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Liberal multiculturalism

A defence of liberal multicultural measures without minority rights

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INTRODUCTION

In this article, I will introduce and discuss the possibility and desirability of ‘multicultural measures’ – specific group-based measures intended to benefit ethnic, religious or cultural minority groups. Unlike many multiculturalists, I reject the notion of specific permanent measures based on minority rights granted to (members of) groups solely for the protection of their shared culture. On the other hand, I do support special treatment of some cultural or ethnic minorities under exceptional circumstances. But, the differential treatment must not be an acknowledgement of *special* minority rights. It has to be the result of the practical application of *generally* acknowledged, liberal and valid citizenship rights. I consider here only the question of rights for ethnocultural minorities in immigration societies. I will not discuss the justification of self-government rights for aboriginal, indigenous groups or national minorities (cf. Kymlicka, 1995: 27–30).

LIBERAL MULTICULTURALISM: A CONTRADICTION?

Most countries today are multicultural societies, but not all of them are multiculturalist. ‘Multicultural’ refers to the empirical fact of diversity, ‘multiculturalism’ to a normative response to that fact. Multiculturalism is a policy based on a philosophy of saying ‘yes’ to the fact of diversity (Raz, 1994: 173).

Since the end of the 1980s, multiculturalism has been a major theme in political philosophy. Kymlicka (2001: 39ff.) has suggested that there is a growing consensus that multiculturalism is *the* way of thinking about our political societies. However, multiculturalism is an umbrella that covers many different ideas, and there is no consensus among political philosophers about the meaning of the term. The common denominator that binds different multiculturalists is unease about the way mainstream liberal thinking treats the issues of diversity and pluralism. In particular, the impartial neutrality of liberal policy has become the target of a number of multicultural thinkers. This is not to suggest that liberal impartiality is not a good cause, but 'difference-blind liberalism' is accused of failing to live up to its own egalitarian ideals.

Some critics of traditional liberalism are mild, while others are harsh. According to some, liberalism should refine itself from within (cf. Kymlicka, Tamir, Raz, Carens). But, according to others, we have to go 'beyond liberalism' (Parekh, 2000: 109–13, 172; Taylor, 1992). Taylor complains that the egalitarian liberal position is 'inhospitable to difference', and Young writes that the liberal principles of equal treatment are bound up with 'the ideal of assimilation'. The charge is that the (implicit) aim of liberalism is to exclude or homogenize difference (Taylor, 1992: 43; Tully, 1995: 58–62; Young, 1990: 158). Moreover, in the eyes of the adepts in the politics of difference, people do not simply demand equal treatment, but more importantly, 'recognition' of their distinct identities as members of particular cultural communities. The liberal *civil rights* are said to pay insufficient attention to the latter (Taylor, 1992: 41; Tully, 1995: 190; Young, 1990: 161).

On the other hand, the multiculturalists have also been seriously criticized by their (liberal) opponents. In *Culture and Equality* Brian Barry accuses them of being anti-universalistic and anti-liberal, and thus of denying the ideals of the Enlightenment. Multiculturalists are said to unjustly support the politicization of cultural group identities, thereby paradoxically, obstructing the integration of minorities (Barry, 2001: 5). They do this in the name of 'minority rights' – rights which are claimed solely on the basis of membership of a particular cultural group and which have the purpose of perpetuating and protecting the cultural identity – which can find no place in liberalism.

Liberals such as Barry are not against pluralism and cultural diversity within a particular political society, but they maintain that liberalism offers sufficient intrinsic possibilities to accommodate diversity in a fair way. Liberalism does not need *extra* (minority) rights and *extra* measures above and beyond liberal rights and measures. In other words: Barry is not against multicultural measures, as long as they are liberal. But he would prefer to speak about liberal instead of multicultural measures.

