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LIBERAL EQUALITY AND THE POLITICS OF RELIGION

Abstract

According to the traditional conception of liberal egalitarianism, the state should be neutral on religious issues and the rights granted to citizens to practice their religions should be universal, and thus blind with respect to religious differences between people. In this paper, I critically examine both components of the traditional view. I argue: (1) state neutrality is compatible with much more religion in the public sphere than it is usually thought, (2) liberal egalitarians should in any case abandon their commitment to state neutrality, and (3) they should likewise abandon the view that all (legitimate) religious rights are difference-blind, and so make room for group-differentiated religious rights as well.\(^1\)

Key words: liberal egalitarianism, state neutrality, difference-blind rights, secularism, religious diversity

Introduction

According to liberal egalitarians, state policies should ultimately be based on two core values, namely liberty and equality. Thus, the state should secure basic liberties such as freedom of speech, freedom of movement and freedom of religion, and it should also secure equality of opportunity in the distribution of social, economic and perhaps also other kinds of goods. When specifying what liberal egalitarianism implies in the case of policies on religion, over and above freedom of religion, such egalitarians have traditionally claimed that the state should be neutral on religious issues and the rights granted to citizens to practice their religions should be universal, and so blind with respect to religious differences between people.

Roughly, state neutrality is the doctrine that the state should not favour any particular conception of the good. Here, a ‘conception of the good’ denotes a set of prudential and moral value judgements about how to live one’s life. Such a conception may include, for example, views about what makes a life truly fulfilling, what cultural activities are worth engaging in, and whether it is morally permissible to have an abortion. More importantly, in the present context, a conception of the good may also include religious beliefs and commitments of various kinds.
The claim that the state should be neutral between different conceptions of the good can be said to express an ideal of equality. The idea is that the state should not be partial towards some citizens at the expense of others by favouring the particular conception of the good to which the former group subscribes. This idea can be traced back to the Enlightenment, where it was developed in response to the ongoing religious conflicts and wars in Europe, but it continues to play an important role in political thought (Rawls 1993; Sher 1997).

The precise implications of the doctrine of state neutrality depend on the particular version we assume, and I shall return to this issue below. However, the doctrine has often been employed by liberals arguing for a (further) secularisation of society. More specifically, it has been used to justify, for example, the rejection of an established church, religious holidays, religious activities in schools, religious arguments in politics, and more generally the presence of religion in the public sphere (Audi 2000). Thus, the doctrine of state neutrality has been taken to imply that the state should place various restrictions on religious manifestations and activities and in particular, it should do so insofar as these manifestations and activities can be associated with the state itself. Furthermore, if this is how we understand neutrality, this ideal can be in tension with another liberal ideal mentioned above, namely freedom of religion.

It is not just political theorists who invoke neutrality in defence of secularism, politicians in Europe are also increasingly employing this argumentative strategy. In large part, this seems to be in response to the immigration of non-westerners and the resulting increases in religious diversity. A case in point is a new law proposal from the Danish government, according to which it would be illegal for judges to wear religious symbols in courts of law. This law is explicitly justified in terms of the neutrality of the state.

As pointed out above, liberal egalitarians have traditionally combined the doctrine of state neutrality with the claim that the rights granted to citizens should be difference-blind. Roughly, this means that these rights are extended to everyone, irrespective of his or her religious or cultural commitments. And indeed, the requirement that rights should be difference-blind appears to capture the ideal of equality of opportunity rather nicely. To illustrate, the state should not provide tax deductions for, say, Christians, while withholding that same right from Jews and Muslims. Similarly, if some religious community has the right to build places of worship or even to have them provided, other groups should have this right as well. Indeed, some of the most important and spectacular achievements in eradicating discrimination and inequality have consisted in granting to all rights that were hitherto reserved for a privileged group. Think, for example, of the introduction of women’s right to vote and the abolition of racial segregation in the United States and South Africa.

