

Theoretical Misconstructions Used to Support Spanish National Unity: the Introduction of Constitutional Patriotism in Spain

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In the early nineties of the XX century constitutional patriotism became popular in Spain, being sponsored by the two main parties: the Socialist Party (PSOE) and the People's Party (PP). Originated in Germany, the theory was imported into Spain with a specific target: giving support to the national model enshrined in the Constitution of 1978. In order to accomplish this aim, Spanish advocates of the doctrine did not hesitate about even perverting Habermas' original version. However, the distortion remained hidden to take advantage of Habermas' prestige.

Along these pages, I am going to analyse the extent of the misrepresentation which constitutional patriotism suffered in Spain. For conducting this assessment, explaining Habermas' doctrine is necessary first, so my paper is arranged in three parts. The first one offers a brief summary of the main points of habermasian constitutional patriotism. The second one is intended to show the theory which was received in Spain. In the third part, I am going to focus on the differences between German and Spanish constitutional patriotism.

1. The original version

Constitutional patriotism was a theory originally coined by Dolf Sternberger in 1979, on the thirtieth anniversary of the German Constitution. However, Jürgen Habermas made it popular and Spanish advocates of constitutional patriotism merely

talk of Habermas' doctrine¹. That is the reason why this paper is going to focus on the second scholar exclusively.

Habermas first used the term constitutional patriotism during the historians' dispute (*Historikerstreit*), a debate on the "self-understanding of the Federal Republic" (Habermas 1989a: 84) which took place in the late eighties of the XX century. Conservative intellectuals argued against the singularity of Nazi crimes, particularly the Holocaust, putting it on a level with the 'Gulag archipelago'. From a methodological point of view, they adopted neo-historicism's perspective, trying to understand what had happened in Germany between 1933 and 1945. In this sense, conservatives attempted to find "certain aspects of normality" in National Socialist era (Habermas 1989a: 85). Quite the opposite, critics of the historicist method highlighted the risks which normalising exceptional historical events entails: Auschwitz cannot be understood, according to Habermas (1989b: 112). Moreover, Auschwitz destroyed faith in the morality of tradition, so now continuities which are unquestionably asserted must be mistrusted, particularly if their validity derives from their unquestioned nature (Habermas 1989b: 114).

In the course of this dispute on both the originality of Nazism and the public use of history, Habermas suggested constitutional patriotism as the only feasible mean of collective identity in Germany (1989b: 115). Not in vain, ethnic nationalism had been discredited after the Holocaust. While traditional patriotism consists of a political identity centred on the historic tradition of the nation, constitutional patriotism is based on the identification with the universalist principles of democracy and human rights as they are enshrined in a particular constitution. As a result, so-called 'post-national' identity emerges [Habermas (1989b: 116); Ingram (1996: 2)].

Constitutional patriotism has been criticised either for transcending nationalism and giving birth to a universalist identity [Ingram (1996: 2); Rosales (1997: 52-56; 1999: 142-143)], or for being too abstract to provide the necessary internal cohesion which a community requires [Kymlicka (1995: 238); Miller (1997: 199-200), Canovan (2000); De Greiff (2002: 431-432); Herrero de Miñón (2002: 239-242); Uriarte (2002: 128-130); Ruiz Miguel (2004: 89)]. In my opinion, however, post-national identity in Habermas' works does not mean the antithesis of the national principle, at least if nation

¹ As far as I know, Rosales (1997, 1999, 2001) is the only author who has extensively studied Sternberger's work.

is understood in a political sense. According to the German philosopher, identity is always something particular (Habermas 1989b: 114-115), so universalist principles which a post-national identity consists of must become rooted in a certain nation (1989b: 118). Nonetheless, nationalism implies a selective appropriation of cultural tradition (1998: 621): we cannot either search for our own traditions or abjure them –on pain of renouncing our personal identity–, but we are able to decide how to follow them, because continuing a tradition is a selective act (1989b: 121).

Compatibility between habermasian constitutional patriotism and political nationalism is better explained by turning to the idea of nation that Habermas uses. In his opinion, nation is comprised of two elements: *national self-awareness* and *republican consensus*. National self-awareness understands the nation as the “pre-political unity of a historical community of destiny” (1998: 620); it owns an ethnic-cultural nature, and its cohesion is based on some objective features (language, history, religion, and so on). As the people’s will is relegated to a secondary place, it can be said that national self-awareness squares with the concept of cultural nation, derived from the objective paradigm of nation building. On the contrary, republican consensus equals the idea of political nation, based on the subjective paradigm of nation building: a will-based nation of citizens which constitutes political identity in a democratic community (Habermas 1997b: 178; 1998: 620, 622).

