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## **Tensions nationalistes et Patriotisme Constitutionnel en Espagne**

## **Nationalist tensions and Constitutional Patriotism in Spain**

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### **Résumé:**

Pendant la dictature de Francisco Franco, les cultures et les identités ethniques comme ceux de Catalogne et Pays Basque ont été ignorés ou directement rejetées en Espagne par le système juridique et politique. Après la transition vers la démocratie cette situation a profondément changé. La Constitution de 1978 a établi des institutions démocratiques, garanti les principes de liberté et d'égalité, et permis un degré élevé d'autonomie dans les régions avec une identité ethnique spécifique. Ces changements n'auront pas apparemment satisfait toutes les exigences et les attentes des partis et organisations nationalistes sous-étatiques, et des nouvelles exigences sont apparues aussi dans les années suivantes. Influencés par un débat idéologique qui a commencé en Espagne au début des années quatre vingt dix, les deux principaux partis espagnols ont déclaré le Patriotisme Constitutionnel comme le référent d'une nouvelle identité nationale espagnole inclusive au début des années deux-mil. Au cours de ces années et les suivants les tensions et les conflits nationalistes n'ont pas cessé. Au contraire, les mouvements nationalistes périphériques ont augmenté la portée de leurs revendications, qui incluent de plus en plus souvent le droit à l'autodétermination.

La question qui se pose est de savoir quelle est la raison de cet échec. Une explication possible est que la version espagnole du Patriotisme Constitutionnel n'a pas suivi certains des principes défendus dans sa formulation théorique originale. Un autre point de vue possible c'est que, en termes généraux, le Patriotisme Constitutionnel peut rencontrer des problèmes importants quand il est appliqué à des situations concrètes. Le cas espagnol serait un exemple particulièrement illustratif

## Abstract:

During the dictatorship of Francisco Franco, cultures and ethnic identities such as the Catalanian and Basque ones were ignored or directly rejected by the legal and political system. After the transition to democracy this situation profoundly changed. The 1978 Constitution granted democratic institutions, endorsed the principles of freedom and equality, and allowed a high degree of self-government in regions with a specific ethnic identity. These changes did not fulfil all the demands and expectations of sub-state nationalist parties and organizations, and new demands appeared also in the following years. Influenced by an ideological debate which started in Spain in the early nineties, in the beginning of the new millennium the two major Spanish parties declared Constitutional Patriotism as the referent for a new inclusive Spanish national identity. During these and later years, nationalist-based tensions and conflicts have not ceased. Instead peripheral nationalist movements have increased the scope of their demands, which include more and more often the right to self-determination.

The question arises as to what is the reason for this failure. One possible explanation is that the Spanish version of Constitutional Patriotism did not follow some of the principles advocated in its original theoretical formulation. Another possible perspective is that, in general terms, Constitutional Patriotism may encounter important problems when it is applied to practical situations, the Spanish case being a particularly illustrative example.

**Mots clés:** Patriotisme Constitutionnel, Espagne, nationalismes infra-étatiques, l'identité nationale, la citoyenneté

**Key words:** Constitutional Patriotism, Spain, sub-state nationalisms, national identity, citizenship.

## Introduction

In the early nineties Constitutional Patriotism, a concept coined by one German intellectual, Dolf Sterberger, and further popularised by another, Jürgen Habermas, was introduced in the Spanish public debate on national identity. Some years later, in the first half of the 2000 decade Constitutional Patriotism was widely endorsed in the political, journalistic and academic arena as the best way to eliminate the political tensions and conflicts related to Spain's pluri-ethnic character, with different national identities coexisting.

In sharp contrast to that, from the second half of the 2000 decade on, the appeals to Constitutional Patriotism in Spanish public life have almost completely disappeared, whereas this has not been the case with ethnic and nationalist-based conflicts. These pages intend to explain the reasons for this process of widespread endorsement and sudden abandonment of this public discourse. The answer to this question refers partly to specificities of the Spanish case, but also to circumstances which are relevant to the debate of Constitutional Patriotism in general. The Spanish case is thus a matter of study in itself, but also a good means to illustrate the weak points and problems that may affect Constitutional Patriotism. In relation to the latter, it will be argued that while Constitutional Patriotism theoretically seems to be the perfect solution to eliminate tensions in multiethnic States with different national identities, it can often meet serious, sometimes almost unsolvable problems, when applied to certain practical situations.

