

The Reception of Constitutional Patriotism by the Spanish Left

Mateo Ballester

When Jan-Werner Müller, whose book *Constitutional Patriotism* is considered by Jürgen Habermas the most clarifying text on the issue, writes about the exporting of this concept, and the idea of public culture it implies, from Germany to other countries, he mentions the Spanish case as the most relevant example (Müller, 2007, 44). In Spain, indeed, already in the early 1990s some Spanish leftist intellectuals and politicians presented Constitutional Patriotism as a most suitable program for creating an inclusive national identity, one that would ease ethnic and nationalist tensions in Spain. An intense academic and media debate on the issue followed, and progressively Constitutional Patriotism became widely endorsed in the political and intellectual arena, particularly from leftwing positions, as the best way to eliminate the political tensions and conflicts related to Spain's pluri-ethnic character.

Spanish national identity should according to this discourse be based on a broadly inclusive concept of citizenship and on a sense of identification with a political system that delivered freedom and equality to every citizen, incarnated in the 1978 constitution. Patriotic identification would thus not be based on specific cultural features but on political principles all Spanish citizens could relate to, regardless of their ethnic ascription.

In early 2000, Constitutional Patriotism received a major boost in Spain when it was endorsed as a political guideline for a future socialist government by the then candidate for Prime Minister, José Luis Rodríguez Zapatero, which held this discourse after he reached this post in 2004. Even though at one point Constitutional Patriotism was endorsed by both the right wing and left wing of the political spectra, it was particularly in the left wing where this program took hold and was more emphatically endorsed.

Nonetheless, starting in the second half of the 2000 decade, the Spanish left has progressively abandoned its defense of Constitutional Patriotism. The appeals to this approach in Spanish public life have almost completely disappeared, whereas ethnic-based conflicts have not. Quite on the contrary, peripheral nationalist movements have increased the scope of their demands, which include more and more often the right to self-determination. The question arises to whether the Spanish case is proof of the failure of Constitutional Patriotism, which in a practical situation has failed to create a common identity attractive to everyone; or rather, as some critics have argued, the reason of its failure in Spain is that it was never really implemented.

These pages intend to explain the reasons for this process of widespread endorsement and sudden abandonment of this public discourse. The answer to this question refers partly to specificities of the Spanish case, but also to circumstances which are relevant to the debate of Constitutional Patriotism in general. The Spanish case is thus a matter of study in itself, but also a good means to illustrate the weak points and problems that may affect Constitutional Patriotism. In relation to the latter, it will be argued that while Constitutional Patriotism theoretically seems to be the perfect solution to eliminate tensions in

multiethnic States, it can often meet serious, sometimes almost irresolvable problems, when applied to certain practical situations.

CONSTITUTIONAL PATRIOTISM AS A THEORETIC FORMULATION

To start with, it might be convenient to briefly touch on the history and meaning of Constitutional Patriotism. It was first formulated in 1979 by Dolf Sternberger, a German Political Scientist in Heidelberg, on the thirtieth birthday of the West German Constitution, and it was initially conceived in relation to a specifically German context. The experience of national-socialism, the defeat in World War II, the continued remembrance of some of the crimes committed, and the partition of Germany in two states posed the question on what should be the grounds of a new German national identity.

Sternberger first stated the fact that national feeling and political allegiance to West Germany could hardly be based on the idea of being a cultural community, since part of this community (East Germany) had been left out of the State (Sternberger, 2001 [1979], 85). According to Sternberger, national identity in West Germany relied and should rely on what he labeled as *Constitutional Patriotism (Verfassungspatriotismus)*.¹ That is, on the idea of being part of a political system which grants democratic institutions, freedom and equality, symbolized in West Germany by the Fundamental Law of 1949.²

In the following decade Jürgen Habermas adopted and further popularized this concept. Whereas Sternberger was particularly concerned with Germany under the specific circumstances of the partition, Habermas emphasized the idea that Constitutional Patriotism is the most suitable foundation for national identity in any Nation-State, and also for a future European identity (Habermas, 2000 [1998], 132-135). Habermas went further than Sternberger with his assertion that national identity should be based solely on this collective dimension. He argued that if national identity is based on specific cultural features -such as language, religion, tradition, or an idea of a common national history- this will exclude those individuals or groups within the State that do not share these features or identify with them, posing problems to social cohesion and integration. This consideration is particularly relevant given the fact that most States in the world are actually multiethnic (Habermas, 1989 [1988], 116-7 and 1999 [1996], 94).³

In modern pluriethnic States it is essential, according to Habermas, that “a cosmopolite understanding of the nation of citizens is given priority in relation to

¹ The term first appeared as the title of an article published on 23 May 1979 in *Frankfurter Allgemeine Zeitung*: “In an imperceptible way, a new patriotism has appeared which is funded precisely on the Constitution. National feeling remains wounded and we do not live in a whole bodied Germany. But we live in the integrity of a Constitution, in a whole bodied constitutional State, and this is some sort of fatherland” (Sternberger, 2001 [1979], 86).

