

Constitutional Patriotism and the Spanish Constitutional Debate

Patriotismo constitucional y el debate constitucional español

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Abstract

The constitutionalist parties in Spain have adopted the concept of constitutional patriotism into their political discourse. This assimilation has important consequences in the way they approach nationalist tensions and ethnic conflict. I present a general overview of the concept of constitutional patriotism and its use in Spanish politics. The first section reviews the origin and formation of constitutional patriotism as a concept. The second section is an analysis of its fundamental characteristics. The third section is an attempt to show the reception and interpretation of constitutional patriotism by the Spanish constitutionalist parties, the debate and criticism that its use has evoked, and some of its implications in dealing with nationalist tensions in the country.

Keywords: Constitutional Patriotism; Habermas; Nationalism; Secessionism; Spain.

Resumen

Los partidos constitucionalistas en España han adoptado el concepto de patriotismo constitucional en su discurso político. Esta asimilación tiene consecuencias relevantes en la manera en la que abordan las tensiones nacionalistas y al conflicto étnico. Presento una revisión general del concepto de patriotismo constitucional y su uso en la política española. La primera sección presenta una revisión del origen del patriotismo constitucional como concepto. La segunda sección es un análisis de sus características fundamentales. La tercera sección pretende mostrar la recepción y la interpretación del patriotismo constitucional en los partidos constitucionalistas españoles, el debate y las críticas que ha generado su uso y algunas de sus implicaciones al tratar con las tensiones nacionalistas en el país.

Palabras clave: España; Habermas; nacionalismo; patriotismo constitucional; secesionismo.

The trouble at present is not that people think patriotism a thing to be ashamed of, but that they have developed a certain brand of patriotism which is a thing to be ashamed of.

(Chesterton, 1901)

Within the Spanish political context, constitutional patriotism has come to be an umbrella term that encompasses the theoretical background and discourse of the political parties that favor Spanish unity, the so-called “Regime of ‘78” and the Spanish Constitution and its procedures. The term is associated with the discourse of the three main political parties that defend the monarchical institutions: The People’s Party (PP), the Spanish Socialist Workers Party (PSOE), and the more recent Citizens’ Party (*Ciudadanos*).

Habermas proposed the most extensive and commonly accepted vision of constitutional patriotism within the German context. However, in practice, constitutional patriotism is not a united, coherent, and structured theory. For many, it is not intended as a general theory upon which to ground political action. The mere inclusion of the concept of constitutional patriotism in Spanish political discourse, consequently unleashed a series of political debates on whether the use of the term is in fact applicable to the Spanish political context, as well as whether it has been properly used by the constitutionalist parties, or if it is merely a political strategy meant to water down Spanish nationalism.

The purpose of this paper is not to provide a detailed explanation of the theory of constitutional patriotism, but to provide an overview of the main elements of the concept in order to compare, contrast, and better understand the ways in which it has been assimilated into the discourse of the Spanish constitutionalist parties and their critics. The paper begins with a brief explanation of the meaning, history, and fundamental elements of constitutional patriotism. Then, it focuses on the integration of the concept into Spanish political discourse and its implications on the ideological foundation of the constitutionalist parties and their response to nationalist tensions.

A Brief History of Constitutional Patriotism

There is an intuitive assumption that a certain kind of patriotic attachment is required in order to establish any kind of national identity.

It is undoubtedly true that every nation requires a core of images, histories, and symbols that exalt national pride and promote patriotism. In his essay *Is Patriotism a Virtue?* MacIntyre presents two visions of patriotism that are useful in terms of building a broad understanding of constitutional patriotism (MacIntyre, 1984).

The first understanding of patriotism is that allegiance to a nation exists because the specific nation is “the champion of some great moral idea” (MacIntyre, 1984, p. 3). Therefore, one’s loyalty is first to a certain idea or set of values and second to a specific nation. According to MacIntyre, this first understanding of patriotism gives reasons for anyone, irrespective of their nationality or citizenship, to be “patriotic” about the fact that a certain idea is being advocated or supported. The second concept, according to MacIntyre, is the most common understanding of the word patriotism, which is “a kind of loyalty to a particular nation which only those possessing that particular nationality can exhibit” (MacIntyre, 1984, p. 4). This version of patriotism encompasses more than simply nationality and includes loyalty to shared symbols and pride for the country’s perceived merits and achievements. This version of patriotism is more aligned with love for one’s family, the support for a specific football team, or marital fidelity.

MacIntyre problematizes the idea that the second understanding of patriotism is incompatible with any impersonal or liberal account of morality. Moreover, he argues that the first conception of patriotism – putting values or great ideas first in terms of one’s allegiance, is not true patriotism, because it is not sufficiently specific regarding the land, the people, or the history of a particular community. MacIntyre manages to reconcile the idea that allegiance to a particular morality also relates to the specific context and community in which one acquires and practices these moral precepts, as well as the morality of a specific national project. Regardless of these arguments, MacIntyre accepts forcefully that “patriotism turns out to be a permanent source of moral danger” (MacIntyre, 1984, p. 6).

