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Conclusiones
Conclusions

The Future of Basque Self-government: A Constructive Reflection

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Editor

The creation of the Paper on Self-Government established in the Basque Parliament during the previous legislative period endorsed the need to bring Basque self-government into the twenty-first century and to lay the foundations for debate on the new political status of the Basque Country, which could therefore be addressed from the beginning on of the new eleventh term of office, continuing the work done by the Committee on Self-Government during the previous term. This preliminary work will certainly facilitate a calm and reasoned debate because it is necessary to open to the Basque Society a reflection on the future of our self-government rather than on specific political circumstances.

Bearing in mind what an important issue this is for Basque citizens, Eusko Ikaskuntza, in collaboration with the Basque Government organised a conference in Vitoria/Gasteiz on 20 April 2016, aimed at opening a plural reflection on the future of our self-government which led to this publication. The aim of the conference was to analyse different comparative European models of territorial distribution of political power and transfer this analysis to the European Union dimension, to conclude with a debate between different Basque political parties on the future political status that each of them proposes to the Basque people.

There could be three important binomials for reflection with regard to the future Basque political status: opportunities and basis for the development of self-government (assessment of the development of the Estatuto de Gernika or Statute of Gernika; secondly, the democratic principle and the mechanisms of greater democracy (right to decide, right to self-determination, legality and legitimacy, consultation-referendum) and finally the concept of sovereignty and the territorial model (acquisition of new capacities and greater territorial cohesion of the Basque Country, with the possible need for constitutional reform, symmetry-asymmetry, historical rights, unilateralism and bilateralism).

The comparative study of heterogeneous models provided by the cases of Bavaria, Flanders, Switzerland and Scotland, allow us to learn thought-provoking

conceptual lessons to try to encourage debate and reflection on its application to Basque socio-political reality:

- 1) *The Swiss confederal model*. This model is based on the sovereignty of the cantons, joined voluntarily in a Confederation. Its federal structure is an essential element of this unique Swiss territorial model, in terms of the scale of sovereignty shared between the cantons and the federal government. Bilateralism and the exercise of direct democracy as a unique methodology for the democratic functioning of the Swiss Confederation provide many areas for reflection and analysis.
- 2) *The model of modern federalism in Bavaria and Germany*. This is the model of a state within a state. This modern German federalism, embodied in the model of Bavaria is based on principles of subsidiarity, cohesion and solidarity. The Part or Länder and their strength in turn reinforce the Whole or the Federal State, under the driving force of multilateral federal loyalty: the federal State is not opposed to the Länder because they are also States.
- 3) *The model of legal consultation agreed between the Scottish and British governments*: an important element of British political pragmatism can be found in a culture that prefers to resort to politics to resolve political challenges and keep law for legal challenges only. The democratic principle and the recognition of a plurinational character distinguish this British dimension.
- 4) The internationally renowned Flanders model. This model includes its own foreign policy and representation in European institutions. Belgian social reality is characterised by the existence of two communities with very marked differences, like the Flemish and the Walloon. Dissociation and asymmetrical federalism provide a dose of originality rooted in the recognition of national identity and the model of coexistence between the two communities that coexist under the same state and which is characterized by a flexible, open and generous system of distribution of the representation of respective Belgian interests in European institutions.

The corollary of this comparative analysis is the analysis of the question of territorial distribution of political power vis-à-vis the European Union, and the question arises: How receptive is the European Union towards this heterogeneous choice of models? Is the EU part of the solution to understanding how, with a dose of pragmatism and democratic political culture it is possible to identify the avenues for territorial debates and a way to achieving harmonious coexistence, in which national realities with a proven willingness and ability for self-government, such as the Basque or Catalan realities can coexist alongside the Spanish State? Furthermore do they have the necessary means at their disposal to contribute with their own territorial development to the economic, social and territorial cohesion of the EU and the challenges of the globalised world of the twenty-first century?

