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Anticipatory minority rights for majorities turning into minorities

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Concerns about national, cultural and demographic preservation have become increasingly salient in the age of migrations and globalisation. Liav Orgad fittingly points to recent political reactions to the influx of refugees in Europe and to broader trends towards relinking citizenship and migration policies with concerns about national identity and cultural integration. He is right to complain about the reluctance among political theorists to engage systematically with these developments. I fully agree with Orgad that ignoring these issues is both "theoretically wrong" and "politically unwise". However, I disagree that majorities have special majority rights that can be defended on the same normative basis as minority rights. I argue that if a current majority group is worried about its rights, it should genuinely support minority rights in anticipation of its future minority status.

Orgad should be commended for his clever attempt to defend a liberal version of majority rights. He carefully defines a palatable notion of "idea-based majorities" and aims to justify majority rights in virtue of the need to ensure the "acceptance" of just constitutional principles that are "essential for citizenship in a given state". However, as Joppke points out, this narrow defence of majority rights collapses into a mere justification of universal individual rights quarantined by liberal constitutions. This is obviously not what advocates of closed borders and selective immigration on ethnic or religious grounds have in mind when claiming to defend their nations. Orgad's strong commitment to liberal constitutional principles leaves little room for culturally exclusive immigration and citizenship policies. Attempts to promote such exclusive policies either run afoul of liberal constitutional principles (e.g. the citizenship test proposed by Baden-Wuerttemberg in 2005) or rely on problematic constitutional provisions that entrench ethno-national privileges (e.g. differential treatment of ethnics and non-ethnics in many Central and Eastern European constitutions). Although liberal states can and should seek to ensure widespread respect for constitutional principles, they cannot do so by way of ethno-cultural engineering.

There are liberal limits to selecting immigrants and future citizens on grounds of ethnic origin, cultural background or inner dispositions. Even if one could argue for strict(er) border controls and immigration (say, for reasons of security or economic capacity), these restrictions should not discriminate among immigrants on ethno-cultural grounds. Selecting people on such grounds will not only arbitrarily discriminate among immigrants but also among citizens by differentiating between citizens who share the dominant ethno-cultural characteristics and citizens who do not. One way around this is to introduce ethnic immigration quotas that tie inflows with the current ethno-demographic composition of the population. Apart from lacking strong normative justifications and having ill-famed historical precedents, this solution will not necessarily guarantee the dominance of one ethnic group over the others. The system will have to be constantly updated to account for the ethno-demographic changes caused by differential (ethnic) birth rates and ethno-cultural re-identification. The argument that priority should be given to immigrants who share "our" liberal values is unhelpful because we lack effective liberal means to test liberal dispositions. Hansen is right to argue that immigration and citizenship do not make good tools for fighting illiberal ideas and keeping out illiberal people. Instead of agonising about the future of our liberal principles, we should

redouble our efforts to promote these principles among immigrants and citizens as well. Exclusionary membership policies and bolstering majority rights at the expense of "threatening" minorities is unlikely to strengthen our liberal culture(s).

Orgad justifies cultural majority rights by relying on previous defences of minority rights. It must be noted that this strategy works only if one is convinced by liberal arguments for minority rights. Assuming a relative consensus about the value of liberal minority rights, I argue that the normative grounds and political purposes of minority and majority rights are markedly different. Liberal minority rights are mainly compensatory. National and autochthonous minorities are owed special rights because dominant groups have treated them wrongfully in the past and because, in the absence of special rights, they face unfair disadvantages. Although minorities may be concerned about their cultural and demographic preservation, their claims against the state are limited to securing access to a fair share of public resources and recognition. Minority rights are not tied to minorities' present or future cultural and demographic robustness. Minorities may use their fair share of resources to promote their identity and culture within and outside their communities, but they have no guarantees that this promotion will be successful.

Orgad defines idea-based majorities as groups "whose members share, to a high degree, certain ideas and principles that are dominant ones in a given society". This definition focuses on the "dominant" character of "ideas and principles" and says little about the normative value or worth of these principles. At a first look, this means that majorities in societies where racism is deeply entrenched also qualify as idea-based majorities. Orgad solves this problem by imposing a series of liberal filters to the claims of idea-based majorities. However, what is at stake is a defence of the *dominance* of an idea-based group rather than a defence of its justness. As Orgad argues, majority rights can be claimed even when the justice of institutions is not threatened. Here is, I think, where the justifications for minority and majority rights grow visibly apart. Liberal minority rights are compensatory for historical injustices and they seek to ensure fair access to resources and recognition. They are justice-based claims triggered by past and present asymmetries of power between minorities and majorities (or other minorities). Majority rights are not compensatory but preservationist. They are identity-based claims that seek to preserve a group's dominant position in the state beyond strict considerations of justice.

If one is genuinely concerned with the fate of minorities one should advocate for a fair and inclusive system of minority rights from which all present and future minorities stand to benefit. If one is anxious about the fate of diminishing majorities, one should make a case for anticipatory minority rights for majorities turning into minorities.

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