National self-awareness and republican consensus complement each other in current states (Habermas 1996a: 178). In the times of the French revolution collective identity founded on national self-awareness was used to create the idea of citizenship, and this is the beginning of their union. In Habermas’ words, “*ethnos* was a vehicle for the birth of *demos*” (1998: 623). National self-awareness created bonds of solidarity between unknown individuals, whilst republican consensus helped to justify political power on democratic grounds. It can be said that the first element plays a cohesive role, whereas the second one fulfils a legitimising function.

Nonetheless, reconcilability between national self-awareness and republican consensus does not mean they are mutually indistinguishable: national self-awareness is not absorbed by republican consensus because their relation is transitory. That is the reason why a continuous tension within the state exists: the tension between universalism of an egalitarian legal community and particularism of a community with a shared historical destiny (Habermas 1997b: 177), that is, between *demos* and *ethnos*.

Under ideal circumstances, national self-awareness and republican consensus should be balanced, because their mutual tension is prone to create political conflicts: an excessive relevance of the ethnic element culminates in “self-satisfied fundamentalism”, while an overdose of republican mentality results in the breakup of society (Bastida 2002: 218). Most of Habermas’ arguments aim to denounce the perils of *ethnos*’ predominance over *demos* in Germany (Habermas 1996a: 226). He propounds constitutional patriotism as a mean to reinforce republican consensus when defining the nation. In this sense, it can be asserted that Habermas’ theory is a good instance of civic nationalism, although he employs an ambiguous nomenclature –constitutional patriotism, post-national identity– which gives the idea of nationalism being superseded. In this sense, the German philosopher held that the ambivalence between universalism and particularism within the nation-state turns out to be innocuous as long as a cosmopolitan understanding of the nation of citizens is given priority over the ethnocentric version (Habermas 1999a: 91). As Uriarte has noticed, constitutional patriotism refers to the nation of citizens, that is, to the citizens who feel that they are a nation, not because they share a history, a culture or a common origin, but because they agree on the organisational principles of the state which rules over that nation (2002: 129).

2. The reception of constitutional patriotism in Spain

In 1991 Jürgen Habermas gave a lecture in Madrid and Valencia entitled “Citizenship and national identity. Some reflections on the future of Europe”. After a few months, Juan José Laborda, the then president of the Senate and a member of the Socialist Party, published a paper on constitutional patriotism and its implementation in Spain. In his opinion, the second article of the Constitution already contains the idea of constitutional patriotism (Laborda 1992: 6), because it establishes a political nation. Laborda follows Meinecke’s dichotomy as it was interpreted by De Blas (Laborda 1992: 7), for whom a political nation equals a nation-state, while a cultural nation is a stateless one which is never going to be able to achieve the state condition (De Blas 1984: 34).

However, I totally reject this exegesis owing to two reasons. Firstly, because it involves a misinterpretation of Meinecke’s work, as Bastida has pointed out (1998). Secondly, because if nations are “imagined communities” that only differ from the “style in which they are imagined”, according to Anderson (2006: 6), the type of nation

will be known after analysing the nationalist discourse. In line with performative nationalism, the nationalist speech gives the clue. So, as it has been previously said, I will talk of a cultural nation when the objective paradigm of nation building is used, whereas a political nation will be the one which resorts to the subjective paradigm.

Laborda thinks that the elaboration of the Constitution meant the foundational moment of our nation, where it was decided to be a nation or a common homeland regardless of the common history (1992: 9). But this assertion conflicts with his depiction of the second article as an example of constitutional patriotism. The elaboration of the Constitution was able to entail the re-foundation of Spanish nationalism, but in fact no decision was taken on the common homeland: according to the second article, the Spanish nation is not based on the Constitution, but the Spanish nation gives the Constitution some meaning. Sharing a common history was not an irrelevant element to build constitutional nationalism, as Laborda admits; rather, history became the cohesive factor of the Spanish nation. In this sense, the Spanish nation is cultural or ethnic, but not political, because it employs the objective paradigm of nation building. Neither constituents nor citizenry at the constitutional referendum decided to be a common homeland, because they were not allowed to question the nation's very existence: the unity of the Spanish nation was one of the tacit determinants which operated during the constitutional process. Whether constitutional patriotism involves the identification with a historical community grounded on certain values, particularly liberty (Laborda 1992: 5), it must be stressed that liberty did not play any role in the writing of the second article. According to Bastida, the recognition of the right of national self-determination is necessary to talk of liberty (2002: 229).