In this article, I first consider which policies regarding religion are compatible with state neutrality. I argue that neutrality is much more accommodating towards religious expression, activity and argument in the public sphere than it is often thought to be and indeed that neutrality by no means implies a thoroughly secular state. I then challenge the traditional liberal framework and argue that liberal egalitarians would be well advised to do away with conceptions of equality that restrict the state to neutrality and difference-blind rights. Rather, the state should sometimes adopt policies that are not
neutral, for example, educational policies that aim at furthering the personal autonomy of school children, where such autonomy is part of a conception of the good. This may be legitimate, even if it causes children to critically question the religious beliefs and values with which they have been brought up. Likewise, the state may sometimes be justified in granting rights to particular groups, where these rights are therefore not difference-blind, for example, an exemption for Sikhs from the general requirement to wear safety helmets on construction sites such that they can wear a turban instead.

I should emphasise that my aim is not to try to rebut liberal egalitarianism, but rather to develop a more plausible version of this view. In fact, I believe that the changes I propose will make this view both more liberal and more egalitarian.

Liberal neutrality

We need to distinguish between different conceptions of state neutrality. According to the first conception, the state should ensure that its policies have equally good consequences for individuals, irrespective of their particular conception of the good (Kymlicka 2002: 218). However, this ideal of neutrality is generally considered implausible; in part because the state should then subsidise even very expensive conceptions of the good at much higher levels than cheaper conceptions, and do so even if the individuals who have the more expensive conceptions could easily and non-intrusively be persuaded to develop cheaper conceptions instead.

Let me briefly also mention a second possible reading of the ideal of state neutrality, according to which the state should ensure through its policies that individuals have equal opportunities to live in accordance with their conceptions of the good. Thus, one of Robert Audi’s principles for the separation of church and state, namely what he calls the ‘equalitarian principle’, does indeed seem to include a concern for equality of opportunity (Audi 2000: 36). Likewise, Veit Bader’s principle of relational neutrality – which requires a state «equidistant to both religious and secular worldviews and practi-
Nordic Journal of Religion and Society 22:2

ces» – seems to go some way towards accommodating different religious and secular groups by giving them equal opportunities (Bader 2007: 101). However, neither Audi nor Bader provides very precise characterisations of their respective principles. And presumably, the very different conclusions they draw from their principles are to be explained by differences in their conceptions of equality of opportunity, at least in part.

This reading of state neutrality, according to which the state should ensure through its policies that individuals have equal opportunities to live in accordance with their conceptions of the good, would simply amount to equating state neutrality with the liberal egalitarian ideal of equality of opportunity, and so not give rise to an ideal of state neutrality in any distinctive, and so distinctively interesting sense. Nevertheless, I shall briefly return to this idea towards the end of the present section.

According to a third form of state neutrality, the state must not justify its policies on the basis of any specific conception of the good (Rawls 1993: 193–194). Thus, this form of neutrality is not concerned with the consequences of state policies, but with their justification. One undetermined issue concerns how to identify the state’s justification for a given policy, but I shall sidestep this issue here. Henceforth, I shall simply refer to this form of neutrality, which is the one I will focus on, as the ‘doctrine of state neutrality’.

In order to fully understand this doctrine, we need to distinguish between a political conception and a conception of the good (Rawls 1993: 11–15). While both include value judgements, the former conception is concerned only with principles of liberal justice that apply to the most basic institutions of society, whereas the latter is concerned with more specific or ‘thick’ claims about virtually any aspect of an individual’s life and how she should go about organising it. Rawls’ principles of justice exemplify a political conception, whereas claims that one should only eat meat that has been ritually slaughtered or that men should wear a turban or women a hijab derive from a conception of the good. This, however, does not fully clarify the distinction and I am not even sure that, ultimately, it can be drawn in a plausible way. Nevertheless, for present purposes, we shall merely take it for granted and assume a sort of intuitive understanding thereof.

What, then, is a religious conception of the good? In order to be a religious conception, the relevant values must have some kind of religious underpinning. The main idea is that these values are justified with reference to, or are at least in some other appropriate sense associated with, the existence of a super-natural being of some kind (such as God). Again, this is somewhat vague, but I will not attempt (nor do I need) greater clarity here.

