

Liberal Equality – from Minority Rights to the Limits of Tolerance

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Any liberal democrat believes that *members* of religious minority groups have rights in virtue of being individual citizens – liberty rights like the right to practise one’s religion and the right to express one’s views and various equality rights like the right to be protected against discrimination and to have a fair share of the resources of the society.

In this talk, I focus on the suggestion of various multi-culturalist liberals that we – living in a modern multi-religious society where one religion is dominant – should accept *special group-rights* for religious minorities. I shall argue that we – on the whole – do *not* need to depart from a traditional liberal conception according to which all citizens have the *same* set of individual citizen’s rights. In other words, we do not need to postulate special group rights intended to protect and support the identities of religious minorities. It is certainly true that, in modern multi-religious liberal states with a dominant religion, there are typically many cases of unfair inequality between members of majority and members minority religious communities – inequalities that we, the liberal egalitarians, should find unacceptable. But these inequalities are – I argue – already incompatible with the familiar uniform set of liberal citizen’s rights in so far as these are understood as not only formal rights, but also as rights that citizens are actually capable of exercising. So, at most, what is needed are *general* policies – not group-specific policies – designed to ensure that, among others, members of religious minority groups are able to exercise their common rights as citizens.

This paper offers more of an overview of an argument than a fleshed-out argument. I shall start by sketching the two main strategies for arguing *for* strong minority rights, as these are described by the prominent multiculturalist – Will Kymlicka. I shall, then, outline some of the reasons for scepticism that can be given on behalf of the traditional liberal egalitarian who advises against

going beyond individual rights – both reasons for scepticism about the arguments and the proposed policies of multiculturalists.

1.

How might the multi-culturalist put the case for a departure from a traditional liberal unitary conception of citizen's rights? Kymlicka presents what I will call a *moderate* case for liberal multiculturalism. Liberal culturalism, in Kymlicka's words, is "the view that liberal-democratic states should not only uphold the familiar set of common civil and political rights of citizenship which are protected in all liberal democracies; they must also adopt various group-specific rights or policies which are intended to recognize and accommodate the distinctive identities and needs of ethnocultural groups".¹ Kymlicka's view is a *multicultural* version of liberal culturalism, since he argues that the state could support more than one group identity. His view is moderate in two senses. He is moderate in the sense that, at least according to his own opinion, he does not give up on a *universalist* defence of liberal rights, as have more radical relativist multiculturalists.² But, he is also moderate in the sense that he believes that special group rights ought not in any way to *restrict* the familiar individual liberal rights of citizens, but rather they should be a *supplement* to them.

According to Kymlicka, the multiculturalists essentially give two arguments *for* the adoption of some sort of minority rights. First of all, the multi-culturalist points out that the traditional liberal conception according to which a fair society is one in which we all have the same set of rights is only plausible under a certain presupposition, namely that the state is neutral with respect to the interests of different cultural (hereunder religious) groups. The state is assumed – by the traditional liberal egalitarian – to be culturally and religiously blind. The problem according to Kymlicka is that this presupposition is not satisfied in actual multi-cultural and multi-religious liberal societies. Actual liberal states have always implemented policies aimed at bolstering and securing a certain "societal culture". Such policies – what

¹ Kymlicka (2001), p. 42. See also the whole introduction to Kymlicka (2001) and chapter 8 of Kymlicka (2002) for an overview of his views about multiculturalism.

² Examples of less moderate forms of multiculturalism can be found in Parekh (2000) and Tully (1995). Even the older Rawls (1993) seems to give up on a universalist defence of liberal egalitarianism.

Kymlicka calls “nation-building policies” – have imposed things like a common language, common educational policies, common national symbols, state holidays and national media. And, importantly, these policies have implicitly or explicitly reflected the majority culture’s symbols, customs and values. The typical liberal state is, thus, in actual fact far from culturally and religiously neutral. To take a few examples from the Danish context: Many Danish national holidays are Christian holidays, the Danish flag has a Christian cross in it, and in the primary school, there is a course named “knowledge of Christianity”. And last, but not least, we have in Denmark a protestant Christian *state*-church with a special status relative to other religious groups.