## Constitutional Patriotism as a theoretic formulation

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

Sternberger first stated the fact that national feeling and political allegiance to West Germany could hardly be based on the idea of being a cultural community, since part of this community (East Germany) had been left out of the State [Sternberger, 2001 (1979), p. 85] According to Sternberger, national identity in West Germany relied and should rely on what he labelled as Constitutional Patriotism

(Verfassungspatriotismus).<sup>1</sup> That is, on the idea of being part of a political system which grants democratic institutions, freedom and equality, symbolised in West Germany by the Fundamental Law of 1949.<sup>2</sup>

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

In modern pluriethnic States it is essential, according to Habermas, that “a cosmopolite understanding of the nation of citizens is given priority in relation to an ethnocentric version of the nation” [Habermas, 1999 (1996), p. 91]. This political understanding of the community, and a democratic process which involves all individuals, are the most useful means of social integration in societies which have become increasingly diverse [Habermas, 1999 (1996), p. 111]. As opposed to the effects of a cultural definition of the nation, Constitutional Patriotism brings different ethnic groups together into a shared and inclusive national identity which everyone could relate to.

## **Incorporation of Constitutional Patriotism to the Spanish debate**

With these previous considerations in mind, attention will now be drawn to the Spanish case and background in relation to the national and ethnic issue. The policies of the Spanish State during the 19th century and the first decades of the 20th century were characterised -to some extent like some other Western European States- by the official efforts to develop a national identity based on shared cultural features, thus attempting to culturally homogenise the Spanish population. Together with this process, a discourse of national resistance and self-assertion appeared, became politically organised, and gained progressively strength in several territories with specific ethnic features, such as -in quite different degrees- Catalonia, the Basque Country and Galicia.

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

The result of these years of cultural discrimination was not the dissipation of these identities and ethnic groups in a common Spanish cultural and national identity. They have survived and in addition this has left a retrospective feeling of cultural imposition and subjugation, kept alive and fuelled by modern nationalist discourse. After the transition to democracy, the political conditions have changed radically; the new political and normative order, established by the 1978 Spanish Constitution, grants democratic institutions, freedom and equality, and allows for a high level of self-government in regions with a specific culture and ethnic identity, such as Catalonia, the Basque Country and Galicia. New regulations have transferred basic jurisdictions and powers from the central government to the regional governments, including education and culture. This did not lead to an end of tensions between peripheral nationalist and the central government, which was often accused of representing and fostering in different ways a specifically Spanish cultural identity. In the early nineties, some Spanish politicians and intellectuals saw in Constitutional Patriotism a most suitable program to create an inclusive national identity in Spain, one which every Spanish citizen could relate to, regardless of their ethnic ascription, be it Basque, Catalanian, Galician or any other. The incorporation of this idea to the Spanish debate was at least in part a result of a conference held by Habermas in Madrid in November 1991, where he defended Constitutional Patriotism as the necessary ground for a future European identity.<sup>4</sup> Juan Jose Laborda, University Professor in Modern History, PSOE member, and at that point the president of the Spanish Senate, played a major role in the incorporation of the idea of Constitutional patriotism into the Spanish public debate. In several occasions he explicitly referred to the above mentioned conference by Habermas as a main inspiration [Laborda, 1992, p. 5, 1994, p. 20 and 2002, p. 47]. Laborda argued that this idea could be a good guideline for the creation of a modern national identity in Spain, which would be both inclusive and respectful to ethnic diversity [Laborda, 1992, p. 6]. Individuals from different ethnic or nationalist groups in Spain could thus keep a separate cultural identity while at the same time being able to identify with a political community which would include all citizens of the Spanish state. Constitutional Patriotism would have another positive effect in Spain, partly resembling the German case. Most leftwing-oriented Spaniards were quite sceptic to anything related to Spanish nationalism or patriotism, after Franco had controlled

and designed the nationalist discourse for forty years (appealing most often to the term *patria*). In an article significantly titled “Patriots and left-winged”, Laborda called upon leftwing Spaniards to “cast a critical glance towards their own past, and ask themselves to what extent the idea of Spain absorbed reactionary values because it was disdainfully abandoned by the left, and handed over for the exclusive use of the radical right wing” [Laporta, 2002, p. 49]. Constitutional Patriotism now provided leftwing Spaniards with a new sense of patriotism that they could accept and relate to [Laborda, 2002, p. 53].

