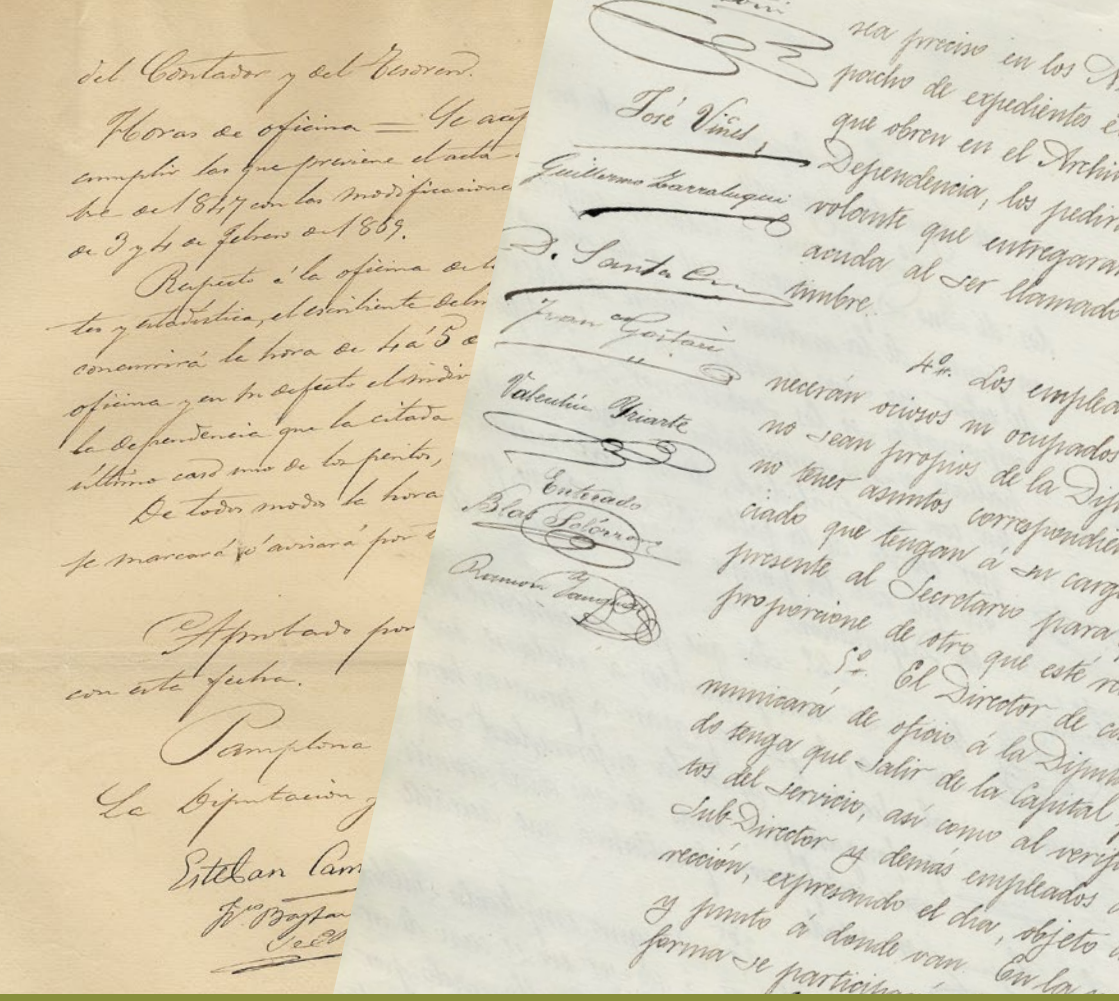

MODERN SOCIETIES AND NATIONAL IDENTITIES

Legal Praxis and the Basque-Spanish Conflict

Unai Urrastabaso Ruiz

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Introduction

This volume develops a novel interdisciplinary theoretical approach to interpret the Basque-Spanish nationalist conflict. It incorporates into sociological analysis the understanding of law put forward by legal realism and legal pluralism in order to answer some of the most pressing problems encountered in historical research on the topic. The study takes the form of a comparative historical analysis that focuses on the historical puzzle produced by the political trajectories of Navarra (from now on Navarre) and Vascongadas (precursor of today's Basque Country, formed by the historical territories of Biscay, Gipuzkoa, and Araba-Álava) between 1841 and 1936. Throughout history, the jurisdictional authorities of both territories 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, this defense translated into key influential majorities in both territories defending together a similar concept of the state, the one associated with Carlism, and each territory was thought of as being both Basque and Spanish. In the 1936 military coup, however, the jurisdictional authorities of Navarre and Vascongadas defended different concepts of the state. Navarre's supported the military

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coup, whereas Vascongadas's stayed loyal to the republican government, with a more ambivalent position in Araba-Álava. By that time, the meanings of both "Basque" and "Spanish" had been reinterpreted, and important differences had emerged between Basque nationalists and Navarre's Carlists, such as Victor Pradera. This split has continued to this day and has reemerged in the contrasting national identities defended by the political parties that have dominated governance in these territories since the reestablishment of democracy in 1978. Basque national identity has been dominant in Euskadi, and a regionalist Spanish nationalism called *navarrismo* (navarrism) has been dominant in Navarre (Izu Belloso 2001: 436). Contrasting with these departing trajectories, the traditional interpretations of law have remained similarly influential in both territories. A discussion of those factors that produced the split in the concepts of state associated with these political paths forms the subject of this investigation.

Explaining this historical puzzle is important not only for interpreting the emergence of nationalism but also for analyzing of the history of the state of Spain. Clarifying why large parts of the populations of Vascongadas and Navarre supported Carlism in particular is key for construing the meanings of the social and political conflicts that shaped the formation of the modern state (Pérez-Agote 2006: 57). The diverging paths of Navarre and Vascongadas seem to support modernist interpretations of nationalism, which typically distinguish between two epochs in which the meanings of political action are interpreted differently (Smith 2009: 16). On the one hand, the political choices defended by large parts of the populations of Navarre and Vascongadas up to 1836 are normally associated with pre-modern religious and conservative positions, which clashed with a progressive liberalism attempting to reform the Ancient Regime. On the other, the fact that two rather new and different ideologies became increasingly dominant in each territory between 1876 and 1936, is thought to support the idea that the social changes produced by the industrilization of society led to the development of new political ideologies, such as nationalism. Therefore, the diverging trails of Vascongadas and Navarre support the modernist conviction regarding the modernity of nationalism while simultaneously backing the historical

break hypothesized from theories of modernization. Generally, however, historical research on Basque and/or Spanish nationalism, although acknowledging the idiosyncrasies and trajectory of Navarre, tends to focus on the subjects of Spain/Spanish nationalism or Basque Country/Basque nationalism. The origins of these national identities are usually associated with two rather different processes and theoretical or ideological influences. The emergence of the first Spanish nationalism as a form of popular identity is normally linked to the creation of a constitutional state in Spain during the Peninsular War (1808–1814) (Álvarez-Junco 2001: 64–74). It has been argued that "1808 is for Spain what 1789 was for France" (Moreno Alonso 2010: 12; my translation[1]. I provide the original language of the material that I translate in notes). In contrast, Basque nationalism tends to be associated with the creation of the political party Euzko Alderdi Jeltzalea-Partido Nacionalista Vasco (Basque Nationalist Party. From now on EAJ-PNV) in the 1890s in Biscay in a context of rapid industrialization. It is often presented as a racial, religious, or conservative reaction to the social changes produced by modern industrial society together with the abolition of the *fueros* (The term fuero comes from the Latin term forum, and among the different meanings attributed to it, there is that of jurisdiction and law (O'Callaghan 2001: xxx; Galán Lorda 2009: 19); in this context, it refers to the traditional laws of the Basque Country) and the influence of romantic ideas (De la Granja et al. 2011: 143–144).

A consequence of endorsing such perspectives is that the focus slips away from the political and jurisdictional structures that have been central to the histories of Navarre and Vascongadas and moves toward the terms and concepts used by nationalists themselves. This change generally implies approaching the study of society following concepts and ideas perceived to grant *legitimacy* to one or another nationalist project—legitimacy that is implicit or explicitly articulated in legal theory. Hence, law tends to be taken for granted, and the influence that legal thought exercises in sociological analysis tends to be overlooked.

Modern legal scholarship has been significantly dominated by two main perspectives, natural law and legal positivism. They differ in their definitions of law. According to natural law, law tends to be defined in relation to a normative claim. There are good and there are bad legal

orders. Legal contexts have been evaluated in relation to different preferences, including religious ideas and rational thought. In contrast, legal positivists define law in relation to sets of institutional relations in which law exists. Positive law, or law per se, is only the law occurring in sovereign and politically independent states in which the sovereign authority legislates and the bulk of society obeys. There are no good or bad laws; there is proper positive law, and there are other kinds of somehow inferior or improper types of laws. These dominant approaches to conceive of law have together, for different reasons, dismissed and/or denied the validity and meanings of some recurrent legal and jurisdictional conflicts in premodern European states, including the interpretations of law traditionally made from Vascongadas and Navarre. These meanings are invalidated for two different reasons. Because they were largely justified in history, custom, or religion rather than rationality and utilitarianism, or because some of these claims questioned the sovereignty of the authority of the state. Thus, political action during the studied processes is rarely thought to include a justified legal dispute about legitimacy and sovereignty of one or another jurisdictional authority to legislate and exercise types and degrees of social powers. Thus, jurisdictional conflict is stripped away from its meanings. Meaning is supposed to derive not from legal theory but from social and political theory. This usually leads to the sovereignty and legitimacy of state authorities being taken for granted. In social science, this tendency to equate society and the state has been referred to as methodological nationalism (Chernilo 2006), and alternative approaches to understand modernity, such as the theory of multiple modernities (Eisenstadt 2000), have been proposed to account for the more complex social realities making up modern industrial societies.

This book endorses a different interpretation of law, one put forward from the alternative legal perspectives of legal realism and legal pluralism. They propose an empirical and critical understanding of law. Law is defined neither in relation to state authority nor in relation to the establishment of a qualitatively distinct kind of law. Instead, law is understood as a method utilized by people to order social interactions, from granting recognition, to establishing relationships or resolving conflicts (Berman 1983). The correspondence between state and law that modern legal thought has promoted is questioned in light of the histories

of legal relations of European states. The history of law is not to be understood as the study of the development of different types of law in the modern state. The history of law needs to describe what *kinds* of legal relationships have existed and *explain* their social effects (Benton 2002). Incorporating a critical and empirical understanding of law into sociological theory produces a broader and richer analytical framework from which the meanings of jurisdictional action during processes of modernization can be interpreted in relation to processes of state formation. The taken-for-granted and unquestioned tendency to locate sovereignty and legitimacy with the entity of the state is understood to be a product of modern legal thought.

The theory chapters (three and four), explore some of the ways in which modern legal thought influences modernist interpretations of nationalism. This influence of modern legal thought especially affects the meanings of political action during the nineteenth century. Reactions to state constitutionalism are not to be uniquely read in relation to dichotomies, such as progressive versus conservative, scientific versus religious, or urban versus rural. Different views regarding the nature of law and the legitimacy of state authority also play a role. The meanings of these disputes stem from the legal and organizational features that characterized the Ancient Regime. In contrast to the portrait of the absolutist legal order made from theories of modernization, the symbolic French absolutist monarchy sought but was not able to create a centralized state bureaucracy (Bendix 1978: 332). The European empires out of which modern states were created were "'legally plural in their core regions as well as in their overseas or distant possessions" (Benton and Ross 2013: 1). Moreover, in the Ancient Regime, law could be understood as a protector of liberties as well as an instrument of despotism (Halliday 2013: 271). The meaning of liberty was not anchored to an already existing and undisputed notion of the sovereign state. The definition of law put forward by the French Revolution, and that of legal positivism, linked law to the entity of the state. The most influential definitions of law in modern legal thought altered both how jurisdictional disputes could be understood and the meaning of state-centralized governance. If in the context of the absolutist state centralizing tendencies were associated with despotism (from progressive positions at least), in the context of the

constitutional state, centralization took on the opposite meaning, becoming a reference for progress and constitutional principles.

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 change in the meanings produced by the regime change, and how this triggered a variety of reactions, is generally obscured by one or another modern understanding of law. Nationalisms and nationalist conflicts are modern, but jurisdictional conflict and disputes over jurisdictional legitimacy based on interpretations of law are not. This book aims to contribute to the development of a more nuanced and effective theoretical framework for understanding the emergence of nationalist conflict in modern industrial states.

Research Design and Use of Terms

A goal of this research design has been not to conduct analysis based on the terms and concepts utilized by nationalists. I have attempted instead to locate the focus in social actors and structures that exercised a key influence on the development of political history, an attempt that led me to endorse a jurisdictional perspective. The concept "jurisdiction" is used to mean legally existing entities. These entities can enjoy different types and/or degrees of social powers, including legislative, executive, monitoring, or enforcing.

Endorsing a jurisdictional perspective has raised significant problems in the use of names. Commonly used terms to identify one or a combination of the studied jurisdictions, whether it is Navarre, Spain, Euskal Herria or Basque Country, however "official" or widespread they may be, are considered historically wrong and theoretically misleading. If jurisdictional existence is going to be a reference associated with legally established social realities, the complete titles that identify existing jurisdictions are to be used. Legally, Navarre is likely to have been, among

other possibilities, the Kingdom of Navarre, the Province of Navarre, or the Foral Province of Navarre (foral comes from fueros). Similarly, the term "España" has not always, only, and/or in all jurisdictional contexts been used with the same meaning or to refer to the same social phenomena. For example, the term was used roughly up to the nineteenth century as a geographic term to identify what nowadays is called the Iberian Peninsula. This is illustrated by the work of Alexander Beaumont (1809: 1) writing on the history of Spain: "Spain, including Portugal, is a great peninsula, extending 600 miles in length and 500 in breadth, on the western extremity of the European continent." Additionally, the use of the term "Spain" or "Kingdom of Spain" is likely to have existed in certain legal contexts, such as international treaties (Artola 1999: 31). What terms were used where, and how such uses should be interpreted, needs to be analyzed. 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. In contrast, the Basque Country did not exist as a recognized jurisdiction with a legally defined institution until 1936. Prior to that date, terms such as "Provincias Vascongadas," "Euskal Herria," or "Vasconia" were used to refer to the total or a number of the Basque territories not necessarily legally bound together.

The use of any of these terms is not considered to be wrong per se; what is necessary is to use them in their appropriate context, not as general analytical or descriptive concepts. Using the appropriate title identifying each jurisdiction in its time is necessary as the titles had legal and practical consequences that affected jurisdictional recognition, relations, and associated views and social practices. Although analytically important, the use of proper titles can become problematic for effective communication. On one hand, constant attention and explanation of the use of one or another title may be required at times when 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.

Another problem related to uses of terms has to do with the political inclinations associated with uses of Basque or Castilian language. The problem includes using the term "Spanish" instead of "Castilian," as used herein. Such a tendency is overwhelming outside the state of Spain.

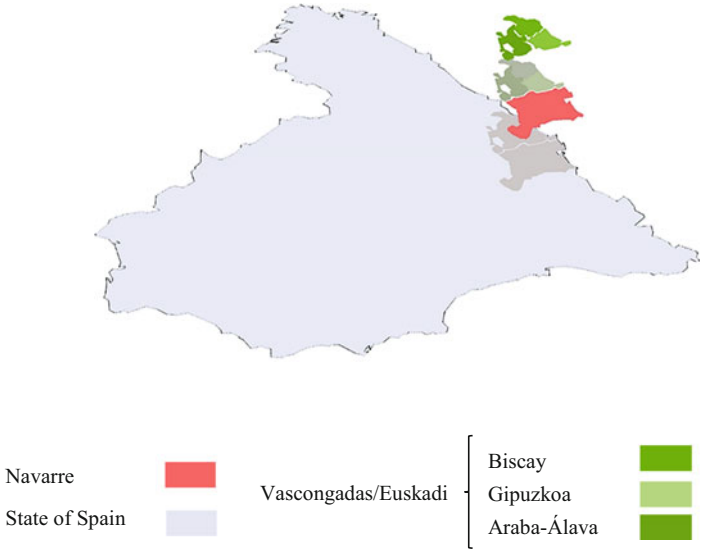

Fig. 1.1 Graphic representation of the jurisdictional entities studied in the Iberian Peninsula

However, it carries important symbolic and political connotations that come to the fore in the Spanish constitution, which establishes within its Preliminary Title that Castilian is the official language of the state and that *the rest of the Spanish languages* will also be official in the regions that say so in their organic law. This book utilizes the term "Castilian" instead of "Spanish."

To address this range of issues, the working terms used in this book are listed in Fig. 1.1.

Working Terms Alphabetically Ordered

- *Araba-Álava*: In the absence of an English term to name this territory, I use the official term, which combines both Basque and Castilian terms. The term "territory" also is employed instead of historical titles; the latter may be used when relevant for the argument or the point being made.

- *Biscay*: The English term is used to refer to this jurisdiction. For the same reasons stated above, the term "territory" also also is used.
- *Gipuzkoa*: There is no English term to identify this jurisdiction. The *Encyclopædia Britannica*, for instance, only offers the Castilian term, "Guipúzcoa" (*Encyclopædia Britannica Online* 2015). I use instead the current official term. The term "territory" also is used.
- *Navarre*: The English term is used, as is the term "territory."
- *state of Spain*: This term is used to refer to the jurisdictional context created by the Castilian monarchy throughout its history. The terms "state," "Spain," or "Spanish Empire" also may be employed.
- *Vascongadas or Euskadi*: These terms are used to refer to the territories currently making up the jurisdictional Basque Country. The term "territory" also is used to refer to this jurisdictional context. The Basque term "Euskal Herria" is used to refer to the seven territories traditionally considered to be Basque. The English term "Basque Country" is not used from here on because it does not distinguish between the current political space defined by such term and the territories traditionally considered to be Basque.

Data Collection

Data was collected from appropriate archival sources to study the selected jurisdictions, each of which manages its own historical archives. In practice, data collection was influenced significantly by the different organizing policies and search systems existing in each archive, as well as by the different possibilities involved in collecting data from digital or physical sources. 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 downloading relevant material or keeping references to access it when needed. Some unexpected digital resources, such as Google Books, proved to be useful to find and access a surprising collection of pre–twentieth-century publications, including compilations of legislation, history, politics, geography, and others.

There are abundant digital resources to collect data from the administration of the state, like *Hispana: Directorio y recolector de recursos digitales (Hispana: Directory of digital collections)*, run by the Ministry of Education, Culture and Sport of the Spanish Government, which offers access to an ample number of digital collections in the state of Spain. The *Boletín Oficial del Estado* (State's Official Gazette) has been an important digital resource to study state legislation. Two main archival resources were used in Navarre: the Archivo Real y General de Navarra (Navarre's Royal and General Archive) (AGN), and Navarre Public Libraries' services, especially *BINADI* (Navarre's digital library), and the *Fondo Antiguo* (historical section). These resources were used differently. The most important resource was AGN. It is the archive of Navarre 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. In the context of Euskadi, three main archival sources were identified for data collection. In Araba-Álava, the *Archivo del Territorio Histórico de Álava* (Archive of the Historical Territory of Álava) (ATHA); in Gipuzkoa, the *Archivo General de Gipuzkoa (General Archive of Gipuzkoa)* (AGG-GAO); and in Biscay, the *Archivo Histórico Foral de Bizkaia (Historical and Foral Archive of Bizkaia)* (AHFB). Although some primary data and descriptions of data held can be accessed online, gathering relevant documentation required working in the archives. Another important source for data was San-Sebastian's library Koldo Mitxelena, which holds relevant historic documentation, some of which is accessible online. 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.

List of Archival Sources

Physical Sources

- Archivo General de Guipúzcoa (AGG-GAO)
- Archivo del Territorio Histórico de Álava (ATHA)
- Archivo Histórico Foral de Bizkaia (AHFB)
- Archivo Real y General de Navarra (AGN)

- Centre for Research Collections, The University of Edinburgh
- Fondo Antiguo, Biblioteca General de Navarra
- Fondo de Reserva, Koldo Mitxelena Kulturenea
- National Library of Scotland

Online Resources

- Badator: Basque Government. http://dokuklik.snae.org/
- Biblioteca Navarra Digital (BINADI):Navarre's government. https://administracionelectronica.navarra.es
- Biblioteca Virtual Del Patrimonio Bibliográfico, Gobierno de España: http://bvpb.mcu.es/
- Biblioteca Virtual Miguel de Cervantes, Fundación Biblioteca Virtual Miguel de Cervantes. http://www.cervantesvirtual.com/
- Bibliothèque Nationale de France, French government: http://www.bnf.fr
- Boletín Oficial del Estado, Gobierno de España. http://www.boe.es/
- Europeana: National Library of the Netherlands. http://www.europeana.eu/portal
- Galiciana, Xunta de Galicia: http://galiciana.bibliotecadegalicia.xunta.es
- Google Books: https://books.google.com/
- Hathi Trust Digital Library, University of Michigan: http://www.hathitrust.org/home
- Hispana: Gobierno de España. http://hispana.mcu.es/
- Koldo Mitxelena Kulturenea. http://www.kmliburutegia.net/
- Memoria Digital Vasca-Euskal Memoria Digitala, Fundación Sancho el Sabio: http://www.memoriadigitalvasca.es/
- Minerva, Repositorio Institucional de la Universidad de Santiago de Compostela: http://dspace.usc.es
- The Internet Archive (nonprofit organization): https://archive.org/

Validity in Comparative Historical Research

Empiricism has become the key methodological way to validate scholarly research. In historical research, validity traditionally has been linked to research that closely follows primary sources (Haupt and Kocka 2004: 25). Peter Burke (1991) portrayed the discipline's traditional paradigm as essentially positivist, operating under the presumption that its subject of study was politics and that politics took place in the state (3–6). This entangled validity in historical research with the study of politics in the context of the state. However, during the last few decades, new approaches and interests have emerged in the study of history (1). A consequence of this has been that history has been untangled from politics and the state, which has led to a problem of sources and methods (12). Such novel historical perspectives have raised significant methodological concerns, leading to new needs to justify research design in historical research (Cohen and O'Connor 2004: x).

Comparative historical research produces its own particular tensions and contradictions with traditional tendencies to validate research in historical scholarship. Haupt and Kocka (2004: 25) 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." 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 (25). Haupt and Kocka argue that both the "risks" as well as the "benefits" generated by comparative historical research should be recognized, and they propose minimizing risks by selecting the smallest possible number of cases to compare, two often being selected by comparative researchers (26). The benefits of making a comparative historical analysis include making researchers more aware and reflective about the selected cases and the meanings of these choices. Contrasting 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" (30). Michael Mann (1993: ix) has used the notion of

the "zigzag" method to refer to the need to combine the analysis of primary data with the study of secondary literature. The validity of this investigation does not rely solely on the collection of valid data from appropriate sources, but also on the approach employed to interpret and relate the collected data.

Structure of the Book

The book is divided into nine chapters, including the introduction and the conclusion. This introductory chapter presents the investigation, maps the methodology, and summarizes the contents of the book. Chapter 2 sketches the traditional historical narrative of the state of Spain within which the emergence of the Basque-Spanish conflict tends to be articulated. Generally, the relations of Vascongadas and Navarre are thought to have been amicable and collaborative with state authorities during the height of the Spanish Empire, a situation that would change most notoriously during the nineteenth century, as the Ancient Regime was being dismantled and industrialization developed. At the turn of the twentieth century, the Basque-Spanish nationalist conflict emerged. The chapter argues that traditional narratives of the history of Spain generally overlook jurisdictional conflicts that tend to be misinterpreted.

An alternative theoretical approach is articulated in Chaps. 3 and 4. The first of these engages with one of the central debates in the study of nationalism, that debating the modernity or antiquity of nations and nationalism. The political dimension and the role played by theories of modernization to legitimize or delegitimize nationalist claims are highlighted. I further argue that modernist interpretations of nationalism are influenced by a normative concept of law contained in the theories of modernization. This shapes the analytical framework from which the meaning of political action is interpreted in historical research. The prevalence of this concept of law, and how it influences sociological and political analyses, is explored in definitions of key terms, such as absolutism and constitutionalism, and in the justification of regime change proposed in the French Revolution. It is argued that such a legal presumption contributes to naturalize the entity of the state, which is linked

to the prevalence of "methodological nationalism" (Chernilo 2006). The critical outlook does not attempt to validate the definitions of nationalism made from perennialism, primordialism, or ethnosymbolism; it tries instead to highlight the necessity of developing an alternative approach to make sense of the historical continuities in jurisdictional views and conflicts, continuities that generally are dismissed from modernist conceptions.

Chapter 4 argues that the definition of law proposed by legal positivism, as it also ignores meanings of some jurisdictional disputes up to the nineteenth century, similarly leads toward methodological nationalism. Again, a definition of law reduces considerably the meanings that can be granted to political action. Legal realism and legal pluralism are proposed as alternative approaches to develop a more nuanced, empirical, and critical understanding of the relationship between social and legal theories. A brief overview of legal realism brings to the fore its main features, and the work of Harold J. Berman (1983) illustrates how such a perspective can have an effect on concepts of society. Legal pluralism is introduced as a different yet converging perspective. I reject tendencies to define law around the entity of the state and focus on authors such as Lauren Benton (2002), whose work provides an alternative analytical context to study the meanings of legal disputes.

Chapter 5 argues that defining Carlism has been a controversial matter since the First Carlist War and that definitions of law generally have had pivotal roles in interpreting the First Carlist War. Why the populations of Vascongadas and Navarre supported the Carlist cause has been a matter of academic and political debate ever since the 1830s. The centrality that interpreting law had in influencing concepts of the war, the state, and the wider European political and ideological context came to the fore in a British political debate that took place in 1837 between interests of the Whig government and those of the Tory opposition. The analysis shows how central understanding the law already was at the time for interpreting the state as a kind of legal organization. It also suggests the extent to which different approaches to understanding legal orders influenced interpretations of social realities that acquired nationalist connotations 50 years before the Basque-Spanish nationalist conflict began. Nonetheless, the fueros were defended not only by Carlists but also by the liberals from

Navarre and Vascongadas who negotiated foral reform with state authorities after the peace treaty. The need to differentiate between *carlismo* and *fuerismo* (fuerism, a term used to signify positive regard toward the fueros) can be seen. The latter emerges as a valid concept to denote a positive regard toward the fueros that cuts across the left-right political spectrum (historically at least, though there surely exist exceptions).

Chapter 6 studies the evolution of the Deputation of Navarre between 1841 and 1936. The evolution of the administration is sketched through pay slips, budgets, and reports. Two structural features of the administration are considered to have been influential in the decision-making processes of the institution: (1) the extent to which the electoral system and the work of the Department of Secretary constrained the capacity of any political party as well as any deputy to govern following a particular ideology; and (2) the resilience of decentralized administrative practices, which influenced not only established procedures within the administration but also how some political crises were resolved. These structural features generally were associated with and defended in relation to the fueros.