² In a speech at the Academy for Political Formation, Sternberger mentioned that the idea of Constitutional Patriotism could already be found in a comment of the German author Thomas Abbt in mid 18th century: “If I am linked by birth and free will to a State, whose laws I accept because they are beneficial and do not take more freedom from me than what is necessary for the common good, then I call this State my fatherland” (Sternberger, 2001 [1982], 98).

³ According to Habermas, the existence of ethnic subcultures “reinforces centrifugal forces within the Nation-State, and erodes civil solidarity unless the historical symbiosis between republicanism and nationalism is broken, and republican beliefs are assimilated by the population within the new frame represented by Constitutional Patriotism” (Habermas, 2000 [1998], 102-103).

an ethnocentric version of the nation” (Habermas, 1999 [1996], 91). This political understanding of the community, and a democratic process which involves all individuals, are the most useful means of social integration in societies which have become increasingly diverse (Habermas, 1999 [1996], 111). As opposed to the effects of a cultural definition of the nation, Constitutional Patriotism brings different ethnic groups together into a shared and inclusive national identity which everyone could relate to.

RECEPTION OF CONSTITUTIONAL PATRIOTISM IN SPAIN

Let us now attend to the Spanish case and background in relation to the national end ethnic issue. The policies of the Spanish State during the 19th century and most of the 20th century were characterized -to some extent like other Western European States- by the official efforts to develop a national identity based on shared cultural features, thus attempting to culturally homogenize the Spanish population. This created long lasting tensions with other ethnic identities on Spanish soil which, far from disappearing, grew stronger during this period.

The most aggressive project in this sense took place during the almost 40-year-long dictatorship of Francisco Franco. Even though there was already a strongly developed Basque and Catalanian identity, the Spanish national identity that was officially endorsed was based on an idea of cultural homogeneity based on a Spanish ethnicity. The specific content of this cultural national identity resulted to a great extent from a metonymic identification of Spanish culture with Castilian culture (understood in a wider historical sense). The Catalanian and Basque cultures were basically ignored as constitutive elements of a Spanish national identity, whereas some of their aspects were actively rejected.

The result of these years of cultural discrimination was not the dissipation of these identities and ethnic groups in a common Spanish cultural and national identity. They have survived and in addition this has left a retrospective feeling of cultural imposition and subjugation, kept alive and fuelled by modern nationalist discourse in these regions.

After the transition to democracy, the political conditions have changed radically; the new political and normative order, established by the 1978 Spanish Constitution, grants democratic institutions, freedom and equality, and allows for a high level of self-government in regions with a specific culture and ethnic identity, such as Catalonia, the Basque Country and Galicia. New regulations have transferred basic jurisdictions and powers from the central government to the regional governments, including education and culture. This nonetheless did not lead to an end of tensions between peripheral nationalist and the central government, which was often accused of representing and fostering in different ways a specifically Spanish cultural identity.

In the early nineties, some Spanish politicians and intellectuals, mostly leftwing-oriented, saw in Constitutional Patriotism a most suitable program to create an inclusive national identity in Spain, one which every Spanish citizen could relate to, regardless of their ethnic ascription, be it Basque, Catalanian, Galician or any other. The incorporation of this idea to the Spanish debate was at least in part a result of a conference held by Habermas in Madrid in November 1991, where he defended Constitutional Patriotism as the necessary

ground for a future European identity.⁴ Juan Jose Laborda, University Professor in Modern History, PSOE member, and at that point the president of the Spanish Senate, played a major role in the incorporation of the idea of Constitutional Patriotism into the Spanish public debate. In several occasions he explicitly referred to the above mentioned conference by Habermas as a main inspiration (Laborda, 1992, 5, 1994, 20 and 2002, 47). Laborda argued that Constitutional Patriotism might be a good guideline for the creation of a modern national identity in Spain, chronically plagued by political tensions, because it created an identity both inclusive and respectful to ethnic diversity (Laborda, 1992, 6). Individuals from different ethnic or nationalist groups in Spain could thus keep a separate cultural identity while at the same time being able to identify with a political community which would include all citizens of the Spanish state.