Apart from Laborda, other prominent socialists claimed the application of constitutional patriotism in Spain, including the former president Rodríguez Zapatero, who thanked Habermas for the favour he had done to left-wing people popularising constitutional patriotism (cited in García Abad 2001). Habermas himself linked this doctrine to the left, and he was surprised when the People's Party (right-wing) argued for constitutional patriotism as well (Comas 2003). It was at the XIV Conference of the party, which took place in January 2002, and where J. Piqué and M. San Gil gave a presentation called "Constitutional patriotism of the XXI century".

The paper uses ambiguous words, but neither the ethnic national discourse is abandoned nor universalist premises, which are deemed inherent in constitutional

patriotism (Piqué and San Gil 2002: §17), are adopted. A careful analysis will reveal several inconsistencies. First, whereas the constitutive plurality of the Spanish reality is positively viewed (2002: §2, §8, §13, §27), it is also asserted that Spain is an objective entity with enough strength and homogeneity, and represents more than the mere aggregation of its peoples (2002: §27). Second, at the beginning the paper insists that the Constitution is Spaniards' doing (2002: §4, §5) and that its passing made it possible for perennial problems of Spanish politics to be solved. In keeping with it, constitutional patriotism is considered a frame concept which does not require all sensitivities to share the same idea of Spain (2002: §8). Several pages on, nevertheless, the right of self-determination is categorically rejected and related to terrorism in an attempt to delegitimise it: admitting that the constitutional framework does not allow the exercise of self-determination, constitutional patriotism inevitably entails a common –unitary– idea of Spain being shared. Third, the flat turning down of Spanish nationalism (2002: §17, §19) is combined with the natural assumption of an idea of Spain free of historical guilt complex (2002: §13). The nation's identity is described as political, historical and cultural, rather than ethnic, and it has emerged from Spanish history and culture, its constitutive plurality and its historic project rooted in two lands, Europe and America (2002: §13). In short, the People's Party does not abandon the model of nation building which was used in the second article, the so-called objective paradigm. The Spanish nation shows cultural attributes, and its unity is based on history; in a political nation cohesion should be grounded on its members' will, and it involves the recognition of the right of self-determination to any people within that territory, minorities included.

PP's advocacy of constitutional patriotism engendered great controversy, because it was interpreted as an attempt either to monopolise the theory with a vote-catching aim or to disguise Spanish nationalism in order to combat peripheral nationalisms effectively. However, I hold that PP's version of constitutional patriotism did not differ substantially from PSOE's one.

Let me explain my point further by comparing Laborda's paper of 1992 and PP's presentation of 2002. Both works conceptualise constitutional patriotism as a wide framework which has place for every option, regardless of its political tendency: left-wing or right-wing, nationalist or non-nationalist [Laborda (1992: 6); Piqué and San Gil (2002: §8)]. Their common adscription to non-nationalism [Laborda (1992: 5); Piqué and San Gil (2002: §17)] is unable to prevent them from supporting the national

conception that the second article enshrines, an article which represents the quintessence of constitutional patriotism (Laborda 1992: 6). Spanish nation is depicted with political characteristics –although history is the key component–, while nationalities within the same territory (such as Catalonia or the Basque Country) only show cultural features. So nationalities have no sovereignty and, as a consequence, they are not entitled to self-determination rights. Such a circumstance cannot be altered even by a constitutional reform, because it would mean destroying the basics of democratic life (Piqué and San Gil 2002: §9). The regional model developed in the Constitution is not only compatible, but inherent in constitutional patriotism (Laborda 1992: 10); so much so that PP’s paper put the defence of the Constitution and the Autonomous Statutes on a level with that of the idea of Spain (Piqué and San Gil 2002: §6). Therefore it can be said that Spanish advocacy of constitutional patriotism represented a new version of the formula ‘nation of nations’ [Bastida (2002: 240-241); Villanueva (2002)], that is, a sovereign nation which coexists with other stateless nations within the same territory. That is the reason why peripheral nationalisms criticised constitutional patriotism, because in fact it matched the same centralist goal.