Chapter 7 examines the processes by which the Concierto Economico (Economic Agreement), the legal framework that would replace that of the fueros, was created in Vascongadas between 1876 and 1936. The analysis focuses on the approaches by which the agreement was conceived and negotiated. It is argued that beneath conceptions and legal definitions of what Euskadi is lie traditional political practices that are evident in cooperative jurisdictional behaviors. Two rather opposing dynamics are identified as important in this regard: First is the variety of existing jurisdictions, their legally recognized powers, and the interest generated around them. Second is dynamics of systematic cooperation between jurisdictions, which can be related partly to commonly held values and interests and partly to a strategy of strengthening their position in their negotiations with state authorities.

Chapter 8 examines the legal conceptions contained in Navarrism and Basque nationalism, the modern identities that would become most popular in Navarre and Euskadi during the twentieth century. The chapter largely focuses on two referential figures, Sabino Arana and Victor Pradera. It shows the importance that interpretations of law had in their

ideas and how those interpretations influenced their conceptions of legitimacy and sovereignty in relation to the state. The analysis suggests that the traditional interpretation of law dominant in Navarre and Euskadi during the nineteenth century underlies and shapes the modern national identities that have become most popular in these territories.

Chapter 9, the concluding chapter, argues that an interdisciplinary perspective combining a modernist approach with legal realism and pluralism allows an analysis of social action that can consider a broader set of factors. Incorporating a critical and empirical understanding of law produces a novel way of thinking about nationalism, which alters how the issue of legitimacy is analyzed. The salient position that states have in today's legal order is the outcome of a history that includes not only a struggle between progressives and conservatives but also jurisdictional disputes over the nature of law and legitimate political power. Clashes between people defending different concepts of the state, and justifying them differently, existed before nationalism. In Vascongadas and Navarre, the state's legal order and jurisdictional relations were interpreted in relation to a more complex analytical setting, which included traditional meanings of jurisdictional relations and debates about the nature of law.

Note

1. "*1808 es para España lo que 1789 fue para Francia*."

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2

The Basque-Spanish Nationalist Conflict

The formation of the Basque-Spanish nationalist conflict can be studied in relation to different "national" contexts, including the French, Basque, and Spanish. Given the characteristics of this study, this chapter contextualizes it within the history of the state of Spain. It is the setting in which the Basque-Spanish nationalist conflict emerged and one in which the meanings of political action have been interpreted in relation to state politics. The narrative aims at providing an image of how the emergence of the nationalist conflict tends to be understood within the history of the state of Spain, to show the historical continuities that modernist perspectives have problems explaining, and to bring to the fore the importance of conceptions of law to interpret historical evidence.

Conventional Narratives of the State of Spain

Different historical epochs have been proposed to locate the beginning of the history of Spain. Roughly up until the nineteenth century, historical narratives usually began with characters or tales from the Old Testament;

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since the nineteenth century, more scientific approaches tended to start with the prehistory of the Iberian Peninsula (Tarradell 1982: 49). More recently, it has been argued that prehistorical peoples and social structures cannot be understood as part of the history of the modern state of Spain, and it has become popular to locate the origins of Spain in the Roman Empire. Tarradell (1982): 50) does so, for example, as does Raymond Carr (2000: 6), who states that "[t]he imposition of Roman rule over most of Spain created the notion of Hispania as a single political entity." However, as emphasized by Ansón (2005: 15), it has also been argued that the origins of the modern state of Spain cannot be traced so far back and that it had to be placed in 711, which has led to debates about the origins of the modern state of Spain.

Be this as it may, we can distinguish between a time before and a time after the Muslim presence in the Iberian Peninsula. The Muslims occupied the peninsula in the early eighth century, quickly and without significant resistance (Montero and Roig 2005: 41). The successful effort led them to gain control of "'most of the Peninsula, saving only the refugee Christian principalities in the north" (Fletcher 2000: 64). Muslim rule remained rather stable until the tenth century. Then Al-Andalus, center of Muslim power in the Iberian Peninsula, broke ties with the rest of the Muslim world (Montero and Roig 2005: 42). At the same time, the Catholic inhabitants of the north of the peninsula were gaining in strength and trying to conquer some northern territories. The setting would dramatically change in the thirteenth century. In a crucial battle in Navas de Tolosa in 1212, Alfonso VIII of Castile defeated the Muslim army. "In its aftermath a great push by the three main Christian kingdoms had by 1250 reduced Islamic dominion in Spain to the Emirate of Granada" (Fletcher 2000: 80).

The period between the eighth and the thirteenth centuries is normally referred to as the Reconquista (reconquest), which has been historically conceived as a Catholic crusade to conquer the Muslim territories of the Iberian Peninsula. It is a time that "has traditionally been a cherished feature of the self-image of the Spanish people" (Fletcher 2000: 63). During this period, the social structures associated with the history of the state of Spain were created or consolidated. However, jurisdictional

power and relations emerged without much resemblance to the legal order or jurisdictional hierarchies of the modern state of Spain. In the eleventh century, for instance, Sancho III Garcés (992–1035), King of Pamplona (which would later 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 Vascongadas during the tenth, eleventh, and twelfth centuries (García-Sanz et al. 2002: 27), when it lost jurisdiction to Castile. In 1469 a key event, the marriage between Isabel and Fernando, sovereigns of the Kingdoms of Castile and Aragón, respectively, turned their united kingdoms into the strongest monarchy on the peninsula. This event has been thought to be foundational for the creation of the Spanish monarchy. "Their marriage helped to germinate the origin of Spain as a unit. It meant at the same time the end of feudalism and the establishment of a central power, crystallizing the unity of all the kingdoms of Spain under the governance of the same persons (Montero and Roig 2005: 51, my translation[1]).

The alliance of the two kingdoms made them the strongest peninsular state, enabling them to conquer the remaining Iberian territories: the still-Muslim Kingdom of Granada in 1492, the peninsular part of that of Navarre in 1512, and Portugal in 1580. The "discovery" of America in 1492 and the colonial expansion of the Spanish Empire that followed turned it into the most powerful state of the time. The Spanish Empire maintained its strength throughout the sixteenth, seventeenth, and eighteenth centuries, though visibly declining throughout the latter. By the nineteenth century, the once-mighty Spanish Empire came "'to be considered by the diplomats and statesmen who gathered in Paris in 1814, as⋯a second-class nation" (Carr 2000: 1).

The territories of Navarre and Vascongadas, with their legal, cultural and political idiosyncrasies, participated in the events and processes associated with the Spanish Empire. They took part in the Reconquista, and they actively participated in the colonial enterprises. They thus benefited from the commercial and financial opportunities produced by the empire as well as from the military and administrative careers available within the

structures of the state. At the same time, the jurisdictional disputes over legitimacy were not always associated with being, or not being, Basque or Spanish. Opposition to the state's centralizing practices did not necessarily include a wish to be independent, nor did this always lead to the united action of all the territories traditionally considered to be Basque. Additionally, during the twentieth century, Navarre's political representatives 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 Pradera Larumbe (1873–1936), considered Navarre as Basque (Yanguas 1832: 1; Pradera 1917: 26).

At the turn of the nineteenth century, the situation of the state of Spain dramatically changed. From being a conqueror, the state of Spain was being threatened with being conquered by France. A first attempt led to the War of the Pyrenees (1793–1795) and a second one to the Peninsular War (1808–1814). It was during this latter war that the first Spanish constitutions to replace the absolutist state were drafted. The first one was proposed by France in 1808 to modernize the Spain, which France dominated at that particular time. The second one was drafted by a liberal movement formed in the state of Spain during the war. It organized a "national" political assembly and produced the Constitution of 1812, which is generally considered to be the first proper Spanish constitution. In Spanish historiography, the Peninsular War is known as the War of Independence, and it is normally associated with the emergence of a modern concept of the Spanish nation (Moreno Alonso 2010: 12).

The origins of Spanish nationalism are often portrayed as civic because it is assumed that like-minded progressive social actors similarly considered state authority as the taken-for-granted, adequate authority to link with legitimate social authority and the citizens of the state as sovereign. The rise of other kinds of Spanish nationalisms, such as that of the fascist dictatorship, is linked to later historical developments (Álvarez-Junco 2001). Again with their legal and cultural idiosyncrasies, attitudes in Navarre and Vascongadas during these events seemed not to be significantly different from those of the populations in other parts of the state. This similarity contributed to an impression of unity among the

populations of the state of Spain in their national sentiments. In 1814, with the French beaten and the war over, the king returned from exile and the constitution was abolished. From this moment onward, and at least until the end of the First Carlist War (1833–1840), the meaning of political action tends to be understood as a confrontation between liberal constitutionalists and Catholic absolutists. The term "liberal" in association with constitutionalism started to be openly used in Spanish politics (Fawcett 2014: 7). Liberals managed to regain control of the state in 1820, and they reestablished 1812's constitution. The king managed to obtain international aid and recover sovereignty in 1823, again abolishing the constitution. The death of the king in 1833 led to a dynastic dispute that became associated with a struggle between liberals and absolutists. The liberal victory in 1840 enabled the consolidation of constitutionalism. Normally, good part of nineteenth century's political history is associated with phasing out the Ancient Regime:

> 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, seigneurial 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 considered the time when there arose "the definitive consolidation of a political system controlled by the middle classes" (Cruz 2000: 33). In this context, Navarre and Vascongadas are normally seen as some of the more conservative, religious, and antirevolutionary territories (Vincent 2007: 10). In 1876 a new epoch started, one in which the state of Spain modernized (Vincent 2007: 52). It is known as the Restoration and lasted until 1923 (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 and Moreno-Luzón 2000: 98). The pact was

designed to replace the political instability that had characterized state politics between 1808 and 1874, which involved military action and revolution (Fontana 2007: 433–434). Despite the electoral corruption that was generated, the political system created was, "on paper, one of the most democratic polities in Europe" (Carr 2000: 223):

> 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 and Moreno-Luzón 2000: 109)

It was indeed after 1876 that the political parties representing modern ideologies and identities were created. The Partido Socialista Obrero Español (Spanish Socialist Workers' Party, from now on 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 (General Union of Workers) took place (García Venero 1979: 259–260). In Biscay, Sabino de Arana y Goiri created the Basque Nationalist Party in 1895 (Elorza 2001: 181), which would be established in Gipuzkoa in 1908 and in Araba-Álava and Navarre in 1911 (EAJ-PNV 2014). Arana's Basque nationalism is usually portrayed as a racist, religious, and conservative reaction to the social changes and new migratory routes produced by the rapid industrialization of Biscay. In 1901 Catalan nationalism was articulated in a political party—the Liga Regionalista (Regionalist League of Catalonia) (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, and the telegram were implemented; banks and financial institutions established; and an increasing number of political, civic, cultural, and recreational associations were created in villages, towns, and cities as the freedoms of press and association were consolidated. If one supports Pérez-Díaz's (1998: 220–221) definition of "civil society" as "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," one can associate that period in the history of the state with the emergence of a modern civil society. Disputes between constitutionalists and traditionalists, progressives and conservatives entered the twentieth century, but the disputes were permeated with modern ideas and social projects.

Theories of modernization normally suggest that the meanings of political action changed once the Ancient Regime was replaced and industrial capitalist democracies produced novel social contexts, classes, interests, and ideas. Supporting this hypothesis, there are sharp differences in the wars produced by state politics during the nineteenth and twentieth centuries. Four wars, three in the nineteenth century (1833–1840; 1846–1849; 1872–1876) and one in the twentieth (1936–1939), were the result of state political differences. The Carlist wars of the nineteenth century originated in, or involved, dynastic claims to legitimacy to rule. In contrast, the twentieth-century civil war was ultimately a war between a republic and a military coup. Although the constitutional versus authoritarian dichotomy was still present, the legitimizing references in which war took place had changed. Moreover, the changes in the legitimizing references correlated with changes in war patterns. The social, political, and military action that most especially supported Carlism between 1833 and 1876 was roughly located in the same geographical locations: Navarre, Euskadi, Catalonia, Aragón, and Baleares (Carr 2000: 205; García de Cortazar 2005: 409, 431, 433; Vincent 2007: 12). The localized character of Carlism during the nineteenth century until 1876 would not reemerge in 1936.

Continuities in Jurisdictional Conflict

Historical research conducted from the aforementioned framework often leads to findings that are paradoxical or contradictory. At the center of this problematic stands law. The elaboration of a more accurate explanation for the history of Spain seems to require paying more attention to the legal and political fragmentation of the state (Carr 2000; Vincent 2007). In Carr's (2000: 7) words:

> The Catholic Kings, Ferdinand and Isabella, did not create, as we used to learn at school, a modern nation state. The union of the crowns of Castile and Aragón was a personal union created by their marriage in 1469; the Spain of the Catholic Kings was a federal monarchy in which the obedience was conditional on the personal prestige of the monarchs and their respect for the *fueros*, the local constitutions which gave the constituents parts of the federation, in particular the Basque Provinces and the lands of the crown of Aragón which included Catalonia and Valencia, a quasi-independent status with their own Cortes or local parliaments.

Carr (2000: 7) sees a continuity in the traditional defense made in Basque and Catalan territories of their "lost local liberties" and the emergence of "modern nationalist movements based on the defense of their non-Castilian language and demanding home rule" (7). Mary Vincent (2007) has argued that issues of legitimacy need to be emphasized in order to better understand the history of the liberal project in the state of Spain. She considers it to be key to explaining the importance of political violence and believes that it carries significance regarding how the state of Spain should be conceptualized (Vincent 2007: 2).

The term *fuero* comes from the Latin term "*forum*," and among the different meanings attributed to it 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. Different types of fueros have existed, including personal, municipal, provincial, monarchical, military, and ecclesiastic ones (Galán Lorda 2009: 20–22). From a legal positivist position, fueros are normally understood as privileges granted by the sovereign state, privileges that the state can abolish at its will (e.g., Floristan Imizcoz 1994 in García-Sanz et al. 2002: 32). From the normative understanding of law endorsed in theories of modernization, fueros are preconstitutional, historicist, and unjustified bodies of law that are to be replaced by modern, rational, and justified laws. In contrast stands the traditional interpretation of fueros held in Navarre and Vascongadas. A recent definition by Galán Lorda (2009) may illustrate some of the understandings associated with this word:

> Each locality, small or large, and even certain groups or people, had their *fuero*, their legal regime or own regulations. At that time, the term fueros had the same sense than to speak nowadays of *constitutions* or *codes*, that is to say, the texts that collected a community's own rules (Galán Lorda 2009: 24; her own emphasis; my translation[2]).

Neither fueros nor differences between institutions and authorities in exercising types and degrees of social powers were exceptions to the state's legal and jurisdictional features; they were the norm. There was a common legal formula used to establish jurisdictional relations, a formula in which social actors recognized each other and established the terms that defined their relationship. Without disregarding the importance of how jurisdictional relations might have started, conquest or voluntary annexation being usually disputed, I want to direct the focus to the conditions under which each jurisdiction accepted or had to accept the created legal relationships. It was in the negotiation and establishment of these conditions that the legitimacy of particular social authorities was founded and their legal, administrative, and political powers were defined. Although potentially motivated by a variety of factors, throughout history jurisdictional authorities have often defended their legitimacy to exercise types and degrees of social powers. These disputes have involved legal, political, and ideological debates over the legitimacy of different institutions and authorities and their ranges of legislative and executive powers, for example, 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; and to decide what institution and/or authority would govern, where, and over whom.

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 Vascongadas and Navarre. The first documentary sources noting the jurisdictional existence of Navarre, Araba-Álava, Biscay Gipuzkoa, and Castile are from around the ninth century. Miguel Artola (1999) finds, for instance, documentary 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 disassociated origin of jurisdictional existence already

mentioned. Artola (1999) stated that "it is known that Araba-Álava, Biscay, Alaone, and Orduña have always been held by their inhabitants" (176; my translation[3]).

The jurisdictions identified in such an early period would evolve toward the legal and institutional features that have characterized these territories until modernity. Some of these features were roughly present in publications of fueros made during 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 that time, 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 fueros resulted in rebellions: in Vascongadas 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. (2002: 30) note a possible secessionist movement in Navarre in the 1640s. Similarly, Artola (1999) argues that "[t]he frequent and important conflicts, were always between the kingdoms and the Crown—the communities of Castile, the secession of the Low Countries and of Portugal, the failed insurgencies of Catalonia, the riots of Aragón and Naples" (37; my translation[4]).

However, it was in the eighteenth century when the legal disputes between the monarchical government and the jurisdictional authorities of Navarre and Vascongadas gained notoriety. The location of these territories' custom posts became an important issue. Traditionally, these had been along Navarre's and Vascongadas's boundaries with other regions within the state of Spain. State authorities wanted to move them to Vascongadas's and Navarre's boundaries with France, and so they did 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 eighteenth century, the foral regimes (from "fuero," the social regimes they created) of Vascongadas and Navarre were 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 attitudes displayed in these territories 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). In addition, in 1794, the jurisdictional authorities of Gipuzkoa approved the abandonment of the Spanish absolutist state and negotiated with French authorities to become part of the French republic (Monreal Zia 2009: 256). State authorities reacted to these events with 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* (Historical News of the three Basque Provinces), "published in three volumes in 1805 and 1806" (Monreal Zia 2005: 20). Another text directed to the same objective was the *Diccionario Geográfico-Histórico de España* (Spanish Geographic-Historical Dictionary) (1802) (Pérez Núñez 1996: 36). Intellectuals, historians, and politicians from Navarre and Vascongadas, such as Miguel y Astarloa, Francisco Aranguren y Sobrado, Juan Antonio de Zamácola, and Pedro Novia Salcedo, challenged the narratives promoted by the state and questioned the legitimacy of monarchical claims to sovereignty (Basurto Larrañaga 1986: 665; Jimeno Aranguren and Tamayo Salaberria 2005: 33). Fernández Sebastián (1990), for instance, states that Aranguren argued that 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" (Fernández Sebastián 1990: 81; his emphasis, my translation[5]).

In the context of the state of Spain, Navarre and Vascongadas probably entered the nineteenth century as the strongest jurisdictional entities able to resist state centralization. The legal position of Navarre in relation to the state can be described to be between that of Aragón, which had lost its fueros, not without complaint and resistance, between 1707 and 1714 (López de Mendoza 1882: 365), and that of Portugal, which had ended its union with the state of Spain in 1640. Navarre entered the nineteenth century with its own status, institutions, legislative powers, body of law, tribunals, boundaries, currency, and veto to royal law. The legal position of the jurisdictions forming Vascongadas 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 position undermined royal claims to absolute power and disempowered the absolutist monarchy's centralizing projects. It also, given state authority's decision to exclude Vascongadas and Navarre from the economic market of Spain, led to increasing problems for them in accessing economic markets.

The arrival of constitutionalism in the early nineteenth century did not bring such jurisdictional disputes to an end. The jurisdictional representatives sent by Navarre and Vascongadas to Bayonne in 1808 to discuss and approve the constitution for Spain drafted by the 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. 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 Vascongadas and Navarre and which has been described as signifying "'more than anything else the triumph of Liberalism over the ncient egime" (Mina Apat 1990: 89; my translation[6]), 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 followed similar jurisdictionally structured political practices in the way they related toward each other and toward state authorities and in their defense of the principles associated with the fueros. Some social actors displayed different degrees of willingness to reform parts of the fueros, such as a political class in Navarre that negotiated a deep legal and institutional reform. Nonetheless, the willingness to reform included a desire 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 Vascongadas attempted to avoid making the reforms demanded by the state government. Vascongadas's authorities, facing the biggest pressure to reform, negotiated the 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; a system which grants 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 2014). In 1937, the alliance of Navarre's authorities with the military coup led the military state government to recognize its foral regime; Araba-Álava's "privileges" were also granted, albeit "with less enthusiasm" (Mina Apat 1990: 105). In the reestablishment of democracy following 1975, fueros were again successfully 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, nor to the jurisdictional disputes formed around the different interests of the authorities of the state of Spain and those of Navarre and Vascongadas. To different degrees at different times in history, and regardless of the enthusiasm with which jurisdictional authorities recognized the jurisdictional rights of each institution and authority, legal disputes between jurisdictional authorities have periodically reemerged.

Notes

1. *"Su matrimonio sirvió para germinar el origen de España como unidad. Significó a su vez el final del feudalism y el establecimiento de un poder central, cristalizando la unidad de todos los reinos de España bajo el gobierno de las mismas personas."*
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.*
3. *se sabe que Álava, Vizcaya, Alaone y Orduña han estado siempre en poder de sus habitantes.*
4. *Los conflictos, frecuentes e importantes, fueros 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.*

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 protectiva, no absoluta, sobre los vizcaínos*.
6. *El Convenio de Vergara, que significó ante todo el triunfo del liberalismo sobre el antiguo régimen*.

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3

A Legal Presumption in Modernist Interpretations of Nationalism

Nationalism has been a dominant force in modern industrial societies (Hutchinson and Smith 1994; Özkirimli 2000: 1; Delanty 2003: 2873); Delanty and O'Mahoney 2002: ix). In contrast to this central significance, the study of nationalism has been largely neglected in the social sciences until relatively recently (Özkirimli 2000: 1; Delanty and O'Mahony 2002: ix). The marginal position that the study of nationalism has had in modern sociology has been linked to the lack of interest in the topic in the classical sociology of key authors, such as Weber and Durkheim (Delanty 2003: 288). Generally, up until "1918 the study of nationalism was closely linked to the formation of nation states and of a historical profession. Nationalism was regarded as a component of national history rather than as a distinct subject" (Breuilly 2008: xvi).

Özkirimli proposes to distinguish between four stages in the history of the scholarly study of nationalism. During the eighteenth and nineteenth centuries, the notion of nationalism was formed; between 1918 and 1945, the subject attracted some academic interest; between 1945 and 1980,

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the topic gained popularity in sociology and political science; and since then, the classical understandings of nationalism have been scrutinized (Özkirimli 2000: 15). The latter part of the twentieth century often has been highlighted as a time in which the academic interest in nationalism grew and diversified (Guibernau and Hutchinson 2001: 1; Delanty and Kumar 2006: 1). The many forms that nationalism can take, and the wide number of disciplines and approaches from which it can be studied, have been argued to pose significant problems in the study of nationalism (Hutchinson and Smith 1994: 3–5). Nations and nationalism have passed from being a taken-for granted notion associated with the histories of modern nation-states to be at the center of a debate that taps into and scrutinizes core scholarly concepts in social science, such as culture, society, the state, and modernity. To this day, "the concept of the nation continues to pose analytical problems to social scientist" (Dannreuther and Kennedy 2007: 12). Some scholars claim that the subject is one of the most complicated and challenging themes of modernity (Chernilo 2006: 129; Smith 2010: 10).

This chapter engages with one of the central debates in the study of nationalism, that of debating the modernity or antiquity of nations and nationalism. From modernist perspectives, it is generally argued that nationalisms emerged in Europe from the late eighteenth century onward following the social transformations produced by the scientific and industrial revolutions. Three perspectives can be distinguished from which the antiquity of nationalism is defended: perennialism, primordialism, and ethnosymbolism. They differ in that they link national sentiments to different factors. The debate between modernist and primordialism (as it is sometimes framed) has been argued to have at its core "the question of the degree to which modern nation constructions are dependent on real rather than imagined historical experiences of nationhood" (Delanty and O'Mahony 2002: 83). If these historical experiences are real, nationalist political claims can be considered to have some validity, and their legitimacy is linked to notions of culture or ethnicity. If the experiences are imagined, nationalist political claims are not given much validity, and they connect legitimacy to a concept of law contained in theories of modernization.

The Antiquity of Nationalism

Three perspectives—perennialism, primordialism, and ethnosymbolism—maintain that nationalism has ancient origins. According to Özkirimli (2000: 64), primordialism was the first dominant paradigm to understand nations and nationalism. Its primacy lasted until the second half of the twentieth century, when it lost ground in favor of modernism. Nonetheless, the label "primordialism" was not used until 1957 (Özkirimli 2000: 65). Rather than a theory, it can be better thought of as "a related family of concerns and approaches" (Hearn 2006: 20). The nation tends to be regarded as "a primordial element of nature, and intrinsic to the human condition" (Smith 2001: 10); and it is often negatively associated with "the sins of naturalism, essentialism and retrospective nationalism" (Smith 2009: 8).

In contrast to primordialism, perennialism proposes an empirical and historical approach to understanding nationalism (Smith 2001: 10). It does not link national identity to quasi-biological factors that cannot be sociologically explained. However, Smith argues that the dominant understanding of nationalism up to the mid-twentieth century was not only primordial but also perennial, because it was thought "that nations, like races, were given in nature and therefore perennial and primordial" (Smith 2009: 3). From such perspectives, not only the existence of national identity is naturalized, but it is also considered a key factor shaping modern European history. The notion of national identity, far from being conceived as alien to the process, is seen as a key factor making possible the formation of a modern international state system. The origin of this idea has conventionally been linked to one historical event, the Peace of Westphalia (Lessafer 2004; Neff 2006; Fabry 2010). The peace has been conventionally considered 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).

Ethnosymbolism has emerged as an alternative perspective that argues for the premodern origins of nationalism. It was put forward in the 1980s by John Armstrong and Anthony Smith (Hutchinson 2000: 660). According to Smith (2009: 1), it does not pretend to be a scientific

theory: The perspective aims instead at providing "a social and cultural understanding of nations and nationalism, and the emphasis on culture stems, in large part, from the perceived need to supplement modernist approaches that focus on political and economic factors" (129). The formation of nationalisms during modernity is not related only to socio-economic or administrative factors but also to ethnic and cultural. Smith (1981) argued that the cultural revival that took place during the second half of the twentieth century was a reaction by ethnic communities to the possibilities offered by the concept of nationalism. Rather than discrediting their political ambitions, Smith interpreted them as a sociological reaction of communities often isolated, or politically excluded, which found in nationalism a concept to become "active, participant and self-conscious in their historic identities" (24). Despite their modernity, nationalist movements originate in "deeper" sociological roots from what they normally were granted. Nationalist political claims are linked to the political utility perceived by cultural communities to articulate their rights to be empowered.

The latter part of the twentieth century developed two contrasting tendencies towards nationalism. Whilst it regained political importance in Europe, central concepts to the notion of nationalism, such as culture or identity, were revised and widely criticised in academia. It is perhaps due to this theoretical turn in social science that modernism has become the most popular way to understand nationalism (Smith 2010: 50–53), although the debate between modernist and ethnosymbolists continues (Ichijo 2013: 1). The concepts of culture and identity, so closely related to that of nationalism, have been similarly scrutinized (e.g., Somers 1994; Brubaker and Cooper 2000 regarding identity; Whiteley 2003 regarding culture). It was in the 1980s when the notion of culture started to be challenged in social and cultural anthropology and its usefulness questioned. Scholars began to argue that the idea of culture was not empirically supported and that it responded to a particular historical time (Wolf 1982 in Spencer 1990). Richard Handler's (1985) work on Quebecois nationalism was influential in raising awareness about the political implications of academic representations based on the concept of "culture," around which nationalists based their claims. Jean Jackson (1995) showed how indigenous communities in Colombia constructed their "cultures" based on the

western concept of culture in order to empower their positions and interests. She in fact offers a great description showing how the notion of "culture" was understood and how it is being reconceptualized:

> [The] conventional concept of culture [is] based on a quasibiological analogy in which a group of people are seen as "having" or "possessing" a culture somewhat in the way an animal species has fur or claws. In addition, people are thought to acquire culture slowly, during their childhoods, as part of their development. The culture they acquire existed before them and will be their legacy; they neither create nor invent it. Although culture is understood to change over time, this is a gradual process; rapid change is described as acculturation, with one group losing some of its culture⋯If, however, we see culture as something dynamic, something that people use to adapt to changing social conditions—and as something that is adapted in turn—we have a more serviceable sense of how culture operates over time, particularly in situations demanding rapid change. It is helpful sometimes to see culture as less like an animal's fur and more like a jazz musician's repertoire: the individual pieces come out of a tradition, but improvisation always occurs. (18)

The validity that should be given to political projects based on notions of culture or identity was at the center of the debate. Iris Jean-Klein (2001: 84) noted that anthropologists had become increasingly aware of the extent to which their "studies colluded with reprehensible political projects, as the model of 'culture' employed in the discipline played directly into the hands of contemporary nationalist representation."