Those who have defended the idea of constitutional patriotism face a similar dilemma. On the one hand, constitutional patriotism is criticized for being too abstract, too close to globalism, and too distanced from the concrete aspects that offer identity; on the other, constitutional patriotism is seen as a risky, rational justification of typical patriotic attitudes. In general, the main criticism of constitutional patriotism seems to be that it is too academic and intellectual, with few day-to-day

implications for the people that actually live in a particular nation and that want to identify themselves with a specific tradition, national symbol(s), and/or culture. The reality despite many attempts to structure a coherent theory based on Habermas's philosophy, is that there is no clear consensus within the political discourse about its implication and meaning. Instead, constitutional patriotism seems to fit in an uncomfortable space between nationalism and globalism.

The decisive difference between traditional patriotism or nationalism and constitutional patriotism can be summarized as the order in which we place the nation and the values it upholds. Either we are patriotic about our nation, and therefore proud of its values, or we are proud of its values, and therefore patriotic. It is clear that traditional nationalism has a strong ethnic component and is more concerned with placing national identity, land, and fellow patriots first in this equation, with values and institutions considered secondary. However, constitutional patriots are loyal to a set of universal, democratic, liberal values revealed in a specific political setting and a concrete historical constitution that endorses these values and protects liberties and rights. Constitutional patriotism is, therefore, an attempt to answer the fundamental question of patriotism in a way that is genuine while also being critical and democratic.

Constitutional patriotism emerged in Germany during the aftermath of World War II, as an alternative to the risks of the traditional forms of patriotic attachment. As a result, constitutional patriotism has been saddled with the stigma of being an academic idea that may not correspond with the reality of how humans form patriotic allegiances. Constitutional patriotism is therefore seen not as a standard approach to civic or political identity, but as a substitute for a "proper" national identity used by multicultural, multinational, multiethnic, or post-war societies. Spain falls within these categories. As in Germany, Spanish constitutional patriotism has been primarily focused on creating a national identity that is able to overcome the memory of the fascist dictatorship of Francisco Franco and the scars of the civil war.¹

1 As discussed later, constitutional patriotism in Spain has been used with the secondary and, for many, improper intention of generating civic and national cohesion necessary to face the nationalist and separatist challenges (Müller, 2007, p. 45).

First proposed by Dolf Sternberger in 1979,² constitutional patriotism emerged against a backdrop of a divided Germany where the German Constitution and the Constitutional Court were considered to be the most respected political institutions in the country. The German Constitution was seen as an embodiment of the political traditions of Germany and the values of the democratic restoration (Müller, 2006, p. 284), while the Constitutional Court was seen as pivotal for social integration and as a promoter of the recently adopted democratic liberalism.

Sternberger's concept of constitutional patriotism was similar to his prior concept of "friends of the Constitution", as opposed to Carl Schmitt's "enemies of the Constitution", widely used in the 1970s (Müller, 2007, p. 127), and "militant democracy", a concept first introduced by Karl Loewenstein in 1938. Militant democracy was used to justify the ban of the Nazi and the Communist parties in the German Federal Republic. Sternberger's constitutional patriotism was based on vertical affective ties, as people cared about protecting specific interests and values within particular institutions (Sternberger, 1979). As suggested by Müller (2007), Sternberger's concept of patriotism:

Was not a matter of uncomplicated belonging or a kind of 'feeling at home' that could be taken for granted. Rather, it was based on a political achievement and on an explicitly adversarial relationship with democracy's enemies, real or presumed. (Müller, 2007, p. 25)

For Sternberger, patriotic loyalty was more about militancy in favor of specific laws and institutions rather than the general liberal values that they represent.

Although Sternberger coined the concept, Habermas's approach to constitutional patriotism has been disseminated more broadly among the international community. As a participant in the so-called "Historians' Dispute" (Habermas, 1988, p. 6), Habermas was involved in a set of debates meant to comprehend Germany's role in WWII and understand the possibilities for a German collective identity. With the ever-present fear of normalizing the past, Habermas found constitutional patriotism to be the "only permissible form of political identification for West Germans" (Habermas, 2007, p. 115). As a member of the Frankfurt School, Habermas believed that Auschwitz could not be uncritically assumed, and Germans needed to be critical of their

2 The term *Verfassungspatriotismus* first appeared in Sternberger (1979).

tradition (Habermas, 2007, p. 112). Habermas agreed with Sternberger's affirmation about political principles. However, Habermas considered Sternberger's militant approach of the "friends of the Constitution" to be too similar to regular forms of patriotism. While Sternberger's constitutional patriotism focused on the state, Habermas's was oriented towards the public sphere (Müller, 2007, p. 41).

