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# Nation and Tradition

The question of tradition cannot be dissociated from that of nation. This can be seen in the fact that different conceptions of nation maintain a different stance towards tradition. A comparison of the attitude that the two basic conceptions of nation assume towards tradition makes this difference especially explicit. One of them could be described as primordial. The other as liberal.

The first conception regards the nation as a pre-political category and as such connects it with collective memory based on common origins and with common culture, interpreted as a product of common history. In other terms, from the perspective of this conception, national identities are regarded as given, i.e. as a phenomenon constituted before its expression among political concepts. That is why the concept of nation can designate human communities that have become geographically and culturally integrated through common language and customs, i.e. through common tradition, but not politically integrated in the form of a state. Following the logic of the primordial conception closely, the organization of a nation into a state should not be regarded as evidence for questioning the thus envisaged concept of nation: in this case, the state is regarded as an institution that will formally and legally conserve the particular tradition which is the basis of the given nation. Since the function assigned to this state is the conservation of the given tradition as a necessary particular phenomenon, the state cannot be expressed in purely formal and legal terms, because it would then acquire a universal form which would thus need to be neutral as regards particular traditions. Of course, in its more flexible variants, this conception can, to a lesser or greater extent, include elements of a universal state, but never in a radical way, because including these elements would imply giving up the conservation of the distinctive tradition of the nation as its substantial foundation. To express the above in traditional philosophical terms, the primordial theory cannot in any of its versions accept the assumption of a radical distinction between *ethos* and *nomos*.

Accordingly, the primordial conception of nation is based on a particular conception of personal identity, i.e. on the assumption that people develop their self-understanding, their personal conceptions of good and justice, and their capability to make normative judgements, only within the *context* of a particular community, i.e. of a particular tradition. Crucial to the understanding of the primordial theory, however, is the fact that it necessarily relates this particularistic conception of a person to criticism of the assumption of neutrality of legal principles as regards an ethos. According to the precepts of the primordial theory, conceptions of person, morality, law and reason cannot be dissociated from the substantial horizons of a certain way of life, of a given ethos. In the same way that non-contextual, "impersonal" people cannot exist; contextually neutral or unbiased morality, law and reason cannot exist either.

That is why, from the perspective of the primordial conception, the self is always situated in, always bound to a given community. From this point of view, "the context of justice" has to be some community that, using its historically developed values, praxis and institutions – thus its identity –, creates normative horizons constitutive of the identity of its members, and thus of its legal norms. Only *within* these horizons of values it is possible to raise questions such as those regarding what is good or valid for the given community and to answer them. The principles of law, induced from the given community as a context, are valid only within it, and can be materialized only in this context; every attempt to justify the norms on the grounds of priority given to individual rights and formal procedures are unfounded because they act as foreign to any context; they postulate a non-contextualized, unplaced "abstract person" who, in theory, makes decisions as regards matters of justice in an "impersonal", "unbiased" way, regardless of community-constituted identity.

Unlike the primordial conception of nation, which in its basic form does not imply a distinction between customary and political community, because it regards the latter as something rooted in the former, the liberal conception is focused precisely on liberating a political community of its dependence on customary community. This implies a radical distinction between these communities as regards the way they are constituted. Since a customary community's integrity, as stated above, is based on common origin, tradition and language, it means that a political community cannot induce its identity from the common ethnic and cultural features of its members, i.e. that its constitutive principles cannot be linked to culturo-ethnic terminology. If this negative obligation is fully observed, it necessarily leads to a definition of political community in purely formal terms, i.e. it leads to the foundation of a community whose essence is supplied by a universal procedure. For only a political community thus constituted can avoid taking conditioning by culturo-ethnic criteria as substantial to its form. Only thus will it be able to act as an instance neutral towards the culturo-ethnic identity of its members. Such a definition of a political community can, of course, only match a culturo-ethnically neutral concept of a nation. Every human community, regardless of its culturo-ethnic structure, can work as a nation if its people reach an explicit or tacit consensus regarding the form of government under which they will live. If by some miracle all the people in the world adopted one common form of government – a purely utopian hypothesis, of course – they would, regardless of their different racial and culturo-ethnical belonging, function as a nation. In other terms, the liberal concept of nationality is defined by citizenship, i.e. by belonging to a given state regarded as a primarily political and legal category – all members of a state belong to the same nation.

It is clear that the liberal radical distinction between a political and a pre-political community, resulting from a radical separation of *nomos* and *ethos*, makes liberalism incompatible with any particularizing conception of personal identity, i.e. with the conception of the so-called "bound" self. Liberal theory is necessarily oriented towards the so-called "unbound" self, i.e. towards a self that is not bound up with any pre-political, primordial features. This results from the fact that the person upon which the liberal conception of nationality has a bearing cannot retain a culturo-ethnic identity, but only retain formal rights – can only be a legal subject.

Many critics of liberalism oriented towards the primordial concept of nation fail to acknowledge that the basic difference between the liberal and the primordial conception of a person stems from the fact that these conceptions are not located at the same conceptual level. The difference in conceptual level can in turn be defined by the difference between a normative and an ontological perspective.

