampoco vuestros intereses materiales, como lo tiene ofrecido en una ley solemne

It is the duty of society to attend solicitously to the material and moral interests of humanity on its journey through life...Live safe, that whilst with your economy and industriousness you increase your private fortunes, the patrimony under the Deputation, which it is also yours, will not be left motionless and uncultivated. The beautiful roads that cut across your territory in all directions, the probabilities of building a railroad, your flourishing agriculture, the industry in progress and the prodigious and unknown traffic, which can be noted everywhere, do these not loudly proclaim that peace leads to the greatness of nations? (my translation⁹¹) (AGN DFN, Caj 51 148/5)

A memoir written by the Navarre's Deputation in 1885 directed to 'its country' assessed the economic circumstances that the Deputation was facing, explaining and justifying why the Deputation had initiated a reform of the tax system (AGN DFN, Caj 1998). The Deputation argued that the expenses to which the institution had to respond had significantly increased, leading to an extraordinary increase of Navarre's debt, a situation that could not be maintained and which required economic reform. The rise in expenses was partly due to the costs of the last War (1872-1876) and to the raising of the economic contribution that Navarre had to make to the State since new State regulations had been approved in 1876. Another important factor was the large investment that the Deputation had made in previous years in the construction of roads.

Increasing the income of the Deputation was seen as a necessity, not only to be able to balance the budget and reduce debt, but also to enable the institution to continue providing 'the public services of ordinary character and the increasingly growing demands of modern life' (my translation⁹²) (AGN DFN, Caj 1998). Investing in roads was justified, for example, despite its economic cost, by arguing that these improvements 'would be fruitful arteries to allow the circulation of the wealth of the country...and... due to the precarious situation of the labouring class, due to the

⁹¹ Deber es de la sociedad atender solícita a los intereses materiales y morales de la humanidad en su viaje de esta vida...Vivid seguros, que mientras con vuestra economía y laboriosidad aumentáis la fortuna privada, no quedara estadizo y sin cultivo el patrimonio, que también os pertenece, pero que la Diputación tiene a su cuidado. Los hermosos caminos que cortan en todas direcciones vuestro territorio, las probabilidades de construir una vía férrea, vuestra floreciente agricultura, la industria en progreso y el prodigioso desconocido tráfico, que en todas partes se advierte, ¿no dicen muy alto que con la paz se engrandecen las naciones?

⁹² los servicios públicos de carácter ordinario y las exigencias cada vez más crecientes de la vida moderna

general drought, inclined the Deputation to build public works to occupy these people' (my translation⁹³) (AGN DFN, Caj 1998). Despite the debt of the administration, the investments made by the administration in previous years to modernise and to provide an income to people in need were not only justified, but the memoir also committed to the notion of improving the economy without eliminating the provision of public services. In this deputation no carlist would have been present (García-Sanz et al 2002: 41).

The administration seems to have continued to consider necessary a degree of social investment, despite the costs. A report explaining the budget of 1910 suggests this to be the case. It began by stating that the existing budget was insufficient to cover the amounts needed to complete the ongoing public works and other subsidies that the Deputation conceded to municipalities and private companies for projects that had the character of 'general interest'. The memoir, rather than suggested reverting to austerity policies in order to decrease expenses, proposed the need to find 'extraordinary resources' to be able to continue supporting those projects (AGN DFN Caj. 2462/3: 2). This Deputation would be dominated by carlists, as four of the seven deputies have been identified as such (García-Sanz 1996: 55-61).

The Deputation's commitment to modernity and its association with welfare continued to be expressed from the institution. A report made by the deputy Mariano Arrasate in 1929, who has been associated with an independent Catholic political party (García-Sanz 1996: 55), argued that Navarre needed and was able to face the important works that were required to ensure the necessary modernisation of the territory. He argued that despite their costs they should not be abandoned: 'the installation and organization of the administrative services, land registry, welfare in general, the main roads and moreover secondary roads; having not concluded a good number of roads, many villages not well communicated and not properly undergoing reforestation, [because] it all results in the detriment of a good administrative regime and to the provincial

⁹³ serán arterias fecundas para que circule la riqueza del país...y que dada la situación precaria de la clase jornalera, por efecto de la sequía general...inclinaron a la Diputación a construir obras públicas para ocupar a estas personas

economy' (my translation⁹⁴) (AGN DFN, Caj 2474_4). He suggested that the only way that the Deputation could achieve all of this was through loans, and stated that if this was not done 'Navarre would fall behind all the Spanish provinces, in many aspects of life and of the services dependent on the administration, and this cannot satisfy us either as deputies nor as Navarrese' (my translation⁹⁵) (AGN DFN, Caj 2474_4).

The creation of a modern society can thus be seen as a key concern of Deputies with a variety of ideologies between the 1840s and the 1930s. The technological, infrastructural and industrial development was undertaken as a way to improve social life. Throughout the period studied, the Deputation had combined its wish to modernise the territory with an awareness of its social role and the dependency of society on its performance to access social services such as health and education. It also felt responsible at times to provide an income to the less favoured classes in extraordinary circumstances.

6.4. Land Tenure and Social Equality

It is often the case that the emergence and features of Basque nationalism are studied in relation to the transformation of an agricultural and rural society dominated by a feudal economy into an urban, commercial and capitalist one. From such analytical perspectives, like that of Alfonso de Otazu (1986), it is often argued that foral societies contained significant structural inequalities that question the traditional discourses of equality promulgated from Foral institutions.

Traditional ownership of the land is often associated with the existence of unequal societies and changes in the regulations of land tenure related to the end of absolutism and the emergence of modern social systems. Generally, the idea that politically conservative attitudes ambitioned to maintain pre-capitalist forms of land tenure on

⁹⁴ la instalación y organización de los servicios administrativos, el catastro, la Beneficencia en general, las carreteras principales y con más razón las secundarias; a tener sin concluir buen número de carreteras, muchos pueblos incomunicados y a no hacer en debida forma la repoblación forestal, todo con ello con perjuicio de un buen régimen administrativo y de la economía provincial

⁹⁵ Navarra quedaría a la zaga de todas las provincias españolas, en muchos aspectos de la vida y de los servicios dependientes de la administración; y esto no puede satisfacernos ni como diputados ni como navarros

which they based their social privileges whilst progressives would want land ownership to be liberated dominantes.

This thesis does not suggest that such frameworks of interpretation are ultimately wrong. It argues however, that important nuances and differences could have existed in different social contexts, and that it is therefore wrong to assume that such a hypothesis is true everywhere.

Regarding discourses of equality made from Foral authorities and defenders of the *fueros*, a degree of rhetoric of equality covering structural inequalities is likely to have been present, more significantly in some periods. However, there is evidence suggesting that in some municipalities of Navarre traditional forms of land tenure produced degrees of equality, as they granted access to land to inhabitants of the municipality.

Research carried out in municipal archives in Navarre, like that of Gastón (2010) or Lana-Berasain (2012), suggests indeed that different waves of constitutional reform dismantled traditional structures of land use that ensured access to land and the resources it produced to members of municipalities. The privatisation of previously communally accessed land may have produced, in certain social contexts, higher social inequalities than equality.

Authors such as Majuelo (2010) have endorsed the idea that disputes over ownership of communal land might be a factor that needs to be taken into account in order to understand processes of modernisation. However, the social and political meanings of the processes need to be studied in each case, not assumed to be properly portrayed by a general hypothesis.

I have not made of this a central factor of my analysis not because I consider it not to be important, but because it cannot be assumed that meanings normally attributed to such changes from liberal interpretations are correct. This is, the privatization of land did not necessarily contribute towards a more equal society in all social contexts, and therefore, supporting or opposing the privatization of land cannot be assumed to represent traditional conceptions of progressive or conservative political tendencies.

The thesis attempts to contribute towards the development of a theoretical framework better equipped to contextualise meanings of social action.

6.5. Professionalisation of the Administration

The process of modernisation of society can be seen to have taken place together with a process of modernisation of the Deputation itself. The changes in how the administration was managed can be seen to correlate with changes that took place in legal recognition and legal practice in wider social contexts. Both the exercise of law and the management of the administration evolved in the same direction: from legally recognising and being partly structured in the recognition of persons, families or organisations, to the establishment of general rules equally applicable to all members of the organisation. The case of Benito Ribed, who was depositary of the Deputation between 1848 and 1868, and a number of internal regulations of the Deputation, illustrate these changes.

Benito Ribed was appointed as depositary of the Deputation in 1848. The role included guarding the money of the Deputation and receiving and paying the amounts dictated by the Deputation. To access the post, Ribed had hypothecated several properties he had in Pamplona and land in Navarre. He occupied this post until he died in 1868 (AGN, DFN Caj 1). During those two decades, his role within the administration seems to have been fairly independent. There are records of the Deputation asking Ribed to pay staff or provide money to cover different expenses, but Ribed himself is not listed as staff, nor are wages paid to him recorded. This suggests that the Depositary was perhaps managed singlehandedly by Ribed between 1848 and 1868. Soon after his death, in 1870, the Depositary was incorporated to the core structure of the administration together with Secretary and Accountancy.

The death of Ribed coincided with the timeframe for the above noted template for the Deputation's annual budget, suggesting that during the time in which Ribed was in charge of the Depositary the yearly budget was done by Ribed, not done at all, or no records were kept of it. The personal character of Ribed's role in the administration is further suggested by how on his death his brother, Ribed was able to occupy the office temporarily, whilst Ribed's son claimed to get back the properties hypothecated by his

father. Once the process was finished, the Ribed family left the Depositary and a process was opened to find a new Depositary (AGN DFN, Caj 1).

The internal regulations of specific departments of the Deputation as a whole reinforce this idea. Since 1859 the Deputation kept records of internal regulations as distinct documents. Previous regulations that existed may not have been kept as distinct documents, but could be found in minutes of the sessions of the Deputation.

The regulations approved in 1859 contained a detailed description of the responsibilities of some posts. However, some duties were not defined in relation to a position, but rather in relation to the person holding the position (AGN DFN Caj 199/1). This suggests that the administration was not entirely thought of structurally, but also in relation to some of the individuals who worked in it and the role they performed. Despite the present personalised features, some of the articles suggest that the administration was perceived to be an institution that had to be governed professionally. The regulation established working hours, demanded punctuality, and did not allow staff to use official channels to unofficially manage personal business. It also emphasised the confidentiality of information handled and expected honesty and civility from its employees (AGN DFN, Caj 199/1).

During the 1860s the Deputation would be increasingly regulated in its different departments, including 'road men' in 1864 (AGN DFN Caj 199/2), Public Works in 1866 (AGN DFN, Caj 199/3), Secretary and Accountancy in 1869 (AGN DFN, Caj 502), Regulation for pensions in 1869 (AGN DFN, Caj 199/5), reforms of the 'road men' regulations in 1869 (AGN DFN, Caj 199/2) or a reminder of the duties of staff in 1867 (AGN DFN, Caj 199/1).

In the regulations approved for the departments of Secretary and Accountancy in 1869, the personalised definition of some administrative positions is no longer present, and the departments are defined uniquely in relation to their structure. However, it also shows that access to these central departments of the administration was not equally open to everyone, as the regulations established that when a vacancy existed within the administration, the son of an employee or a previous employee who was qualified

for the post would have accorded preference for the position (AGN-NAO DFN, Caj 502-5).

The growth, role and performance of the Deputation was assessed periodically by deputies or top managers in the form of reports: evaluating administrative procedures, analysing problems faced by the Deputation or some of its departments, assessing its capacity to respond to them, and identifying what areas were considered to be necessary to maintain or develop. As a result, new regulations, reforms of existing ones, and reports regarding the workings of the administration or negotiations between deputies and staff about regulations took place regularly, including those issued in 1872, 1879, 1881, 1892, 1902, 1905, 1910, 1919, 1921, 1926, 1929, 1930, 1931 and 1933⁹⁶.

The regulation of 1872, for instance, suggests that decision-making was perceived to require the opinion of experts in the field, as it established that when necessary, the opinion of managers of different sections, such as Public Roads, Secretary, Ploughing or Woodland, would be requested and taken into account to make a decision (AGN DFN, Caj 1996/1). A proposition to reform Accountancy in 1879 proposed that it should be responsible for producing annual territorial budgets (AGN DFN, Caj 201/2). This task may not have always been exercised efficiently, as seen from a report by a deputy assessing the administration in November 1892 by U. Errea, a carlist (García-Sanz 1996: 57), which pointed at the urgent need to produce a territorial budget for the coming year (AGN DFN, Caj 1996/1). Another interesting issue shown in the report is that the Deputation experienced a degree of pressure from the public media. This is suggested by the deputy's remark that he found it unacceptable that the press had published information suggesting that the Deputation was allowing some private citizens to delay the payment of their debts to it, and he suggested that all economic

⁹⁶ These can be found in the following: 1872 in (AGN DFN, Caj 1996/1), 1879 in (AGN DFN, Caj 201/2), 1881 in (AGN DFN, Caj 199/1), 1892 in (AGN DFN, Caj 1996/1), 1902 in (AGN DFN, Caj 199/9), 1905 in (AGN DFN, Caj 199/5), 1910 in (AGN DFN, Caj 199/6), 1919 in (AGN DFN, Caj 199/7, 199/8), 1921 in (AGN DFN, Caj 199/9), 1926 in (AGN DFN, Caj 199/11, 199/14), 1929 in (AGN DFN, Caj 199/12), 1930 in (AGN DFN, Caj 199/13), 1931 in (AGN DFN, Caj 199/15) and 1933 in (AGN DFN, Caj 199/15)

obligations of the administration ought to be exercised in their due timeframe (AGN DFN, Caj 1996/1).

The efforts to create or maintain an efficient and professional administration can be seen to have required periodical reminders to staff of their duties. These reminders may have been necessary either because it was considered that the regulations were generally being breached, or because due to the constant growth of personnel numbers a process of 'professionalisation' had to be continuously asserted. Such reminders were issued for instance in 1867 (AGN DFN, Caj 199/1), 1893 (AGN DFN Caj 1996/1), 1900 (AGN DFN Caj 1996/1) and 1924 (AGN DFN, Caj 199/10).

In 1893, the Deputation demanded that the employees must arrive on time, work efficiently, and also established mechanisms to ensure that this was done (AGN DFN, Caj 1996/1). A similar thing happened in 1900, when the Deputation agreed to remind employees of the norms regarding how a particular area of the administration ought to function (AGN DFN Caj 1996/1). In later years, reminders to the staff of their rights and obligations would continue to be issued. In 1927 for first time in the reviewed documentation, the right of staff to three weeks of holiday was included (AGN DFN, Caj 1996/1).

Part of this process of professionalisation was the increasing demand by the deputies of periodic reports explaining what had been done and how the economic resources were being used. At least since 1910, the annual budget of the Deputation needed to be produced together with an explanatory report (AGN DFN, Caj 2464/3). Nonetheless, an internal letter in 1914 in which the managers of different departments of the Deputation are reminded of the need to submit reports detailing their performance, suggests that report writing had to be periodically demanded (AGN DFN, Caj 1996).

Nevertheless, managers of some departments seem to have found an opportunity to show their value in such reports. This might be especially the case in the field of medicine. The medical staff hired by the Deputation seem to have had a continual interest in learning and applying new methods and techniques, and found in report making an efficient tool to highlight their work.

In a folder kept in the archive containing documents of the year 1899, there is a letter sent by the medical staff of the Health Department to the Deputation requesting it to send a doctor to officially represent Navarre in some experiments that were going to be carried out in Madrid, in order to test a new serum against diphtheria. The Deputation praised the attitude of the medical staff and agreed (AGN DFN, Caj 31973). Nonetheless, an internal regulation for the hospital held in the same folder suggests the influence that personal interests may still have exercised within public administration. It stated that the head doctor would be responsible for treating all sick women apart from those who had syphilis (AGN DFN, Caj 31973).

In 1928, Dr Lite Blanco, manager of Pamplona's Hospital, wrote a statistical report in order to disprove an alleged bad reputation and praise the establishment (AGN DFN, Caj 31973). The following year he made use of a report to explain that he had updated the 'fraction section', and in doing so, he claimed to have worked with a prestigious doctor in Vienna, and to be one of the first people to apply such methods in the State of Spain, labelling previously methods as 'quackery'. He also asked for authorisation to create some time in the future a practical workshop of Traumatic Surgery, to teach rural doctors this novel practice. That same year, a report by another medical institution, the Institute of Provincial Hygiene (*El Instituto Provincial de Higiene*), advised the creation of a provincial service of veterinary medicine. It argued that both the economic cost of losing livestock due to curable illness and the risk of infection that some of these carried for human beings justified the provision of such a service. Showing the usefulness of the institution, an example of how a case of diphtheria had been successfully contained in a village is emphasised (AGN DFN, Caj 31973).

It seems therefore that different departments approached report making differently, some regarding reports as an opportunity to credit their work and request further funding, whilst others seem to have neglected their production. In general, however, a process towards much more detailed accounts of the work being done as well as the uses of economic resources can be seen in internal regulations, evaluative reports and annual budgets.

In 1931 a conflict between the deputies and large portion of the staff led to the creation of general rules to be applied to all the staff. The conflict arose when the deputies

agreed to change the conditions for some employees. Once this was known within the administration, many other employees demanded to be regulated by the same norms. The deputies considered that doing so would lead to the promotion and pay rises of too many members of staff, and decided to cancel the previous agreement and to create a new rule that would have a general character, avoiding the 'unwanted' general pay rise (AGN DFN, Caj 1996/1).

Between 1841 and 1936, the Deputation evolved from dealing with each post within its administration according to the post or the person holding it, to create regulations of general character that would be equally applied to all staff. Throughout the studied period the deputies attempted to improve the efficiency of public administration by updating its structures and supervising that staff worked efficiently. Processes of growth and specialisation within the administration produced degrees of centralising tendencies, which could lead to jurisdictional conflicts.

6.6. Governance and Ideology

García-Sanz (1996) published a biographic dictionary of Navarre's foral deputies between 1840 and 1931, in which he was able to establish the political inclinations of most deputies (García-Sanz 1996: 48). He argued that, risking inaccuracies, a shifting trajectory from more liberal towards more conservative positions could be identified. However, rather than linear, the process involved the existence of distinct periods.

Between the 1840s and the 1860s the deputation would display a rather liberal character, slowly shifting towards more moderate politics. During the 1860s more conservative individuals would have been elected (García-Sanz et al 2002: 40-41). Between 1868 and 1874, the deputies would have been liberals, although they would have been appointed rather than elected (García-Sanz 1996: 48). In 1874 a new period began, and until 1890, carlists did not participate in foral elections (García-Sanz et al 2002: 41). Between 1890 and 1903 political office would have been dominated by conservatives, and by carlists between 1905 and 1916; finally, between 1917 and 1923 a mixture of ideological tendencies would have been present (García-Sanz 1996: 49).

Regarding the socio-economic background of the Deputies, they are described as having 'belonged mostly to the socio-economic elites of the province, but a significant

nuance is introduced: among them there were quite marked differences regarding the importance of their properties and there was even a not inconsiderable group whose origin is located in the so called middle classes, or, if you will, upper middle-class' (my translation⁹⁷) (García-Sanz 1996: 41).

Contrasting with the variance identified in the ideological and socio-economic profiles of elected deputies, García-Sanz argues that there was an overarching interest identified across Navarre's political class throughout the studied period: 'The defence of the foral regime bound all Navarre's political classes' (my translation⁹⁸) (García-Sanz 1996: 52). He also finds that differences about social actors' desires to recover lost competences, and the risks they were prepared to assume to get it, 'occurred within all [political] forces, although to a lesser extent in *Euskaros* and nationalists' (my translation⁹⁹) (García-Sanz 1996: 52). The defence of the *fueros* emerges as a key value, and differences in the ambition expressed to recover competences lost in the 1841 reform, and the risks they were prepared to assume in doing so, similarly emerged within most political parties.

Governance from the Deputation of Navarre within the studied period does not seem to have been primarily influenced by deputies' ideologies. This may have been influenced by several factors: partly by a traditional interpretation of the *fueros* generally held by Navarre's political class, and partly by structural features of the administration that could have reduced the extent to which reform could have been influenced by any deputy's ideology.

Studied data suggest the existence of structural factors limiting the degree to which deputies' decisions could have been shaped by their ideologies. Two rather structural features, the work of the department of Secretary, and the presence of de-centralised

⁹⁷ pertenecían en su mayor parte a las elites socio-económicas de la provincial, pero se introduce un matiz significativo: entre ellos había diferencias bastante notables respecto a la importancia de sus propiedades e incluso había un grupo no desdeñable, cuyo origen se situaba entre las denominadas clases medias o, si se quiere, medias-altas

⁹⁸ La defensa del régimen foral era un aglutinante de toda la clase política Navarra

⁹⁹ tales divergencias se daban en el seno de todas las fuerzas, aunque en menor medida en los *euskaros* y nacionalistas

administrative practices associated with the *fueros* show some of the factors limiting the impact that deputies' ideologies could have in decision-making.

6.6.1. Department of Secretary

The Deputation acted as a tribunal, resolving the cases and issues that arose. The Secretary was the department responsible for providing deputies with the relevant documentary material considered important for the resolution of each case. The resolution of cases had to be based not uniquely in ideological preferences, but also in law. The importance of the legal context and the application of the appropriate body of law to perform a legitimate exercise of power can be seen in the importance given by the deputies to the post of Secretary and the whole department he managed, the duties of whom were considered to be key in facilitating decision-making about the cases at hand.

Since 1836, and until sometime between 1861 and 1863, the office of Secretary had been occupied by Yanguas y Miranda. He had had an important role in the negotiations that led to the *Ley de Modificación de los Fueros* of 1841, and he occupied this position afterwards and pretty much up to his death in 1867, which arguably was the most influential political position within Navarre's governing institution that did not require being elected. The importance of the figure of the Secretary and the centrality of the department of Secretary can be seen in the regulations issued in 1859, which identified the Secretary as the top manager of the Deputation just below the deputies themselves.

The regulation of 1859 was issued shortly before he died in 1863, which suggests that it had been considered appropriate to clearly define the role and duties of the post, and that these had to be clearly defined for his successor. There are seven articles under the heading *Obligaciones del Secretario* (Duties of the Secretary): 1) he is responsible of the good work of the administration; 2) he establishes who does what; 3) he had to study the open files that were ready to be dispatched, having at hand the regulations, antecedents and legal dispositions concerning the case to facilitate decision-making; 4) he must take minutes and accurate records of meetings that occur within the Deputation; 5) he would be present in all sessions of the Deputation to contribute his knowledge when needed; 6) he would continue doing all the things he used to do; and

7) he clarifies that the Secretary holding the post at the time had a temporary character. Some of the duties of the staff of Secretary included keeping the records of general registry updated, so on any occasion the state and place of the notes about a particular case could be known; and each official was made responsible for the accuracy of the records kept, of the relevance of the antecedents related to each case, and responsible for properly associating documentation that may contribute to the 'illustration' of a case (AGN DFN, Caj 1996/1).

The importance of the Secretary, the superior authority within the administration and only below the deputies themselves, together with the centrality of the department of Secretary, relate to their role as the administrative department taking care of all the paperwork necessary to enable or facilitate deputies' decision making. This suggests that record keeping, the use of law to guide evaluations, individual capacity to interpret and relate law, jurisprudence and cases at hand, as well as clearly filed and labelled documentation were seen as important features of accurate and appropriate governance.

Another example can be found in the regulation for the department of Secretary of 1872, which listed some of the key duties to be completed by the staff of the department. These include: opening a general registry recording all incoming and outgoing issues that go through Secretary, in which the object of the case or expedient would be noted, together with the date, department it is sent to, and all the paperwork related to it until the case or file is closed; and to state that officers are liable for handing over the cases to applicants with a summary, informing them about those cases for which there is an established jurisprudence or which relates to Navarre's own laws. In the cases for which a lack of legislation is to be interpreted, the resolution would be on the interpretation made by high officials of the administration of the Central Government, subject to the Deputation Secretary's opinion, and referring the case to district deputy or deputies if considered necessary (AGN DFN, Caj 1996/1).

An 1892 report proposing efficiency improvements in the administration suggested that to facilitate the work of the Deputation it would be useful to have a compilation of the existing administrative resolutions previous to the 1841 law, which could serve as a guide to create a fixed criteria to deal with issues regarding the Deputation's

competences. It was argued that such a compilation would be very welcome in the 'country', as the latter would know what to expect in its dealings with the administration, and proposed that this ought to be done despite its costs (AGN DFN, Caj 1996/1).

The regulations drafted by the Deputation in 1921 contained a handful of articles (19; 28; 29; 30; 33; 35; 38; 40; 43; 50; 52) that show the responsibilities and duties of the Secretary. These articles show that the deputies requested that each case ought to be clearly presented and contextualised, including dates, arguments, laws related to such cases, and all documents that related to the case (AGN DFN, Caj 1996/1).

From at least 1859 until 1921 decision-making in the Deputation can be seen to have been related to judging each case according to its appropriate legal context and resolved following the law. A case that took place in 1883 illustrates this. In August of that year, the Deputation authorised the Council of Tudela to apply a tax to the soap introduced in its municipality. Kept as part of the documentation that was used to decide upon the case, there is a compilation of how soap had previously been taxed. This compilation contained eight different laws or taxes, the first dated in 1849 (AGN DFN Caj, 38138). This can be seen as an example of how the work of the Secretary defined in the regulations materialised in decision-making processes.