For Kymlicka, the fact that societal cultures are biased towards the majority culture calls for compensations to the minority groups in the shape of special rights – for instance religiously based exemptions from relevant state-laws. Thus, the first argument for minority rights is an argument from the implicit bias towards the majority culture in actual societal cultures of liberal-democratic states. Essentially, the argument is that it is unfair – from an egalitarian point of view – that members of minority cultures should incur large costs of assimilation to the societal culture that are not incurred by members of the majority culture. Minority rights are to be seen as compensations for these added costs in the name of equality.

The second overall multiculturalist strategy for defending minority-rights charges that traditional liberal thinking has overlooked the importance of certain types of interests that all citizens have. These are interests in things like being a member of a (flourishing) culture and thereby sustaining one’s cultural identity and having one’s identity recognized in the wider society. That is, traditional liberal egalitarians have focused on achieving equality with respect to the satisfaction of interests in civil liberties, equal opportunity and economical subsistence. But, they have simply been blind to crucial interests related to culture, identity and recognition. The argument then goes that, since members of minority cultures typically have much less chance of having their ‘cultural interests’ satisfied than members of the majority culture, a liberal state

ought to grant minority rights and adopt policies that seek to make actual opportunities more equal.

I believe that Kymlicka's versions of both arguments for minority rights have considerable merit. Clearly there is a liberal egalitarian case for special attention to the plight of members of minority cultures. The question in the remainder of this talk, however, will be the following: Is the case for minority rights made by Kymlicka's two arguments strong enough to show that the injustice and unfairness of the ways that members of minority cultures are actually treated in liberal societies are *best addressed as a matter of practical politics* by giving up the traditional liberal view of equal rights for all, rather than expanding on that view and ensuring that it is actually implemented in society as it was intended.

2.

So, first, must we – as liberal egalitarians – counter the fact that the societal culture of actual liberal-democratic states tends to be biased in favour of a majority religion by countenancing religious minority rights? Here are some reasons for scepticism.

First of all, there is a different possible policy that is much more direct, i.e. a policy of attempting to make the societal culture less biased. For instance, with special reference to the Danish context, it is clearly possible to disassociate the state and the church – to treat majority and minority religions completely equal from a legal standpoint. Thus, no religious group should have the right to perform marriage rituals with legal force, no religious group should be preferentially treated by receiving funding through the state tax system,³ and all religious groups should have the right to purpose-built places of worship and burial grounds and so on. Likewise, it is possible to ensure that the core curriculum in the schools reflect different religious perspectives. Perhaps, this sort of policy cannot for various pragmatic reasons be successful in every way – for instance, it is unlikely that the Christian cross will be removed from the Danish flag – but it seems to me that *much* can be achieved

³ In Denmark, the protestant 'Folkekirken' – a form of a state church – receives part of its funding from the state budget to which all Danes, including atheists and citizens of other faiths, pay through the general tax system.

simply by ensuring that the laws are made blind to religious difference. Of course, this would mean significant change to the Danish state-church system. But, that change is arguably long overdue from a liberal-democratic standpoint anyway.

A second point to be made about Kymlicka's bias-argument is that the notion of the *costs* of assimilation paid by minority cultures should be regarded as importantly complex. As Kymlicka himself recognises, not all costs of assimilation to the societal culture are to be compensated on a liberal-democratic view. Some costs of assimilation are what we might call 'democratic costs'. These are costs that members of religious groups have to pay in case certain practises of the group become outlawed in a democratic state because they are illiberal. This can be practises and customs that are internally repressive of the group-members by denying them the basic citizen's rights or that threaten the rights of citizens outside the group.⁴ To take a particularly obvious example, if the special religious norms of a certain sect forbids parents to give their children adequate medical care, then a democratic state should intervene to protect the rights of the children not to be harmed. It is a standing challenge to liberal egalitarians to draw up a principled distinction between fair and unfair costs in this way. I shall return to a brief discussion of specific examples of fair democratic costs towards the end of the paper and give some indications of where I believe the line should be drawn.

