Cultural majorities, constitutional essentials, and cosmopolitan citizenship

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Liav Orgad's idea of a two-stage process of the regulation of immigration and access to citizenship in The Cultural Defense of Nations appears sensible and on first sight largely agreeable. But a more careful positioning of the argument regarding democratic theory and sociological understandings of nationalism brings out aspects that problematize some of its key assumptions and that reveal a risk of counter-productivity. In this, the argument might be less original than claimed and the specific version of a liberal theory of cultural defense less fit for socio-culturally complex democratic societies, in particular within the European context. I will briefly touch upon three dimensions that seem to me problematic: the notions of majority culture and cultural defense; the notion of constitutional identity as used in the book; and the problem of constitutional populism.

Majority culture and cultural defense

Orgad argues that democratic theory generally assumes that the majority is "able to take care of itself", but that recent developments particularly in regard with the influx of migrants are threatening that comfortable assumption. What might result is the "gradual erosion of the majority culture" and the "majority may become 'needy' " (232). Democratic theory is apparently not up to the task of comprehending contemporary developments. The carefully crafted argument regarding the justification of a defense of the majority with regard to access to citizenship is a sensible one, but I am puzzled as to why the whole book presents its theoretical approach as something radically novel. The book is hardly referring to the time-honoured debate in political philosophy between liberalism and communitarianism, even if many of its assumptions come very close to the latter view. While, for instance, Michael Walzer's work is cited in passing, there is no reference whatsoever to his notion of "liberalism two". This take on liberalism is in important ways close to the version of cultural majority liberalism that Orgad finds justifiable. Already in the 1990s, Walzer delineated – inter alia in a response to Charles Taylor's essay "Multiculturalism" – a culturally sensitive form of liberalism (labelled liberalism two, according to Walzer a version that Taylor sustained). Liberalism two "allows for a state committed to the survival and flourishing of a particular nation, culture, or religion, or of a (limited) set of nations, cultures, and religions—so long as the basic rights of citizens who have different commitments or no such commitments at all are protected" (99). And, Walzer continues, "liberals of the second kind [...]" "are willing to weigh the importance of certain forms of uniform treatment [in accordance with a strong theory of rights] against the importance of cultural survival, and opt sometimes [...] in favor of the latter." (100) "Most liberal nation-states (think of Norway, France, and the Netherlands as examples) are more like Quebec [defending liberalism two, pb] than Canada [defending liberalism one, which purports to be culturally neutral, pb]. Their governments take an interest in the cultural survival of the majority nation; they don't claim to be neutral with reference to the language, history, literature, calendar, or even the minor mores of the majority. To all these they accord public recognition and support, with no visible anxiety" (100). I wonder if a more substantial revisiting of the liberal-communitarian debate would still have resulted in the classification of political theory as "ill-equipped to address the challenge of cultural defense policies" (201).

Constitutional identity

The (implicit) communitarian basis of the argument

relates to the understanding of national culture that the book lays out. That is to say, as in some versions of communitarianism, national culture is reified, understood as the authentic identity of the 'permanent majority', and understood in a largely static, essentialist way. Orgad's notion of 'national constitutionalism' could be understood as closely related to a version of communitarian constitutionalism, emphasizing constitutional essentials, even if not to trivial cultural mores (which is referred to frequently in the book). In 'national constitutionalism', it should be accepted by the newcomer to, let us say, Romania, that the Romanian Constitution of 1991 states in article 1 that it is 'a sovereign, independent, unitary and indivisible National State' and in article 4 that 'The State foundation is laid on the unity of the Romanian people'. The Venice Commission has commented on this: "The formulation "unity of the people" in the already existing text is unclear; moreover, it is a rather outdated notion, typical of instruments of the system prevailing in the country prior to its democratic transformation" (Venice Commission 2014). The notion of 'unitary and indivisible National State' seems surely a constitutional essential, as a principle of state organization, but is often understood as unnecessarily rigid vis-à-vis non-Romanians, in particular minority cultures, informing long-standing tensions between the Hungarian minority and the Romanian state. In Orgad's version of liberal theory, this seems to be accepted as part of the majority culture's right to defend its constitutional essentials, as the 'way we do things here'. But is it not equally true that an insistence on a majoritarian, 'patriotic' understanding of national culture, as essential part of constitutional identity, forms one of the main problems, stimulating intractable and intensifying political conflict? A closed view of national identity is one that is increasingly, as Orgad himself points out, in tension with the growing socio-cultural complexity of societies. What is more, if the essentialist, closed view is taken to the extreme, it might result in intolerant forms of majoritarianism, as witnessed by the emergence of nationalist constitutional projects in Hungary and Poland.

Constitutional populism

The constitutional projects in Hungary and recently also Poland, which take the defense of the cultural majority as their main objective, are strangely absent in the book. While the multiple threats for the rule of law and illiberal tendencies in particular the Hungarian case have been widely discussed, the identitarian dimensions of Orban's Fundamental Law and PiS's constitutional aspirations – in terms of implications for communitarian constitutionalism and constitutional populism – have perhaps been less the object of systematic democratic-theoretical attention. Obviously, Orgad's argument is nowhere close to defending a full-blown version of constitutional nationalism, but the implications of his theory in terms of 'constitutional identity' and 'constitutional essentials' remain strongly linked to the national context. When can constitutional essentials be defended on a justifiable basis and when is this not the case? In particular in cases in which constitutional identity is strongly embedded in national identity, cultural pluralism might become compromised. According to Orgad, the argument is 'more about "us" than about immigrants' and insists that '[r]egulating immigration is a journey into ourselves' (231), thereby focusing on the 'cultural defense' of the majority. An alternative argument would be – inspired by cosmopolitan reasoning, see for instance Gerard Delanty's view of citizenship in The Cosmopolitan Imagination (2009); of crucial relevance in the European context – that a viable constitutional-democratic project involves a continuous and inclusive journey of renegotiation of the values and principles that hold together a political community, rather than the exclusive defense of a specific, closed national narrative.

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