Provided constitutional patriotism does not introduce any change from the national model of 1978, apart from the rhetorical variations, why did this formula enjoy such an extraordinary success among Spanish politicians? According to Bastida (2002: 220-221), constitutional patriotism offered three decisive advantages over traditional nationalism. The first one has to do with Habermas’ prestige in Spain: whoever wants to confront constitutional patriotism will be forced to make an additional dialectical effort to win the debate, due to the power of the authority argument. The second virtue is its ability to satisfy everybody or, at least, not worry anybody too much. Thereby both moderate and radical Spanish nationalists come together in this theory. The third asset is explained by the socio-historical climate in which constitutional patriotism appeared. German and Spanish recent history had very similar features: both countries considered the best manner of organising collective identity, and resorting to tradition did not seem an acceptable option to either of them.

3. Perversions of Spanish constitutional patriotism

Spanish version of constitutional patriotism misrepresented the German original. According to Müller, the distortion was the outcome of “deliberate mistranslations”

rather than “unfortunate misunderstandings” (2007: 45). As Núñez Seixas has pointed out, in Spain “music was far more important than lyrics” (2004: 73); hence the omission of key elements of constitutional patriotism. Such twisting affects several aspects of this doctrine, and they are going to be explained below.

3.1 The unrecovered historical memory

Despite the similarities between the latest German and Spanish history, the attitudes adopted to confront the past differed in both countries. First of all it must be said that memory is a fundamental concept in Habermas’ constitutional patriotism (Müller 2006a: 293), intimately connected to the process of identity building [Velasco (2002: 38); Müller (2007: 11)]. In Germany finding a new form of collective identity to make citizenry proud of being a nation was necessary, and this operation entailed putting some distance between the present and the ignominious past. Therefore, National Socialist despotism was rejected, grounding social cohesion on loyalty to the constitution and its values. During the historians’ dispute, Habermas denounced the perils of neo-historicism’s normalisation of exceptional events, stating that post-national identity in Germany was self-understood from the particular perspective which having overcome fascism provided (Habermas 1989b: 116). In this sense, tradition would have to be subjected to criticism. After the Holocaust the belief in the innate goodness of tradition was destroyed, and as traditions are common goods, not private ones, they can only be changed through public discussion on their correct interpretation (Habermas 1997a: 53): here lies the reason of the *Historikerstreit*.

Although Habermas’ opinion was not unanimously shared –that is why I talk of a dispute–, during the eighties and nineties of the XX century German politicians and intellectuals embarked on “self-obsessed debates about their identity” and “the meaning of Germany” (Müller 2006b: 21). Not without problems, coming to terms with its past has been positive: today, Germany “has hardly found consensus on its ever elusive national identity”, but “there is convergence on a definition of *Germanness* that is no longer ethnic, that is more accepting of immigrants, and that implies a less tortuous, though not complacent relation to its own past” (Müller 2006b: 21). Germans have critically confronted their problematic history, albeit belatedly. Taking into account that lessons can only be drawn from history when it is considered a critical institution, the need of dealing with the past appears obvious (Habermas 1997b: 73).

On the contrary, in Spain, historical memory has not been recovered, let alone critically analysed or condemned. In public debates the Civil War and Francoism are not mentioned, apparently to stabilise the regime born in 1978. When the Constitution was being discussed, the new democracy was surrounded by high uncertainty about its same viability, and certain determining factors influenced the final draft of this norm: the monarchy, the unity of the Spanish nation², the ‘state of autonomies’, and the electoral system were not publicly debated and passed by the majority of Spaniards, but factually imposed. Like any other newborn government, Spanish democracy had to create their own foundational myths, deciding which symbols and memories from the past should be recovered and which forgotten. Among the foundational myths elaborated *ex novo*, the Transition to democracy, the Constitution and the King must be highlighted. The Transition is regarded as an exemplary paradigm of reconciliation between ‘the two Spains’; the Constitution epitomises democracy; and the monarch embodies both national harmony and, particularly after the attempted coup d’état on 23 February 1981 (known as ‘the 23-F’), democracy.

It was not until 1996, when the People’s Party came to power, that Spanish politicians started to remember historical memory, a tendency which was increased during the second legislature, when the right-wing party achieved an absolute majority. Due to the clear connections between PP and the dictatorship –for example, the party’s founder, Fraga Iribarne, served as Minister for Information and Tourism under Franco’s government–, the congressional opposition submitted a bill to condemn Francoism, as well as to recognise its victims and entitled them to redress. PP defeated it several times, endorsing the proposal only after certain amendments had been introduced. It took place at such a significant date as 20 November 2002 (the anniversary of Franco’s death). The right made its affirmative vote conditional on putting an end to public discussions on memory and its spokesman’s speech in the Congress focused on the risks of opening up