So far it has been argued that some costs of assimilation ought to be *gotten rid of* rather than compensated, namely by changing the laws until they reflect the equal legal status of religions. Further, *some* costs of assimilation – democratic costs – are fair and do not call for compensation. The question as I see it, then, becomes whether there are *further* costs incurred by a religious minority that are unfair and thus ought to be compensated. And, of course, there *are* different types of costs of being in a minority relative to being in a majority group than the types of costs discussed so far. To take an example, a liberal state will grant all of its citizen's freedom of speech and expression. Thus, *formally* the liberal state treats all citizens equally. Of course, this right

⁴ Kymlicka would, of course, agree that there should be such democratic limits to the practises of minority groups – and minority rights may not, in his view, restrict the individual rights of the citizens in the group. See e.g. Kymlicka (2002), p. 340-42.

entails the right to wear religious symbols in public. However, it is also well-known that public displays of religious symbols by members of minority religious groups become especially conspicuous against the backdrop of the majority culture. Thus, wearing a minority religious symbol is typically regarded as somehow demonstrative or even provocative whereas similar public displays of symbols of the majority culture simply fade into the background and go unnoticed. *Formal* equality clearly does not guarantee actual equality. Members of minority groups face pressures and obstacles that members of majority cultures do not face, when they try to exercise their rights. More generally, the fact that *the state* is blind to religious difference and formally equally respectful of members of different religious groups is no guarantee whatsoever that *the general public* has these virtues. Quite the contrary, the order of the day in many liberal-democratic societies is such that minorities are often met by prejudice, lack of respect and in the worst cases even hate-speech and persecution. Thus, there is clearly an issue of *unfair* costs of belonging to a minority religious culture that must be addressed by liberals – costs that have to do with lack of actual abilities to exercise ones' rights.

What I now want to focus on is the pragmatic question: What can actually be done from the standpoint of *state-politics* in an effective effort to counter such unfair costs to members of minority religious groups? A wide range of policies seems relevant and effective: 1) first of all, there should, of course, be laws and policies that prevent and punish hate-speech and outright persecution of members of minority groups, 2) there should be policies that forbid and seek out discrimination on the job-market and in the public space in general, 3) there should be educational policies that promote understanding between different groups in society and respect for the rights of all citizens, and, finally, 4) there should be a wide range of policies aimed at ensuring a more fair distribution of economical and social opportunities so that citizens growing up in an economically and socially disadvantaged environment are helped by things like special education and special economical support. Since members of minority groups have higher probabilities of ending up in such disadvantaged groups – partly for the reasons given above to do with

prejudice and discrimination – they will also tend to benefit relatively more from such *perfectly general* liberal-egalitarian policies.

Now these four types of egalitarian policy all fall short of assigning special rights to minority groups or even of being a group-specific policy. Rather, the appropriate way to characterise these policies are as policies designed to promote the ability of marginalised citizens that are the victims of discrimination to *actually* exercise the rights that they share equally with all citizens – *no matter what the cause of the marginalisation and discrimination is*. There is nothing here that goes beyond common citizen's rights and common policies to promote equality and social and economical justice. And my suggestion is that this is all that a liberal democratic state can *effectively* do to compensate the unfair costs described above of being a member of a minority culture.

3.

Of course, I must now meet the charge that I am ignoring special interests in cultural identity and recognition. Thus, I must say something to counter the second strategy of the multi-culturalist argument for minority-rights as given by Kymlicka above. I will briefly answer the second multi-culturalist argument in two stages. First, I will give some general comments questioning the notion and importance of 'cultural identity'. And, secondly, I will look at some of the problems associated with adopting different types of multi-culturalist policies – policies that go beyond the above in that they employ minority rights or group-specific policies.