Another distinction often associated with the doctrine of state neutrality is that drawn between the public and the private spheres. The idea is that there is a sphere of private morality governed by conceptions of the good, and a public sphere that is (or should be) governed by a political conception of justice. Thus, different kinds of values have legitimacy in these two spheres. Like the other distinctions mentioned so far, the distinction between the public and the private is far from clear-cut, but again, I shall merely assume an intuitive conception thereof.
With these distinctions in place, we can turn to the question of how neutrality relates to secularism. In itself, the doctrine of state neutrality does not rule out the presence of religion in the public sphere. Rather, it merely implies that insofar as religion is present in this sphere and is so because of state policy, that policy must have a neutral justification. Thus, the state may legitimately have a policy that allows employees in public institutions to express their religion in the form of religious symbols, such as with crucifixes or hijabs, if for instance it justifies this rule in terms of freedom of religion. Likewise, the state may well support religious activities, financially or otherwise, say because doing so will promote self-respect and political participation amongst religious minorities. In fact, it may in principle even have an established church, as long as the justification is a neutral one, for example that it is the only way of ensuring the sort of social and cultural cohesion necessary for solidarity amongst citizens and so a precondition for implementing equality. (Note that the point is not that this is a good argument for having an established church – I don’t think it is – but merely that it is, in the relevant sense, a neutral argument. It is an argument that is compatible with the doctrine of state neutrality.)

Thus, the doctrine of state neutrality does not in and of itself prevent very many, if any, kinds of religious manifestations or activities in the public sphere. What this doctrine does rule out is a policy that invokes the superiority of a religion, qua religion, as part of its justification. Likewise, it rules out policies on religion that are ultimately justified in terms of, e.g., nationalist conceptions of what it means to be English, French or Danish. And historically, of course, many official policies on religion have had just such forms.

I also want to take a closer look at a claim that is frequently made by liberals in contemporary political debate, namely that religion takes up too much space in the public realm (in a Danish context, see, e.g., Jarlner and Jerichow 2005). As we have seen, this claim cannot be derived from the doctrine of state neutrality itself, as this doctrine concerns only justifications. But perhaps it has merit nonetheless. In the following, I shall first consider two particular settings in which it may be claimed that religion takes up too much space, namely, education and politics. Then I shall consider possible justifications for this claim.

Let me be specific. A few years ago, my son, Tristan, attended a day-care centre in Nørrebro, a part of Copenhagen with a great deal of ethnic and religious diversity. Here, although perhaps many of us often fail to notice it, religion plays an important role in the children’s lives. Thus, they have a holiday at Christmas, and they spend a great deal of time in December celebrating this event. They draw pictures of Santa Claus and angels, read stories about Joseph and Mary, watch movies about Christmas, and all this involves, in one way or another, symbols associated with Christianity and, in particular, the birth of Christ. Likewise, they have a holiday at Easter. And every morning, they raise the Danish flag with the white cross.

Furthermore, the staff talks to the children about why some of them eat pork and others don’t, which is something they have of course wondered about. And the children themselves often talk about, e.g., Christianity and Islam. This often came out in conversations with my son; for example, one day when Tristan asked me whether it is in
fact true, as claimed by another boy, Jihad, that Allah (which Tristan pronounces in Arabic) is stronger than Obelix (a famous cartoon figure). More generally, the children at the day-care centre position themselves and each other in relation to their religions, or the absence thereof. And so I would say that Tristan’s life at the day-care centre was not just affected by, but actually loaded with religion.

Nevertheless, I predict that not many people, including liberals who declare themselves opposed to religion in the public sphere, will be too disturbed by much of this. For example, it would be silly to suggest that children should not draw Santa Claus, angels and other Christmas symbols. (However, for certain reservations regarding the singing of Christmas carols in schools, see Audi 2000: 53–54).