² One of the seven members of the panel who wrote the Constitution, Solé Tura, relates an extremely revealing anecdote about the factual genesis of the second article (1985: 99-100). One day he was presiding the session, a courier handed in a message containing the current wording of the second article, and the stipulation that the future of the Constitution would depend on the inclusion of that new drawing-up with no corrections. Until that moment, the second article talked of the “unity of the state”, which admitted a federal interpretation, on the contrary to the “indissoluble unity of the Spanish Nation”. Solé Tura speculates on a military authorship of the manuscript note. But he forgot to remark, as Bastida has pointed out (1998: 52), the way each amendment proposed by Alianza Popular (the right-wing party) figured in the new writing. However, the heirs of Franco’s regime held until the end their negative vote to the controversial text.

old wounds (Atencia Robledo, Journal of Debates of the Congress, nº 625, 2002, p. 20516).

In 2007, when Rodríguez Zapatero was the president, the Historical Memory Law was passed. Among the provisions of this enactment was the recognition of the victims of both sides in the Civil War and the Francoist regime, the supply of aid to them and their descendants, and maybe the most controversial point, state help in the tracing, identification and exhumation of those who were killed at the hands of the dictatorship (articles 11-14 of the Law 52/2007, 26 December).

On the basis of this law, Baltasar Garzón stated his competence to investigate some crimes committed under Franco's government (16 October 2008), although he disqualified himself just a month later (18 November 2008). However, what could be a conflict of competences between judges became an infamous trial against our most celebrated judge. Garzón's prestige for elucidating responsibilities within Latin American dictatorships, lead international public opinion to watch Spanish justice carefully. Finally, the Supreme Court found Garzón not guilty, but the image of our country's judicial system was severely tarnished.

Apart from the judgement each of us holds of Garzón, a highly controversial person, his case proves that investigating crimes perpetrated during the dictatorship still arouses deep suspicion in Spain. In my opinion, this is an unmistakable sign of the state's democratic deficiency. As Rupert Colville (the spokesperson for the UN High Commissioner for Human Rights) has said, "Spain is obliged under international law to investigate past serious human rights violations, including those committed during the Franco regime, and to prosecute and punish those responsible" (2012). Moreover, Spanish Amnesty Law –which was introduced after Franco's death and allegedly breached by Garzón when probing into the atrocities carried out under the dictatorship, so he was charged with having overstepped his authority– should be repealed, because it was not in conformity with international human rights law. However, the Spanish national identity has been built on a profound lack of history and memory: Franco's era has disappeared from society's memory (Lacasta-Zabalza 1999: 35). The Second Republic's and the Civil War's memories are still influenced by Francoist official interpretation. In fact, Aguilar and Humlebæk have noticed that Spanish democracy maintains more continuity with Franco's regime than with any other previous government (2002: 152). This is particularly significant regarding the Second Republic,

the first Spanish democratic experience: Francoist propaganda successfully instilled in people's minds that republic was synonymous with anarchy, radical violence, and political chaos; so the majority rejection of this form of government continues nowadays.

Another sign of the lack of memory in Spain is the Transition's mythification. It was understood as an example of mutual renouncing in the interests of achieving national pacification, but in fact waivers were asymmetrical. Using a dichotomy, the left was the main loser, while the right merely suffered slight losses, often in the form (for instance, in the issue of territorial organisation).

A final manifestation of the absence of memory is the myth that all Spaniards were equally guilty for the atrocities committed during the war. Consequently, forgetting the past and forgiving any affront is believed the best manner of facing the future. Nevertheless, two things make me inclined to think that responsibility of the Francoist camp cannot be relativised. Firstly, Franco's military uprising sparked the war and toppled a democratic government –the Republic–. Secondly, under Franco's regime terrible crimes were carried out. Whether during the war both sides perpetrated outrages, after the victory and for forty years the only culprits were the fascists.

In my opinion, the recovery of historical memory should involve a serious investigation of Francoism and its abuses. The Amnesty Law cannot be used as a 'full stop law' to enable the Francoist establishment to get away with it. Spain is internationally obliged to probe and punish crimes committed during the dictatorship. Furthermore, continuity with Franco's era must be broken to be able to proclaim, with Habermas, that Spain has successfully overcome fascism (1989b: 115-116).

3.2 The context of constitutional patriotism

The second difference between German and Spanish constitutional patriotism consists in the citizenry's perception on the so-called 'national matter'. According to Ruiz Miguel, the meaning of the expression constitutional patriotism does not only depend on how patriotism is understood, but also on how nation is interpreted, because this concept links patriotism to the Constitution (2004: 81).

