

THE LAW OF THE HOME: THE PRIMACY OF THE NATION-STATE

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Liberals, utopians, and postmodernists are all united in their desire to sever their domestic ties. They reject the local in favour of the universal, the familiar in favour of anonymous global networks. They deny borders, boundaries, and distinctions, for a worldwide egalitarian fraternity liberated from the 'oppression' of custom, convention, and tradition. In so doing, they eschew the 'economy'—a word deriving from the Greek *oikos*, meaning household, and *nomos* meaning law. For conservatives, the 'law of the home' is something sacred, and ought to be sustained and cherished. For their opponents, it is but one more instance of power which must be resisted in the name of unbridled freedom. It does not seem to matter that all those who profess disdain for this law have been shaped by it. Nor does it seem to matter that they were born, not as liberal individuals or as global citizens, but as people belonging to a particular place defined by local laws and customs. For them, in order for such freedom to be achieved, the crucial thing is that those laws and customs be subject to consistent and sweeping critique. Edmund Burke

summed it up well when he said of those 'enlightened' liberals who would put old France to the flame: "Their attachment to their country itself is only so far as it agrees with some of their fleeting projects; it begins and ends with that scheme of polity which falls in with their momentary opinion."

If conservatives seek to uphold the law of the home, it is because they consider it neither feasible nor desirable to transcend it. Hence, they defend the local over the universal and the familiar over the anonymous. Their attachment to their country is founded on reverence and fidelity to that place which made them, and whose geography, law and culture constitutes the fabric of their identity and the object of their true affection. Liberals and postmodernists sometimes respond to this by condemning conservatives as nationalistic, chauvinistic or xenophobic. The nation, they claim, is an 'artificial' entity that prioritises 'us' over them, the self-same above the stranger. According to postmodern philosopher John D. Caputo:

[such] nationalist identitarianism does everything it can to prevent the 'other' from crossing over 'our' borders, from taking 'our' jobs, from enjoying 'our' benefits and going to 'our' schools, from disturbing 'our' language, culture, religion, and public institutions. [It] could not be more inhospitable to the coming of the other.

In contrast, the postmodernist yearns for "highly heterogeneous, porous, self-differentiating quasi-identities, unstable identities ... that are not identical with themselves, that do not close over and form a seamless web of the self-same."

When postmodernists, and indeed liberals, speak of the 'other,' they generally mean non-Westerners. Accordingly, the nations of the West, those of Europe and the United States of America are, according to Caputo, "the almost perfect embodiment of 'identity,' of identitarianism, of self-affirming, self-protecting, homogenising identities that make every effort to exclude the different." The irony is, however, that the only countries which actively seek to suppress difference are those which constitute what postmodernists label

‘the other.’ The tyrannies and theocracies of the Middle East, for example, are the almost perfect embodiment of self-protecting identity. Strangers and outsiders must rigidly conform to local norms, while ‘minorities’ are almost completely suppressed. There is no room for protest or intellectual inquiry which strays beyond that which is sanctioned by the authorities. There is, in other words, no functioning civil society whose members might freely engage in artistic, cultural or intellectual pursuits without fear of punishment. If anything counts as an example of ‘domination’ or ‘power,’ it is surely this. And yet, in the eyes of its liberal intellectuals, the West is something akin to a giant prison in which citizens are unwittingly enslaved to a system of surveillance and punishment. Following Rousseau, their contention is that although born free, we are everywhere in shackles.

What I am suggesting is that the Western political order is anything but the pure ‘totalitarian unity’ condemned by Western leftist intellectuals. If anything, it is an order founded on consent and one which lets all flowers bloom. It is a self-revising entity which, when confronted by discrimination or bigotry, reforms its laws to prohibit prejudice against what is perceived as ‘different’ or ‘other.’ It makes room for deviance, defiance, and dissent, for novelty, originality, and innovation. It allows artists and intellectuals to challenge established conventions and boundaries—to push imagination and inquiry to their limits.