As stated before, my purpose is not to detail the philosophic foundations of the concept of constitutional patriotism. However, it is important to keep in mind the difference Habermas proposes between *demos* as membership within a society and *ethnos* as ascriptive identities in "post-national" and "post-traditional" societies. Habermas's constitutional patriotism has been said to be in constant tension with universalism and the particularities of a society with a common historical past (Habermas, 1997, p. 77), which must be understood as the tension between the *demos* and *ethnos*. In his formulation of constitutional patriotism, Habermas constantly warns about the dangers of prioritizing *ethnos* over *demos* (Habermas, 1996, p. 226). In Habermas's words, when "a nation as an ethnic-cultural community, identified with a common destination (*ethnos*) [is placed above the loyalty to a] nation of citizens as holders of the political sovereignty" (Habermas, 1996, p. 310); consequences can include the repression and active assimilation of the ethnic, cultural, and religious aspects of the population. Constitutional patriotism is, therefore, a way of defending *demos* and the liberal, republican, and democratic elements that hold it together, represented by a concrete constitution, as opposed to the traditional forms of patriotism based on *ethnos*, history, and symbolic identities. This vision of society constitutes a major element of the emergence of a "post-national" identity (Habermas, 2007, p. 116). For Habermas, identities could not be formed by uncritically internalizing symbols after World War II.

This set of theories gave rise to the term "post-traditional society", which, according to Müller:

Does not imply that particularity has to be relentlessly purged, or that religion, tradition, 'family values,' and other forms of 'conventional morality' are simply superseded; instead, they are, at least partially, reinterpreted in the light of the universalist claims and perspectives that also find expression –however imperfectly, as basic civil rights and as constitutional norms more generally. (Müller, 2007, p. 28).

In other words, national identity requires critical reflection on the traditions and the historic shared values of the individual, not their destruction.

Post-traditional societies, therefore, require traditional touch-points of identity, such as territory, organization, and government, to be molded and questioned through critical and rational debate. This open-ended debate is protected, but also limited, by the rights guaranteed in the constitution. This process also makes citizenship much more politically active. In the words of Müller, “what matters is a kind of critical, highly self-conscious back and forth between the existing traditions and institutions on the one hand, and the best universal norms and ideas that can be worked out on the other” (Müller, 2007, p. 29). This is the meaning of a post-traditional society, and this is why it is a core principle of the idea of constitutional patriotism.

Müller is one of the few authors that have formulated a comprehensive account of Habermesian constitutional patriotism. According to Müller (2007), the concept can be defined as:

The idea that political attachment ought to center on the norms, the values and, more indirectly, the procedures of a liberal democratic constitution [that] offers us *concrete* normative resources –norms and values, for maintaining political regimes as well as for contesting them. (Müller, 2007, p. 10)

Müller’s understanding of constitutional patriotism attempts to grapple with the gap between liberal nationalism and cosmopolitanism and illustrates how constitutional patriotism can encompass the most attractive moral intuitions of these two concepts. In other words, constitutional patriotism attempts to apply universal norms to particular experiences that can be, in certain cases, a contrast between a current democratic system and an anti-democratic or fractured past, e.g. the situation in Spain and Germany. According to Habermas, constitutional patriotism is defined as “the overcoming of fascism forms, the particular historical perspective from which a post-national identity centered around the universalist principles of the rule of law and democracy understands itself” (Habermas, as cited in Müller, 2006, p. 5).

Essential Ideas of Constitutional Patriotism

In addition to the brief and condensed overview of constitutional patriotism presented above, there are some key elements that are essential to Habermasian constitutional patriotism that are useful as a way to understand if the Spanish constitutional political parties' discourse, regarding constitutional patriotism, is authentic and if the decisions made to manage ethnic and nationalist tensions are consistent with this set of ideas. I believe that the following concrete elements can be used as a test to identify genuine political patriotism in political discourse.

The first key notion of constitutional patriotism is memory (Velasco, 2002, p. 36). Because constitutional patriotism is a reaction to previous forms of identity that have been proven to be dangerous, such as fascist nationalism, the notion of memory is crucial within any agenda based on constitutional patriotism.³ An objective, reflective, and conciliatory approach to history is a clear way to supplement a constitution's core of norms and values, and a way in which constitutional patriotism can promote political identity. Understanding a shared history can be a cornerstone to critically improve a shared future. Constitutional patriotism is not a form of attachment in the traditional patriotic sense, but instead involves significant self-criticism. It is not only about defending the liberal and democratic values of a constitution but contesting imperfections in their implementation.