The first of these perspectives – normative – does not strive to set any ethnic value or particular conception of life as its ideal; its ideal is more likely to consist of setting a legal framework that will guarantee, for every individual, the possibility to choose, develop and revise his or her personal identity and conception of a good life. In the process of guaranteeing this possibility, no significant guidelines of what should be considered as a good life, i.e. as valuable, are given. For the very reason that the liberal conception of a legal subject legitimises all possible plans for a good life, providing that they do not question the liberal conception itself, this conception cannot be defined by any one of those particular ethnic plans: i.e. it is independent of them. That is why a "legal subject" should be regarded as a phenomenon anterior to particular identities, a phenomenon which makes their expression possible. But this anteriority of a legal subject should be taken in normative and not ontological terms: there is no particular culture or ethnic value that can, objectively or in a universally binding way, hold primacy as regards deontological – in this case formal and legal – norms. Fundamental interests and goals are not so fundamental as to exclude in advance the possibility of their changing.

For an adequate interpretation of the difference between the primordial conception of a subject, linguistically, culturally and historically defined; and the liberal conception of the subject, as abstract, it is important to realize that these two subjects belong to different types of communities.

The community that the liberal legal subject belongs to is a legal community governed by types of relationships and acknowledgments different to those present in the customary community. The legislation obliges people to act not in a morally correct way, but according to the law. People as legal subjects are addressees of institutionalised legislation, which is the law of a political community. At the same time, as citizens they create this legislation. The difference between the person as holder of formal, negative and legal liberties, and the person as holder of a particular identity is the difference between institutional and non-institutional (private) identity. The first formally and legally guarantees the liberty of creation, evolution and change of the second. A liberal legal community is based on the logic of the universal and equal acknowledgment of an individual, regardless of his or her particular identity.

The separation of *nomos* from *ethos*, i.e. the separation of a holder of rights from a holder of a particular identity (which leads to the desubstanciation and the deontologation of a legal norm) is nothing but a different way of expressing the distinction between law and tradition. Distinguishing law from tradition does not imply the dissolution of tradition, but only that it remains without any institutional – legal protection. The tradition is thus in fact left on its own: the level of communication between it and other traditions and the dynamic level of its change are set by the tradition itself. The fact that in the liberal model tradition loses its direct normative power does not mean that it thus loses its integrating function – in fact its integrating function takes the form of social integration, integration on a social level, since law has taken over its normative function. The distinction between law and tradition is thus a distinction between two types of integration, which are closely linked in a pure primordial model – the normative and the social. The first constitutes and cements the legal and political identity of a state and the common identity of its citizens, which cannot be dissociated from common, undifferentiated citizen status. The second type of integration forms the basis for social solidarity and patriotism.

Up to this point, I have briefly outlined the two basic models of a nation, and the two ensuing attitudes towards tradition. A distinction between pure models (that I have in fact been using), and real historical phenomena, which generally show some minor or major exceptions to the above-mentioned models, should, of course, be made. These exceptions bear witness to the fact that the pressure of real life creates a certain type of *compromise* between these distinct normative perspectives, which means that each one of these models becomes open to the influence of some elements of the other.

I will cite the example of the introduction of minority rights into the liberal model. I use the term "introduction" because there is no way to acknowledge minority rights on the basis of liberal principles; they can only be acknowledged on the basis of the culturo-ethnic principles. This is so because rights, as they are envisaged by the liberal conception of nation, are acquired *independently* of culturo-ethnic belonging: in other terms, belonging cannot be a basis for rights, as envisaged by the liberal conception of nation. If the opposite were the case, there could not be any distinction between political/legal and culturo-ethnic form; whereas minorities as culturo-ethnic communities can only be given rights on the basis of their cultural and ethnic belonging. Incidentally, all of these communities justify their claims regarding their rights by invoking these reasons. As a result of the above-stated facts, there is necessarily a latent tension between liberal and minority rights: the extent to which it will show depends on the very character of the minority rights, and the possible threat they might pose to the collective legal and political identity of the given state, to the free circulation of people, capital, money, services, etc. If personal rights in a state were acquired only according to cultural and ethnic belonging, it would no longer be a civil state. Thus, in all the modern states with minority rights – owing to the life necessities of contingent relations of power – there is a *compromise* between the above-stated normative models of nation, between the liberal-bourgeois and the culturo-ethnical principle. The introduction of minority rights into a constitutional arrangement is in fact a *primordialist intervention* into a liberal, i.e. a non-ethnic conception of a nation.

Of course, if we are dealing with democracies of a liberal type, then this compromise with culturo-ethnical constitutional principles should not bring into question the minimalist liberal conception, i.e. the constitutional condition without which a liberal state cannot exist – the priority of individual rights over common welfare and a minimum of common rules of play. The same logic, in the opposite sense, applies to states based on the culturo-ethnical principle.

(Translated by Alison and Vladimir Kapor)