Les ateliers de l'éthique
The Ethics Forum

Diversity and the Liberal State
Introduction

Xavier Landes et Nils Holtug

Volume 6, numéro 2, automne 2011

URI : https://id.erudit.org/iderudit/1008032ar
DOI : https://doi.org/10.7202/1008032ar

Aller au sommaire du numéro

Éditeur(s)

Centre de recherche en éthique de l'Université de Montréal

ISSN

1718-9977 (numérique)

Découvrir la revue

Citer ce document

Landes, X. & Holtug, N. (2011). Diversity and the Liberal State: Introduction. *Les ateliers de l'éthique / The Ethics Forum*, *6*(2), 79–84. https://doi.org/10.7202/1008032ar

DOSSIER:

DIVERSITY AND THE LIBERAL STATE

XAVIER LANDES AND NILS HOLTUG
UNIVERSITY OF COPENHAGEN

The articles contained in this issue are the proceedings of a joint workshop organized by Centre for the Study of Equality and Multiculturalism (CESEM) and Centre de Recherche en Éthique de l'Université de Montréal (CRÉUM) that took place in June 2010 at the University of Copenhagen. The idea behind the workshop was that most *de facto* multicultural countries face to some extent the same issues regarding diversity management, especially as regards cultural and religious affairs. And it is interesting to compare experiences and thoughts from North America and Europe and especially Canada and Denmark, where Canada is known for embracing multicultural policies and Denmark for firmly rejecting them[1].

In recent years, Canada has had several intense debates on topics as various as the proposed introduction of the so-called 'Sharia tribunals' in Ontario[2] and the Bouchard-Taylor Commission on reasonable accommodation in Quebec[3]. Similarly, Denmark has experienced debates over e.g. mother-tongue instruction and religious symbols worn by judges, where Nils Holtug discusses the latter in the present issue. But such questions are not specific to Denmark and Canada. Recurrent debates on religious symbols in public schools and space have taken place in France over the last years[4]. Germany has had a similar debate on the wearing of such symbols by school teachers[5]. In the United States, various debates have concerned the right for members of police and army forces to wear religious symbols[6], the right for parents from certain religious groups to prematurely remove their children from schools[7] or from courses they consider incompatible with their faith[8]. All these examples touch upon the issue of how to accommodate diversity in liberal institutions. All demonstrate the salience of the management of religious diversity in liberal democracies.

Issues of diversity and the liberal state are not limited to religion though. Even if liberal institutions emerged as an answer to discontent and wars fuelled by religious diversity, the questions at hand cannot be limited to this sole dimension. Diversity management in the liberal state concerns a broad array of issues. For instance, Canada and Denmark have indigenous peoples who have put forward claims for self-government. And even if one may argue that the issue of diversity is more visible in some countries due to their distinct histories, it is present everywhere. Religious, ethnic, linguistic, moral and national diversity is the common lot of all countries.

This does not mean that all these forms of diversity foster strictly identical questions. For example, demands that emanate from indigenous peoples and national minorities sometimes have profound constitutional implications, in terms of e.g. secession or political autonomy, which is seldom the case for migrant minorities. Despite these particularities, there is a general set of questions that unites them,

namely: how far should institutions in liberal countries go to accommodate difference? How do their (proclaimed) liberal commitments interact with demands for accommodating diversity, when such accommodation implies e.g. exemptions from common regulation, specific rights and social norms? By way of illustration, Morten Ebbe Juul Nielsen inquires about the normative dimensions of cases where several legal orders are to cohabit the same territory.

As pointed out above, the liberal state has emerged as a solution to the issue of diversity. Of particular concern here is the principle of neutrality, i.e. the claim that institutions should remain neutral with respect to different conceptions of the good. This principle has received various formulations that, more or less, share the same basic idea that the state should abstain from favoring or handicapping specific cultural, moral, religious or ethnic groups[9].

A second, related, principle that also forms the basis of the liberal position since John Locke's *A Letter Concerning Toleration* (1689) is, precisely, toleration. Toleration is regularly appealed to in order to justify some hand-off policies from the state, accommodation of difference, and so on. In spite of its apparent overlap with neutrality, the principle expresses the slightly different idea that institutions (and individuals) should not interfere with conceptions of the good, even ones that diverge from the conception which is presumed to be endorsed by the majority and ones that this majority may find abhorrent or in contradiction with some of its fundamental principles[10], as long as, to return to John Stuart Mill, there is no harm to others[11].

So much for pure theory. As pointed out by several authors in the present volume, the principles of neutrality and toleration may appear unconvincing in a liberal environment for several reasons. One is that institutions operate in *de facto* culturally loaded environments[12]. No state is fully neutral, at least as regards consequences, as mentioned by Sune Lægaard. Some cultures or religions are always favored over others. Historical factors help to explain advantages in terms of state support that certain cultural or religious groups enjoy over others. It is often more difficult for holders of minority views to realize their conception of the good. They have to bear costs that members of the majority do not[13]. As a result, any affirmation of the neutrality of institutions could appear hypocritical from the minority's perspective, while blinding the majority to their undeserved advantages. This reason has been regularly invoked since the first philosophical discussions of political multiculturalism in the 1990's.