What is more, it seeks neither to silence nor to suppress those voices speaking from the margins of tradition. Counter-cultural philosophers, historians, and artists are provided with a platform from which they can ‘deconstruct’ the canon, thus ‘liberating’ the work of those who seek to ‘unsettle’ and ‘disturb.’ Only in a system which recognises difference will difference thrive, which is why the West is porous, self-differentiating, and hospitable. Only in such a system will foreigners and strangers be welcome and permitted to live in accordance with their traditional norms and values. The proof of this is the fact that whereas few migrate from the West to settle elsewhere, vast numbers migrate from elsewhere to settle in the West. And they do so to enjoy the benefits of a system which, in contrast to their own, is both welcoming and affirming of their so-called ‘otherness.’

The ‘we’ of the modern nation-state is neither exclusionary nor does it aim at racial or

religious purity. It signifies a people bound not by blood or faith, but by common fidelity to a given territory, its laws and institutions. It signifies that 'we' belong to this particular place, one that 'we' love and consider as 'ours.' Naturally, people who belong to a given territory are bound by a shared past and a common language. This, however, does not serve as a barrier to those coming from elsewhere. In fact, the original success of the American 'melting-pot model'—now, perhaps, under threat—rests on its insistence that newcomers claim that past and language as their own.

The important thing to note is that, in such nations, *the constitution is sovereign*. In states where the rule of man, or that of God, takes priority over that of law, there will either be tyranny or sectarian strife. That is because, where people are not subject to a common set of laws, they will offer their primary allegiance to sect, tribe, or religion. In other words, constitutional sovereignty safeguards against any single group seizing power against the will of the minority. It upholds an electoral process which ensures that all interests are represented. In so doing, it protects against those who would use elections to abolish elections. That is why when rulers seek to modify, amend or rewrite the constitution in their own favour, a country has taken its first steps along the road to serfdom.

As stated by Burke, "it has been the uniform policy of our constitution to claim and assert our liberties, as an entailed inheritance derived to us from our forefathers, and to be transmitted to our posterity." Consequently, our constitution "preserves a unity in so great a diversity of its parts." The constitution—and the institutions which sustain it—reflect a long history of *homebuilding*. They serve as a record of negotiation and compromise, a testament to our ancestors' willingness to settle things through cooperation rather than force. In identifying with and abiding by the laws of the state as enshrined in the constitution, we "are locked fast as in a sort of family settlement"—meaning that we respond with reverence to the sacrifices made on our behalf by the dead, while concurrently accepting the responsibility to transmit their legacy to the unborn.

In responding to the needs of their citizens, the constitutions and laws of western states command respect and reverence. Like the rules of any household, they are seen not as a limitation on liberty, but as that which ensures an equal measure of liberty for all. The

spirit of freedom is thus, according to Burke, “tempered with an awful gravity.” Accordingly, ours is a “noble freedom” which “has a pedigree and illustrating ancestors.” Our laws are not rational abstractions that come from nowhere; neither did they fall readymade from the sky. They comprise a rich historical tapestry illustrating how ‘we’ came to be the people ‘we’ are. They show how, in response to unanticipated events, our ancestors reinterpreted the law so as to expand liberty beyond its previous bounds. The history of law is, therefore, the history of *our* liberty, an account of how it evolved on the basis of innumerable initiatives and compromises down the generations.

Burke believed, quite correctly, that the constitution of a state—and the execution of its powers through civil institutions—is a “matter of the most delicate and complicated skill.” That is so because, for a state to function, it must command the loyalty and affection of all its citizens. They must be capable of seeing the state as the principal source of their own happiness, security and fulfilment. This is what Hegel meant when he defined the state as “the actuality of the ethical Idea.” It is only when the individual feels at home in the state—only when he conforms to its requirements and reaps the consequent benefits in terms of liberty—that this person will fully identify with the nation to which he belongs.