In Germany "the *we* of constitutional patriots", that is, "the particular context of constitutional patriotism" (Müller 2007: 36), "appeared not to be in question" (Müller

2006a: 293); rather it was the content which the pre-existent patriotism, one with a long antidemocratic history, had to accept what aroused controversy (Núñez Seixas 2004: 81). Habermas' formulation of constitutional patriotism started from the assumption that its specific demands were directed at German citizens (Müller 2006a: 293), a category which included also those inhabitants of the Democratic Republic. The German people was perfectly delimited, even under post-war division, because Germany is one of the few examples in the world wherein state and nation match up. The split was the consequence of an external imposition, not the outcome of a will-based decision of Germans.

Quite the opposite, in Spain the 'national matter' represents one of the thorniest political problems. National demands are not something new, but they constitute a recurrent chapter of our history. Spain does not correspond to the ideal model of a nation-state; on the contrary, several nations coexist within its territory. Despite the fact the Constitution is founded on the very unity of the Spanish nation, according to the second article, an agreement on the unity of the nation has not been reached yet. It can be said that in Spain there is not a common national self-awareness which operates as the substratum for the republican consensus. Consequently, whereas in Germany national unity was one of the premises of political legitimisation, in Spain it was, and still is, an obstacle to that legitimisation (Bastida 2002: 225).

Apart from this, as the line of argument of Spanish constitutional patriotism centred on defining "the *homeland* which is the subject and the *demos* of the Constitution" (Núñez Seixas 2004: 73), the Constitution –the other concept of the binomial– was forgotten. This omission completely denatured the meaning of constitutional patriotism. On the one hand, constitutional civic values were not emphasised and, as a result, constitutional patriotism does not differ from traditional patriotism. On the other hand, when several homelands exist, the same civic values can be projected over any of them; that is the reason why sticking to the literal text of the current Constitution, a norm which enshrines the unity and uniqueness of the Spanish nation, is stressed: there is only one nation, the remaining entities are just cultural communities, also known as nationalities.

3.3 Constitutional fundamentalism

The third difference is the meaning assigned to the term *constitution*. In Habermas' view, constitutional patriotism was the ability to identify oneself with the political order and the universalist principles of a democratic state (1989a: 94; 1989b: 116). In this sense, constitution means the core of liberties and human rights as they are recognised in a democracy, but not the literal text which is currently in force in a particular country. Members of a plural society are bound together by abstract procedures and principles of an *artificial* republican order, that is, law creates those ties (Habermas 1997b: 72). Turning to the two components of habermasian national idea, it can be said, along with Bastida, that the constitution is deemed republican consensus' shelter; it guarantees that the reasons for cohesion emerged from national self-awareness are going to be purified in a universalist sense (2002: 232-233).

Far from it, in Spain the exegesis of constitutional patriotism led to an excessive mystification of the constitution; as a consequence, the literal text of the Constitution passed in 1978 became the object of patriotic adherence. In Velasco's words, the application of constitutional patriotism in Spain can be depicted as "selfish and quite unfair" (2002: 38); the Constitution is used as a weapon to combat anyone who slightly deviates from political orthodoxy: both those who dare to propose a constitutional reform or call any of its articles into question, and those who just comply with the Constitution unenthusiastically. Like any other incipient regime, Spanish democracy established foundational myths, the Constitution being the most prominent one, in order to self-legitimise and develop political attachment to its institutions. Using Herrero de Miñón's words, a kind of "constitutional magic" was created (2002: 250), by virtue of which politics is justified on the grounds of the enforcement of the Constitution. In fact, the fashion in which Spanish politicians deal with the Constitution does not match its normative condition. The Constitution has been idealised and become a semi-divine creature thanks to neo-constitutionalism. So the Constitution works as a belief, in Ortega's sense (1994), and not as an idea in our society: its rationality and truthfulness are beyond question, because the individual who deviates from it will be socially sanctioned. Setting an example, it can be argued that an unconstitutional act does not only involve illegality, but immorality as well. Being charged with unconstitutional infringement means a disqualification for public debate –see what happened to the Ibarretxe Plan–, and it has been exploited to expel bitter opponents from the political

arena. As a result, politicians split into two blocs: constitutionalists –those who are with us– and anti-constitutionalists –those who are against us–.