Thus it would appear that liberals who say they want religion out of the public sphere do not quite mean what they say. Perhaps the explanation is that, in part, the role of religion at, e.g., day-care centres and schools tends to go largely unnoticed. This, in turn, may be because many of us are accustomed to thinking that it is appropriate to celebrate Christmas, for example, and even fail to think of this as a particularly religious event. On the other hand, I would suggest that for many Muslims it is in fact fairly obvious that these are religious events. Indeed, perhaps the most striking feature of the role played by religion in Tristan’s day-care centre is that there is no celebration in connection with, e.g., Eid, even though most of the children are actually Muslims.

The other public dimension I want to consider is politics, because this is a sphere in which religion and religious argument appear to be particularly troubling. Consider, for example, religiously-based legal systems such as Sharia. Indeed, in an editorial in the Danish newspaper Weekendavisen, the editor proposed that religious arguments should not be used in the public sphere because they are based on faith and so cannot be supported by evidence (Knudsen 2007: 12). Thus, in a democratic society, politics must be based on claims that are capable of some kind of proof. This, however, is a very naïve picture of politics. Political arguments are not – and cannot be – based solely on premises that are capable of the sort of empirical proof to which the editor refers. Thus, politics is not just about the empirical consequences of various policies, but also about the values that make those policies and their implications just. For example, freedom of religion and state neutrality are distinctively liberal conceptions of justice.

In fact, the editor herself explicitly assumes such values when she claims: «What we need is not more religion in the public sphere. What we need to emphasise is rather that people need to show concern for other people …» (Knudsen 2007: 12, author’s translation). And this value, of course, is not capable of the sort of proof she requires for political argument.

In fact, it seems that arguments are no less available in the sphere of religion than in the sphere of politics. It is certainly possible to argue for and against the existence of God, for and against different interpretations of various religious texts etc. And it does not seem to me that such religious arguments need to be weaker than the sort of arguments usually invoked to support political values, including liberal egalitarian values.

Now, to put my cards on the table, I am myself an atheist and so believe that any religious argument suffers from the problem that it rests on at least one false premise. But this, of course, is itself a controversial claim of the kind that proponents of the
doctrine of state neutrality will consider an illegitimate basis for policy. Furthermore, in any case, it would be implausible to ban faulty arguments from the political sphere (and indeed very difficult to implement).

We should also consider that there may actually be various negative consequences stemming from excluding religious arguments from political life. If people do not put forward the arguments that in fact motivate them, but only secular arguments of the politically approved kind, the arguments that in fact motivate people may not be exposed to the kind of critical scrutiny generally valued by liberals. Thus, dubious and even dangerous ideas may go largely unnoticed and unchallenged. On the other hand, a public platform is likely to ensure a larger audience for dangerous ideas and this will of course have to be weighed against the beneficial effects of public scrutiny. But this is not so much an issue of religion, as opposed to the more general problem of how to handle dangerous ideas in the public sphere, whether they are religious (as with, e.g., religiously motivated oppression of gay people) or non-religious (e.g., fascism).

A different, less naïve idea, which nevertheless captures the notion that political arguments in the public sphere should have a suitable, non-religious form, has been proposed by John Rawls. Rawls does not differentiate between religious and other conceptions of the good and argues that, quite generally, a plausible political conception must be justifiable to individuals who hold quite different conceptions of the good in the private sphere, even non-liberal conceptions. Therefore, a political conception cannot rely for its justifiability on any particular such conception. A political conception in other words must be capable of what he calls an overlapping consensus. This does not mean that individuals will justify a political conception independently of their conception of the good, only that each is capable of justifying it by invoking his or her own such conception (Rawls 1993: 133–172).

This, of course, is also Rawls’ argument for the doctrine of state neutrality, but with the important addition that it is not just the state, but also organisations and individuals putting forth political arguments in public that should conform to a form of what he calls public reason. (For the related idea that political views should not be put forward in public unless one has, and is willing to offer, a secular reason for them, see Audi 2000: 86–96.)