Like the concept of culture, the concept of identity has suffered similar transformations. Margaret R. Somers (1994), for instance, argues that "to avoid the hazards of rigidifying aspects of identity into a misleading categorical entity is to incorporate into the core conception of identity the categorically destabilizing dimensions of *time, space and relationality*" (606; her emphasis). Identity is seen as changing, dynamic, and constructed; it is political and instrumental rather than natural or inevitable. Behind an identity there is not a particular way of being. It has been argued that identity "is a matter of claims, not character; persona, not personality; and representation, not self" (Ybema et al. 2009: 306). Identity is not something that is ever achieved (Brubaker and Cooper 2000);

it needs to be continuously performed and enacted (Ybema et al. 2009). Identities are constructed within particular social contexts and in relation to other existing identities. This is because identities are not formed in isolation but instead through the interaction of different social agents in social life: "it seems that an intrinsic part of the process by which we come to understand who *we* are is intimately connected to notions of who we are *not*" (Ybema et al. 2009: 306, his emphasis). Identities are co-constructed, generated in the dialogue between different social agents who negotiate who they are and who they are not in relation to each other. The study of the construction of collective national identity requires the study of the social context in which the existing national identities are together constructed in relation to each other.

These theoretical developments have made it problematic to maintain the claim that ethnic ties produce shared understandings that motivate united social action. Culture has come to be understood as a battleground for power. The emerging understandings have affected not only how researchers write about these concepts, but it has also raised serious questions about the extent to which linguistic, ethnic, or cultural features can be associated with a factor creating shared views and actions. It thus becomes problematic to link historical continuities to notions of ethnicity or national identity.

The Modernity of Nationalism

The modernist approach was formed after World War II partly as a reaction to the racist and nationalistic ideas driving the Holocaust (Smith 2009: 4). Modernists reinterpreted nationalism by disentangling political legitimacy from ethnic and racial factors. The old idea that national identities had played a key role in the formation of European states and a modern international state system was rejected, and national identity was no longer considered to be a natural or almost inevitable characteristic of the human condition. Instead, nationalism was thought to be a product of modernity, having mostly emerged during the

nineteenth and twentieth centuries (Özkirimli 2000: 85). The reference for modernity tended to be the Enlightenment rather than the Renaissance:

> From the modernist perspective, nations are outgrowths of modernization or rationalization as exemplified in the rise of the bureaucratic state, industrial economy, and secular concepts of human autonomy. The premodern world of heterogeneous political formations (of empire, city-state, theocratic territories) legitimated by dynastic and religious principles, marked by linguistic and cultural diversity, fluid or disaggregated territorial boundaries, and enduring social and regional stratifications, putatively disappears in favour of a world of nation-states. (Hutchinson 2000: 652)

However, other than the modernity of nationalism, there is little agreement as to which of the changes that brought about modernity was the cause of the emergence of nationalism (Hechter 2001: 3). Jonathan Hearn (2006: 67–94) has identified three main themes within modernism: the economy and industrialism; politics (the modern state); and mass culture (language and education). Although the themes generally are combined, each emphasizes a different factor to link to the emergence of nationalism. The work of Ernest Gellener (1983), John Breuilly (1993), and Benedict Anderson (1983) illustrate the different emphases placed on these approaches.

To Gellner (1983: 1), nationalism was primarily a "political principle, which holds that the political and the national unit should be congruent." The modernity of nationalism was related to the social changes that turned agrarian societies into industrial ones. There was a gap in agrarian societies between a high-cultured minority exercising power and a disempowered and uncultured food-producing majority. Culture itself was associated with religion, and the food-producing majority "were tied to a faith and church rather than to a state and pervasive culture" (Gellner 1983: 141). This vertical social hierarchy and the connection between culture and religion impeded the existence of a communal national identity. In industrial society, by contrast, high culture is no longer linked to religion, and it is made available to larger parts of the population, as they need to learn the knowledge necessary to labor in more complex industrial economies.

Industrial society relies on a "growth-bound economy dependent on cognitive renovation" (141). The cultural and sociological references are shifted from religion and the church to the particular culture of a given social context. "So the culture needs to be sustained as a culture, and not as the carrier of scarcely noticed accompaniment of faith. Society can and does worship itself or its own culture" (141–142). The emergence of nationalism can be linked to the creation of horizontal bonds in the French and American revolutions, which "would replace the vertical hierarchies of the ancient regime" (Esherick et al. 2006: 2).

Key to explaining the emergence of nationalism are the differences between agrarian and industrial societies. Gellner put forward a modernist theory of nationalism that linked the social transformations produced by economic and technological developments to the emergence of national identities. The importance that theories of modernization had in his thought has been noted by John Breuilly, who in the introduction to the second edition of Gellner's *Nations and Nationalism* states that Gellner, to develop his modernist interpretation of nationalism, had to "identify the central feature of modernity," which was articulated in a historical break, "the transition from pre-industrial (usually agrarian) to industrial society" (Breuilly 2008: xxi–xxii). The processes of social upheaval associated with this change were characterized by a neat legal, political, and epistemological distinction. Gellner understood this process of modernization as a clearly defined transition from a social system dominated by "a violent and coercive ruling class, and closed non-cumulative cognitive framework imposed by a self-perpetuating revelation-holding clerisy, to industrial society, characterised by affluence, dynamic and cumulative cognitive growth and the prospect, if not the guarantee, of liberty" (Dannreuther and Kennedy 2007: 340). Nationalism is conceived of as a political doctrine produced in industrial society due to the culturalization of the masses and the utilization of secular cultural references.

The second main theme in modernist theories is the state. It has been argued that Gellner paid little attention to the state (O'Leary 1998 in Hearn 2006: 74). Arguably, Gellner preferred using the term "high culture" than "state," perhaps to void the anachronism of referring to the past with terms and ideas developed later on in history. Nevertheless, Gellner is often associated to a lack of attention to the figure of the state.

In contrast, John Breuilly (1993: 1) is an example of an influential academic who places the emphasis directly in modern politics and the modern state. My purpose here is to highlight the extent to which both Breuilly and Gellner consider nationalism to be modern:

> I do not regard the nation as having a significant pre-modern history, or as a "real" group with an identity and consciousness which produces political effects such as nation-states, or as a discursive construct. Rather I treat the nation as a modern political and ideological formation which developed in close conjunction with the emergence of the modern, territorial, sovereign and participatory state. (Breuilly 2001: 32)

Nationalism is modern, and there are therefore no continuities in nationalist sentiments or conflicts. The emergence and effects of nationalism are to be interpreted solely in relation to modernity. The same is true for the interpretation of the rise of nationalism normally associated with the third main theme noted by Hearn, mass culture. Benedict Anderson (1983: 4) is a key figure in this. To him nationalism was a historical "cultural artefact," which had formed toward the end of the eighteenth century and which had had different meanings. He defined nationalism as "an imagined political community – and imagined as both inherently limited and sovereign" (6). He linked the emergence of nationalism to key cultural changes and to the influence exercised by "the convergence of capitalism and print technology on the fatal diversity of human language [which] created the possibility of a new form of imagined community, which in its basic morphology set the stage for the modern nation" (Anderson 1983: 46). Although these three themes do not exhaust all possible modernist interpretations of nationalism, they serve to illustrate the extent to which modernity exercises an influence in the form of a key historical discontinuity. There was an epoch without nations or nationalisms, then came the Enlightenment, as a symbol of an epistemological shift, triggering a process of transformations, social, legal, political, economic, and technological. There emerged within the transformed society new social classes, issues, contexts, and ideas. Modern industrial states are generally thought to have produced urban and secular contexts within which populations developed new forms of identities,

including national ones. Nationalism is to be explained primarily in this context. It plays a key role in distinguishing two distinct historical epochs that are to be interpreted in relation to contrasting analytical frameworks. The emergence of nations and nationalism is to be understood in relation to a historical discontinuity. There is modernity within which the emergence of nationalism can be studied, and there is a time before, which is to be explained in relation to other factors (Smith 2009: 16). However, Hearn (2006: 106) 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."

A Legal Presumption in Theories of Modernization

Modernist scholars studying nationalism have noted the relevance that theories of modernization have for their theoretical positions (Hearn 2006: 92). I argue that there is a legal presumption contained in theories of modernization that influences the analytical framework from which the modernity of nationalism tends to be understood. This assumption is embedded in the very notion of modernization.

The terms "modernity" and "modernization" are related, yet they have different histories. The term "modernization" started to be used around the eighteenth century and would become an academic term during the twentieth century (He 2012: 3). It has been generally used to refer to "the sum of the processes of large-scale change through which a certain society tends to acquire the economic, political, social and cultural characteristics considered typical of modernity" (Martinelli 2005: 5). In contrast, the term "modernity" has a much older history. It comes from the Latin term "*modernus*," and from early on in history, "it was used as a means of describing and legitimizing new institutions, new legal rules, or new scholarly assumptions" (5). Since the eighteenth century, the term "modernity" has been used in reference to the different society constructed over the ideas of the Enlightenment (7).

The subject is broad, and it refers to a large and varied number of social transformations taking place over two centuries. The social changes associated with the idea of modernization have been a central concern in the social sciences since their emergence (Martinelli 2005: 8–9), and modernization has become "one of the most discussed concepts in social and political theory over the last two decades" (Delanty and O'Mahony 2002: 1). "Modernity is a complex field of many forces, ranging from long-run historical processes, which we have termed civilizational processes, to cultural and social projects" (25). However, it is generally the case that the very notion of modernity is built around an epistemological shift associated with the Enlightenment. This epistemological shift embedded in the idea of modernity supposedly is responsible for the social and technological changes that make up modernity. Martinelli traces the origins of this conception of progress and modernity to the ideas of seventeenth century's intellectuals such as Descartes and Bacon. Convinced by the principle that knowledge had to be achieved through human reasoning, they challenged the dominant belief established during the Renaissance about knowledge, which posited that knowledge stemmed from ancient history (Martinelli 2005: 5–9). With the Enlightenment, the notion of modernity itself was identified with the present in rejection of the past (6–7). A progressive model to understand history emerged, in which modernity implied a process of constant change and development, triggered by the desire to know more accurately about the world. Modernity was thus "the condition of 'permanent revolution'" (Delanty and O'Mahony 2002: 2). Martinelli (2005: 8) speaks of a twofold revolution: "[i]f the French Revolution gave modernity its form and characteristic conscience, based on reason, the Industrial Revolution gave it its material substance."

An epistemological shift resulted that ultimately transformed the social and material world. History, ancient wisdom, and religious dogma were rejected as valid sources on which to construct knowledge. This shift had implications for most human affairs. A key one was law. The law not only constructs a legal order, but it also contains justifications for its existence constructed in theories of knowledge. Bendix (1978: 16) considered the replacement of absolutist social systems with constitutional ones a matter of "power and the mandate to rule, that is, the use of force as an attribute

of authority and the justification which attempts to make use of force legitimate." Modernity itself can be partly understood in relation to the comparison of the ancient and modern forms to justify the existence of law and social authority. During the Enlightenment the conviction grew that "the possession of a formally prescribed and written political constitution was a hallmark of progressively realized or *enlightened* modern societies" (Thornhill 2011: 8–9; his emphasis). Despite the complexities and nuances making up modernity, it is generally thought that "[t]he beginning of modernity is marked by the all-conquering rise of the bourgeoisie, which finally gains political ascendancy with the French Revolution at the end of the eighteenth century" (Grossi 2010: 70). The centrality of this idea is illustrated in the Declaration of the Rights of Man and Citizen, approved in 1789 by the National Assembly of France. The declaration became an important document, the symbol of the ideals that the revolution was fighting for. Doyle (1989: 118), for instance, goes as far as to argue that the declaration was "the founding document of the Revolution and, as such, sacrosanct."

According to the declaration, there was only one justification for the existence of social authority: the protection and the promotion of the well-being of the citizens of the state. The first article states this explicitly: "Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good." The idea that social authority can exist only to ensure that no one violates that principle underpins the rest of the articles. In the second article, political association is justified as a way to ensure the creation of a society that respects these rights. The third article directly links social authority to the sovereignty of the nation, disallowing individual claims to authority. The fourth article sets the limits of liberty in relation to the harm made to other members of society and establishes that these limits will be identified by the law. In the fifth article, law is defined only as able to prohibit actions that are hurtful to society. The sixth article clarifies that every citizen has the right to participate in person or by a representative in the construction of the law. In the seventh to the eleventh articles, limits to the action of the law are established. The twelfth article justifies military authority to secure the rights of individuals. The thirteenth article justifies taxation to maintain the administration that will execute said taxation. The fourteenth article

recognizes the right of citizens to participate in deciding how to apply taxation. The fifteenth article gives to society the right to control the administration. In the sixteenth article, it is stated that a society without law, and without the separation of powers, has no constitution. Finally, in the seventeenth article, private property is asserted, with the exception in which public necessity will demand it, and providing compensation to the legitimate owner.

As can be seen, the main concern of those designing the new social order was that of anchoring its legitimacy to the protection and well-being of all members of society. The document shows the perceived necessity of creating an effective referential and defining source stating and securing what was seen as primordial: replacing the validity of previously existing ideas legitimating social authority and distinction. Associating social authority uniquely to the protection of the social members implied deep changes in regard to what is valid knowledge, what justifies legislation, and the types of arguments and evidence that carry value in law. The existence of law was to be justified not in history or in religious ideas but solely in its normative value. This understanding of law is rooted in natural law (Grossi 2010; Thornhill 2011).

This normative claim, which was questioned during the nineteenth century from legal positivism as well as from early sociology, gained popularity again following World War II. Its significance today can be seen in current understandings of modernization, such as Bendix's, who defined it "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). It also comes to the fore in how key related terms, such as constitutionalism and absolutism, tend to be defined. For example, the definition of constitutionalism provided in the *Encyclopaedia of Political Theory* (2010) states 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)

Constitutions are understood and studied as mechanisms regulating the relationship between the government and citizens (Finer et al. 1995: 1). It has been stated that "the purpose of a constitution is to lay down fixed rules that can affect human conduct and thereby keep government in good order" (Alexander 2001: 4). The intention behind constitutions is thus to create a society in which free individuals can pursue their own goals and ambitions (Andrews 1963: 9). This is also the case with the Constitution of the United States: "the Founding Fathers in drawing the American Constitution had⋯[the aim]⋯to draw up a structure of government that could serve to protect the people from government, from the danger of a tyranny of the majority in the legislature" (Bogdanor 1988: 3). The centrality of law becomes fully evident 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 constitutionalism, of modernity, materialized in the modern state.

The Meaning of Social Action

The normative distinction embedded in the notion of modernity in the legal dimension as put forth in the Declaration of the Rights of Man and Citizen carries important implications for how to make sense of social conflict during processes of modernization. Social conflicts during the eighteenth and nineteenth centuries are understood as being concerned with the achievement of this legal 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.

Societies before modernity were characterized by the absolute sovereignty of monarchies, somehow colluding with the church, and based on religious dogma. Then the Enlightenment and eighteenth-century social

revolutions occurred, starting a process by which absolutist monarchies were replaced initially by constitutional democracies. Social action regarding legal change during this time can be interpreted as a clash between defenders of the Ancient Regime and those who, following the ideas of the Enlightenment, aspired to create a more rational and just legal system. Normally, national sentiments are not thought to be the engine of these processes. The idea of modernity itself is intertwined with a new way of justifying the existence of social authority. The emergence of nationalism tends to be associated instead with the time that followed that initial transition.

Such an understanding of modernization normally leads to contextualizing the study of nationalism within the history of social science. Within this context, the intellectual developments of nationalism are normally explained in relation to the influence that modern sociological knowledge could have exercised on people's views. An association is often made between two schools of thought during early modernity, positivism and German Romanticism, and two kinds of nationalism, civic and ethnic, or between liberalism and nationalism. The civic nation is normally linked to constitutionalism, rule of law, and democracy; in contrast, ethnic nationalism tends to be associated with a historicist tradition influenced by Herder and the nineteenth century's romanticism (Delanty 2003: 292–293).

From such an analytical frame, a normative distinction between liberal states and nationalist movements has been articulated. As the twentieth century came to an end, McCrone (1998: vii) noted 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." An example of this is the work of Maurizio Viroli (2003), who 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 (2003: 95), and nationalism related to eighteenth-century German Romanticism, and Herder in particular (2003: 119). Viroli presents the case as a moral one: you can choose 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 2003: 1–2).

There has also been a tendency to equate liberalism with modernity. Overlooking the nuances of liberal thought, many liberal commentators have simplified both liberalism and modernity and made them pretty much the same thing. Quentin Skinner (1999), in his book *Liberty before Liberalism*, has argued indeed 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 would suggest. As he noted, "[w]ith the rise of the liberal theory to a position of hegemony in contemporary political philosophy⋯the liberal analysis has come to be widely regarded as the only coherent way of thinking about the concept involved" (113). Other authors such as Fawcett (2014: 3) have similarly stated 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."

From such positions, commonsense patriotism is normally associated with attachments to political structures that represent liberal values, while nationalism tends to be perceived as something alien that poses a threat to such values (Jean-Klein 2001: 85; Canovan 1996: 2; Kissane and Sitter 2010: 2; Özkirimli 2000: 3). 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 materialized in constitutional states, a transition that is explained by the idea of modernity. However imperfect states may be in their embodiments and materializations of key liberal principles—as has been argued by a variety of authors, including Kymlicka and 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 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. However, this idea leads to interpreting nationalism not only as modern but also as a new kind of social conflict. There is little theoretical space to grant meanings to jurisdictional disputes across processes of modernization other than a contention between conservative and progressive ideas within the framework of the nation-state.

Methodological Nationalism

Daniel Chernilo (2006: 129, his own emphasis) has argued that an ongoing problem in the study of nationalism relates to what he says is known as "methodological nationalism," which he defines "as the all-pervasive equation within the social sciences between the concept of 'society' and the nation state. Methodological nationalism 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." This does not necessarily mean that the nation-state should not be understood to have been a key factor influencing the evolution of modernity. Chernilo considers, however, that methodological nationalism should be rejected because it does not allow identifying nationalisms' own histories and the disputes they have endured against rival concepts (131).

The acknowledgment of the existence of different conceptualizations about the nation-state is the first step to "start disentangling the equation between nation-state and society" (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 take into account the formation and disputes over the existence of such contexts on the first place. This idea has important similarities with Roger Brubaker's (1997) proposed approach to understanding nationalism. Brubaker argues that nationalism should not be understood in the terms through which nationalists make sense of social reality, the "nation," "culture," "identity," and so on. These are categories of practice that aim at producing a social effect by conceptualizing society in a particular way. Instead, Brubaker states that "we have to understand the

practical uses of the category 'nation,' the ways it can come to structure perception, to inform thought and experience, to organize discourse and political action" (7).

Rather than distancing the meaning of nationalist conflict from issues of legitimacy, such approaches direct the study of nationalism toward the role played by the idea of nationalism in the formation of the governing structures existing today. Chernilo (2007: 19) argues that methodological nationalism has to be rejected because it "not only distorts social theory's legacy but also prevents us from capturing the opacity of the nation-state in modernity." As a path to leave methodological nationalism, Chernilo argues that social theory has historically attempted to provide an explanation to the problematics created by the nation-state (20). In a departure from legal theory, Chris Thornhill (2011, 2013) shares a similar view. He argues that sociological theory was initially formed as a critique to the definition of law and constitutionalism put forward in the French Revolution. Early sociology sought to provide more sociological explanations of society to the account presented by normative law. These authors emphasize the centrality that inquiring into the idea of society had in early sociological thought and argue that this critical approach should be recuperated in order to provide a sociological explanation of the state or constitutionalism.

I want to review two approaches to understanding the state and nationalism that question central concepts such as society and modernity and attempt to develop an alternative explanation to understand the state or nationalism. These are Michael Mann's (1986, 1992) theory of social power and Shmuel Eisenstadt's (2000) theory of multiple modernities. These theories move away from prevailing understandings of society and modernity in the same direction and for reasons similar to those that are reviewed in relation to legal realism and pluralism in Chap. 4. They put forward perspectives that understand social action in reference to social pluralities, and they coincide in conceiving of the creation of Europe's modern state system as centuries'-long processes of social interaction rather than as a linear or sudden intellectual, institutional, or material change.

Michael Mann's Sociological Theory

For Mann (1986: 15), the creation of law (institutionalization of social interaction) is not an end in itself but rather is rooted in the need to regulate interconnected social action. Although directed toward different ends (such as the management of distinct forms of power), the law requires the development of "common ideological and normative understandings." Mann summarizes his theory in two key ideas. First, he argues that most sociological orthodoxy unproblematically endorses the concept of society as a proper context in which to study social relations, society being generally equated to states. Mann's paragraph explaining why this is mistaken (though as he notes takes the idea to its extreme), illustrates the reasons:

> Societies are not unitary. They are not social systems (closed or open); they are not totalities. We can never find a single bounded society in geographical or social space. Because there is no system, no totality, there cannot be "subsystems," "dimensions," or "levels" of such a totality. Because there is no whole, social relations cannot be reduced "ultimately," "in the last instance," to some systemic property of it–like the "mode of material production," or the "cultural" or "normative system," or the "form of military organization." Because there is no bounded totality, it is not helpful to divide social change or conflict into "endogenous" and "exogenous" varieties. Because there is no social system, there is no "evolutionary" process within it. Because humanity is not divided into a series of bounded totalities, "diffusion" of social organization does not occur between them. Because there is no totality, individuals are not constrained in their behavior by "social structure as a whole," and so it is not helpful to make a distinction between "social action" and "social structure." (1–2)

In Mann's approach, the study of social power does not involve the study of how power is exercised within a polity; the study of power has to do with how people have sought social powers and produced organizational forms to acquire and exercise them. The history of social power is a history in which different social organizations negotiated and disputed the exercise of social power. Organizations, however, do not uniquely exist next to other organizations; they also overlap; they may exist inside and/or

outside one another and make different claims to types of social power (Mann 1986: 17–18).

Second, Mann proposes approaching the study of social power not in relation to just one form of power but in relation to different forms of power. He identifies four: political, ideological, military, and economic. Any organization—say the state, the church, or financial institutions—is not to be seen as a "natural" context for the exercise of one or another type of social power. Each organization may at different times and places use, or attempt to control, more than one social power. Mann's approach points toward the existence and interaction of different types of resources that empower social actors differently and toward the influence that such resources can exercise in social life at different times and under different circumstances. The histories of societies are not to be interpreted in relation to the existence of any organization somehow conceived and defined around the exercise of types and degrees of social powers. The histories of European peoples should be interpreted in relation to disputes and negotiations over the exercise of social powers that are formalized in institutional relations. Mann's sociology does not presume that the state as the social organization that exists today has been created by a single factor, whether this might be national identity or liberal values.

The preeminence of European states is studied by Mann in relation to their organizational features. In Mann's analysis, the success of states comes from a social feature that he perceives to be unique to states: "the state's unique ability to provide a *territorially centralized* form of organization" (Mann 1992: 1; his emphasis). The idea that only the state had this capacity is in my view not entirely accurate. In the state of Spain, for example, the jurisdictions of territories such as Navarre and Vascongadas also had such territorially centralizing forms of organization, with similar degrees of administrative and political power as the central state.

I believe that an understanding of states as possessing such unique features stems from the influence exercised by modern legal thought. Mann's definition of state despotic power suggests this. He defines state despotic powers as "the range of actions which the elite is empowered to undertake without routine, institutionalized negotiation with civil society groups" (Mann 1992: 5). This concept of despotism, in abstract, may be accurate, yet it does not accurately portray the legal orders of most

absolutist monarchies during the Ancient Regime. Such a concept can be related to modern definitions of law, which tend to assume or justify the sovereignty of state authority. However, if one takes as reference the legal definitions proposed by alternative legal approaches, such as legal realism or legal pluralism, the absolutist legal order appears to be different. The variety of legal claims that existed is not dismissed in relation to a modern definition of law. Based on the meanings of these jurisdictional conflicts, it seems that these jurisdictional contexts could be thought of as having fulfilled the role of a civil society understood as a collection of social organizations limiting state authority.

There is one way in which I suggest that Mann's approach could benefit from incorporating the legal approach that I propose in Chap. 4. The suggestion here is that one of Mann's identified sources of social power, the political, could benefit from being analyzed in relation to jurisdictional relations. Some definitions of the term "politics" can be rather vague. The *Oxford Dictionary of English* (2010) defines it as "[t]he activities associated with the governance of a country or area, especially the debate between parties having power". The concept of politics contains both a reference to the exercise of social power from a sovereign state (a country) and a reference to the participation in government of a degree of the citizenship through political parties. Conceiving the histories of states as political histories becomes problematic because such understandings contain a "truth" as well as a "lie." This is the case because the history of the state as an organization is packed with subtleties that can be interpreted differently. As it will be shown in the next chapter through Lesaffer's (2004) analyses of peace treaty practices, internal and external sovereignty were increasingly achieved by monarchical governments throughout the centuries. In some cases, increasing a state's sovereign authority involved the abolition of the institutions that disputed the authority of the monarchy. The elimination of traditional local governing institutions could result in increasing degrees of "politization" of the monarchical institutional context, as the social actors participating in the abolished political, legislative, and judicial contexts had to gravitate toward the institutions and administrations proposed by the monarchy to exercise governance.

Yet such profound institutional changes often happened during or after war. Changes were often resisted, and the ambitions of the monarchy were softened by the practical (im)possibilities it encountered in applying its desired reforms. Sometimes the legal and institutional relations changed, but not necessarily always, nor were they always immediately or even at all accepted; different jurisdictional aspirations are likely to have survived. Absolutist monarchies were not political units in the sense of a system of governance associated with the political participation of a community of people. This participation arguably took place to different degrees in different jurisdictional contexts. To better understand states as political organizations, the political—meaning the exercise of governance in a given social context—has to be broken down in relation to the number of jurisdictions that existed and the legal powers they had. To the complexity of the multiplicity of social actors and types of social power, there should be added the different degrees to which social actors could exercise these social powers. Strength, wealth, and persuasion are not qualities that people either have or do not have. Social actors have them to different degrees. The same is true of distributions of legislative, executive, or juridical powers, which could be possessed in different degrees by different social actors.