The second idea is the role that constitutional patriotism gives to "nation-character", including national symbols, land, language, and traditional forms of national identity. Constitutional patriotism does not suppress or deny these symbols in any way; it does, however, relegate them to a supporting role (Müller, 2007, p. 42). This is one of the biggest debates surrounding constitutional patriotism, as it seems to deprive nationality of its ethical meaning, offering instead only a supportive, pragmatic use. Still, constitutional patriotism cannot be separated from the specific purpose of maintaining and justifying a democratic political system, because it is tied to the idea of a specific, but not immutable, constitutional political rule and procedures. Constitutional patriotism is founded on pre-existing political structures (Michelman, 2001).

A third concrete idea indispensable to understanding constitutional patriotism is the universal principles that should be included in a

3 This, as we'll see later, seems to be the case of the "Law of Historical Memory" created by the government of José Luis Rodríguez Zapatero from PSOE in 2007.

constitution as objects of patriotic attachment. Frank Michelman (2001) argues that these can be summed up by Rawl's "constitutional essentials" (Reidy, 2014, pp. 141-146), e.g. the political system, separation of powers, and the constitutional legislative procedures. Michelman also states that the first object of attachment proposed by constitutional patriotism should be the same notion of a constitution. This, of course, does not preclude free discussion among citizens about any aspect of the constitution. The democratic and legal procedures of the constitution should encourage national or ethnic minorities to maintain the constitutional regime during debates and disagreements. Constitutional patriotism "provides minorities with a language to contest majority decisions, when they feel they have been treated unjustly" (Müller, 2007, p. 56).

A fourth aspect that is important to keep in mind is the fact that constitutional patriotism is considered to be a mode of attachment for plural and multicultural societies. Constitutional patriotism does not require cultural uniformity, as liberal nationalism often seems to implicitly entail. Constitutional patriotism only requires citizens to subscribe to the norms and values represented in a liberal and democratic constitution. In so doing, citizens should be able to respect cultural differences and make room for dissent and even civil disobedience within the framework of shared democratic values.

The fifth and last relevant idea that I consider essential to constitutional patriotism is that the shared normative framework of society should generate a "constitutional culture" (Müller, 2007, p. 57). This constitutional culture simply reflects the fact that the object of attachment for a constitutional patriot is not the written text of the constitution, but a shared and just constitutional regime in which citizens understand and uphold equality and the values of the constitution in their interactions with each other –it is the shared belief in democratic procedures and legitimate laws. Constitutional culture requires a long process, is shaped by debate and diversity, and should be subject to periodic evaluation. Constitutional culture should therefore be understood as a regulative ideal, and by no means should any nation believe they have fully achieved it.

It is important to note that constitutional patriotism is not meant to be a standalone theory of political and national identity or justice, and it relies heavily on other political and liberal preconceptions. Therefore, constitutional patriotism cannot be the only consideration in efforts to

rebuild or integrate a society, and it cannot be exported to a society that lacks liberal democratic foundations.

Reception of and Debate Regarding Constitutional Patriotism in Spain

As mentioned in the introduction, constitutional patriotism has become a shared principle among the three biggest constitutional parties in Spain, or at least a shared term often used to describe the political discourse of the PP, PSOE, and *Ciudadanos*. The term is often heard at political rallies and in parliamentary speeches, and the concept has been widely used in opposition to regional nationalism. As a result, the history of constitutional patriotism in Spain is heavily influenced by each party's understanding and use of the term, as well as by the criticism that its use has evoked.

I would like to start by providing a brief overview of the way these different political parties have adopted constitutional patriotism to then explain some of the main critiques of their use of the concept. It is significant to note that in addition to the use of constitutional patriotism in the discourse of the three aforementioned political parties, other relevant political figures have also used and adopted the concept (Harrington, 2005, p. 107). Most notoriously, José Pedro Pérez-Llorca, founding father of the Spanish Constitution, has defined himself as a constitutional patriot (Pérez-Llorca, 2018), Miguel Herrero y Rodríguez de Miñón, Gregorio Peces-Barba and Gabriel Cisneros Laborda, also founding fathers of the Constitution, have written extensively about the concept and its incorporation into Spanish political discourse (Herrero, 2002).

A pragmatic interpretation would suggest that constitutional patriotism has given the constitutionalist parties a way to defend the unity of Spain without seeming nationalistic, and therefore without referencing ethnicity or symbols that voters may relate to Spain's fascist past. This phenomenon can therefore be interpreted as either the development of true democratic values and plural forms of identity or as a facade to disguise Spanish nationalism in opposition to regionalist nationalist movements. For many, it seems to merely represent a progressive, watered-down patriotism that can be used to appeal to an identity without the risk of sounding too traditional or outdated.