Constitutional Patriotism would have another positive effect in Spain, partly resembling the German case. Most leftwing-oriented Spaniards were quite skeptic to anything related to nationalism or patriotism, after Franco had controlled and designed the nationalist discourse for forty years (appealing most often to the term *patria*). In an article significantly titled "Patriots and left-winged", Laborda call upon leftwing Spaniards to "cast a critical glance towards their own past, and ask themselves to what extent the idea of Spain absorbed reactionary values because it was disdainfully abandoned by the left, and handed over for the exclusive use of the radical right wing" (Laborda, 2002, 49). Constitutional Patriotism now provided leftwing Spaniards with a new sense of patriotism that they could accept and relate to (Laborda, 2002, 53).

During the nineties, Constitutional Patriotism was widely debated, and basically endorsed, in many intellectual debates. The interest in it was essentially confined to the intellectual left wing of the ideological specter. During the first years of the new millennium the idea of Constitutional Patriotism widened the scope of its adherents, and was postulated as a political guideline for the *Partido Socialista Obrero Español* (PSOE) by its main leader, José Luis Rodríguez Zapatero. After being elected in July 2000 as the General Secretary of the PSOE, and consequently the party candidate, Rodríguez Zapatero made this idea a central pillar of his political program. On several occasions Rodríguez Zapatero praised Jürgen Habermas for this theoretical formulation and declared that an eventual future socialist government would have Constitutional Patriotism as a main ideological referent.⁵

In January 2002, the governing party, the *Partido Popular* (PP), also officially supported the idea of Constitutional Patriotism. In the XIV Party Congress Josep Pique, then Minister of Foreign Affairs, from Catalonia, and Maria San Gil, from the Basque country, issued a party position paper entitled *21st Century's Constitutional Patriotism*,⁶ where they referred to Constitutional Patriotism as a political referent also for their governing party. Different PP politicians appealed to this idea in the following months; the idea was extensively debated in editorials and articles, both academic and journalistic,

⁴ The title of this conference was "Citizenship and national identity. Reflections on the future of Europe" ("Ciudadanía e identidad nacional. Reflexiones sobre el futuro europeo").

⁵ At a meeting at *Club Siglo XXI*, on 12 February 2001, Zapatero commented for instance that "Habermas has made a great service to left wing people by putting into circulation the idea of Constitutional Patriotism (*El País*, 2001, 23).

⁶ "El patriotismo constitucional del siglo XXI".

and obtained wide support in the political and intellectual field, marking the heyday of Constitutional Patriotism in Spain.⁷ Whereas the appeal to Constitutional Patriotism by the Popular Party was quite occasional, and was quickly abandoned, the endorsement of this approach by the PSOE was more long-lasting and was still being mentioned as a political guideline by Rodríguez Zapatero when he reached the post of Spain's prime minister after the elections of May 2004.

However, as mentioned before, during all these years, and until now, nationalist tensions have not ceased. Quite on the contrary, nationalist movements in Catalonia, the Basque Country and Galicia often claim to be unfairly treated and discriminated by the central government, and have increased the scope of their demands, which include with growing intensity the demand for self-determination (and potentially also independence). Popular support of this demand in these regions has also increased in general terms in this period.

At the same time references to Constitutional Patriotism have almost completely disappeared from the public debate, where it is no longer presented as the solution for ethnic-based conflicts in Spain. Now the question is: Does this show that Constitutional Patriotism has proved unfit to eliminate ethnic tensions? Or, rather, the reason for this is that the State organization and national identity officially fostered in Spain do not follow the principles of Constitutional Patriotism as it was originally formulated? This paper will discuss both what could be considered as specifically Spanish aspects of the controversy, and also some aspects in which the Spanish case illustrates some practical and theoretical problems posed by Constitutional Patriotism on a general level.