The Theory of Multiple Modernities

The theory of multiple modernities was put forward by Shmuel N. Eisenstadt (Ichijo 2013: 7). Eisenstadt (2000: 1) considers that the classical theories of modernization assumed "that the cultural program of modernity as it developed in modern Europe and the basic institutional constellations that emerged there would ultimately take over in all modernizing and modern societies.". He reflects that instead, since World War II, modernity has unfolded in a variety of ways influenced "by specific cultural premises, traditions, and historical experiences" (2). His suggestion is thus a conception of modernity that takes account of this varied reality. Modernity is not defined anymore in relation to a particular idea; it is rather to be seen "as a story of continual constitution and reconstitution of a multiplicity of cultural programs" (2). Similar to Mann's

theory of social power, the existence of diverse sets of interests and meanings are emphasized. Processes of modernization are not to be explained in relation to the achievements of an idea of progress but in relation to the existence of a variety of conflicting views and interests. The notion of agency that is often associated with modernity is emphasized as a notion that implies degrees of plurality. "In the theory of multiple modernities, modernity is about the centrality of human agency in interpreting the surrounding environment rather than a particular pattern in institutional development and differentiation" (Ichijo 2013: 29).

Atsuko Ichijo (2013: 2) rightly argues that, given the reliance of modernist theories of nationalism on theories of modernization, the reinterpretation of modernity proposed from the theory of multiple modernities invites a reconsideration of the modernity of nationalism. Departing from a predominantly postmodernist concept of identity, processes of modern state-building are "not simply seen as an Enlightenment-inspired rational process" (32) but are instead understood as outcomes of a clash of different views and tendencies. The modernity of nationalism "is not found in the banishing of the premodern elements as the conventional theories would have it, but in the continuous clashing of different elements of collective identities driven by autonomous and self-reflective agents who would draw from different traditions as they see fit" (32). Such a theoretical approach opens up the possibility to account for, from a critical legal approach, the validity of the meaning of jurisdictional conflict that preceded modernity and questioned the sovereignty of state authority. Modernization can be explained by including the views and claims that have been traditionally rejected under the influence of modern legal thought. The next chapter argues that modern legal thought has significantly influenced how the state and its role in processes of modernization generally have been understood. It maintains that some of the problems noted by these theories could be overcome by the incorporation into sociological theory of a critical approach to definitions of law.

Conclusion

I have argued that modernist interpretations of nationalism are problematic insofar as they implicitly endorse a concept of law contained in theories of modernization. This understanding of law simplifies absolutist states as despotic legal contexts exploited by monarchies and the church and overlooks the meanings of legal and jurisdictional conflicts within such organizational contexts. By dyeing all preconstitutional legal forms with the same color, the original meanings of some jurisdictional conflicts before constitutionalism are stripped away. Theories of modernization, influenced by such an understanding of law, create a too-narrow analytical framework for interpreting the meanings of political action during processes of modernization, including the emergence of modern nationalism. Much of the linearity and lack of plurality associated with modernity has to do with interpretations of law and the effect definitions of law have on the analytical frameworks employed to interpret the meanings of political action.

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4

Legal Positivism, Legal Realism, and Legal Pluralism

There is in academia an emerging interest in the relationship between law and society. Often this relationship has been explored from different disciplines around the topic of constitutionalism. In the study of nationalism, this interest is illustrated by the special issue of the journal *Nations and Nationalism* (2010) focused on *National Identity and Constitutionalism in Europe*. In law, Chris Thornhill (2011, 2013) has written extensively about law and society, including a volume exploring sociological understandings of constitutions. The legal approach proposed in this chapter aims to contribute to this emerging body of literature through a revision of the relationship between these two disciplines. I have put the emphasis on law rather than on constitutionalism, on how legal scholarship has been dominated during modernity by perspectives that have similarly contributed to the ubiquity of methodological nationalism. I argue that a critical and empirical understanding of law, like that of legal realism or legal pluralism, can contribute to the formation of a broader and richer analytical framework from which the meanings of jurisdictional action during processes of modernity can be interpreted in relation to processes of state formation.

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Modern industrial states generally are thought to have produced urban and secular contexts within which populations have developed new forms of identities. These identities have been articulated in relation to different features and activities, including sports, culture, sexuality, and politics, resulting in different degrees of fraternity, indifference, or aggressiveness between groups. Law can be seen as having influenced these processes in a variety of ways, including the development of a legal order in which citizens have encountered degrees of liberties that enabled them to nurture a perception of individual freedom that has been translated into social movements seeking to obtain different degrees of social recognition. I argue in this chapter that modern legal thought, insofar as it defines law in relation to state authority and sovereignty, has overlooked the meanings that jurisdictional conflicts have had for some social actors during processes of modernization. Clashes between people defending different concepts of the state, and justifying them differently, existed before nationalism. Generally, the meaning of such legal disputes has been interpreted in relation to a concept of law conceiving it to be intertwined with the figure of the state, and which can be related to perspectives such as legal positivism. This viewpoint reduces considerably the meanings that can be granted to political action. Adding in sociological analysis approaches, such as legal realism and legal pluralism, produces a broader interpretative framework within which legal disputes can be analyzed. This wider and more nuanced analytical framework can contribute toward resolving some of the puzzles that the study of the history of the state often produces.

Legal Positivism

If a debate between "primordial-perennial-ethnosymbolist" and modernist perspectives is often seen as having structured the study of nationalism, a contention between natural and positive definitions of law is a key one in modern legal thought. Although the distinction between different kinds of law (associated with ideas of natural and positive) has existed since antiquity, it was during the nineteenth century that, with the articulation of legal positivism, the distinction acquired a prominent significance—so

much significance that the distinction became "an organizing matrix for theoretical inquiry into the preconditions of law and legitimate authority" (Thornhill 2013: 197–198).

The "idea of natural law derives from antiquity" (Olivecrona 1971: 7). It was already mentioned in ancient Greece by Aristotle; and it has been contended that there is a "set of universal principles of justice: the belief that, amidst the welter of varying laws of different states, certain substantive rules of conduct were present in *all* human societies" (Neff 2006: 31, his emphasis). The idea was further developed in Stoic philosophy; it was adopted by "Roman lawyers and the Christian Church, and then bequeathed by them to medieval Europe" (Neff 2006: 31). The influence of this idea was long lasting, reaching until the present day.

The Middle Ages can be seen as the great age of natural law. A legal and political outcome associated with natural law throughout the Middle Ages is the power and superior political position of the Catholic Church, which received the "obedience of the subjects of the state" (Brierly 1955: 4). By the sixteenth century, however, the superiority of the Catholic Church started to be questioned. Monarchies had grown stronger, and, as they "began to consolidate their possessions into compact geographical areas, they increasingly denied the jurisdiction of the Church in their territories⋯Step by step the princes of France, England, Spain and the German or Italian states, asserted that they were sovereign, that they would recognize no other laws than the laws of the realm" (Mangone 1963: 36). Such a process has been normally linked to the development of a different kind of law, leading to the emergence of international law and the formation of a European state system (Lesaffer 2004; Neff 2006; Fabry 2010). The new role and powers achieved by states found normative support in the ideas of thinkers such as Hugo Grotius and Thomas Hobbes. It is nonetheless often noticed that natural law has had throughout history an influential rationalistic angle, which has been traced back to Thomas Aquinas's interpretation (Neff 2006). To Aquinas, natural law was "susceptible to discovery and application by means of human reason rather than revelation" (32). Already in the ancient period a distinction was made between

> *jus naturale* (or natural law properly speaking) and *jus gentium* (or law of peoples)⋯Natural law was the broader concept. It was something like what

> we would now call a body of scientific laws, applicable not just to human beings but to the whole animal kingdom as well. The *jus gentium* was the human component, or sub-category, of it. (Neff 2006: 31)

The distinction, although it was very subtle, survived within natural law throughout the Middle Ages. Thornhill (2013) has argued that conceiving natural and positive law as markedly different understandings of law fails to appreciate that positive law developed from ideas of natural law. However, in international law, it has been customary to present the history of law in relation to the rise of a distinct kind of positive law. The formulation of a new approach to theorize this emerging context of legal international relations normally is traced back to the work of Hugo Grotius. He transformed

> the old *jus gentium* into something importantly different, called the *law of nations*. The distinctive feature of this law of nations lay in the fact that it was seen as a body of law distinct from the law of *nature*⋯it was a set of rules applying specifically to one particular and distinctive category of human beings: rulers of states. (Neff 2006: 35; his emphasis)

The distinction was not one between rivals but rather one between partners (Neff 2006: 35). Thomas Hobbes took a more radical and contrasting position with natural law. Hobbes argued that there was not an orderly law of nature outside the legal context made up by the state. He depicted instead a prepolitical natural society of anarchy and danger from which people escaped only by surrendering their liberties to the sovereign (36). It has been conventionally thought that the formation of an international legal order in the Peace of Westphalia (1648) is a consequence of the new legal ideas that were being developed. Nowadays, Lesaffer (2004) and Fabry (2010) consider that this conceptualization of the Peace of Westphalia as the constitutive moment of the modern European state system needs to be reconsidered. Rather than proposing new legal formulas, the peace treaties were largely based on previously used legal forms (Lesaffer 2004: 407); even if they did not in practice do what has been traditionally thought, the treaties were important because, since the end of the seventeenth century, they began to be treated as if they

were becoming a historical point of reference. States became references for the articulation of a different kind of law characterized by its human and rational origins.

In the nineteenth century, the distinction between natural and positive law acquired irreconcilable meanings through scholars such as John Austin, who articulated legal positivism. Austin (1875) argued that different kinds of law had to be distinguished: natural, positive, and international. Even though he stated that the three existed, only one, positive law, was presented as law properly speaking and as the subject of study of jurisprudence. Natural laws were those set by God to people (although they also contained a more complex connection between legal order and morality). Positive laws were those set by people to people. International law was not seen as law per se, and Austin preferred referring to it with the term "positive morality" (5–6). To Austin, what distinguished positive law was that, in his view:

> Every positive law or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme. In other words, it is set by a monarch, or sovereign number, to a person or persons in a state of subjection to its author. (82)

Two key conditions were established for law to be positive law: that it was legislated in a sovereign (politically independent state) and that it was made by the sovereign authority of the state to be obeyed by the rest of society. The concept of sovereignty was thus central to defining law. Austin understood sovereignty as a political system characterized by having a person, or a body of persons, who were habituated to make law and not to obey or respond to anyone; and the "*bulk* of the given society [who] are in the *habit* of obedience or submission to a *determinate* and *common superior*" (Austin 1875: 82; his emphasis). Only when these conditions were met could a society be considered sovereign and law considered positive law. International law could not be considered the same kind of law because it did not meet these criteria. Hence, Austin considered international law "a set of objects frequently but improperly termed laws" (6). Nonetheless, he thought that international law could be

studied from a scientific approach "analogous to jurisprudence" (61). Natural law was rejected not only due to its association with a divine-created social order but also due to the close connection it established between legal order and morality. Law acquired its meaning from Austin's proposed concept of sovereignty, not from the type or political system, number of rights, or degree of liberty existing in any given sovereign state. Legal positivism was not related to how the existence of law itself had to be justified. As Austin stated, "in respect, then, of positive law, the distinction of sovereign governments into lawful and unlawful is a distinction without a meaning" (142).

Nevertheless, the rejection of natural law produced a problem, as it was the concept that provided a justification for the existence of a legal order, including that of sovereign independent states. Austin was convinced that traditional explanations based on natural law, which assumed the existence of sovereign independent states in relation to rather abstract or general ideas, were wrong. In regard to international law, he criticized the dominant understandings of the formation of a modern international order associated with Grotius, because it implied the idea that the international system "ought to be," as if it were a product of the laws of nature (Austin 1875: 74). He also criticized the idea, popular at the time, that societies had somehow spontaneously emerged out of the consent of people. Austin considered that explaining the existence of law had to be linked to concrete human action and events, not to abstract ideas of origins. The idea that sovereign states had been somehow formed through an explicit or tacit agreement was rejected, because he argued that it had no "foundation in actual facts" as there was no "historical evidence" to prove the claim (138). The lack of evidence and the historical dimension involved in settling the issue led him to believe that processes of state construction had to be studied as a matter of ethics rather than law (123). In order to show the principles that he thought had led to the formation of sovereign states, Austin followed ideas of Bentham and Hobbes. Following Bentham's utilitarianism, Austin thought that "[t]he proper purpose or end of a sovereign political government, or the purpose or end for which it ought to exist is the greatest possible advancement of human happiness" (123). Influenced by Hobbes's ideas, Austin linked the formation of political governments to a human desire "of escaping to a state

of government, from a state of nature or anarchy" (125). The existence of states and societies thus was not to be understood in terms of moral claims or presumed spontaneous occurrences, but instead as a historical process in which people came to realize the convenience of being a subordinate part in a political community.

This concept of the state, although stepping away from the normative claims of the French revolutionaries, reinforces nonetheless a perception about the state as the taken-for-granted context to be associated with sovereignty. The sovereign state became the benchmark to define law. The debate framed during the nineteenth century between natural and positive law, despite their differences, was structured around, and validated, the sovereignty of the state. The legal positivist definition of law, although opposed to the practice of justifying and defining law in a moral claim, dismissed the meanings of jurisdictional action within absolutist states to a similar degree, not because of the references used to justify the existence of social authority but due to the only understanding of the sovereign state that the legal positivist definition of law permitted. Therefore, the framework of analysis created in modern legal scholarship has similarly dismissed the validity of the meanings of some instances of jurisdictional conflict that made up the legal order of the absolutist state. This position has a key effect on how the meanings of social action surrounding legal change are interpreted. This framework of analysis in legal scholarship has overlooked or denied, albeit for different reasons, the meanings and the social and historical significance of jurisdictional conflicts within states prior to modernity.

I want to review two legal perspectives, legal realism and legal pluralism, from which the legal positivist definition of law and the normative understanding of law promoted in the French Revolution associated with natural law have been questioned. Legal realism and legal pluralism, although different, can be seen to exist on 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 abstract concepts of law. The legal histories of Europe are not only about the discovery of a different kind of law but also about the creation and definition of legal

orders, including the structure of global legal orders around a concept of sovereign states.

Legal Realism

"Legal realism" is a term that began to be used during the interwar period in the United States 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 predominantly empirical approach to developing an understanding of what law really is in practice (63).

Wilfred E. Rumble (1968: 236), 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." 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). Endorsing this approach widens the possible meanings of the social action taking place around legal orders. Importantly, the meanings of social action around jurisdictional conflict prior to the late eighteenth century are not invalidated in a way a normative or technical definition of law invalidates them.

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 concepts 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 concepts 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 on 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" (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 directly leads Berman to state:

> 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; the meaning of legal conflict is not to be uniquely validated through a legal positivist definition of law. Law 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). The jurisdictional and legal diversity that characterized European states 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" (9). Law does not concern only technical matters; law resolves and institutionalizes social relations. In doing so, it defines social reality. Current concepts 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 (17).

Legal Pluralism

"Legal pluralism" tends to be used to describe legal practices rather than as a term that identifies a particular interpretation of law. M. B. Hooker (1975: 6) proposed that "[t]he term 'legal pluralism' refers to the situation in which two or more laws interact." To Halliday (2013: 262), legal pluralism is "a device scholars use to impose interpretative order on otherwise chaotic worlds of both present and past." . It has been argued that contexts of legal pluralism have been studied without making use of the term (Benton and Ross 2013: 1). This approach may have led to emphasizing contexts of legal plurality. A result has been that, in contrast to discourses that present states as having enjoyed jurisdictional authority throughout their histories, European states are described as primary examples of legal pluralism. Concepts 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 and 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 currently is conceived and how state law has been thought of and practiced (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" (9). She identified two "very different mistakes" contributing to this view. One is produced by taking "states'

claims to legal sovereignty at face value"; the second, associating state's sovereignty to the development of "specific institutional formations" (9). Benton proposes that a better approach to study states' legal histories requires interpreting state law in relation to how law has been thought of and practiced. For her, the origin of the modern nation-state is related to the processes in which different existing jurisdictional authorities negotiated or imposed their relationships. The state or international law is to be understood in relation to the emergence of a different kind of law. She proposes understanding the history of law and the salient positions that modern states have in it as an exploration of "the emergence, under varying historical conditions, of legal regimes in which actors immersed in different legal systems nevertheless constructed a shared understanding of legal power as a basis for exchanges of goods and information, even in the absence of an overlapping authority or a formal regulatory structure" (4).

This idea offers a new analytical context within which the meaning of social action surrounding legal change can be interpreted. Interesting for the study of nationalism, Benton offers a whole new perspective for thinking about the relationship between law, national identity, and culture. In contrast to modernist tendencies, she perceives a close relationship between legal and cultural dominance. In fact, she conceives her work as a contribution "to the movement to resurrect 'culture' as an element of global 'structure'" (Benton 2002: 24). Her desire to "resurrect culture" does not imply going back to static and homogeneous concept of culture. Culture is instead related to social authority and social distinctions assumed, or potentially resisted, by people (real or not). This focus allows thinking in terms of culture without implying natural bonds or a spontaneously emerging sense of common identity and feelings of alliance. Culture acquires another dimension, more related to imposed or agreed norms within a community and the relationship and status of that community with other existing ones. On this Benton seems to agree with Jonathan Hearn's conceptualization of culture as a product of the existing social relationships of power (2006).

Benton (2002: 11) put forward an alternative methodology around what she calls three "points of entry" to study "global legal regimes." These points of entry identify social actors and legal concerns that in her view may have influenced the evolution of legal thought and practice. The

first of these is articulated around a term she coins, "jurisdictional politics." It is proposed to broadly "mean conflicts over preservation, creation, nature, and extent of different legal forums and authorities" (10). These jurisdictional conflicts confronted states' governing authorities with those of other existing jurisdictions. Social actors would not have understood the existence of these jurisdictions and their disputes solely from a technical perspective; legal relations were also "crucial to changing notions of cultural boundaries, in part because 'jurisdiction' itself implied a certain sharing of identities and values among subjects" (10). In the second point 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, possibilities, or necessities. This bridging position would in some cases lead to surprising behavior; also, to interpretations and representations of legal boundaries that challenged the state's promoted views (10).

The third point concerns the "law of property" as an important factor to consider. Benton argues that there existed a connection between property, law, and jurisdiction. Changes in property law were thus perceived "by social actors as primarily about changes in the ordering of legal authorities, rather than about property per se" (Benton 2002: 11). A similar logic could have developed in relation to a variety of legal concerns. What are nowadays considered technical legal matters were perceived 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 behaviors. The meanings of jurisdictional conflict are highlighted, rather than disregarded, as key factors to take into account for making a sound historical analysis of the formation of modern 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 to act as such.

Randall Lesaffer (2004) offers an account of European states' histories that can partly explain the processes by which states increasingly monopolized the exercise and definition of law. His findings emerge from comparing the Peace 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. Instead, they mostly "drew on sixteenth-century and even late medieval practices" (407). In the Peace 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, was the result of a series of processes that show how monarchical authorities managed, over time, to achieve higher degrees of sovereignty (13).

Lesaffer (2004) 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" (13–14). International peace treaties during the fifteenth and sixteenth centuries show that European monarchies did not enjoy internal sovereignty (15). In international peace treaty practice, the distinction between internal and external sovereignty did not yet exist (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 among international, national, and 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, treaties even stipulated that some authorities, such as towns or nobles, had to ratify them

(19). These practices that Lesaffer calls "co-ratification" would practically disappear by the second half of the sixteenth century (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" (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" (408). In the pivotal case of France, it has been noted that a legal tendency to distinguish between monarchical legal power and legal validity of custom endured up to the French Revolution amid monarchical ambitions to obtain absolute legal powers (Grossi 2010: 74–77).

Paul D. Halliday (2013) has argued that the way one may think of states today is completely different from the way states may have been thought of before the eighteenth-century revolutions. Halliday looks into the history of uses of the term "legal pluralism" to bring to the fore the kind of issues he taps into. The notion of legal pluralism was used in the early second half of the twentieth century, especially in Africa, as a "diagnostic label," a term able to identify a problem in need of solution, faced by new nations (262–263). Legal pluralism was considered to affect two important issues: it "militated against legal uniformity and thus the rule of law [and]⋯against national unity" (263). Halliday argues that modernizing the country required legal uniformity, and as engineers were hired to build modern infrastructures, "socio-legal engineers" were hired to design constitutions (263). "Modernization, uniformity, rationalization: the effort would extend to postcolonial Africa and Asia an evolutionary process European societies had presumably passed through long before" (263).

European modernizing projects have, generally, operated on the idea that historical legal plurality and diversity had to be replaced by rational constitutions. To Halliday, "[t]he 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'" (2013: 269). In contrast, early modern subjects would have

understood the existing orders of jurisdictional and legal pluralities forming states as "a patchwork of tiny, often overlapping spaces" (269). Halliday also stresses that the monarchical sovereignty of the Ancient Regime, which tends to be understood in terms of obedience and subjugation, could have had a different meaning, that of a possibility, which arose "from the protection—provided by laws—given in return for obedience" (270). Contrary to modern legal thought, Halliday maintains that preconstitutional legal orders "could be as productive of tyrannies⋯as they were of liberation" (271).

There is today a tendency to locate key moral and ethical questions contained in social and political thought in relation to the type of organization states were or ought to be. This tendency would contrast with a rather traditional approach that tended to assess such ethical concerns in relation to the legal and jurisdictional structures and authorities that existed. Ethical and political analyses were made in relation to different types of existing social organizations, including different types of possible state systems. This can be seen in Montesquieu, for example. In "The Spirit of the Laws" (1748), he contextualized 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 also included discerning what was thought to be beneficial or detrimental within different social contexts. So Montesquieu considered it best that, when a monarchy conquered a territory or a kingdom, "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 seen simply 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: Montesquieu considered ecclesiastical jurisdictions to be harmful in a republic yet beneficial in a monarchy (18).

Another flaw lies in the idea that before constitutionalism, legal, intellectual, political, or military disputes over the legitimacy of different types of social systems to exercise governance—split between those who defended the legitimacy of the king and those who defended that of political communities—did not exist. However much constitutionalism

presents itself as the "origin" of legitimating government in political assemblies, this is not entirely the case. The picture usually made of religion as colluding with monarchical despotism may not be entirely accurate either. Up to the seventeenth century, political thought in Europe was related to ecclesiastical thought (McIlwain 1918: xv). Central to this political debate was the issue of legitimacy for the exercise of social authority between and within states (xv).

> Thus in the sixteenth century, on the Continent, and in England to a degree···questions were mooted touching the source, the nature, and the extent of royal power; questions of election, of contract, of restrictions imposed by the coronation oath; assertions of the right of the people collectively to judge, to depose, and even to kill the king, a right attributed in rare instances even to individual subjects. (McIlwain 1918: xvi)

McIlwain (1918: xvi) points to the book *Vindiciae Contra Tyrannos* (1579) as one of the best examples of the time's antimonarchical positions and argues that in both Protestant and Jesuit thought, the defense of legitimacy to exercise social authority was placed in God and translated to society through the people (xxii–xxxiv). Michael Wilks (1963) also argued that debates regarding what justified social authority and the type of government that should exist, involving king and kingdom and the church, were a central concern of early modern religious and political thought. As he concludes in his study of sovereignty in the later Middle Ages, antimonarchical views of sovereign power existed among religious scholars. Many theologians at the time found horrifying the implications of considering rulers as direct representatives of God on earth and thus granting them absolute power to rule. At times, Wilks (1963: viii) argues, "the extreme papalist becomes almost indistinguishable from his most savage lay opponent."

The book *Patriarcha*, published by Robert Filmer, an English political writer, most likely before 1631 (Burgess 2009), is an example of a pro-monarchical view in such a contention. The purpose of the book is captured in its subtitle: "A defence of the natural power of kings against the unnatural liberty of the people" (Filmer 1949 [1631]: 53). Filmer argues 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" (53, 55). One of these "schoolmen" against whom Filmer argues is "Suarez the Jesuit" (74), who forwarded the argument that the community of people had not begun together with Adam, "nor by his will alone" and therefore "we cannot say that Adam naturally had political primacy in that community" (75).

Definitions of law and the state, both past and present, are not solely abstract or technical reflections. They are instrumental devices designed to achieve particular social effects. The views of sovereignty of Grotius and Hobbes did not emerge in a vacuum. Hobbes's concept of the state was not solely an intellectual response to an abstract idea, but it was also a discourse directed "to augment the power of the state so that its laws could prevail over all juridical vestiges of local, late feudal and baronial authority" (Thornhill 2013: 208). Similarly, constitutions cannot be understood without looking at what lies behind them—at the political process that gave them birth and at the historical experience that conditioned the thinking of their founders. The constitution itself will be the expression of those concerns rather than a generator of constitutional values (Bogdanor 1988: 10).

Law has been a central social device to establish relationships of power. In my view this is not so much a matter of relativizing constitutionalism and questioning liberal normative claims, although this is a legitimate inquiry. It is instead more a matter of better understanding the extent to which definitions of law influence concepts of society and the extent to which historical jurisdictional conflicts are at the root of some modern nationalist conflicts. Academics such as Chernilo and Thornhill agree in their conviction about the need to recover the more inquisitive sociology practiced by early social scientists regarding processes and causes of state formation. In the study of nationalism, I consider valuable the different views expressed by the nineteenth century's thinkers John Stuart Mill (1861) and Lord Acton (1862). Both authors identified with liberal principles, the legitimacy of social systems based on representative governments, and social justice. They both, advancing modernist concept of nationalism, associated the existence of national identities more with

socially constructed features—mostly political, in the sense of a community of people participating in the exercise of governance—than with natural or cultural factors. Contrasting with currently existing modernist approaches to the study of nationalism, both Mill and Acton related uses of the idea of national identity to processes of identifying the proper social context in which representative governments ought to be located. The location of representative governments in one or another social context and the idea of national identity were seen to be closely related. The concern for both Mill and Acton was not uniquely with what nationalism really was but also with its social effects. Despite such similarities, their analyses of the idea of nationalism and the implications it should have in state governance were different. These differences may originate partly in the different perspectives they endorsed. Mill's may be seen as more philosophical, whereas Acton's is primarily historical.

John Stuart Mill and Nationality

John Stuart Mill was aware of the problems emerging from understanding national identity in relation to notions of society associated with the Enlightenment or with German Romanticism. In *Considerations on Representative Government* (1861), he endorsed the ideas underpinning the French Revolution but acknowledged at the same time that German Romantics had a point in their criticism. Mill did not elaborate his argument in this regard, yet throughout the book his argument addressed the problem of how one can legitimize establishing a representative government in one or another social context. Mill analyzed what permits, what favors, and what is desirable for the establishment of a representative government. To Mill, a representative government was one "in which sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government" (53). Mill argued that this form of government is better and more desirable for reasons very similar to, if not the same as, those argued by the French revolutionaries: it is the only form of government that can ensure the

protection and well-being of all the members of the community. Mill considered national identity to be an influential factor to take into account to establish representative governments: "it is in general a necessary condition of free institutions, that the boundaries of governments should coincide in the main with those of nationalities" (292). He thought that national sentiments could be caused by several factors, including race, descent, language, religion, or geographical limits; the strongest of all, however, was "identity of political antecedents; the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past" (287). National identities were partly the product of political history, and they could therefore be changed, merged, or modified. Mill believed that, although largely socially constructed, nationalist sentiments were key facilitating the establishment of representative governments. For Mill, what nationalities should exist was a moral dilemma and a political issue. Given that states were the ultimate centers 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, Mill concluded that creating a single nationality for states was beneficial: "Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current of the ideas and feelings of a highly civilised and cultivated people" (293). However one may like or dislike Mill's moral resolution, what I want to highlight here is that he perfectly understood the problems created in the act of justifying the existence of social authority. Mill's work on representative government can be partly understood as an attempt to reconcile ideals of social justice with the necessity of justifying locating representative government in one or another social context.