In this context, divergent political positions prove to be distinct and legitimate political positions (constitutionalist, nationalist, separatist, sovereignist and federalist among others) that reduce the alternatives to finally get the so-called “Basque case” back on track. The challenge is however, achieving a common ground between them all to equip Basque society with the best possible means for addressing the major challenges of this new century. Current political positions point to the following likely future scenarios for the development of our self-government, which could include, at least theoretically, any of these five possibilities:

- 1) The involution of the system itself, which cannot be ruled out if centralising theses that reduce all the territorial problem to criticism based on barren and ineffective administrations were to succeed
- 2) the path of continuity: that is, continuing with the “café para todos” or “one-size-fits-all” approach with improvisation as the driving force of the system, without addressing or tackling the real underlying problem;
- 3) developing state federalising components and structures, through symmetrical federalism;
- 4) explicit political and constitutional recognition of a plurinational democracy, a wide-reaching self-government and participation in state affairs rooted in the idea of bilateralism;
- 5) secession or independence.

How can we end this political and institutional impasse? How it is possible for the desire to be a nation with the level of institutional recognition that Basque society overwhelmingly demands, be acknowledged in a normal way without hysteria or demonization? There are two possible routes towards that objective. The first, which is both so dangerous for social harmony as ineffective in terms of results (and which is also overwhelmingly rejected by our society) would be the breakdown of the current legal framework from a clash of projects and ideas; the second, as pragmatic as it is necessary, calls for progression down the reformist path, without abrupt breaks, step by step, bit-by-bit, with patience, perseverance and political wisdom.

It is worth reflecting on all this, without aprioristic demonization or enthronements, just with the willingness to find common ground. Our future as a Basque society depends on it.

It is well known that, the model of territorial organisation and structure of political power in Spain, which is both ambiguous and imprecise, is so vague that Title VIII of the Spanish Constitution failed to nominalise and define the Autonomous Communities that would form part of the then new system of internal territorial distribution of political power.

Should the constitutional debate be reopened to overcome obsolete provisions contained in supreme law, some of which are so surprising, such as the fact that Europe, the European Union is not even mentioned and instead there are references for example to the special relationship between Spain and countries like the Philippines, Equatorial Guinea, Andorra or Latin American countries?

This never-ending debate, one of the political clichés that keeps coming and going, “now you see it now you don’t”, poses important both legal and political dimensions that are linked to the question of jurisdictional fragmentation and increased costs from sustaining a so-called “State of autonomies”.

How structural costs can be streamlined can and should be debated, but there are those who favour, incidentally, moving towards a standardisation of the model, centralising greater powers in the hands of the Spanish central government under the lure of the “optimisation” of resources. This new and apparently non-ideological political technocracy actually conceals a sense of detachment from what is considered to be a mere decentralising quick fix that has brought nothing but trouble.

A starting point that would also achieve a minimum consensus would be the recognition of a true plurinational democracy. Examples, among others, that include Canada and Belgium, make it possible at a comparative level to conclude that this formula provides a common ground for living together, in spite of varying national feelings and the different concepts of sovereignty that coexist.

The political accommodation of national minorities within a state may be settled permanently and stably through the recognition of a true plurinational democracy and must be able to overcome the supposition that arises from the ideology that denies the existence of stateless nations, expressed by the concept that between the state and citizens there are no intermediate structures of power and representation such as communities or peoples.

This theory artificially simplifies the debate and eliminates in one fell swoop every attempt at expression by any other national realities that coexist within a state, such as Spain.

Politics, true politics are made by communities, not fragmented individualism. A state in which different nations and nationalities coexist with a strong historical character, like ours, cannot be organised on the excluding or exclusive basis of the principle of national unity, excluding or exclusive. Why? This is because, as indeed it occurs in successive Spanish government politics, a greater role and greater importance are always given to one coexisting nation, generating therefore grievances among the rest. The principle of political equality between different nations is not respected and their existence as political entities is not guaranteed.

Indeed, many models of comparison such as Canada, Belgium and the United Kingdom show that it is possible to live together, respecting differences and remain united in diversity. Renewing concepts and overcoming old realities must be the basis for the emergence of a new regime. The recognition of plurinationality is essential for the system of territorial distribution of political power in Spain to stop being like a floating cork, not sinking, but lacking a course, with its entrenched and unresolved old problems because there is no fit or political accommodation for national, such as Basque or Catalan, realities. What does the Constitution itself mean when it refers, clearly differentiating, to “nationalities and regions”? Why should it be considered unfeasible that with an all-organising state, individual, unique and non-excluding realities can coexist?