Thus, Barry and many multiculturalists define multiculturalism in a very specific way: multiculturalism is that which transcends liberalism to

accommodate cultural and religious diversity. As the title of this article already suggests, I will not use this narrow definition – otherwise ‘liberal multiculturalism’ would be a *contradictio in terminis*. By multiculturalism I mean a policy within the scope of liberal philosophy that seeks maximum accommodation of differences in religious, cultural or ethnic origin in a stable and morally defensible way, in private as well as in public spheres. I think that for the task to accommodate differences, liberalism still has enough potency, and that when there is a conflict between liberalism and diversity, the principles of liberalism have priority. Many critics of liberalism seem to forget that liberalism is in fact a theory of pluralism. And in as far as multiculturalism is a species of pluralism, liberalism is ‘fundamentally a theory of multiculturalism’ too (cf. Kukathas, 1998: 690). Liberalism is indeed the response of the modern world to the fact of moral, religious, and cultural diversity. Liberalism says that, within some margins, differences should be tolerated and accommodated. This is what Rawls meant by the priority of the right over the ideas of the good (Rawls, 1971: 28, 1988). Liberalism also admits that a complete social unity, marked by uniform and common culture that integrates and harmonizes the interests of individual and community, is unattainable and undesirable. So, along with Kukathas, I assert that liberalism does not have a problem with multiculturalism, and thus my concepts of ‘liberal multiculturalism’ or ‘multicultural liberalism’ (I will use both) are unequivocal in my interpretation.

This must show that the radical critics of liberalism are not fair because they do not appear to realize that egalitarian liberalism is essentially a fair basis for pluralism. Liberalism actually gives a basis for a multicultural theory based on the central concepts of tolerance, freedom, and equality. If, on the contrary, there were to be a hidden agenda aimed towards the elimination of difference, as Young and Tully suggest, then liberalism would not be worth its name. Egalitarian liberalism is not the enemy of diversity; rather it is the foundation upon which pluralism in the areas of culture, religion, and lifestyle can fairly be implemented in a single society.

The criticism that liberalism pays insufficient attention to the individuality of personality, identity, and culture, is also puzzling. It is, after all, the intention of liberalism to ensure that all people are treated equally, regardless of their differences. It is the strength, not a weakness, of liberalism that it forms the ‘politics of indifference’ on these issues (Kukathas, 1998: 691; Barry, 2001: 274ff.). However, unlike the suggestion of Taylor and Young, liberalism cannot extend to compulsory recognition of differences.

THE PRACTICE VERSUS THE IDEALS OF LIBERALISM

But it is clear that not all interpretations and concretizations of liberalism are versions of 'multicultural liberalism'. In practice, liberalism does not make full use of its multicultural potential. Barry (2001: 317) writes that many problems are 'invented out of nothing by multiculturalists'. There is some truth in this, but in part, he is too optimistic, as if liberalism can no longer be improved, for instance concerning the concrete application in novel circumstances. In practice some mainstream interpretations of liberalism are indeed not maximally hospitable to difference. On this point some critics of multiculturalists are justified. Some of them diagnose rightly the case. However, they provide the wrong remedies by going beyond liberalism, when the remedies can also be found within liberalism itself.

Thus, it is undeniable that liberal governments are in practice less neutral than they would wish themselves to be. Nobody can neglect the fact that every political culture is a product of its particular history. The official language, symbols of state, official holidays, etc.; they are all the non-neutral results of a historical process.

This problem must be addressed from within liberalism itself, because the practical situation does not live up to liberal ideals. It follows that an ideal of neutral politics as 'benign neglect' is untenable, not in the least because of liberalism's own aims and principles. This kind of passive and strict neutrality appears to be a system that is heavily weighted in favour of the majority group (cf. Kymlicka, 2001: 43; Tamir, 1993; Taylor, 1992: 62). Therefore it should be better that the passive hands-off neutrality – neither hindering nor helping any particular (ethno) cultural group – is replaced within the scope of egalitarian liberalism by the idea and practice of neutrality and justice as *even-handedness* (Carens, 2000).

Thus liberalism that wants to live up to its own ideals of pluralism and equality cannot translate itself into practice as a passive hands-off approach, because this approach does not offer satisfactory accommodation for national, religious, cultural, and ethnic differences. Passive *laissez-faire* neutrality is not always the best way to realize equal treatment of different members of different groups. Government should not always take up a passive neutral position. In different domains, it may adopt accommodating policies such as offering religious subjects in public education, and the public funding of recognized religions (Barry, 2001: 29).

MULTICULTURAL AMENDMENTS TO THE IDEALS OF LIBERALISM

There can also be tension between the ideals of a mainstream interpretation of liberalism and a multicultural interpretation of liberalism that seeks to accommodate cultural and religious diversity as much as possible, within the boundaries of liberalism itself.