Another reason why some may be skeptical regarding the compatibility of liberalism and diversity accommodation is conceptual. In fact, as the argument usually goes, the principles of toleration and neutrality conflict with other normative commitments, which are central to the liberal tradition. Two antagonist interpretations of this tension are possible. One, which is common among critics of multiculturalism, proclaims that multiculturalism could (and, in fact, often does) conflict with fundamental liberal principles such as respect for basic human rights and/or gender equality[14]. Another elaborates on the previous argument (states are *de facto* culturally biased): liberalism tends to serve the interests of the majority or initiate or reinforce domination of some sort, especially in a post-colonial environment. According to both versions of the argument, with opposite implications though, a choice will have to be made between liberalism and diversity accommodation.

This special issue proceeds in a different way. Instead of elaborating on this much discussed tension, the articles take the discussion a step further. They take seriously and engage the idea that diversity has a feed-back effect on liberal principles and institutions. In other words, liberalism is transformed by the necessity of dealing with diversity. What liberal principles then lose in simplicity or neatness, they gain in refinement and adequacy, precisely because liberalism may be seen as a process of constant actualization of its principles (neutrality, toleration, individual freedom, respect). To repeat the point, since liberalism has been forged as an answer to diversity, it is natural that it gets challenged by – and may need to be transformed in light of – requests for accommodation. The articles also engage views about the monolithic character of liberalism and its inhospitality toward diversity. Liberalism is diverse, both in the sense that different interpretations compete (external diversity), but also in the sense that it is committed to value-diversity and principles that should be articulated together (internal diversity).

The first two articles offer a discussion of neutrality. Sune Lægaard identifies degrees of secularism and asks the important question of how to conceive of different forms of neutrality that go astray from pure secularism (as, e.g., in the case of Denmark). He employs the concept of "moderate secularism" in order to, first, study its relation to principles of neutrality, toleration and recognition, and, second, determine in which sense a moderately secular state could still be labeled 'liberal'. Liberalism is thus put in context by reviewing the kind of moral obligations that are generated when liberalism espouses an impure form[15]. On this basis, Lægaard demonstrates the need for a normative analysis of moderate secularism, i.e. a rethinking of the nature of mildly neutral states that diverge from the liberal ideal, and for conceiving of liberalism as a pluralistic normative notion.

Nils Holtug offers a critical evaluation of a law on religious symbols passed in 2009 in Denmark, banning the use of such symbols by judges in courts of law, following pressure from the nationalist right (the *Danish People's Party*). First, he demonstrates how the law came into existence through a transformation of justifications, starting with concerns about the allegedly illiberal connotations of Muslim headscarves on the nationalist right (and even in mainstream Danish politics) and ending, in the official motivation for the law, with concerns about secularism and state neutrality. Second, he argues that appeals to liberal neutrality for legitimating the ban are flawed, implying that there is indeed room within the liberal framework to accommodate diversity. Holtug unfolds the principle of neutrality by spelling out four ways of understanding it in the context of the law (neutrality of justification, neutrality of consequences, equality of opportunity, and real and perceived impartiality) and argues that they cannot justify the ban on religious symbols. On the contrary, variants of the neutrality argument imply that the law is unjust.

The next two articles illustrate how diversity challenges liberal institutions from within, especially courts and the legal architecture. Morten Ebbe Juul Nielsen considers three challenges that multi-legalism (i.e. the cohabitation of several legal orders on a given territory) presents. The first two challenges rely on the choice between hard and soft forms of multi-legalism, and the clash between culturally based claims and universalistic concerns. The article spots the 'choice of law' as an issue of major concern. In short, in a multi-legal context, it is necessary to define some second-order rules and establish adjudicating institutions

with the very purpose of arbitrating between claims stemming from different '*nomos* groups', i.e. groups structured around different systems of law. The article goes beyond the pure principled opposition between multicultural multilegal claims and universalistic commitments, which is recurrent in the literature, by raising the question of how properly to conceive of the articulation of distinct legal spheres (while leaving supremacy on the territory untouched). As the two precedent articles, it digs into the normative implications of liberalism.

Daniel Weinstock's article is a reflection on toleration. It deals with the arguments used to assess the legitimacy of religious claims for accommodation in Canadian Courts. It is argued that Brian Barry's "paradox of toleration" (either a law is essential and exemptions are not justified or a law is not essential and it should be abrogated) is too simplistic for understanding how to balance individual rights and public interest. Weinstock reviews the two methods used by courts for deciding if some exemptions should be granted: the subjective test (what is evaluated is the sincerity of the claimant and her understanding of religious or cultural requirements) and the objective test (what is evaluated is the material proof for the practice for which exemption is asked). Upon assessing the strengths and weaknesses of each approach, a mixed test requiring claimants to make a "plausible case" for their demands is defended.