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

In January 2002, the governing party, the Partido Popular (PP), also officially supported the idea of Constitutional Patriotism. In the XIV Party Congress Josep Pique, then Minister of Foreign Affairs, from Catalonia, and Maria San Gil, from the Basque country, issued a party position paper entitled 21st Century’s Constitutional Patriotism,<sup>6</sup> where they referred to Constitutional Patriotism as a political referent also for their party. Several leading PP politicians praised this initiative in the following months; the idea was extensively debated in editorials and articles, both academic and journalistic, and obtained wide support in the political and intellectual field, marking the heyday of Constitutional Patriotism in Spain.<sup>7</sup> When Jan-Werner Müller -whose book *Constitutional Patriotism* is considered by Habermas the most clarifying text on the issue- writes about the exporting of the concept from Germany to other countries, he mentions the Spanish case as the most relevant example [Müller, 2007, p. 44].

However, during that period, as well as in the following years until now, nationalist tensions have not ceased. Quite on the contrary, nationalist movements in Catalonia, the Basque Country and Galicia often claim to be unfairly treated and discriminated by the central government, and have increased the scope of their demands, which include more and more often the right to self-determination (and thus also independence). Popular support of this demand in these regions has

according to opinion polls also increased in general terms in this period.<sup>8</sup>

At the same time, as mentioned before, references to Constitutional Patriotism have almost completely disappeared from the public debate, where it is no longer presented as the solution for ethnic-based conflicts in Spain. Now the question is: Does this show that Constitutional Patriotism has proved unfit to eliminate ethnic tensions? Or, rather, the reason for this is that the State organisation and national identity officially fostered in Spain do not follow the principles of Constitutional Patriotism as it was originally formulated?

In an attempt to answer this question, this paper will discuss firstly what could be considered specifically Spanish aspects of the controversy and, secondly, some aspects in which the Spanish case illustrates some practical and theoretical problems posed by Constitutional Patriotism on a general level.

## Particularities of the Spanish case in the debate on Constitutional Patriotism and its implementation

Regarding the first perspective, different politicians and authors often, but not always, linked to positions close to peripheral nationalism have argued that the appeal to Constitutional Patriotism by both major Spanish parties was mainly aimed as a strategy to discard any claim of the right to self-determination and, particularly in PP’s case, to uphold a centralised government. According to these views, behind the external endorsement of Constitutional Patriotism most often there was not a real commitment to decentralise and fully recognise the rights of other national groups.

PP’s already mentioned position paper of 2002 defending Constitutional Patriotism was harshly criticized, particularly by peripheral nationalism; it was accused of not encouraging popular identification with the Constitution as an abstract concept, as a symbol of a political system based on freedom and equality, regardless of ethnic adscription. Its aim would rather be to uphold the specific text of the 1978 Spanish constitution, and particularly some principles established in it which were considered detrimental to peripheral nationalism.<sup>9</sup>

Critics especially condemned the PP’s emphasis on endorsing article 2 of the Constitution, arguably one of the most controversial ones, which states that “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the

solidarity among them all".<sup>10</sup> Together with the mentions of Spain's indivisibility, the emphasis on solidarity was considered as a subterfuge and excuse to deny extended self-rule. The real aim of this appeal to Constitutional Patriotism would thus be to enhance specific contents of the Spanish Constitution, which would operate as a barrier towards secessionist movements,<sup>11</sup> or even against further decentralisation.<sup>12</sup> What PP was defending, according to some of these critics (often ideologically close to leftwing positions or sub-state nationalisms), was not a Constitutional Patriotism but a Constitutional Fundamentalism [Velasco, 2002, 38]<sup>13</sup> or a Constitutional Dogmatism [Kepa Bilbao, 2003, p. 23]. Some remembered in this context that the 1949 German Constitution had been modified many times (48 times by 2001), whereas the Spanish one had by then only one amendment.