However, the personal capacity to interpret law could have been important to direct the resolution of some cases towards one or another direction. This factor would have been decreased by the need to reach a consensus between the deputies present in the session to make a decision. Deputies could have different ideologies, as they were elected in representation of their constituency, and the Deputation was not formed by a winning political party as in modern politics.

In some cases, irreconcilable differences emerged between deputies, which could lead to deputies' resignation. An instance occurred in relation to the initiative promoted by Navarre's deputation in 1885 to change the system to calculate taxation referred to above. How the tax system ought to be reformed appears to have produced important disagreements between the seven deputies of the Deputation. The direction that four

deputies were able to push forward, which was opposed by the other three, led to the resignation of the three opposing deputies.

The ideological tendencies associated with the deputies who resigned were: a liberal-*Euskaro* elected in the constituency of Aoiz (F. Iñarra); and the two deputies elected in the constituency of Pamplona (though at the time divided in two by the aforementioned legal abnormality), a liberal (T. Galbete), and an *Euskaro* (D. Alsua). The four deputies who did not resign were three conservatives, elected in Estella (A. Baztan), Tafalla (G. Pérez) and Tudela (E. De Benito), and a republican, elected in Estella (S. Goicoechea) (AGN DFN, Caj 1998/1; García-Sanz 1996: 55-61). However, F. Iñarra might have reconsidered his initial resignation, as he signed the Memoir, and continued as deputy the following year.

The conflict may have jeopardised the trust that people had in the institution, since it led to the explanatory Memoir that the Deputation directed to the country, and because in it the Deputation put forward a proposal with the objective to illustrate their ‘patriotism’. The Deputation considered that:

the relationships between popular Authorities and the Country they govern must be perfectly harmonious; and thus, this Deputation, which is guided by this fundamental principle, has attempted to regulate it in practical dispositions, proposing Navarre’s Districts to appoint representatives so they can examine the economic issues of the Country, and to manifest their views about it, indicating the solutions that, in their view, should be adopted to resolve the financial and tax problems (my translation¹⁰⁰) (AGN DFN, Caj 1998/1).

Differences within the Deputation could therefore lead to important tensions and even to the resignation of deputies. In the case reviewed in which three deputies resigned, such an event led to a sort of institutional crisis, which was approached by opening the process of decision-making to the municipalities in order to show the good will of the

¹⁰⁰ Se ha consignado al comienzo de esta Memoria que las relaciones entre las Autoridades populares y el País que rigen deben ser perfectamente armónicas; y por eso, esta Diputación que tienen por norte ese principio fundamental, ha procurado reglamentarlo en disposiciones prácticas, acordando que los Distritos de Navarra, nombren sus representantes, para que puedan examinar los asuntos económicos que interesan al País; y manifestar el concepto que acerca de los mismo formen, indicando soluciones que, a su juicio, deban darse, a los problemas tributarios y financieros

administration and its commitment to Navarre. The deputies argued that the institution could make economic or administrative mistakes, ‘but will never fall into patriotic mistakes, because patriotism, the love to the Country and to its traditional institutions, will always be the fundamental dogma for the people of Navarre’ (my translation¹⁰¹) (AGN DFN, Caj 1998/1).

Governance from the Deputation was therefore significantly influenced by law, and especially by the work done by the department of Secretary bringing together all relevant documents to enable deputies to reach decisions. If the work of Secretary could have been a first element influencing the resolution of some cases, the need to reach consensus by a majority of deputies who could have had a variety of ideologies could further minimise the extent to which an ideological idea could influence decision-making. Irreconcilable differences could nonetheless emerge between deputies. In cases, such as that reviewed above, such differences produced an institutional crisis, which was resolved by opening the decision-making process to representatives of Navarre’s municipalities, further reducing the extent to which deputies were able to promote decisions based on their ideologies without degrees of consensus.

6.6.2. Administrative Decentralised Practices

Another significant factor limiting the impact of deputies’ personal preferences relates to the decentralised administrative praxis associated with the *fueros*. Traditionally, decentralised praxis meant that each municipality was largely autonomous regarding the management of the social context it formed: included electing procedures, taxation and investment of resources and legal or customary idiosyncrasies.

Decentralised practices can be seen, for example, in methods used by the Deputation to collect knowledge from the municipalities. In 1844 for instance, the Deputation issued a circular in which it requested all municipalities to provide information about the types of measuring and weighing systems they used for different purposes, as well

¹⁰¹ La Diputación de Navarra podrá equivocarse en sus gestiones, podrá incurrir en desaciertos económicos, pero nunca incurrirá e errores de patriotismo, tal como sería el traicionar sus derechos forales para salvar un conflicto financiero, porque el patriotismo, el amor al País y a sus tradicionales instituciones, será siempre el dogma fundamental para el pueblo de Navarra

as whether these practices were established in written or customary law (AGN DFN, Caj 38138/1). The objective of the initiative related to developing a plan to manage an eventual transition to the metric decimal system. The same method of compiling information was used in 1931 by the Deputation to collect data about the kind of water they had and how it was used. This was done by issuing a letter to all municipalities requesting the information (AGN DFN Caj, 31973).

The growth of a public bureaucratic and specialised administration seems to have produced centralising tendencies. In Navarre, jurisdictional authorities' proposals to changes in decentralised practices tended to produced jurisdictional disputes, often involving discussions about the *fueros*. This happened between territorial deputations and the State, and also between territorial deputations and municipalities. An issue that generally led to jurisdictional conflict was economic reform, including the production and approval of budgets as well as control over taxes.

Producing an annual budget, and the characteristics that this ought to have, became a matter of jurisdictional dispute between State authorities and Navarre's Deputation between the 1840s and the 1870s. This is likely to have been a result of Navarre's traditional governance, which did not require them, a circumstance that was not fully accepted by State authorities, who demanded provincial budgets (Martinez Beloqui 1999: 173-190). The issue was addressed by Jose Alonso (1849). In his view, the Deputation was defined through legal documents, and according to these, and to the competences of Navarre's Deputation, it did not have the obligation to produce annual budgets, though he considered it convenient (Alonso 1849: 299-300).

Changes in the models of municipal budgets requested by the Deputation of Navarre to municipal councils in 1867 also produced jurisdictional friction, which had at its centre the *fueros*. Illustrating the dispute are two documents that were produced by the Council of Pamplona.

After careful analysis of the models provided by the Deputation to present municipal budgets, the Council argued that they could not be applied without profound changes. This position was defended with various arguments, including practical

inconveniences, legitimacy to exercise such change, and a defence of the *fueros* and decentralised practices as the best ways to achieve social welfare.

Pamplona's Council argued that such changes would produce grave problems that affected the efficiency of the practices and procedures it had in place, which it argued were the best possible ones. They understood that the Council was in the best position to know its needs and use its resources efficiently. In the case of that of Pamplona, the Council argued that it was assisting the poorest. It defended that since antiquity, municipalities had had the right to manage such issues, and directly associated the *fueros* with administrative decentralisation. It praised the fact that Navarre had managed to avoid centralisation when compared with other provinces of the State, and associated centralisation with unnecessary bureaucracy that produced 'human demoralisation'. It stated that Navarre was fortunate for having a Deputation that cared and protected the *fueros*, and suggested that it would be unlikely that the Deputation would promote acts against the *fueros* (AGN DFN Caj 22285/1).

The Deputation responded, detailing the studies made and alternatives considered before reaching such a decision. The Council of Pamplona replied, acknowledging the work and the reasons followed by the Deputation, supporting their goal of stopping the abuses that had been detected in certain villages. However, the Council emphasised that the necessary reforms had to be made without jeopardising the historical rights of municipalities and argued that decentralisation resulted in welfare: 'Perhaps, the renowned England owes part of its prosperity and strength to this municipal system' (my translation¹⁰²) (AGN DFN Caj 22285/1). Arguably, different levels of jurisdictional authorities feared that changes in traditional practices would be associated with changes in how legal relationships were conceived and distribution of competences legitimised.

An important aspect of decentralised administrative practices had to do with taxation, and changes in taxing practices also produced significant jurisdictional disputes. Arguably, such changes were generally resisted in Navarre. Up to the 1930s, although municipal taxes had to be approved by the deputation, each municipality retained the

¹⁰² Quizá deba la renombrada Inglaterra parte de su prosperidad y pujanza a este Sistema municipal

right to propose those taxes that were considered necessary. The degree to which Navarre's municipalities exercised taxation according to their perceived needs is suggested by the documents contained in the box DFN, Caj 22285. It contains descriptions sent by Navarre's municipal authorities to Navarre's Deputation of the taxes they had in place in the early 1930s. These documents were requested by the Deputation in relation to state legislation, that was considered did not affect Navarre, but that Navarre's deputation considered appropriate to apply under their own management (AGN DFN, Caj 22285-4423). The documents show the marked differences in the taxes that each municipality had in place¹⁰³.

Conflicts that changing taxing practices produced between a variety of social actors can be seen in different examples. These could happen between deputies of the same institutions, between different jurisdictional authorities, or between public authorities and private parties. Disputes between territorial authorities and state authorities are often highlighted. Among the many that took place during the period studied, an important dispute took place in 1894, known as *La Gamazada*, when Navarre's political class and nascent civic society unanimously rose up against reform proposed by State authorities. Among the less well known, an interesting instance emerged in 1867, when State authorities interpreted that a law directed to tax financial organizations, the 'Law of 29th of June of 1867 about the imposition of five percent to the salaries of the employees and profits of credit societies' (my translation¹⁰⁴), should be applied in Navarre and Euskadi.

On the 4th of September of 1867 the financial institution *Crédito Navarro* wrote to Navarre's Deputation explaining that the Civil Governor (the authority appointed by State authorities) of the territory had demanded the tax due to them, and they

¹⁰³ These can be compared for instance in the following references for the noted municipalities:

Cabanillas AGN DFN, Caj 22285-4389

Cintruenigo AGN DFN, Caj 22285-4396

Falces AGN DFN, Caj 22285-4403

Isaba AGN DFN, Caj 22285-4407

Ochagavia AGN DFN, Caj 22285-4408

Ribaforada AGN DFN, Caj 22285-4412

¹⁰⁴ Ley de 29 de Junio de 1867 sobre la imposición del 5% a los sueldos de empleados y dividendos o beneficios de las sociedades de crédito

considered that the Deputation should know about it and about their view that the tax was not applicable in Navarre due to foral law. The following day the Deputation replied, stating that they would protect foral rights. The disputes between State and Foral authorities would lead to an exchange of communications between financial institutions and jurisdictional authorities in Navarre and Euskadi. These communications show some of the pressures that financial institutions within each territory were placing on each deputation to protect them from paying the tax (AGN DFN Caj 2891/1). They also show the determination displayed by some deputations to defend what they interpreted were their foral rights, that is, the compliance with existing and binding law.

On the 18th of August 1868, for example, a letter from the Deputation of Araba-Álava to that of Navarre informed the latter about an agreement reached by the three deputations of Euskadi. The third of their agreed points stated:

That if the Banks and trade associations consulted about the line of conduct they should follow, to let them know what the country has agreed to do: to resist, by all the means that law provides, the payment of the imposition, and as last resource, if it could not be resisted without breaching the duties of respect and reverence that have always presided within the businesses of Euskal Herria, to comply with the most reverential, energetic and solemn protest (my translation¹⁰⁵) (AGN DFN Caj 2891/1).

Another example of the determination displayed by some deputations about their commitment to defend their views can be seen in a letter sent by the Deputation of Gipuzkoa to those of Navarre, Araba-Álava and Biscay on the 7th of May of 1870. In it, the Deputation of Gipuzkoa requests the collaboration of the other three ‘to employ by common agreement all the resources at their disposal to avoid the establishment of the intended tax’ (my translation¹⁰⁶) (AGN DFN Caj 2891/1).

¹⁰⁵ Que si los Bancos y asociaciones mercantiles les consultan la línea de conducta que deben seguir se les manifieste cuanto el país ha acordado practicar: que por todos los medios que el derecho suministra resistan el pago de la imposición y que en el último extremo si no hubiese términos hábiles para eludirla sin faltar á los deberes del respeto y la veneración que siempre han presidido á los negocios del país vasco, causen también la más reverente, enérgica y solemne protesta

¹⁰⁶ para que empleando de común acuerdo todos los medios que estén de nuestra parte, no se lleve a ejecución el impuesto que se pretende

The tax system could lead to different types of legal and jurisdictional conflicts, some of which had a much smaller magnitude and lacked the same political importance. They show nonetheless the many levels at which decentralised administrative practices could produce legal conflicts. An instance can be seen in a complaint made by some peddlers to the Deputation in 1875. They complained about the taxes that some villages were demanding of them in order to be able to sell their products within the municipality, which they considered illegitimate (AGG DFN, Caj 38138/3).

The value given to decentralisation can be explicitly seen in the work of Luis Oroz (1917). As noted above, Oroz was the Secretary between 1921 and 1945, occupying this key role for the working of the administration within a variety of State regimes, including a republic and a fascist military dictatorship. Oroz's analysis of the institutional and legal changes that took place in Navarre following 1841 paid special attention to the control over municipalities. He lamented the loss of municipal autonomy that occurred, and related municipal autonomy with forality. For Oroz it was not only a matter of what institution had control over the municipalities, but it was also a matter of the degree of autonomy that municipalities ought to have. For him, the fact that the Deputation had the legal right to govern over municipalities did not mean that the latter ought to be a subordinate of the former. In his own words, 'We do not believe, as some have sustained, that by the mere fact that the 6th article of the Treaty Law states that the Municipalities of Navarre have to act under the dependency of the Deputation, we have to be considered as mere delegates of the mentioned Corporation' (my translation¹⁰⁷) (Oroz 1917: 51).

García-Sanz (1996) concluded in his bibliographical dictionary of Navarre's deputies that their services had been fundamental to the maintenance of the foral system (García-Sanz 1996: 7). A traditional interpretation of the fueros and structural features of Navarre's administration may have been some of the influential factors resting beneath Navarre's deputies' attitudes.

¹⁰⁷ No creemos, como algunos han pretendido sostener, que por el mero hecho de consignarse el art. 6 de la Ley Paccionada, que los Ayuntamientos navarros han de obrar bajo la dependencia de la Diputación, ha de entenderse que esta dependencia ha de ser absoluta, que haya que considerarles como meros delegados de la expresada corporación

6.7. Conclusion

Navarre's public administration changed deeply between 1841 and 1936. The reform of the *fueros* pact in 1841 dismantled Navarre's traditional governing institutions, transferred legislative powers from Navarre's parliament to that of the State, and turned the Deputation into Navarre's highest authority and the administrative centre from which the social changes associated with the modernisation of society were managed. The implementation of liberal policies and processes of industrialisation resulted in significant social transformations, especially from the second half of the nineteenth century, which produced jurisdictional conflicts and political debates within Navarre's jurisdictions and institutions and between these and the State.

Overall, the Deputation and the administration it managed can be seen in the context of privilege. Only persons with considerable wealth would be elected as foral deputy, and working for the administration was protected by those already inside it. Within the degrees of elitism and protectionism present in the workings of the administration, a significant variance of ideological and socio-economic profiles could reach influential positions.

Nevertheless, political debates in Navarre during these processes of change have seldom confronted a progressive and secular liberalism disregarding and demeaning the *fueros* with a traditionalist and religious conservatism defending them. Instead, Navarre's political action seems to converge in the same direction: the *fueros*. The influence of these may be involved in the uses of law for the resolution of cases, in the maintenance of a rather decentralised administrative system, in conceptions of the public administration as a tool that existed to look after the common wealth of the peoples of Navarre, and in the perception that it was the duty of the Deputation to modernise society to achieve such an end.

Managing the modernisation of society from the Deputation led to a steady growth of the administration during the period studied, accelerating towards the turn of the twentieth century. Despite the protection of decentralised administrative practices within Navarre, a curve can be identified towards increasing degrees of centralisation. This could lead to jurisdictional friction, when centralising policies came from

elsewhere (like State authorities), or when they were promoted from Navarre's own institutions.

The resilience of a decentralised administrative system in Navarre may have been influenced by several factors, like the general defence of the *fueros* by Navarre's political class, or structural features of the administration that limited the extent to which deputies' ideologies could shape decision-making processes. These included the electoral system, which produced governments formed by deputies with different political affiliations; the importance granted to law as a reference to reach decisions, which meant that the department of Secretary was a first key factor influencing the resolution of some cases; and decentralised administrative practices associated with the *fueros*, which, by distributing legitimacy over decision-making among affected municipalities, led in some cases to institutional crisis which included affected social actors in processes of decision-making.

7. Agency and Cooperative Behaviour in the Creation of Euskadi

This chapter argues that resting beneath conceptions of what Euskadi is (and is not), and legal recognition of this, are practices of traditional jurisdictional cooperative behaviours. Cooperative practices produced by a variety of factors, including willingness, compulsion, necessity or interest, may also rest beneath instances of legal recognition elsewhere. Be this as it may, this has come to the fore in the study of the case of Euskadi due to the necessity to make sense of the existence of both jurisdictional fragmentation and tendencies to conceive independent jurisdictional units as one.

Two rather opposing dynamics have been identified as important in these territories' jurisdictional histories. On the one hand, the variety of existing jurisdictions, their legally recognised powers, and the interest generated around them, directing focus towards each jurisdictional entity and presuming a level of unilateralism regarding interests, conceptions of social reality and evaluations of social phenomena. On the other hand, dynamics of systematic cooperation among these jurisdictions.

Arguably, the creation of a jurisdictional Euskadi, as it exists today, is a result of a history of jurisdictional behaviours of recognition and cooperation between the jurisdictional authorities of the territories studied. These cooperative behaviours may have led to official practices identifying, by a single term, legally unrelated jurisdictional entities. Why these practices existed in the absence of any legally binding disposition, and in spite of the different interests represented by each jurisdictional entity, is considered to be a central factor to take into account in order to better understand the jurisdictional histories of the studied territories.

7.1. Cooperative Practices and Official Recognition

It has been argued in the methodological chapter that conceiving Euskadi as a jurisdictional context to compare with that of Navarre is problematic. Euskadi as a jurisdictional entity did not exist until 1936. Between 1876 and 1936 the jurisdictional entities that existed were mostly defined by state law. Before 1876, those existing

entities were mostly defined by autochthonous law, the *fueros*. Rather than thinking in terms of Euskadi, what would become Euskadi in 1936 needs to be understood in relation to the jurisdictional entities that existed, their interactions and the political processes that led to its creation.

Nevertheless, even in the absence of a jurisdictional entity to associate with Euskadi, one can still justify thinking in terms of Euskadi before its jurisdictional creation. This is made possible because since at least the eighteenth century, and despite the fact that such a jurisdictional entity did not exist, a rather official tendency to conceive these three territories together existed, which can be seen in the use of the term *provincias Vascongadas* in some legal documents.

This has been noted in chapter five, where jurisdictionally fragmented behaviours in the processes of foral reform between 1839 and 1841 have been identified, which happened together with legal references to refer to directly unrelated jurisdictions as a single entity. In the Peace Treaty of Vergara, the military carlist leaders, in a context of war, in complete absence of legal obligations to do so, fighting a war of succession in the name of an absolutist king, and theoretically confronted with the jurisdictional authorities of their territories, organised themselves and represented each of the jurisdictional territories, making the *fueros* the key issue to be resolved. The rather fragmented action surrounding the treaty took place together with elements of cooperative behaviour. The treaty had been negotiated together by several carlist leaders in representation of their territories and their inhabitants; although Navarre's and Araba-Álava's leaders decided against immediately adhering to it, the treaty nonetheless allowed them to do so in the future.

The liberals who negotiated foral reform once the war was over, who in theory were not the same people and did not represent the same interests, followed similar jurisdictionally organised and cooperative practices, leading to the different paths followed by Euskadi and Navarre and to uses of terms in legal documents identifying the resulting jurisdictional attitudes towards foral reforms. In Navarre an influential political class existed willing to negotiate and exercise legal reform. In Euskadi such an institutional reform would be avoided, because a political class willing to perform such a reform was not influential enough or perhaps because Euskadi's legislative

chambers were mainly formed by representatives of Municipalities. This would be no longer allowed by State authorities after the third Carlist War (1872-1876), when they set into motion a process to abolish the *fueros*.

7.2. The Social Construction of the Legal Framework Associated with the *Fueros*

The *fueros* in Euskadi were abolished following the third Carlist War (1872-1876). Although the abolition of the *fueros* has been generally associated with the law of 21st July 1876, the practices and meanings associated with the *fueros* would be replaced by the legal framework created in 1878 in a new legal mechanism that would be known as the Economic Agreement.

Contrasting with the *fueros*, the Economic Agreement was given a temporal character, the first one for ten years. The temporality of the agreement would remain in relation to it or some of its contents, such as the need to periodically revise the amount to be paid to the State (Zabala 1927: 52-53). The Economic Agreement would therefore be in constant construction, as its period of validity, or an aspect of it, would expire, and a new one had to be created. The Economic Agreement also developed a different issue. As it did not include all possible taxes, disputes could emerge between the State's and Euskadi's jurisdictional authorities regarding the application, and/or management, of a tax not included in it. In such cases the applicability and management of the tax could be negotiated as an isolated case, which could be later included in the Economic Agreement (AGG-GAO; JD T 1789, 2-00-19).

7.2.1. The Abolition of the *Fueros* in 1876 and the Construction of a New Jurisdictional Framework

Between 1876 and 1878 the foral reforms that would be applied to Euskadi and Navarre after the war were debated, negotiated and disputed. In the case of Euskadi, the legal document associated with the creation of a legal framework replacing the previous document created by the *fueros*, the Economic Agreement, did not institutionally define Euskadi, as foral reform had done in Navarre in 1841. The lack of explicit legislation regulating an institutional transformation analogous to that negotiated in the reformation of Navarre's *fueros* may have led some authors to conceive the institutional reform, including what authorities would exist and how these

would be elected, as not having been a matter of great dispute. Rivera (2003) argues for instance that ‘the implementation of the Spanish general normative regulating the mechanisms to elect office did not encounter many difficulties’ (my translation¹⁰⁸) (Rivera 2003: 414).

However, an analysis of the legal dispositions issued with the goal of eliminating the institutional particularities associated with the *fueros* suggests that the process was more complex, as a long process of legal and political resistance can be identified of almost two years’ duration. Arguably, the resistance of foral authorities finished when foral authorities considered it most beneficial to accept defeat, under official complaint, and to negotiate a governing framework considered better than facing the consequences of continued resistance. The outcome of the process was the creation of the Economic Agreement between Euskadi and State authorities, a legal framework providing territorial governing authorities with degrees of economic and administrative autonomy, and which, like that of Navarre, could be interpreted as a ‘treaty-like’ law.

The process of the abolition of the *fueros* began with the Royal Order of the 6th of April of 1876, which was issued with the goal of eliminating the institutional particularities associated with the *fueros*. The Royal Order had six commands, which created a timetable and a procedure through which the *fueros* of Euskadi would be reformed, completing the second article of the 1839 law of *fueros*, and updating those of Navarre. The necessity to do so was justified in its preamble.

The existence of the *fueros* within the constitutional state was directly related to war, perhaps suggesting that their existence had to be explained in relation to not entirely legitimate factors. At the same time, the *fueros* were conceived as an obstacle impeding the completion of the constitutional project of Spain, which was argued to be demanded by ‘the unequivocal demonstrations of public opinion, pronounced both inside and outside of Spain, to immediately and finally complete the great work of the

¹⁰⁸ la implantación de la normativa general española que regulaba los mecanismos de elección de cargos no encontró demasiadas dificultades

national unity' (my translation¹⁰⁹) (Real Orden 6 Abril 1876: Preamble). For State authorities the *fueros* were an obstacle for the unity of the State; what the nation-state had to be was perceived to be impeded by the *fueros*. This had a *symbolic* aspect, which was asserted in the preamble, as well as a more *practical* character, as the *fueros* disallowed state authorities to implement some of the policies they wanted in these territories. Perhaps the State authorities' ambition to achieve administrative constitutional unity was encouraged by processes of state formation taking place elsewhere in Europe, such as in the states of Italy or Germany.

The *fueros* however, would not be transformed following the timetable, procedure or including all the territories that the order was directed to; most likely because the State did not encounter the collaboration it sought in Navarre and Euskadi. The lack of success of the Royal Order of 6th of April 1876 is likely to have led state authorities to issue the law of 21st of July of 1876, which enabled the government to impose the reforms it considered necessary. It contained six articles, in the last of which the legislative bodies of the State granted the government extraordinary powers to impose the execution of the preceding articles. These stated that Euskadi had to contribute to the army and to the Treasury of the State like the rest of the provinces (Art 1, 2 and 3), and allowed State authorities to negotiate with the territories the reform of the *fueros* within the legal framework created by certain laws (Art 4), as well as to consider local particularities in the reforms or enabling that new taxes would be imposed within a timeframe (Art 5). This law became a symbol of the abolition of the *fueros* not so much because it defined the new jurisdictional context, but because it became the legal mechanism used by the State to create enough pressure on the governing authorities of Euskadi to force them to comply and collaborate.