A mainstream interpretation of liberalism implies that the neutrality of liberal policy also means that the public sphere must be as neutral as possible. This is one interpretation of liberalism, but not a multicultural one. This is because a liberalism that strives towards a neutral public sphere leaves less scope for diversity than the liberalism that strives towards a pluralistic public sphere and demands neutrality only where that is essential. The French idea of *'laïcité'* and 'radical secularism' is a good example of a non-multicultural interpretation of liberalism.¹

But the link between liberal neutrality and a strictly neutral public sphere is not necessary at all. Within liberalism the ideal of a neutral public sphere can be replaced by the idea of a pluralistic one. It is possible to think of a liberal public sphere in terms of pluralism because we can discard the idea that the public sphere has to be neutral to be impartial. Pluralism can be allowed as long as it threatens no danger to the public or to the individuals concerned, and as long as it does not interfere with the effective functioning of the social practice under consideration or the liberal state (cf. Barry, 2001: 54–62). Neutrality in the public sphere is only appropriate when it is functionally necessary, such as in courts of justice and police work, or when public law and order is threatened. Thus liberal multiculturalism acknowledges that neither a neutral nor a monocultural public space is the aim of policy. For the public sphere the motto should be: pluralism where possible, neutrality when necessary.

There is also a second amendment to mainstream liberalism that I want to mention here. Within liberalism, it is possible to treat the access to one's own culture and cultural membership as primary social goods. Liberalism has long ignored the fact that culture is an element which should be included in considerations of justice. In this I agree with the well-known opinions of Raz (1994) and Kymlicka (1989: ch.8, 1995: ch. 5). People can only regard themselves as autonomous beings when they have access to a societal culture of choice. Group-differentiated measures that secure and promote this access may therefore have a legitimate role to play in a liberal theory of justice (Kymlicka, 1995: 83–4; Tamir, 1993: ch. 1–2). When members of minorities face disadvantages with respect to the good of cultural membership, those disadvantages may require rectification by special group-based measures. As we will see, this does not imply the use of minority or group rights.

In fact, with liberal multiculturalism, I propose a third way between anti-liberal multiculturalism and radical anti-multicultural liberalism. On the one hand, I agree that 'liberalism is itself, fundamentally, a theory of multiculturalism'. In no way do we have to abandon liberalism in order to address multiculturalism. On the other hand, some multicultural charges against liberalism do have justification. Some interpretations and historical manifestations of liberalism have given only limited hospitality to difference and pluralism within the bounds of liberalism. The practical application of the abstract and formal liberal rights requires special attention for the context and the specific interests of the people who are concerned; otherwise the result may be to foster unfair inequality instead of equality (cf. McLachlin, 2003).

To illustrate this position, I will introduce and discuss the concept of liberal multicultural measures without minority rights.

BEYOND THE CONTROVERSY ABOUT MINORITY RIGHTS

One of the main topics that divides philosophers, political and legal theorists into multiculturalists and opponents of multiculturalism is the question: do we need minority rights? (cf. Rääkkä, 1996) The disagreement is not equivalent to the contrast between liberalism and communitarianism, since Kymlicka, a liberal political theorist, gives the most extensive defence of minority rights. He and many others argue that the so-called colour-blind approach of traditional liberalism must be complemented with the acknowledgement of minority rights – 'special legal or constitutional measures, above and beyond the common rights of citizenship'² – to defend the culture, religion or identity of a minority group. Minority rights should protect cultural differences that might be lost if a colour-blind policy of benign neglect were to be applied.

However, Barry argues that liberal egalitarianism cannot make way for such minority rights advocated by the theorists of multiculturalism. 'For what they propose are group-based policies deliberately intended to perpetuate cultural differences indefinitely. Moreover, they do not make claims for the justice of such policies on the ground that they are needed to redress inequality of opportunity' (Barry, 2001: 117).

In order to progress beyond the discussion between Barry and Kymlicka, I propose to introduce the concept of 'multicultural measures'. By a multicultural measure, I mean an exceptional, temporary measure directed towards a specific cultural, ethnic or religious group in order to give more substance to the concept of equal opportunity. So, the different treatment is not the consequence of the acknowledgement of 'special' minority rights – 'above and beyond the common rights of citizenship' – but the result of

the practical application of generally acknowledged individual and liberal citizenship rights (e.g. freedom of religion, right to education, right to work, etc.). For impartial liberalism can make way for a different approach for some groups, if this approach is based on the idea that equal opportunities can only be guaranteed by acting differently towards different groups.

Unlike minority rights, a multicultural measure is not permanent. The special treatment of certain (cultural minority) groups may only serve to neutralize an unfair inequality: discrimination in the labour market, obstructive mechanisms in education, but also inequality regarding access to and experience of the own culture.