Speaking about religious or cultural pluralism poses no ideological problems at all for political leaders, on the contrary, their recognition and protection is valued as proof of a dynamic modern democracy. Why do these same party representatives frown and close ranks on the denial of another dimension to this pluralism: national pluralism?

The world's political structures are increasingly more horizontal when before everything worked vertically, from centralised national hubs with exclusive competence and responsibility. Now, however, there is an emergence of multiple decision-making centres at all levels: as opposed to the vertical structure of nation-states, as was expected with the sadly failed European Constitution, the peoples demanding decentralisation and their own decision-making centres rise up.

Unlike the nineteenth-century equation "each state one nation and every nation one state," today it is not possible to conceive and govern the complexity of life in society by assigning just a "demos" or political entity for democracy. The classical theories do not even consider it, but the principle of equality that is preached and applied to citizens (because they are individuals of "their" state) should also be applied to the other "Demos" of democracy. Opening political minds to the supervening political complexity of these principles and classical values in this way will make it possible to respond to the challenges of such a diverse, heterogeneous and complex democratic reality.

We are not talking about false or invented conflicts. Settling the claims for national recognition made by a large part of Basque and Catalan society requires a new political culture that contemplates and proposes political leaders resorting to new concepts. We must modernise moribund and obsolete terminology. This is only possible by working on the establishment of a democracy of consensus, where majorities and minorities participate in the development of state policies (Belgium and Switzerland are good examples of this) and allow for greater democracy for each demos, not mistaking loyalty with submission or collaboration with resignation, but explicitly recognising a plurinational democracy.

What's missing is political education. There is no need to demonise these approaches. There are many similar examples in the world that show that how such a coexistence of recognising difference through mutual respect, without arrogance or impositions is possible.

Democracy, or true democracy is always a game of uncertainties and conflicts that must be diagnosed and managed; appeals or calls for responsibility and a "sense of State" together with a commonplace and foreseeable demand for "foresight" must have content so they do not become mere generic invocations with little chance of success.

What is the democratic mandate of ballot boxes? True mandate is related to the challenge for political parties with parliamentary representation to demonstrate the existence of a true spirit of cooperation and mutual recognition. In the words of Richard Sennett, cooperation is the art of living in disagreement.

The crisis of the political system in Spain does not derive from the predominance of an alternating two-party system, but rather it is largely a result of the ob-

solescence and inadequacy of constitutional provisions in a series of key areas for living together in democracy and for a society that bears no comparison to that of 1978.

If political groups were to lead this process generously, others would join this renewed commitment, they would see their role as the main players of political life re-legitimised and it would allow for the regeneration of the political climate, as coexistence would be based around a new democratic culture and new consensus based on four main areas: 1) A new form of territorial distribution of political power by allowing for a plurinational dimension and asymmetrical shape of the division of powers, bilateral relationships, guarantee mechanisms for the level of self-government acquired etc. thus overcoming this stale and obsolete concept of Spanish national unity ; 2) Strengthening the social dimension of citizens' rights; 3) Developing more democratic value to the whole dimension of citizen engagement, including new regulations on consultations and referendums, and 4) Setting the European dimension in the Spanish Constitution, not just associating it with the idea of cutbacks and austerity and allowing national communities direct participation in European decision-making processes.

Thirty-eight years after the adoption of the current Spanish Constitution, the inertia of the regulatory framework set in 1978 which was developed in the context of a then immature and fragile democracy remains present. One wonders whether it should normatively survive *sine die*, without a time limit, as if it were written in stone with no tweaking allowed at all, and the question arises as to why an institutional framework built at that date, in fear of a democratic involution rather than looking to the future is so idolised and why it is not confronted with political courage, going to the core of democracy, opening a restorative stage to reinforce the system by overcoming the never-ending debate about plurinational democracy.