The resistance exercised by foral authorities to institutional change and the legal pressure exercised by State authorities on foral authorities to negotiate the abolition of the *fueros* can be seen in some of the legal dispositions that followed. On the 11th of January of 1877 the Presidency of the Council of Ministers published in the *Gaceta de Madrid* a legal disposition that made clear in its fifth article that Navarre and Euskadi

¹⁰⁹ las manifestaciones inequívocas de la opinión pública, tanto dentro como fuera de España pronunciada, porque se corone inmediata y definitivamente, la grande obra de la unidad nacional

would have to comply with ‘the duties that the Monarchical Constitution imposes on all Spaniards’; and in the seventh article established that the municipal councils and the provincial deputations would be formed according to the Ministry Order of 5th of February of 1874 and the decree of 21st of January 1875 (the latter conferred to the provincial Governor the authority to renovate the deputation or councils either partially or completely, until new municipal and provincial laws were issued).

Again, the lack of success of this law is suggested by the existence of a Royal Decree issued four months later, on the 5th of May 1877. The State authorities argued in the preamble that it had made use of all its resources to facilitate an understanding with Euskadi. It suggested that it had encountered some willingness in Gipuzkoa and Araba-Álava, but apparently none in Biscay. The decree ordered that in Biscay, the government and administration of the territory would be like that of the rest of the nation; that the Deputation would be regulated by the general laws of 1870 and 1876; that all taxes and economic government would be according to the national budget; that the territorial government absorbed the obligations to religious institutions; that the State’s Government absorbed the competences to manage general roads; that *papel sellado* (stamps) would start to be used; that the territorial government would manage the distribution between municipalities of provincial taxes and establish regulations for those who want to apply for the exemptions contemplated in the fifth article of 21st July 1876. For Zabala (1927) this decree was the government’s revenge on Biscay’s General Assembly for not showing willingness to cooperate, particularly in an extraordinary session held on the 18th of April of 1877 (Zabala 1927: 25-26). Even though I cannot confirm whether Zabala’s description of events is accurate, reading the preamble of the decree does indeed suggest that it had a punitive character.

Nevertheless, according to the preamble of the Royal Order of 28th February of 1878, state authorities would not yet obtain the collaboration of foral authorities. It would be the Royal Decree of 13th of November of 1877 which brought to an end almost two years of resistance, and forced all foral authorities to collaborate with State authorities. This decree was directed to the three territories and dictated the economic amounts that each one had to pay as an annual contribution to the State, set deadlines for payments and ordered that if the deputations did not collaborate to raise and pay the

money, the sums would be demanded directly by the Central Government to the municipal councils. Perhaps Biscay's jurisdictional authorities, which seem to have been those most reluctant to cooperate, decided to negotiate because they found the possibility that the State's administration would bypass the representative institutions of their jurisdiction threatening, and so directly demanded, by whatever means were considered appropriate, economic contributions to the municipalities.

The idea that all foral authorities finally gave up sometime after that decree is suggested by the change in attitude that can be seen in a Royal Order issued the following month, on the 12th of December of 1877. In it and following the suggestions made by the Governor of Biscay, the jurisdictional authorities of Biscay regained key competences to exercise governance that had been previously transferred to Madrid. Another Royal Order, this on the 8th of June of 1878 and directed to Euskadi, created particular regulations for the exercise of governance in the territory, which mostly related to granting its deputations more competences and executive powers. In the time between these two Royal Orders a third Royal Order, the legal document that would become key in regulating the degrees of economic and administrative autonomy that Euskadi would legally exercise was that of 28th of February of 1878. This would become known as the Economic Agreement; it would become the key legal mechanism providing a framework for economic and administrative autonomy and would become the legal reference associated with what the *fueros* represented.

This was explicitly stated in the long preamble of the Royal Order of 28th of February of 1878. It began by arguing that once the constitutional unity in the territories had been established (institutional change), and the first contribution of men to the army from Euskadi had taken place, one more issue had to be settled in order to complete the objectives set by the Central Government in 1876: to reach an economic agreement. The original intention of the State authorities was to regulate economic government in these territories by state law; nevertheless, this idea had been finally discarded and a particular legal context to regulate the economic government in these territories was negotiated. Such change in policy was justified by asserting that:

[State Government] has not only taken into account the conveniences of this country and how difficult and risky it is

to violently terminate ancient institutions, incarnated so to speak in each of the Basque people, and which constitute their way of being: social, political and economic; but also that, as far as it has been the administration of those regions, where its action has never been felt, it lacked the news and antecedents, of all kinds necessary, to make provisions shine with equity and justice, bases for all forms of acceptable taxation (my translation¹¹⁰) (Real Orden 28 February 1878).

Since its creation, links between the *fueros* and the Economic Agreement have continued to be made by one or another social actor. In 1905, for instance, Bilbao's Academy of Law and Social Sciences (my translation¹¹¹) wrote a report about the Economic Agreement in which they portray it as 'these remains of its ancient institutions' (my translation¹¹²) (AGG-GAO: JD T 1789,2-00-19). A similar idea was presented in 1927 by Julian de Elorza, former president of Gipuzkoa's Deputation, in the prologue of a book that analysed the history of the Economic Agreement (Biblioteca Koldo Mitxelena: JV 2374).

The study of State law shows the existence of two years of resistance to institutional change. When the jurisdictional authorities involved in the creation of the *fueros* were finally forced to negotiate foral reform, their interest did not concern the creation of an institutional framework defined in any particular way, which could have led to reproducing institutional dominance of the same elite. Instead, these authorities were concerned about creating a legal framework in which the elected governing authorities would find the legal mechanisms to govern with as much autonomy as possible. In short, when institutional change was thought to be inevitable, the interest was not in negotiating the creation of an institutional system that would facilitate the access to political power to certain elites, but rather to create the legal framework that most resembled those features associated with the *fueros*, which could be managed by

¹¹⁰ el Gobierno por la Ley de 21 de Julio para introducir en este punto las modificaciones que estuviesen más en armonía con los hábitos del país, no ha tenido presente sólo las conveniencias de éste y lo difícil y arriesgado que es prescindir de un modo violento de instituciones seculares, encarnadas, por decirlo así, en cada uno de los vascongados, y que constituyen su manera de ser social, política y económica, sino que también que, alejada la Administración, como ha estado, de aquellas comarcas, a donde su acción nunca se dejó sentir, carecía de antecedentes y noticias, de toda suerte indispensables para que la equidad y la justicia, base de toda tributación aceptable, brillase en sus disposiciones

¹¹¹ Academia de Derecho y demás Ciencias Sociales de Bilbao

¹¹² estos restos de sus antiguas instituciones

whoever would be elected. Not only did the governing authorities associated with the resistance to institutional change not display a strong interest in influencing election procedures, but the governing authorities elected with the new electoral system would repeat aforementioned jurisdictional behaviours.

7.2.2. Social Cooperative Processes in the Renovation of the Economic Agreement

The Economic Agreement was periodically renegotiated and renewed. Between 1876 and 1936 four main renovations took place. After the initial agreement reached in 1878, new negotiations would follow in 1887, 1894, 1906 and 1925 (Monreal-Zia & Jimeno Aranguren 2009: 651). Despite the revisions of the Economic Agreement, between these negotiations jurisdictional disputes between deputation and state authorities regarding the right to decide upon or exercise an economic or administrative competence emerged.

The cooperative behaviours taking place in the process of creation of the Economic Agreement come to the fore in a series of files kept by the Deputation of Gipuzkoa between 1885 and 1921 under the subject 'Fueros'. The first case was opened in 1885 to keep records of the process of renovation of the Economic Agreement; it would become the first of a series in the deputation's archive where those cases officially dealt with by the Deputation of Gipuzkoa and that were considered to relate to the *fueros* in both their practical and symbolic elements. These files show the types of official cases that the governing authorities of the deputation associated with the *fueros*, as well as the social actors involved in the cases, and the views and actions taken by the deputation. The last case found in the archive, number 140, was filed in 1921. Although the entire 140 cases were not found, and although not all of those that were found contained the same level of data to allow interpretation of the details of the cases, an ample number of them contained enough data to show the noted cooperative features¹¹³.

¹¹³ Find below a reference to how these records are kept. It displays signatures on boxes, the years in which the documentation contained was produced, and a hint of the subject matter, as in some cases this was long. There are sixteen different boxes within the section Juntas y Diputaciones, and files are kept compiled by subject, not chronologically; although when a box contains more than one case these are chronologically ordered.

The files of the series ‘Fueros’ kept by the Deputation of Gipuzkoa offer a portrait of some of these disputes as well as of the negotiations of the Economic Agreement. These files need to be understood to be the types of official cases that the governing authorities of the Deputation of Gipuzkoa associated with the fueros. The files show what social actors were involved in each case, who opened it and why, and the views and actions of the Deputation in the assessment and resolution of the cases.

The recurrence of cooperative behaviour in the social construction of the legal framework associated with the fueros can be identified throughout these files. The rather common occurrence of coordinated, united action between the three territorial deputations is suggested by the fact that of data collected in 140 cases, the resolution of seventy involved communication between two or more of the studied jurisdictional authorities. Thirty of the cases were resolved by the Deputation of Gipuzkoa without communicating with any of the other deputations; there are forty cases in which whether this happened or not could not be established from the data contained or collected about the cases.

<i>Signature</i>	<i>Years</i>	<i>Subject matter</i>
AGG-GAO JD T 1788, 1	1884-1907	Files subject to revision
AGG-GAO JD T 1845, 1	1887	Supplement regarding the new Economic Agreement
AGG-GAO JD T 1849, 1	1887-1898	Files regarding economic powers, the Economic Agreement etc.
AGG-GAO JD T 3235	1893	Economic Agreement
AGG-GAO JD T 1850, 1	1898-1905	Files regarding the organisation and functioning of the administration
AGG-GAO JD T 3236	1904	File regarding the Law of alcohol
AGG-GAO JD T 1857, 1	1905-1910	Files regarding laws, taxes, the Economic Agreement etc.
AGG-GAO JD T 1846, 1	1906	Files regarding the renovation of the Economic Agreement
AGG-GAO JD T 3249, 7	1908-1938	Files regarding the Official Gazette
AGG-GAO JD T 1856, 1	1910-1921	Files regarding law-drafts
AGG-GAO JD T 1788, 2	1917-1922	Documents about the unanimous demand to full foral reintegration
AGG-GAO JD T 1789, 1	1918	Views expressed by the personalities consulted about how Gipuzkoa's Sovereignty should be constituted
AGG-GAO JD T 1789, 2	1924-1926	Municipal and private adherences about the Ley de Timbre
AGG-GAO JD T 1841, 1	1885-1886	File number 1 of the Economic Agreement
AGG-GAO JD T 1841, 2	1886-1887	File number 2 of the Economic Agreement
AGG-GAO JD T 1841, 3	1887	File number 3 of the Economic Agreement

This means that a territorial deputation, when faced with a case that it considered could affect, could be beneficial, could interest, or for other reasons might have an impact on the deputation, often decided to exchange communications about it with one or more of the other deputations. The degrees of cooperation, trust and united action come to the fore in some of these cases.

For example, case number 71 was opened in 1907. The case concerned negotiations carried out between the deputations of the three territories to present state authorities with a strong case in defence of their claims, as it had been apparently requested. In order to do so it was decided that careful analysis of the economic and administrative histories and circumstances was required, which were divided in nine areas: jails, provincial credits and debits, municipal credits and debits, administrative contracts, provincial and municipal employees, disciplinary faculties of deputations, provincial and municipal public works, health services and education. The deputations decided that the best way to approach the required analysis would be that each of the deputations would be responsible for studying a different area, a consequence of which would be that the conclusions reached by one or another had to be accepted or questioned (AGG-GAO JD T 1857, 1).

Another case suggesting that collaborative action was increasing is case number 82, which also took place in 1907. It concerned an internal regulation approved by the Deputation of Biscay. The deputations of Gipuzkoa and Araba-Álava did not like one article related with private businesses domiciled in Biscay but constituted elsewhere. Gipuzkoa's Deputation argued that it was 'against patriotic law', and that it would mean that citizens from Gipuzkoa could be treated in Biscay 'worse than in the rest of Spain'. Finally, after an intense exchange of communications between the three deputations, Biscay modified the article (AGG-GAO JD T 1857, 7).

In 1918 case number 132 was opened. It was started with a communication of the Deputation of Biscay, which considered it appropriate, given the frequency with which the three were meeting, to do something in order to tighten and intensify their relationships and united action in defence of their autonomy (AGG-GAO JD T 1856, 1). The jurisdictional cooperation of the deputations during the early twentieth century seems to have increased in order to articulate more efficient strategies to defend

common interests, and this cooperation led to degrees of trust in sharing information and even questioning one's internal regulations.

The files also show the variety of social actors who approached the Deputation of Gipuzkoa with cases that were interpreted to regard the *fueros*. This is true in reference to the social actors who communicated with Gipuzkoa's Deputation, but it does not mean that those social actors were those whose action originated the case. For example, case number 90 was opened in 1909 by the Deputation of Gipuzkoa when it received a communication from the Deputation of Biscay. The case, however, had been raised in Biscay not by the Deputation, but by an industrialist from Bilbao, who had asked about how to proceed with the payment of certain taxes (AGG-GAO JD T 1857, 9).

From the data collected from the identified cases, what social actor's action led to opening a case could be calculated with a degree of certainty in 86 cases; from these, 65 were instances initiated by political authorities of various kinds and 21 cases were initiated by non-political social actors, such as commercial associations, private companies or private individuals. Most of the cases, regardless of the type of social actor who initiated the case (excepting those that were not from Euskadi), concerned enquiries made between social actors regarding what position should be defended or action taken about a tax, a law, or a demand made by State authorities. Eighteen cases were started following communications of the Deputation of Biscay, sixteen of which had to do with the assessment of economic or administrative issues that were considered to require a decision as to whether they were part of the competences these territories associated with the economic concert, and/or to decide what action they should take. The Deputation of Gipuzkoa opened nineteen cases, seventeen of which had the same character. The Deputation of Araba-Álava six, five of which had a similar character. Nine cases were opened following enquires made by Gipuzkoa's Municipal Councils or Mayors, and seven of these had a similar character. Fifteen were initiated by commercial associations or private companies, eleven of which requested the deputation's help or assistance not to pay a tax demanded by the state, or asked if they had to pay a tax demanded by the state.

7.2.3. Cooperative Behaviour Between Mutually Independent Jurisdictional Deputations

This part will review processes of jurisdictional interaction that took place in Euskadi to renew the Economic Agreement. The study of such processes shows how the cooperative behaviour between the jurisdictional authorities of the three territories was vitally important for the creation of the Economic Agreement. This cooperation was voluntary and it involved a significant degree of transparency and trust, as information, assets, ideas, influences and know-how were shared in the processes of designing strategies and arguments to unite and defend their interests. Some key principles appear to have characterised jurisdictional collaboration: respect for free will, agency and legitimacy of decision-making in each of the jurisdictional entities; careful study of the cases to be decided upon, including legal antecedents, present circumstances and an analysis of how it all affected the case at hand; and a sense of fairness. This was associated not only with jurisdictional legitimacy and legal antecedents, but also to socio-economic realities and the different social and material strengths perceived in each of the jurisdictional entities, taken into account, for instance, to establish the quote that each territory had to pay to the state.

The processes by which the Economic Agreement was approached by territorial jurisdictional authorities and negotiated with state authorities can be studied in the first two files of the series. Each one covers a different period of time of the process, suggesting that the process had been divided into two files due to the amount of documentation that the case had generated, the management of which could have benefited from being divided (in fact there are more files related to the process, although number three, for example, compiled documents of a particular event related to the process). The documents of the cases are preceded by rather detailed indexes in which the dates on which the relevant documentation arrived, and a brief description, with different levels of detail depending on the case, are provided. These indexes are likely to have been made in order to facilitate understanding the process by anyone who would need to consult the case. These two files are kept in the AGG-GAO under the signatures JD T 1841 (1) and JD T 1841 (2).

The first files show that during the 1880s, as the time to renew the Economic Agreement approached, the three territorial deputations started to analyse their present circumstances, in order to design a common strategy and to produce a draft for the new Agreement that would be acceptable for them. The process suggests that jurisdictional cooperation, although expected, was not taken for granted; that it had to be constantly reproduced and that it included the willing and active collaboration of the three jurisdictional deputations.

According to the files the process would have been started by Biscay's Deputation, from which a letter was received in Gipuzkoa's deputation on the 11th of February 1885. In it, Biscay manifested its desire for the three territories to negotiate with the state, if not as one, at least in unity and defending common interests. On the 19th of February Gipuzkoa's Deputation replied to Biscay's, agreeing with the idea, suggesting that they should meet and letting Biscay know that a Committee had been created to make a first draft of what the new document could be. On the 20th a letter from the President of Araba-Álava's Deputation arrived, attaching the reply that had been sent to Biscay's initial letter. On the 23rd Gipuzkoa replied to Araba-Álava, attaching a copy of their reply to Biscay. On the 9th of March Biscay's Deputation replied to Gipuzkoa's stating that it agreed with the views that Gipuzkoa's had expressed in its previous letter, and suggests that the three should convene a conference in the coming month of May.

A series of letters exchanged by the three deputations followed, in which the meeting kept being postponed. By October the conferences had not taken yet place, and a letter from Biscay's Deputation received by Gipuzkoa's on the 10th of the same month suggested that the meeting could not be delayed any longer, and that the territorial elected deputies to Parliament (Madrid) should also assist. On the 12th a letter from Araba-Álava's arrived, agreeing and suggesting to Gipuzkoa to establish a date and a place for the meeting. On the 15th Gipuzkoa wrote to the other two deputations letting them know who would assist the meeting as their representation and suggesting that the meeting should take place in Biscay. The conferences would finally take place on the 23rd and 24th of October, the minutes of which are included in the file.

There is also a list of the documents that were produced or used, to analyse the context and circumstances of their time, which included a report commissioned by Araba-Álava's deputation about the convenience to have a special economic and administrative organisation for Euskadi; a draft of the basis for the new concert produced by Araba-Álava's Deputation; the basis that the State Government would accept to adapt the concert for Araba-Álava and a draft for the organisation of Biscay's Councils and Deputation.

The conferences seem to have been productive, as drafts for the basis of the new economic concert for the context of Euskadi as well as for each territory were produced. At least the Deputation of Gipuzkoa kept a draft for the context of Euskadi and one for Gipuzkoa. Nonetheless, it seems that there existed an interest, at least in Gipuzkoa, to better understand what the effects of such a basis would be in the economic and administrative governance of the territory, which led to proposing holding a second conference after a period of time in which each territorial authorities could assess in detail the effects that the agreed basis would have in their economic and administrative practices.

The Deputation of Gipuzkoa commissioned a report to assess this, which was discussed and the resulting draft approved by the Deputation on the 30th of November of 1885. In the same session it was also decided to organise a meeting with those persons who had held highest governing office in Gipuzkoa's administration. On the 5th of December the meeting in Gipuzkoa took place, in which a Commission was created to study the report, and the conclusions of the Commission were heard in another meeting held on the 9th of December. Three days earlier, Gipuzkoa had informed the deputations of Araba-Álava and Biscay about the readiness of Gipuzkoa to assist the second conference, which would be held in San Sebastián.

On the 14th and 15th of December the second conference between the representatives of the three deputations took place. In it, a final agreement was reached and a draft for the new Economic Agreement was produced. Also, it was decided to set into motion the process to get in touch with state authorities. An explanatory letter directed to the highest state authority (at the time called *Presidente del Consejo de Ministros* –

President of the Council of Ministers) and Gipuzkoa's deputies in the State Parliament requested them to arrange a hearing with state's Council of Ministers.

A meeting between Gipuzkoa's deputies in Parliament and state authorities took place in December 1885, and notification of it was received by Gipuzkoa's Deputation on the 1st of January 1886. A few days later, Gipuzkoa responded to the Deputies in the Parliament of the State approving of their conduct in that meeting. On the 21st of February reports sent by Araba-Álava and Biscay were received in which they were informed of the details of the processes of their negotiations about the economic concert. That first contact showed important differences between the expectations of territorial and state authorities. Official negotiations would not be held again until January 1887.

During 1886, and following that first contact between the three territories' and state's authorities, the Deputation of Gipuzkoa increased its communications with Gipuzkoa's deputies to Parliament, in which the views, positions and objectives of each of the parties were exchanged. One of the deputies in Parliament put himself at the disposal of the Deputation. By mid-1886 the deputations considered it appropriate to re-open negotiations with the state, and in July Biscay suggested that a meeting between the three deputations would be convenient, which took place that same month in Araba-Álava. Between July 1886 and January 1887 the three deputations exchanged communications considering how it would be best to approach state authorities to carry out negotiations, including official and informal contacts, in different locations, and by different peoples. By November 1886 it appeared that the possibility of starting negotiations was close, and the three deputations started to plan a meeting between the three before negotiating with the state's government. These conferences would take place in mid-December 1886 in Biscay. During the last days of December the three deputations agreed a date for their representatives to leave by train from their respective cities towards Madrid. On the 30th of December state authorities informed the deputations that they would hear them from the 7th of January onwards.

The commissioners of the three deputations met together with state authorities on the 8th and the 10th of January. On the 11th Araba-Álava and state authorities met, on the 12th a meeting was held between state authorities and Gipuzkoa, and on the 15th

between Biscay and the state. By the 19th the Minister of Finances presented the deputation with a draft of basis that the state's government considered acceptable. This was followed by further meetings between the deputations' Commissioners and state authorities in Madrid, as well as by evaluations of the proposal by the deputations (at least this was the case in Araba-Álava and Gipuzkoa). Negotiations continued in Madrid once the territories had evaluated the circumstances; the difficulties that existed to reach an agreement can be seen in that despite all the previous collaborative work, during the negotiation important disagreements emerged between Biscay and Gipuzkoa regarding a rise in the amount that Gipuzkoa should pay that had been authorised by Biscay. The differences between Gipuzkoa and Biscay would be sorted out, which required the compilation of data in order to check what was being argued and the assessment of the appropriateness of the formulas used by Biscay to formulate its proposal. Eventually, and not before more arguments and disagreements took place, the deputations and state authorities would also reach an agreement.

As the process shows, cooperative behaviour between the jurisdictional authorities of the three territories was vitally important for the creation of the Economic Agreement. The Economic Agreement can be understood as a final product, the documents that eventually became law, but perhaps also as a process. Its existence (and perhaps meanings) may not be entirely explained without taking into account how it was created. This included the voluntary cooperation of jurisdictional authorities in Euskadi, which involved a significant degree of transparency and trust, as information, assets, ideas, influences and know-how were shared in the processes of designing strategies and arguments to unite and defend their interests.

7.3. Legitimacy in Gipuzkoa

The collaborative behaviour between jurisdictional authorities noted above, central to influencing what the legal framework of the Economic Agreement would be like, was the product of the willing participation of the three territories in the absence of any legal compulsion. However important the articulation of such united action might have been, the process lacked any sense of legal validity and legitimacy. The only sense of legal validity and legitimacy of such processes were those granted to it by the social actors who produced them. The fact that such processes were followed by the creation

of the jurisdictional entity of Euskadi suggests that such social action eventually produced perceptions of legitimacy elsewhere.

Be this as it may, legitimacy was perceived to be located within each jurisdictional entity, and associated with the decisions made by each of the existing jurisdictional authorities. In the jurisdictional, institutional and legal framework created by the *fueros* the highest jurisdictional authority, and the institution associated with legitimate political decision-making, was the *Juntas Generales* (General Assembly) (Echegaray 2009 (1924): 43). This would meet annually in Gipuzkoa, and although who exactly would participate changed throughout history, municipal councils, valleys and populations were the kinds of community that normally sent Commissioners to represent them. Echegaray asserted that during the nineteenth century 82 ‘republics’ sent representatives, although some of them would unite and be represented by the same Commissioner (Echegaray 2009 (1924): 45).

An implication of the abolition of the *fueros* was that of the abolition of the highest institutional authorities that they produced: the General Assembly. Theoretically, in the new context legal power was transferred to the deputations, which became the highest territorial authorities. The deputations would be created and their authorities elected following state law.

The data analysed below suggest that the inhabitants of Gipuzkoa continued to locate legitimacy in the political community associated with the General Assembly, and that these were conceived to be legitimate because they brought together representatives of the social organisations thought to represent the different communities of people that inhabited the territory.

Two examples will be used to illustrate this. The first took place in the 1880s in the process of renovation of the first economic concert. The second took place in 1918, when jurisdictional authorities launched an in-depth survey to study how the *fueros* could be updated if state authorities would eventually accept their re-establishment, a possibility that although distant, was perceived to be real.

7.3.1. The General Assembly in the 1880s

As noted above, in January 1887 important differences in the negotiations to renovate the Economic Agreement between the interests of state and territorial authorities became clear, and the territorial deputations started considering that the three main basis agreed to structure the economic concert might not be possible to obtain. These were: 1) Renovation of the economic concert of 1878 ‘with stable and definitive character’; 2) Maintaining the taxes included and the amounts established in it; and 3) The state would compensate those persons and organisations whose exceptions expired at that time (AGG-GAO JDT 1841(3)).