Following a lecture given by Habermas in Madrid and Valencia, titled *Citizenship and National Identity: Some Reflections on the Future of Europe*, PSOE senator Juan José Laborda wrote a paper titled *Patrotismo Constitucional y Estado Democrático* (Constitutional Patriotism and the Democratic State) in which he attempted to apply Habermas's ideas to the Spanish context. Laborda is thus often cited as the first to introduce constitutional patriotism into the Spanish political discourse.

One of the main elements of Laborda's take on constitutional patriotism is his statement that the founding moment of the Spanish nation-state was the consensus of 1978 and the drafting of the Constitution, despite the fact that the foundation for such consensus was built during the course of a long national history and process of cultural identification (Laborda, 1992, p. 7). Laborda's constitutional patriotism attempted to defend the Constitution by appealing to both the historical unity of Spain⁴ and the constitutional consensus of 1978, which complimented the historical community with the values of the liberal Western democracies. In words of Laborda, "the unity of Spain is for us a meta-constitutional and pre-constitutional value; the Constitution can assume it, proclaim it and recognize it [...] however, the Constitution cannot fundament this unity" (Laborda, 1992, p. 7). Laborda's position seems to lack a historical review or discussion about the history of Spain and assumes the unity of Spain as a pre-constitutional principle. Apart from Laborda, constitutional patriotism was also used by the former President José Luis Rodríguez Zapatero and by other prominent members of the PSOE.⁵

Although the PSOE was the first party to use the concept of constitutional patriotism, the PP attempted to appropriate the concept during their XIV National Congress in the paper *El Patriotismo Constitucional del siglo XXI* (XXI Century Constitutional Patriotism) (Piqué & San Gil, 2002), written by the Catalan Josep Piqué and the Basque María San Gil.

The main ideas of the PP's approach to constitutional patriotism are based on the same premises as Laborda's. Piqué and San Gil (2002)

4 Regarding Spain's historical identity and the defense of constitutional patriotism see Ruiz (2004).

5 A recent example of constitutional patriotism in Spanish political discourse is seen in the declarations of Javier Fernández, president of the Principality of Asturias and member of the PSOE, in favor of constitutional patriotism as a force against the "false history" promoted by nationalism ("Fernández (PSOE) defiende el patriotismo", 2017).

assert that Spanish constitutional patriotism is not ethnic, but rather political, multicultural, and based on constitutional democratic values. Perhaps the most relevant aspects of this discourse have to do with the significantly more militant attitude regarding regional nationalism, particularly the ETA terrorist group, which seems to echo Sternberger's constitutional patriotism more than Habermas's.⁶ In general terms, the discourse includes the main elements of constitutional patriotism outlined previously in terms of plurality, critical thinking, the defense of democratic values and procedures, openness to immigration, and the European project. However, just like Laborda's approach, the discourse presented by Piqué and San Gil (2002) lacks a clear and critical analysis of Spanish history, avoiding any mention of Francoism. There is a clear bias in favor of Spanish unity, with no consideration for any valid claims of Spain as a federal or quasi-federal system, and there is no consideration of a hypothetical constitutional reform. The PP's defense of constitutional patriotism is summed up in the following lines:

Spain has established a social and democratic rule of law, guided by the values of liberty, justice, equality, and political pluralism and based on the principle of its indissoluble unity, the right to autonomy and solidarity among the nationalities and regions that form part [of the country]. A civic constitutional patriotism must emerge from this foundation, free from false superiority or inferiority complexes. We therefore understand constitutional patriotism to be the updated political manifestation of a certain loyalty to Spain –the integrated and pluralistic Spain represented in the Constitution, with deep roots in our history. (Piqué & San Gil, 2002)

The debate regarding constitutional patriotism has been pushed within the PP by the *Fundación para el Análisis y los Estudios Sociales* (FAES), a political think-tank related to the PP, particularly via former

6 The alignment with Sternberger's concept of constitutional patriotism rather than Habermas's has been denounced by Brad Epps: "In many respects, it would seem that Sternberger's more state-oriented understanding of constitutional patriotism, linked to a number of illiberal policies and laws concerning direct action or terrorism rather than Habermas's more civic-oriented understanding, is more suited to the nationalist practice that barely lurks –for it is perpetually in evidence, behind the deceptively postnational, antinationalist, and non-nationalist rhetoric of the Partido Popular" (Epps, 2010).

President José María Aznar. Aznar himself stated at the XIV National Congress of the PP:

We believe without complexes in the plural Spain, in the Spain of the institutions, in the constitutional Spain, and that we speak, without any reservations, of the constitutional patriotism, which is the fulfillment of the responsibilities with the present and the future of our country. (Aznar, 2002, p.10)

The last and most recent example is the Ciudadanos Party, which was partially created as a response to Catalan nationalism and the independence movement. In 2018, *Ciudadanos* created a political platform to promote patriotism named *España Ciudadana* (Ciudadanos, 2018). Albert Rivera, president of *Ciudadanos*, presented himself as the “defender of constitutional patriotism” during the 2015 Spanish general election (Mateo, 2017), and in November 2018, he wrote an article titled *Sanchismo o patriotismo constitucional* (Sanchism or Constitutional Patriotism) (Rivera, 2018), which criticized the agreement between President Pedro Sanchez and the secessionist parties. In the article, Rivera accused Sanchez of renouncing the constitutional values of unity, freedom, and equality in favor of populism, in an attempt to please the nationalist parties on which the president’s parliamentary support depended.