Some critics have also extended these denunciations to PSOE; arguing that also in their case the hidden idea back the defence of Constitutional Patriotism in Spain was basically to avoid any change that would question the unity of Spain. The enhancement of the Spanish Constitution to a status of unquestionable text would thus help to protect its content and rule out any possible reform.<sup>14</sup> In relation to this, some authors have pointed out that the second article of the Constitution overemphasised the idea of Spain's indivisibility to appease the army, which by the time when the Constitution was drawn up, shortly after Franco's death, posed a real danger to the consolidation of democracy [Bastida 1998, p. 44].<sup>15</sup>

It may be argued against these critics that, unlike what they suggest, the Spanish case is not a unique and exceptional case in the issue of the recognition -or rather not recognition- of the right to self-determination. In fact almost no State in the world recognises in its Constitution this right; neither does Germany, nor France or the USA, considered by Habermas one of the closest practical examples to the ideal of Constitutional Patriotism [Habermas, 1999 (1996), p. 95]. On a theoretical level, it is also relevant to remember here that Habermas does not include self-determination among the rights that Constitutional Patriotism should outright grant. Habermas argues that the right to self-determination, and thus independence, should be granted to any ethnic group which suffers State discrimination, but "in so far as in a State all citizens enjoy equal rights, and no one suffers discrimination, there is not any convincing reason for separation from the existing shared political entity" [Habermas, 1999 (1996), p. 122]. This same idea has been accepted by many intellectuals, politicians and international institutions as a reasonable guideline for nationalist conflicts, particularly considering that we live in a world where most states are multiethnic. Independence in such situations might be considered a possibility that involved parts may discuss and negotiate about, but not a right.

In relation to PP's appeal to Constitutional Patriotism, it should in any case also be noted that these ideas meant a detour from a widespread endorsement of a cultural definition of Spanish national identity among rightwing Spanish politicians, and a

step towards a more inclusive identity, political rather than ethnic [Peces Barba, 2003, 58]. This initiative was in any case not welcomed by many traditional PP sympathisers; several influential rightwing journalist and opinion makers were by then quite critical, from a cultural definition of Spanish national identity, of PP's endorsement of this new understanding of national identity. The journalist Cesar Alonso de los Rios epitomised this attitude with his description of Constitutional Patriotism as a "belated and foreign invention", and his harsh criticism of PP's new political program: "What is PP's aim with this shameful way of justifying patriotism? Opportunism is leading them to weak and dangerous thoughts" [in García Abad, 2001, p. 2].<sup>16</sup>

## Practical challenges of Constitutional Patriotism: the Spanish case as an example

Besides its specific aspects and particularities, the experience of Constitutional Patriotism in Spain illustrates also, as mentioned before, more general considerations and problems related to this theoretic model, which transcend the specific case of Spain, and can be projected to many other countries with ethnic and nationalist-based tensions or conflicts.

One problem that Constitutional Patriotism may encounter is that in some cases it may be difficult to conciliate strict equal treatment in a multilingual society and the aim to foster a shared political identity. Together with the defence of a fully egalitarian treatment for all individuals and cultural groups, another basic principle of Constitutional Patriotism is that the development of an inclusive identity requires the existence of a public sphere of fluent political communication and a shared public debate, which is considered as a necessary condition for the creation of a political community where everyone feels equally represented.<sup>17</sup> Nonetheless, it may be argued that this space of public communication, this necessary "deliberative formation of the citizens' opinion and will" [Habermas, 2000 (1998), p. 103], requires the existence of a common language, which would be necessary to make possible proper interaction among all members of the community.