What is a liberal democrat to say about the suggestion that the state ought to ensure that its citizens have a fair chance to develop and hang on to a cultural identity that, further, is respected in the wider community? Certainly, the multi-culturalist is right to point out that we humans need to be initiated in a culture – a horizon of values – in order to become beings capable of evaluating and choosing in the first place. In particular, this is necessary to become the kind of autonomous person able to reflect critically on one's values that liberals value highly. The problem, as I see it, is that it is not clear that this sort of cultural identity is necessarily tied to being a member of an identifiable cultural group. And can we, in the first place, clearly circumscribe

the class of members of any given group? For instance, it appears to me that it is impossible to circumscribe the majority-community of Danish Christians – there are so many differences between a socialist, liberal Christian and conservative, nationalistic Christian that this seems to be an impossible task. Very likely the same thing is true of Danish Muslims, Danish Jews and any other religious minority groups. What are we exactly talking about when we talk about religious groups in a modern society? Secondly, it is not clear to me that having an identity that is, for example, composed partly of the culture of one's parents and partly of the democratic secular culture of the surrounding society is necessarily the same thing as having a weak or somehow deficient identity. It certainly seems *highly implausible* (and easily rejected empirically) to suggest that somehow one can only have a strong and healthy sense of identity, if one has taken over more or less exactly the same cultural identity that one's parents had. And, finally, I am simply not convinced that a special interest one might have in a cultural identity is *that* important relative to the interests that the liberal egalitarian has traditionally focused on: interests in equal liberties, non-discrimination and equal social and economical opportunities.⁵

In fact, I think that there is some evidence to suggest that it is exactly when these more basic interests of members of a religious minority group go unfulfilled that they come see it as crucial that they retain their culture. When a cultural group perceives itself as being under unfair social, economical and political pressure, things like the cultural (or national) identity suddenly tends to be perceived as being all-important by members of the group. But then a multi-culturalist policy of supporting the cultural identities of minority groups and ensuring their recognition in the wider society is really treating the *symptoms* rather than the *causes* of the unfair treatment of the group. What is needed is, surely, the traditional egalitarian policies mentioned above.

⁵ I am here inspired by the central argument of Barry (2001). He plausibly suggests that the call for special multiculturalist policies of identity are, in fact, dangerous for liberal egalitarians, because they take away the focus from these traditional liberal egalitarian concerns.

4.

What about the various *policies* suggested by multiculturalists? Are they justifiable and pragmatically feasible? I think that we should here distinguish between *weak* and *strong* forms of multi-culturalist policy where the first include policies of public affirmation that fall short of granting exemptions from general laws and where the latter involves granting such exemptions.

So, first, should the liberal state adopt a weak multi-culturalist policy of publicly affirming or recognising⁶ in some way the various religious cultures in the society – though without granting religious exemptions? Well, I think, first of all, that there is a sense in which any liberal-democratic state publicly recognises the various religious groups in the society, namely in virtue of recognising the rights of each citizen to choose his own religion. Granting all citizens the right to free speech and free association *is* – in one obvious sense of the word – to recognise every citizen’s equal worth. What more can a citizen reasonably ask for from the state – other than, of course, a guarantee that this is not a *merely formal* recognition?

Crucially, granting that the liberal state ought to recognise citizens as equals is not the same as saying that the state ought to recognise the equal truth or value of all the religions of the citizens. There are several reasons for this: First of all, I believe that a neutralist version of liberalism is right according to which the liberal state ought to remain neutral on the issue of what constitutes a good life. What the state ought to do, is to ensure that all citizens have the opportunity to choose any lifestyle and conception of the good (only restricted, of course, by the Harm Principle). But, secondly, it is not even *possible* to affirm every religion consistently. Religious belief-systems have – as Brian Barry rightly points out⁷ – propositional content. They contain views about the world that are claimed to be true by their proponents. But, since the propositional contents of any two distinct religions are mutually inconsistent, it simply doesn’t make sense to affirm both at the same time. Of course, one can *say* that one affirms different inconsistent religions, but that is either really just being insincere or confused or it is just – in a manner of

⁶ For an argument for a liberal politics of recognition, see Galeotti (2002).

⁷ See Barry (2001), p. 278.

speaking – expressing one’s recognition of the equal right of any citizens to chose his own religion. Thirdly, how could a liberal state sincerely affirm a religion that contains *illiberal elements* – for example, elements that violate liberal principles of non-discrimination of women and freedom of speech? Surely, a liberal state cannot be asked to affirm the equal value of such a religion compared with a reformed religion that has weeded out any illiberal elements?