To treat the access to one's own culture and cultural membership as primary social goods (see earlier) does not mean, however, that all kinds of specific measures should be introduced to guarantee that people can practise their religion and culture 'in equality' and/or 'in full'. First, all its members must voluntarily accept the culture in question, and there must also be sufficient exit options. A liberal government should try to discourage or even forbid illiberal cultural elements. In such an event, other human rights take precedence over religious and cultural rights. Second, there should be recognition of a 'sufficiency principle', which requires governments to ensure that people can practise their culture at a 'minimum acceptable' level. As long as cultural experience remains below the minimum acceptable level, governments should intervene with special support measures. But once above the minimum acceptable level, governments should take no further action, even though people may still encounter substantial differences in their opportunities to practise their own culture.

AMBIGUITY IN KYMLICKA'S LIBERAL ARGUMENTATION FOR POLYETHNIC MINORITY RIGHTS

This concept of liberal multicultural measures overlaps with most of Kymlicka's polyethnic rights and special representation rights. But I try to argue in such a way that Barry's criticism of Kymlicka's minority rights is negated. Critics can remark that the argument of this article cannot be a genuine alternative to Kymlicka's theory of multiculturalism. They are right. I do not claim to provide a general alternative, especially because I do not enter the crucial discussion about self-government rights for national minorities. I only want to consider here the discussion about the minority rights for ethnic minorities. And even on that point our argument is rather a *reformulation* than a real alternative of Kymlicka's idea of polyethnic rights.

Because Kymlicka is a liberal political philosopher, he has argued his polyethnic minority rights in such a fashion that they are not in conflict with

egalitarian liberal philosophy. First, he makes it clear that external protections may never be used to permit cultural groups to frustrate the fundamental rights and freedoms of their members (Kymlicka, 1995: 34–44, 152–72). Polyethnic rights want to protect specific religious and cultural practices which are disadvantaged or which might not be adequately supported by existing legislation, but have to reject internal restrictions. Polyethnic immigration policies are intended to enable immigrants to express their ethnic identity, and to reduce some of the external pressures on them to assimilate. But along with Kymlicka, it is perfectly logical (and liberal) to accept that aim, while denying that groups are entitled to regulate individuals' freedom and to impose practices on members who do not wish to maintain them.

Second, Kymlicka is justifiably reluctant to use the term 'collective rights', because the individual is the only recognized bearer of moral and political rights in liberal thinking. Since groups cannot be rights bearers, he prefers to use the expression 'group differentiated' or 'minority rights' (Kymlicka, 1989: 138–40, 1995: 45–48, 2001: 71–82). As a liberal, Kymlicka remains an individualist: the individual is morally prior to the community, and the community matters only because it contributes to the well-being of the individuals who compose it. But moreover, he argues, most group-differentiated rights are not about the primacy of communities over individuals. Rather, they are based upon the idea that justice between groups requires that the members of different groups be accorded different rights. For Kymlicka, group-differentiated citizenship is thus a matter of justice between members of different groups. Third, Kymlicka makes a qualitative distinction between three forms of group-specific rights: self-government rights for national minorities or indigenous peoples, polyethnic rights for immigrant groups and special representation rights. Immigrants have fewer rights than national minorities (Kymlicka, 1995: 26ff.).³ Moreover, unlike self-government rights, polyethnic rights are intended to promote integration into a larger society, not self-government.

With these arguments, Kymlicka goes a long way towards disarming classical liberal criticisms of minority rights. Yet, Kymlicka's terminology continues to cause confusion. Terms such as 'group-differentiated citizenship', 'polyethnic rights', and 'rights above and beyond the common rights of citizenship' irritate egalitarian liberals as a red rag irritates a bull, because these terms give the impression that multiculturalism has to go beyond liberalism.

Kymlicka is also ambiguous on the purpose of polyethnic minority rights. On the one hand, he writes that he will only endorse special rights for ethnic minorities if there actually is a disadvantage with respect to cultural membership (Kymlicka: 1989: ch. 9, 1995: 109ff.). On the other hand, he argues that minority rights are 'not seen as temporary' because the cultural differences they protect are not something we seek to eliminate (Kymlicka,

1995: 31). Kymlicka is not clear whether his minority rights serve to protect a cultural identity as an end in itself, or whether they are intended to negate an inequality and are merely means in order to achieve more general and justice-based goals, such as equal opportunities and equal freedom (e.g. the freedom of religious practice). In this fashion, Kymlicka and many other multiculturalists with him, leave themselves vulnerable to Barry's criticism.