Very roughly, public reason involves a broadly liberal conception of justice and certain guidelines of inquiry (Rawls 1993: 223–227). In particular, public reason does not invoke a conception of the good, including «comprehensive religious and philosophical doctrines» (Rawls 1993: 224–225). This means that individuals and organisations may justify policies quite differently in the public sphere from what they do in the private sphere. As Kymlicka puts it: «for Rawls, people can be communitarians in private life, and liberals in public life» (Kymlicka 2002: 236).

Note that Rawls’ view by no means rules out religious expression or activities in the public sphere. For example, it does not rule out the wearing of religious symbols such as a crucifix, a turban or a hijab. It pertains only to the ways in which political claims are justified. Furthermore, Rawls restricts the domain of public reason to what he calls ‘constitutional essentials’ and questions of basic justice, and thus the public reason constraint on public argument does not apply to all political questions (Rawls 1993: 214).
While the public reason constraint thus does allow some religious expression, activities and arguments in the public sphere, I nevertheless believe that it is too strong. Firstly, the constraint may seriously threaten the prospects for just policies, including liberal ones. Suppose, for example, that everyone except members of a certain religious group favours freedom of speech (or some other liberal principle). Suppose also that it would be a serious setback to free speech if this group cannot be persuaded. Suppose finally that while the group cannot be persuaded from within public reason, there is an argument that appeals to their religious teachings that will have just this effect. It seems implausible to claim that this religious argument should not be put forward in public, even if this is what it would take to convince them.

In fact, Rawls seems to believe that there can be cases in which citizens may invoke non-public reasons, but only insofar as this strengthens the ideal of public reason itself (Rawls 1993: 247). A case in point is abolitionists, who publicly argued that slavery is contrary to God’s law. Here, Rawls suggests that presumably they hoped for a just society in which the ideal of public reason could finally be honoured (Rawls 1993: 250). However, it is not clear whether the case of freedom of speech referred to above is similar, i.e., a case in which non-public reasons would promote public reason (in the long run). Rawls may argue that free speech is so fundamental an element of the political conception that it is essential to public reason.

Therefore, let us consider a different case instead. Suppose that to implement a policy of full egalitarian justice rather than a sufficientarian scheme that guarantees only a decent minimum to everyone, a certain religious group will have to be persuaded of the virtues of the more robust egalitarian policy. Suppose also that the only way this group can be persuaded is if it is publicly pointed out that there is a commitment to full equality in certain of its religious texts. Surely a commitment to full equality cannot be required by public reason, especially since Rawls characterises such reason as only ‘broadly speaking’ liberal. Nor need there be any reason to suppose that full equality will better honour public reason in the long run. Therefore, according to Rawls’ argument, it is impermissible to put forward the religious egalitarian argument. But, again, this seems implausible, assuming that the argument will secure the implementation of a worthy social ideal.

Nevertheless, it is worth noting that Rawls more recently weakened his position on public reason in a way that accommodates this objection. Thus, he later claimed that comprehensive doctrines of the good may in fact be put forward in political discussions, as long as, in due course, the views they are said to support are also justified in terms of public reasons (Rawls 1999: 144). Furthermore, he also claimed that one may publicly express opinions about what other people’s comprehensive doctrines imply with respect to a given political doctrine (Rawls 1999: 156).

Secondly, Rawls’ public reason constraint seems too strong because of the specific justification he seeks to provide for it. Rawls’ aim is to defend his liberal egalitarian principles on the basis of an overlapping consensus, but it is in fact quite unclear why non-liberals should accept the full Rawlsian liberal package on the basis of their own conception of the good. Consider for example a religious group that in the private sphere condemns heresy (questioning the orthodox religious interpretation), apostasy...
Nils Holtug: Liberal equality and the politics of religion

(abandoning one’s religious faith) and mandatory education. Why would this group, on the basis its own conception of the good, be committed to liberal rules in the public sphere that allow everyone to question their religion and abandon it? Likewise, why should we expect group members who for religious reasons oppose abortion in their private morality suddenly to accept women’s right to choice when they move into the public sphere? There seems to be no good reason for this (Kymlicka 2002: 233).