PARTICULARITIES OF THE SPANISH CASE IN THE DEBATE ON CONSTITUTIONAL PATRIOTISM AND ITS IMPLEMENTATION

Regarding the specifically Spanish aspects on this matter, different politicians and authors often, though not in all cases, linked to positions close to peripheral nationalism have argued that the appeal to Constitutional Patriotism by both major Spanish parties was mainly aimed as a strategy to discard any claim of the right to self-determination. The real aim of this appeal to Constitutional Patriotism would according to its critics be to enhance specific contents of the Spanish Constitution, which would operate as a barrier towards secessionist movements.⁸

⁷ To mention but two of the most relevant intellectuals which took part on the debate by then, Fernando Savater wrote an article in *El País* in late 2001, where he connected Constitutional Patriotism to the defence of "a society of equals according to the law as opposed to a society of identical people according to the peculiarity of cultural purity" (Savater, 2001, 18). This same year Fernando Vallespín published an article ("Towards a post-national Spain. Civic patriotism against substantial nationalism"), where he argued for the need to foster and develop, particularly in States like the Spanish one, "a widely-shared civic culture which can define, on diverse societies, the basic features of a Republic above the feelings of ethnic and national solidarity" (Vallespín, 2001, 124).

⁸ Additionally in PP's case, it has often been argued that its leaders attempted thus to uphold a centralized government. According to these views, behind the external endorsement of Constitutional Patriotism there was not a real commitment to decentralize and fully recognize the rights of other ethnic groups and individuals. PP's position paper of 2002 defending Constitutional Patriotism was harshly criticized, particularly by peripheral nationalism, and met

Critics focused particularly on the content of article 2 of the Spanish Constitution, arguably one of the most controversial ones, which states that “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all”.⁹ The defense of Constitutional Patriotism would in this case serve to legitimize contents of the Spanish Constitution which, according to these critics, were contrary to the original values of *real* Constitutional Patriotism, like the right of self-determination.¹⁰ What the main parties were thus defending, according to some of their critics, was not a Constitutional Patriotism but a *Constitutional Dogmatism* (Kepa Bilbao, 2003, 23).

The enhancement of the Spanish Constitution to a status of unquestionable text would in addition, according to this view, help to fossilize its content to rule out any possible reform.¹¹

It may be argued against these critics that, unlike what they suggest, the Spanish case is not a unique and exceptional one in the issue of the recognition -or non recognition- of the right to self-determination. In fact almost no State in the world recognizes in its Constitution this right; neither does Germany, nor France or the USA, considered by Habermas one of the closest practical examples to the ideal of Constitutional Patriotism (Habermas, 1999 [1996], 95). On a theoretical level, it is also relevant to remember here that Habermas does not include self-determination among the rights that Constitutional Patriotism

accusations of not aiming to encourage popular identification with the Constitution as an abstract concept, as a symbol of a political system based on freedom and equality, regardless of ethnic adscription. Its aim would rather be, according to these views, to uphold the specific text of the 1978 Spanish constitution, and particularly some principles established in it which were considered detrimental to peripheral nationalism. Already before PP’s XIV Party Congress, when Constitutional Patriotism was only a proposal still not officially endorsed, Francesc de Carreras warned against this biased use: “it is not about defending the literality of a certain constitutional text, but the principles that inspire it” (Carreras, 2001, 19). According to Juan José Laborda, this resolution seemed to be conceived as “a dogmatic legitimizing of a policy aimed to reject any reform and freeze the development of a decentralizing program” (Laborda 2002, 48). In support of this assertion this author points out to that PP’s formal support of Constitutional Patriotism did not lead to a single initiative to discuss any issue related to the subject in the Parliament (Laborda 2002, 48). Jordi Solé Tura was much harsher in his questioning of the intentions of the governing party: “PP aims to build with this proposal a wide front to set Basque and Catalan nationalism against the wall and (...) to become the master of the Constitution by presenting itself as the champion of a new patriotic centralism” (in García Abad, 2001, 9).

⁹ “La Constitución se fundamenta en la indisoluble unidad de la Nación española, patria común e indivisible de todos los españoles, y reconoce y garantiza el derecho a la autonomía de las nacionalidades y regiones que la integran y la solidaridad entre todas ellas”.

¹⁰ Xacobe Bastida condemns as a whole the declarations in favour of Constitutional Patriotism of both major political parties, arguing that, as opposed to Habermas’ formulation, “in the Spanish Constitutional Patriotism the Constitution which is invoked does not refer to any substantive principle, but to the formal document itself” (Bastida, 2001, 233). This is particularly clear, according to Bastida, in relation to the fact that the Constitution does not recognise the right of self-determination: “in the Constitution of the Spanish State, in relation to the issue of the nation, there is no place for freedom and democracy, which is clearly shown in the interdiction to appeal to the citizens’ will to decide in which model of nation they want to live” (Bastida, 2002, 233).