Far from radically changing from one party to another, the use of constitutional patriotism in Spanish political discourse has become a common denominator among the constitutionalist parties. In the three approaches to constitutional patriotism, the concept is envisioned as a kind of catch-all space for any kind of political opinion that favors the unity of the Spanish nation, its constitution, and its political arrangement. However, the three parties appear to lack a more profound analysis of Spain’s history and a debate about its unity. It is also clear that the three approaches share a clear anti-nationalist agenda as part of their ideological foundation.

The main elements of these discourses can be summed up as follows: The nation’s identity is political rather than ethnic, it emerged from the long history of Spain since the XV century and is now a full Western liberal democracy, and it constitutes a plural society on a cultural level but only one political nation and sovereign people. The parties seem to have assimilated the Habermesian idea that ethnic-cultural principles cannot be imposed over the *demos* as citizens, holders of the political sovereignty. These ideas are often complemented in the discourse by the

notion that Spain should not be ashamed of its origins and symbols, and it is here that debate begins to emerge.

There have been numerous critiques of the use of constitutional patriotism by the three political parties described here. As stated previously, most of the criticism denounces the “unionist” parties for using constitutional patriotism as merely a cover-up or replacement for patriotism in the traditional sense, which might be seen as “fascist” by the electorate. Habermas, for example, expressed concern regarding the use of constitutional patriotism by the right (Habermas, 2003), and Müller has stated that it is “often misused as part of a wide-ranging debate on regional autonomy and asymmetrical federalism” (Müller, 2007, p. 44) in Spain. However, harsher critiques usually come from within the Spanish context, and the debate generally focuses on the formulation, origin, and interpretation of the first and second articles of the Spanish constitution.

For the purposes of this research, we will address the criticism put forth by Payero (2012), Bastida (2002), Velasco (2002), and Epps (2010), all of whom concur on some of the general arguments against Spanish constitutional patriotism.

For most critics, the second article of the Spanish Constitution includes nationalist presuppositions, especially regarding the indissoluble unity of the nation, which, according to these critics, makes this article incompatible with constitutional patriotism. This contrasts radically, for example, with Laborda’s notion that the second article is precisely a clear expression of constitutional patriotism (Laborda, 1992).

The second article of the Constitution states the following:

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. (Const., 1978, art. 2)

This article simultaneously recognizes the multinational nature of the state while impeding any kind of regional self-determination in the name of the *indissoluble unity of the Spanish Nation*. The Spanish Constitution is generally recognized as a liberal and modern democratic constitution; however, due to the nationalist disputes, this article has been accused of being a remnant of Francoism.

Most critiques of the article seem to denounce the same contradiction: The Constitution recognizes and praises the plurality of the Spanish nation while simultaneously establishing the narrative of Spain as a single and homogeneous reality. On this issue, Payero (2012, p. 6), Epps (2010, p. 552), and Peces-Barba (2003, p. 9) reference the same anecdote shared by Solé Tura, one of the founding fathers of the Constitution. Tura claims that the first drafts of the Constitution referred to the “unity of the state”, which allowed an open federal interpretation. However, during a constituent session a courier submitted the current phrasing: “indissoluble unity of the Spanish Nation”. Tura has speculated about the military origin of the phrasing. The constitutionalist answers to this argument usually refer to the fact that most Western constitutions establish the whole nation as sovereign, defend the unity of the state,⁷ and do not recognize the right to self-determination of their regions.

Peces-Barba (2003), who we have already mentioned as a founding father of the constitution and was one of the most left-leaning of the seven, has argued that the idea of the *indissoluble unity of the Spanish Nation* is simply a nationalist emphasis added to the constitution to reassure Francoist and military leaders during the democratic transition (Peces-Barba, 2003, p. 7). This emphasis –he argues, closes the possibility for the existence of different approaches to patriotism and a real debate about the political structure of Spain.

The first argument structured by Payero (2012) against Spanish constitutional patriotism is based on the lack of a critical historical analysis within the constitutionalist parties. Despite the Law of Historical Memory, passed by the PSOE in 2007, Payero argues that no real review of the crimes of Franco’s dictatorship has occurred in Spain, which, unlike Germany, seems incapable of a coherent and real critique of its history due to the amnesty granted during the political transition to democracy (Payero, 2012, p. 9). As discussed before, memory is a crucial part of Habermas’s constitutional patriotism, and it is an essential element for building a future-facing identity (Müller, 2006, p. 293).