Lord Acton and Nationality

Acton's (1862) paper on nationality was, at least in part, a reaction to Mill's ideas, which had been published the previous year. Like Mill, Acton endorsed liberal values, yet he disagreed when Mill defended "that the

boundaries of governments should coincide in the main with those of nationalities" (Mill 1861 in Acton 1862: 14). In Mill's eyes, the theory of nationality, though socially constructed, exercised a positive and beneficial effect on the establishment of systems of governance based on liberal principles. 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). Acton claimed that the theory of nationality was becoming the most popular of the three.

Acton defended the idea that, prior 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). Acton associated the awakening of the modern theory of nationality with the partition of Poland in 1772. Nevertheless, he emphasized 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 or to the social project launched by the French revolutionaries. Instead, it had to be associated with a different historiographic tradition, one that started with Jean-Jacques Rousseau and that had in the English revolution of 1688 an empirical example of its practical applicability. The superiority of the English example rested in the fact 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" (6). This idea 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" (7). Denying nationality, or rather states' monopolization of nationality, implied "the denial of political liberty" (23). Acton interpreted the Napoleonic wars and the counterrevolutionary 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 of absolutist monarchies from exercising types and degrees of social powers (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 there were not just absolutist or liberal values at stake. Nineteenth-century social action related to state transformations also had to do with contrasting approaches to locate and legitimize the existence of representative governments in one or another social context. Mill's philosophical perspective favored the location of representative governments in states. He conceptualized 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 on 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 who had been associated with their defense. Acton's interpretation of nationalism related nineteenth-century social conflict to revolutionary state transformations and the reactions these triggered. These reactions had to do not only with liberal values but also with historical disputes about the legitimacy of different organizational contexts to exercise types and degrees of social powers, how claims to legitimacy were justified, and what they meant.

Conclusion

A legal and organizational approach to the study of European states' histories could help us better understand the processes of modernization 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 concepts do not correlate with what European states have historically been in legal practice.

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-centered 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. I argue that these claims have been dismissed in legal thought in one way or another. A consequence of this has been a certain shortsightedness as to the meanings of political action occurring in processes of state formation. Modern legal thought has proceeded to consider the state as a central object to present a process of legal change. Making coincide the history of law with the history of the state contributes to the ubiquity of methodological nationalism. It is worth highlighting one important effect, which has to do with the different meanings that centralizing policies acquired within absolutist and constitutional states. Arguably there is a time before and a time after the French Revolution in which the meanings of state centralizing practices can be contextualized. Among the meanings that centralizing policies can have within the Ancient Regime is that of despotism. In this context of resisting centralization—depending on the features of the particular jurisdictional resisting institution—resistance was associated with liberty and political freedom. The endorsement of a centralizing constitutional administration by the French Revolution changed the meanings of centralizing policies. Resistance to

centralization suddenly took on the opposite meaning, that of opposing progress and constitutional principles.

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5

Carlism: The Meaning of the Counterrevolution

A good part of nineteenth century's political action is normally depicted as a confrontation between a liberal constitutional progressive project clashing with a conservative and religious movement associated with the interests of the church and the nobility. Such depictions generally have been maintained in interpretations of the history of the state of Spain made from both progressive and conservative positions. Since the reestablishment of democracy in 1978, however, historical research on Carlism has produced a revision of the concept. Far from leading to an agreed understanding, the different views that have emerged have created a disputed academic context that has led authors such as Jordi Canal (2008: 19) to portray it as one experiencing a "mild crisis." The chapter suggests that disputes about the meaning of Carlism similar to those existing today have existed since the First Carlist War. The reemergence of similar interpretative debates in such distant historical periods could be caused in part by the influence exercised by interpretations of law when analyzing the meaning of political action.

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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 King Fernando VII (1784–1833), to succeed Fernando 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 its current meaning and dimension when Fernando died in 1833. Until 1830, in the absence of the legally stipulated first heir (male descendant), Carlos was the legal successor to the throne. In 1829 Fernando's wife became pregnant, and a legal reform dated March 31, 1830, reinstituted women's right to reign, removing Carlos's immediate right to become king. He never accepted this change and continued to claim his right to the throne. When Fernando died, the two pretenders (and/or their followers) claimed the legitimacy of their preferred pretender. If *carlistas* were those supporting Carlos, *cristinos* were those who supported the legitimacy of the king's daughter, Isabel II (1830–1904), embodied in the regency of her mother, Maria Cristina (1806–1878). The dispute between these two dynastic lines was never entirely settled and has continued until this day. Carlism currently exists in the form of a political party, the Partido Carlista. Jordi Canal (2000: 17) argues that the long existence of Carlism is caused in part by its capacity to adapt to changing political landscapes. Although Carlism is ultimately defined by support for the legitimacy of a pretender to the Spanish throne, the social conflicts that developed during the nineteenth century in relation to uses of the term "Carlism" are rarely interpreted as having arisen solely around a dynastic dispute. The reasons why some social actors supported Carlism for other than purely dynastic preferences have been debated since its emergence in the 1830s, and it continues to be debated today.

In 1837, Major Herbert Byng Hall, a British military official who fought 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, arguably one of the key figures who 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 dynastic option" (Aróstegui et al. 2003: 16; my translation[1]). 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 sociopolitical frame based in the free confederation of the Peoples of the Spains" (Partido Carlista 2013; my translation[2]). Historically, the Carlist movement has been thought to represent more than just a dynastic preference. What else it represented, however, has been a matter of heated debate.

Carlism in the First War

Debates about the meaning of Carlism already emerged in the 1830s as Carlism itself took shape. Although this war is generally known as the 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 translation[3]). De Urbiztondo y Eguía was 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 2014). Joseph-Augustin Chaho (1811–1858) used the same name to refer to the war (Sánchez-Prieto and Nieva Zardoya 2004: 39). Chaho is often introduced as a first person expressing Basque nationalist ideas and is described as a republican and defender of democratic values (De la Granja Sainz 2002: 26). It is likely that predilections to use one or another name are formed by different interpretations of fueros.

Be this as it may, the centrality that conceiving the fueros had to interpret 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. British interest in the war was caused by the government's support of the liberal dynastic line, that of Isabel. British involvement in the 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 for the Carlist cause, and the deployment of a 12,000-man legion in the Iberian Peninsula to fight Carlism (Clemente 2001: 56). The war began when Fernando died in September 1833, which triggered social actors to rise in defense of the legitimacy of one or another claimant to the throne. Those supporting the legitimacy of Isabel included high officials of the army, the civil administration (Canal 2000: 56), and members of the wealthiest nobility, "the Grandees of Spain" (Southern 1837a: 10). Thus, key authorities and elites of the state supported the candidacy of Isabel. Carlos's 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 disorganized insurrections were at first easily repressed, and by the beginning of December, the Carlist movement seemed to be under control (Canal 2000: 68). Contrary to expectations, however, the liberal 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 occur and war news reached the British public, who were 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. A Captain Henningsen (1836: 514, 515), 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." Sir Charles Shaw (1837: 589), who fought for the British on the side of the queen, in his *Memoirs* called it an "unnatural war" and confessed in a letter to his mother his guilt for having committed, and perhaps continuing to commit, "many evils" (617).

The character that the war had taken turned the early optimism regarding its end into deep concern. Not only had the insurgency turned into a savage war; its resolution, in 1837, was not at all clear. It was argued that

the geography of the territories and the support that the civilian population provided to the Carlist troops in Navarre and Vascongadas "may make it eternal" (Southern 1837a: 16). The unexpected development of the War, including its focalization in Vascongadas and Navarre, was perceived by some Tory members as an opportunity to attack the Whig government's foreign policy. In part, the debate was carried out through anonymous publications, though the authors and interests behind the different positions were soon exposed. In 1836, a two-volume pamphlet was published in England under the title "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." 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 engaging in the debate. The first publication was soon acknowledged by Lord Carnarvon (1800–1849). A member of the Tory Party, he was elected to the House of Commons in 1831 and became member of the House of Lords in 1833 (Baigent 2004). The second pamphlet was attributed to someone close to the Foreign Office or to Lord Palmerston, who denied authoring it (Carnarvon 1837: xv). It was also attributed to members of the Spanish government (Anon. 1837: 281). Nowadays, some websites, such as The Internet Archive, attribute this pamphlet as well as its sequel, "Sequel of the Policy of England Towards Spain" (1837b), to Henry Southern (1799–1853). Southern 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 defense of political representation, liberties, private property, and justice; rejection of the French Revolution as a way to achieve social change; defense of empiricism and reason as best sources to establish truth; and a higher regard for positivism than for romanticism. Both accused the other of deliberately lying or misrepresenting reality. Nevertheless, they interpreted Carlism and the war in almost opposite ways.[4]

Lord Carnarvon

The war, as it 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 defense of those liberties; to attack the British government for helping a state´s government to put an end to these legitimate institutions; and to demonstrate that French revolutionary ideas destroyed, rather than created, justice and liberty. In his mind, it was the British political example that 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 British government was portraying Carlists—as bandits—and the way the war was developing, localized and with an uncertain end. For Carnarvon, this contradiction was resolved when one realized that the war was not being fought by bandits but by a whole population colluding with the Carlist troops in defense of their liberties, a view that he claimed was confirmed by the testimonies of returning soldiers and people who 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 fueros; Carlos had allegedly defended fueros in a council of state, awakening Basque sympathies (264); and the support for Carlism in these territories had been mild until "Castañon [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" (207). Once Carnarvon had associated the defense of fueros with the war in these territories, he illustrated in detail why fueros were instances of ancient protoliberal 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 the 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 (211). This same reason was used to articulate an explanation 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" (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. (213–215)

In Carnarvon's eyes, these territories functioned as self-governing and efficient social organizations. He also considered that they exemplified what a traditional social system founded on political values such as representative governance could look like. 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; his ultimate goal was to argue that the war was being fought to defend 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. (216, 217)

Carnarvon's analysis regarding the degree of self-government that these territories had, and the efficiency of the organizations and institutions looking after and executing social order, led him to conceive of the relationship between these territories and the state, about 60 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?" (292). Carnarvon's emphatic portrait of the Carlist war in the Basque territories as a product of Basque defense of fueros is likely a response to reasons other 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 argument, the war 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 idea 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)

Henry Southern

Carnarvon's views were contested by Henry Southern (1837a: 3), who accused the Tories of trying to take political advantage of the little progress made in the war and Carnarvon of mixing facts with fiction (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?" (18). Southern associated Carnarvon's argument, packed with historical references, with romanticism. If Carnarvon's discourse was based on traditional conceptions of fueros held in Vascongadas and Navarre, to 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:

> No 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." (Southern 1837a: 32)

Southern's insinuation that Carnarvon's analysis was tainted with romanticism rather than with empirical analysis was 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 display his rational analysis, used what can be presented as a "logic-based" analysis to prove Southern wrong:

> 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 emphasized by Carnarvon were minimized by Southern, who portrayed them as elements of outdated social systems. They had not only lost efficiency in governing society (20), but also they "have been virtually set aside with the tacit consent of the people" (19). Southern interpreted the emphasis made of fueros in Navarre and Vascongadas as a political strategy to cover real interests. 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" (20–21). Illustrating how fueros in no way influenced people's views or motivations, and that they covered only illegitimate economic interests, Southern 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. (23)

Southern provided some examples to show how people did not care about fueros any longer and how little they influenced social praxis. One such example 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, fueros "were equally disregarded," not on a single occasion but rather systematically (19–20). In the sequel to Southern's first pamphlet (1837b), he responded to a claim made by Carnarvon in the second edition of his own pamphlet (1837b), where he had stated that his defense 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. Below I highlight some of the examples Southern provided.

Regarding jurisdictional powers to manage taxes and the idea that contributions were given as a free gift, Southern stated that the immemorial 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" (Southern 1837b: 83; his emphasis). 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 nonelected authority figures (84, 85). Considering the privilege of Biscay's citizens not to be tried by law other than its fueros, regardless of where they lived in the state, Southern argued that such a custom was a curse rather than a virtue, which in practice was not respected (87). The right of Biscay's citizens 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" (87). The legislative powers of the parliament of Biscay that Carnarvon had emphasized by were relativized 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 state: "In fact, it is this 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" (37–40). Southern argued that if such an interpretation were true, if Carlism were Basque-ism, it would mean that a small part of the population of Spain wanted to impose law on the rest of the peninsula—an unacceptable ambition that Europe should be happy to eradicate (38). For Southern, the frame of reference for British foreign policy was not that of the Basques but that of recognized 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" (38). The past, history, old customs, and institutions are associated with romanticism, with emotional and unempirical 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. To 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" (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. (62, 63)

Southern and Carnarvon interpreted the fueros differently. To Carnarvon, fueros was a legal instrument that emerged and somehow protected a "bottom-up" perspective. This turned fueros into a valuable example to defend—something that revolutions indiscriminately destroyed regardless of liberty and justice. Southern saw fueros as a strategy used by the absolutist state authority to divide the people, reducing the danger "of their uniting together against the Crown" (Southern 1837a: 19). Southern interpreted fueros as "top-down" instruments manufactured by the Castilian monarchy. Arguably, the contrasting interpretations of fueros made by Carnarvon and Southern can be associated

with prevailing interpretations of fueros in Navarre and Vascongadas during the nineteenth century and with those made by state authorities.

John Francis Bacon

The views of these authors are likely to be not only biased but also to have been strategically presented in order to promote concrete political interests. There is another British author whose interpretation about the war, through his own bias, further highlights the contradiction that makes it difficult to understand Carlism. In 1838 a pamphlet titled "Six Years in Biscay" was published in London under the name John Francis Bacon. In the pamphlet the author is presented as an English diplomat who lived for two years in Castile and for five in Bilbao between 1831 and 1837. However, I have not found any other reference to this author; there is, for example no one with that name listed in the *Directory of British Diplomats* (Mackie 2014). Thus, it may be that the pamphlet was published under a pseudonym.

Although Bacon did not directly engage with the ongoing debate between Southern and Carnarvon, his views supported parts of Carnarvon's and parts of Southern's arguments. Like both these authors, Bacon (1838: 2) positioned himself within an empirical perspective and stated that his analysis was guided by evidence. Like Carnarvon, he linked fueros, the societies they created, and their autonomy with jurisdictional histories (58, 59). He also considered Basques to be the "most compact and ancient race in the Spanish peninsula" (53), and argued that there was a marked difference between the social systems created by fueros in Navarre and Vascongadas and those existing elsewhere in 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" (65). This interpretation of fueros led Bacon to think, like 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" (80). The similarities between Bacon's and

Carnarvon's analyses can be seen in their approaches to understand foral societies, which include reconciling historical analysis with empiricism, to positively value 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 regard 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 analyzing 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 analyzing 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, 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 Bacon to criticize 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 Vascongadas 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

fueros; "the Spanish nation," he argued, find the Basque fueros "odious" (80). The Carlist war resulted in a contradiction that was hard to explain because, on 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 symbolized liberalism wanted to abolish existing political systems that were considered examples of liberal societies.

The Study of Carlism Today

There have been significant developments in the study of Carlism since the reestablishment of democracy in Spain in 1978. 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 understand Carlism, which has "destroyed rooted myths" (302; my translation[5]). As a result, a "new" understanding Carlism as a heterogeneous movement, which has changed throughout its lengthy history and which cannot be entirely understood in relation to traditional conceptions, has developed. Yet far from leading to an agreed conception of Carlism, sound contemporary historical research has raised more questions than provided answers. A central problem is that data do not sustain the traditional definition of Carlism as a counterrevolutionary movement associated with the interests of the nobility that opposed a constitutionalist movement linked to the bourgeoisie.

Bartolomé Clavero (1974), for example, argued that more than anything else, it was the *mayorazgo* that defined the preliberal economy and sustained the preliberal social system. The 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" (De Castro 1787: 1; my translation[6]). Clavero argued that the interest of the bourgeoisie, "as a class," lay in bringing the institution of the mayorazgo to an end, substituting for it capitalist relationships of property (Clavero 1974: 418). He concluded that his findings did not support the conventional portrayal of

the eighteenth century's crisis of the Mayorazgo, and he argued that "[t]he conception of the bureaucratic or commercial bourgeoisie of the eighteenth century, as materially opposed to the nobility, may result from a projection effect on itself of the historically subsequent industrial bourgeoisie" (301; my translation[7]). More recently, Jesus Millán (2008) has argued that "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" (67; my translation[8]). Other authors share the idea that reforms that transformed the Ancient Regime into a liberal order did not result in a significant decrease in the nobility's wealth and social position. Virto Ibáñez (2002), 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 favor of the moderate liberalism that sustained the throne of Isabel II" (337; my translation[9]). Similarly, Miguel Artola (1973) argued that the nobility "passed through the revolutionary experience without significant detriment of its *status*" (135; his emphasis; my translation[10]).

Contradictions arise not only in the context of the state but also in the context of Vascongadas and Navarre. For instance, "universal nobility" existed in Gipuzkoa, Biscay, and parts of Navarre. That is, all the people born in these areas were considered to be noble by birth. On one hand, this "universal nobility" has been interpreted in relation to the existence of an interest in maintaining the category, which was beneficial for these peoples in the state. On the other hand, it has been interpreted in relation to the egalitarian qualities that fuerists linked to the foral system. These traditional foral societies often have been portrayed as examples of protoliberalism. Such an interpretation is reinforced by the fact that in eighteenth-century Vascongadas, the Real Sociedad Bascongada de Amigos del País (Royal Basque Society of Friends of the Country) was created, an association dedicated to the promotion of the sciences, arts, and progress in general. This model would be copied by state authorities during the second half of the eighteenth century, and traditionally it has been linked to a desire to modernize the state following the principles and

ideas of the Enlightenment. Nonetheless, in the 1830s, Navarre and Vascongadas became not only the symbol of traditionalism and conservatism but also the geographical space in which opposition to constitutional reform materialized in concrete and effective political and military resistance. Maximiano García Venero (1945) argued that there is in Basque's behavior toward the liberal constitution "a sudden mutation that no one can still exactly explain. The country, which slumbered liberal, dawned absolutist" (57; my translation[11]). 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).

The interpretative problems are substantial enough to lead Jordi Canal (2008) to state that the academic study of Carlism today is experiencing a "mild crisis" (19). Canal suggests that the crisis is being produced partly by methodological tendencies to study Carlism that shape and constrain its meanings in one or another direction. He notes four main methodological approaches that 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 (19–22). Supporting Canal's call to endorse less constrained methodological approaches, and pointing at the existence of a theoretical significance that transcends the case at hand, interpretations made of counterrevolutions in different states, such as France and Spain, can produce contrasting interpretations that resemble those taking place between Southern and Carnarvon in the 1830s. One can compare for example, the interpretation of the counterrevolutionary movement in the context the French revolution made by Alan Forrest (1995) with that made in the context of the state of Spain by Aróstegui et al. (2003).

Both works can be seen to have common elements that can be associated with contemporary perspectives. Aróstegui et al. and Forrest both share a vision of 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), and both conclude 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 agree in not conceiving of 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 variations, as they are not researching the same times and contexts. Nevertheless, the differences that emerge out of their interpretations resemble Southern's and Carnarvon's debate over the meanings of the war. 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. (Aróstegui et al. 2003: 20; my translation[12])

The counterrevolutionaries are identified as those who had "a well-defined position in the old social structures" (Aróstegui et al. 2003: 20; my translation[13]); 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" (17; my translation[14]). The paragraph is open enough to be able to reflect some complexities behind Carlism; nonetheless, key ideas underlying the proposed perspective can be identified. Carlists were those who defended a "stratified society," who conceived and explained society in reference to religious dogma, and who inhabited traditional rural economies and considered new urban cultures as a threat to their material and cultural universes.

To Forrest (1995: 11), in contrast, the French revolution 'was not, after all, a single, tidy entity, coherent in its objectives'. The revolution meant different things to different social classes, as well as to the inhabitants of

different regions. Thus, he considers that it 'is only right that the history of the period should reflect something of that diversity, of the desperation and, on occasion, anarchy which characterized it' (12). The same outlook is used to understand the counterrevolution. Contrary to dominant perceptions of the counterrevolutionary movement, he 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" (152). The French Revolution had different meanings for different social actors, and produced a variety of responses that were motivated for different reasons. It is therefore, difficult to synthesise the meaning of social action (12).

Forrest's interpretation of the counterrevolution can easily accommodate the interpretation of "Basque historiography," whereas that of Aróstegui et al. hardly leaves any space for it. It seems that some European counterrevolutionary movements might have been more complex than what generally has been thought. In some cases, concepts of law and the extent to which one or another authority could legitimately exercise types and degrees of social powers could have been influential factors leading to jurisdictional conflict. Contrary to perspectives based on modernist narratives, these different interpretations of law could have not been completely defined by a dichotomy between the interests of the bourgeoisie and those of the church and the nobility. The concepts of legal order, of legally recognized communities that had historically served as illustrations (however imperfect), of social system alternatives to absolute monarchies, might have also been at stake.

Fuerism

"*Fuerismo*" (fuerism) is a term often used to identity a historiographical tradition defending the existence, significance, and validity of fueros in Navarre and Vascongadas. This tradition preceded the nineteenth century and Carlism. Fernández Sebastián (1990: 62) 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. This tradition combined a jurisdictional and institutional angle interpreting the legal validity of the fueros with "historians' perspectives of ideas and culture" (64; my translation[15]). Fernández Sebastián identified two contrasting traditions of interpreting fueros, which begin showing the difficulties associated with interpreting the meaning of defenses of 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. (64; my translation[16])

Regardless of the long defense of 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. From modernist perspectives, the significance of traditional interpretations of the fueros, and the extent to which these interpretations could have influenced social action, get usually diluted under the weight given to socioeconomic factors. This tendency contextualizes social actors' views about fueros more in relation to historical narratives and meanings of European states than in relation to narratives of foral historiography. Interpreting the meanings of fueros in relation to state-centered historiographical traditions produces an important problem. The particular features of the war and the Carlists' defense of fueros when their ideas were visible in political action have created a significant link between defenses of fueros and Carlism. This is problematic. Carlism and defenses of fueros were different things, and one cannot be thought to represent the other. Nonetheless, insofar as defenses of fueros are associated with Carlism or conservatism, interpreting those defenses has little meaning outside of Carlism or conservative attitudes in opposition to progressive views.

A general appreciation of fueros and an interpretation of them (largely shaped by traditional conceptions) seem to have been common during the first half of the nineteenth century in the concepts of society held by both

self-proclaimed liberals and Carlists in Vascongadas and Navarre. An instance of liberal defenses of fueros can be seen in an anonymous document printed in Bayonne in July 1836, by someone who seems to have been a citizen from Gipuzkoa who had escaped the war and engaged to some degree in territorial politics. The 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" (AGG-GAO JDSM 28, 12_2; my translation[17]). The writer began by explaining that an incident had inspired him to think about the fueros of Vascongadas, an issue that in his eyes was a "[g]rave subject, of foremost importance for the sacred cause of Spanish liberalism" (AGG-GAO JDSM 28, 12_2: 1; my translation[18]). The incident occurred when two procurators from Gipuzkoa were unilaterally excluded from participating in the state parliament 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" (AGG-GAO JDSM 28, 12_2: 1; my translation[19]). The disregard that Gipuzkoans felt toward what they considered was their legitimate institutional representation led the author to analyze what he identified as the origin of such an undermining attitude toward Gipuzkoa's institutions: a tendency to portray 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" (AGG-GAO JDSM 28, 12_2: 2; my translation[20]). He associated the support that Carlism had encountered in Vascongadas 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, is much more so in a country used to the exercise of civil rights on a much larger and popular scale than

> that which is tried to be imposed now as progress. (AGG-GAO JDSM 28, 12_2: 2; my translation[21])

The writer was convinced of the liberal value of Gipuzkoa's foral system and associated tendencies to abolish or deeply reform fueros with an existing tendency to call fueros privileges (AGG-GAO JDSM 28, 12_2: 4). For the author, if such qualities represented liberalism, 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 the author's 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 practicing 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. (AGG-GAO JDSM 28, 12_2: 4; my translation[22])

The author 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-centralized 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

centralized system, which although it has some acknowledged advantages, does not lack inconveniences" (AGG-GAO JDSM 28, 12_2: 5; my translation[23]). Similar interpretative logic can be found in other testimonies. For example, consider two speeches made on October 6, 1839, in the Congress of Deputies convened in Madrid that discussed and eventually approved the law confirming fueros on October 25, 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" (Biografias y Vidas 2014). Olózaga argued that if 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

> [t]hose 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 recognize 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 empire and domination, let's keep unharmed those testimonies that credit it. (AGG-GAO JD SM 28, 12_1; my translation[24])

Nonetheless, Olózaga considered that some aspects of fueros had to be reformed within the constitutional context of the state. An unequivocal association of fueros with liberalism was made in the same setting by Luis Antonio Pizarro y Ramirez, Conde de las Navas (Count of the Navas), born in Valladolid and deputy for Cordoba and Salamanca, among other territories, between 1834 and 1854 (Casas 2010: 356). Pizarro y Ramirez associated fueros with a quote by Jean-Jacques Rousseau in which the latter 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 (AGG-GAO JD SM 28, 12_1; my translation[25]).

The clearest evidence of Carlists' defense of fueros in the 1830s can be found in the peace treaty ending the war in Vascongadas and Navarre. On

August 29, 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 14, Don Carlos, the pretender, escaped to France with his remaining 8000 men (Urcelay Alonso 2006: 171); the war would be considered over when, on July 5, 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 different authorities to support, or not, the Carlist cause.

The Abrazo de Vergara (Embrace of Vergara), as the ratification of the treaty generally would be called, acquired great symbolic, legal, political, and ideological significance. Eguiguren Imaz (2008) feels confident to follow Antonio Pirala stating that "it will be one of the most famous and popular political facts of Spanish contemporary history" (Pirala 1868 in Eguiguren Imaz 2008: 46; my translation[26]). Among other things, it became the basis for the fueros' reconciliation with constitutional Spain, which was formalized in the Ley de 25 de Octubre de 1839 (Law of October 25, 1839). This law became the key reference for foral 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. 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" (65; my translation[27]), 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 formalized contained 10 articles, and it covered four main issues:

1. The maintenance of fueros (article 1)
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 the Carlists of Navarre and Araba-Álava to adhere to the treaty should they want to (article 7)
4. The Carlists' surrender of their weapons and fortresses (article 8) (BINADI Sign: CA4/137)

The treaty had been negotiated by several Carlist leaders representing their territories and their inhabitants (Castile, Biscay, Gipuzkoa, Araba-Álava, and Navarre). Yet Navarre and Araba-Álava decided not to adhere to it immediately. 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 on whether to adhere to the treaty. 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 law of October 25, 1839, for example, which came to reconcile the fueros' existence within a constitutional state of Spain, used the term "*provincias Vascongadas*" (Basque provinces) 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" (BINADI Sign: CA4/137; my translation[28]). The second article states that the government, as soon as it is possible, and after having heard Vascongadas and Navarre, will propose to the state parliament the required modifications on the fueros (BINADI Sign: CA4/137). Contrasting with war peace treaties, this political document distinguished between only two political spaces, that of Navarre and that of Vascongadas. This was surely influenced by the three territories of Vascongadas presenting themselves

united in defense of the same interests. In fact, representatives of Navarre and Vascongadas met to discuss their positions before addressing the government, resulting in Navarre negotiating and reforming its fueros alone (Sánchez-Prieto and 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. The use of terms also suggests that conceptual simplifications of complicated realities coexisted with the fragmented political praxis produced by such complexities. The peace treaty ultimately illustrates what Carlists in Vascongadas and Navarre found most important to protect: their lives, their properties, and the fueros. I believe that the term "fuerism" can be a helpful concept to refer to the positive regard and defense made by inhabitants of Navarre and Vascongadas of their fueros. I do not imply that everybody had such a positive regard of the fueros, but I argue that the long history of fuerism stems from the legal practices regulating these territories that decentralized the exercise of power among municipalities and was therefore perceived as distributing, rather than accumulating, types and degrees of social powers.