It is, of course, important to notice here in passing that this does not mean that the liberal state ought to *ban* illiberal religious groups. The liberal principle of freedom of association entails that the state ought not to intervene in illiberal associations, as long as subjection to the internal rules of the association is a) not coerced, b) only involves members that are above the age of consent, c) do not threaten individuals outside the group and d) always allows for a real exit-option for those who no longer want to be a member of the group. The citizens of a liberal state are allowed to subject themselves freely to as many discriminatory practises, unfair rules and painful rituals as they might like. But the state, of course, cannot affirm that all such choices are the right choices.

Another point to be made about a multi-culturalist politics of public state affirmation of diverse group-identities is that it is not at all clear that such a policy *can* be very effective in changing the problematic disrespectful and discriminatory attitudes of the general public. In particular, it is very difficult for the state to remove things like prejudice and hatred between its citizens by passing laws and making symbolic gestures of recognition. Perhaps the state can succeed in imposing some sort of political correctness in the public debate, but the observance of such political correctness in the public sphere can, unfortunately, co-exist with deep-seated and widespread prejudice and discriminatory attitudes in the general public. The real work of combating such bad phenomena, I suggest, lies rather in the policies mentioned above: in efforts against discrimination, in policies aimed at integrating marginalised groups into the labour-market and public life and in educational policies that promote equality respect and understanding.

One final objection to the suggestion of multiculturalists that the state should adopt various policies of affirmation towards minority groups is much more general and a little speculative. The question is whether, even if we grant that the state should put its weight behind identity-policies of some kind, we should want the state to adopt policies that *accentuate* the differences between the citizens rather than policies that ensure that there is a widening common ground between the citizens – for instance by various kinds of ‘nation-building policies’ to use Kymlicka’s term. It is, arguably, an empirical fact that solidarity among the citizens of a given society is inversely proportional to the degree of diversity in the society. If it is true that diversity is the enemy of solidarity, then, by extension, the politics of diversity could be seen as threat to the future solidarity and social cohesion of the society.

Let me illustrate my worry by looking at the explanation of the fact that Danes helped their Jewish fellow citizens to escape the Nazis whereas the Poles and some other Europeans tended not to help.⁸ Now, many Danes would no doubt like to explain this fact by seeing it as evidence of a special Danish moral character – a tolerant, decent, and courageous one – but I think that part of the explanation is very different: Jews in Denmark tended to be much more assimilated into the wider society than in other places in Europe. The Danes, thus, primarily saw their Jewish fellow-citizens under descriptions such as “my neighbour”, “the excellent butcher around the corner” and “the silversmith who made my wedding-ring”. Hence they saw them under the description of “one of us” before they saw them as “one of the Jews”. It was simply much more difficult for the Danes compared to other Europeans to single out the Jewish group as a target of persecution and much easier to identify with them and to show solidarity with them.

Now, my point here is that surely what we need to work towards is a society in which we see all our fellow-citizen’s as ‘one of us’. Such solidarity between citizens is, amongst other things, a precondition for getting the political support needed for the politics of economical redistribution of resources that liberal egalitarians recommend – i.e. support for the high taxes that fund the welfare state. What the liberal egalitarian state needs, it would

⁸ I am here inspired by a passage in Rorty (1989).

seem, is, if anything, a *politics of democratic identity* rather than a politics of cultural and religious diversity.

5.

Let me finally turn to what I called *strong* multi-culturalist policies, i.e. policies that involve granting religious exemptions to state laws. I have already outlined the principles that I believe should guide the liberal here: The basic stance is that the state cannot intervene in the practises of religious communities – no matter how illiberal – provided that these communities are effectively free associations of consenting adults with real exit-options. But, on the other hand, the state *can* intervene if the exit-options are not real, or if non-consenting adults' rights are violated, or if the rights of non-adults are violated. The problem is that the practises that make members of religious groups ask for religious exemptions most often are practises that satisfy the conditions for state-intervention. Let me briefly comment on some of relevant and illustrative examples:

Should parents have the right to exempt their children from parts of an otherwise mandatory core curriculum in primary schools? For example, should fundamentalist Christian parents be allowed to ensure that their offspring is isolated from the facts of evolutionary biology? Certainly not! Children are not the property of their parents and their interests should be protected by the state. In particular, the state should ensure the satisfaction of every child-citizen's obvious interest in getting an education that prepares him or her for a life in a modern democratic society – both interests related to future job-opportunities, to future participation in public and democratic institutions.⁹ This should be done by ensuring that there is a mandatory core curriculum for every child – not just children that attend schools that are funded by the state. This, of course, would not exclude additional religious education outside the core curriculum. As mentioned above, some sort of a democratic education, I believe, is the most efficient tool when it comes to fighting prejudice and lack of mutual respect among citizens.

⁹ See also Barry (2001), chapter 6.

A very similar, but even stronger, argument excludes the possibility of exemptions to do with harmful rituals and prohibitions as these are applied to children – female genital mutilation and prohibitions against blood-transfusions are relevant examples. Of course, there ought to be nothing to hinder persons *above* the age of consent to have the circumcision performed, if they so choose, or to commit suicide by refusing to receive blood-transfusion, for that matter.

A further, more controversial, case is that of demands for exemptions from veterinary slaughter-regulations in order to perform *halal* or *kosher* ritual slaughter. Assuming that animals have some moral status, this case is actually similar to the case of children above, since it is a case of a ritual practise that harms non-consenting moral subjects. Notice that denying this exemption is not to deny Jews and Muslims the possibility of complying with their religious laws – only denying them a non-vegetarian diet. I am not sure that exemptions should be denied here, since the case for exemptions depend on two crucial and difficult further questions of the moral status of animals and the actual pain experienced by the animals during slaughter. But, there *is* at least a *prima facie* case against allowing exemptions related to ritual slaughter.

An interesting set of cases are those where the only possible harm of a certain practise is harm to the practitioner herself, but where the practice is still outlawed for some, more or less paternalistic, reason. For instance, there is the question whether Sikhs should be exempt from wearing crash-helmets on their motorbikes because of their religious head-garment. The problem with an exemption in this case is that, if an exemption is given, how could, say, a macho member of a motorbike-club who believes that only living dangerously is living in full, be denied the right to ride without a crash-helmet? It seems to me that a neutral liberal state cannot make the value-judgement that the Sikh value-system is somehow more true or serious than the macho motor biker's value-system. Perhaps the solution here is a libertarian one, allowing everyone to ride a motorbike without a helmet – perhaps on the condition that they pay an extra insurance-fee that covers the cost of the increased probability of a need for extra hospital treatment. But, it seems to me that, if libertarianism is not the answer here, there still can be no

exemption. Again, notice that this does not entail that Sikhs have to break their own religious rules. Only that they have to e.g. drive cars instead of motorbikes.

Finally, I cannot resist also commenting on the curiously controversial question of *hijabs*. In my opinion, clearly, freedom of expression permits Muslim women to wear a *hijab* whenever they freely choose to – in any public place, even in a school. Here there is no question of harm to outsiders or non-consenting persons. Granted, Muslim schoolgirls are not adults, but also, it is difficult to see what harm the *hijab* can do. Of course, it has been argued that there *is* a victim here, namely the woman voluntarily wearing the *hijab* herself, since it is arguably a symbol and means of suppression of women. Maybe this is so, but the question is: Would a ban really help against this sort of victimisation? Is it not far more likely that a ban would cause the women to identify even more strongly with the oppressive practises? And anyway, a liberal state cannot and ought not to *force* its citizens to exercise their rights to an equal status.

It seems to me that the only justifiable and really effective means of influencing the unfair status quo from a liberal point of view in the case of women that are suppressed by the misogynist religious norms is through the kind of egalitarian policies, I have frequently mentioned above – primarily education for all and effectively enforced laws against discrimination in the labour-market. Such policies will give Muslim women a real chance of gaining independence, respect and self-respect and thus enjoy the equal status that liberal egalitarians always must have as their goal to provide equally for all citizens.

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