¹¹ Some authors remembered in this context that, in contrast to the 1978 Spanish Constitution, which has been reformed two times, the 1949 German Constitution had been modified more than 50 times.

should outright grant. Habermas argues that the right to self determination, and thus independence, should be granted to any ethnic group which suffers State discrimination, but “in so far as in a State all citizens enjoy equal rights, and no one suffers discrimination, there is not any convincing reason for separation from the existing shared political entity” (Habermas, 1999 [1996], 122). This same idea has been accepted by many intellectuals, politicians and international institutions as a reasonable guideline for nationalist conflicts, particularly given the fact that most states in the world are multiethnic.

PRACTICAL PROBLEMS IN THE IMPLEMENTATION OF CONSTITUTIONAL PATRIOTISM: THE SPANISH CASE AS AN EXAMPLE

Besides its specific aspects and particularities, the experience of Constitutional Patriotism in Spain illustrates also more general considerations and problems related to this theoretic model, which transcend the specific case of Spain, and can be projected to many other countries with ethnic tensions or conflicts. The rest of the article will be dedicated to analyzing some of these problems.

One problem that Constitutional Patriotism may encounter is that in some cases it may be difficult to conciliate strict equal treatment in a multilingual society and the aim to foster a shared political identity. Together with the defense of a fully egalitarian treatment for all individuals and cultural groups, another basic principle of Constitutional Patriotism is that the development of an inclusive identity requires the existence of a public sphere of fluent political communication and a shared public debate, which is considered as a necessary condition for the creation of a political community where everyone feels equally represented.¹² Nonetheless, it may be argued that this space of public communication, this necessary “deliberative formation of the citizens’ opinion and will” (Habermas, 2000 [1998], 103), requires the existence of a common language, which would be necessary to make possible proper interaction among all members of the community.

In Spain, Castilian, or Spanish, has traditionally operated as a shared language, a *lingua franca*, used by everyone regardless of their mother tongue. This practice, though, has lately been accused of being discriminating against other linguistic groups. Yet the same problem might be projected to the idea, defended by Habermas, of making Constitutional Patriotism the foundation for a European identity. The question of whether or not it is possible to shape a strongly self-conscious political community out of a human group which is multilingual in all aspects of public life emerges. If we answer this question negatively and conclude that a shared language is needed for that purpose, this would mean favoring native speakers of this shared language over people with another native tongue.¹³

¹² According to Habermas, which here follows J. Raz’s considerations, in the implementation of Constitutional Patriotism “individuals from all cultural groups will have to assimilate a common political language and patterns of behaviour to effectively participate in the competition for resources and group protection, as well as for individual interests in a shared political arena” (Habermas, 1999 [1996], 124).

¹³ As Denise G. Réaume notes, regarding the effects of establishing unilingualism in certain spheres of public life in multilingual States, the key aspect is consent. When accepted by the vast majority of individuals of all linguistic groups, unilingualism may have a positive effect in fostering social cohesion and a shared identity as a political community. When imposed and not

Constitutional Patriotism meets other problems in its practical implementation. Whereas the principle of equal treatment is clear in theory, in practical situations sometimes we encounter conflicting ideas of what is equal and fair treatment, or what is and what is not discriminatory. In certain Spanish regions, namely Catalonia, there is for example a widespread discourse which considers unfair treatment, and sometimes plain discrimination, the fact that their region pay more taxes than what it gets in return. The question here is whether asymmetry in taxation may in fact be labelled as unfair treatment or discrimination of an ethnic group, as it is often claimed, or rather should be considered an unavoidable part of the State's redistributive role.

When Allen Buchanan enumerates what he regards as legitimate reasons for secession from a State, he mentions as one of them a policy of *discriminatory redistribution*, meaning that the central government of a State acts in a systematic and morally arbitrary manner to harm a certain ethnic group by means such as tax policies or economic programs (Buchanan, 1991, 41). This principle seems fair and legitimate as a theoretic formulation, but in practice it can lead to radically different interpretations, and to situations in which it is abusively invoked.

Even more complex than this first example is the issue of what a fair linguistic policy in a bilingual region, such as Catalonia, might be. An extended opinion among people with a dominant Spanish identity is that in Catalonia there should be the possibility of using indistinctively both official languages (Catalan and Spanish), and choosing freely between them, for instance in education. Catalan nationalist discourse, on the contrary, claims that Catalan language should have a preferential status. This is in fact the current policy in most activities managed by Catalonia's regional government, which most often gives priority to what is labeled as *own language* (Catalonian), as opposed to the *official* Spanish language. In the field of education, for instance, it has become practically impossible to educate one's own children in Spanish.