However, such a claim faces the opposition of scholars who have argued the contrary. The work of Alfonso de Otazu y Llana has been important in this sense. In his book *El "Igualitrismo" Vasco: Mito y Realidad (Basque Egalitarianism: Myth and Reality)* (1986), he argued that the claims that present Basque foral societies as examples of egalitarian social systems do not fit with the social histories of these territories. Contrasting with views that seem to convey a rather unchanging portrait of foral societies, he sees a changing history, and he links the maintenance throughout history of the egalitarian discourse to the different interests that emerged in different historical periods.

Otazu (1986: 16) dates the origin of the "Basque egalitarianism" associated with fuerist interpretations back to the mid-sixteenth century. His argument implies that regardless of the extent to which the origins of such an understanding of Basque foral societies might have been justified, the egalitarian discourse has been maintained throughout history to cover structural inequalities beneath a façade of equality. According to Otazu, the traditional understandings of the fueros, those normally associated to fuerism, should be considered false myths. Some virtues of the research leading to such conclusions cannot be denied. Otazu's work brings to the

fore the existence of inequalities that cannot be overlooked. Nevertheless, Otazu concludes that fuerist narratives cannot be justified because foral societies contained structural inequalities. I agree with Otazu's claim that Basque foral societies contained important inequalities, yet I disagree in concluding therefore that fuerist narratives are unjustified. To me, the validity of the egalitarian discourse does not hinge on the existence of an underlying ideal egalitarian and idyllic society matching its representations. The political validity of fuerist discourses should not be assessed against abstract notions of equality but instead against the political alternatives that existed at the time. I do not argue that normative evaluations should never take abstract ideas as references, but historical analysis should refer to the existing political context. It is granted that Basque foral societies contained structural inequalities and that they cannot be claimed to be egalitarian when compared with abstract concepts of an egalitarian society. However, the foral societies of Vascongadas and Navarre in terms of equality need to be portrayed not only in relation to existing inequalities but also in relation to the historical contexts in which such claims were maintained. In order to assess the extent to which foral narratives are justified, one should also take into consideration the larger social, political, and ideological contexts in relation to which such discourses existed. Contextualizing liberty-laden foral discourses in relation to historical debates about the nature of law and jurisdictional sovereignty seems to grant them some credit.

Conclusion

The definition of Carlism has been disputed since the First Carlist War. Why the populations of Vascongadas and Navarre supported the Carlist cause has been a matter of academic and political debate ever since the war. Nonetheless, fueros were defended in Vascongadas and Navarre not only by Carlists but also by liberals. Fuerism emerges as a valid concept to denote a positive regard toward fueros that cuts across the left–right political spectrum (historically at least, and surely exceptions will exist). Modern legal thought has the effect of discrediting traditional fuerist interpretations, either under the influence of a legal positivist definition

of law or due to the preconstitutional and historicist origin of the fueros as a kind of law.

Notes

1. *el carlismo fué siempre algo o mucho más que el conjunto de los seguidores de una determinada opción dinástica.*
2. *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.*
3. *Apuntes sobre la guerra de Navarra en su última época y especialmente sobre el convenio de Vergara.*
4. In what follows, the term "Basque provinces" occasionally is used to refer to both Navarre and Euskadi. This is done to match the uses of the authors who are mentioned.
5. *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.*
6. *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.*
7. *La concepción de la burguesía burocrática o comercial del XVIII como materialmente enfrentada a la nobleza puede resultar de un efecto de proyección en la misma de la burguesía industrial históricamente posterior.*
8. *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.*
9. *De ahí que la nobleza española como conjunto fuera partidaria del liberalismo moderado que sustentaba el trono de Isabel II.*
10. *La nobleza, al menos la nobleza titulada, pasó por la experiencia revolucionaria sin sensible detrimento de su status.*
11. *Hay una súbita mutación que nadie sabe todavía concretamente a qué móviles obedeció. El país, que se acostó liberal, amaneció absolutista.*

12. *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.*
13. *facciones todas ellas con una posición bien definida en las viejas estructuras sociales.*
14. *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.*
15. *la perspectiva de los historiadores de las ideas y de la cultura.*
16. *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, republicanismo, federalismo o comunismo [*sic*], según los casos.*
17. *Reflecsiones sobre la elección de procuradores a cortes en Guipúzcoa y sobre la cuestión política de la conservación de los fueros en las provincias Bascongadas.*
18. *Materia grave; trascendental a la santa causa del liberalismo español.*
19. *bajo una forma tan humillante como violadora de su representación y de sus derechos.*
20. *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.*
21. *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.*
22. *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.

23. *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 grabes 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.*
24. *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: si, 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.*
25. *Benditos los pueblos que se dan instituciones a la sombre de un árbol "aludiendo al famoso árbol de Guernica, símbolo glorioso de las libertades Vizcaínas.*
26. *será uno de los hechos políticos más conocidos y populares de la historia contemporánea española.*
27. *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.*
28. *se confirman los fueros de las provincias Vascongadas y Navarra, sin prejuicio de la unidad constitucional de la Monarquía.*

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6

Governance in Navarre 1840–1936

This chapter analyzes the evolution of the Deputation of Navarre between 1840 and 1936. It begins at the end of the First Carlist War and with the foral reform that turned the kingdom into a province. The institutional transformations turned the deputation, until then subordinate to Navarre's parliament, into Navarre's highest institutional authority (now subordinate to the state's parliament), and into the institutional center 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 characterized the deputation's evolution and governing practices. The data presented suggest that the political action taking place in Navarre was heavily influenced by its own traditional legal practices. The evolution of the deputation and its governing practices, although adapted to the circumstances and pressures of different times, were characterized by a similar behavioral pattern, largely defined by a constant reconciliation between traditional jurisdictional practices, the desire to achieve modernity, and the necessity of complying with the demands produced in the larger legal context of the state. Influencing such tendencies seem to be Navarre's own traditions and practices, those associated with fueros, which may have been generally

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considered to be key points associated with jurisdictional legitimacy and good administrative practice. Explaining this can be problematic from a modern perspective in part due to attempting to grant meaning to Navarre's political action in relation to state politics rather than to Navarre's. Legal realism and legal pluralism enable us to broaden the analytical framework and consider the meanings that political action in Navarre could have had in relation to Navarre's own issues and understandings of its legal relation with the state. The concept of jurisdictional politics put forward by Benton (2002) is useful to explain the most characteristic features of the behavior of Navarre's deputation during the period studied. The addition of this theoretical concept opens the possibility of hypothesizing other conceptions of modernity.

Foral Reform: 1839–1841

As previously explained, the Kingdom of Navarre was defeated and conquered by the Kingdom of Castile in 1512, but it maintained its status as kingdom, its institutions, laws, currency, boundaries, jurisdiction, body of laws, and veto to royal law until 1841. The jurisdictional transformation took place in the context of a seven years long war (1833–1840). Fueros, which had been abolished during the fighting in 1833 (Mitchell 1840: 158), were reestablished in the peace treaty negotiated in 1839 between state and Carlists authorities, mostly from Vascongadas and Navarre. The same year, the Law of October 25, 1839, confirmed the fueros without detriment to the unity of the constitutional monarchy and in need of reformation. The treaty followed a negotiation between authorities of the state and those of Navarre and Vascongadas to carry out the necessary reforms. The four foral territories met together to discuss their positions before addressing the government. The territories of Vascongadas agreed to negotiate forming a united front, and Navarre decided to negotiate on its own (Sánchez-Prieto and Nieva Zardoya 2004: 84, 85). The result of this negotiation between Navarre and Madrid's government was the Foral Reform Act of 16 of August 1841, which became, together with the law of 1839, a key political reference in Navarre. Castells Arteche has argued that this created "a spirit of

singularity on this territory. . .that has lasted until the present" (Castells Arteche 2007: 33; my translation[1]). The legal reform tends to be understood as having a liberal character (García-Sanz 1996: 49; Huici-Urmeneta et al. 1980: 134). The reform was negotiated and approved without the participation or consent of Navarre's own authorities and institutions. In this sense, it can be understood as a revolution. However, the revolutionary reform in Navarre was not one characterized by a rejection of the past. It maintained instead important elements of the kingdom, such as the body of law to be applied in Navarre.

José Yanguas y Miranda

José Yanguas y Miranda was an influential figure in Navarre's politics at the time who had a prominent role in the institutional transformative process (Sánchez-Prieto and Nieva Zardoya 2004: 35). He would occupy the position of secretary of the Deputation of Navarre from 1841 until his death in 1863. During the war he wrote *Análisis histórico crítico de los fueros de Navarra* (Critical and historical analysis of fueros of Navarre), where he explained why he considered foral reform to be necessary and how he justified it. Published in Pamplona in 1838, the volume shows the rationale of the political elite of Navarre who negotiated and managed kingdom's institutional transformation. Yanguas analyzed 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 to be the kingdom's constitution (Yanguas y Miranda 1838: 3). Yanguas restated his view of t fueros 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" (49; my translation[2]). He 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 he felt was considered controversial by those with an interest in suppressing fueros "in order to flatter the absolute power" (3; my translation[3]).

Yanguas considered that 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 (13). Of particular interest for the discussion here are some of his arguments in regard 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. Yanguas mentioned how the clergy made it impossible for policies inspired by the Enlightenment to be approved. For Yanguas, the reforms of key institutional features that would lead to a better system of governance could not be achieved in Navarre. His words illustrate why he considered the existing parliament to be an inefficient political assembly and point to key factors impeding 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 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 scepter; whether the Peninsula was free or

> slave, Navarre had to be necessarily involved 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 neighbors, to receive their laws: Navarre could not stop being Spanish, and their local situation necessarily demands so. (Yanguas y Miranda 1838: 27–29; my translation[4])

Yanguas's analysis of commerce was influenced by similar logic. Navarre had no external commerce. This situation had developed first due to France's decision to allow its products to enter Navarre but not vice versa and then because Castile forbade the importation of goods from navarre, as it considered that French products were being introduced into their economic market through Navarre. Yanguas argued that in Navarre there were no legitimate traders left, because those who existed had become, due to those changes in policy, smugglers (Yanguas y Miranda 1838: 42–44). Navarre's commercial enterprises required access to a larger economic market.

A mixture of reasons led a sector of the population of Navarre to favor foral reform associated with the state's interests. Importantly, the possibilities to exercise social change in Navarre were perceived to be limited by the military and economic powers that Navarre had in relation to the larger and more powerful states of France and Spain. These states were seen as the inescapable contexts within which decisions that had to be made, not the appropriate or ideal contexts. Decisions were guided by pragmatic analyses. This is not to say that Yanguas's preferences were not also influenced by the qualities of the options. In fact, his support of the institutional transformation to become a province of the state of Spain was in part due to the features that he valued in the Spanish Constitution of 1837. He valued key principles that the constitution represented, which he could relate with the institutional changes he considered were necessary in Navarre.

One of the characteristics of the constitution valued by Yanguas was the political system of governance that it proposed. It was structured around elected municipal councils and provincial deputations as key organs to

govern their own public affairs. This process would allow "the most enlightened individuals of each country. . .to promote all the branches of political government, which include agriculture, the arts, the industry and commerce" (Yanguas y Miranda 1838: 38, 39; my translation[5]). 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 found it in the representative government of the Spanish nation" (49).

The reasons to favor Navarre's independence, the constitutional union with the state of Spain or with that of France, or not to change at all were motivated by a series of factors. In no case were the choices be produced by an intrinsic desire of social actors to favor 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. 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's liberalism did not contain a concept of law that located legitimacy and sovereignty in state authority. It was the circumstances in which Navarre was immersed that resulted in the situation where Navarre's people could not unilaterally make certain legal changes. Importantly, Navarre's legal and political existence was directly influenced by its military and economic powers, which restricted the real possibilities of what Navarre's institutions could achieve.

Clashing Concepts of Foral Reform

The Foral Reform Act of August 16, 1841, defined in 26 articles the newly created institutional context that would exist. The articles defined the main authorities that would exist, their relationships, responsibilities,

rights, hierarchies, and the bodies of law that would be applied. However, "[t]he powers of the three authorities designated to Navarre. . .were not detailed with full specification, nor carefully delimited" (Alonso 1849: 231; my translation[6]). The law itself was ambiguous about what had exactly changed, 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 (1846), a public notary in the Court of First Instance in Estella (BINADI BCC00R47-6-02p11). Other authors offered a broader interpretation of the legal and institutional modifications that had been created, like José 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* (Alonso 1848, 1849; my translation[7]).

Partly due to this ambiguity, and partly driven by the different existing approaches to understand the state as a legal organization, two opposing interpretations of the legal reform soon emerged. One, which can be associated to Navarre, considered the reform to be a treaty law, a compact between two parties that could not be unilaterally modified. The other, which can be linked to state authorities, averred that the law did not have such a pact character and that it is ordinary law of the state with no special features (Martínez Beloqui 1999: 34–39). These two ways of interpreting the legal relations created by fueros between Navarre and the state continue to the present. The historical trajectory of the Deputation of Navarre suggests that its managers continuously endorsed the treaty law concept. The deputation, with its new role and powers, would grow with the objective of effectively performing its duties, achieving progress, and professionalizing the work of the public administration.

Departmental Growth

The newly defined institutional framework, temporarily since November 1839 and permanently 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 legally defined in 1841 inherited a small structure facilitating the deputies' work. This deputation would evolve in order to provide, manage, and regulate the powers it had retained, developing a bureaucratic administration that would govern processes of modernization in Navarre. The extent to which the deputation was able to exercise governance over certain duties was a direct consequence of the rights defined in fueros and maintained in 1841's reform. Also important to the same end may have been the capacity of Navarre's authorities to interpret law in their favor and their abilities to passively resist legal dispositions coming from the central government that were considered to undermine fueros.

The evolution of the administration can be seen in part in internal documents of the deputation, pay sheets, budgets, internal regulations, and reports written at different times. The deputation did not regularly keep territorial budgets 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 what was called the Deputation of the Kingdom listed nine people. In 1842, the deputation, now with new status and integrated differently in the institutional context of the state, listed a slightly higher number of employees. Fourteen were paid in the Department of Secretary, and a small number of people also worked in Accountancy and as janitors. According to the records, from 1837 to 1859, the deputation management structured pay sheets in similar ways: 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 department of 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, 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 *Depositaría* (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 evolve, including constant departmental growth and specialization to administer the powers it had maintained in the reform of the fueros. Since the late 1850s there existed a tendency to differentiate staff working for the deputation itself from those in charge of managing different social issues, but not necessarily working daily in the deputation's administrative center. In 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: (1) Print; (2) Custodians, Janitors, and Gardeners; (3) Employees of the Deputation; (4) Management of Public Works; (5) Employees of Mountains; and (6) Pensions. In 1868 a new department was listed: the Provincial Board of Public Instruction (AGN DFN, Caj 502).

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 from the years 1867 to 1870 (AGN DFN, Caj 2457). Someone began to fill in the template, but it was left unfinished, and the manner in which data was presented was not repeated in later budgets. It attempted to present data structured in income and expenses, but in a way that would permit the reader to directly compare incomes and expenses generated by each department (AGN DFN, Caj 2457). This template suggests that a rather small organization existed, the finances of which could be structured in such a comparative fashion.

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 divided into these following areas: "Secretary, Accountancy, Depositary, Roads, Mountains, Agriculture,

Provincial Treasury, Urban Works, Hospital and *Inclusa* (*Facility dedicated to maternity and orphanage*), Navarre's Madhouse, Provincial Print and Mechanical Services" (AGN DFN, Caj 1996/1). However, over time, the administration grew significantly in the departments and in the number of personnel used to manage those areas, especially after the late nineteenth century. In 1909, although there were not necessarily new major departments, a significant growth can be seen in the number of specific departments that had been created. In the expenses section alone, 34 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 size of the budget had grown considerably, 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 specialized and less generic, occurred along with continued growth in the personnel working for the deputation. The number of employees listed as paid staff grew from around 12 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. This difference between the number of people paid by the administration displayed in pay sheets and in territorial budgets may reflect a difference between staff per se and people hired to work or provide one or another service. For instance, in 1909, 297 of these employees were listed in the section Road Maintenance as *camineros* (road men); in 1928, 339 were listed in the same role. These positions existed at least since 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 for every three kilometers (1.86 miles), and for every 30 kilometers (18.6 miles), there had to be a foreman (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 organizations. In 1869, in order to be hired as road men, candidates were

required, among other conditions, to submit certifications of their good conduct issued by the mayor and the priest of their municipality (AGN DFN, Caj 199/5). Territorial budgets also show that a significant number of religious organizations were included as part of the public administration's structure, especially in the provision of health. In 1909, 73 of the listed staff members belonged to religious organizations. Of these, 21 worked in the hospital, 12 worked in the maternity house, and 40 worked in the mental hospital. In 1928, 69 employees also belonged to religious organizations, distributed in 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 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. More rapidly since the late nineteenth century, Navarre's public administration gradually grew as it attempted to provide, manage, and regulate the powers it was responsible for. This growth produced, to a degree, centralizing tendencies. These, as will be analyzed later, could produce jurisdictional conflicts that were discussed in relation to fueros.

Modernization

The desire to achieve and to manage progress and modernization can be seen as part of the objectives of the managers of the deputation since the 1840s. The deputies appear to have shared understanding of what the goal of their office and that of the institution they managed was: to maintain or to improve the welfare of Navarre. Such tendencies can be identified in deputies elected to represent both liberal and conservative political parties. 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 October 3, 1840, the newly formed temporary Deputation of Navarre issued a public proclamation that stated the government's objectives for society. The first part explained the government's commitment to safeguard public order and 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 reduced them almost to nothing: and, having lost the memory of what you once were, soon would have suffered the common fortune. The day of regeneration has arrived; and in entering the great Spanish family you would recover and improve your liberty and dignity; and the justice of the Nation would not forget your material interests, as it has offered it in a solemn law. (AGN DFN, Caj 20268/3; my translation[8])

This document suggests that Navarre's historical institutions were understood by the liberal deputation as valuable examples of ancient liberties that had been eroded by despotism over time. The same idea, with a clearer emphasis on an institutional commitment to achieve modernity, was transmitted in another proclamation by the deputation on June 18, 1855, a proclamation that has also been portrayed as liberal (García-Sanz 1996: 48). It restated that the old institutions had lost their efficiency throughout history and that the new institutional and legal context had only resulted in benefits for Navarre. The last part of the proclamation stated:

> It is the duty of society to attend solicitously to the material and moral interests of humanity on its journey through life. . .Live safely, that whilst you increase your private fortunes with your economy and industriousness, it will not remain stagnant and neglected the patrimony, that also belongs to you, but that is under the care of the Deputation. The beautiful roads that cut across all directions your territory, 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 say that peace leads to the greatness of nations? (AGN DFN, Caj 51 148/5; my translation[9])

A report written by the Navarre's deputation in 1885 directed to "its country" assessed the economic circumstances that the deputation was facing, and explained and justified 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 that required economic reform. The rise in expenses was partly due to the costs of the last war (1872–1876) and to the fact that Navarre had to make a larger economic contribution to the state since new state regulations approved in 1876. Another important factor was the large investments 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 so the deputation could balance the budget and reduce debt but also so it could continue providing "the public services of ordinary character and the increasingly growing demands of modern life" (AGN DFN, Caj 1998; my translation[10]). Investing in roads, for example, despite its economic cost, was justified because these improvements "would be fruitful arteries to allow the circulation of the wealth of the country. . .and. . .due to the precarious situation of the laboring class, due to the general drought, inclined the Deputation to build public works to occupy these people" (AGN DFN, Caj 1998; my translation[11]). Despite the administration's debt, the investments made in previous years to modernize and to provide an income to people in need were defended. The report also committed to the notion of improving the economy without eliminating the provision of public services. There were no Carlists in this deputation (García-Sanz et al. 2002: 41).

The tendency to consider necessary a degree of social investment despite the costs can be detected in different historical times and within administrations of contrasting political inclinations, including liberal and Carlist. In 1910 a report explaining the budget stated that the ordinary 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 report, rather than suggesting 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 can be associated with Carlism, as four of the seven deputies have been identified as such (García-Sanz 1996: 55–61). The deputation continued to express its commitment to modernity and welfare. 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, undertake the important works that were required to ensure the necessary modernization of the territory. Arrasate argued that despite their costs, there should not be abandoned "the installation and organization of the administrative services, land registry, welfare in general, the main roads and moreover secondary roads" (AGN DFN, Caj 2474_4; my translation[12]). Arrasate suggested that the only way that the deputation could achieve all of this was through loans, and he 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 of the administration, and this cannot satisfy us either as deputies nor as Navarrese" (AGN DFN, Caj 2474_4; my translation[13]).

The creation of a modern society can thus be seen as a key concern of deputies with various ideologies between the 1840s and the 1930s. Technological, infrastructural, and industrial development was undertaken as a way to improve social life. Throughout the studied period, the deputation combined its wish to modernize 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. Although occasionally the deputation felt obliged to help the most disadvantaged classes, a rhetoric of equality was used to cover structural inequalities. However, research carried out in municipal archives in Navarre, such as that of Gastón (2010) and Lana-Berasain (2012), suggests 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 privatization of previously communally accessed

land may have produced, in certain social contexts, more social inequalities than equality. Some authors have argued that disputes over ownership of communal land might need to be taken into account to explain many of the key issues associated with social change occurring since the rise of constitutional revolutions; such disputes were a key factor influencing the particular pattern that the civil war displayed in Navarre (Majuelo 2010: 7; Gastón 2010: 13).

Professionalization of the Administration

The process of modernization of society can be seen to have taken place together with a process of modernization 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 recognizing and being partly structured in the recognition of persons, families, or organizations, to the establishment of general rules equally applicable to all members of the organization. The case of Benito Ribed, who was depositary of the deputation between 1848 and 1868, and a consideration of a number of internal regulations of the deputation illustrate these changes.

Benito Ribed was appointed 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 and there is no record of wages paid to him. This suggests that the depositary was perhaps managed single-handedly by Ribed between 1848 and 1868. Soon after his death, in 1870, the depositary was incorporated into the core structure of the administration

together with the Secretary and Accountancy. Ribed's death coincided with the above-noted template for the deputation's annual budget, suggesting that during the time when Ribed was in charge of the depositary, the yearly budget was done by Ribed, it 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 was able to occupy the office temporarily, while 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 open to find a new depositary (AGN DFN, Caj 1).

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 have not 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 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 sometimes in relation to some individuals who worked in it and the role they performed. Despite these personalized 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 businesses. It also emphasized the confidentiality of information handled and expected honesty and civility in 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 502/5), Regulation for pensions in 1869 (AGN DFN, Caj 199/5), reforms of the road men regulations in 1869 (AGN DFN, Caj 199/2), and a reminder of the staff's duties in 1867 (AGN DFN, Caj 199/1). In the regulations approved for the departments of Secretary and Accountancy in 1869, the personalized definition of some administrative positions is no longer present, and the

departments are uniquely defined in relation to their structure. This regulation also suggests that the entrance to work in these departments was covertly protected. Although there was a specific section regulating the conditions to get in and to be promoted within the administration, in a posterior section dedicated to pensions it was stated that whenever there was a vacancy and a child of a former employee of the Deputation wanted it and showed his ability to perform the duties, he would be the preferred one to occupy it (AGN-NAO DFN, Caj 502/5).

The growth, role, and performance of the deputation was assessed every now and then by deputies or top managers in the form of reports that evaluated administrative procedures, analyzed problems faced by the deputation or some of its departments, assessed its capacity to respond to them, and identified areas considered necessary to maintain or develop. As a result, new regulations, reforms of existing ones, reports regarding the workings of the administration, and 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 1933.[14] 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, Plowing, or Woodland, would be requested and taken into account when a decision was made (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 always have been exercised efficiently, as a report by U. Errea, a Carlist deputy assessing the administration in November 1892 (García-Sanz 1996: 57) 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 public media. This is suggested by the deputy's remark that he found unacceptable that the press had published that the deputation was allowing some private citizens to delay the payment of their debts with it, and he suggested that all economic obligations of the administration ought to be exercised in their due time (AGN DFN, Caj 1996/1).

The efforts to create or maintain an efficient and professional administration can be seen to have required periodic reminders to staff of their duties. These reminders may have been necessary either because it was considered that generally the regulations were being breached or because the constant growth of the number of personnel required that a process of "professionalization" 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 employees must arrive on time and 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 continued to be issued. In 1927, for first time in the reviewed documentation, staff's right to three weeks of holidays was included (AGN DFN, Caj 1996/1).

Part of this process of professionalization is the increasing demand by the deputies for periodic reports explaining what had been done and how the economic resources were being used. At least since 1910, the yearly budget of the deputation needed to be produced together with a report explaining it (AGN DFN, Caj 2464/3). The practice was not always followed, and the managers of the different departments had to be occasionally reminded of the need to submit reports, like it was done in an internal letter in 1914 (AGN DFN, Caj 1996). Nevertheless, managers of some departments seem to have found in such reports an opportunity to show their value, especially in the field of medicine. The medical staff hired by the deputation seems to have had a continuous 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 for 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 testing a new serum against diphtheria. The deputation praised the medical staff's attitude and agreed (AGN DFN, Caj 31973). An internal

regulation for the hospital kept in the same folder suggests that some personal interests remained. 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 section on fractures. 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, calling previously used methods quackery. He also asked for authorization to create, some time in the future, a practical workshop of Traumatic Surgery to teach rural doctors these novel practices. 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 service (AGN DFN, Caj 31973). It seems therefore that different departments approached report making differently, some regarding reports as an opportunity to take credit for their own work and request further funding while others failed to produce reports. In general, however, internal regulations, evaluative reports, and annual budgets reflect a move toward much more detailed accounts of the work done as well as the uses of economic resources. In 1931 a conflict between the deputies and many staff members 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 raises of too many staff members and decided to cancel the previous agreement and to create a new rule that would have a general character, avoiding the "unwanted" general pay raise (AGN DFN, Caj 1996/1). Between 1841 and 1936, the deputation evolved from dealing with each post within the administration according to the post or the person holding it to creating regulations

of general character that would be applied equally to all staff. Throughout the studied period, the deputies attempted to improve the efficiency of public administration by updating its structures and ensuring that staff worked efficiently. Processes of growth and specialization within the administration produced degrees of centralizing tendencies, which could lead to jurisdictional conflicts.