Gipuzkoa’s Deputation, aware that such agreed key basis were in jeopardy, began considering the necessity of convening the General Assembly in order to assess the circumstances, agree new bases and design a strategy. The Deputation opened a file in January 1887 to compile documentation of the event. The first entry in the index is of the 13th of the month, and it described an accord made by the Deputation to ask the Commissioners of the territory (negotiating in Madrid) if they considered it convenient to consult the views of the municipal councils. On the 14th, the Deputation sent communications to the municipal councils asking them to appoint Commissioners to represent them if it was finally decided that the General Council would meet. On the 20th, another communication was sent to the municipal councils informing them that the General Council would be finally held on the 24th of the same month. Also invited to the meeting were those individuals who had held the highest political offices in the territorial administration, and the *Cámara de Comercio de San Sebastián* (Chamber of Commerce of San Sebastián).

The file contains a copy of the minutes of the meeting. In it is described that the event was inaugurated by a speech of the President of the Deputation. He started by explaining to the chamber that the meeting had been considered necessary due to the complete disagreement between the bases considered by state and territorial authorities; the situation that led the Deputation to convene this assembly, which as the most genuine representation of the Country had the right to know the status of negotiations and could, with its authority, inspire the good efforts that might be

necessary, sharing with the Deputation the responsibilities inherent in such transcendental problem (my translation¹¹⁴) (AGG-GAO JDT 184 (3)).

Although the speech portrayed the assembly as ‘the most genuine representation of the Country’, it granted to it authority only to ‘inspire’ the Deputation, though sharing with the Deputation the responsibility of the outcome of the negotiation. Such nuances are likely to have been produced by the fact that legally the only legitimate authority was the Deputation, yet in Gipuzkoa, it was probably the case that there was still a general association between the General Assembly with legitimate political action.

This is suggested by a dialectic exchange that took place during the meeting. At some point the representative of the municipality of Zumaia asked if the negotiations over the Economic Agreement affected the foral regime. He was answered by the Mayor of San Sebastián, who clarified that ‘foral law was settled with the protest made in its day, and that the aspirations that the Country follows today regarding the Economic Agreement are independent of the foral regime’ (my translation¹¹⁵) (AGG-GAO JDT 1841(3)).

The exchange shows that in some municipalities it was not entirely clear that the fueros had been abolished almost a decade ago, suggesting that the association of legitimacy with the General Assembly had not been questioned despite the lack of legal validity. It also highlights the difficulties that existed to properly evaluate what one or another jurisdictional system was, or the extent to which legislation modified social practices at different times in different places.

An opening paragraph of the accord reached by the General Assembly provides a portrait of how some key concepts and practices were conceived in Gipuzkoa. It reads:

[The General Council have met to] deliberate about the most transcendental problems for the life and future of the inhabitants of this noble place of Gipuzkoa, showing once

¹¹⁴ haya convocado esta Asamblea, que como la más genuina representación del País tiene derecho a conocer el estado de las negociaciones y puede, con su autoridad, inspirar las buenas gestiones que hayan de entablarse, compartiendo con la Diputación las responsabilidades inherentes a tan transcendental problema

¹¹⁵ el derecho foral quedo saldado con la protesta que en su día se hizo, y que las aspiraciones que hoy persigue el País en orden al Concierto Económico son independientes del régimen foral

again that despite the tremendous disgrace that since the ill-fated day 21st of July of 1876 afflicted the Basque provinces, the great qualities of civic-mindedness that characterised this noble village educated in the glorious traditions of nobility and loyalty that illuminate all their acts have been completely conserved (my translation¹¹⁶) (AGG-GAO JDT 1841(3)).

The paragraph suggests that the *fueros* – the jurisdictional infrastructure that the law of 21st of July of 1876 was directed to abolish – were connected to nobility and to civic-mindedness; qualities that were considered to have been maintained (as they were enacted in the General Assembly). The *fueros*, nobility and political consensual decision-making were conceived as related.

The General Assembly agreed to create a Commission that would make a report, which would be submitted to the Deputation. Two days later, on the 26th, the Commission created by the General Assembly submitted a draft with new bases for the Economic Agreement. On the 27th the Commission presented the report to the Deputation. On the same date, the Deputation approved the draft.

7.3.2. The Presence of Civil Society in 1918

The idea that legitimacy was associated with the political community created by the *fueros*, and that a characteristic of this was that of bringing together representatives of the interests of the different communities of people that inhabited the territory is further suggested by an event that took place in Gipuzkoa in 1918. In that year the Deputation of Gipuzkoa perceived the possibility, in a perhaps not too distant future, to recover the *fueros*. This led the Commission of *Fueros* of the Deputation of Gipuzkoa to conduct what might be presented as an in-depth qualitative survey among the social actors that the Commission considered had the right to participate in the creation of the legal framework associated with the *fueros*.

The survey was kept as the case number 131 of the series labelled as ‘*Fueros*’. The index does not offer much information about the process, as it only displays the case

¹¹⁶ deliberar sobre los problemas más trascendentes para el porvenir y la vida de los habitantes de este noble solar guipuzcoano, demuestra una vez más que a pesar de la tremenda desgracia que desde el infausto día 21 de Julio de 1876 aflige a las provincias vascongadas, se conservan íntegras e incólumes las grandes cualidades de civismo que caracterizan a este noble pueblo educado en las gloriosas tradiciones de nobleza, hidalguía y lealtad que resplandecen a todos sus actos

number, the subject to which the case belonged and a sentence describing what the case was about: ‘Evaluations of persons consulted about what can and should be the future organisation of Gipuzkoa’ (my translation¹¹⁷). Details of the process have to be inferred from the documentation contained in the file.

The first document is a letter sent on the 12th of November 1918 by the Committee of Fuegos of Gipuzkoa to a number of persons and organisations. In it, the Commission explained that it considered it appropriate to start to work towards developing a consensual framework about how the fuegos should be updated if they were recovered. They justified doing so even within a legal context in which such a possibility did not really exist, and despite the difficulties they anticipated such a transformation would entail.

The significance still held by the General Assembly can be seen in that this survey was done after representatives of all municipalities had unanimously agreed to request, in a meeting held in Tolosa, ‘full foral reintegration’; that is, to fully re-establish the foral system (AGG-GAO JD SM 29, 1).

The letter/survey sent by the Commission shows how the creation of the legal framework associated with the fuegos was approached. Two types of social actors were distinguished in the justifications offered by the Commission to survey them. First, it stated that the opinions of those persons who were considered to have expertise or knowledge in relevant fields were considered necessary. Secondly, it asserted that ‘the entities, economic, social, cultural and other ‘vital forces’ (*fuerzas vivas*) of the Country, each one of them from the particular aspect or point of view that distinguishes them, to articulate their views about the subject’ (my translation¹¹⁸) would be also consulted (AGG-GAO JD T 1789, 1).

The file contains a list of the persons and associations that were consulted, which includes almost two hundred social actors. The list groups social actors in two ways. Firstly, individuals are grouped according to the type of political office they held:

¹¹⁷ Dictámenes de personas consultadas sobre lo que puede y debe ser la futura organización guipuzcoana

¹¹⁸ a las entidades económicas, sociales, culturales y otras fuerzas vivas del País, para que cada una desde el especial aspecto o punto de vista que le distinga, exprese su parecer sobre la cuestión

Senators, Deputies to State parliament, Territorial Deputies and Municipal Mayors. In contrast, business, individuals and associations of different kinds, including banks and other financial institutions, political parties, trade unions, law firms and associations, industrial and/or commercial associations, cultural associations, universities, schools of medicine, of arts, religious associations, magazines or newspapers, were mostly grouped according to municipal origin. These are the social actors that can be associated with a modern civil society.

Interestingly, the views and interests of different associations, although they might have been of similar character, were not assumed to be identical. For instance, rather than contacting one organisation associated with republicanism, working class interests or carlism, associations of the same kind established in different municipalities were listed. For example, the *Casino Republicano* (Republican Casino – a type of recreational/social association related to republican tendencies), was listed in Vergara, Irun, Eibar and San Sebastián; the *Centro Obrero* (Working Centre – or similarly called) was consulted in Vergara, Tolosa, Irun and San Sebastián; or the *Centro Conservador* (Conservative Centre) in San Sebastián, Eibar and Irun.

The survey launched by the Commission of fueros can be said to have been fairly successful. The deadline for the submission of reports was set for the 31st of December of 1918, which was extended to the 28th of February 1919. The file contains 54 submitted reports, some of which had been produced by a number of the listed individuals or associations together. Altogether, nearly half of the approached social actors are likely to have submitted their views. I consider these numbers to be a success due to the complexity of the task, and the quality and extent of some of the evaluative reports submitted.

The survey requested that the contacted social actors answer two questions: 1) If the territory were to regain its foral rights as it had before 1839, ‘which would be, in your view, the adaptation of this legal regime to actual life, both in terms of the competences, well defined, of the Province in its internal regime, and in its relationship with the State, in a manner that would be able to be articulated in a law voted by the Congress’; and 2) ‘Manner in which the foral organisms ought to be adapted and

transformed according to the necessities and circumstances of the present' (my translation¹¹⁹).

In 1918, despite the important institutional, legal, technological and ideological changes that had taken place since 1876, the construction of a legal framework associated with the *fueros* was still approached by seeking a point of consensus between those social actors who were perceived knowledgeable and legitimate to participate in its construction. Legitimacy was traditionally located in municipal councils, and councils continued to be incorporated into processes related to the construction of such legal frameworks. As can be seen in the survey launched by the Commission of *Fueros* of the Deputation, by 1918 other social actors that can be associated with a more developed modern civil society were also considered necessary to consult in order to include the different interests that existed in what was considered to be the legitimate political community.

7.3.3. The Creation of Euskadi as a Jurisdictional Entity in the 1930s

Jurisdictional cooperative behaviours in the defence of key values may have had a significant influence in the creation, in the 1930s, of a jurisdictional Euskadi. The legally constitutive process started in the context of the jurisdictional formation of the State that culminated in the republican constitution of 1931. The constitution of 1931 asserted the jurisdiction of the state from a top-down perspective, and opted for a bottom-up approach to further define the political jurisdictions that would exist within the State, starting from municipalities that could form provinces, which could then form autonomous regions (*regiones autónomas*) when some established conditions were met.

The legal beginnings of Euskadi as a jurisdictional entity can be associated with a decree issued by the Ministry of Governance (*Ministerio de Gobernación*) on the 9th

¹¹⁹ Primera: En el caso de hallarse la Provincia en la plenitud de sus derechos forales, tal y como se hallaba antes de... 1839, cual sería, a su juicio, la adaptación de este estado de derecho a la vida actual, tanto en lo que se refiere a las atribuciones, bien definidas, de la Provincia en su régimen interno, como en sus relaciones con el Estado, en forma que puedan concretarse en el articulado de una ley que votasen las Cortes. Segunda: Modo como deban adaptarse y transformarse los organismos forales en atención a las necesidades y circunstancias del día

of December of 1931. Its preamble stated that it was issued in response to repeated requests to legally enable that ‘the Basque provinces and Navarre could present the Parliament their aspirations for autonomy’ (my translation¹²⁰). It also asserted that:

The government should not prejudge whether that autonomy has to be legalised in a uniform Statute for the Basque provinces and Navarre, or if, on the contrary, it would be articulated in a Statute for each province, responding in this way to the traditional regime that, with different particularities, had as Code the Fueros of Araba-Álava, Biscay, Gipuzkoa and Navarre, in which legislative diversity never weakened the fraternal ties that in all times united the four provinces, and therefore the Government, respectful of the will of that country, leaves to their freewill such resolution (my translation¹²¹) (Decreto de Ministro de Gobernación published in Gaceta de Madrid on the 9th of December of 1931).

Again, the jurisdictional authority was located in each jurisdictional entity, each possessing unique features and jurisdictional histories, yet as a result of them all having cooperated and identified with each other throughout history in the absence of any legal obligation, conceptions of fraternity between them were noted. Together with these, a rather normalised distinction between Euskadi and Navarre is asserted.

Two different drafts were voted for in the process of territorial unification to create a jurisdictional entity that would bring together the four territories. The first draft was voted for in 1931 and approved in the four territories. This draft was rejected by the Parliament of the State because one article regarding institutional relations with the church was considered to be anti-constitutional. The second draft was voted for in 1932 and eventually rejected in Navarre.

Stanley G. Payne (1984) has argued that the second draft had been drafted by an inter-territorial commission, and overall, was similar to the previous one. The ‘religious

¹²⁰ las provincias Vascongadas y Navarra puedan elevar a las Cortes Constituyentes sus aspiraciones de autonomía

¹²¹ El Gobierno no debe prejuzgar si esa autonomía ha de legalizarse en un Estatuto uniforme para las tres provincias Vascongadas y Navarra, o si, por el contrario, se articulara en un Estatuto por cada provincial, respondiendo así al régimen tradicional que, con peculiaridades distintas, tuvo por Código los Fueros de Álava, Vizcaya, Guipúzcoa y Navarra, cuya diversidad legislativa nunca debilitó los vínculos fraternales que en todo tiempo unieron a las cuatro provincias, y por ello el Gobierno, respetuoso con la voluntad de aquel país, deja a su libre albedrío esa resolución

autonomy' rejected by the State's General Assembly had been removed, and promoted by the socialists; an amendment had been introduced, which meant that the 'General regional Assembly [would be] based in a universal suffrage... [that appointed half of the deputies]...according to the total population of the four territories. This amendment would grant a disproportionate weight to the populated Biscay, centre of socialism and Basque nationalism, whereas it would reduce the representation of the rural and less populated Araba-Álava and Navarre' (my translation¹²²) (Payne 1984: 107).

7.4. Conclusion

The current existence of Euskadi as a jurisdictional reality cannot be assumed, regardless of how often terms have been used to identify mutually independent jurisdictions as one throughout history. Uses of such terms, as well as processes leading to the creation of a jurisdictional Euskadi, require theoretical explanation. This chapter has proposed that social cooperative behaviours can be identified as a rather constant factor influencing the construction of the legal framework of Gipuzkoa that was normally associated with the *fueros*.

The creation of the Economic Agreement – the legal framework enabling self-governance and associated with the *fueros* – was approached in these territories in similar ways throughout the period studied. These approaches were characterised by cooperative behaviour taking place within and between each jurisdiction. That taking place within was directly associated with the jurisdictional and institutional framework that the *fueros* created, and it was the jurisdictional context, the institution (when it existed), and the political community (once the *fueros* were abolished following 1876) that were considered to possess the legitimacy to make decisions about matters concerning the creation of the legal framework associated with the *fueros*.

¹²² En términos generales, era similar al Estatuto de Estella, salvo la estipulación de autonomía religiosa. Pero una enmienda, debida sobre todo a la presión de los socialistas, introdujo una asamblea general regional basada en el sufragio universal en la que la mitad de los diputados serían elegidos por voto proporcional de acuerdo con la población total de las cuatro provincias. Esta disposición otorgaría un peso desproporcionado a la populosa Vizcaya, centro tanto del socialismo como del nacionalismo vasco, mientras que reduciría la representación de las rurales Álava y Navarra, menos pobladas

In Gipuzkoa, even when the *fueros* had been abolished and the General Assembly did not have legal existence or validity, the elected jurisdictional authorities continued to associate legitimacy with that political community. What can be seen is that the political community associated with the inhabitants of Gipuzkoa would be regularly involved in decision-making processes that affected jurisdictional formation.

These collaborative behaviours within and across jurisdictional entities are similarly detected throughout the period studied. This needs to be emphasised, as in Euskadi, between 1876 and 1936, key social transformations usually related to the emergence of modern industrial societies took place: institutional-constitutional reform in 1876, rapid industrialisation between the 1870s and the 1890s (especially in Biscay), the development of a modern civil society as the freedom of association was established, and the articulation of political parties defending ideologies and identities associated with modernity.

Such transformations are likely to have transformed different aspects of society, producing new opportunities, interests and circumstances, allowing a variety of social actors to access political power, influence who would hold political office, or influence political behaviour by one or another form of lobbying. Nevertheless, the evidence analysed here suggests that despite the significant social changes that took place and opened new opportunities for different social actors to influence jurisdictional behaviours, jurisdictional thinking remained markedly stable regardless of the persons elected to govern the jurisdictional authorities, or to the influence that different lobbies could have exercised on them. In other words, social change normally associated with modernity does not correlate with changes in jurisdictional behaviours that had to do with legal disputes and jurisdictional claims over legitimacy.

In contrast, jurisdictional behaviour in these territories appears to have been characterised by some features, including the defence of autonomy, the maintenance of claims over jurisdictional authority to exercise types and degrees of social powers, unilateral jurisdictional agency, and cooperative behaviour with those jurisdictional entities or social actors that were perceived to have or defend similar interests to their own. There seems to be a correlation between jurisdictional cooperative behaviours

and jurisdictional claims over legitimacy to exercise types and degrees of social powers.

8. Conclusion

This thesis has studied a historical puzzle, that produced by the legal and ideological trajectories of Navarre and Euskadi within the constitutional history of the State of Spain. During a good part of the nineteenth century, key influential majorities in Euskadi and Navarre, defending a similar conception of the State, supported carlism, most notoriously in war, the last one ending in 1876. In the 1936 civil war, however, key influential majorities in Euskadi and Navarre supported the different conceptions of the state associated with republicanism and fascism; differences that re-emerged in the most popular political choices made by populations in Navarre and Euskadi once the democracy was re-established in 1978.

The divergence in conceptions of state and ideologies that can be associated with these processes correlate with social change associated with the emergence of modern societies, such as industrialisation and the establishment of a civil society. Between 1876 and 1936 the societies of Navarre and Euskadi experienced important transformations, which correlate with important ideological changes.

Nevertheless, historical records also contain evidence that suggest the existence of historical continuities, in defences of the *fueros* in Euskadi and Navarre and in the jurisdictional conflicts between Foral and State authorities that their contrasting interpretations of the *fueros* generated. The existence of historical continuities in jurisdictional disputes over the exercise of types and degrees of social powers, however, suggest that some interests and concerns did not change. These continuities are difficult to explain from orthodox theories of modernity.

Traditionally, concepts such as ‘culture’ or ‘identity’ have been used to highlight and provide an explanation for the existence of some of these continuities. Nevertheless, such approaches present important problems. On the one hand, historical records contain evidence suggesting that social features associated today with such concepts may have not motivated disputes in the past. On the other, research and theoretical developments during the last few decades have put into question some of the ways in which concepts such as ‘identity’ or ‘culture’ were often thought to influence social action or define society (e.g. Spencer (1990); Somers (1994); Jackson (1995); or

Brubaker (2000)). The study of history today presents researchers with the problem of needing to explain the existence of evidence for which there is not a clear theoretical explanation. This may, at least partly, explain why historical study of Navarre, Euskadi or carlism often produces findings that contradict some of the hypotheses made from theoretical perspectives.

This investigation has departed therefore from a modernist understanding of nationalism, as it associated the emergence of modern national identities and nationalist conflicts with processes of modernisation. However, it also acknowledged the existence of historical continuities that are difficult to explain from theories of modernity. It approached the study of both the continuities and the identified ideological shifts not only in relation to theories of knowledge, economic interests, or ideas of ‘culture’ or ‘identity’, but also in relation to jurisdictional disputes over the exercise of types and degrees of social powers.

8.1. Methodology and Historical Research

Research design took the form of a comparative historical analysis. This was influenced by different factors, including the historical puzzle studied, today’s existing social contexts, nationalist claims and theories of nationalism. A particular purpose of the methodology was that of placing emphasis on the study of jurisdictional contexts, as they appeared to have influenced social action associated with disputes over the exercise of social powers. The focus on social praxis contained two aspects: that happening within and that happening between jurisdictions.

Mapping out the social structures influencing social praxis has been challenging. An important obstacle to mapping social structures with confidence has been that legislation and social action recorded by a single source is not sufficient to create such an image. A researcher cannot fully understand processes of modernisation in the State of Spain by uniquely studying sources associated with State governance. In the same way, one cannot understand the history of Euskadi by collecting data from Euskadi’s government alone. The same applies to Navarre. This had been anticipated and research design had identified relevant sources to study different jurisdictional contexts. Nevertheless, the extent to which this methodological issue would affect the

investigation had not been properly anticipated. This limitation is inevitable, as it mostly followed usual practices in contemporary historical research in the study of Euskadi and Navarre, as well as some of the ways in which these territories have been treated in legal documents and literature throughout modern history.

In any case, the need to further identify relevant social structures that may have been influential: how, why, in relation to what interests; and how it all relates to interpretations of nineteenth century social conflict, has made producing accurate descriptions of social structures, how these affected the interests of key social sectors, and how the latter reacted to social change, a very complex task. The ways in which each context may have been affected by this, and what this could mean in relation to the study of modernisation and nationalism, also needs to be analysed and distinguished.

There are, however, key historical moments and documents, such as the foral reform in Navarre in 1841, or that in Euskadi in 1876, which indicate the existence of crucial changes, as well as showing that some of the social features changed at that particular time. The importance of such events and documents is suggested by the fact that, since they took place, they became constant references for social actors' interpretations of social relations and a central reference to articulate their grievances and ambitions. Thus, although important nuances need to be better understood and accounted for in order to improve current theories, the influence and centrality of certain events, social actors and ideas are difficult to deny.

Nevertheless, even features and evidence found in documents related to these events come to question key presumptions resting beneath popular theories of nationalism. They bring to the fore, for example, the existence in Euskadi and Navarre of a rather general defence of the *fueros* based on rather traditional understandings, which were endorsed by social actors associated with both liberalism and carlism. They also show the existence of both jurisdictionally fragmented social action together with uses of terms to name social contexts that presented as one entity a number of legally unrelated (to one another) jurisdictions. This shows that ways of thinking about society did not necessarily match legal existence. In my view, this requires a better understanding of what existed legally, for what reasons and why other ways of naming societies existed.

The collection and study of primary data presented limits to the extent to which, in reference to primary data alone, an accurate description of social structures, how and why they changed over time, and how these affected the interests of different social actors, could be done. Thus, the collection and study of primary data had to be combined with the study of secondary sources.

Secondary data thus acquired an important role in order to better understand the social context that existed, what social change meant, for whom and why. Nonetheless, to the problems involved in making sense of history uniquely in relation to primary sources, one has to add the problems that emerge when relying on secondary literature to fill gaps and find references to make data meaningful. Secondary literature, rather than creating a stable theoretical context to interpret meanings of social conflict, show the existence of disputed interpretations. Two such historiographical traditions may have developed in relation to contrasting interpretations of the fueros: one directing legitimacy over legislation and governance towards the State government, the other directing legitimacy over such issues towards Foral authorities.

Given the complexities involved in historical research, and the likelihood that instances of encountered evidence will support, whilst others will question, one or another theoretical claim, it is not unlikely that researchers emphasise findings that fit well with the theory at hand and discard evidence that cannot be fully understood, or the interpretation of which is complicated. This can be done by highlighting some evidence, pointing at the existence of secondary sources endorsing a particular interpretation, and discrediting rival historiographies by associating them with poor academic practice, or mistaken theoretical presumptions.

In my view, secondary data may be best used with caution as a descriptive source of social structures and the influence they exercised in social action. Arguably, theories of modernity explaining the meaning of nineteenth century social conflict in Euskadi and Navarre find more support in historiographical traditions of secondary sources analysing social conflict than in primary data.

8.2. Law and the State

The two liberal theories of modernity reviewed in the theory chapter contain a strong link between conceptions of law and conceptions of European states. Whether illustrated in the Peace Treaties of Westphalia, or in the French revolutionary movement, modernity is presented in terms of a progression towards ‘better-ness’. These improvements would have been produced by the development of better forms of knowledge, leading to better forms of legal practice, which resulted in particular state systems. These processes have been associated with either the Renaissance and the replacement of pre-national empires with national states and an international order, or with the Enlightenment, and how despotic absolutist regimes were replaced by constitutional and democratic ones.

In either case, the legitimacy of European states tends to be associated with the historical achievement that European states embody: that of securing governance in appropriate social contexts and rightfully-formed authorities, which would have been identified through better forms of knowledge. A period in history is portrayed as one in which a qualitatively different way to think of legal relations and society emerged, either in the self-recognition of states as sovereign organisations, or in justifying and shaping the existence and exercise of law in rational knowledge and in the well-being of a community of people.

Beneath these theories of modernity rests a presumption, the idea that better knowledge guided types of social actors towards identifying state authorities as those legitimate to exercise social change and to govern. Dominant liberal theories of modernity today seem to suggest that a new theory of knowledge spread among a social class (the bourgeoisie), which had gained political and economic strength was able to challenge the status quo. The formation of European states would be explained by the similar idea that endorsing a novel theory of knowledge would have produced to how society and the state were conceived.

Such qualitatively different concepts of law, the historical narrative of states they are associated with, and the conception of the state and society that rational thinking is supposed to have produced, have been questioned from legal perspectives empirically

studying the exercise of law, such as legal realism and legal pluralism. From them, it has been argued that contemporary legal practice is not uniquely guided by the application of objective and unbiased rules that produce justice. Neither can there be identified a qualitatively different approach to law-making before and after the Peace Treaties of Westphalia. The idea that the existence of European states can be explained by a conception of the state, law and society that were produced by new forms of knowledge is questioned.