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

would mean favouring native speakers of this shared language over people with another native tongue.<sup>18</sup>

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

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

Even more complex than the former case is the issue of what might be a fair linguistic policy in a bilingual region, such as Catalonia. An extended opinion among people with a dominant Spanish identity is that in Catalonia there should be the possibility of using indistinctively both official languages (Catalan and Spanish), and choosing freely between them or having them represented and used on equal proportion, for instance in education. Catalan nationalist discourse, on the contrary, claims that Catalan language should have a preferential status. This is in fact the current policy in most activities managed by Catalonia's regional government, which most often gives priority to what is labelled as own language (Catalonian), as opposed to the official Spanish language. In the field of education, for instance, the language used in public schools is almost exclusively Catalanian.

The arguments in favour of that policy are varied: one is the idea that there is an overwhelming sociological dominance of Spanish, which has to be officially compensated in favour of Catalan. Another is the need for a standard (vehicular) language to grant social cohesion. In most cases the underlying assumption, although not always explicitly expressed, is that it is fair and necessary to make up for a historical injustice, implying that the presence of Spanish language in Catalonia stems from a former discrimination.<sup>19</sup> The result of this policy, some might argue, is a reverse discrimination against Spanish speaking citizens in Catalonia.

This example illustrates how the idea of what is fair or unfair is often based on

conflicting national discourses, with different interpretations of history, or different ideas regarding the way in which the historical background should determine modern laws and regulation, where it is difficult or outright impossible to point at one of them as the right one.<sup>20</sup> The case of Catalonia's language policy shows how in certain situations it might be argued that a strict equal and symmetric treatment is not necessarily a referent of justice, and that real justice might in certain cases require different treatment. Whether or not this opinion is right is often a matter of interpretation, to which it is not possible to give an unquestionably fair and conclusive answer.

Even though Habermas has at some point showed a certain awareness of this problem in the practical implementation of Constitutional Patriotism,<sup>21</sup> in general terms this has been absent from his considerations on the matter, therefore offering a too optimistic view of the possibilities of Constitutional Patriotism to eliminate tensions in multiethnic and multination States by appealing to abstract principles of liberty and equality.<sup>22</sup>

Constitutional Patriotism might encounter more practical problems; one frequent objection in the Spanish debate on the issue was that Constitutional Patriotism helped to preserve the existing political entities, in this case the Spanish State, maintaining thus a political status quo more satisfactory to people with a Spanish ethnic identity than to people with other ethnic identity. Only the latter would have to accept, according to this criticism, a situation of incongruity between their reference cultural community and the sovereign political community.<sup>23</sup>

The intention of Constitutional Patriotism is precisely to avoid secessionist claims by eliminating all the inequalities which might justify secession, but in doing so it implies the preservation of the existing State limits, which often are the result of an historical process of dynastic unions, annexations, divisions and different territorial changes, often carried out in times when popular will was irrelevant. In multiethnic states, the territorial frame of the State often coincides with the territorial symbolic construction of some ethnic group, and not with others'.<sup>24</sup> In these cases, and regardless of how devoted a political system is towards the implementation of Constitutional Patriotism, the State may always encounter accusations, coming especially from sub-state nationalism, of being illegitimate in origin.<sup>25</sup>

As a last practical problem, connected to the previous one, a patriotic identification based on citizenship and not on ethnic adscription would arguably need the State symbols, like the flag and the national anthem, as the best referent for an inclusive national identity (USA is to a high extent a good example of that). But these symbols can often be regarded, as is the case in Spain, as culturally loaded, for the fact of having been historically connected to a cultural nationalism. This connection may be additionally overemphasised and instrumentalized, as might be argued is

the case in Spain, by a certain discourse from sub-state nationalism, interested in keeping alive a climate of confrontation towards the central State alive. These symbols will in such circumstances meet great difficulties to operate as abstract references which everyone could relate and consider his/her own.

## Conclusion

Constitutional Patriotism appears to be a most suitable approach to do away with tensions and discrimination in multiethnic and multinational States, through the fostering of an inclusive national identity; the idea of fair and equal treatment regardless of ethnic adscription obviously seems to be a good guideline in political decision making. However, Constitutional Patriotism meets important problems and challenges when applied to practical situations. Habermas and other authors which have dealt with this issue from a basically theoretic perspective seem to have underestimated this aspect.

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

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

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