Verfassungsblog
ON MATTERS CONSTITUTIONAL

Immigration, Majority Rights, and Welfare State Solidarity

David Abraham

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Liav Orgad's new book, *The Cultural Defense of Nations,* could hardly have appeared at a more opportune moment. It represents a systematic effort to grapple with the core issues of national identity so much on the agenda of both the classical and new lands of immigration. It seeks to do so within the framework of liberal political and social theory while turning our sympathies toward majority cultures facing the "threat" of lost identity and dominance, a loss being brought about by both immigration and the multiculturalist policies of the past generation.

As recently as two or three years ago, liberal and progressive scholars and politicians shunned certain words, words that seemed redolent of exclusionary and discriminatory practices that had fortunately been overcome and which seemed very out of sync with the world of globalization, transnationalism, and non-discrimination. The idea of a dominant, mainstream *Leitkultur* was written off as reactionary, and even classical Weberian notions like the politically-constructed "feeling of belonging together," *Zusammengehörigkeitsgefühl,* were disdained. Also in bad odor was any consideration of *Homogenität*, E. W. Böckenförde's notion of relative social homogeneity as a foundation for liberal debate and conflict in society. Closure and boundedness were not good things, albeit sometimes necessary, and global justice rather than national class conflict was the order of the day. (I have taken up these matters at length here and here.) Second- and third-generation Rawlsians critiqued the master's shortcomings in this area while stretching his conception of domestic overlapping consensus. Ethical and historical communities of obligation were, in short, not something to be frozen in time or even especially valued.

As we all know, things have changed rather quickly and dramatically. Outside the "illiberal democrats" of central and eastern Europe, political leaders and theorists wish to remain fundamentally liberal while taking on board critiques raised during the past tumultuous year and those offered by national communitarians like Orgad. Orgad certainly wants to be closer to Michael Walzer than to Viktor Orbán, but the slope is very slippery and the ice on which he skates rather thin. Here he endorses an approach that: "centers on normative principles, values, and institutions, instead of actual practices, folkways, lifestyles, and cultural mores … [W]ithin the normative realm, the focal point is the constitution, rather than sociological concepts … Put differently, it is the constitutional, rather than national or societal identity. Moreover, the focus is only on core constitutional principles, the basic structure, and, exclusively, on those principles that are essential for citizenship in a given state … [T]here is no plea for moral identification, only for legal acceptance …"

Orgad – and not only Orgad – is stuck here somewhere between a Habermasian *Verfassungspatriotismus* and an endorsement of *Leitkultur*. Walzer moved from the communitarianism of *Spheres of Justice* (1983) to a more multicultural position arguing that nation states may "reproduce men and women of a certain sort: Norwegian, French, Dutch, or whatever," but on the condition that they allow "minorities an equal freedom to organize their members, express their cultural values, and reproduce their way of life."[1] Orgad worries that under current conditions of global migration and resettlement, such a regime would force some "needy" majority cultures to give too much away. Whether more serious efforts at immigrant integration, such as are now mooted nearly everywhere, would be enough to prevent "harm to liberal-democratic principles and institutions" *and* these "needy"

cultures is uncertain. Immigrants as citizens-in-the-making in the juridical and civic sense may not be enough for a stout "cultural defense" of the nations to which they have come.

Although I suspect he might reject the claim, it seems to me Orgad's position does lead him to Böckenfördian conclusions. The liberality of the liberal state is, in other words, nourished by and dependent on a certain value consensus, generally left undiscussed. In order to be able to dispute and fight democratically and stably over a certain range of matters, there needs to be a background consensus on numerous other matters, a consensus that goes sometimes to pre-political cultural as well as political values and not just rules, to justice and not just fairness. That agreement, in turn, cannot be limited to procedures or legality but must implicate historically and locally-produced sets of values, visions of justice, and a core of ethics.

To the Habermasian response that the democratic constitution and rational-discursive way of life themselves engender legitimacy without metaphysics and while accommodating citizens with diverse beliefs, the Orgadian skeptic might respond concerned – "trust" and "toleration" may indeed be generated through democratic constitutionalism. But it is more problematic in the social arena where legality alone may not be sufficient to generate legitimacy. While the existence of a democratic constitutional state makes higher demands of citizens than the rule of law alone might do, a redistributive social state "demands a more costly commitment and motivation, and these cannot simply be imposed by law" but rather are embedded in a civil society that is nourished by springs that one may term pre-political. Legitimacy, in other words, cannot spring from legality alone but comes also from places like culture and ethics. Community precedes contract.