Governance and Ideology

The behavior 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 state authority and those existing in Navarre, as a pragmatic center of governance that sought its strength in an interpretation and exercise of law, than to a center of governance shaped by marked ideological positions. García-Sanz's (1996) analysis of Navarre deputies' political and socioeconomic profiles in his Biographic Dictionary of Navarre's Foral Deputies (1840–1931) offers valuable insight about the importance that the fueros had across Navarre's political spectrum. To García-Sanz, there was more political plurality than what could have been expected (1996: 48). He highlights that apart from "a genuine left" (socialist), there were elected deputies of all political tendencies. Liberals dominated; around half of the total of the elected deputies were liberals. In the other half one can find conservatives, Carlists, independents or nationalists (1996: 48). Regarding the socioeconomic backgrounds of the deputies, he notes that the customary idea that the deputies were largely part of a socioeconomic elite of the territory is supported (1996: 41). However, there were significant differences in the value of their properties, and "there even was a not-inconsiderable group whose origin is located in the so-called middle classes, or, if you will, upper middle-class" (García-Sanz 1996: 41; my translation[15]).

In contrast with the variance identified in the ideological and socioeconomic profiles of elected deputies, García-Sanz argues that "[t]he defense

of the foral regime was a binder of all Navarre's political class" (García-Sanz 1996: 52; my translation[16]). There were important differences in deputies' desire to recover the fueros as they were before 1841 reform, but these emerged within all political parties (García-Sanz 1996: 52). Governance from the Deputation of Navarre during the studied period does not seem to have been primarily influenced by deputies' ideologies. Deputies' decissions may have been influenced by several factors, including a traditional interpretation of the fueros as well as some structural features of the administration that could have reduced the extent to which reform could have been influenced by ay deputy's ideology.

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 important for the resolution of each case. The resolution of cases had to be based not uniquely on ideological preferences but also on law. The importance of the legal context and the application of the appropriate body of law to legitimately exercise power can be seen in the importance given by the deputies to the post of Secretary and the whole department he managed, duties that the deputies felt facilitated them making decisions about the cases at hand.

Since 1834 and until his death in 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 Foral Reform Act of 1841 (Ley de Modificación de los Fueros), and arguably was the most influential position within Navarre's governing institution that did not require election. 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 Yanguas died in 1863, which suggests that it had been considered appropriate to clearly define the role and duties of the post and that they were 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) it clarifies that due to special circumstances an official is acting as secretary, who would continue doing so. The duties of the staff of Secretary include: (1) carry out the tasks ordered by the secretary (2) to keep updated records of general registry as well as the special ones assigned to them, so the state of any case and the whereabouts of relevant documentation can be known at any moment; (3) each official is responsible of the accuracy of the records kept, of the relevance of the antecedents related to each case, and for properly associating documentation that may contribute to the "illustration" of a case (AGN DFN, Caj 1996/1).

The importance of the secretary, his superior authority within the administration only below the deputies themselves, and the centrality of the department of Secretary are due to the fact that this is the administrative department that takes 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, and clearly filed and labeled 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 department staff. One such duty was opening a general registry recording all incoming and outgoing issues that go through the department. In the registry would be noted the object of the case or expedient, the date, the department it was sent to, and all the paperwork related to it contained until the case or file is closed. Another duty stated that officers are liable to hand over the cases to applicants with a summary informing about those cases for which there is an established jurisprudence or that relate to Navarre's own laws. In cases that had to be interpreted where there was a lack of legislation, the resolution would be

based 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 a district deputy or deputies if considered necessary (AGN DFN, Caj 1996/1).

In 1892 a report proposing changes in the administration in order to improve its efficiency suggested that to facilitate the work of the deputation, it would be useful to have a compilation of the existing administrative resolutions prior to 1841 Foral Reform Act, which could serve as a guide to create fixed criteria to deal with issues regarding the deputation's duties. 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 it was 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 be clearly presented and contextualized, including dates, arguments, laws related to such cases, and all documents that related to the case (AGN DFN, Caj 1996/1).

At least since 1859 and up 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 law. A case that took place in 1883 illustrates this. In August of that year, the deputation authorized 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 on the case is a compilation of how soap had 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 materialized in decision-making processes. However, in some cases the personal capacity of the secretary to interpret law could have been important to direct the resolution of cases in one direction or another. 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 to represent their constituency, and the deputation was not formed by a winning political party as in modern politics.

In cases, irreconcilable differences emerged between deputies, which could lead to deputies' resignations. An instance occurred in relation to the initiative promoted by Navarre's deputation in 1885 to change the system to calculate taxation mentioned 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. Perez), 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 jeopardized 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 its members' "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, on their view, should be adopted to resolve the financial and tax problems. (AGN DFN, Caj 1998/1; my translation[17])

Differences within the deputation could lead therefore 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 goodwill of the 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" (AGN DFN, Caj 1998/1; my translation[18]).

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 the 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 a variety of ideologies could further minimize the extent to which an ideological idea could influence decision making. Irreconcilable differences could nonetheless emerge between deputies. In cases such as the one reviewed earlier, 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.

Administrative Decentralized Practices

Another significant factor limiting the impact of deputies' personal preferences relate to the decentralized administrative praxis associated with fueros. Traditionally, decentralized 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. Decentralized 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 weighting systems they used for different purposes as well as about 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 waters municipalities had and how they were 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 specialized administration seems to have produced centralizing tendencies. In Navarre, jurisdictional authorities' proposals to change decentralized practices tended to produce jurisdictional disputes, often involving discussions about 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 such a budget 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 annual budgets, a circumstance that was not fully accepted by state authorities, who demanded provincial budgets (Martínez Beloqui 1999: 173–190). The issue was addressed by José Alonso (1849). In his view, the deputation was defined through legal documents. According to such documents and to the duties of Navarre's deputation, the production of annual budgets was not required, 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 created jurisdictional friction, which had at its center the fueros. Two documents produced by the Council of Pamplona illustrate the dispute. After careful analysis of the models provided by the deputation to present municipal budgets, the council argued that the substitution could not be applied without profound changes. This position was defended with various arguments, including practical inconveniences, legitimacy to exercise such changes, and a defense of fueros and decentralized practices as best ways to achieve social welfare. Pamplona's council argued that such changes would produce grave problems that would affect the efficiency of the practices and

procedures it had in place, which, it argued, were the best possible ones. The understood idea was that the council was in the best position to know its needs and use its resources efficiently. In Pamplona, the council argued for the need to assist the poorest people. It defended that right, stating that since antiquity, municipalities had had the right to manage such issues, and directly associated fueros with administrative decentralization. It praised Navarre for managing to avoid centralization when compared with other provinces of the state and associated centralization with unnecessary bureaucracy that produced "human demoralization." It stated that Navarre was fortunate for having a deputation that cared and protected fueros and suggested that it would be unlikely that the deputation would promote acts against 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 its goal of stopping the abuses that had been detected in certain villages. However, the council emphasized that the necessary reforms had to be made without jeopardizing the historical rights of municipalities and argued that decentralization resulted in welfare: "Perhaps, the renowned England owes part of its prosperity and strength to this municipal system" (AGN DFN Caj 22285/1; my translation[19]). Arguably, different levels of jurisdictional authorities feared that changes in traditional practices would be associated with changes in how legal relationships were conceived and distributions of duties legitimized.

An important aspect of decentralized 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 right to propose those taxes there were considered necessary. The degrees 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 not to affect Navarre but that Navarre's deputation

considered appropriate to apply under its own management (AGN DFN, Caj 22285-4423). The documents show the marked differences in the taxes that each municipality had in place.[20]

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 normally highlighted. Among the many that took place during the period studied was an important one in 1894, known as La Gamazada (the term comes from the name of the Minister of Finance, Germán Gamazo, who attempted to abolish Navarre's foral tax regime established in 1841), when Navarre's political class and developing civic society unanimously rose up against reforms proposed by state authorities. A lesser-known 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 5% to the salaries of the employees and profits of credit societies" (my translation[21]), should be applied in Navarre and Vascongadas.

On September 4, 1867, the bank Crédito Navarro (Navarrese Credit) wrote to Navarre's deputation explaining that the civil governor (an authority appointed by state authorities) of the territory had demanded the tax on its profits and salaries of its employees, and Crédito Navarro considered that the deputation should know about it and about its view that the tax was not applicable in Navarre due to foral law. The following day the deputation replied stating that it 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 Vascongadas. 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 August 18, 1868, for example, the Deputation of Araba-Álava informed the

Deputation of Navarre by letter about an agreement reached by the three deputations of Vascongadas. 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 provide, 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 the businesses of the Basque Country, to comply with the most reverent, energetic and solemn protest. (AGN DFN Caj 2891/1; my translation[22])

Another example of the determination displayed by some deputations to defend their views can be seen in a letter sent by the Deputation of Gipuzkoa to those of Navarre, Araba-Alava, and Biscay on May 7, 1870. In it, the Deputation of Gipuzkoa requested 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" (AGN DFN Caj 2891/1; my translation[23]). 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 decentralized 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, taxes they considered illegitimate (AGG DFN, Caj 38138/3).

The value given to decentralization can be explicitly seen in the work of Luis Oroz Zabaleta (1917). Oroz Zabaleta was the secretary from 1921 to 1945, occupying this key role for the workings of the administration within a variety of state regimes, including a republic and a fascist military dictatorship. Oroz Zabaleta'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. He argued that "the vagueness of the 6th article [of 1841 Foral Reform Act] permits the Central power to ambition limiting Municipalities' foral

capacities, attempting to reduce them to purely economic action" (Oroz Zabaleta 1917: 45, 46; my translation[24]). For Oroz Zabaleta, it was not only a matter of what institution had control over the municipalities; 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. On 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, have to be considered as mere delegates of the mentioned Corporation" (my translation[25]).

Conclusion

García-Sanz (1996: 7) concluded in his bibliographical dictionary of Navarre's deputies that their services had been fundamental for the maintenance of the foral system. A traditional interpretation of the fueros and structural features of Navarre's administration may have been some of the influential factors on which the attitudes of Navarre's deputies were based. Navarre's public administration changed a great deal 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 center from which the social changes associated with the modernization of society were managed. The implementation of liberal policies and processes of industrialization resulted in significant social transformations, especially since 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 as a 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, men of different ideological

and socioeconomic profiles became deputies. 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. Their influence may be involved in the uses of law for the resolution of cases, in the maintenance of a rather decentralized 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 modernize society to achieve such an end.

Managing the modernization of society from the deputation led to a steady growth of the administration during the period studied, speeding up toward the turn of the twentieth century. Despite the protection of decentralized administrative practices within Navarre, a curve toward increasing degrees of centralization can be identified. This could lead to jurisdictional friction, when centralizing policies came from elsewhere (like state authorities), or when they were promoted from Navarre's own institutions. The resilience of a decentralized administrative system in Navarre may have been influenced by several factors, such as the general defense of fueros by Navarre's political class, or by structural features of the administration that limited the extent to which deputies' ideologies could shape decision-making processes. These structural features 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 decentralized administrative practices associated with the fueros, which, by distributing legitimacy over decision making among affected municipalities, led in some cases of institutional crisis to include affected social actors in decision-making processes.

Notes

1. "*un espiritu de singularidad de este territorio. . .que ha perdurado hasta la actualidad*."
2. *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.*
3. *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.*
4. *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 consistiesen 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.*
5. *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.*
6. *Las atribuciones de las tres autoridades designadas a Navarra. . .no fueron detalladas con toda especificación, ni deslindadas minuciosamente.*
7. *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.*

8. *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 recobrareis 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.*
9. *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 ferrea, 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?*
10. *los servicios públicos de carácter ordinario y las exigencias cada vez más crecientes de la vida moderna.*
11. *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*
12. *la instalación y organización de los servicios administrativos, el catastro, la Beneficencia en general, las carreteras principales y con más razón las secundarias.*
13. *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.*
14. 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, Caj199/5; 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.
15. *e incluso había un grupo no desdeñable, cuyo origen se sitúa entre las denominadas clases medias o, si se quiere, medias-altas.*

16. *La defensa del régimen foral era un aglutinante de toda la clase política Navarra.*
17. *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.*
18. *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.*
19. *Quizá deba la renombrada Inglaterra parte de su prosperidad y pujanza a este Sistema municipal.*
20. 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

21. *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.*
22. *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.*
23. *para que empleando de común acuerdo todos los medios que estén de nuestra parte, no se lleve a ejecución el impuesto que se pretende.*

24. *La vaguedad del artículo 6° permite al poder central querer limitar las capacidades forales de los Ayuntamientos, tratando de reducirlos a una acción puramente económica.*
25. *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.*

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7

The Fueros and the Creation of the Basque Country

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 laws, 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 creation of a jurisdictional Euskadi, as it exists today, cannot just be taken for granted; nor can it be assumed to have been a creation of Basque nationalism. Since at least the eighteenth century, long before the emergence of Basque nationalism, there existed somewhat official tendencies to conceive of these three territories as one entity, a tendency that can be seen in the use of the term *provincias Vascongadas* (Basque provinces) in some legal documents. Other terms were also used in academic and political contexts, some of which also included Navarre, such as *Pais Vasco-Navarro* and *provincias hermanas*.

This chapter analyzes how the construction of the legal framework that replaced fueros in 1876, and led to the creation of Euskadi in 1936, was approached in Vascongadas. Findings suggest that the creation of the legal entity of Euskadi has been partly influenced by a history of jurisdictional behaviors of recognition and cooperation between the jurisdictional

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authorities of Vascongadas, which to a lesser degree also included Navarre. Two rather opposing dynamics are identified as important in these territories' jurisdictional histories: (1) the variety of existing jurisdictions, their legally recognized powers, and the views and interests generated around them, which included considering each jurisdictional entity as largely sovereign and presuming a level of unilateralism regarding interests, concepts of social reality, and evaluations of social phenomena; and (2) the dynamics of systematic cooperation between jurisdictions, which involved legally defined political practices within each of these jurisdictions as well as strong collaborative tendencies between legally disconnected jurisdictions.

The Abolition of Fueros as a Process, 1876–1878

Unlike Navarre, which following 1841's reform managed to maintain the legal validity of fueros until the present day, fueros of the territories forming Euskadi were abolished when the last Carlist War ended in 1876. The legal framework associated with fueros would be replaced in 1878 by the Economic Agreement. The legal document associated with the creation of a legal framework replacing fueros 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 believe that institutional reform, including what authorities would exist and how they would be elected, was not a matter of great dispute. Rivera (2003) argues, for instance, that "The implementation of general Spanish legislation regulating the mechanisms to elect office did not find too many difficulties" (Rivera 2003: 414; my translation[1]).

However, an analysis of the legal dispositions issued by the state with the goal of eliminating the institutional particularities associated with fueros suggests that the process was more complex, as a process of legal and political resistance of almost two years' duration can be. Arguably, the resistance of foral authorities ended when foral authorities decided it was more beneficial to accept defeat, under official complaint, and to negotiate

a governing framework rather than face the consequences of continued resistance. The outcome of the process was the creation of the Economic Agreement between Vascongadas and state authorities, a legal framework providing territorial governing authorities with degrees of economic and administrative autonomy and that, like the framework in Navarre, could be interpreted as a "treatylike" law.

The process of the abolition of fueros began with the Royal Order of April 6, 1876, which was issued with the goal of eliminating the institutional particularities associated with fueros. The royal order had six commands, which created a timetable and a procedure through which 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 the order's preamble. The existence of 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, fueros were considered an obstacle that impeded 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 national unity" (Real Orden 6 Abril 1876: Preamble; my translation[2]). For state authorities, fueros were an obstacle to state unity; fueros were perceived to impede what the nation-state had to be. This had a *symbolic* aspect, which was asserted in the preamble, as well as a more *practical* character, as fueros prohibited state authorities from implementing 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 order would not change the fueros as it intended, most likely because the state did not find the collaboration it sought either in Navarre or Vascongadas. The lack of success of the Royal Order of April 6, 1876, is likely to have led state authorities to issue the law of July 21, 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. The articles stated that Euskadi had to contribute to

the army and to the treasury of the state like the rest of the provinces (Articles 1, 2, and 3) and allowed state authorities to negotiate with the territories the reform of fueros within the legal framework created by certain laws (Article 4) and to consider Basque local particularities in its contribution to the army and the treasury (Article 5). This law became a symbol of the abolition of 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 Vascongadas 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 fueros can be seen in some of the legal dispositions that followed. On January 11, 1877, the presidency of the Council of Ministers published in the *Gaceta de Madrid* (Madrid's Gazette. Official name used between 1697 and 1934. Nowadays called Official State Gazette) a legal disposition that made clear in its fifth article that Navarre and Vascongadas 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 February 5, 1874, and the decree of January 21, 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 May 5, 1877. The state authorities argued in the preamble that the state had made use of all its resources to facilitate an understanding with Vascongadas. 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*

(paper with official stamp, taxed, for official documents) 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 July 21, 1876. For Zabala Allende (1927: 25–26), 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 April 18, 1877. 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 Decree of February 28, 1878, state authorities would not yet obtain the collaboration of foral authorities. The Royal Decree of November 13, 1877, brought to an end almost two years of resistance and forced all foral authorities to collaborate with state authorities. This decree was directed at 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 from the municipal councils. Perhaps Biscay's jurisdictional authorities, which seem to have been those most reluctant to cooperate, decided to negotiate because they found threatening the possibility that the state's administration would bypass the representative institutions of their jurisdiction and directly demand economic contributions to the municipalities.

The idea that all foral authorities finally gave up some time after that decree is suggested by the change in attitude that can be seen in a royal order issued the following month, on December 12, 1877. In it and following the suggestions made by the governor of Biscay, the jurisdictional authorities of Biscay regained key duties to exercise governance that had been previously transferred to Madrid. Another Royal Order, this one on June 8, 1878, and directed at Euskadi, created particular regulations for the exercise of governance in the territory, which mostly related to granting its deputations more duties and executive powers. In the time between these two royal orders, a Royal Decree was issued on February 28, 1878. This legal document would become key in regulating the

degrees of economic and administrative autonomy that Vascongadas would legally exercise. 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 fueros represented.

This was explicitly stated in the long preamble of the Royal Decree of February 28, 1878. It began by arguing that once the constitutional unity in the territories had been established (institutional change), and the first men from Vascongadas had joined the army, 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:

> The collection of contributions, rents and taxes in these provinces will not be the same as in the others of the Kingdom; because the Government authorized by the Law of July 21 to introduce in this point the modifications that were more in harmony with the habits of the country, not only taking into account what it is convenient for this 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. (Real Decreto de 28 de febrero de 1878; my translation[3])

Since the creation of the Economic Agreement, links between fueros and it have continued to be made by one or another social actor. In 1905, for instance, Bilbao's Academy of Law and Social Sciences (Academia de Derecho y demás Ciencias Sociales de Bilbao) wrote a report about the Economic Agreement in which it is portrayed as "these remains of its ancient institutions" (AGG-GAO: JD T 1789,2-00-19; my translation[4]).

A similar idea was presented in 1927 by Julian de Elorza, former president of Gipuzkoa's Deputation, in the prologue of a book that analyzed the history of the Economic Agreement (Biblioteca Koldo Mitxelena: JV 2374). The study of the state's legal dispositions shows the existence of two years of resistance to institutional change. When the jurisdictional authorities involved in the creation of 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 of certain elites to political power but rather in creating the legal framework that most resembled those features associated with fueros, which could be managed by 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 maintain the traditional interpretation of the fueros.

Dynamics of Jurisdictional Cooperation

In contrast with fueros, the Economic Agreement was given a time-limited 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 Allende 1927: 52–53). The Economic Agreement would therefore be under constant construction, as its period of validity, or an aspect of it, would expire and a new one had to be created. A different issue also arose with regard to the Economic Agreement. As the agreement 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).

Between 1876 and 1936, four main revisions took place. After the initial agreement reached in 1878, new negotiations would follow in 1887, 1894, 1906, and 1925 (Monreal Zia and Jimeno Aranguren 2009: 651). Despite the revisions to the agreement, between these negotiations there emerged jurisdictional disputes between deputation and state authorities regarding the right to decide upon or exercise an economic or administrative competence.

The cooperative behaviors taking place in the process of creating 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 behaviors compiled in the files concerned those cases officially dealt with by the Deputation of Gipuzkoa that were considered to relate to the creation or maintenance of the legal framework associated with fueros in both their practical and symbolic elements. The files show what social actors were involved in each case, who opened each case and why, and the views and actions of the deputation in the assessment and resolution of the cases. The first case was opened in 1885 to keep records of the process of renovation of the Economic Agreement. These files show the types of official cases that the governing authorities of the deputation associated with 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 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 features.

The study of these files shows how the cooperative behavior between the jurisdictional authorities of the three territories was vitally important for the creation of the Economic Agreement. This cooperation was voluntary and 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 characterized jurisdictional

collaboration: respect for the free will, agency, and legitimacy of decision making in each of the jurisdictional entities; careful study of the cases to be decided on, including legal antecedents, current circumstances, and an analysis of how it all affected the case at hand; and a sense of fairness. The latter was associated not only with jurisdictional legitimacy and legal antecedents but also with socioeconomic realities and the different social and material strengths perceived in each of the jurisdictional entities that had to be considered, for instance, in establishing what 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 is clear, for example, in the first two files of the series. Each one covers a different period of time during the process, suggesting that the process was divided into two files due to the amount of documentation that the case had generated. (In fact, there are more files related to the process, although number 3, for example, compiled documents of a particular event related to the process.) 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 analyze their current 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 February 11, 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 February 19, 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 February 20, a letter from the president of Araba-Álava's deputation arrived, attaching the reply that had been sent to Biscay's initial letter. On February

23, Gipuzkoa replied to Araba-Álava, attaching a copy of their reply to Biscay. On March 9, Biscay's deputation replied to Gipuzkoa's, stating that it agreed with the views that Gipuzkoa had expressed in its previous letter and suggesting that the three should convene a conference in 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 October 10 suggesting that the meeting could not be delayed any longer and that the territorial elected deputies to parliament in Madrid should also assist. On October 12, a letter from Araba-Álava's arrived, agreeing and suggesting that Gipuzkoa establish a date and a place for the meeting. On October 15, Gipuzkoa wrote to the other two deputations suggesting that the meeting should take place in Biscay and letting them know who they would send to the meeting. The conferences would finally take place on the October 23 and 24, the minutes of which are included in the file.

There is also a list of the documents that were produced or used to analyze the context and circumstances of their time, which included a report commissioned by Araba-Álava's deputation about the convenience of having a special economic and administrative organization for Euskadi; a draft of the basis for the new Economic Agreement produced by Araba-Álava's deputation; the basis that the state government would accept to adapt the Economic Agreement for Araba-Álava; and a draft for the organization of Biscay's councils and deputation. The conferences seem to have been productive, as drafts for the basis of the new Economic Agreement 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 the effects of such a basis in the economic and administrative governance of the territory, which led to Gipuzkoa 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 on their economic and administrative practices.

The Deputation of Gipuzkoa commissioned a report to assess this, which was discussed, and the resulting draft was approved by the

Deputation on November 30, 1885. In the same session, it was also decided to organize a meeting with those persons who had held highest governing office in Gipuzkoa's administration. On December 5, the meeting in Gipuzkoa took place, during which a commission was created to study the report. The conclusions of the commission were heard in another meeting held on December 9. 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 December 14 and 15, 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 in 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 January 1, 1886. A few days later, Gipuzkoa responded to the deputies in the state parliament approving of their conduct in that meeting. On February 21, the Deputation of Gipuzkoa received reports describing the course of the negotiations for the renewal of the Economic Agreement in Araba-Álava and Biscay, sent by their respective deputations. 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 reopen negotiations with the state, and in July, Biscay suggested that a meeting between the three deputations would be convenient. The meeting took place that same month in Araba-Álava. Between July 1886 and January 1887, the three

deputations exchanged communications considering how best to approach state authorities to carry out negotiations, including official and informal contacts, in different locations, and by different people. By November 1886, the possibility of beginning negotiations seemed close, and the three deputations started to plan a meeting among 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 on a date for their representatives to leave by train from their respective cities toward Madrid. On December 30, state authorities informed the deputations that they would hear them from January 7, 1887, onward.

The commissioners of the three deputations met together with state authorities on January 8 and 10. On January 11, Araba-Álava and state authorities met; on January 12, a meeting was held between state authorities and Gipuzkoa; and on January 15, there was a meeting between Biscay and the state. By January 19, the Minister of Finances sent to the Basque deputies and senators a proposal to resolve the conflict. 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 in reaching an agreement can be seen in that despite all the previous collaborative work, during the negotiations, important disagreements emerged between Biscay and Gipuzkoa regarding an increase in the amount that Gipuzkoa should pay that had been authorized 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 behavior 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. It involved the voluntary cooperation of jurisdictional authorities in Vascongadas, which required a significant degree of transparency and trust, as information, assets, ideas, influences, and know-how were shared in the processes of designing common strategies and arguments.

Jurisdictional Autonomy and Legitimacy: The Case of Gipuzkoa

The argued collaborative behavior between jurisdictional authorities was the product of the willing participation of the authorities 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 the processes were those granted 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 to be associated with the decisions made by each of the existing jurisdictional authorities. In the jurisdictional, institutional, and legal framework created by 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 assembly would meet annually in Gipuzkoa, and although the specific participants changed throughout history, municipal councils, valleys, and populations were the kinds of communities 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 (45).

An implication of the abolition of 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 analyzed below suggest that the inhabitants of Gipuzkoa continued to locate legitimacy in the political community associated with the General Assembly and that these assemblies were conceived to be legitimate because they brought together representatives of the social organizations thought to represent the different communities of people who inhabited the territory. Two examples will be used to illustrate this. The first took place in the 1880s in the process of revising the first Economic Agreement. The second took place in 1918, when jurisdictional authorities launched an in-depth survey to study how fueros could be updated if state authorities would eventually accept their reestablishment, a possibility that, although distant, was perceived to be real.

The General Assembly in the 1880s

In January 1887, the ongoing negotiations between state and Euskadi authorities to revise the Economic Agreement reached an impasse. This made it clear to the authorities of Euskadi that their agreed conditions, which had been approved by their respective General Assemblies, would not be included in the new version of the Economic Agreement. These conditioins were: (1) to give the Economic Agreement a stable and definitive character; (2) to maintain the taxes and amounts already established; and (3) to compensate the persons and organizations who were about to lose an exceptional treatment contemplated in the previous Economic Agreement (AGG-GAO JDT 1841(3)). Gipuzkoa's deputation, aware that such agreed key terms were in jeopardy, began considering the necessity of convening the General Assembly in order to assess the circumstances and agree a new position. Following an exchange of communications between the deputation and its commissioners negotiating in Madrid, it was decided that the General Assembly should be convened on January 24. Present in the assembly, together with representatives of the municipal councils, were those individuals who had held the highest political offices in the territorial administration and representatives of

the Cámara de Comercio de San Sebastián (chamber of commerce of San Sebastián).