This problem for Rawls’ theory also brings out a more general problem for the doctrine of state neutrality. Rawls and other liberal thinkers hold that the ability to critically reflect on and revise one’s conception of the good is a value and is to be promoted in, e.g., the educational system. Underlying this value is an ideal of personal autonomy. This is also why liberals think favourably of the possibility of heresy and apostasy and require mandatory education. But as Rawls himself points out in *Political Liberalism*, autonomy (or what he calls ‘moral autonomy’) is in fact itself a conception of the good that expresses an ideal of leading one’s life reflectively, according to one’s own values (Rawls 1993: xlv). And so, the liberal policy on, e.g., heresy, apostasy and mandatory education, or more specifically its autonomy-based motivation, is incompatible with the doctrine of state neutrality.

I have now critically discussed various attempts to reduce religion in the public sphere. Do my critical conclusions imply that religion should be given carte blanche in this sphere? By no means, as none of this implies that religious expressions, activities and arguments in the public (and, for that matter, the private) sphere cannot be highly problematic. Nor does it necessarily rule out that some such expressions, activities and arguments should be illegal. Clearly, such expressions, activities and arguments can be racist, prejudiced, oppressive, harmful and unjust. But note that the problem with them is then not that they are based on religion, but that they are racist, prejudiced, oppressive, harmful and unjust.

Such immoral manifestations may of course be especially troubling if they appear in state policies or in the motivation thereof, e.g., when a state introduces Sharia in its legal system. Furthermore, it is worth pointing out that religiously motivated state policies may tend to divide rather than unite citizens (as indeed may other policies that are based on controversial political and moral ideas). Perhaps there may even be cases in which a ban on religious arguments might be in order, if this is judged necessary to prevent, for example, civil strife. But again, this is not because these arguments are religious or even because they express a conception of the good, but simply because they are divisive and cause civil strife.

Less dramatically, even if liberal egalitarians should give up the doctrine of state neutrality, they still have the conceptual resources to support opposition to an established church. Thus, an established church threatens equality of opportunity for members of different religious communities.

In fact, as noted earlier, equality of opportunity itself provides a possible reading of the ideal of state neutrality, although not a reading that preserves the distinctive significance of this ideal. Incidentally, equality of opportunity is also an ideal that seems compatible with a great deal of religion in the public sphere. To see this, consider for example a new law proposed by the Danish government, according to which it would
be illegal for judges to wear religious symbols in courts of law. To reject the charge that
this law is incompatible with anti-discrimination legislation, the government emphas-
ises that the law ensures equality of opportunity for religious groups since in fact all
religious symbols are rendered illegal. However, first, there are of course various ways
in which we may try to secure equality of opportunity. For example, we may allow ev-
everyone to wear the religious symbols he or she in fact prefers. And it is not clear why
the former way of securing equality of opportunity is preferable.

Second, it may be argued that a law to rule out judges wearing religious symbols is
in fact incompatible with equality of opportunity. For example, such a law will give
atheist judges the opportunity to express their conception of the good by not wearing
religious symbols, while denying female Muslim judges, who believe they are required
to wear headscarves for religious reasons, the opportunity to express their
religious conception.

To sum up, there is no easy, general liberal egalitarian argument against religion in
the public sphere, or even against religious arguments in politics. Rather, liberal egali-
tarians need to assess religious expressions, activities and arguments individually on
the basis of their compatibility with the core values of liberty and equality. And in this
respect, religious expressions, activities and arguments do not differ from other expres-
sions, activities and arguments.

**Difference-blind rights**

The other element of a traditional, liberal egalitarian position that I want to consider
here is the claim that rights should take a difference-blind form (where the term ‘dif-
ference-blind rights’ derives from Charles Taylor’s critical discussion of what he called
‘difference-blind liberalism’ in a pioneering article on multiculturalism; Taylor 1994:
62). Difference-blind rights are insensitive to cultural, ethnic and religious differences
between people. More precisely, they are not ascribed to – or withheld from – people
on the basis of their membership of cultural, ethnic or religious groups. Like the doc-
trine of state neutrality, this notion can be said to express a certain ideal of equality.
After all, it grants identical rights to everyone. Amongst other things, this means that
everyone has the same religious rights, irrespective of his or her particular religion.