LIBERAL AND TEMPORARY 'MULTICULTURAL MEASURES' INSTEAD OF MINORITY RIGHTS

Egalitarian conditions for group-differentiated measures

I propose to resolve those shortcomings by talking only in terms of 'multicultural measures' instead of special (polyethnic, minority) rights. The multicultural group-specific measures are always legitimized by the common rights of citizenship, not by 'special' minority rights. We should think in terms of equal citizenship, instead of Young's differentiated citizenship. Application of the common rights of citizenship can require group-differentiated measures under particular circumstances, as all liberals will agree. Special treatments for the members of certain groups are not necessarily contrary to basic liberal principles.

Also Barry writes explicitly that his egalitarian liberalism does not rule out group-based policies (Barry, 2001: 12–3, 113ff.). The individualistic nature of liberalism does not preclude policies that provide special benefits for people based on their membership of particular groups. Egalitarian liberalism takes the view that any disadvantage for which the victim is not responsible establishes a *prima facie* claim to compensation. On this basis, egalitarian liberal principles should provide no objection to special measures for providing assistance for members of disadvantaged groups (Barry, 2001: 114; Dworkin, 1981).

Group-differentiated measures must, according to egalitarian liberals, comply with well-defined conditions. The beneficiaries of the special treatment are assumed to be people who want the same things as the rest of the population and simply lack the resources that would enable them to enjoy more of those things. Moreover, the special measures are needed to redress inequality of opportunity or resources, and as such the special measures have to be temporary, because the measures tend to decrease diversity and social isolation.

Barry acknowledges that 'there may be cases in which a system of group-based rights for those suffering from systematic disadvantage will be a way of helping to meet the egalitarian liberal demand that people should not have fewer resources and opportunities than others when this inequality has

arisen out of circumstances that they had no responsibility for bringing about' (Barry, 2001: 13). *But*, he argues, the multiculturalists' argument for cultural based rights does not depend on this kind of inequality because, according to multiculturalists, the special minority rights are granted to groups defined by their distinctive cultural attributes, and these special rights will be needed permanently – or at any rate as long as the group retains its cultural distinctiveness. Moreover, he writes, 'if the group did no longer need special rights, that would not be regarded as a cause for celebration, because it would be taken to suggest that the support for the group's culture had been insufficient to prevent its members from assimilating to that of some larger or more powerful group' (Barry, 2001: 13).

Multicultural measures as liberal measures

In the following discussion, I will show that the concept of multicultural measures is a *liberal* one because it complies with the conditions that Barry and other egalitarian liberals stipulate for the special treatment of groups. However, various elements that I propose can also be found in the work of Kymlicka (not without reason a 'liberal' political philosopher), with the difference that I have applied modified terminology and have adjusted certain arguments in order to disarm the criticism of liberals such as Barry. I hope that (our argument for) the concept of multicultural measures is clearer on those points than Kymlicka's argument for minority rights, which remains rather ambiguous.

In the first place, multicultural measures should be recognizable as liberal measures that everyone would support, regardless of their individual identity and view of the good life. They concern the application of a universal primary social good. Thus Barry does not have a problem with, for instance, affirmative action in relation to jobs or special funding for education to help minority groups whose members suffer systematic disadvantage, when 'disadvantage' is defined in universal terms such as the lack of things (resources and opportunities) whose possession would generally be agreed to be advantageous.

But, contrary to Barry's opinions, it is difficult to deny that access to the own 'societal culture as context of choice' is also a primary good – i.e. 'a good which people need, regardless of their particular chosen way of life, since it provides a context within which they make those particular choices' (Kymlicka, 1995: 214; cf. earlier). Whenever access to the culture of choice is unreasonably obstructed by arbitrary historical circumstances, multicultural measures can justifiably be used to redress the balance.

Second, it must continually be emphasized that multicultural measures are only necessary if the measures actually serve to rectify an unchosen, unfair disadvantage and inequality. The special treatment must be the result of specific application of a universal and individual right that would

otherwise have been denied.⁴ It has nothing to do with minority or group rights which are aimed towards recognition, protection, and perpetuation of cultures and group identities for their own sake. Like Barry's group-differentiated measures, these multicultural measures are not designed to reinforce differences, but to promote inclusion and enable integration of the beneficiaries. Differential treatment of cultural groups can, under well-defined circumstances, be a way to achieve a desirable level of equality (Miller, 2002; Kymlicka, 1995: 114ff.). In this context, multicultural measures should always be temporary – as long as the unfair inequality persists. Once the inequality ends, or is no longer unfair, there is no longer any valid reason to give the group special treatment.