A legal order structured around modern European states is not the product of a theory of knowledge or a particular socio-economic interest. There is not a moment of genesis of the figure of the state and the European state system. There may not be a single factor, whether ideological, cultural or socio-economic, which ‘naturally’ guided social actors towards, suddenly in a period of history, or ever since the dawn of time, associating society, politics, legitimacy and sovereignty uniquely with the state as a type of organisation.

Ideas of social justice, equality and political liberty are partly abstract conceptions, but they also have an empirical angle. A dispute about the legitimacy to govern between despotic monarchical rule and the governance of the people (represented in the institutions of a kingdom, a province or a city), existed before the French revolutionary movement transformed Europe’s political landscapes. As seen earlier, such debates were argued to have been important in influencing the development of Europe’s early modern political thought (e.g. McIlwain (1918)). Relatedly, Montesquieu’s (1748) analysis of the qualities of law suggests that enlightened ideas did not develop uniquely in relation to abstract ideas that would be ‘naturally’ located in the jurisdictional contexts of states. Rationalism or concerns over political liberty and social justice did not necessarily lead social actors to conclude that absolutist states should be transformed into administratively centralised, legally re-defined and newly justified types of social organisations.

The constitutional model promoted by the French revolutionaries became a symbol of a social struggle against absolutism, but this does not imply that a rational and empirical analysis of society produced the same conclusions regarding what social change was necessary in society in order to banish despotism everywhere. Other

interpretations of law existed, liberal and of other kinds, such as those identified in the jurisdictional authorities of the city of San Sebastián in 1832, in the work of Lord Carnarvon (1836), Francis Bacon (1838), in the political class who negotiated Navarre's foral reform in 1838, or Lord Acton's interpretation of nationalism (1862).

It is true that these early liberal views were not all the same, and some of these can be associated with conservative rather than with progressive liberal stances. Nevertheless, in my view, the existence of these different forms of early liberalism are not to be explained uniquely in relation to more or less progressive views, but also in relation to the influence exercised by different approaches to interpreting law. A feature that influenced how law was interpreted was the jurisdictional contexts from which legal change was evaluated.

For example, in the context of the State of France, French revolutionaries thought that the creation of a social system that could be associated with the triumph of social justice and political liberty over tyranny and despotism required the creation of novel legal structures, social authorities and justifications for their existence. This was done by justifying the existence of social authority in the security, equality and well-being of all citizens of the state, and materialising such principles was perceived to require abolishing all previously existing legal authorities and practices and replacing them with new, rational and properly legitimised ones. As the French revolution has historically symbolised, perhaps more than any other social movement, the rise of the bourgeoisie against despotism, the social reforms introduced by the French revolutionaries are often thought to be a key reference illustrating what progressive political views were at the time.

However, not all early liberal minds may have shared the idea that creating such a novel administratively-centralised state and legitimising discourse was necessary. Their reasoning was not necessarily because the principles were not shared, but because applying such principles to the context of the State of France could be a novel initiative that required certain justification; whilst applying such principles to the existence of social authority in other social contexts could be part of a historical narrative rather than a novelty, and hence, the existence of those principles required embracing tradition rather than transgression. Within social contexts in which

jurisdictional history was associated with resistance to despotism and examples of social freedom and political liberty, history may have not represented lack of social justice, but rather the contrary.

Scholars such as Berman (1983) and Benton (2002) propose that processes of state formation cannot be properly understood without including law as an arena generating social conflict, into which meanings are to be inferred in relation to the interests and views contained in the legal dispute. Rather than looking at legal disputes between qualitatively different forms of law, if they are instead considered between different legal interests, one can start interpreting the general defences of the *fueros* in relation to other possible meanings. The conflicts generated between state and foral authorities regarding their interpretations of the legal relationship does not acquire uniquely its meaning in relation to liberal or conservative views, but also in relation to interpretations of law, the meanings that legal relations had, and the ways in which legitimacy to exercise types and degrees of social powers were distributed among different social authorities and why.

In the study of the historical trajectories of Euskadi and Navarre, taking law as a factor influencing jurisdictional behaviours and granting meaning to social action enables a meaningful explanation to be provided to those historical continuities that theories of modernity find problematic. The general defences of the *fueros* identified in Navarre and Euskadi transcended political ideologies and socio-economic interests. This suggest that these were produced by interpretations of law and legal relations that emerged from the populations of Euskadi and Navarre. Largely in Navarre and Euskadi the *fueros* could be thought to need some reform, but not necessarily to be abolished or their existence questioned. Ultimately, agency and legitimacy over foral reform was generally located within the jurisdictional contexts formed by the *fueros* rather than by State authorities.

8.3. Law as a Factor

The investigation has led to an important conclusion: conceptions about the legitimate legal order for the studied social actors and within the studied period were not uniquely influenced by social actors' different sociological profiles; they were also influenced

by interpretations of law emerging from historical legal relations and existing traditions interpreting them. Legal traditions and interpretations of law itself might have been a causal factor shaping social action associated with processes of modernity and the emergence of modern nationalist conflicts. This legal factor could have been important in relation to social actors' responses to proposals to change key legal and organizational features of the state, such as the abolition or reform of the *fueros*.

The addition of such a factor into the analysis of data is likely to create new research interests, which can significantly contrast with traditionally endorsed approaches studying these cases. This is perceivable for example in relation to two disciplines that have been historically influential in the study of these cases: history and anthropology.

Anthropology

Anthropology has been an influential discipline from which Navarre and Euskadi have been studied in relation to Basque culture and nationalism. It might have become an influential discipline creating academic understandings of the Basques due to the legal and political fragmentation of the seven territories traditionally considered to be Basque, which, together with the uniqueness of the Basque language, created a social context that could be explained in relation to the concept of culture.

Although important differences exist in the ways Basque culture has been studied from anthropological perspectives, it might exist an overarching inclination. This would be characterised by a tendency to study 'Basque-ness' in relation to local contexts that are to be understood in relation to notions of custom and culture; such 'culturally defined' Basque elements would be then conceptualised within the larger framework of the state, which might be comprehended in relation to culture but also in association with law or politics.

The work of Julio Caro Baroja illustrates the important ways in which the local, almost understood as a closed cultural universe, has been theorised to be of critical importance in order to understand Basque culture. Caro Baroja emerged during the twentieth century in Euskal Herria as an influential and pioneer anthropologist in the study of Basque culture. He can be introduced as an anthropologist who developed a rather

materialist understanding of Basque culture. In his view, 'Basque material culture and the spiritual and social world of Basque culture and society were intertwined' (Center for Basque Studies, 2015).

Such a perspective overlooks the fact that the existence of local conditions presumably producing 'culture', required being recognised, legitimised and protected by larger social, customary and legal contexts. Social actors were not blind to this fact, certainly not all of them. Social actors during the studied period rarely understood 'the local' as a social context disconnected and independent from larger legal and jurisdictional structures. This does not imply that those jurisdictional relations were understood in terms of modern national identities.

This thesis proposes that interpretations of legal relations were an influential factor shaping social actors' understandings of relations between 'the local' and 'the global'. Hence, understanding the features and developments of Navarre's and Euskadi's citizens' ideas requires understanding not only the local, but also how the relations between the local and the global were understood, and how these understandings might have influenced social actions associated with legal and organizational transformations of the state. The proposition to understand interpretations of law as a causal factor and not only as a consequence attempts precisely to provide a theoretical reference in relation to which perceptions and evaluations regarding local-global relations can be analysed.

History

Historical studies often bring to the fore features different to those highlighted from anthropological studies. Arguably, they often produce less 'culture-centred' portraits of social reality. Historical research tends to bring to the fore the number of jurisdictional levels within which local contexts existed. This can be seen for example in *Historia Ilustrada de Navarra* (1993), *Historia de Álava* (2003) or *Historia del País Vasco* (2004). Highlighting the existence of these contributes towards identifying the number of jurisdictional levels connecting and relating the 'local' with the 'global'.

Such benefits of the study of history however, do not pass unaffected problems that interpreting legal relations produce. These can be illustrated by comparing the work of García-Sanz et al (2002) and Galán Lorda (2009). Both provide descriptions of key features and developments of governing institutions in Navarre. They might describe rather similar contexts, yet a different interpretation of law underlying their work leads to descriptions that can be perceived to direct legitimacy to govern towards different jurisdictional authorities.

For example, Galán Lorda argues that although ‘it is the kings who grant or confirm the *fueros*...the protagonist in the daily elaboration of law is society itself’ (my translation¹²³) (Galán Lorda 2009: 56). Contrasting with her, García-Sanz et al (2002) argue that ‘(a) viceroy acted on behalf of Castilian monarchs, holding supreme representation of sovereign power, with broad delegated political and military powers. The king, who had to swear Navarre’s *fueros* when he was enthroned, convened the Cortes, sanctioned law, was the military chief and presided the Royal Council’ (my translation¹²⁴) (García-Sanz et al 2002: 29). Galán Lorda begins by looking at the *fueros* by following local interpretations and representations. García-Sanz et al place the focus on the crown instead.

If Galán Lorda, highlights that Navarre’s Cortes ‘legislated independently of those of Castile’ (my translation¹²⁵) (2009: 88), García-Sanz et al refer to the work of the historian Floristan Imizcoz to argue that there is a perspective too focused in highlighting Navarre’s self-government that needs to be overcome. Navarre’s Cortes and Deputations ‘have, no doubt, a growing importance over these centuries, but not so much as to shadow, in daily government, to the viceroy and the Royal Council, whose main and omnipresent leadership has to be emphasised. Likewise, we tend to forget that the big decisions are made in Madrid, not in Pamplona’ (my translation¹²⁶)

¹²³ son los reyes los que otorgan los *fueros* o los confirman...la protagonista de la elaboración diaria del derecho es la propia sociedad

¹²⁴ Un virrey actuaba en lugar de los monarcas castellanos, ostentando la máxima representación del poder soberano, con amplias facultades delegadas tanto políticas como militares. El rey, que debía jurar los *fueros* navarros al ser entronizado, convocaba las Cortes, sancionaba las leyes, era el jefe militar y Presidia el Consejo Real

¹²⁵ legislaban de forma independiente de las castellanas

¹²⁶ Las cortes y diputaciones tienen, sin duda, una importancia creciente a lo largo de estos siglos, pero no hasta hacer sombra, en el gobierno ordinario, al virrey y al consejo real, de los que hay que

(García-Sanz et al 2002: 32). If for Galán Lorda ‘Navarre’s Cortes...were responsible of reminding the king of his oath to respect the fueros’ (my translation¹²⁷) (2009: 88); García-Sanz et al, again following Floristan Imizcoz, note that in Navarre’s Cortes ‘some breaches were energetically protested, but others were silenced’ (my translation¹²⁸) (García-Sanz et al 2002: 32).

As it can be seen differently interpreting legal authority directs perceptions about jurisdictional authority to exercise types and degrees of social powers towards different jurisdictional centres. This brings to the fore some of the problems that interpretations of law can create in the interpretation of historical data.

Anthropological and historical approaches to the study of these territories and their cultures provide valuable insights to different social aspects. Generally however, the influence that interpretations of law might have exercised as a factor shaping people’s evaluations of social phenomena tends to be under theorised.

8.4. Meanings of Social Conflict and Anachronisms

A need to reconcile current liberal theories of modernity with the existence of evidence that questions some of their hypotheses can be often identified in historical research made in Euskadi or Navarre. In some cases, this is approached by studying the social societies created by the fueros and evaluating whether they really produced the egalitarian social systems claimed by some discourses. The logic seems to be that the more unequal these societies appear to be, the more it can be thought that the abolition of the fueros was necessary in order to achieve equality and democracy; which could be perceived to ultimately support narratives of modernity promoted by legal positivists or simplistic liberal accounts of European history.

It is certainly true that some social classes benefitted from structural inequalities contained in the fueros, and that the extent to which this happened was indeed criticised by some social actors who had aimed at changing such features. However,

destacar su protagonismo principal y omnipresente. De igual modo, tendemos a olvidar que las grandes decisiones no se toman en Pamplona sino en Madrid

¹²⁷ Las Cortes navarras...se encargaban de recordar al rey su juramento de respeto a los fueros

¹²⁸ ciertos incumplimientos fueron protestados enérgicamente, pero otros se silenciaron

assessments of the degree of egalitarian contexts produced by the *fueros* are often made in comparison with current conceptions of social justice, equality, democracy and political liberty. In principle, there seems to be nothing wrong with this, as it can simply show differences and similarities between the past and the present. Problems arise when, taking today's social features as a reference to what an equal and democratic society should be, it is concluded that societies of the past did not produce as much equality as one would expect. In cases, such conclusions can be used to suggest that the *fueros* were inaccurately portrayed as instances of liberty, and to suggest that 'real' liberals or democrats would have considered deep foral reform or abolition necessary.

This is, in my view, an anachronism. Regardless of what one may think from perspectives of the present about the egalitarian character of societies of the past, one cannot assume that social actors in the past developed their ideas of equality by comparing their societies with those of today. The meanings of social action and the accuracy of social actors' analysis of social phenomena needs to be judged in relation to the social contexts that existed at the time, what they meant and represented, to whom and why. What the *fueros* symbolised was not inferred in relation to society today, but in relation to the social contexts that existed at that time.

Arguably, the *fueros* were thought to illustrate traditional societies associated with social justice, political liberties and resistance to despotism. Arguably, state constitutionalism represented an updated form of political liberty. The difficulties with which the existence of the *fueros* were reconciled with the existence of a constitutional state, and the constant jurisdictional conflicts that the relationship has generated ever since, may have to do not with uniquely political views, but also with disputes over the exercise of types and degrees of social powers, formed around jurisdictional interests, and defined in law.

Monarchical governments, whether absolutist or constitutionalist, when they wanted to empower state administration, attacked the *fueros* and argued that legislative and executive powers legitimately belonged to State authorities. Foral governments, whether absolutist or constitutionalist, when they wanted to empower foral administrations, defended the *fueros* and their legitimacy to legislate and to exercise

governance. The fact that strong historical tendencies can be identified in the monarchy towards diminishing the *fueros* and in foral authorities towards enhancing them, suggests that more often than not, the individuals in office considered it beneficial to endorse a particular interpretation of legal relations, that which empowered their authority.

The central importance and significance that the existence of the *fueros* has had for state governance throughout history suggests the importance that defining such legal relationships have had in the history of the State. How difficult it was to change these legal relationships is suggested by the fact that the most significant foral reforms happened during times of war. The idea that the meaning of social conflicts regarding the *fueros* is not entirely explained by the inner qualities of the *fueros* is suggested in that the meanings of jurisdictional conflicts between State and Foral authorities could have changed in relation not to the *fueros* themselves, but to the meaning of state power. When state power represented despotism, the *fueros* may have symbolised resistance to it; when state power represented progressive liberalism, the *fueros* may have represented conservatism.

8.5. Society, Social Cooperation and Legal Recognition

The perspective endorsed in this thesis suggests that there exists a relationship between conceptions of society and social relations that become recognised in law. This contrasts with currently prevailing theoretical perspectives, which more or less explicitly relate factors such as democracy, or social characteristics nowadays associated with the term ‘culture’ to the existence or construction of the idea of society.

Throughout the period studied, conceptions of society, country, legitimacy and even sovereignty have been identified to have existed in association not only with the State of Spain or Euskal Herria, but also with Navarre, Gipuzkoa, Biscay or Araba-Álava. The existence of these legal entities seems to have depended on the collaboration of the key social organisations that made them up: traditionally municipalities and the variety of ways they could group, thus forming larger legal entities, to which a civil society would be added during modernity.

The necessity to theoretically explain the formation of legal entities has come especially to the fore in the study of Euskadi. The current existence of Euskadi as an existing jurisdictional reality cannot be assumed, regardless of how often terms have been used to identify mutually independent jurisdictions as one throughout history. Uses of such terms, as well as processes leading to legal recognition, have to be explained. What I consider to be important to better understand processes of modernisation and conceptions of personhood and society is the type of social relations and interactions that have led or lead to social organisation and legal recognition.

The legal recognition of Euskadi, although related to centuries' long jurisdictional and social relations, was ultimately influenced by the social processes involved in the creation of the Economic Agreement. The creation of this legal framework was approached in these territories in similar ways throughout the studied period. These approaches were characterised by cooperative behaviour, which took place within each jurisdiction and also between them. That taking place within was directly associated with the jurisdictional and institutional framework that the *fueros* created, and it was the jurisdictional context, the institution (when it existed), and the political community (once the *fueros* were abolished following 1876) which was considered to possess the legitimacy to make decisions about matters concerning the creation of the legal framework associated with the *fueros*.

In Gipuzkoa, even when the *fueros* had been abolished and the General Councils did not have legal existence or validity, the elected jurisdictional authorities continued to associate legitimacy to that political community. This can be seen from the fact that the political community associated with the inhabitants of Gipuzkoa would be regularly involved in decision-making processes that affected jurisdictional formation.

These collaborative behaviours within and across jurisdictional entities are similarly detected throughout the period studied. This needs to be emphasised, as in Euskadi, between 1876 and 1936, key social transformations usually related to the emergence of modern industrial societies took place: institutional-constitutional reform in 1876, rapid industrialisation between the 1870s and the 1890s (especially in Biscay), the development of a modern civil society as the freedom of association was established,

and the articulation of political parties defending ideologies and identities associated with modernity.

Such transformations are likely to have transformed different aspects of society, producing new opportunities, interests and circumstances, allowing a variety of social actors to access political power, influence who would hold political office, or influence political behaviour by one or another form of lobbying. Nevertheless, the evidence analysed here suggests that despite the significant social changes that took place and opened new windows of opportunities for different social actors to influence jurisdictional behaviours, the latter did not change, regardless of the persons elected to govern the jurisdictional authorities, or bend to the influence that the different lobbies could have exercised on them. In other words, societal change normally associated with modernity does not correlate with changes in jurisdictional behaviours that had to do with legal disputes and jurisdictional claims over legitimacy.

In contrast, jurisdictional behaviour in these territories appears to have been characterised by some features, including the defence of autonomy, the maintenance of claims over jurisdictional authorities to exercise types and degrees of social powers, unilateral jurisdictional agency, and cooperative behaviour with those jurisdictional entities or social actors that were perceived to have or defend similar interests to their own. There seems to be a correlation between jurisdictional cooperative behaviours and jurisdictional claims over legitimacy to exercise types and degrees of social powers.

The governing practices of the institutions they produced reflect this, as they were conceived as bringing together the representative elements of society, institutional differences granted. When one of the parts forming them decided that the legal arrangement was no longer beneficial or desired, conflicts such as those reviewed between municipal and territorial authorities could emerge.

The early nineteenth century social conflict in Navarre and Euskadi cannot be entirely understood without taking into account the positive regard that their inhabitants had towards their political institutions and laws: the *fueros*. These influenced their analyses

and evaluative logic, which tended to locate legitimacy to govern and decide the nature of their own institutions and authorities, and which shaped their views and interests.

The legal existence and the ability of these jurisdictional authorities to maintain governing competences appears to have strongly depended on social cooperation, both within their territories, and between territorial authorities. Decision-making processes associated with transforming traditional legal relations were often approached by including representative elements of society into decision-making processes. Factors such as willing social cooperation of municipalities, the legal groups they formed, and civil society combined with governing practices that included them into decision-making processes regarding foral reform, may have influenced the existence of the legal entities of Araba-Álava, Biscay, Gipuzkoa, and Navarre, as well as the interpretations of the *fueros* traditionally made within them.

8.6. Nationalism

The fresh importance that national identities acquired in state politics during modernity tend to be interpreted as indicative of the emergence of novel forms of interests or grievances within the populations of the state. This is particularly the case in reference to states such as that of Spain, which already existed and had a significant international presence before modernity. In such cases, a period in which constitutionalism replaced absolutism tends to be distinguished from a period in which modernity changed society and produced new kinds of social conflict.

It is true that modern nationalism has put issues such as linguistic policies, minority rights or the right to self-determination at the centre of state politics, which did not seem to have had such importance in state politics before modernity. Nevertheless, historical records show that jurisdictional disputes between state and foral authorities over their legitimacy to exercise types and degrees of social powers existed long before modernity unfolded. Alongside these disputes two competing historiographical traditions differently interpreting the *fueros* developed, directing legitimacy either to state or foral authorities.

Nationalist conflicts might be modern, but social conflict is not. Modernity has produced ideologies and identities that are different from those existing in the past and

have come to dominate current perceptions of personhood and society. Nonetheless, disputes over the capacity of one or another jurisdictional authority to legitimately exercise types and degrees of social powers have been a central concern in state politics throughout most of history.

The particular issue at stake at different historical times has changed, having included military conquest, legislative powers to locate customs, contribute soldiers to the army, elect political representatives, manage taxes and economically contribute to the state, or define linguistic and symbolic policies. In my view, jurisdictional conflicts are not to be entirely explained with reference to the particular issue at stake at a given time in history. The legal meaning of the continuity in jurisdictional conflicts is also to be located in the continually repeated interpretation made by jurisdictional authorities of their legitimacy to exercise types and degrees of social powers. More often than not, state authorities attempted to acquire legitimacy to exercise types and degrees of social powers held by Foral authorities. The latter, more often than not, attempted to maintain their legitimacy to exercise types and degrees of social powers. The variety of issues that could emerge or acquire relevance at different times in jurisdictional disputes may be the result of contexts of jurisdictional strength and possibilities.

The emergence of nationalist conflict in Navarre and Euskadi could be partly explained by the suggested connection between legal recognition and conceptions of society. Conceptions of society that may have included perceptions about the legitimate distribution of types and degrees of social powers between some jurisdictional authorities. In the context of the constitutional history of the State of Spain, providing legal recognition to the *fueros* may have been thought to imply granting recognition to conceptions of society associated with the *fueros*, which may have carried particular implications regarding perceptions of what could be the legitimate distribution of social powers between foral and state authorities.

The idea that interpretations of law within modern state societies may have shaped the formation nationalist conflicts in Navarre and Euskadi, is suggested by the arguments generated in the debate about the *fueros* in 1830s Britain between the Whig government and the opposition Tory party. What the *fueros* were, in principle and in practice, and how these influenced populations' views in relation to processes of state

regime change, produced two contrasting interpretations of legal relations that closely resemble some of the debates that a Basque-Spanish nationalist conflict would generate at the turn of the twentieth century. In my view, this suggests the importance that interpreting law may have had in producing conceptions of society and associated perceptions with legitimacy.

The influence that interpretations of law could have had in shaping conceptions of society is further suggested by the fact that a central feature of the most popular identities and ideologies that have dominated politics in Navarre and Euskadi since 1978 relates to the interpretations they make of the *fueros*, which directly link with traditionally dominant interpretations of the *fueros* in these territories. It is true that these modern identities also included interpretations of other important social features, such as different regards towards linguistic uses, or endorsing different theoretical perspectives associated with positivism and romanticism. I do not want to imply that only interpretations of law shaped ideological developments and the spread of national identities. Nonetheless, the traditional interpretation of the *fueros* can be found to sustain much of the jurisdictional action and legitimising discourse throughout the histories of the foral territories, suggesting a relation between the traditional interpretation and how these territories were conceived.

Ultimately, proposing that law influences conceptions of society is far from novel, as an important part of the idea of modernity is based upon a desire developed by a social class to change absolutist legal relations, leading to the creation of modern democratic societies. Modernist narratives of European states, however, rely heavily on positivist interpretations of law, which present European absolutist monarchies and the legal relationships they contained not as law, but as social systems created by the illegitimate use of military power and legal relationships designed to perpetuate the privileges of the nobility and the church. This confines what can be interpreted as legal dispute, and invites to differently interpreting the meaning of social conflict regarding legal recognition in a time before, and a time after modernity.

Legal disputes over the legitimacy to exercise types and degrees of social powers between foral and state authorities have existed since at least the early eighteenth century, and have been reproduced regardless of the type of state regime or degree of

development of society. In my view, the meaning of social conflict between state and foral authorities cannot be uniquely inferred from whatever has been at stake in a particular time of history, but also in relation to an issue that has been rather continuously at stake: the legitimacy of one or another jurisdictional authority to exercise types and degrees of social powers. This investigation has led to the conclusion that at the bottom of contemporary nationalist conflicts rests a dispute over the exercise of social power that is resolved in law and justified with knowledge.

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Appendices

Appendix 1. Main body of data consulted to study the evolution of the State of Spain as a legal entity.

Appendix 2. Main body of data consulted to study the legislative particularities of Navarre and Euskadi within the legal history of the constitutional State of Spain.

Appendix 3. Main body of data consulted to study conceptualizations of the State of Spain and the term ‘Spain’ during modernity.

Appendix 4. Main body of data consulted to study conceptualizations of carlism.

Appendix 5. Main body of data consulted to study conceptualizations of Euskadi.

Appendix 6. Main body of data consulted to study Navarre.

Appendix 7. Main body of data consulted to study Gipuzkoa.

Appendix 8. Main body of data consulted to study Biscay.

Appendix 9. Main body of data consulted to study Araba-Álava.

Appendix 1.