The problem with the Jacobins, both old and new, is that by disregarding “human nature and human necessities” in favour of pretended rights, they reduce “the union of individuals in the state to a contract and therefore to something based on their arbitrary wills, their opinion.” If the French Revolution did not usher in a new era of “liberty, equality, and fraternity,” it was because its architects swept aside the constitution of a “great actual state” for one that was based on “pure thought alone.” The result, as correctly perceived by Hegel, was “the maximum of frightfulness and terror.”

If there is a salutary lesson here, it is that in the absence of nation-states, people cannot identify with anything greater than themselves (other than perhaps sect or tribe). They acknowledge a debt neither to the dead nor to the unborn and see the law as nothing more than a constraint on their arbitrary wills. Neither will they offer their allegiance to that which, as in the case of the European Union, seeks to supplant the nation as the principal object of their loyalty. The reason for this being that there is nothing in the European

Union to which people feel fundamentally attached. Unlike the nation to which they are bound by history, language, and culture, the federation is a contrived entity with which citizens cannot identify, and which merely serves to alienate them from the political process.

Having no roots in locality, and issuing dictatorial directives from elsewhere, the EU simply cannot supply the rewards of membership which is the principal benefit of belonging to an actual state. In losing their sense of ownership over the political process, people inevitably drift away from politics. When they no longer identify with the law of the home, or when they no longer recognise the home as *theirs*, it ceases to be an object of loyalty and affection. Proof of this can be seen in the widespread political apathy among younger voters across the EU. If they have become detached and disinterested, it is because there is no place which they can readily identify as home, no place which the 'I' feels at one with the 'we.'

Conservatives are often accused of being enemies of the nation-state and of promoting a form of radical individualism. Following the example of Margaret Thatcher, it is said they wish to dismantle the state in favour of individual responsibility, and that they see in unbridled capitalism the solution to every social and political dilemma. They are, thus, accused of fostering a culture of greed and selfishness, and of offering ideological justification for so-called Big Business. It is true that libertarians, and anarcho-capitalists such as Murray Rothbard, consider the state as an impediment to liberty, and regard the free market as a panacea to all social ills. However, it should be clear from what I have been arguing, that such ideas are more the exception than the norm among the founding fathers of philosophical conservatism.

When thinkers like Hegel and Burke speak of 'the state,' it is certainly nothing akin to the socialist state which seeks to dominate the lives of its citizens. It comprises the institutional life of a given territory, institutions (rule of law, independent judiciary, and constitutional government) which guarantee liberty to engage in private pursuits within the constraints of the law. Naturally, within and between such states there is free movement of goods and services. There is, in other words, a free market, one which is

governed in accordance with the law of demand and supply. There is, however, nothing exploitative or unfair in this, being as it is the basis of a functioning *economy* (another meaning of *oikos-nomos* is the 'management of the home'). In the context of local economies, the free market is both protected and regulated by the institutional structures. That is, the law of the home ensures that the market remains both free and fair.

Global corporations which seek to exploit and thus destroy local economies find no favour among those for whom the state is, invoking Hegel again, the "actuality of the ethical Idea." That is why we can say, with Roger Scruton, that conservatism is less interested in profit than in loss. When defined as a form of political, cultural and moral *conservation*, the idea that conservatism is an enemy of the state, or an ally of big business, can no longer be sustained. Neither can it be accused of fostering a culture of selfishness in which the individual, unleashed from any attachment to the state, is considered sovereign. As I have described it here, conservatism is that which endeavours to sustain the nation-state *against* its opponents, against those who would undermine the historical and political identity of its people and their common homeland. If anything promotes a culture of detached individualism, it is precisely those forces which, according to Burke, "on the speculations of a contingent improvement," strive "wholly to separate and tear asunder the bands of their subordinate community, and to dissolve it into an unsocial, uncivil, unconnected chaos of elementary principles."