Nevertheless, in Basque society there is the question of whether this process will really happen or if it were to happen whether we would be worse off than before from both a competencies point of view as well as in terms of the recognition of our uniqueness as a historical nationality and Basque nation (Article 1 Statue of Gemika). Would even a *reformatio in peius* of the Constitution, in other words, an involution of our system of Basque self-government be possible?

Political evolution has shown that the willingness to compromise overrides everything when there is interest or when there is tangible proof for agreement. Think back to the constitutional reform of Article 135, relative to the Budgetary Stability Pact, adopted by emergency procedure and approved in a single reading and without a call for referendum. This fast-track constitutional reform made a reality of the old saying that in politics everything is possible and that the law, the legal system, is adapted and depends on political agreements.

The sacredness of the Spanish Constitution and the fear of the "pandora's box" that could open if a few adjustments were made to its provisions have led to this obsolete text remaining virtually unchanged.

The original constitutional text quotes only once, when this reform occurred, the term “European Union”, and still has references to Spain’s colonial past, alluding to the special relationship between Spain and the Philippines, Equatorial Guinea, Andorra and Latin American countries, totally ignoring the political and legal reality that integration in the European Union involves. It fails to mention, not to mention, the amount or name of the Autonomous Communities and still retains an ambiguous and imprecise Title VIII on the distribution of powers between the State and the Autonomous Regions, modified *de facto* through organic laws that have always reinterpreted its wording in re-centralising code to the benefit of state powers.

This is all even more surprising if we ask ourselves why there is this inertia in the Constitutional framework of 1978, in relation to structural and key issues such as territorial structure or the recognition of a right to be consulted on the future of political relations between the Spanish State and the Basque Country, in the terms already provided, by the way, in the Articles of Agreement or the Pact of Ajuria Enea, subsequently endorsed by the Basque Parliament, alluding to the fact that the endorsed statute itself in its additional provision, expressly reserves the rights corresponding to the Basque people by virtue of their history and the update of which is not waived by the acceptance of the current regime of autonomy.

Defining possible future scenarios for the development of our self-government is more necessary than ever before. A starting point that would also achieve a minimum consensus would be the recognition of a true plurinational democracy. This formula would ensure the existence of a common ground where different national feelings and varying ideas about sovereignty can coexist. This should be the driving force for any political agreement with the Spanish State about our self-government.

Passiveness does not make things resolve themselves over time. The inertia of conformity accumulated by the bloc of constitutionalist parties over such a period of statutory infringement once again becomes apparent in the reactions to the demand for greater self-government by a large majority of Basque society.

Everyone, from different political positions, repeatedly refers to the need to leave confrontational politics of division and confrontation behind, and reiterates to the point of exhaustion the cliché that has created a stir in political discourse: the need for accountability and foresight. How should this well-worn phrase which has already awoken in many Basque citizens so much scepticism for its emptiness be translated?

Agreeing is not the same as giving up. If conflicts and misunderstandings are to be avoided, then negotiation is the fundamental principle for regulating political relations. And I’m not talking of trading like in an “oriental bazaar” but on the basis of finding common ground that benefits Basque society. Building a “country” has too often less social and political glamour than playing at histrionic and sterile maximalisms. The leadership of a society cannot be created with a rhetorical language, or by forming intriguing sentences and ideas from the technocracy of the back room.

The value of the politics is that it symbolises the collective commitment of citizens as a way to guarantee a future. Political leaders need to leave tribalism behind and discuss, negotiate and reach agreements, not hinder our expectations or our future, and then politics will recover much of its lost prestige.

Thanks to this conference on self-government we know more about the different realities of self-government in Europe. We know ourselves better.

This conference has enabled us to better understand such heterogeneous models as those found in Bavaria, Flanders, Switzerland and Scotland that provide us with thought-provoking conceptual lessons to try to encourage debate and think about how they could be applied to Basque socio-political reality.

We have also identified the European Union's view of the diversity of the models. It is a constructive and positive view that strives to prioritise solutions over problems. The reflections gathered today enable us to answer key questions concerning the future of Basque self-government.