Main body of data consulted to study the evolution of the State of Spain as a legal entity

<i>Year</i>	<i>Author</i>	<i>Title</i>	<i>Source</i>
1730		Recopilación de todas las cédulas, y ordenes reales, que desde el año 1708 se han dirigido a la Ciudad de Zaragoza, para el nuevo establecimiento de su Gobierno por la Magestad del Rey Nuestro Señor D Phelipe V.	Google Books
1789	Imprenta Real	España dividida en provincias e intendencias y subdividida en partidos, corregimientos, alcaldías mayores, gobiernos políticos y militares así realengos como de órdenes, abadengo y señorío	Google Books
1789	Imprenta Real	Nomenclátor o diccionarios de las ciudades, villas, lugares, aldeas, granjas, cotos redondos, cortijos y despoblados de España y sus islas adyacentes	Google Books
1805	Reguera Valdolemar	Novísima Recopilación de las leyes de España (V. 1 to 5)	Google Books
1807	Reguera Valdolemar	Guía para el estudio del derecho patrio	Koldo Mitxelena Kulturenea
1808		Constitución of Bayona	Biblioteca Virtual Migue de Cervantes
1811	Jose canga Arguelles	Reflexiones sociales o idea para la Constitución Española, que un patriota ofrece a los representantes de las Cortes	Google Books
1812		Constitución of Cádiz	Ministerio de la Presidencia. Gobierno de España
1813		Instrucción para el Gobierno económico -político de las Provincias decretada por las cortes generales y extraordinarias de la nación en 23 de junio	Galiciana. Biblioteca de Galicia
1820	Francisco Martínez Marina	Juicio crítico de la Novísima recopilación	Google Books
1821	Imprenta Nacional	Colección de los decretos y órdenes generales de la primera legislatura de las cortes ordinarias de 1820 y 1821 (desde 6 de Julio hasta 9 de noviembre de 1820)	Google Books
1822	Juan Sempere y Guarinos	Historia del derecho Español	Google Books
1823		Instrucción para el gobierno económico -político de las provincias	Minerva. Repositorio Institucional de la Universidad de Santiago de Compostela
1833	Imprenta Real	Division territorial de la península è islas adyacentes	Google Books
1834		Estatuto Real	Ministerio de la Presidencia. Gobierno de España

	José Canga Argüelles	Diccionario de Hacienda con aplicación a España	Google Books
	Imprenta Real	Subdivisión en partidos judiciales de la nueva división territorial de la Península e islas adyacentes aprobada por S. M. en el Real decreto de 21 de Abril	Google Books
1835	Imprenta Real	Real Decreto sobre el modo de constituir y formar las Diputaciones provinciales de 21 de septiembre	Ciudadanía y Género en la Europa Contemporánea. Universidad de Barcelona
1837		Constitución de 18 de Junio	Ministerio de la Presidencia. Gobierno de España
		Ley Electoral 20 de Julio	Centro de Ciencias Humanas y Sociales. Gobierno de España
1838	Imprenta Real	Colección de las leyes, decretos y declaraciones de las cortes... Tomo 23.	Google Books
1845		Ley de Organización y Atribuciones de los Ayuntamientos, 8 Enero	Gaceta de Madrid
		Ley de Organización y Atribuciones de las Diputaciones provinciales, 8 de enero	Gaceta de Madrid
		Ley Consejos provinciales	Real Academia de Jurisprudencia y Legislación
		Constitución 23 de Mayo	Ministerio de la Presidencia. Gobierno de España
1847	Juan Sempere y Guarinos	Historia de los Vínculos y Mayorazgos	Google books
1856		Ley de Organización y Administración municipal 5 julio	Gaceta de Madrid
1858	Imprenta Real	Nomenclátor de los pueblos de España formado por la comisión de estadística general del Reino	Google Books
1863		Ley Provincial 25 septiembre 1863	Gaceta de Madrid
1866		Ley y Reglamentos reformados para Gobierno y administración de las provincias. Madrid: Imprenta nacional (1866)	Google Books
1868		Ley Orgánica Provincial 21 Octubre	Gaceta de Madrid
1868		Ley Municipal 21 Octubre	Gaceta de Madrid
1869		Constitución	Ministerio de la Presidencia. Gobierno de España
1870		Ley provincial 21 Agosto	Gaceta de Madrid

1873	Proyecto Constitución Federal	Universidad Miguel Hernández
1875	Decreto 21 Enero	Gaceta de Madrid
1876	Constitución	Ministerio de la Presidencia. Gobierno de España
	Ley de Bases de 16 de Diciembre	Gaceta de Madrid
1877	Ley Provincial de 2 de Octubre	Gaceta de Madrid
1882	Ley Provincial de 29 de Agosto	Gaceta de Madrid
1913	Real Decreto de 18 de Diciembre sobre Mancomunidad de Provincias	Gaceta de Madrid
1924	Estatuto Municipal de 8 de Marzo	Gaceta de Madrid
1925	Estatuto Provincial de 20 de Marzo	Gaceta de Madrid
1931	Decreto de 21 de Abril	Gaceta de Madrid

Appendix 2.

Main body of data consulted to study the legislative particularities of Navarre and Euskadi.

Source: Boletín Oficial del Estado (Gaceta de Madrid). Systematic searches were made between the dates 1830 and 1937. Searches were done with the Titles ‘Vascongadas’; ‘Vizcaya’; ‘Guipúzcoa’; Álava; and Navarra, in each of the Rango (classes) provided. Only searches that showed positive results were recorded and only those that showed most relevant checked. Below those fitting such categories are displayed with publication references (number, date and page number).

Title: Vascongadas. Rango: Anuncio. 54 results.	Checked: N. 35, de 20/03/1834, pages 164 a 165.
Title: Navarra. Rango: Anuncio. 217 results.	
Title: Guipúzcoa. Rango: Anuncio. 37 results.	Checked: N. 166, de 15/06/1901, page1051. N. 304, de 31/10/1907, page411. N. 141, de 21/05/1913, page528. N. 289, de 16/10/1913, page104.
Title: Vizcaya. Rango: Anuncio. 299 results.	
Title: Álava. Rango: Anuncio. 31 results.	
Title: Vascongadas. Rango: Autorización. 1 result.	Checked: N. 230, de 17/08/1928, pages 964 a 965.
Title: Navarra. Rango: Autorización. 46 results.	Checked: N. 364, de 29/12/1876, page793. N. 227, de 15/08/1882, page520. N. 105, de 15/04/1905, page209. N. 63, de 04/03/1914, page566. N. 5, de 05/01/1930, pages 183 a 184.
Title: Guipúzcoa. Rango: Autorización. 122 results.	Checked: N. 324, de 20/11/1879, page508. N. 241, de 29/08/1891, page705. N. 337, de 03/12/1906, page865. N. 113, de 23/04/1913, page236.
Title: Vizcaya. Rango: Autorización 116 results.	Checked: N. 113, de 23/04/1895, page300. N. 79, de 20/03/1913, pages 739 a 740. N. 192, de 11/07/1922, pages 109 a 110. N. 190, de 09/07/1927, pages 196 a 197.
Title: Álava. Rango: Autorización 31 results.	
Title: Vascongadas. Rango: Circular. 3 results.	Checked: N. 129, de 09/05/1925, pages 774 a 775. N. 53, de 22/02/1934, pages 1422 a 1423. N. 39, de 08/02/1936, pages 1197 a 1198.
Title: Navarra. Rango: Circular. 11 results.	Checked: N. 11, de 11/01/1924, page183. N. 72, de 13/03/1927, pages 1523 a 1526. N. 281, de 07/10/1928, pages 177 a 180. N. 125, de 05/05/1929, page800.
Title: Guipúzcoa. Rango: Circular. 12 results.	Checked: N. 2249, de 15/12/1840, page1. N. 274, de 30/09/1880, page1089.

	<i>N. 284, de 10/10/1880, page115.</i>
Title: Vizcaya. Rango: Circular. 10 results.	Checked: <i>N. 274, de 30/09/1880, page1089.</i> <i>N. 284, de 10/10/1880, page115.</i>
Title: Álava. Rango: Circular. 9 results.	Checked: <i>N. 274, de 30/09/1880, page1089.</i> <i>N. 284, 10/10/1880, page115.</i>
Title: Vascongadas. Rango: Comunicación. 54 results.	Checked: <i>N. 465, 31/03/1836, page1.</i> <i>N. 1797, 11/10/1839, pages 2 a 3.</i> <i>N. 1875, 28/12/1839, page1.</i> <i>N. 3813, 21/02/1845, page1.</i> <i>N. 4549, 27/02/1847, page1.</i> <i>N. 4749, 15/09/1847, page1.</i> <i>N. 4752, 18/09/1847, page1.</i> <i>N. 5049, 10/07/1848, page2.</i> <i>N. 5894, 02/09/1850, page2.</i> <i>N. 5934, 12/10/1850, page1.</i> <i>N. 1316, 11/08/1856, page1.</i> <i>N. 23, 23/01/1875, page187.</i> <i>N. 247, 04/09/1877, page646.</i> <i>N. 168, 17/06/1909, page1495.</i> <i>N. 286, 13/10/1922, page166.</i> <i>N. 91, 01/04/1934, page23.</i>
Title: Navarra. Rango: Comunicación. 344 results.	Checked: <i>N. 313, 23/12/1834, page1294.</i> <i>N. 465, 31/03/1836, page1.</i> <i>N. 843, 27/03/1837, page3.</i> <i>N. 2296, 31/01/1841, pages 1 a 2.</i> <i>N. 2713, 15/03/1842, page1.</i> <i>N. 3653, 14/09/1844, page1.</i> <i>N. 4752, 18/09/1847, page1.</i> <i>N. 4755, 21/09/1847, pages 1 a 2.</i> <i>N. 4804, 09/11/1847, page1.</i> <i>N. 4807, 12/11/1847, page1.</i> <i>N. 5010, 01/06/1848, page2.</i> <i>N. 5045, 06/07/1848, page1.</i> <i>N. 5253, 30/01/1849, page1.</i> <i>N. 773, 13/02/1855, page1.</i> <i>N. 892, 12/06/1855, page1.</i> <i>N. 896, 16/06/1855, page1.</i> <i>N. 51, 20/02/1864, page1.</i> <i>N. 240, 28/08/1870, page2.</i> <i>N. 23, 23/01/1875, page187.</i> <i>N. 54, 23/02/1889, page523.</i> <i>N. 30, 30/01/1897, page447.</i> <i>N. 191, 10/07/1905, pages 118 a 121.</i> <i>N. 75, 16/03/1910, page569.</i> <i>N. 112, 22/04/1911, page124.</i> <i>N. 111, 20/04/1912, pages 143 a 144.</i> <i>N. 261, 18/09/1913, pages 658 a 659.</i> <i>N. 363, 29/12/1914, page952.</i> <i>N. 20, 20/01/1915, pages 186 a 187.</i> <i>N. 70, 11/03/1915, page765.</i> <i>N. 241, 28/08/1916, page451.</i> <i>N. 304, 30/10/1916, page304.</i> <i>N. 309, 04/11/1916, page351.</i> <i>N. 8, 08/01/1917, pages 70 a 71.</i> <i>N. 254, 11/09/1917, page645.</i> <i>N. 273, 30/09/1918, page885.</i> <i>N. 319, 15/11/1918, page658.</i> <i>N. 38, 07/02/1924, page664.</i>

<p>Title: Guipúzcoa. Rango: Comunicación. 404 results.</p>	<p>Checked: N. 5043, 04/07/1848, page1. N. 5073, 03/08/1848, page1. N. 5253, 30/01/1849, page1. N. 284, 11/10/1859, page3. N. 302, 29/10/1867, page12. N. 203, 22/07/1877, page214. N. 341, 06/12/1892, page685. N. 103, 13/04/1905, pages 178 a 179. N. 94, 04/04/1906, pages 40 a 45. N. 291, 18/10/1907, page232.</p>
<p>Title: Vizcaya. Rango: Comunicación. 333 results.</p>	<p>Checked: N. 1874, 27/12/1839, page1. N. 1875, 28/12/1839, page1. N. 2238, 04/12/1840, page1. N. 2835, 15/07/1842, page1. N. 284, 11/10/1859, page3. N. 108, 17/04/1860, page1. N. 270, 27/09/1861, pages 2 a 3. N. 179, 27/06/1876, page803. N. 150, 30/05/1891, page705. N. 321, 17/11/1893, page497. N. 30, 30/01/1901, pages 415 a 416. N. 92, 01/04/1908, page15. N. 12, 12/01/1910, page71.</p>
<p>Title: Álava. Rango: Comunicación. 322 results.</p>	<p>Checked: N. 5256, 02/02/1849, page2. N. 99, 09/04/1859, page4. N. 65, 06/03/1921, page778. N. 44, 13/02/1929, pages 1242 a 1244.</p>
<p>Title: Vascongadas. Rango: Decreto. 37 results.</p>	
<p>Title: Navarra. Rango: Decreto. 130 results.</p>	<p>Checked: N. 102, 12/04/1870, page1. N. 153, 02/06/1870, page1. N. 159, 08/06/1870, page1. N. 162, 11/06/1870, page1. N. 167, 16/06/1870, page1. N. 194, 13/07/1870, page1. N. 211, 30/07/1870, page1. N. 302, 29/10/1870, pages 1 a 2. N. 22, 22/01/1871, page170. N. 40, 09/02/1871, page329. N. 148, 28/05/1871, page1217. N. 166, 15/06/1871, page1417. N. 325, 21/11/1871, pages 603 a 604. N. 211, 29/07/1872, page285. N. 216, 03/08/1872, page341. N. 266, 23/09/1874, page757. N. 346, 12/12/1874, page663. N. 343, 09/12/1931, pages 1550 a 1551. N. 324, 19/11/1932, pages 1212 a 1213. N. 36, 05/02/1933, pages 915 a 916. N. 347, 13/12/1934, pages 2120 a 2121. N. 10, 10/01/1935, page241.</p>
<p>Title: Guipúzcoa. Rango: Decreto. 98 results.</p>	<p>Checked: N. 26, 26/01/1871, page202. N. 219, 07/08/1874, page329. N. 320, 15/11/1884, page387. N. 135, 15/05/1931, pages 744 a 745. N. 343, 09/12/1931, pages 1550 a 1551. N. 358, 23/12/1932, page2069.</p>

Title: Vizcaya. Rango: Decreto. 112 results.	<p>Checked:</p> <p>N. 348, 13/12/1868, pages 2 a 3.</p> <p>N. 26, 26/01/1869, page1.</p> <p>N. 252, 09/09/1870, pages 3 a 4.</p> <p>N. 26, 26/01/1871, page202.</p> <p>N. 109, 18/04/1872, page171.</p> <p>N. 343, 09/12/1931, pages 1550 a 1551.</p> <p>N. 22, 22/01/1932, page565.</p> <p>N. 146, 25/05/1932, pages 1428 a 1429.</p> <p>N. 220, 08/08/1933, page922.</p> <p>N. 46, 15/02/1935, page1355.</p>
Title: Álava. Rango: Decreto. 80 results.	<p>Checked:</p> <p>N. 360, 26/12/1870, page1.</p> <p>N. 23, 23/01/1871, page177.</p> <p>N. 26, 26/01/1871, page202.</p> <p>N. 364, 30/12/1871, page1059.</p>
Title: Vascongadas. Rango: Ley. 7 results.	<p>Checked:</p> <p>N. 1812, 26/10/1839, page1.</p> <p>N. 207, 25/07/1876, page213.</p> <p>N. 171, 20/06/1877, page808.</p> <p>N. 251, 08/09/1878, page703.</p> <p>N. 93, 03/04/1895, page25.</p> <p>N. 88, 29/03/1900, page1134.</p> <p>N. 1, 01/01/1913, page5.</p>
Title: Navarra. Rango: Ley. 18 results.	<p>Checked:</p> <p>N. 2498, 19/08/1841, pages 1 a 2.</p> <p>N. 1704, 04/09/1857, page1.</p> <p>N. 99, 09/04/1859, page1.</p> <p>N. 220, 08/08/1873, page1301.</p> <p>N. 72, 12/03/1880, page650.</p> <p>N. 131, 11/05/1882, page421.</p> <p>N. 230, 18/08/1882, page537.</p> <p>N. 144, 24/05/1887, page477.</p> <p>N. 180, 29/06/1898, page1209.</p> <p>N. 88, 29/03/1900, page1134.</p> <p>N. 363, 29/12/1934, pages 2539 a 2540.</p>
Title: Guipúzcoa. Rango: Ley. 29 results.	<p>Checked:</p> <p>N. 1028, 24/09/1837, page2.</p> <p>N. 2756, 27/04/1842, page1.</p> <p>N. 1704, 04/09/1857, page1.</p> <p>N. 175, 24/06/1885, pages 877 a 878.</p> <p>N. 134, 13/05/1888, page465.</p> <p>N. 77, 18/03/1890, page837.</p> <p>N. 153, 01/06/1892, page725.</p> <p>N. 331, 26/11/1908, page800.</p>
Title: Vizcaya. Rango: Ley. 30 results.	<p>Checked:</p> <p>N. 1028, 24/09/1837, page2.</p> <p>N. 2756, 27/04/1842, page1.</p> <p>N. 84, 25/03/1883, pages 709 a 710.</p> <p>N. 157, 06/06/1883, page651.</p> <p>N. 250, 07/09/1883, page665.</p> <p>N. 210, 29/07/1887, page275.</p> <p>N. 216, 04/08/1895, pages 457 a 458.</p>
Title: Álava. Rango: Ley. 13 results.	<p>Checked:</p> <p>N. 1028, 24/09/1837, page2.</p> <p>N. 2756, 27/04/1842, page1.</p> <p>N. 193, 11/07/1888, page117.</p> <p>N. 2756, 27/04/1842, page1.</p>
Title: Vascongadas. Rango: Lista. 2 results.	<p>Checked:</p> <p>N. 5086, 16/08/1848, page3.</p> <p>N. 141, 20/05/1896, page531.</p>

Title: Navarra. Rango: Lista. 10 results.	<i>Checked:</i> N. 81, 22/03/1895, pages 1075 a 1077.
Title: Guipúzcoa. Rango: Lista. 4 results.	<i>Checked:</i> N. 29, 29/01/1895, pages 329 a 330.
Title: Vizcaya. Rango: Lista. 25 results.	<i>Checked:</i> N. 5086, 16/08/1848, page3. N. 39, 08/02/1895, pages 494 a 495.
Title: Álava. Rango: Lista. 19 results.	<i>Checked:</i> N. 19, 19/01/1895, pages 217 a 218.
Title: Vascongadas. Rango: Orden. 16 results.	<i>Checked:</i> N. 252, 09/09/1870, page1. N. 20, 20/01/1933, page464. N. 51, 20/02/1933, pages 1403 a 1406. N. 141, 21/05/1933, pages 1329 a 1330. N. 199, 18/07/1933, pages 384 a 387. N. 342, 08/12/1933, pages 1613 a 1614. N. 344, 10/12/1933, page1710. N. 240, 28/08/1934, pages 1773 a 1775. N. 39, 08/02/1935, pages 1172 a 1173. N. 339, 05/12/1935, pages 1973 a 1974. N. 17, 17/01/1936, pages 446 a 447.
Title: Navarra. Rango: Orden. 116 results.	<i>Checked:</i> N. 135, 15/05/1870, page1. N. 252, 09/09/1870, page1. N. 156, 04/06/1872, page659. N. 304, 30/10/1872, page305. N. 115, 25/04/1873, page216. N. 177, 26/06/1873, page860.
Title: Guipúzcoa. Rango: Orden. 105 results.	
Title: Vizcaya. Rango: Orden. 140 results.	<i>Checked:</i> N. 270, 27/09/1931, pages 2051 a 2053.
Title: Álava. Rango: Orden. 59 results.	
Title: Vascongadas. Rango: Real decreto. 108 results.	<i>Checked:</i> N. 2581, 03/11/1841, page1. N. 3587, 10/07/1844, pages 1 a 2. N. 6074, 01/03/1851, page1. N. 70, 11/03/1875, page655. N. 318, 14/11/1877, pages 473 a 474. N. 60, 01/03/1878, pages 505 a 507. N. 48, 17/02/1893, page600. N. 299, 26/10/1900, pages 333 a 334. N. 299, 26/10/1900, page333. N. 30, 30/01/1904, pages 405 a 406. N. 114, 24/04/1910, pages 169 a 170. N. 352, 17/12/1912, pages 858 a 859. N. 298, 25/10/1913, page219. N. 1, 01/01/1918, pages 33 a 37. N. 67, 08/03/1919, pages 832 a 833. N. 212, 30/07/1920, pages 372 a 373. N. 296, 22/10/1924, pages 354 a 357. N. 297, 23/10/1924, pages 362 a 366. N. 362, 28/12/1926, pages 1740 a 1747.

Title: Navarra. Rango: Real decreto.
470 results.

Checked:

N. 131, 30/10/1830, page533.
N. 2250, 16/12/1840, pages 1 a 2.
N. 4800, 05/11/1847, page2.
N. 5081, 11/08/1848, page1.
N. 5526, 31/10/1849, page5.
N. 5624, 23/12/1849, page1.
N. 6074, 01/03/1851, page1.
N. 6219, 24/07/1851, pages 1 a 2.
N. 6511, 20/04/1852, page1.
N. 873, 24/05/1855, page1.
N. 1032, 01/11/1855, page2.
N. 282, 09/10/1858, page1.
N. 153, 02/06/1859, page1.
N. 257, 14/09/1859, page1.
N. 141, 20/05/1860, page1.
N. 1, 01/01/1862, page1.
N. 46, 15/02/1863, page1.
N. 114, 24/04/1863, page1.
N. 282, 09/10/1863, page2.
N. 11, 11/01/1864, page1.
N. 35, 04/02/1864, page2.
N. 9, 09/01/1865, page1.
N. 12, 12/01/1865, page1.
N. 110, 20/04/1865, page1.
N. 332, 28/11/1865, pages 1 a 2.
N. 347, 13/12/1865, page1.
N. 347, 13/12/1865, page1.
N. 362, 28/12/1865, page1.
N. 226, 14/08/1866, page1.
N. 298, 25/10/1866, page1.
N. 335, 01/12/1866, page1.
N. 82, 23/03/1867, page1.
N. 226, 14/08/1867, pages 2 a 4.
N. 264, 21/09/1867, pages 2 a 3.
N. 160, 09/06/1875, page679.
N. 312, 07/11/1876, page335.
N. 51, 20/02/1877, page475.
N. 325, 21/11/1877, page549.
N. 159, 08/06/1878, page633.
N. 115, 24/04/1880, page193.
N. 105, 15/04/1881, pages 139 a 140.
N. 109, 19/04/1886, pages 188 a 189.
N. 108, 18/04/1893, pages 249 a 250.
N. 126, 06/05/1899, page413.
N. 152, 01/06/1899, page750.
N. 290, 17/10/1900, page222.
N. 299, 26/10/1900, page333.
N. 30, 30/01/1904, pages 405 a 406.
N. 210, 28/07/1904, page323.
N. 272, 30/09/1904, pages 1109 a 1110.
N. 321, 18/11/1904, page581.
N. 345, 11/12/1907, pages 932 a 933.
N. 41, 10/02/1909, page355.
N. 255, 12/09/1909, pages 495 a 496.
N. 342, 08/12/1910, page566.
N. 207, 26/07/1911, page306.
N. 208, 27/07/1911, page310.
N. 352, 17/12/1912, pages 858 a 859.
N. 74, 15/03/1913, page682.
N. 74, 15/03/1913, pages 681 a 682.
N. 301, 28/10/1913, page305.
N. 99, 09/04/1914, pages 73 a 74.
N. 254, 11/09/1914, pages 674 a 676.