However, Kymlicka (1995: 176ff.) emphasizes that the philosophy underlying polyethnic rights is an 'integrationist one', and he can not exclude that the demands of some groups for permanent polyethnic rights will take the form of withdrawal from the larger society. We can think of the example of Roma or Muslim groups who have demanded the same sort of exemption from a liberal education granted to the Amish in the USA. The only thing that Kymlicka writes is that these kind of demands are 'atypical' and that they have not been accepted in Canada, the USA or Australia, but he gives no philosophical argument why they cannot be accepted. On this point Kymlicka is not clear enough. As we have already seen, the same problem of ambiguity arises about the purpose and temporality of his polyethnic minority rights.

For Barry it is clear, special group-differentiated measures are always temporary, because special treatment is justifiable only for as long as the unfair inequality persists. For that reason, members of a cultural group can never be entitled to continue special rights after resources and opportunities have been equalized.

The multicultural measures that I propose in this article are equally clear in purpose: they serve to increase social integration and eliminate unfair inequalities and are therefore, at least in principle, temporary. The difference with Barry is that I also regard unequal access to the preferred culture of choice as a relevant inequality of resources and opportunity. Barry denies this.

SOME EXAMPLES OF MULTICULTURAL MEASURES

An example of a multicultural measure such as described above is the directive issued by the Flemish Minister of Education (16 august 2002), which determines that children are authorized to be absent from school for 'the celebration of holy days which are inherent to the constitutionally recognized religion of a pupil'.⁵

This measure was criticized because it awarded group rights solely based on membership of a particular religion. However, it is easy to disarm this criticism. This measure is not applied on the basis of membership of a particular group, but on the basis of the *general* right to religious observance.⁶ We can imagine that based on Rawls's original position, a choice could be made to spread public holidays in such a fashion that the various religions would benefit. However, the legally fixed public holidays are based only on the Catholic calendar. The relevant minorities were not present during the historical period when the holidays were fixed. They entered the game after it had already begun.

If the right to religious freedom is to be actively implemented, then government must create a framework that will provide people a minimum acceptable level of freedom to observe their religion. The provision of that *same* right to different religions can require the application of *differentiated* measures. Since celebration of certain religious holy days lies at the core of religious life, we can assume that anyone unable to take time off work or school for these holidays will fall below the acceptable minimum level of religious experience. Based on the stated 'sufficiency standard', it is therefore legitimate for governments to take special measures to permit people a minimum level of religious observance. The ministerial directive fulfils this need. Reference to the sufficiency standard also makes clear why the directive does not provide authorization for children to be absent from school for longer periods in order to make a pilgrimage to Mecca, even though such a pilgrimage is deeply important to Muslims. There are more than enough opportunities during the extensive school vacations for such a pilgrimage, and therefore a minimum level of religious freedom on this point is guaranteed.

Opponents of the ministerial directive also refer to the hazard of the slippery slope. What if, after a while, certain groups request reduced school attendance because education is not appropriate to their culture, and what about the children who are kept away from school to travel with their parents outside the regular school vacations? Regarding the latter, we can be brief: the decision to travel is a *choice*, and as such is of a different order than the *circumstances* of rightful membership of a religious group. Membership of a certain religion is not a choice (Jones, 1994). Inequalities that fall outside of individual responsibilities should be eliminated as far as possible under egalitarian liberalism (Dworkin, 1981; Kymlicka, 1989; Rawls, 1971: 96).

The proposed measure does not open the door to a regulation such as that existing in the United Kingdom, and which is defended by Kukathas (1995: 248): Roma are only required to send their children to school for half the normal duration (and because of the lack of control, this *de facto* amounts to no school attendance at all). However, the desire for holidays on a few specific days, as allowed by the Flemish ministerial directive, is not

motivated by a wish to reduce school attendance for cultural reasons. It is the result of a desire to give equal opportunities for the celebration of religious holy days. Furthermore, this measure is also temporary, in the sense that it could be repealed if it became redundant, for instance following a fundamental rearrangement of the school year. It is possible that the measure will be 'de facto' a permanent measure because such a rearrangement will never occur, but *in principle* it is a temporary one. The measure is not an end in itself, but is only necessary as long as the unfair inequality with other acknowledged religions persists. Once the inequality ends, or is no longer unfair, there is no longer any valid reason to give the children of the religions that are mentioned in the directive a special treatment.