The minutes of the meeting describe that the event was inaugurated by a speech of the president of the deputation. He started explaining that the meeting was necessary due to the impossibility to reach an agreement with the state government on the terms that the assemblies and deputations of Vascongadas had previously agreed. Due to these circumstances, the Deputation had considered that the Assembly, "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" (AGG-GAO JDT 184 (3); my translation[5]). Although the speech portrayed the assembly as "the most genuine representation of the country," the president granted to it authority only to "inspire" the deputation. However, it also made the assembly responsible 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, probably there still was 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" (AGG-GAO JDT 1841 (3); my translation[6]). The exchange shows that in some municipalities, it was not entirely clear that 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 an example 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 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 characterized this noble village educated in the glorious traditions of nobility and loyalty that illuminate all their acts have been completely conserved. (AGG-GAO JDT 1841(3); my translation[7])

The paragraph suggests that fueros—the jurisdictional infrastructure that the law of July 21, 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). Fueros, nobility, and political consensual decision making were conceived of as being related. The General Assembly agreed to create a commission that would make a report that would be submitted to the deputation. Two days later, on July 26, the commission created by the General Assembly submitted a draft with new terms for the Economic Agreement. On July 27, the commission presented the report to the deputation. On the same date, the deputation approved the draft.

The Presence of Civil Society in 1918

The idea that legitimacy was associated to the political community created by 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 fueros. This led the Commission of Fueros of the Deputation of Gipuzkoa to conduct what might be considered an in-depth qualitative survey among those social actors whom the commission considered had the right to participate in the creation of the legal framework associated with fueros.

The survey was kept as the case number 131 of the series labeled "Fueros." The index does not offer much information about the process, as it only displays the case 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 organization of Gipuzkoa" (my translation[8]). Details of the process have to be inferred from the documentation contained in the file. The first document is a letter sent on November 12, 1918, by the Committee of Fueros of Gipuzkoa to a number of persons and organizations. In the letter, the commission explained that it considered it appropriate to start to work on developing a consensual framework about how fueros should be updated if they were reinstated. The committee justified doing so even within a legal context in which such a possibility did not really exist, and despite the difficulties 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 reestablish 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 fueros 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. Second, 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" would be also consulted (AGG-GAO JD T 1789, 1; my translation[9]).

The file contains a list of the persons and associations that were consulted; almost 200 social actors are listed. The list groups social actors in two ways. First, individuals are grouped according to the type of political office they held: 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 and of arts, religious associations, magazines or newspapers, were grouped mostly 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 organization 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 center, or similarly named organizations) was consulted in Vergara, Tolosa, Irun, and San Sebastián; and the Centro Conservador (conservative center) was consulted in San Sebastián, Eibar, and Irun.

The survey launched by the Commission of Fueros was fairly successful. The deadline for the submission of reports was set for December 31, 1918, which was extended to February 28, 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 social actors who were approached likely 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, "what would, in your opinion, be the adaptation of this rule of law to the present life, both regarding the powers, well defined, of the Province in its internal regime, as in regards of its relation with the State, in a way that could enable its incorporation into the articles of a law voted by the Parliament? (2) How do you adapt and transform foral organizations in order to meet the needs and circumstances of today?" (my translation[10]).

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 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.

The Creation of Euskadi as a Jurisdictional Entity in the 1930s

The two dynamics noted above were also present in the creation of Euskadi in the 1930s. The legally constitutive process started in the context of the jurisdictional formation of the state that culminated in the republican constitution of 1931. 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 December 9, 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 translation[11]). It also asserted that:

> The government should not prejudge whether that autonomy must be legalized in a single Statute for the three Basque provinces and Navarre, or, on the contrary, in one Statute for each province, as in the traditional regime that, with different peculiarities, had as laws the Fueros of Araba-Álava, Biscay, Gipuzkoa and Navarre; legislative plurality that has never weakened the fraternity that has always united these four provinces, and hence the Government, respecting the will of this country, leaves to its free will that resolution. (Decreto de Ministro de Gobernación de 9 de diciembre de 1931; my translation[12])

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, concepts of fraternity between them were noted. Together with these, a rather normalized 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 anticonstitutional. The second draft was voted for in 1932 and eventually rejected in Navarre.

Stanley G. Payne (1984) has argued that the second draft, apart from removing the problematic "religious autonomy", was largely similar to the previous one. However, he noted that an amendment pushed by the socialists introduced an electoral method that "would give a disproportionate weight to the populous Biscay, center of both socialism and Basque nationalism, while reducing the representation of the less populous rural areas of Araba-Álava and Navarre" (Payne 1984: 107; my translation[13]).

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 behaviors can be identified as a rather constant factor influencing the construction of the legal framework of Gipuzkoa that was normally associated with fueros. The creation of the Economic Agreement—the legal framework enabling self-governance and associated the fueros—was approached in these territories in similar ways throughout the period studied. These approaches were characterized by cooperative behavior taking place within and between each jurisdiction. That taking place within was directly associated with the jurisdictional and institutional framework that fueros created, and it was the jurisdictional context, the institution (when it existed), and the political community (once 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 fueros. In Gipuzkoa, even when 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 behaviors within and across jurisdictional entities are similarly detected throughout the period studied. This needs to be emphasized, as in Vascongadas, between 1876 and 1936, key social transformations usually related to the emergence of modern industrial societies took place: institutional-constitutional reform in 1876, rapid industrialization 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 behavior by one or another form of lobbying. However, the evidence analyzed here suggests that, despite these significant social changes, the interpretation of the Fueros made from the Basque deputations remained markedly stable regardless of the elected deputies or of the influence that different lobbies could have exercised on elected deputies. In other words, social change normally associated with modernity does not correlate with changes in jurisdictional behaviors that had to do with legal disputes and jurisdictional claims over legitimacy. In contrast, jurisdictional behavior in these territories appears to have been characterized by some features, including the defense of autonomy, the maintenance of claims over jurisdictional authority to exercise types and degrees of social powers, unilateral jurisdictional agency, and cooperative behavior 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 behaviors and jurisdictional claims over legitimacy to exercise types and degrees of social powers.

Notes

1. la *implantación de la normativa general española que regulaba los mecanismos de elección de cargos no encontró demasiadas dificultades.*
2. *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.*
3. *No será la misma la forma de exanción de las contribuciones, rentas e impuestos en estas provincias que en las demás del Reino; pues autorizado 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.*
4. *estos restos de sus antiguas instituciones.*
5. *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.*
6. 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.*
7. *deliberar sobre los problemas más transcendentes 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 integras 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.*
8. *Dictámenes de personas consultadas sobre lo que puede y debe ser la futura organización guipuzcoana.*

9. *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.*
10. *cual seria, 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.*
11. *las provincias Vascongadas y Navarra puedan elevar a las Cortes Constituyentes sus aspiraciones de autonomía.*
12. *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 debilito 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 albedrio esa resolución.*
13. *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.*

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8

Modern National Identities in Navarre and Euskadi

In 1978 the state of Spain was "reinvented" as a constitutional monarchy, ending almost 40 years of fascist dictatorship. Since then, and based on the electoral results in regional elections, political parties associated with national identities have become the most popular ones in Navarre and Euskadi. The Basque Nationalist Party (EAJ-PNV) has won all the elections to the Basque government, which has resulted in EAJ-PNV's governance, on its own or in coalition with other parties, in all legislatures except for one. Unión del Pueblo Navarro (Navarrese People's Union. From now on UPN) has dominated Navarre's government on its own or integrated and/or in coalition with other parties. Technically, there have been nine legislatures, starting in 1983, although in 1979 there were democratic elections to form a parliament. In seven of the nine legislatures, continuously since 1991, UPN has won the elections. In all of them but two UPN has been able to form a government.

If Basque nationalism is characterized by its national identity, Navarre navarrism is associated with the rejection of Basque nationalism and with the assertion of a kind of regional Spanish nationalism. The modern national identities that have become most popular in these territories were both articulated at the turn of the twentieth century together with the social changes associated with modernity. The populations of these

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territories experienced substantial social and technological development, which led to the emergence of new political projects and ideas. A key issue at stake in Navarre and Vascongadas was that of reinterpreting the traditional meaning of fueros in the new socioeconomic context.

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* (The Bee) 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 industrialization taking place in Biscay between the 1870s and the 1890s is emphasized as a critical factor influencing the emergence of Basque nationalism (Elorza 2001: 140–191; De la Granja Sainz 2002: 15). Industrialization produced social and demographic transformations that led to a decline of Basque traditional culture, and while some influential Basque intellectuals, such as Miguel de Unamuno, considered the change as positive and inevitable, Arana associated the industrialized and changing social landscape with "the political disappearance of the Basque people" (Elorza 2001: 154–155; my translation[1]).

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. However, it was not race itself that Arana associated with the legitimacy to exist as self-governing jurisdictions. Although Arana listed history by at the bottom of the hierarchy of elements composing national identity, legitimacy was associated to 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 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 way to recover the fueros"; he linked the new ideas he was proposing to two principles: *Jaun-Goikua eta Lagi Zarra* [God and ancient law, also known as JEL] (García Venero 1979: 269–270). These would indeed become the cornerstone of his political project, as can be seen in the document that initially defined the political doctrine of the Basque Nationalist Party. Its first article stated: "Biscay, as it organizes 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'" (García Venero 1979: 282; my translation[2]). In fact, the name of the Basque Nationalist Party, in Basque Euzko Alderdi Jeltzalea, comes from the motto JEL (EAJ/PNV 2017). Arana considered that the agency, the legitimacy granted by fueros to Biscay and to each of the Basque territories, did not stem from the state of Spain or that of France but from God and traditional law.

The centrality of interpreting fueros in Arana's ideological trajectory can be further seen in that his nationalism was not only a response to the

social changes produced by industrialization but also a reaction to public debates over interpretations of fueros. Although Arana's linguistic work already contained a political angle (Elorza 2001: 154), his first work with a marked political character, *Pliegos Historico-Politicos* (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" (*Encyclopædia Britannica Online* 2015), and Ismael de Olea, who would be counselor in Bilbao toward the end of the nineteenth century (*Auñamendi Eusko Entziklopedia* 2015). On April 14, 1886, Unamuno published an article in response to a previous one by Olea, in which the latter had accused Unamuno of attacking fueros. A quote from Unamuno's text illustrates his position:

> I did not attack the foral autonomy defended by the majority of *vascongados*[3] (not *bacongados*[4]) 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 in 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*[5]⋯and the Basque literature in *vascuence*,[6] 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. (El Noticiero Bilbaino 14/04/1886: 2; my emphasis; my translation[7])

Unamuno argued that he had not attacked fueros. What he had done was to interpret them from a perspective not only different from that traditionally used to defend them but from that which had traditionally attacked them: that identified in Southern's discourse (Southern 1837b: 80–89). However, in contrast with Southern, Unamuno fueros. Both men similarly held to positivism, which led them to believe that it was nature and the present, not historical romanticism, that legitimized the

existence of social authority. For Unamuno, fueros had a valid place in society in the 1880s; for Southern, they did not in the 1830s. Unamuno defended the autonomy associated with fueros, yet he did it from an interpretation of them that jeopardized the whole legitimizing structure on which the defense of fueros had been traditionally sustained. His position implied doing away with some differentiting references, such as history and race. At the time, a movement promoting a revival of Basque culture was strong across Euskal Herria, and Unamuno's ideas could be read as reacting in part to this movement.

Arana's interpretation of fueros was opposite to that taken by Unamuno. He associated the legitimacy of fueros not with the present or their utility but with elements of traditional defenses of fueros. He considered, however, that all sectors of Biscayan society, including Carlists, had endorsed the interpretative framework of fueros created by the state of Spain, restricting and corrupting their real meaning. Arana's abandoning of Carlism had to do with the Carlists' interpretation of fueros and the legal context in relation to which the agency produced by fueros ought to be framed. He thought that Basques had forgotten their real nationality, "the authentic meaning of their fueros and their truthful history" (Mina Apat 1990: 101; my translation[8]). Basque nationalism would develop in relation to Arana's interpretation of 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.

The influence of these central ideas of Basque nationalism can be seen in the work of Manuel Irujo (2004 [1945]), a Basque nationalist and politician from Navarre. Irujo conceived Basque people in relation to their unique racial features, and he associated Carlism with a defense of fueros (the latter being key elements that had allowed Basques to maintain their racial characteristics). Being Basque not only implied a racial distinction, but also an association with certain values. In his view, Basques had maintained throughout history a social philosophy that he thought characterized the Basque race. The Basques, he claimed, "preserved intact the philosophy of their race, without letting the Aryan spirit of conquest win their soul" (27; my translation[9]).

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 García (2005). He has argued that "Basque nationalism has its own and exclusive version of history, and this informs or closely imbues all its ideology" (Montero García 2005: 249; my translation[10]). 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 maintained through pacts (fueros) with the central government; (3) a particular interpretation of Carlism as a movement in defense 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 EAJ-PNV itself (259, 260). For Montero García, although such an interpretation does not have "scientific support" (276), it is related to a historiographic tradition that he dates back to the seventeenth century, which Arana would reinterpret by to create Basque nationalism (266–267).

The Emergence of 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 centralizing policies, took place (Aliende Urtasun 1999). However, navarrism, as an ideology or identity, defined by the same tenets as today's navarrism, developed following the views of early twentieth-century public figures such as Victor Pradera (Izu Belloso 2001: 287; Sánchez-Prieto and Nieva Zardoya 2004: 251).

Victor Pradera, like Sabino Arana, was a Carlist; from Navarre rather than Biscay, he 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 representing Pamplona (Carballo 2013: 98–105). If Arana's nationalism was partly a response to debates over the meanings of fueros occurring in the 1880s, Pradera's navarrism was partly a response to Basque nationalism (98–102). Both Pradera and Arana departed from a traditional concept of fueros, one that associated legitimacy with history. In fact, Pradera considered that fueros were "Basque's personal identity" (Pradera 1918b: 8; my translation[11]). To 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 linguistic difference with the right to exist as an independent nation. In his view, associating racial and cultural features with legitimacy entailed promoting a modern idea, that of constructing Euskal Herria as a sovereign state, which had no precedent in history. He claimed that in contrast to Basque nationalists, he loved "*Vasconia*" (Vasconia is a historical term to refer to the Basque Country. It started to be used in the first century and it is rarely used nowadays) as it was (Pradera 1918a: 5). For Pradera, the fueros represented the "real" and "ideal" organization of the state of Spain, which could be described as a federal monarchy (31).

Basque nationalists would have made 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, implied 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 fueros (Pradera 1917: 32, 33). Pradera also argued that Basque nationalists erred in linking race and language with "the philosophical justification of people's independence" (29; my translation[12]). For him, the primitive sovereign social units were municipalities—arguably the cornerstone of fueros—and he pondered rhetorically whether Basque nationalists would recognize the municipalities' independence (28).

Basque nationalists, in the name of tradition and truth, were making claims and associations that Pradera considered illegitimate. History was the validating and legitimizing features valued by Pradera, and he found no indication in historical records of the existence of the racial and linguistic issues or political implications emphasized by Basque nationalists. He argued that although the Basque language was most appropriate for Euskal Herria,

Basques had used both Basque and Castilian throughout 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" (29; my translation[13]).

Pradera and Unamuno might have had in common the defense of fueros and a preference toward the Castilian language, 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 one hand and a complete embrace of history on the other.

Pradera's interpretation of fueros 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 and Nieva Zardoya 2004: 253). Franco thought that a historical tradition of pure and real Spain existed, a tradition that rejected foreign and contaminated liberal ideas. He presented Carlism and the military coup of 1936 as reactions of an "ideal Spain…against the bastard Spain, frenchified and eurocentric of the liberals" (Franco in Peña e Ibáñez 1940: 3; my translation[14]). Peña e Ibáñez (1940), who would endorse the exact same idea, argued that the localization of Carlist support in the "Basque-Navarrese country" was associated with the character of fueros: a "purely counterrevolutionary institution" (48; my translation[15]). However, 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) (175). Eladio Esparza Aguinaga was a Navarrese journalist who contributed to the dissemination of a "navarrist" interpretation of Navarre that was similar to those of Franco and Peña e Ibañez. He did so especially after the Civil War, from important academic offices, such as that of director of the journal *Principe de Viana* (Aznar Munárriz 2003), the most important academic journal in

Navarre. Esparza also related Carlism with resistance to liberalism. Both Esparza and the Basque nationalist Manuel Irujo were aware of the variety of existing interpretations of Carlism and the Carlist wars. Esparza 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 defense of the fueros" (Esparza 1941: 87–88; my translation[16]). Contrary to Irujo, who interpreted the First Carlist War as "[t]he political death of the Basque Country" (Irujo 2004 (1945): 76; my translation[17]), Esparza adhered to the same interpretation endorsed by Peña e Ibañez, which 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 and Nieva Zardoya (2004), who have argued that "the living memory of Francoism formed ideas and an important element of Navarre's own collective identity" (261; my translation[18]). Franco's military dictatorship might not have maintained the foral regime "but even increased and strengthened it" (my translation[19]) (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 established after 1975 (Izu Belloso 2001: 393). This navarrism has been described as "nothing more than Navarre's version of twentieth-century Spanish nationalism" (287; my translation[20]).

Conclusion

Industrialization and the consolidation of civil rights, such as freedom of association, led to the emergence at the turn of the twentieth century of novel political projects and ideas in Navarre and Vascongadas. It would be during this time that the modern identities that would become most popular in these territories during the twentieth century developed. The ideas of two political figures, Sabino Arana and Victor Pradera, gave form to these identities. The chapter has shown that at the bottom of the modern identities that the populations of these territories have fashioned rest traditional interpretations of fueros. The novelty of the

political ideas had to do with how they reinterpreted traditional concepts of sovereignty and legitimacy in a modernizing social context. These political ideas led both Pradera and Arana to assert the right of Vascongadas and Navarre to self-governance. Whether this right ought to translate into a federal state or an independent Basque nation seems to have been influenced by different considerations regarding the importance and role that Basque and Spanish languages should have in the Basque territories. This factor also seems to be present in the position defended by Miguel de Unamuno, an author associated with more liberal views.

Notes

1. *la desaparición política del pueblo vasco.*
2. *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.*
3. Basques, as traditionally written in the literature; with "v," a letter not contained in the Basque alphabet.
4. Basques written with "b," has a minor presence in the literature; the letter exists in the Basque alphabet.
5. *Euskera* is the word used in the Basque language to identify itself.
6. A Castilian term to identify the Basque language, normally disliked today by Basque speakers.
7. *Yo no ataqué la autonomía foral que defienden la mayoría de los vascongados (no bascongados) y yo con ellos; y no la ataqué, 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 ataqué 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.*

8. *han acabado por ignorar "su verdadera nacionalidad," el significado auténtico de sus fueros y su verdadera historia.*
9. *conservaron intacta la filosofía de su raza, sin que el espíritu ario de conquista, ganara su alma.*
10. *El nacionalismo vasco tiene su propia y privativa versión de la historia, y ésta informa o impregna de cerca toda su ideología.*
11. *la identidad personal vasca.*
12. *el fundamento filosófico de la independencia de los pueblos.*
13. *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.*
14. *la España ideal⋯contra la España bastarda, afrancesada y europeizante de los liberales.*
15. *institución netamente contrarevolucionaria.*
16. *el motivo fundamental que empujó a los vascongados a la Guerra fué la defensa de los Fueros.*
17. *La muerte política del País Vasco.*
18. *la memoria viva del franquismo conformaba ideas y elementos importantes de la propia identidad colectiva navarra.*
19. *sino que incluso la acrecentaba y fortalecía.*
20. *el navarrismo no es sino la versión Navarra del nacionalismo español en el siglo xx.*

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9

Conclusion

The investigation presented in this volume began from an interest in better understanding what factors led key influential majorities in Navarre and Vascongadas to defend different concepts of the state in the 1936 Civil War after having defended the same concept of the state during the nineteenth century's wars. Although findings suggest that linguistic preferences played a role in the formation of Basque nationalism and Navarre navarrism, what has really come to the fore throughout the research process has been the influence that the social practices associated with fueros, and their traditional interpretations, have exercised in these territories to sustain and justify jurisdictional claims to legitimacy. Findings support the modernist thesis that links social and material transformations with an evolution of ideologies, interests, and concepts of society. It was at the turn of the twentieth century, in the most industrialized area of the Basque territories, that a modern Basque nationalism emerged, which triggered political and intellectual responses such as Victor Pradera's. However, some central features of the different national identities developed in Vascongadas and Navarre, and why these choices have become popular cannot be explained without taking into account the influence

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exercised by legal practices in the formation of concepts of community that translated into political interests.

There has been a tendency in the study of nationalism to study the topic in relation to either "deep" biological or sociological factors that make it, somehow or entirely, an intrinsic part of human nature or as a product of the social conditions formed by modern society and not at all part of the human condition. The validity of political claims sustained in the notion of nationalism has been a key contended issue. The different approaches create contrasting logics to respond to the question of what key factors grant human communities the right to hold the status of nation-state. From the analytical frameworks created by these perspectives, the influence exercised by fueros in political action has been explained generally either in relation to racial/ethnic factors or according to the conception of law contained in theories of modernization. Modernism has become the most popular perspective in academia today. I have argued that modernist interpretations of nationalism are problematic because they are shaped by an analytical framework sustained in modern legal thought, especially in the normative concept of law underlying theories of modernization. The idea that the state is sovereign and its authority unquestionably legitimate has become dominant in modern industrial societies under the influence of legal positivism and the concept of law contained in theories of modernization. This obscures the fact that, at least up to the French Revolution, a debate about the nature of law that revolved around the legitimacy and sovereignty of state authority confronted some of the jurisdictional authorities making up European states. These jurisdictions included kingdoms, provinces, landlords, churchmen, and cities, among others—those entities that Charles Tilly (1993) associated with the "indirect rule" that characterized European states' governance until the second half of the eighteenth century (29–36). This dispute about the nature of law has been largely invalidated in modern legal thought through one or another definition of law. Modern definitions of law have therefore led to the disconnection of modern political history from some contentions regarding the nature of law, and the sovereignty and legitimacy of state authority. The meaning of jurisdictional conflict cannot be understood in relation to traditional

understandings of legal relations and must be interpreted instead in relation to modern sociological or political theory.

This book endorses an interdisciplinary theoretical perspective to develop a broader and richer analytical framework from which the meanings of jurisdictional action can be interpreted differently in relation to processes of state formation. Incorporating a critical and empirical understanding of law produces a novel way to think about nationalism, an approach that modifies how the issue of legitimacy is understood. The salient position that states have in today's legal order is the outcome of a history that includes not only a struggle between progressive and conservative social actors but also jurisdictional disputes over the nature of law and legitimate political power. Clashes between people defending different conceptions of the state, and justifying them differently, existed before nationalism. In Navarre and Vascongadas, the state's legal order and jurisdictional relations were interpreted in relation to more complex analytical settings. These analytical frameworks included traditional meanings of jurisdictional relations and debates about the nature of law.

The French constitutional model was designed based on a concept of law that took for granted the entity of the state as the natural social context associated with representative governance. Nineteenth-century scholars such as John Austin and John Stuart Mill were well aware of this, and each proposed solutions to the problem from different legal and philosophical angles, both influenced by utilitarianism. Authors like Lord Acton argued that such perspectives contradicted the meaning that state political action traditionally had had. The work of these two authors suggests that transforming absolutist into constitutional states required justifying the localization of representative governments in one or another social context. At stake were not only abstract ideas of liberty and justice but also the exercise and management of social powers, including the control over natural and human resources or the establishment of political networks of influence.

The arrival of a Spanish constitutional movement inspired by the French model produced an alteration of the meanings of state centralizing tendencies. The idea that progressive-Enlightenment inclinations led liberal social actors to similarly associate state authority with sovereignty and legitimacy is not supported by data. In Navarre, the liberal political

sector that carried out the 1841 Foral Reform Act defended an idea of liberalism and progress that did not assume that state authority was legitimate. The transfer of legislative powers from Navarre to state's authorities was done as a compromise due to local circumstances; it was not motivated by a conviction that such was the proper distribution of powers between authorities. The legal concept held in Navarre, which valued self-governance, was not uniquely applied in opposition to the state but also within Navarre's own governing praxis. Despite degrees of centralization, Navarre's decentralized governance was maintained in key elements, such as taxation, up to the 1930s.

The study further suggests that there exists a relationship between concepts of society and social practices that become recognized in law. Throughout the period studied, concepts of society, country, legitimacy, and sovereignty existed in association not only with the state of Spain or Euskal Herria but also with Navarre, Gipuzkoa, Biscay, and Araba-Álava. The existence of these legal entities seems to have depended on the collaboration of the key social organizations that made them up: traditionally municipalities, which could form larger jurisdictional entities, to which a civil society would be added during modernity. The necessity of theoretically explaining the formation of legal entities has come to the foreground, especially in the study of Euskadi. The current existence of Euskadi as a jurisdictional reality cannot be assumed, regardless of how often one or another term has been used to identify mutually independent jurisdictions as one throughout history. The use of such terms, as well as processes leading to legal recognition, needs to be explained.

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. These processes involved cooperative behavior within and between the number of jurisdictions that made up Vascongadas. In Gipuzkoa, even when fueros had been abolished and the general assembly did not have legal existence or validity, the Deputation continued to associate legitimacy with the General Assembly of Gipuzkoa. This can be seen from the fact that the political community associated with the inhabitants of Gipuzkoa was regularly involved in the decision-making processes that affected jurisdictional formation. These collaborative behaviors within and across

jurisdictional entities also were detected throughout the period studied. The presence of these cooperative tendencies throughout the period studied needs to be emphasized, as in Vascongadas, between 1876 and 1936, key social transformations usually related to the emergence of modern industrial societies took place: institutional-constitutional reform in 1876, rapid industrialization between the 1870s and the 1890s (especially in Biscay), the development of a modern civil society as 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 and allowing a variety of social actors to access political power, influence who would hold political office, or influence political action by one or another form of lobbying.

Nevertheless, the evidence analyzed here suggests that despite the significant social changes that took place and opened new opportunities for different social actors to influence jurisdictional views and practices, the latter did not significantly 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 behaviors that had to do with legal disputes and jurisdictional claims over legitimacy. In contrast, jurisdictional positions in these territories appear to have been characterized by some features, including the defense of autonomy, the maintenance of claims over jurisdictional authorities to exercise types and degrees of social powers, unilateral jurisdictional agency, and cooperative behavior with those jurisdictional entities or social actors that were perceived to have or defend interests similar to their own. There seems to be a correlation between jurisdictional cooperative praxis and jurisdictional claims over legitimacy to exercise types and degrees of social powers. The legal existence and the ability of these jurisdictional authorities to maintain governing powers appear to have strongly depended on social cooperation, both within the territories and between territorial authorities. Decision-making processes associated with transforming traditional legal relations were often undertaken 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 in 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 fueros traditionally made within them.

Nationalist conflicts may be modern, but jurisdictional conflict is not. Debates about the nature of the law and jurisdictional 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. The most popular definitions of law developed in modern legal thought have dismissed the validity of these legal disputes. In my view, the meaning of jurisdictional conflict between state and foral authorities cannot be analyzed using such definitions of law alone. The analysis benefits by taking into account the critical and empirical aproaches put forwrad from legal pluralism and legalism. From the emerging analytical framework, the meaning of social action includes historical jurisdictional disputes over the nature of law and the legitimacy of one or another jurisdictional authority to exercise types and degrees of social powers.

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Erratum to: A Legal Presumption in Modernist Interpretations of Nationalism

Unai Urrastabaso Ruiz

Erratum to:
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The below reference at chapter-end and book-end was incorrect and it had been updated as:
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