Nevertheless, the suggestion that rights should take a difference-blind form rules
out a number of claims made by religious minorities to the effect that they should be
exempt from certain otherwise universal rules. Such claims may include, e.g., an
exemption for Jews and Muslims from a prohibition against ritual slaughter, and an
exemption for Sikhs from the requirement to wear safety helmets on construction sites
and crash helmets when riding motorbikes. These exemptions are ruled out by the
claim that rights should take a difference-blind form because they would involve with-
holding a certain requirement from a group on the basis of this group’s religious com-
mitments.

As noted, difference-blind rights can be said to express an ideal of equality, but there
are of course different egalitarian ideals floating around and they have importantly diffe-
rent implications with respect to difference-blind rights. At first sight, it may seem fair and indeed equal that rights are not ascribed to some without being ascribed to others as well. If all have the same rights, then people have equal opportunities and this is the kind of equality that ultimately matters, according to liberal egalitarians (Barry 2001: Ch. 2). However, on further examination, it is clear that difference-blind rights are neither necessary nor sufficient for the kind of equality of opportunity that matters according to liberal egalitarians (Holtug 2009). To see that they are not sufficient, consider a rule that requires everyone to be members of the Catholic Church and have no other religious affiliation. This is a difference-blind rule since it is extended to everyone, regardless of their membership of cultural, ethnic and religious groups. However, it can hardly be said to offer individuals equal opportunities in the required sense.

Nor are difference-blind rights necessary for equality of opportunity, or at least so I would argue. What equality of opportunity requires is that individuals have equally attractive sets of options, not necessarily that they have identical sets of options. Consider, for example, two individuals, one blind and the other deaf. These two individuals do not – in any straightforward sense at least – have identical sets of options. After all, only one of them can read, and only one of them can listen to music. Nevertheless, it is plausible to claim that there are possible social arrangements that would ensure equality of opportunity for them. Perhaps this would require compensating one of them more than the other for her disability, perhaps it would not. Nonetheless, it does seem that there is some possible social arrangement that would ensure the relevant kind of equality of opportunity for them, and would do so because it gave them equally attractive sets of options.

On the assumption that what justice requires, according to liberal egalitarianism, is equally attractive sets of options, it is clear that difference-blind rights are not necessary for equality of opportunity. We can give people equal opportunities by giving them different, but for them, equally attractive options. For example, perhaps a holiday at Christmas for Christians and a holiday at Eid for Muslims would have such an effect.

Yet, different ideals of equality of opportunity will have different implications for when justice requires difference-blind rights and when it requires group-differentiated rights instead. Thus, consider two ways in which ideals of equality of opportunity differ. They differ with respect to whether they aim for equality of opportunity for welfare (where ‘welfare’ denotes quality of life), or equality of opportunity for resources, or some other currency (see, e.g., Arneson 1989; Cohen 1989; Dworkin 1981a; 1981b). And they differ with respect to the notion of responsibility that they invoke. Let us consider these two dimensions of equality in turn.

According to what Dworkin calls ‘equality of resources’, but I shall (continue to) call ‘equality of opportunity for resources’, equality of opportunity roughly consists in equality of purchasing power (Dworkin 1981b). (In fact, Dworkin’s theory is more complicated but this brief characterisation will do for present purposes). Equality of opportunity for resources then holds individuals responsible for their choices in that it requires them to bear the costs (and entitles them to the rewards) of how they spend their time and wealth. Thus, if I spend my time and money less productively than you
do and therefore end up with fewer resources, I do not have a legitimate claim for compensation. What matters is that, initially, we had equal purchasing power.