In fact, the ministerial directive is an example of the application of the controversial *rule-and-exemption approach*. There are also other situations in which the *rule-and-exemption approach* can be applied as a multicultural measure. There are for instance schools that maintain rules regarding school uniforms yet permit Muslim girls to deviate from the rules by wearing headscarves (cf. Barry, 2001: 49ff.). Another classic example is that of the turban-wearing Sikhs, who in many countries are relieved of the obligation to wear motorcycle crash helmets or building site hard hats. The application of the *rule-and-exemption approach* must be considered in context but, all things considered, it will usually be found better to enforce the rules for everybody, or to relax the rules for everybody. 'Usually, though, either the case for the law (or some version of it) is strong enough to rule out exemptions, or the case that can be made for exemptions is strong enough to suggest that there should be no law anyway' (Barry, 2001: 39).

An example of the latter is the decree introduced in Flanders to allow human burial in other coverings than the traditional coffin. This law change arises from the desire of Muslims not to bury their dead in coffins. Instead of allowing exemptions to the law, it was decided to change the law itself. In the case of ritual animal slaughter in Flanders, neither law change nor the *rule-and-exemption approach* has been used. Yet the government has still taken a multicultural measure: local authorities are encouraged to arrange for temporary slaughter floors alongside the recognized abattoirs, where it will be possible to slaughter animals in a humane and environmentally friendly fashion, with respect for Muslim traditions.

Many other multicultural measures can be considered in the same light, but without using the *rule-and-exemption approach*. We might consider special subsidies for schools serving high concentrations of minorities, positive action in the labour market (quotas, special training courses) directed towards immigrants, free language tuition for newcomers, etc. They should always be temporary measures based on universally applicable individual rights that are designed to counter unfair inequalities. The politics of affirmative action or positive discrimination is legitimized when it temporarily gives preferential treatment to disadvantaged groups, with

the aim of eventually removing disadvantages and achieving a situation of equality.

Finally, let me cite one more example concerning multinational multiculturalism in Belgium. There are special measures implemented by Brussels or local authorities around the language border in order to guarantee bilingual access to schooling and social services, which can be regarded as multicultural measures. However, such measures can only be justified when required to provide Flemish and French speakers with access to essential services such as education and medical care in their native language, but not to protect the language as such (as in Quebec). The legitimacy of such measures ceases as soon as the injustice has been removed, which – bearing in mind the sufficiency norm – requires access to an adequate number of schools and hospitals, not necessarily an equal number of Flemish- and French-speaking facilities. Again, in principle these measures are temporary, and are only valid as long as the unfair inequality persists, but in practice they often assume a permanent character.

CONCLUSION

In this article, the concept of a ‘liberal multicultural measure’ has been developed and illustrated. Despite the substantial parallels with Kymlicka’s minority rights, I have emphasized a number of aspects whereby multicultural measures should become acceptable for those egalitarian liberals who distrust minority rights in the form advocated by the majority of multicultural theorists. My plea for these multicultural measures shows that the egalitarian liberal perspective has more multicultural potential than is generally acknowledged.

Notes

- 1 For a discussion of the difference between radical, ideological secularism on the one hand, and moderate, pragmatic secularism on the other hand, see Modood, 1998: 390ff.
- 2 The quote is from Kymlicka, 1995: 26.
- 3 The distinction used by Kymlicka between national minorities and immigrant groups, and the resultant hierarchy of minority rights, is hard to defend. National minorities would have more rights (i.e. self-government rights and the right to re-create their own societal cultures) than immigrant groups, since the latter (as distinct from refugees) have voluntarily left their homeland. When people choose to leave their own culture, they know that their success will depend on integrating into the new society. This gives rise to two problems. In our world, the line between involuntary refugees and voluntary immigrants is difficult to draw. Many people leave for a combination of very different reasons, in which

push and pull, as well as psychological and social, or political and economic factors can play a part (cf. Richmond, 1994: 67–70). Furthermore, children of immigrants who are born in the new country are not there voluntarily. Kymlicka (1995: 215–16) avoids the problem by stating that ‘we must strenuously work to ensure that the children integrate into mainstream’.