	<p>N. 1, 01/01/1918, pages 33 a 37. N. 312, 08/11/1918, pages 535 a 536. N. 339, 05/12/1919, pages 1083 a 1084. N. 58, 27/02/1920, pages 754 a 756. N. 90, 31/03/1921, pages 1012 a 1013. N. 253, 10/09/1921, page1002. N. 340, 06/12/1922, page986. N. 13, 13/01/1924, pages 202 a 203. N. 46, 15/02/1924, pages 819 a 820. N. 232, 20/08/1927, pages 1052 a 1053. N. 232, 20/08/1927, pages 1043 a 1050. N. 7, 07/01/1928, pages 227 a 229. N. 362, 28/12/1929, pages 1975 a 1976. N. 47, 16/02/1930, pages 1211 a 1212. N. 60, 01/03/1930, page1422. N. 184, 03/07/1930, pages 82 a 83.</p>
<p>Title: Guipúzcoa. Rango: Real decreto. 318 results.</p>	<p>Checked:</p> <p>N. 131, 30/10/1830, page533. N. 1836, 19/11/1839, page1 N. 3415, 20/01/1844, pages 1 a 2. N. 4692, 20/07/1847, page1 N. 5140, 09/10/1848, pages 1 a 2. N. 143, 23/05/1853, page2. N. 600, 24/08/1854, page1 N. 1083, 22/12/1855, page1 N. 150, 30/05/1865, page1. N. 312, 07/11/1876, page335. N. 215, 03/08/1879, page393. N. 309, 05/11/1879, pages 365 a 366. N. 31, 31/01/1882, page435. N. 201, 19/07/1888, pages 199 a 200 N. 271, 28/09/1889, page994. N. 38, 07/02/1894, pages 513 a 514. N. 41, 10/02/1899, page521. N. 122, 02/05/1902, pages 522 a 523. N. 176, 25/06/1902, page1273. N. 129, 09/05/1906, page521. N. 348, 14/12/1906, pages 984 a 985. N. 301, 27/10/1908, page402. N. 351, 16/12/1908, pages 1068 a 1069. N. 255, 12/09/1914, pages 681 a 684. N. 100, 10/04/1915, page73. N. 182, 01/07/1917, page8. N. 19, 19/01/1923, pages 265 a 266. N. 13, 13/01/1924, pages 202 a 203. N. 175, 24/06/1927, page1747. N. 268, 25/09/1927, pages 1701 a 1704.</p>
<p>Title: Vizcaya. Rango: Real decreto. 369 results.</p>	<p>Checked:</p> <p>N. 1836, 19/11/1839, page1. N. 5405, 01/07/1849, pages 2 a 3. N. 143, 23/05/1853, page2. N. 1475, 17/01/1857, page1. N. 349, 15/12/1862, page1. N. 297, 24/10/1866, page1. N. 312, 07/11/1876, page335. N. 127, 07/05/1877, page401. N. 309, 05/11/1879, pages 365 a 366. N. 9, 09/01/1881, page75. N. 201, 19/07/1888, pages 199 a 200. N. 271, 28/09/1889, page994. N. 98, 07/04/1892, page57. N. 38, 07/02/1894, pages 513 a 514 N. 334, 30/11/1895, page675. N. 33, 02/02/1899, page398.</p>

	<p>N. 256, 13/09/1899, pages 973 a 974</p> <p>N. 196, 15/07/1900, pages 215 a 216.</p> <p>N. 129, 09/05/1906, page521.</p> <p>N. 245, 02/09/1910, page713.</p> <p>N. 267, 24/09/1910, page841.</p> <p>N. 256, 13/09/1911, page676.</p> <p>N. 263, 20/09/1911, pages 751 a 752.</p> <p>N. 67, 07/03/1916, page544.</p> <p>N. 122, 02/05/1919, pages 414 a 415.</p> <p>N. 13, 13/01/1924, pages 202 a 203.</p>
<p>Title: Álava. Rango: Real decreto.</p> <p>272 results.</p>	<p>Checked:</p> <p>N. 1836, 19/11/1839, page1.</p> <p>N. 4729, 26/08/1847, page3.</p> <p>N. 312, 07/11/1876, page335.</p> <p>N. 309, 05/11/1879, pages 365 a 366.</p> <p>N. 201, 19/07/1888, pages 199 a 200.</p> <p>N. 271, 28/09/1889, page994.</p> <p>N. 265, 22/09/1890, page1029.</p> <p>N. 38, 07/02/1894, pages 513 a 514.</p> <p>N. 317, 12/11/1896, page500.</p> <p>N. 133, 13/05/1899, page498.</p> <p>N. 132, 11/05/1904, page572.</p> <p>N. 129, 09/05/1906, page521.</p> <p>N. 348, 14/12/1906, pages 984 a 985.</p> <p>N. 294, 21/10/1911, page164.</p> <p>N. 47, 16/02/1915, pages 526 a 527.</p> <p>N. 161, 10/06/1925, pages 1670 a 1671.</p> <p>N. 111, 20/04/1928, page348.</p>
<p>Title: Vascongadas. Rango: Real decreto-Ley.</p> <p>0 Results.</p>	
<p>Title: Navarra. Rango: Real decreto-Ley.</p> <p>3 results.</p>	<p>Checked:</p> <p>N. 309, 05/11/1925, pages 667 a 668.</p> <p>N. 279, 06/10/1927, page130.</p> <p>N. 39, 08/02/1930, pages 1050 a 1051.</p>
<p>Title: Guipúzcoa. Rango: Real decreto-Ley.</p> <p>2 results.</p>	<p>Checked:</p> <p>N. 222, 10/08/1927, page842.</p> <p>N. 276, 02/10/1928, pages 13 a 14.</p>
<p>Title: Vizcaya. Rango: Real decreto-Ley.</p> <p>2 results.</p>	<p>Checked:</p> <p>N. 279, 06/10/1927, page131.</p> <p>N. 362, 28/12/1929, pages 1967 a 1968.</p>
<p>Title: Álava. Rango: Real decreto-Ley.</p> <p>1 result.</p>	<p>Checked:</p> <p>N. 211, 29/07/1928, page562.</p>
<p>Title: Vascongadas. Rango: Real Orden.</p> <p>68 results.</p>	<p>Checked:</p> <p>N. 28, 04/03/1834, page132.</p> <p>N. 30, 08/03/1834, page141.</p> <p>N. 2274, 09/01/1841, page1.</p> <p>N. 3104, 07/04/1843, page1.</p> <p>N. 3313, 15/10/1843, pages 1 a 2.</p> <p>N. 6399, 09/01/1852, page1.</p> <p>N. 6528, 07/05/1852, page1.</p> <p>N. 1535, 19/03/1857, page1.</p> <p>N. 46, 15/02/1867, page1.</p> <p>N. 340, 06/12/1877, page694.</p> <p>N. 5, 05/01/1879, page48.</p> <p>N. 73, 14/03/1879, page738.</p> <p>N. 221, 09/08/1879, page471.</p> <p>N. 304, 31/10/1879, pages 311 a 312.</p> <p>N. 205, 23/07/1884, pages 233 a 234.</p> <p>N. 192, 10/07/1888, page112.</p>

	<p>N. 321, 17/11/1889, pages 489 a 490. N. 179, 28/06/1897, page1124. N. 159, 07/06/1904, pages 967 a 968. N. 303, 31/10/1904, pages 358 a 359. N. 173, 22/06/1905, page1177. N. 188, 07/07/1909, pages 38 a 39. N. 96, 06/04/1910, pages 38 a 39. N. 320, 16/11/1911, page359. N. 339, 05/12/1911, page549. N. 30, 30/01/1913, page249. N. 50, 19/02/1913, pages 447 a 448. N. 187, 06/07/1915, page59. N. 244, 31/08/1920, page826. N. 244, 31/08/1920, page826. N. 244, 31/08/1920, pages 825 a 826. N. 248, 04/09/1920, page899. N. 197, 16/07/1921, pages 309 a 310. N. 61, 01/03/1924, page1112. N. 261, 17/09/1924, page1375. N. 288, 14/10/1924, page250. N. 99, 09/04/1925, pages 192 a 193. N. 246, 03/09/1925, pages 1355 a 1356. N. 190, 09/07/1926, page197. N. 220, 08/08/1926, pages 913 a 914. N. 277, 04/10/1926, page98. N. 207, 26/07/1927, page531. N. 17, 17/01/1930, page422.</p>
<p>Title: Navarra. Rango: Real Orden. 386 results.</p>	<p>Checked:</p> <p>N. 28, 04/03/1834, page132. N. 30, 08/03/1834, page141. N. 3104, 07/04/1843, page1. N. 5092, 22/08/1848, page1. N. 6399, 09/01/1852, page1. N. 6528, 07/05/1852, page1. N. 562, 16/07/1854, page2. N. 1228, 15/05/1856, page1. N. 1524, 08/03/1857, page1. N. 282, 08/10/1860, page1. N. 130, 10/05/1862, page2. N. 98, 07/04/1876, page61. N. 44, 13/02/1877, pages 411 a 412. N. 138, 18/05/1877, page512. N. 221, 09/08/1879, page471. N. 101, 10/04/1880, page75. N. 25, 25/01/1881, page223. N. 106, 16/04/1881, page153. N. 109, 19/04/1883, pages 175 a 176. N. 229, 16/08/1884, page538. N. 20, 20/01/1886, page178. N. 274, 30/09/1892, pages 1125 a 1126. N. 290, 17/10/1893, page173. N. 179, 28/06/1897, page1124. N. 129, 09/05/1900, page656. N. 296, 23/10/1900, pages 293 a 294. N. 159, 07/06/1904, pages 967 a 968. N. 271, 29/09/1904, page1099. N. 288, 16/10/1904, page198. N. 173, 22/06/1905, page1177. N. 189, 08/07/1909, page43. N. 339, 05/12/1911, page549. N. 11, 11/01/1912, page87. N. 147, 27/05/1913, pages 578 a 579. N. 101, 11/04/1915, pages 86 a 87. N. 20, 20/01/1917, page163.</p>

	<i>N. 61, 01/03/1924, page1112. There are many of these or rs on the coming years. All affecting different private and public bodies in a variety of public services or businesses. Could not check them all.</i>
Title: Guipúzcoa. Rango: Real Orden 355 results.	Checked: <i>N. 4659, 17/06/1847, page1. N. 129, 09/05/1879, pages 397 a 398. N. 131, 10/05/1880, page352. . N. 166, 14/06/1880, page655. N. 209, 27/07/1880, page265.</i>
Title: Vizcaya. Rango: Real Orden 472 results.	Checked: <i>N. 6449, 18/02/1852, page2. N. 292, 19/10/1853, page1. N. 934, 24/07/1855, pages 1 a 2. N. 213, 31/07/1860, page1.</i>
Title: Álava. Rango: Real Orden 223 results.	Checked: <i>N. 389, 18/01/1836, pages 1 a 2. N. 2575, 28/10/1841, page1. N. 129, 09/05/1879, pages 397 a 398. N. 166, 14/06/1880, page655. N. 205, 23/07/1880, pages 227 a 228. N. 57, 26/02/1881, page555. N. 202, 20/07/1888, page211. N. 223, 11/08/1891, pages 519 a 520.</i>
Title: Vascongadas. Rango: Real orden-circular. 6 results.	Checked: <i>N. 363, 28/12/1916, page789. N. 350, 16/12/1917, pages 598 a 599. N. 102, 12/04/1922, pages 135 a 136. N. 102, 12/04/1922, page135.</i>
Title: Navarra. Rango: Real orden-circular. 12 results.	Checked: <i>N. 102, 12/04/1922, page135. N. 4585, 04/04/1847, page2. N. 22, 22/01/1902, page311. N. 363, 28/12/1916, page789. N. 350, 16/12/1917, pages 598 a 599. N. 102, 12/04/1922, pages 135 a 136.</i>
Title: Guipúzcoa. Rango: Real orden-circular. 6 results.	
Title: Vizcaya. Rango: Real orden-circular. 6 results.	Checked: <i>N. 2672, 02/02/1842, page1 N. 4533, 11/02/1847, page2.</i>
Title: Álava. Rango: Real orden-circular. 2 results.	Checked: <i>N. 4533, 11/02/1847, page2.</i>
Title: Vascongadas. Rango: Rectificación. 0 results.	
Title: Navarra. Rango: Rectificación 9 results.	Checked: <i>N. 313, 09/11/1918, page569. N. 214, 02/08/1919, page399.</i>
Title: Guipúzcoa. Rango: Rectification 2 results.	
Title: Vizcaya. Rango: Rectificación 10 results.	
Title: Álava. Rango: Rectificación 7 results.	Checked: <i>N. 217, 04/08/1880, page359. N. 205, 23/07/1880, page227.</i>
Title: Vascongadas. Rango: Sentencia. 0 results.	

Title: Navarra. Rango: Sentencia. 1 result.	<i>Checked:</i> N. 365, 30/12/1872, page1022.
Title: Guipúzcoa. Rango: Sentencia. 1 result.	<i>Checked:</i> N. 203, 21/07/1872, page205.
Title: Vizcaya. Rango: Sentencia. 0 results.	
Title: Álava. Rango: Sentencia. 0 results.	
Title: Vascongadas. Rango: Tratado. 0 results.	
Title: Navarra. Rango: Tratado. 1 result.	<i>Checked:</i> N. 181, 30/06/1862, page1.
Title: Guipúzcoa. Rango: Tratado. 0 results	
Title: Vizcaya. Rango: Tratado. 0 results.	
Title: Álava. Rango: Tratado. 0 results.	

Appendix 3.

Main body of data consulted to study conceptualizations of the State of Spain and the term ‘Spain’

<i>Year</i>	<i>Author</i>	<i>Title</i>	<i>Source</i>
1701	John Stevens	A brief history of Spain	Google Books
1771		Encyclopaedia Britannica	Centre for Research Collections – The University of Edinburgh
1775	R.P. Duchesne	Compendio de la Historia de España	Google Books
1784	Vicente Vizcaino Pérez	Compendio del derecho público y común de España o de las leyes de las Siete Partidas colocado en orden natural	Google Books
1787	Castro, Juan Francisco de	Discurso crítico sobre las leyes y sus intérpretes: incertidumbres y detrimentos de los Mayorazgos, y otras disposiciones análogas en el bien común: su ofensa a la población, agricultura, artes y comercio: necesidad de remedio: tentativa de algunos medios. V. 3	Europeana
1795	No author	A compendious Geographical Dictionary, containing a concise description of the most remarkable places, ancient and modern, in Europe, Asia, Africa & America. Interspersed with historical anecdotes to which are added a chronological table from the creation to the present time	Google Books
1806	Juan Antonio Llorente	Noticias Históricas de las tres provincias Vascongadas V.1	Google Books
1807	Juan Antonio Llorente	Noticias Históricas de las tres provincias Vascongadas V.2 & V. 3	Google Books
1808	Juan Antonio Llorente	Noticias Históricas de las tres provincias Vascongadas V.4 & V. 5	Google Books
1809	A. Beaumont	The history of Spain, from the earliest authentic accounts to the present times	Google Books
1820	José Canga Argüelles	Memoria sobre el crédito público que presenta a las Cortes ordinarias de 1820	Google Books
	No author	Documentos relativos al expediente de vinculaciones impresos de orden de las Cortes para su discusión	Europeana
	Laumier, Charles	Histoire de la revolution D’Espagne en 1820	Bibliothèque nationale de France
	J.A.A.***	Reflexions sur la Revolution D’Espagne	Bibliothèque nationale de France
1822	Edward Blaquiere	An historical review of the Spanish Revolution: including some account of religion, manners and literature in Spain	Google Books

1825	Poisson	De L'état Actuel des finances de L'Espagne	Bibliothèque nationale de France
1826	Alexandre Laborde	Atlas del Itinerario descriptivo de España	Google Books
1831	Conrad Malte-Brun	Universal Geography or a description of all the parts of the world on a new plan according to the great natural divisions of the globe	Google Books
1834	Marquis de Sainte-Croix	Reflexions sur L'état Present de L'Espagne, por un Espagnol	Bibliothèque nationale de France
1835	José Canga Argüelles	Defensa del honor de la Nación Española contra las injustas acusaciones que le hace la rivalidad extranjera	Google Books
1836	William Francis Patrick Napier	History of the War in the Peninsula and in the south of France from the year 1807 to the year 1814	Google Books
	Rodrigo Quiroga Porras	Compendio del derecho civil de España, con la cronología de los reyes desde la fundación de la monarquía de los godos hasta en actual reinado de Isabel II.	Google Books
1838	José María Queipo de Llano Ruiz de Saravía	Historia del levantamiento, Guerra y Revolución de España	Google Books
	John Henry Barrow	The Mirror of Parliament. Second Series. V. 4	Google Books
1840	Manuel Marliani	Historia política de la España moderna	Google Books
1849	A Lady	A catechism of the history of Spain and Portugal	Google Books
1857	Mateo Varona y Gutierrez	Inconvenientes que a la población, a la agricultura y al comercio reporta la institución de los Mayorazgos	Europeana
1861	Juan Rico y Amat	Historia política y Parlamentaria de España: desde los tiempos remotos hasta nuestros días. V. 2	Google Books
	Juan Bautista Carrasco	Geografía General de España. Comparada con la primitiva, Antigua y moderna	Google Books
	Ascargorta	Compendio de la Historia de España	Google Books
1862	Juan Rico y Amat	Historia política y Parlamentaria de España: desde los tiempos remotos hasta nuestros días. V. 3	Google Books
1864	Victor Gebhardt & Antonio DelVillar	Historia general de España y de sus Indias: desde los tiempos más remotos hasta nuestros días	Google Books
1865	Amalio Marichalar,	Historia de la legislación y recitaciones del derecho civil de España	Google Books

	marqués de Montesa & Cayetano Manrique		
1878	Clinton, Herbert Russell	The War in the Peninsula, and Wellington's Campaigns in France and Belgium	The University of Edinburgh's Library
1882	Lopez de Mendoza y Pons, Agustín	Historia de las Guerras Civiles de España: desde la muerte del Señor Carlos II que sucedió en 1 de Noviembre de 1700, distribuida en ocho libros por los mismos años regulados hasta en de 1708.	Biblioteca Nacional de España
1901	Hume, Martin	The Spanish people: their origin, growth and influence	The University of Edinburgh's Library
	Seignobos, Charles	A political history of contemporary Europe since 1814	The University of Edinburgh's Library

Appendix 4.

Main body of data consulted to study conceptualizations of Carlism

<i>Year</i>	<i>Author</i>	<i>Title</i>	<i>Source</i>
1829	Ministerio de Hacienda de España 1829. 'Capitulados de 1727, 1728, 1729 y 1748.	Colección de cédulas, cartas-patentes, provisiones, reales órdenes y otros documentos concernientes á las provincias Vascongadas, copiados de orden de s. m. de los registros, minutas y escrituras existentes en el Real Archivo de Simancas, y en los de las secretarías de estado y del despacho y otras oficinas de la corte. Tomo II.	Google Books
1834	No author	Observaciones sobre la necesidad de examinar el régimen administrativo de las Provincias Vascongadas, para fallar con acierto en esta material	Google Books
1834	William Walton	Spain! Or who is the lawful successor to the throne?	Google Books
1836	Henry John George Herbert Carnarvon (Earl of)	Portugal and Gallicia: with a review of the social and political state of the Basque Provinces and a few remarks on recent events in Spain.	Google Books
	Charles Frederick Henningsen	A twelvemonth's campaign with Zumalacárregui during the War in Navarre and the Basque Provinces of Spain.	Google Books
1837	Pedro de Lemonauria	Ensayo crítico sobre las Leyes Constitucionales de Vizcaya	Google Books
	José de Llanos	Examen imparcial de la administración municipal, y reflexiones sobre la ilustración	Google Books
	Charles Shaw	Personal Memoirs and correspondence of Colonel Charles Shaw.	Centre for Research Collections – The University of Edinburgh
	Henry John George Herbert Carnarvon (Earl of)	Portugal and Gallicia: with a review of the social and political state of the Basque Provinces and a few remarks on recent events in Spain. Second edition.	Google Books
	Henry Southern	The policy of England towards Spain	Google Books
	Henry Southern	Sequel of the policy of England towards Spain	Google Books
1838	Francis Bacon	Six Years Biscay, Comprising a Personal Narrative of the Sieges of Bilbao in June 1835, and Oct. to Dec., 1836, and of the principal events which occurred in that city and the Basque Provinces, during the years 1830 to 1837.	Google Books
1839	San Miguel, Evaristo	España en octubre 1839 Paz	Hathi Trust Digital Library

	Pedro Mendez de Vigo	Segunda Contestación del General D. Pedro Méndez de Vigo al Segundo manifiesto del General Rodil	Google Books
1840	No author	Convenio de Vergara. Datos curiosos para la historia contemporánea	Google Books
	José Manuel de Arizaga	Memoria militar y política sobre la Guerra de Navarra, los fusilamientos de Estella y principales acontecimientos que determinaron el fin de la causa de D. Carlos isidro de Borbón	Google Books
1841	Manuel Lassala	Historia política del Partido Carlista, de sus divisiones, de su gobierno, de sus ideas y del Convenio de Vergara	Google Books
1844	Eugenio de Abiraneta	Memoria dirigida al Gobierno Español, sobre los planes y operaciones puestos en ejecución para aniquilar la rebelión de las provincias del norte de España.	Google Books
	R. Sanchez	Historia de Don Carlos y de los principales sucesos de la Guerra Civil de España	Google Books
1845	Zaratiegui, Juan Antonio.	Vida y hechos de D. Tomás de Zumalacárregui	Biblioteca Nacional de España
1846	Luis Bordas	Hechos históricos y memorables acaecidos en España desde la última enfermedad de Fernando VII hasta la conclusión de la Guerra de los Siete Años	Google Books
	Esteban Ozcariz	Reflexiones sobre las leyes vigentes de Señoríos y su aplicación a las pechas de la Provincia de Navarra	Google Books
	Ildefonso Antonio Bermejo	La Revolución Española en su verdadero punto de vista	Google Books
1849	Eduardo Fernandez San Roman	La revista Militar. Periódico de arte, ciencia y literatura militar. Escrito por un gran número de generales, gefes y oficiales de todas las armas e institutos del ejército. V. 5	Google Books
1856	Patricio de Azcárate	Exposición a S. M. sobre arreglo de los Fueros de las Provincias Vascongadas	Google Books
	Julian Sanz del Rio	Compendio doctrinal de la Historia Universal hasta 1852, escrito en Alemán	Google Books
1859	D. Ramón Díaz Vela	Informe sobre el Fuero militar, en lo civil	Google Books
1863	Segismundo Moret y Prendergast	La familia foral y la familia Castellana	Google Books
1864	Manuel Sánchez Silva, Pedro de Egaña, Joaquín Barroeta y Aldamar	Critica de los fueros de las provincias de Álava, Guipúzcoa y Vizcaya	Google Books

	No author	Discusión sobre los Fueros de las provincias Vascongadas en el Senado en sus sesiones del 13 al 21 de Junio de 1864	Google Books
1871	Sagarmínaga, Fidel de.	Reflexiones sobre el sentido político de los Fueros de Vizcaya	Europeana
1895	Victor Hugo	'Letters to his wife' IN: The Alpes et Pyrénées	Internet Archive
1897	E. A. Menassade	A travers le Guipúzcoa: impressions.	Europeana
	Patricio Aguirre de Tejada	Las señoritas de Menassade y su libro "A travers le Guipúzcoa".'	Euskal-Erria - revista bascongada 37: 188-191.
	José Gómez de Arteche	«A travers le Guipúzcoa: Impressions». E. A. Menassade'.	Boletín de la Real Academia de la Historia V: 404-414.
	Max Weber, Javier Rodríguez Martínez and Koldo Morales Belda	'Max Weber: dos cartas sobre el país vasco '	Revista Española de Investigaciones Sociológicas 100: 303-314.

Appendix 5.

Main body of data consulted to study conceptualizations of Euskadi

<i>Year</i>	<i>Author</i>	<i>Title</i>	<i>Source</i>
1836	R. Teycheney	Essai historique sur les provinces Basques (Álava, Guipúzcoa, Biscaye et Navarre), et sur la guerre dont elles sont le théâtre	Bibliothèque nationale de France
1838	Henry Wilkinson	Sketches of Scenery in the Basque Provinces of Spain, with a selection of national music arranged for Piano-Forte and Guitar: illustrated notes and reminiscences connected with the War in Biscay and Castile	Google Books
1854	S. G. Blanc	Grammaire de la langue basque, d'après celle du Manuel de Larramendi	The Internet Archive
1803	Pablo Pedro de Astarloa	Apología de la lengua Bascongada o ensayo critico filosófico de su perfección y antigüedad sobre todas las que se conocen: en respuesta a los reparos propuestos en el Diccionario Geográfico Histórico de España, tomo Segundo, palabra Navarra	Google Books
1865	Willem J van Eys	Essai de Grammaire de la Langue Basque	Google Books
1844	Samuel Edward Widdrington	Spain and the Spaniards in 1843	Google Books
1837	William Walton	The revolutions of Spain, from 1808 to the end of 1836. With biographical sketches of the most distinguished personages and a narrative of the war in the Peninsula down to the present time, from the most authentic sources	Google Books
1807	Francisco de Aranguren Sobrado	Refutación a Llorente: Demostración del sentido verdadero de las autoridades de que se vale el Doctor Don Juan Antonio de Llorente, canónigo de la Catedral de Toledo, en el tomo I de "Las noticias históricas de las tres provincias vascongadas": y de lo que en verdad resulta de los historiadores que cita, con respecto solamente al Muy Noble y Muy Leal Señorío de Vizcaya	Memoria Digital Vasca-Euskal memoria Digitala
1918		Regionalismo y nacionalismo: documentos parlamentarios. Discursos pronunciados en el Congreso de los Diputados en los días 16, 17 y 18 de Abril de 1918 por los Señores Don Víctor Pradera, Don Antonio Maura y Don Francisco Cambo	Koldo Mitxelena Kulturenea
1836	Pedro Martinez Lopez	Ensayo histórico sobre las provincias Vascongadas (Álava, Guipúzcoa, Vizcaya y Navarra), y sobre la Guerra que actualmente sostienen, traducido del Francés. V. 1 & V. 2.	Google Books
1864	Manuel Garcia Gozalez (Ed)	Crítica de los fueros de las provincias de Álava, Guipúzcoa, y Vizcaya: Discursos pronunciados en el senado	Google Books
1784	Real sociedad vascongada de los amigos del pais	Extractos de las juntas celebradas por la Real sociedad bascongada de los amigos del país en la villa de Bilbao por setiembre de 1784	Google Books
1829	George W. Erving	The alphabet of the primitive language of Spain, and a philosophical examination of the antiquity and civilization of the Basque people: an extract from the works of Don Juan Bautista de Erro.	Google Books

1806	Juan Bautista de Erro.	Alfabeto de la lengua primitiva de España, y explicación de sus más antiguos monumentos de inscripciones y medallas	Google Books
1826	Lécluse, Fleury	Dissertation sur la Langue Basque	Bibliothèque nationale de France
1836	José María Queipo de Llano Ruiz de Saravia	Histoire du Soulevement, de la guerre et de la revolution d'Espagne	Google Books
1839	Mitchell, M. George	Le camp et la cour de D. Carlos. Narration historique des événemens survenus dans les provinces du nord depuis le moment ou maroto prit le commandement de l'armee carliste, en 1838, jusqu'a l'entrée de d. carlos en france en 1839, avec des documens justificatifs et des notes illustratives; précédée de la biographie de maroto.	Bibliothèque nationale de France
1874	Alex, Mis d'	La Solution espagnole et le parti carliste	Bibliothèque nationale de France
1841	Dembowski, Charles	Deux ans en Espagne et en Portugal pendant la guerre civile, 1838-1840	Bibliothèque nationale de France
1806	Juan Antonio Llorente	Noticias históricas de las tres provincias vascongadas, en que se procura investigar el estado civil antiguo de Álava, Guipúzcoa y Vizcaya, y el origen de sus fueros. V.1, V. 2, V. 3. V. 4. & V. 5.	Google Books
1829	Madrid: Imprenta Real	Colección de cedulas, cartas-patentes, provisiones, reales ordenes, y otros documentos concernientes a las provincias vascongadas. V.1, V. 2, V. 3., V. 4., V. 5. & V. 6.	Google Books
1811	Cortes de Cadiz	Actas de la Comisión nombrada para la formación del proyecto de Constitución. Empezó la Comisión sus sesiones el día dos de Marzo de 1811	Biblioteca Virtual Miguel de Cervantes
1868	Antonio Pirala	La Guerra Civil, y de los partidos liberal y carlista, segunda edición, refundida, y aumentada con la historia de la regencia de Espartero. V.1, V. 2, V. 3. V. 4. & V. 5.	Google Books

Appendix 6.