Indeed, this international conference endorsed the value of the creation of a Paper on Self-Government, stressing the value of diversity. It was worth the effort. The proposed objective is to promote an agreed reform of our political status.

The findings are clear and should be underlined:

- We are a reference point when it comes to self-government: The Statute of Gernika has contributed to the institutionalisation of the Basque Country and the welfare of its citizens.
- We still have a way to go: the Statute has yet to be fully developed and so progress has not been made in all the areas of potential that self-government has to offer.
- We endorse the need and opportunity to update and adjust Basque self-government.
- This update must respect the uniqueness and mutual recognition of Basque self-government.
- It is up to us to recapture the will to compromise and establish an effective system of bilateralism to guarantee compliance with what is agreed.
- Decisions are always co-decisions and this means there are different demands made upon each other: sub-state societies are forced to respect their internal pluralism and realise that there are ties that can only be modified by agreement.

States that harbour these communities cannot solve these issues other than with mechanisms that involve giving up their dominant position and pursuing negotiation or arbitration processes with an open result.

It remains true that the future of this country must be based on a dual principle which constitutes the very core of the democratic process: recognising decision-making capacity and commitment towards political agreement.

If one of them had been missing, the Basque political conflict would not have really been solved. Self-government is still based on the free will of our col-

lective destiny and the commitment to compromise within Basque society and with the Spanish state.

In this context, the reform of the political status must be a real renewal and must strengthen its agreed nature. It is not about discussing a list of powers but rather equipping the actual powers themselves with real decision-making content, agreeing in addition to their bilateral interpretation in cases of conflict and ensuring compliance with what is agreed.

The fundamental problem we face is not a matter of ownership and powers, or who has to manage one competency or another, but rather recognising the ability of Basques to assert their own will and respect for agreements reached.

Thirdly, we are united by the existence of plurality and the political will to move forward through dialogue, negotiation and agreement.

There is no agreement without a system of reciprocal guarantees, which are not interpreted or enforced at the discretion of one of the parties. Any solution must ultimately be an agreement that comprises effective bilateralism, guarantees and conditions of loyalty.

A pact, the symbol of genuine freedom to decide, within Basque society and the Spanish state, is a procedure that is linked, by the way, to our best regional tradition and on which we have built our two statutory competencies, the one from 1936 and the Statute of Gernika.

Furthermore, the 1978 Spanish Constitution even contains the means to facilitate this new pact of coexistence, the First Additional Provision and the Second Derogatory Provision, as well as the Fourth Transitory Provision to move forward within a shared framework of institutional relations with Navarre. In addition, under the additional provision of the Statute of Gernika and the Law of Reintegration and Improvement of the Foral Regime of Navarre, our self-government expressly reserves its historical rights and the appeal for its future revision, via an additional provision.

A “right to decide subject to agreement” approach is fully in line with the tradition contained in the historical rights recognised by the Spanish Constitution and the procedures of the Economic Agreement, and that should be revised within a European legal framework. They are the heart of our true shared sovereignty, our system of self-governance and that radically differentiates it from administrative decentralisations and enables us to position ourselves as a political entity in the European and global governance system.

In fact, the Economic Agreement is more than just a tax and financial procedure; it is an agreed commitment to self-government, which requires agreement and cooperation involving mutual recognition, a very innovative principle, and provides interdependence in shared areas of activity.

Trust as a procedure ensures reaching a good agreement, which strengthens the communicating parties. So how can this trust be built? The main key to building trust is compliance with some reciprocal procedures:

- There is no agreement without the willingness to limit one's own aspirations (as a final horizon or over time) and without this self-restraint being reciprocated by another of similar nature. The reciprocity in the origin of an agreement must also be present in the methods of interpretation, development and arbitration in cases of dispute.

We must return to that peaceful vocation that prevails in Basque Country-Spanish state relations, as a historical right that is reclaimable: a guarantee for bilateralism "ad extra" and a guarantee of multilateralism (common institutions - historical territories (TTHH)-municipalities) "ad intra".