The arguments in favor of that policy are varied: one is the idea that there is an overwhelming sociological dominance of Spanish, which has to be officially compensated in favor of Catalan. Another is the need for a standard (*vehicular*) language to grant social cohesion. In most cases the underlying assumption, although not always explicitly expressed, is that it is fair and necessary to make up for a historical injustice, implying that the presence of Spanish language in Catalonia stems from a former discrimination.¹⁴ The result of this policy, some might argue, is a reverse discrimination against Spanish speaking citizens in Catalonia.

This example illustrates how the idea of what is fair or unfair is often based on conflicting national discourses, with different interpretations of history and power relations, where it is difficult or outright impossible to point at one of them as the right one.¹⁵ The case of Catalonia's language policy shows how in

accepted by a significant number of the affected people, unilingualism will probably be more detrimental than multilingualism in maintaining social solidarity and cohesion (Reaume, 2000, 269-272).

¹⁴ This idea is certainly true, and had in Franco's dictatorship its most extreme expression, but should in any case be nuanced from a wider historical perspective. From the fifteenth century onwards Spanish, or Castilian, was for instance often freely adopted as print and cultural language by Catalan elites (Lapesa, 1997, 510).

¹⁵ Kymlicka draws attention to this problem in his work *Multicultural Citizenship* Whereas in countries like Switzerland and the USA, history can be the basis for a shared and inclusive

certain situations it might be argued that strict equal and symmetric treatment is not necessarily a referent of justice, and that real justice might in certain cases require different treatment. Whether or not this opinion is right is often a matter of interpretation, to which it is not possible to give an unquestionably fair and conclusive answer.

Even though Habermas has at some point showed a certain awareness of this problem in the practical implementation of Constitutional Patriotism,¹⁶ in general terms this has been absent from his considerations on the matter, therefore offering a too optimistic view of the possibilities of Constitutional Patriotism to eliminate tensions in multiethnic and multinational States by appealing to abstract principles of liberty and equality.¹⁷

Constitutional Patriotism might encounter more practical problems; one frequent objection in the Spanish debate on the issue was that Constitutional Patriotism helped to preserve the existing political entities, in this case the Spanish State, maintaining thus a political *status quo* more satisfactory to people with a Spanish ethnic identity than to people with other ethnic identity. Only the latter would have to accept, according to this criticism, a situation of incongruity between their reference cultural community and political community.¹⁸

The intention of Constitutional Patriotism is precisely to avoid secessionist claims by eliminating all the inequalities which might justify secession, but in the end it implies the preservation of the existing State limits, which often are the result of an historical process of dynastic unions, annexations, divisions and different territorial changes, often carried out in times when popular will was irrelevant. In multiethnic states, the territorial frame of the State often coincides with the territorial symbolic construction of some ethnic group, and not with others'.¹⁹ In these cases, and regardless of how devoted a political system is towards the implementation of Constitutional Patriotism, the

identity, this is not the case in many other multinational countries, where "history is a source of resentment and division between national groups, not a source of shared pride" (Kymlicka, 1995, 189).

¹⁶ "Law systems interpret in each case in a different manner the same constitutional principles, that is, they do it in the context of the experience of a national history, and conditioned by a historically dominant cultural tradition and way of life. In culturally sensitive matters such as official language or the syllabus of public education (...) we often see reflected only the ethical and political self-understanding of the dominant majority culture" (Habermas, 1999 [1996], 124).

¹⁷ With the Spanish experience in mind, Fernando Vallespin comments in this respect that "Habermas' mistake is to assume that conflicts will disappear by the mere existence of mechanism of public discussion and a well structured institutional organization" (Vallespín, 2001, 147).

¹⁸ Some Basque nationalist have in this context claimed that they would desire a Constitutional Patriotism directed to a Basque Constitution, but not to a Spanish one (Aguado, 2002, 46).

¹⁹ Gregorio Peces Barba draws attention to this double nature of the Spanish State, which in his opinion does not necessarily imply any incompatibility; on the one hand it represents a historical entity, and is the political expression of a pre-existing collective identity; on the other hand, it creates the frame for a project of inclusive political community (Peces Barba, 2003, 57). In contrast to Peces Barba's view, Javier Aguado regards this double nature -the fact that the Spanish State which is the frame for a project of Constitutional Patriotism is also the result of a pre-existing nationalist project- as an almost unavoidable source of tensions: "The existence of a Spanish nationalism ready at service for a State which, as most other States, had in hand powerful tools to spread its values, had already established which one had to be the reference fatherland (*patria*) before we were summoned up to praise the goodness of Constitutional Patriotism" (Aguado, 2002, 46).