- 4 As Miller (2002: 187) remarks, in this context it is also interesting to note that rights relating to minority groups as defined in ‘the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted by the General Assembly of the UN in 1992 as a further supplement to the original *Declaration of Human Rights*, . . . turn out to be amplifications of rights already ascribed to individuals in the Universal Declaration – for instance the right to participate in political decision-making, the right to free association, and so forth. All that the new Declaration is doing here is underlining the point that people should not be deprived of such rights because they belong to a minority group.’
- 5 Specifically, it concerns the Islamic festivals of Sugar and Sacrifice (each one day); the Jewish New Year (2 days), Yom Kippur (1day), Feast of the Tabernacles (4 days), Shemini Atseret (last 2 days), Lesser Day of Atonement (1day), Purim (1day), Passover (4 days), and Pentecost (2 days) in the Jewish faith; Easter Monday, Ascension Day, and Whitsun in the orthodox Christian faith, for the years when this does not coincide with the Catholic holy days
- 6 Cf. Article 9 (1) of the European Convention on Human Rights, which ‘provides that everyone has a right to freedom of religion, including the right to manifest this religion in practice and observance’, and Article 27 of the International Covenant on Civil and Political Rights, which says that members of minority groups ‘shall not be denied the right . . . to profess and practice their own religion’.

References

- Barry, B. (2001) *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity.
- Carens, J.H. (2000) *Culture, Citizenship and Community: A Contextual Exploration of Justice as Even-handedness*. Oxford: Oxford University Press.
- Dworkin, R. (1981) ‘What is Equality? Part II: Equality of Resources’, *Philosophy and Public Affairs* 10(4): 238–345.
- Jones, P. (1994), ‘Bearing the Consequences of Belief’, *Journal of Political Philosophy* 2(1): 24–43.
- Kukathas, C. (1995) ‘Are There Any Cultural Rights?’ in W. Kymlicka (ed.) *The Rights of Minority Cultures*, pp. 228–56. Oxford: Oxford University Press.
- Kukathas, C. (1998) ‘Liberalism and Multiculturalism: The Politics of Indifference’, *Political Theory* 26(5): 686–99.
- Kymlicka, W. (1989) *Liberalism, Community, and Culture*. Oxford: Clarendon Press.
- Kymlicka, W. (1995) *Multicultural Citizenship*. Oxford: Oxford University Press.
- Kymlicka, W. (2001) *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*. Oxford: Oxford University Press.
- McLachlin, B.P.C. (2003) ‘Imaging the Other: Legal Rights and Diversity in the Modern World’, *Associations* 7(1): 11–22.

- Miller, D. (2002) 'Group Rights, Human Rights and Citizenship', *European Journal of Philosophy* 10(2): 178–95.
- Modood, T. (1998) 'Anti-essentialism, Multiculturalism and the "Recognition" of Religious Groups', *The Journal of Political Philosophy* 6(4): 378–99.
- Parekh, B. (2000) *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. New York: Palgrave.
- Räikkä, J., ed. (1996) *Do we need minority rights? Conceptual Issues*. The Hague: Martinus Nijhoff.
- Rawls, J. (1971) *A Theory of Justice*. Oxford: Oxford University Press.
- Rawls, J. (1988) 'The Priority of Right and Ideas of the Good', *Philosophy and Public Affairs* 17(4): 251–76.
- Raz, J. (1994) 'Multiculturalism : A Liberal Perspective', in J. Raz, *Ethics in the Public Domain*, pp. 170–91. Oxford: Clarendon press.
- Richmond, A. (1994) *Global Apartheid: Refugees, Racism, and the New World Order*. Oxford: Oxford University Press.
- Tamir, Y. (1993) *Liberal Nationalism*. Princeton, NJ: Princeton University Press.
- Taylor, C. (1992) 'The Politics of Recognition', in A. Gutmann (ed.) *Multiculturalism and the Politics of Recognition*, pp. 25–73. Princeton, NJ: Princeton University press.
- Tully, J. (1995) *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press.
- Young, I. (1989) 'Polity and Group Difference: A Critique of the Ideal of Universal Citizenship', *Ethics* 99(2): 250–74.
- Young, I. (1990) *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press.

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The limited resources of liberal multiculturalism

A response to Patrick Loobuyck

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According to Patrick Loobuyck, one problem with multiculturalism as a set of political ideals is the tendency of some 'anti-liberal multiculturalists'