If, to repeat, there is a political crisis affecting Europe, it is because people will always disconnect from that with which they cannot naturally identify. If their sense of belonging cannot be satisfied by a nebulous entity like the EU, they will begin supporting political parties whose principal priority is to restore their historic settlement. The problem is, however, that the majority of those parties are disturbingly reactionary in nature. They are animated, not by a love of home, but by a narrow nationalism typified by the rigid ideology of "ourselves alone" (a good translation of 'Sinn Fein'). To borrow Caputo's expression, their vision is of "an airtight, impermeable, homogeneous, self-identical identity," as distinct from that more 'porous' and 'heterogeneous' identity which characterises Western nations which are true to their political and cultural traditions.

If there is an answer to this, it is in that form of *patriotism* which is still actively promoted in the United States, and which Hegel defined as “assured conviction with truth as its basis.” Hegel believed that in the absence of robust institutions, such patriotism could neither flourish nor survive. Indeed, he went further and argued that action which does not conform to those institutions is *irrational*. As “action in conformity with these institutions,” patriotism derives from the ‘consciousness’ that my interest “is contained and preserved” in the state. In what, to my mind, is still the finest definition of ‘patriotism’ available, Hegel wrote that while it is often understood “to mean only a readiness for exceptional sacrifices and actions,” patriotism is that sentiment which “in the relationships of our daily life and under ordinary conditions, habitually recognises that the community is one’s substantive groundwork and end.” And it is out of this consciousness, as Hegel went on to say, “which during life’s daily round stands the test in all circumstances, that there subsequently also arises the readiness for extraordinary exertions.”

As used by Hegel, the word ‘community’ does not have the connotations of ‘fusion’ and ‘identification’ which Caputo attributes to conservatism. Following Derrida, Caputo writes that “one must watch out for the ways tradition and community become excuses for conservatism, for the exclusion of the incoming of the other, and hence constitute ‘as much threat as promise,’ as much a trap as a tap.” Conservatism, at least as I defend it, is a work not of exclusion but of *love*—love of the home. That is why, when deployed by thinkers such as Hegel or Burke, *community* cannot be equated with “a ‘common’ (*com*) ‘defence’ (*munis*), as when a wall is put up around the city to keep the stranger or the foreigner out.” What they mean is precisely what Caputo means when he defines community as “a common or shared life, from *com* + *munus*, having common ‘duties’ or ‘functions,’ doing one’s duty to the whole, mutual service. ”

As such, patriotism is that by way of which the individual identifies his interests and ends as coinciding with those of the community and his fellow citizens. It is that which enables him to see his destiny as intrinsically bound up with theirs, and what motivates him when summoned to sacrifice on their behalf. However, patriotism is only possible where nations and their institutions are strong, and where, as Hegel wrote, “through the forming process of education,” citizens act “by reference to consciously adopted ends, known principles and laws.” Those ends, principles and laws emerge over time and in response to concrete

“conditions and circumstances.” And if, as Burke put it, they do not leave us “hesitating in the moment of decision,” but rather engage “the mind in a steady course of wisdom and virtue,” it is because they are not the product of “naked reason.” They derive, in large part, from those other “integrating factors in the state” which implant a “sense of unity in the depths of men’s minds,” according to Hegel.

Such factors include our attachment to the land, to the cultural heritage of our shared home, and also to its religious rites and rituals. In each case, the individual is reminded that he or she belongs to something greater, something whose existence depends on the community for its survival. We are reminded that our obligations stretch much further than our rights and that, without all those who *cared for creation, conserved culture*, and who sought to *save the sacred* from desecration, we would have no freedom to speak of. For it is this—the pastoral, cultural, and religious sentiments of a people—that renders a nation worthy of true love. It is this which offers redemption from alienation, and which enables us, as Burke put it, to live lives of “peace, and virtue, and fruitful penitence.”