Capitalising the Constitution led Velasco to use the term “constitutional fundamentalism” to refer to Hispanic patriotism (2002: 38). As well as showing loyalty, worshipping the Constitution is required: the similarities with a holy book are remarkable. Signs of this fundamentalist exegesis are the hegemonic parties’ flat refusal to any constitutional amendment and the scholarly attempts to justify it. Ruipérez, for instance, deduces implicit intangibility clauses in order to protect the hard core of the norm, namely the monarchy, democracy, the system of rights and liberties, and the unity of the nation (1995: 126-129). Even more, Hispanic constitutional patriotism focuses on strengthening the unity of the Spanish nation, using the monarchy, though not only, for it. Yet democracy and human rights are pushed into the background, when they are not blatantly violated in the interests of the unitary target.

Habermas’ constitutional patriotism was diametrically opposed to this interpretation, since he understood the constitution in an instrumental rather than fundamentalist sense. Far from brooking dissent, in Spain political heterodoxy is persecuted and punished, even by Criminal Courts. Using Bastida’s words, instead of considering the Constitution “the meeting spot for republican consensus, it was regarded as the starting point for creating (Spanish) national self-awareness” (2002: 233). Alternative national self-awareness has not only been expurgated from the Constitution, but also condemned to a perennial illegality –or para-legality– if it does not abandon its political claims: that is the outcome of armouring constitutional reform. The Spanish Constitution does not embody the expression and guarantee of an active political subject for two main reasons.

The first one has to do with the passive unchanging nature which was bestowed on the constitutional *demos*. In fact, the constituent-constituted subject only voted in 1978, deciding once and for all our institutional and political framework. Such a stand deserves to be described as illiberal, since it infringes an essential principle of liberalism: individuals can freely choose their own conception of the good life, as well as “reconsider that decision and adopt a new and hopefully better plan of life” (Kymlicka 1995: 80).

The second reason is the people’s lack of a leading role in national matters. As I will explain in the next section, the territorial model was not elected either in 1978 or

afterwards: thirty years ago ruling out people's will was justified on the grounds of political instability, which required giving in and making self-sacrifices to avoid the army getting worried. However, today's democracy seems to enjoy good health, so the taboo surrounding self-determination is not understandable.

3.4 The role played by people's will

The fourth difference between Spanish and German constitutional patriotism lies in the prominence given to will in the process of nation building. As I have previously pointed out, Habermas' constitutional patriotism does not categorically reject the national idea, although he opted for an alternative nomenclature –post-national identity, patriotism, loyalty to the constitution– in order to escape from the historical burden borne by German nationalism. Republican consensus should be reinforced to prevent national self-awareness from playing a leading role. That is the reason why rights of citizenship deserve full acknowledgement and protection (Habermas 1998: 626).

Habermas particularly stressed the value of political autonomy regarding the German unification. In the aftermath of the fall of the Berlin Wall, he wondered: should democratic self-determination of German Democratic Republic's citizens be given precedence over the unification of all Germans in a nation-state? (1996a: 227). His answer favours republican consensus to the detriment of national self-awareness: those who will suffer the consequences, that is, East Germans ought to decide whether or not they want to be part of a unified Germany (1996a: 227-228). Thereby, will becomes "the keystone of Habermas' constitutional patriotic arch", in Bastida's words (2002: 226), which includes members of minorities' freedom of choosing their national attachment (2002: 229). Even Habermas said that assigning priority to the right of self-determination in the process of reunification was a requirement of the identification with constitutional principles and institutions in which constitutional patriotism consists (1996b: 306).

Conversely, self-determination of peoples was not included in the version of constitutional patriotism which was imported into Spain. Here there is no consensus on the inability of any part to force the other to abide by its own decision, as Habermas noticed in Germany (1996a: 228). Far from it, the rare occasions in which self-determination is openly discussed, its critics argue that in a hypothetical referendum all

Spaniards would be entitled to vote, a proposal which obviously would dynamite the popular consultation: on national matters, the majority rule cannot be applied, because what is at stake is the suitable political unit within the majority rule is able to operate (Schwarzmantel 1994: 28).

Spanish constitutional patriots who employ habermasian theory against traditional nationalism are wrong and/or lying at least about three issues. First, supporters of constitutional patriotism commit a falsehood by calling themselves non-nationalists or constitutionalists, because their national loyalty is devoted to Spain: they are Spanish nationalists. Second, they make a mistake –let me call it a mistake, although it might be considered an untruth– when, trying to hide their nationalism, resort to an allegedly post-national theory, because sponsors of constitutional patriotism are liberal nationalists. Third, and this is the biggest lie, subjective paradigm is deleted from Habermas’ doctrine in order to reconcile constitutional patriotism with the idea of nation enshrined in the second article, an instance of the objective paradigm of nation building.

