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A BASQUE VIEW ON THE SCOTTISH REFERENDUM

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When, among the happiest people in the world, bands of peasants are seen regulating affairs of State under an oak, and always acting wisely, can we help scorning the ingenious methods of other nations...?
Jean-Jacques Rousseau, The Social Contract.

The legal and political process of Devolution within the UK-Scottish relations contains similarities and potentials of remarkable comparative interest with the constitutional clauses of recognition of Basque Historical rights or titles within the Spanish Constitution. Nowadays, the EU framework is suitable in both cases to ease and foster this interest within a background of progressive co-sovereignty at the EU. The step forward a referendum in Scotland foreseen to be hosted in September 2014 is a good example of recent advances in this sense through an agreement between the UK and the Scottish Governments.

For the British case, the Devolution process could be easily considered as the last on time key moment in British «constitutional» history according to Wicks. This author has selected eight «key moments»: the 1688 «glorious revolution», the 1707 Union of England and Scotland, Walpole's long tenure (1721-1742) as the first Prime Minister, the 1832 reform of Parliament, the Parliament Act 1911, the European Convention

on Human Rights, the UK's accession to the European Communities and the aforementioned devolution legislation of 1998 (1).

Even long time before, Meadows states in 1976 the necessity to turn to the question of why devolution has become a political issue at this time. In general terms, the essence of the controversy is reflected in his following statement:

«Devolution! The very word contains a threat. The English pronounce it to rhyme with evolution, the Scots with revolution» (2).

However, authors like Bogdanor & Vogenauer recall to the words of Dicey in his «Law of the Constitution» who underlined that:

“a British writer on the Constitution has good reason to envy professors who belong to countries such as France... or the United States, endowed with constitutions on which the terms are to be found in printed documents, known to all citizens and accessible to every man who is able to read. Britain remains, together with New Zealand and Israel, one of just three democracies which are still not «endowed» with a «written», or, more properly, a codified constitution” (3).

The option towards independence within the EU requires for the Scottish Government to comply with the commitment of organising the aforementioned referendum. Moreover, a clear result in favour of

independence would give reason and more legitimacy to the independence of Scotland within the EU. Observing from the Basque Country, there are two main legal backgrounds within the Scottish proposal:

- The recognition of Scotland as a nation.
- The example of Quebec.

Regarding the first item, there is a claim for the recognition of the right to self-determination on the basis of the previous existence of Scotland as a nation. With regard to the example of Quebec, following the principles and rules stated by the Supreme Court of Canada on the case of Quebec (Consultative Opinion, 20-8-1998). In both cases, there is key role of concepts like negotiation, agreement or treaty (1707) and referendum within a context of new or post-sovereignty according to the ideas of Scottish professors like Neil MacCormick or Michael Keating, inter alia.

The proposal of the Scottish Government remarkable in four main subjects:

- a) The concept of democracy: because is based on the principle of self-determination internationally recognised;
- b) The concept of "Constitution": therefore, in despite of the absence of a written UK Constitution, there is a mutual recognition as nations as stated and assumed by the 1707 Treaty;

- c) The social participation: due to the fact that the process is open to the whole society, giving also a wider option for young people from 16 years old on;
- d) The EU integration process: recognising the clear will of Scotland to participate within the EU structure according to the EU Treaties.

This process towards the sovereignty of Scotland is clearly committed with the rules of democracy. In fact, one of its main characteristics is the acceptance by both parties of the core part of their non written "Constitutions": Human Rights and democratic principles.

A clear voice of the Scottish society would imply certain effects and impacts for close or similar situations along the EU. In Spain, for example, the approach of the Spanish Government and the Constitutional Court made unconstitutional the Basque Parliament Act to call for a consultative referendum in 2008 (4), while on 9-10-2012 a Catalan proposal in a similar sense was also rejected at the Spanish Parliament.

Therefore, what it seems void in Spain under the rules of a modern and written Constitution, it is perfectly viable without a written constitution and under pre-colonialism rules. In my view, it seems to be a question of democratic culture and State vision from and old democracy like the one ruling during centuries in Great Britain.

ENDNOTES

- (1) WICKS, E. 2007. «The evolution of a Constitution: eight key moments in British constitutional history».
- (2) MEADOWS, M. 1977. «Constitutional crisis in the United Kingdom: Scotland and the Devolution controversy», *The Review of Politics*, Vol. 39, No. 1, January, pages. 42 & 43. Moreover, in my view, with the concept of recovering and updating sovereignty for Scotland through Historical Rights or Titles.
- (3) BOGDANOR, V. & VOGENAUER, S. 2008. «Enacting a British Constitution: some problems», *Public Law*, page. 38.
- (4) Spanish Constitutional Court Judgment 103/2008 (STC 103/2008).