State may always encounter accusations, coming especially from peripheral nationalism, of being illegitimate in origin.²⁰

Another practical problem, connected to the previous one, is that Constitutional Patriotism considers abstract State symbols, like the flag and the national anthem, as the best referent for an inclusive national identity; but these symbols can often be regarded, as is the case in Spain, as *culturally loaded*, for the fact of having been historically connected to a cultural nationalism. This connection may be additionally overemphasised and instrumentalized, as might be argued is the case in Spain, by a certain discourse from peripheral nationalism, interested in keeping alive a climate of confrontation towards the central State. These symbols will in such circumstances meet great difficulties to operate as abstract references which everyone can relate to.

A last objection related to the practical viability of Constitutional Patriotism, as it is formulated by Habermas, is illustrated by this author's participation in the Spanish debate. In an interview given to the Spanish newspaper *El País* in 2003, the German philosopher expressed his skepticism towards the possibility that the Spanish *Partido Popular* could govern along the lines of Constitutional Patriotism, as the party officially claimed at that time: "I cannot imagine Constitutional patriotism as a rightwing idea"; this, on the contrary, Habermas emphasized, "is a leftwing idea since its origin" (Comas, 2003, 39-40). Habermas' skepticism is not related with the special context of the endorsement of Constitutional Patriotism by the PP, which the author declares not to know very well, but with the plain fact that it is a rightwing party. The frame of values within which Constitutional Patriotism could thrive cannot be, according to Habermas, that of mere passive recognition of rights, which he connects with classical liberal thought, but that of positive action from the State in order to guarantee that everyone benefits from social and material welfare.²¹ This would suppose, as Balfour and Quiroga correctly point out, that "the only viable mechanism for the consolidation of this Constitutional Patriotism, is in practical terms the Social-Democratic State" (Balfour and Quiroga, 2007, 167).

This is probably the least realistic aspect of Habermas' Constitutional Patriotism; on the one hand, he reckons that a wide level of acceptance towards the principles of Constitutional Patriotism is essential for his success, but the fact is that rightwing, conservative or liberal parties, whose political program Habermas considers incompatible with Constitutional Patriotism, are supported by a wide proportion of most democratic societies. Furthermore it might be a matter of debate whether socialist parties in most democratic countries carry on

²⁰ Xacobe Bastida exemplifies this critical approach in relation to the Spanish State (Bastida, 2002, 227-8 and 237-8). This reproach will, according to Aguado, always be possible by other national identities within a given State. In cases as the Spanish or the German one, Constitutional Patriotism is built on the given frame of a pre-established national identity, which is later emptied of its cultural content, but keeps some of its symbolic strength (Aguado, 2002, 46). When Juan José Laborda writes that "the Spanish Constitution re-founds the nation on the ground of civic values" (Laborda, 2002, 49) he is implicitly assuming a previous existence of a cultural Spanish nation, which is the reference of the new one. Constitutional Patriotism would in these cases, according to Aguado, be a *post-patriotism*, which somehow feeds on the nationalist feeling that preceded it (Aguado, 2002, 46).

²¹ "I believe that multicultural societies cannot guarantee its cohesion by means of this political culture if democracy is not only defined in its liberal form, limited to the recognition of the rights freedom and political participation, but also includes the right to enjoy social and cultural rights" (Habermas, 1999, 95).

policies which create the conditions that Habermas considers necessary for at Constitutional Patriotism becomes effectively entrenched.

The debate would be another one if, differing from Habermas' approach, the possibility is accepted of a trans-ideological Constitutional Patriotism, compatible both with liberal and social-democratic values.

CONCLUSION

Constitutional Patriotism appears to be a most suitable approach to do away with tensions and discrimination in multiethnic and multinational States, through the fostering of an inclusive national identity, and a strict application of the principle of fair and equal treatment applied to ethnic diversity. However, even though Constitutional Patriotism seems to be a good guideline in political decision making, it can meet important problems when applied to practical situations. Habermas and other authors which have dealt with this issue from an eminently theoretic perspective seem to have underestimated this aspect.

Some of the controversial issues presented here in relation to Spain transcend this specific case, and can be projected to many other countries with ethnic tensions or conflicts. In certain situations, it can be argued that absolute equal treatment can have a dysfunctional effect for the development of a political community in multilingual States. In other occasions, equal treatment might be considered a way to maintain a former injustice. Fair treatment and discrimination might even be difficult to define, when different groups and individuals have conflicting national historical discourses, in some occasions being far from obvious who is right and who is not. Finally, the mere existence of the State in its present form might be considered the result of a historical injustice, thus being questioned, along with the abstract symbols which represent it.