Main body of data consulted to study Navarre

Physical sources: Archivo General de Navarra (AGN)

<i>Boxes's signature</i>	<i>Years of the documents contained and/or Brief description of content</i>
AGN GC_Asociaciones Caj 83, N. 16	Asociaciones
AGN GC_ Asociaciones Caj 91, N. 25	Asociaciones
AGN DFN, L. 755	Registro de Acuerdos Diputación 1869-1875
AGN DFN Caj 31973	Actas, oficios, informes, estadística
AGN DFN Caj 3135	Registro de acuerdos de Ayuntamientos
AGN DFN Caj 1	Solicitudes, plazas y nombramientos
AGN DFN Caj 501	Nominas 1837- 1860
AGN DFN Caj 502	Nominas 1861-1870
AGN DFN Caj 503	Nominas 1871- 1875
AGN DFN Caj 1996	Régimen interno 1850-1914
AGN DFN Caj 1998	Memorias
AGN DFN Caj 31391	Casos presentados a Diputación 1820- 1831
AGN DFN Caj 2457	Presupuestos 1967-1870
AGN DFN Caj 2464	Presupuestos 1909-1911
AGN DFN Caj 2474	Presupuestos 1928-1929
AGN Caj 117170	Procesos judiciales 1829
AGN Caj 117184	Procesos judiciales 1829
AGN Caj 117183	Procesos judiciales 1829
AGN Caj 117216	Procesos judiciales 1830
AGN Caj 117797	Procesos judiciales 1836
AGN Caj 11806	Procesos judiciales 1836
AGN Caj 11805	Procesos judiciales 1836
AGN DFN Caj 506	Nóminas 1882-1886
AGN DFN Caj 507	Nóminas 1887-1889
AGN DFN Caj 513	Nóminas 1904-1905
AGN DFN Caj 521	Nóminas 1915
AGN DFN Caj 536	Nóminas 1930
AGN DFN Caj 548	Nóminas 1936
AGN DFN Caj 38138	Pesas, medidas comercio etc. 1844-1882
AGN DFN Caj 38136	Industria, Comercio
AGN DFN Caj 38137	Industria, Comercio
AGN DFN Caj 5619	Industria, Comercio
AGN DFN Caj 5622	Industria, Comercio
AGN DFN Caj 39854	Sociedad minera de Potasas
AGN DFN L 5832	Memoria de contrafueros
AGN DFN Caj 20265	Guerras carlistas
AGN DFN Caj 20268	Guerras carlistas 1840-1868

AGN DFN L 3933	Padrón industrial 1885
AGN DFN L 3936	Industria 1907-1908
AGN DFN L 3947	Industria 1933-1934
AGN DFN L 548	Actas diputación 1932
AGN DFN L 549	Actas diputación 1933
AGN DFN Caj 112.220	Sociedades
AGN DFN Caj 112224	Registro industrial de Pamplona de 1938
AGN DFN. L, 4012	Padrones de riqueza urbana de Pamplona 1885
AGN DFN, Caj 199	Reglamentos 1877-1960
AGN DFN Caj 201	Informes y Estudios 1877-1960
AGN DFN Caj 2891	Secretaria, legislación y normas desde 1866
AGN DFN Caj 1998	Memoria de actividades 1885-1932
AGN DFN, Caj 22286	Copias certificadas de ordenanzas de establecimiento y condicionados de arriendo de arbitrios y otros atributos municipales 1933
AGN DFN, Caj 22285	Legislación, normas y reglamentos 1867 – 1975
Consulted in digitalised material in the archive or Archive library	<ul style="list-style-type: none"> • Boletín Oficial de Navarra 21 de septiembre de 1892 • Boletín Oficial de Navarra 9 de Enero de 1933 • Acta Diputación sesión 30 & 31 diciembre de 1836 • Acta Diputación sesión 7 de febrero de 1866 • Acta Diputación sesión 11 de Mayo 1880 • Acta Diputación sesión 30 de Junio 1900 • Acta Diputación sesión 13 de Octubre de 1871 • Acta Diputación sesión 17 de Octubre de 1871 • Acta Diputación sesión 1 de Junio de 1943 • Listado de Notarios ordenado según distrito, pueblo y año • Ramos Martínez, Bruno 1957 Memorias y Diario de Carlos VII

Digital Source

Biblioteca Navarra Digital (BINADI)

<i>Signature</i>	<i>Description</i>
BINADI BGN00Ca 4/137	Convenio de Vergara y confirmación y modificación de los Fueros de Navarra
BINADI 0036-6_51	Manifiesto del Ayto. Constitucional de la ciudad de Pamplona, capital de la provincial de Navarra, sobre lo ocurrido en ella desde la publicación de la Constitución de la Monarquía Española
BINADI BGN0036-5_74	Recopilación y comentarios de los fueros y leyes de Navarra V1
BINADI BGN0036-5_75	Recopilación y comentarios de los fueros y leyes de Navarra V2
BINADI BPLK0FA-17_10	Actas de las sesiones celebradas por la Diputación y Comisionados de los distritos

	electorales en los días 22 y 23 de Junio de 1890 sobre la construcción del Ferro-carril de Alduiden
BINADI BCR0026-C-3-41	Noticia histórico descriptiva del Colegio de Loyola
BINADI BGN00CD-0_43	Cultura Navarra
BINADI BGN00CD-0-47	Álbum de personajes Carlistas
BINADI BGN00Ca13_842	Consideraciones acerca de la cuestión foral y los carlistas
BINADI BPTUDFA35_456	Análisis histórico de los Fueros de Navarra
BINADI BCC00R47-6-02	Formulario Teórico-Práctico sobre el modo de hacer las ejecuciones en Navarra conforme a la ley de modificación de fueros sancionada por la corona en 16 de Agosto de 1841
BINADI BGN0036-2_37	Memoria sobre la ley de la modificación de los fueros de Navarra
BINADI BGN0036-1_7	La contragerigonza o Refutación jocoseria del ensayo histórico crítico sobre la legislación Navarra

Other Digital Sources

<i>Source</i>	<i>Title</i>
Hispana	Alerta a los Navarros
LeXNavarra	Acuerdo de la Diputación Foral de 10 de Marzo de 1931, por el que se aprueba el Reglamento de Jubilaciones de los funcionarios de la Diputación Foral
Google Books	Diccionario de las palabras anticuadas que contienen los documentos existentes en los Archivos de Navarra
Memoria Digital Vasca-Euskal memoria Digitala	Ensayo histórico-crítico sobre la legislación de Navarra
Google Books	Diccionarios de los fueros del Reino de Navarra y de las leyes vigentes promulgadas hasta las cortes de los años 1817 y 1818 inclusive
Google Books	Adiciones al diccionario de antigüedades de Navarra
Google Books	Historia Compendiada del reino de Navarra
Google Books	Diccionario Histórico -Político de Tudela

Appendix 7.

Main body of data consulted to study Gipuzkoa

Physical Source: _Archivo General de Guipúzcoa – Gipuzkuako Artxibo Orokorra

<i>Boxes' signatures</i>	<i>Years of the documents contained and/or Brief description of content</i>
AGG-GAO DM 1, 4	1802-1876
AGG-GAO JD IT 1821, 1	Presupuestos provinciales 1899-1900
AGG-GAO JD IT 1719, 1	Presupuestos provinciales 1927
AGG-GAO JD SM 28, 12	Documentación sobre los fueros 1785-1908
AGG-GAO JD SM 36,11	Historia de lo obrado por la diputación tras saber de la muerte del rey 1833
AGG-GAO JD SM 28, 15	Recortes de prensa sobre los fueros vascos y navarra 1840-1931
AGG-GAO JD SM 38, 9	Proyecto de arreglo de la administración provincial de Gipuzkoa 1841
AGG-GAO JD SM 28, 13	Recortes de prensa, periódicos y revistas sobre la cuestión foral 1878-1931
AGG-GAO JD SM 29, 1	Recortes de prensa sobre los fueros de Gipuzkoa 1890-1925
AGG-GAO JD SM 28, 2	Notas manuscritas de Serapio Múgica sobre los fueros de Gipuzkoa
AGG-GAO JD SM 54, 3	Notas manuscritas de Serapio Múgica sobre temas tratados en Juntas Generales cuyo contenido comienza por letra F
AGG-GAO JD SM 37, 5	Extracto de sesión Diputación Gipuzkoa 13 octubre 1902
AGG-GAO JD SM 29, 6	Recortes de prensa sobre los fueros vascos: cuestión vascongada 1904
AGG-GAO JD SM 60, 22	Recortes de prensa sobre los fueros y Navarra 1909-1924
AGG-GAO JD IM 4 /10 / 116	Expediente relativo a las gestiones hechas por las tres provincias para aprobación de convenio... Fecha inicial 1802
AGG-GAO JD IM 4 /10 / 118	Disposiciones sobre hidalguías, vecindad, residencia de forasteros etc. 1807
AGG-GAO JD IM 4 /10 / 128	Legajo de correspondencia sobre la admisión y exclusión de algunos sujetos de la vecindad concejal de varios pueblos 1825
AGG-GAO JD IM 4 /10 / 148	Disposiciones sobre hidalguías, vecindad, residencia de forasteros etc. 1833
AGG-GAO JD IM 4 /10 / 152	Disposiciones sobre hidalguías, vecindad, residencia de forasteros 1841
AGG-GAO JD IM 4 /10 / 153	Disposiciones sobre hidalguías, vecindad, residencia de forasteros 1841
AGG-GAO JD T 1788, 1	Archivos sujetos a revisión 1884-1907
AGG-GAO JD T 1845, 1	Suplemento acerca del Concierto Económico 1887
AGG-GAO JD T 1849, 1	Archivos acerca del Concierto Económico 1887-1898
AGG-GAO JD T 3235	Concierto Económico 1893

AGG-GAO JD T 1850, 1	Archivos acerca de la organización y funcionamiento de la administración 1898-1905
AGG-GAO JD T 3236	Archivos sobre la Ley de Alcohol 1904
AGG-GAO JD T 1857, 1	Archivos sobre leyes, tasas, el Concierto Económico 1905-1910
AGG-GAO JD T 1846, 1	Archivos sobre la renovación del Concierto Económico 1906
AGG-GAO JD T 3249, 7	Archivos sobre el Boletín Oficial 1908-1938
AGG-GAO JD T 1856, 1	Archivos sobre leyes-borradores 1910-1921
AGG-GAO JD T 1788, 2	Documentos sobre la unánime demanda para conseguir la completa reintegración foral 1917-1922
AGG-GAO JD T 1789, 1	Opiniones expresadas por las personalidades consultadas sobre cómo debería constituirse la soberanía Guipuzcoana 1918
AGG-GAO JD T 1789, 2	Adhesiones municipales y privadas sobre la Ley del Timbre 1924-1926
AGG-GAO JD T 1841, 1	Archivo numero 1 sobre el Concierto Económico 1885-1886
AGG-GAO JD T 1841, 2	Archivo numero 1 sobre el Concierto Económico 1886-1887
AGG-GAO JD T 1841, 3	Archivo numero 1 sobre el Concierto Económico 1887

Digital Sources

<i>Source</i>	<i>Title</i>
Digital Repository of the Gipuzkoa Provincial Council	Corografía o descripción general de la Muy Noble y Muy Leal Provincia de Guipúzcoa
Koldo Mitxelena Kulturenea.	Reglamento para el servicio y conservación de la carretera general y ramales de la Provincia de Guipúzcoa.
Koldo Mitxelena Kulturenea.	Memoria sobre el cólera morbo según se ha observado en la ciudad de San Sebastián en el presente otoño y observaciones generales sobre esta enfermedad / por todos los profesores de medicina residentes en la misma.
Koldo Mitxelena Kulturenea.	Memoria de la Comisión Administrativa de la empresa del alumbrado de gas de San Sebastián. Descargo de la comisión revisora de cuentas y actas de las Juntas Generales de accionistas de 1 de marzo y 24 de abril de 1867
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Conferencia acerca del programa nacionalista, el separatismo y el anti nacionalismo dada en Gernika el 23 de Mayo de 1920
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Manifiesto dirigido al Presidente del Consejo de Ministros por los Presidentes de las tres Diputaciones vascas sobre la independencia económica y administrativo de las tres provincias
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Ordenanza de policía para el servicio y conservación de la carretera y ramales de la provincial de Guipúzcoa
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Lo que es el fuero y lo que se deriva del fuero: estudio político sobre el Fuero de Guipúzcoa

Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento de médicos titulares de la provincial de Guipúzcoa
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Informe evacuado por la Comisión de Vacuna en cumplimiento de lo acordado por la Excma. Diputación extraordinaria de esta M.N. y M.L. Provincia de Guipúzcoa, en sesión de 14 de junio del año próximo pasado e impreso por resolución de la ordinaria...
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento de expósitos para la provincial de Guipúzcoa aprobado por la Excma. Diputación Provincial en sesión de 13 de abril de 1891
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento para la ejecución, mejora y reparación de los caminos vecinales usando la prestación personal o sea por el medio denominado "Auzo-lan"
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento para las Casas de Socorro en la provincial de Guipúzcoa
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento para la concesión de beneficios a las casas baratas/ Diputación de Guipúzcoa
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento general de expósitos para la Provincia de Guipúzcoa
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Centralización y regionalismo ante la política unitaria de patria mayor
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Discurso y rectificaciones pronunciados por el Excmo. Teniente General Don Francisco Lersundi en las sesiones del Senado del 28 y 29 de Mayo de 1867 en defensa de los Fueros de las Provincias Vascongadas
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento dispuesto por la M.N. y M.L. provincial de Guipúzcoa para el ramo de tabacos
Digital Repository of the Gipuzkoa Provincial Council	Memoria acerca del estado del Instituto Provincial Guipuzcoano y Real Seminario de Vergara leída el día 16 de Setiembre de 1865
Koldo Mitxelena Kulturenea	Memoria justificativa de lo que tiene expuesto y pedido la ciudad de San Sebastián para el fomento de la industria y comercio de Guipúzcoa / publicada por acuerdo del Ayuntamiento general de vecinos concejantes y Junta de Comercio de la misma ciudad
Koldo Mitxelena Kulturenea	Montepío para Peones camineros de la Provincia de Guipúzcoa aprobado por la Excma. Diputación Provincial en sesión de 11 de mayo de 1900
Koldo Mitxelena Kulturenea	Memoria acerca del porvenir de las Provincias Vascongadas con motivo de la construcción de los caminos de hierro
Koldo Mitxelena Kulturenea	Reglamento para el régimen interior de la administración de arbitrios provinciales aprobado por las Juntas Generales celebradas en Tolosa en 1872
Koldo Mitxelena Kulturenea	Reglamento y Tarifas para la aplicación y administración de la Contribución de Utilidades en Guipúzcoa

Koldo Mitxelena Kulturenea	Reglamento del Concierto Económico
Koldo Mitxelena Kulturenea. Atzo-Atzokoa. Relacion Historica.	Reglamento para el servicio interior de las oficinas y dependencias de la Excma. Diputación Provincial de Guipúzcoa, aprobado por la misma en sesión de 3 de abril de 1895
Koldo Mitxelena Kulturenea	Reglamento de Juntas y Diputaciones.
Koldo Mitxelena Kulturenea	Reglamento para el despacho de los negocios y modo de funcionar de la Excma. Diputación Provincial de Guipúzcoa.
Koldo Mitxelena Kulturenea	Reglamento y ordenanzas de montes de la Provincia de Vizcaya y escritos relativos a repoblación forestal
Digital Repository of the Gipuzkoa Provincial Council	El nacionalismo Vasco y el resurgimiento nacional
Badator	Exposición presentada por la Diputación provincial de Guipúzcoa sobre el proyecto de arreglo económico sobre recaudación de arbitrios
Badator	Circular de la Diputación general de la M.N. y M.L. villa de Tolosa, relativa a un estudio de las reformas necesarias para la cría de ganado lanar.
Google Books	Memoria sobre las Guerras y Tratados de Guipúzcoa con Inglaterra en los siglos XIV y XV

Appendix 8.

Main body of data consulted to study Biscay

Physical Source: Archivo Histórico Foral de Bizkaia (AHFB)

<i>Boxes' Signature</i>	<i>Years of the documents contained and/or Brief description of content</i>
AHFB Presupuestos Diputación Caja n1	1880-1881
AHFB Presupuestos Diputación Caja n10	1899-1900
AHFB Presupuestos Diputación Caja n40	1936
AHFB Bilbao Duplicados 0054/005	Ordenanzas Municipales de Bilbao 1906
AHFB Bilbao Duplicados 0076/001	Actas de Juntas Generales del Señorío 1858
AHFB Bilbao Duplicados 0048/006	Documentos relativos al conflicto ocurrido entre el Alcalde de Bilbao y el Gobernador Civil de Vizcaya en 1869
AHFB Bilbao Duplicados 0001/002	Bandos
AHFB Bilbao Duplicados 0002/002	Reglamento interior para Secretaria del Ato. De Bilbao 1880
AHFB Bilbao Duplicados 0049/003	Publicación en 1881 de Actas de 1632
AHFB Bilbao Duplicados 0051/023	Memoria sobre gestión administrativa Ayto. Bilbao 1872
AHFB Bilbao Duplicados 0064/001	Boletín estadística Ayto. Bilbao 1930
AHFB Bilbao Duplicados 0077/001	Memoria presentada por la Diputación de Vizcaya 1868
AHFB Bilbao Duplicados 0101/003	Presupuestos Ayto. Bilbao 1881-1882
AHFB ZEANURI 0187/002	Ordenanzas de Zeanuri 1756
AHFB ZEANURI 0103/005	Proceso de aprovechamiento de bienes comunales 1757
AHFB ZEANURI 0098/032	Rentas de Colonos y propietarios 1814
AHFB ZEANURI 0070/003	Ordenanzas para aprovechamiento de pastos 1858
AHFB ZEANURI 0084/004	Acuerdo entre Zeanuri y pueblo limítrofe de Araba-Álava, antes de 1800
AHFB AJ 00108	Acuerdos de Diputación y Juntas Generales
AHFB AJ 02290/012	Alcalde de Balsameda consulta a Diputación el pago de un impuesto pedido por el Estado 1892
AHFB AJ 01187/003	Discurso del Presidente Diputación Vizcaya 1890
AHFB AR 00003/002	Comunicación Diputación de Guipúzcoa 1887
AHFB BILBAO ANTIGUA 0322/001	Registro de pleitos y otros de Bilbao 1787-1792
AHFB AJ 02616/005	Expediente concierto Económico 1906-1943
AHFB AJ 02276/012	Datos económicos tres provincias Vascongadas 1906
AHFB AJ 02303/006	Invitación de Alcaldes de Vizcaya a Diputación a un banquete por su defensa del país 1907
AHFB AR 0072/01	Dos casos en Arregorriaga. Denuncia Gobernador Civil contra administración de Arregorriaga; y disputa Concejal contra administración por deuda
AHFB AR 00845/01	Instancia Ayto. Bilbao a Diputación sobre asunto considerado Concierto Económico

AHFB AR 00857/02	Reclamaciones de particulares a la Diputación por presupuesto municipal ordinario 1920
AHFB AJ 02276/013	Informe negociaciones Concierto Económico entre Vascongadas y Madrid 1913
AHFB AJ 02310/006	Documentación relativa a Convocatoria de la Academia de Jurisprudencia y Legislación de Barcelona a una Asamblea de Organización Jurídica 1917
AHFB AR 00921/23	Recurso de particular contra Ayto. Zeanuri
AHFB AJ 02277/011	Informe Concierto Económico 1929
AHFB AJ 00610/001	Actas de Conferencias tres Diputaciones Vascongadas 1868-1882
AHFB AJ 01668/036	Correspondencia entre las Comisiones permanentes de las provincias desde 1876
AHFB AJ 02338/022	Particular solicita acta de reunión de fuerzas vivas celebrada en referencia a Concierto Económico 1930
AHFB AJ 02509/003	Registro de casos del tribunal Económico Administrativo de Vizcaya 1924-1925
AHFB AJ 01437/006	Relativo a la proporción que pago cada provincial vascongada para la elaboración de la Diócesis de Vitoria 1862-1868
AHFB CIM 225/08	Liga Vizcaína de Productores 1894
AHFB CIM 237/04	Liga Vizcaína de Productores 1904
AHFB CIM 217/11	Liga Vizcaína de Productores 1906
AHFB CIM 237/01	Liga Vizcaína de Productores 1900
AHFB CIM 237/08	Liga Vizcaína de Productores 1906
AHFB CIM 217/08	Liga Vizcaína de Productores 1904
AHFB CIM 237/03	Liga Vizcaína de Productores 1902
AHFB CIM 229/04	Liga Vizcaína de Productores 1902
AHFB CIM 230/05	Liga Vizcaína de Productores – varios años
AHFB CIM 247/13	Liga Vizcaína de Productores 1893

Digital Sources

<i>Source</i>	<i>Title</i>
Digital Repository of the Gipuzkoa Provincial Council	Discurso leído por Don Sabino de Arana y Goiri en Larrazábal (Begoña) en el mes de Julio de 1893
Digital Repository of the Gipuzkoa Provincial Council	Pliegos histórico -Políticos
Memoria Digital Vasca-Euskal memoria Digitala	Índice de las obras completas de Arana-Goiri'ta Sabin.
Digital Repository of the Gipuzkoa Provincial Council	Bizkaya por su independencia

Appendix 9.

Main body of data consulted in the study of Araba-Álava

Physical Source: Archivo del Territorio Histórico de Álava (ATHA)

<i>Boxes' Signature</i>	<i>Years of the documents contained and/or Brief description of content</i>
ATHA DH 1407 – 1	Legajo año económico 1879-1880
ATHA DH 1908 - 1	Legajos datos económicos tres provincias Vascongadas 1878-1925
ATHA DAI 778-1	Presupuestos Álava 1936
ATHA DH 1909-1	Presupuestos Álava 1927
ATHA DH 1908-1	Presupuestos Álava 1910
ATHA DH 142-1	Presupuestos Álava 1889-1891
ATHA DH 143-5-02	Reglamento General de las Oficinas de Álava 1863
ATHA DAH ADL 005-022	Actas Diputación 4 de diciembre de 1885

Digital Sources

<i>Source</i>	<i>Title</i>
Memoria Digital Vasca-Euskal memoria Digitala	Memoria que por encargo de la Excm. Diputación Provincial de Álava presenta Ramón de Bajo e Ibáñez...para la asistencia al Congreso Nacional pedagógico inaugurado en Madrid el 28 de mayo de 1882.
Memoria Digital Vasca-Euskal memoria Digitala	Reglamento general para las oficinas y dependencias / Diputación Provincial de Álava.
Memoria Digital Vasca-Euskal memoria Digitala	Proyecto de reglamento sobre organización del Cuerpo de Aduaneros de esta M.N. y M.L. provincia de Álava: año de 1874.
Google Books	Crónica General de España, o sea historia ilustrada y descriptiva d sus provincias...: Álava
Biblioteca Virtual del Patrimonio Bibliográfico. Gobierno de España	Quaderno de Leyes y Ordenanzas con que se gobierna esta Muy Noble y Muy Leal provincial de Álava, y diferentes privilegios y cédulas de su Magestad, que van puestos en el Índice.