Orgad is not overtly so interested in the welfare state, but it is here, I think, that the challenge of cultural and social fissiparousness combines with global neoliberal economics to undermine social solidarity and social welfare and create a culture of resentment and anxiety among native, majority populations that *takes the form of cultural self-defense* – from the AfD and similar populist parties that have grown enormously in Europe to Donald Trump. David Miller wondered years ago if socialism had to be communitarian, and that may be the case for strong welfare states as well. Trust and the willingness to be taxed and share are fragile things. Heavy immigration and diversity may disincline people from contributing to either redistribution or public goods. Identification with the history of the nation creates a commonality and connectedness that facilitate the legal instruments of redistribution. The civic virtues of a society thus inevitably reflect majority particularism as well as universal and civic principles while recognition of otherness may impede mutuality and redistribution.

In view of the likely pool of present and future immigrants to Europe in particular, a more serious integration commitment is essential – especially if a solidarity-based, redistributive social welfare regime is to be maintained in an era of capitalist hegemony. Massive enclaves of unintegrated people who may become not just alienated and hostile but lethal cannot be a good thing, especially as we come to see that illiberal alternative utopias are available to people. E Pluribus Unum is not so simple: Reciprocal trust, willingness to share, and readiness to invest in the commonweal are less where public diversity is greater. What this calls for is a policy of *fordern* and *fördern*. Immigration thus risks undermining the welfare state, itself a condition for equality and a functioning democracy. To preserve the both, accelerating integration is called for.

America has it easier. The U.S. is more successful in incorporating immigrants because it is marked by lower levels of solidarity and a weak welfare state. Immigrants are on their own – along with everyone else. The playing field is level, but there are no ladders for anyone, so the feeling of belonging together is less important and the incentive to acquire skills and one's own contacts greater. Weak labor market regulation, for example, allows immigrants easier entry into the world of work, but it does so in a way that undermines labor as an organized force, further segmenting the labor market. Public discussion of waiving the mini-

mum wage for immigrants isn't really necessary; it simply happens "of its own".

Integrating immigrants into and for the sake of viable democratic welfare states requires both bonds and bridges. The rule of law, cultural standardization, and social mobility are important. Strong anti-discrimination policies, accelerated language instruction, job training programs, residential and school integration, the discouragement of enclaves (though not necessarily of beachheads), and liberal naturalization policies are all a start. Adults must be placed in the labor market, including as many women as possible. In an age of fewer unskilled jobs, this is not as easy as in the days of voracious mines and mills and encompassing trade unions. Children must be in full-day schools, as ethnically integrated as possible with instruction only in the national language; the US experience with Spanish bilingual education has not been impressive.

What general lesson might we take away from Orgad's treatment of immigration and sometimes-imperiled majority cultures? Clearly, immigrants join a sailing ship, whose future course they will help determine. Immigrants thereby come to share a common national identity, to which they make distinctive contributions. That ship, it has to be remembered, is a historic and civic community, a "contingent historical formation [that] is also the history of particular people ... with their contingent array of practices, affiliations, customs, values, ideals, and allegiances" shaping and enforcing social, political, and legal institutions and cultures.

It is, then, a particular state and not just a liberal state; it is a contingent community of memory and experience united also by shared attachment to a body of principles. It is already well under way and sails through rough waters bearing a fragile social cargo. Under these circumstances, the task of creating an open and more capacious "we" requires not the dilution of membership's meaning but rather the very social equality whose foundations and mechanisms immigration itself challenges. At a time when that social equality is increasingly undermined by fiscal crises and aggressive neoliberal advances, the integration of immigrants into the evolving national community should be seen as a key defense, a critical element in the construction of social solidarity and the ability to fight back.

[1] Michael Walzer, "Comment," in Amy Gutman, ed., Multiculturalism: Examining the Politics of Recognition (Princeton, 1994), p. 100. That Orgad is a liberal Israeli and Walzer is strongly identified with Israel is not irrelevant to the vexed question of vulnerable majorities and minority rights.

ABOUT THE AUTHOR

David Abraham

David Abraham is Professor of Law at the University of Miami and an historian of modern Germany. Currently he is a Visiting Professor at the Jena Center for History of the 20th Century at the University of Jena.

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