An official discourse and political practice based on Constitutional Patriotism as a theoretical referent can undoubtedly have a positive effect in lessening ethnic and nationalist conflicts within a certain State, but, as we have seen, in many occasions they can hardly completely eliminate them. A theoretic agreement on values often does not result in an agreement on the fairness or unfairness of the implementation of specific policies.

Constitutional Patriotism should probably, in any case, be defined in a manner that it could be accepted from both a liberal and a social-democratic view. It would be a matter of debate if there can be a *liberal* Constitutional Patriotism, but in the restricted sense that Habermas assigns it, it could hardly become a public discourse widely accepted across ideological lines.

Bibliography

- AGUADO, Javier, "Los límites del neopatriotismo", *Claves de razón práctica*, n. 122 (2002), pp. 41-46.
- BALFOUR, Sebastián y QUIROGA, Alejandro, *España reinventada. Nación e identidad desde la transición*, Península, Barcelona, 2007.
- BASTIDA, Xacobe, *La nación española y el nacionalismo constitucional*, Ariel, Barcelona, 1998.

- - - , "Otra vuelta de tuerca. El patriotismo constitucional y sus miserias", *Doxa*, n. 25 (2002), pp. 213-246.
- BUCHANAN, Allen, *Secession. The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Westview Press, Boulder, 1991.
- BILBAO, Kepa, "Una lectura libre desde y para Euskadi del patriotismo constitucional de Habermas", *Hika*, n. 147, 2003.
- CARRERAS, Francesc de, "Patriotismo sin tribu", *El País*, 11th November 2001.
- "El patriotismo constitucional de Zapatero", editorial in *El País*, 2nd November 2001.
- GARCÍA ABAD, José, "Derecha e izquierda en el patriotismo constitucional", *El siglo*, n. 487, 2001.
- HABERMAS, Jürgen, *Identidades nacionales y postnacionales*, Tecnos, Madrid, 1989.
- - - , *Mas allá del Estado nacional*, Trotta, Madrid, 1997.
- - - , *La inclusión del otro, Estudios de teoría política*, Alianza, Madrid, 1999.
- - - , *La constelación posnacional*, Paidós, Madrid, 2000.
- KYMLICKA, Will, *Multicultural citizenship*, Oxford University Press, Oxford, 1995.
- LABORDA MARTÍN, Juan José, "Patriotismo constitucional y Estado democrático", *Sistema. Revista de Ciencias Sociales*, n. 108 [1992], pp. 5-14.
- - - , "Ubi bene, ibi patria", *El País*, 27th August 1994.
- - - , "Patriotas y de izquierdas", *Claves de razón práctica*, n. 122 (2002), pp. 47-53.
- LAPESA, Rafael, "España, creadora de una lengua universal", *Reflexiones sobre el ser de España*, Real Academia de la Historia, Madrid, 1997.
- MÜLLER, Jan-Werner, *Constitutional Patriotism*, Princeton University Press, Princeton, 2007.
- PECES-BARBA MARTÍNEZ, Gregorio, "El patriotismo constitucional. Reflexiones en el vigésimo quinto aniversario de la Constitución española", *Anuario de Filosofía del Derecho*, n. 20 (2003), pp. 39-61.
- RÉAUME, Denise G., "Official-Language Rights: Intrinsic Value and the Protection of Diference", in KYMLICKA, Will - NORMAN, Wayne, *Citizenship in diverse societies*, Oxford University Press, New York, 2000.
- ROSALES, José María, "Patriotismo constitucional: sobre el significado de la lealtad política republicana", *Isegoría*, n. 20 [1999], pp. 139-149.
- SAVATER, Fernando, "Vivere libero", *El País*, 6th December 2001.
- STERNBERGER, Dolf, *Patriotismo constitucional*, Universidad externado de Colombia, Bogota, 2001.
- VALLESPÍN, Fernando, "Hacia una España posnacional, Patriotismo cívico frente a nacionalismo sustancialista", *El Estado de las autonomías en el siglo XXI: cierre o apertura indefinida*, Papeles de la Fundación FAES, n. 66, Madrid, 2001, pp. 117-162
- VELASCO Arroyo, Juan Carlos, "Patriotismo constitucional y republicanismo", *Claves de razón práctica*, n. 125 (2002), pp. 33-40.