The first error can be explained by turning to both the moral and academic contempt that nationalism provokes. From a philosophical point of view, Anderson has said that “unlike most other isms, nationalism has never produced its own grand thinkers” (2006: 4). In Spain the absence of a reliable nationalist theory contrasts with the political and social importance attached to the territorial model. As a result journalists and discussants on TV programmes create national identity, while self-styled scholars just sum up and gloss over those ideas born in the media. Besides this “*odium philosophicum*” (MacCormick 1994: 70), nationalism is regarded responsible for terrible crimes such as the Yugoslavian ethnic cleansing.

As nationalism is philosophically inconsistent and morally despicable, most citizens and politicians in Spain say they are not nationalist, but constitutionalist. Moreover, the term nationalist specifically refers to the peripheral nations which lack a state (mainly, Catalonia, the Basque Country, and Galicia). According to Billig, “separatists are often to be found in the outer regions of states; the extremists lurk on the margins of political life in established democracies, usually shunned by the sensible politicians of the centre” (1995: 5). Using his own words, nation-states are “indicated, or *flagged*, in the lives of its citizenry” every day (1995: 6); yet their nationalism becomes overlooked, because nationalist ideology is seen “as the property of others, not

of *us*” (1995: 5). Daily reminders of nations take place so often that they are a “familiar part of the social environment” (1995: 38), operating “mindlessly, rather than mindfully” (1995: 38). To refer to these “ideological habits which enable the established nations of the West to be reproduced” (1995: 6), Billig coined the term *banal nationalism*. Yet stateless nations consciously wave their flags to claim state status; whether they achieve the state condition, flags will also disappear from sight.

Spanish politicians pledge their patriotic attachment to the Constitution –hence the label *constitutionalists*–, so the analysis of this norm is necessary in order to evaluate their alleged anti-nationalism. The second article states that “the Constitution is based on the indissoluble unity of the Spanish nation”, which means that the Constitution is nationalist, as well as anyone who uses it as a model. As a consequence, so-called constitutionalists are Spanish nationalists.

The second mistake made by Spanish constitutional patriots derives from the former one. Despite the fact nationalism is rejected, a common identity is needed to base community’s cohesion and state legitimisation. Here constitutional patriotism, a concept with evident republican connotations, appears. Nonetheless, Uriarte points out that patriotism is a kind of nationalism which wishes to look differently (2002: 128). Thanks to Habermas’ prestige, first the left of centre and then the right advocated constitutional patriotism in Spain.

Moreover, and this is the third inaccuracy, between the two components of Habermas’ national idea, Spanish sponsors of constitutional patriotism forgot national self-awareness due to its national references, only maintaining the widely acceptable republican consensus. However, both oblivion and maintenance were merely rhetorical. Neglecting national self-awareness had no factual consequences because Hispanic patriotism worships the Constitution of 1978, whose second article reveals cultural nationalism. Keeping republican consensus was equally inane, since Habermas’ civic nationalism is not mentioned, and any trace of political will is cut out of the theory. So the right of self-determination of all peoples within the state, but the Spanish one, is banned in the second article. As Bastida has pointed out, whether liberty is essential to talk of constitutional patriotism, the doctrine which was brought into Spain, though keeping the same name, distorted the original content: “constitutional patriotism derived from the Constitution does not bear Habermas’ stamp” (2002: 232). Liberty was absent

from the elaboration of the Constitution –vide Solé Tura’s anecdote above mentioned– and its wording does not allow it to operate.

4. Conclusion

Constitutional patriotism was a theory firstly advanced by Habermas during the course of the historians’ dispute. He tried to provide a kind of political attachment centred on the norms and values of a liberal democratic constitution, instead of on pre-political ties which bind people regardless their will. Yet in Spain the theory was imported and “misused as part of a wide-ranging debate on regional autonomy and asymmetrical federalism”, as Müller has pointed out (2007: 44). The main differences between German and Spanish constitutional patriotism can be summarised in four points. The first one is the attitude adopted to confront the shameful past: while Germany has finally come to terms with its history, in Spain historical memory hasn’t been recovered yet. The second unlikeness concerns the ‘national matter’, nonexistent in Germany, but highly controversial in Spain. The third difference consists in the understanding of the Constitution: whereas Habermas gives an instrumental meaning to it, Spanish constitutional patriots see the norm in a fundamentalist sense. Finally, the fourth dissimilarity has to do with the role assigned to political will: liberty is essential for Habermas, but does not play any role in Spanish patriotism.

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