Equality of opportunity for resources, then, does not entitle religious groups to complain that a certain difference-blind rule renders them worse off than others, if by ‘worse off’ they mean *worse off with respect to welfare* (or, for that matter, with respect to some distributive unit other than resources). Thus, even if a ban on ritual slaughter renders it more difficult for Jews and Muslims to satisfy their culinary preferences than it is for others, this does not violate the relevant kind of equality of opportunity. Rather, in order for a difference-blind rule to violate the relevant kind of equality, it would have to give individuals unequal opportunities with respect to *resources*. An example of this may be a case in which a helmet requirement on construction sites makes it impossible for Sikh men to obtain a fair income (although there is still the issue of their responsibility for the choice of wearing a turban; see below).

Equality of opportunity for welfare, on the other hand, will be more sensitive to differences in religious preferences. This is because differences in preferences may easily translate into differences in welfare. Thus, everything else being equal, Jews and Muslims may simply have a lower welfare than others do if there is a ban on ritual slaughter.

The other dimension in which different ideals of equality of opportunity differ concerns the issue of responsibility. Both equality of opportunity for welfare and equality of opportunity for resources will compensate the worse off for relevant disadvantages, but only insofar as they are not themselves responsible for being worse off. Therefore, should Jews, Muslims and Sikhs, for example, be held responsible for the disadvantages to which, respectively, a ban on ritual slaughter and a helmet requirement give rise? According to Dworkin’s theory, it seems that they should indeed be held responsible for these disadvantages. Dworkin suggests that individuals are to be held responsible for the disadvantages to which their preferences give rise unless they would in fact prefer not to have these preferences, in which case the preferences are to be compared to a handicap (Dworkin 2000: 82). And, in general, it seems plausible that religious people would not prefer to be rid of their religious preferences. Therefore, with this account of responsibility, Jews and Muslims are not denied the opportunity to eat meat even if ritual slaughter is prohibited, although they may of course choose not to make use of this opportunity (Barry 2001: 37). And there is no reason why equality of opportunity for welfare could not rely on a similar account of responsibility. In that case, while a ban on ritual slaughter may render Jews and Muslims worse off than others are in terms of welfare, they are to be held responsible for this deficit themselves.

However, I believe there are reasons to be sceptical with respect to this account of responsibility. Let me briefly mention two. First, it seems implausible that I am responsible for any disadvantage to which a preference of mine gives rise unless I would prefer not to have the preference. Thus, I have a preference for not being in pain and this is a preference I have no wish to lose (after all, it is rather useful when it comes to avoiding potentially dangerous situations). But surely I am not in general to be held responsible for disadvantages to which it gives rise.
Second, this Dworkinian account of responsibility is biased towards individuals who are reflective enough to have appropriate preferences about their preferences. Thus, someone who is in the grip of a craving and therefore too unreflective to form an appropriate higher-order preference will not be entitled to compensation, whereas a more reflective but similarly situated person may be (Cohen 1989: 926).

Instead, in light of the fact that religious beliefs and preferences are often first acquired during early childhood and so in a manner that involves circumstance rather than choice, and since they are often costly to get rid of, it may seem plausible that, in the main, individuals are not to be held responsible for them. And if so, the claim that a certain difference-blind rule unjustly disadvantages a religious group cannot in general be rejected by pointing out that members of this group are responsible for their religious preferences themselves and so also for the disadvantages to which they give rise.

To sum up this section, I have argued that liberal egalitarians should reject the notion that justice requires difference-blind rights only. This means that when religious minorities make claims for exemptions from general rules or policies, e.g., require access to ritualistically slaughtered meat in schools, or the possibility of wearing a turban or a hijab where this is in conflict with safety regulations or uniform requirements, we cannot simply dismiss such claims on the basis that they invoke group-differentiated rather than merely difference-blind rights. We need to consider the extent to which such group-differentiated rights may promote equality of opportunity. And here, I have suggested that different ideals of equality of opportunity will have importantly different implications with respect to when it is appropriate to extend group-differentiated as opposed to difference-blind rights to people. Conceptions that tend to render people responsible for their religious preferences will be less accommodating with respect to claims for special treatment from religious minorities than will conceptions that tend to deny such responsibility. And equality of opportunity for welfare will be more accommodating with respect to differences in religious preferences than will equality of opportunity for resources (see also Cohen 1999; Holtug 2009).

Notes

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