Ultimately then "multilevel governance on a shared sovereignty". It is time to begin with a solid and serene reflection on the current political framework. This must provide the basis for a future agreement of coexistence between different parties, with the Basque Country as a common shared project.

This is not a mere fad. It is a debate that has come to stay, and that must be addressed in a sensible, rational way, without victimism or arrogance as well as a new culture of increased democracy.

Defending the update, revision and development of self-government is closely linked to the challenge of coexistence, which hinges on empathy and interaction with what is different. Stigmatising whoever does not support your political agenda, socially and politically marginalising those who do not conform to the socially prevailing orientation, building closed blocs against other social sectors is not the way to true nation building.

Social harmony in Basque society requires us to be able to formulate and share a Basque identity that is able to integrate the plurality of feelings of belonging and identifications that coexist in this complex society.

The respect of frameworks derived from the will of citizens is necessary to guarantee and reclaim the respect for the will of citizens today and in the future.

True progress points to a new way of governing that is more respectful of differences, based more on free consent than of the coercive force of a hegemonic power, by tradition or from a specific moment in time.

Identity has to be formed today in the context of new interdependent realities, diffused and shared sovereignties, according to socio-economic changes, generational changes or new social pluralism.

Basque historical rights recognised by the Spanish Constitution and procedures in the Economic Agreement are the heart of our true shared sovereignty, our system of self-government and that differs radically from mere administrative decentralisations.

Its revision provides a base of powers to, in addition to demanding the immediate implementation of full powers, proceed to regulate *ex novo*, for example, our role and protagonism the Basque Country in Europe, our participation in European institutions, or develop the still untapped cross-border dimension, the ability to sign international trade agreements, or the possibility of officially recognising our Basque sports teams, or contemplate in the new wording of our Statue a list of economic and social rights that are relevant to the twenty-first century.

The current model has great potential, but its development has not been made in accordance with the political pluralism that is stated in the Spanish Constitution and falls short of the transformations that are taking place in Europe relating to the idea of power.

We have the ability and competence to innovate, to overcome stagnation, to adapt our institutions to the new realities so they fulfil their social function in accordance with the times.

The key concept of a vision for the future is the “development” of our self-government: it is not about vindicating for vindication’s sake but rather showing that our organic development as a nation, as “Basque people” (in the terms of Article.1 of the Statue of Gernika) is a right (ours) and duty (the State’s), and it must provide the basis for a new Political Agreement, great potential for power, based on mutual trust and respect for the predominant social and political demand for greater levels of self-government.

The bottom line refers to the need for a new agreement or political pact that recognises the free will of Basque society that is expressed democratically and represented in the Basque Parliament to freely decide their future. A new pact that recognises a new status that guarantees the existence of the Basque community in the twenty-first century, gives it new capacities and means to deepen the social, economic and territorial cohesion of the Basque community as a whole and which coordinates its relationship with the Spanish State and the European Union in a different way, based on the recognition of its status as a national community, which could, if necessary, facilitate migration from the present autonomous state to a plurinational state.

An inexhaustive list of some of the issues to be addressed in this new pact follows:

- Respond first to the need to complete the Statute and update its content. Provide the Basque political community with the powers and capacities that are necessary for self-government, following a re-reading of the framework of powers following entry into the European Union and the devolution of powers which are still to be devolved.
- Make the plurinationality of the Spanish State effective, meaning the recognition of the Basque Country on a legal, symbolic, political and institutional level as a national community.
- Construct a territorial division of the judicial power in accordance with the plurinational nature of the Spanish State.
- Provide the Basque Country with instruments to maintain a coherent international projection, with its own capacity to intervene in European or international affairs.
- Progress forward with the institutionalisation of relations with the Basque territories that share Basque culture and language; the territory covered by the Basque language.
- Guarantee effective bilateralism, so that the agreement or pact reached cannot be changed unilaterally by one of its parties.

Let's go deeper into what unites us, because with mutual recognition and effective bilateralism we are capable of reaching a new pact. Our historical, protected and respected rights can yield as much as our ability to achieve institutional agreements and adopt political decisions to be endorsed and respected by our citizens.