Payero (2012) also critiques the lack of real consensus regarding some of the elements of the Constitution of 1978. Despite the fact that the

7 A few examples within Spain’s geographical context: The Constitution of Italy states in Art. 1 that sovereignty relies on the people, and in Art. 5, that the Republic is one and indivisible. Art. 1 of the French Constitution states that the Republic is indivisible. Art 6 of the Portuguese Constitution also reflects the unity of the State.

constitutional referendum showed 91 % approval rate (95 % in Catalonia) (Ministerio de Interior, 1978), Payero argues that some elements included in the Constitution, such as the unity of Spain, the monarchy, and the electoral system, were not publicly debated but rather imposed (Payero, 2012, p. 7).

Payero (2012) also denounces the fact that Spanish constitutional patriotism often argues that the Spanish Constitution encompasses the freedom to defend any political idea regarding the structure of the Spanish state (Piqué & San Gil, 2002, p. 8). However, constitutionalist parties still reject the right to self-determination, alluding to the second article of the Constitution. The argument emphasizes what seems to be a dogmatic approach to the written text of the Constitution, rather than an open and critical view of the Constitution as an organic text. The political right, in general, has been more reluctant when it comes to constitutional reform, as evidenced by Piqué and San Gil (2002). The PSOE, on the other hand, has been more open to debate a plan for a federalist Spain.

Bastida (2002) has also questioned the lack of a critical analysis of the dictatorship and the absence of a common national project (Bastida, 2002, p. 221), specifically in the PP's version of constitutional patriotism. Bastida argues that constitutional patriotism as used by PP, entails a certain empathy with the Francoist regime and is therefore contrary to Habermas's thinking and an imperfect appropriation of the concept. It is important to keep in mind that the Spanish transition was not a military victory, and a certain level of amnesty was required to maintain stability; immediate revisionism could have been counterproductive for the democratization of the country. Bastida also claims that far from defending the general democratic values and universal principles of the Constitution, the typical interpretation of the constitutionalist parties focuses on the specific written constitution –the dogmatic textual elements such as the unity of Spain and the monarchy, rather than the republican or liberal spirit of the text (Bastida, 2002, p. 232). For Bastida, the lack of debate about the second article is a clear indication of the lack of genuine constitutional patriotism in the discourse of the constitutionalist parties.

Bastida (2002) remarks that one of the main issues of constitutional patriotism in the Spanish political discourse is that it appears to be much more about patriotism than about the universal values of the Constitution. The concept of the *patria* of Spain –as a single political

reality, is “constitutionalized” and therefore becomes a synonym for constitutional values. At the same time, this dogmatism regarding the unity of Spain is much stronger than any existing discourse about Spain as a “nation of nations” (Bastida, 2002, p. 242). Bastida argues that this is true for the discourses put forth by both the PSOE and the PP.

Another fierce criticism comes from Velasco (2002), whose argument relies on the idea that the Spanish political system lacks the republican values that are inherent to a genuine constitutional patriotism. Velasco claims that constitutional patriotism in Spain has become a simple “catchy slogan” (Velasco, 2002, p. 11). Velasco also analyses why Spanish political discourse became such fertile ground for constitutional patriotism, namely, the fact that Spain lacks a set of shared symbols and histories that constitute political identity and attachment after the crimes of the dictatorship. In the words of Wert, Spain suffers from a kind of “patriotic anorexia” (Wert, 2001). Velasco (2002) suggests that true constitutional patriotism in Spain would place a heavier emphasis on the idea of Spain as a nation of nations through genuine critical analysis, which would foment a public, plurinational culture, rather than defend the unity of Spain as constitutional dogma.

The arguments elaborated by Epps (2010) regarding constitutional patriotism have to do with what he perceives as a general discontent with the Constitution. Epps claims that the wide margin that voted in favor of ratification during the Spanish constitutional referendum was the result of a lack of knowledge of the constitutional text and a general desire for a democratic regime, and that the electorate disregarded many specific elements of the constitution (Epps, 2010, p. 548). For Epps, the Constitution of 1978 leaves no social group satisfied: It is too liberal for the conservatives and too monarchical for the republicans. Epps (2010) argues that not only is the second article of the Constitution biased in favor of Spanish nationalism, but also that the constitutional reform process established in Article 168 makes it “almost irreformable” and gives few incentives to attempt to change the Constitution and debate different ways of understanding the Spanish State.