Kasper Lippert-Rasmussen's article broadens the scope of the discussion by engaging liberal justifications of political multiculturalism. In this debate, one prominent liberal position is Will Kymlicka's, which is arguably based on luck egalitarianism[16]. Kymlicka's account has been challenged by Jonathan Quong on the ground that it contains loopholes and is in fact inconsistent with luck egalitarianism[17]. Quong claims that an argument based on the Rawlsian conception of fair equality of opportunity would be a better candidate for legitimating polyethnic rights. However, in part because Quong's argument does not clearly identify the reasons why people immigrate, Lippert-Rasmussen defends the idea that luck egalitarianism is still superior for supporting cultural justice. In short, the article argues that choice matters, especially regarding migrants, when institutions are to determine if some individuals or groups are entitled to some kind of support or recognition in order to counterbalance the disadvantages they suffer in virtue of their minority status. By re-introducing the importance of individual choice, Lippert-Rasmussen draws the contours of a "luck multiculturalism" and assesses the widely held view that cultural inequalities and injustices are mainly a question of circumstance.

In summary, this special issue covers three important dimensions of diversity management. Firstly, it engages the proper meaning and normative implications of liberal principles such as neutrality and toleration. Secondly, it offers some views on the implications of such principles regarding the process of accommodation and the legal architecture of liberal democracies. Finally, it opens up the fundamental question of how to conceive of liberalism in order to firmly ground multiculturalism.

REFERENCES

Ackerman, Bruce, *Social Justice and the Liberal State*, New Haven, Yale University Press, 1980

Banting, Keith, Richard Johnston, Will Kymlicka and Stuart Soroka, « Do Multicultural Policies Erode the Welfare State? An Empirical Analysis », in Keith Banting and Will Kymlicka (eds.), *Multiculturalism and the Welfare State*, Oxford, Oxford University Press, 2006

Bouchard, Gérard, and Charles Taylor, *Building the Future*, Quebec City, Gouvernement du Québec, 2008

Commission de réflexion sur l'application du principe de laïcité dans la République, *Laïcité et République*, Paris, La documentation française, 2004

Dworkin, Ronald, « Liberalism' in Ronald Dworkin, *A Matter of Principle* », Cambridge, Harvard University Press, 1985

Joppke, Christian, « State Neutrality and Islamic Headscarf Laws in France and Germany », *Theory and Society*, 36:4, 2007, pp.313-332

Kymlicka, Will, *Liberalism, Community, and Culture*, New York, Oxford University Press, 1989

Kymlicka, Will, *Multicultural Citizenship*, New York, Oxford University Press, 1995

Larmore, Charles, *Patterns of Moral Complexity*, Cambridge, Cambridge University Press, 1987

Locke, John, *A Letter Concerning Toleration,* 1689

Mill, John Stuart, *On Liberty*, London, John W. Parker and Son, West Strand,1859

Nagel, Thomas, *Equality and Partiality*, New York, Oxford University Press, 1991

Norman, Wayne, *Negotiating Nationalism*, New York, Oxford University Press, 2006

Okin, Susan, *Is Multiculturalism Bad for Women?* Princeton, Princeton University Press, 1999

Quong, Jonathan, « Cultural Exemptions, Expensive Tastes, and Equal Opportunities », *Journal of Applied Philosophy*, 23:1, 2006, pp.53-71

Rawls, John, *Political Liberalism*, New York, Columbia University Press, 1993

Tamir, Yael, *Liberal Nationalism*, Princeton, Princeton University Press, 1995

Young, Marion Iris, *Justice and the Politics of Difference*, Princeton, Princeton University Press, 1990

Williams, Melissa, « The Politics of Fear and the Decline of Multiculturalism » in John Erik Fossum, Johanne Poirier and Paul Magnette (ed.), *The Ties that Bind,* Bruxelles, Peter Lang, 2009, pp. 53-76

NOTES

[1] Banting et al, 2006.
[2] Williams, 2009.
[3] Bouchard and Taylor, 2008.
[4] Commission de réflexion sur l'application du principe de laïcité dans la République, 2003.
[5] Joppke, 2007.
[6] *Goldman v. Weinberger; Webb v. City of Philadelphia*.
[7] *Wisconsin v. Yoder*.
[8] *Mozert v. Hawkins County School Board*.
[9] Ackerman, 1980; Dworkin, 1987; Larmore, 1987; Rawls 1993.
[10] A part of chapter 4 of John Stuart Mill's *On Liberty* (1859) is devoted to the issue of polygamy, i.e. the toleration that should be displayed when confronting certain conceptions of the good.
[11] 'That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right' (Mill 1859, p.22).
[12] Young, 1990.
[13] Kymlicka, 1989.
[14] Okin, 1999.
[15] In that respect, Lægaard's article can be interpreted as belonging to a liberal tradition that tries to assess its compatibility with nationalism or nation-building (Norman, 2006; Tamir, 1995).
[16] Kymlicka, 1989, 1995.
[17] Quong, 2006.