According to Epps (2010), due to the inherent biases of the Constitution, constitutional patriotism in Spain ends up being an emotionally charged discourse to defend the Constitution rather than an actual exercise of critique and reflection. Epps (2010) quotes Juan José Linz, Professor Emeritus at Yale University, who declared during a conference to celebrate the twentieth anniversary of the Constitution that,

although the Constitution could surely be improved in many ways, it was better to “leave the Constitution alone” (Epps, 2010, p. 548) because it was the fruit of a consensus and of extraordinary historical conditions that were not going to be easy to recreate. Epps (2010) argues that this notion of a fragile constitution is also present in the discourse of constitutional patriotism and is incompatible with authentic critical debate about the supposed consensus. For Epps, the deeper constitutional problem is based on the restoration of the monarchy and not the republic, and the fact that the republican values of original constitutional patriotism make it incompatible with Spanish constitutional monarchy.

Conclusion

The five essential elements of constitutional patriotism described in the first part of this paper (memory, the role of traditional symbolic elements, the attachment to “constitutional essentials,” the emphasis on plural societies, and the pursuit of a solid “constitutional culture”), have not always been present in the Spanish constitutionalist discourse. It is clear from the critiques reviewed here that the Spanish constitutionalist proposal has significant deficits in terms of careful historical analysis and the formation of a sound constitutional culture –constitutional patriotism should foment a richer debate about the Constitution beyond simply a defense of its written text. However, it is also true that the Spanish constitutionalist parties appear to have integrated the supportive role of the national symbols into their political discourse, as well as the attachment to “constitutional essentials” (e.g. the legitimate constitutional procedures for the reformation of the state), and a strong emphasis on the defense of a diverse and plural society within the legal framework of Spanish unity.

The Spanish understanding of constitutional patriotism has faced harsh criticism mainly for its perceived pragmatic use by the parties. The concept has not been welcomed by all the academic circles, nor it seems to be rooted in the minds of citizens and civil society. For most critics constitutional patriotism in Spain is a nuisance for a real constitutional debate, reform, and historical conciliation when it should precisely be the foundation for such attitudes. Therefore, most of the criticism that we have reviewed has more to do with the constitution than with constitutional patriotism as a concept.

However, as it is evident by the political discourse of PP, PSOE, and *Ciudadanos*, constitutional patriotism has also become a bonding term for a constitutional consensus, that attempts to avoid nationalist regressions and aims to consolidate democratic European values. A useful example can be found in the Catalan separatist crisis of 2017. After a tense political crisis, an illegal referendum and a “symbolic” unilateral declaration of independence by Carles Puigdemont, former president of the *Generalitat* of Catalonia; PP, PSOE and *Ciudadanos* were the main participants in the coalition that voted in favor of triggering article 155 of the Spanish Constitution in the Senate on October 27, 2017 (Domínguez & Alberola, 2017).

Despite all the criticism, within the specific context of the Catalanian political crisis, constitutional patriotism does seem to provide a compelling argument regarding the legitimacy of constitutional procedures for something such as reforms to grant the independence of an autonomous region. In other words, beyond the written text of the second article of the Constitution, a constitutional patriot should recognize the value of following the procedures established by the Constitution, as well as the role of the Spanish parliament as the voice of the sovereign people.⁸ From this perspective, the actions undertaken by the Government of Catalonia before the triggering of Article 155, including the call for a unilateral referendum, the approval of transitional laws, the dubious use of the parliamentary majority, the lack of respect for the suggestions of the *Llettrados de la Cámara* and the *Consejo de Garantías Estatutárias* of the Catalan Parliament, and the clear disregard for the constitutional order and the Statute of Autonomy of Catalonia through the unilateral declaration of independence (Sallés, 2017), lack any kind of justification in terms of the constitutional framework. In this context, the government’s

8 Despite the criticism it evoked from some sectors of the left, I believe that the attachment to the constitutional procedures required by constitutional patriotism can be summed up in the words of King Felipe XVI in his address to the nation regarding the Catalan crisis: “To the citizens of Catalonia –all of them, I want to reiterate that for several decades we have lived in a democratic state that offers constitutional avenues for any person to defend their ideas while respecting the law. Because, as we all know, without that respect there can be no democratic harmony in peace and freedom –not in Catalonia, nor in the rest of Spain, nor anywhere in the world. In a constitutional and democratic Spain, they know they have a space for harmony and to come together with all their fellow citizens” (Buck, 2017).

use of Article 155 is aligned with the values of constitutional patriotism due to the respect for constitutional procedures, regardless of other circumstantial issues of the political crisis.

Although it seems that the government and the constitutionalist block were acting in accordance with the principles of constitutional patriotism in triggering Article 155, it is also clear that the overall attitude of the Spanish government, the history of the relationship between the Spanish state and Catalonia, and the lack of political understanding that led to the crisis, all reflect a deficit in the development of a sound constitutional culture in Spain. The formation of a robust constitutional culture requires the constitutionalist parties to begin to broaden the debate regarding the Constitution and the political structure of the Spanish nation, as well as a response to the existing criticism regarding their lack of historical analysis.



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