

Accommodation of Cultural Diversity in Liberal Societies: Law and Political Theory

Prof. Rainer Bauböck and Prof. Ruth Rubio-Marin

First term seminar – autumn 2010

Tuesdays 11:00 – 13:00, Seminar Room 2, Badia Fiesolana

Please register with Monika.Rzemieniecka@eui.eu (for SPS)
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Since the early 1990s the toleration, accommodation or recognition of cultural diversity have become a major topic in controversies in law and political theory. The debate has generally moved from special rights for cultural minorities and questioning the cultural, religious and gender neutrality of public spheres and institutions in liberal democracies towards greater emphasis on the need for integration and social cohesion and negative effects of multicultural policies on liberal equality or social solidarity. In this seminar we trace main lines of debates in political theory and match them with disputed court decisions and legal doctrines.

Seminar participation requirements:

Researchers from all EUI-departments are invited to participate. Participants are asked:

- to read the basic seminar texts (mandatory readings are highlighted in bold)
- to give one presentation (or more, if you want) based on additional reading, with an outline disseminated until Friday of the week before
- to engage actively in discussions, and this includes preparing comments on the topic of each week and the outline circulated

If you want to write a seminar paper for this seminar, please send an outline before 23 November. The full paper has to be submitted by 14 January 2011.

Seminar schedule and readings:

(1) 5 October 2009 11:00 – 13:00 **Introduction by the seminar instructors**

Texts:

Tully, James (2007) *The Practice of Law-Making and the Problem of Difference: An Introduction to the Field, in Multiculturalism and Law: a Critical Debate*, (ed. Omid. Payrow Shabani), University of Wales Press, pp. 19-41.

Bauböck, Rainer (2007) Beyond culturalism and statism. Liberal responses to diversity, Eurosphere Working Paper, March 2008, at: http://eurosphere.uib.no/knowledgebase/wpsdocs/Eurosphere_Working_Paper_6_Baubock.pdf

(2) 12 October 2009 11:00-13:00 **Multiculturalism and Its Critics**

In this session we will stage a debate between major contributors to the political theory controversies about multiculturalism. Participants will be asked to prepare a defence of a particular author's position and critique of rival theories.

Texts:

Barry, Brian 2001. *Culture and Equality. An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press: 292-328

Kukathas, Chandran 1992. "Are there any Cultural Rights?" *Political Theory* 20 (2):105-39

Kymlicka, Will. 1995. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Oxford University Press, chapter 5: 75-106.

Parekh, Bhikhu 1998. "Equality in a Multicultural Society" *Citizenship Studies* 2 (3):397-411.

Taylor, C. 1992. *Multiculturalism and the Politics of Recognition*. Princeton: Princeton University Press.

Waldron, Jeremy. 1995. " 'The Cosmopolitan Alternative' ." In *The Rights of Minority Cultures*, ed. W. Kymlicka. Oxford: Oxford University Press

(3) 19 October 2009 11:00-13:00 **Indigenous peoples**

With Claire Charters (MWF LAW)

The last three decades have witnessed a flourishing of indigenous people's claims as well as important developments in both national and international recognition of their rights. Many of the grounds for recognition of indigenous peoples rest on their distinctiveness, which finds expression not only in forms of cultural diversity but also in the unique relationship of indigenous peoples to their ancestral lands. At the same time, the fact that indigenous peoples have traditionally lived under different forms of self-government embracing their own set of values, norms and institutions raises the question of the law itself as a cultural artifact and accordingly the challenge of legal pluralism.

Some of the most controversial aspects in the discussions around indigenous peoples include: the need (or not) for a definition of indigenous peoples; how to understand self-determination and autonomy claims raised by indigenous peoples; and what the effective protection of indigenous culture requires, including in terms of protection of indigenous people's relationship to their lands. There are also the questions of: who can claim to be a member of an Indigenous people; whether Indigenous peoples' customary law should exclusively determine who is in and who is out; and/or whether human rights should also be taken into consideration.

Texts: Who are Indigenous Peoples?

Jeremy Waldron, "Indigeneity? First Peoples and Last Occupancy" (2003) 1(55) *New Zealand Journal of Public and International Law* 55 (available under: http://www2.law.columbia.edu/faculty_franke/Thursday%20Lunch/Waldron.facultylunch.indigeneity.pdf .

Benedict Kingsbury “Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy” (1998) 92 *American Journal of International Law* 414 (available under <http://www.jstor.org/stable/pdfplus/2997916.pdf?acceptTC=true>).

Will Kymlicka “Multicultural Odysseys” (2007) 6(4) *Ethnopolitics* 585 (available under <http://www.informaworld.com/smpp/content~db=all~content=a788556463>).

UN Declaration on the Rights of Indigenous Peoples <http://www.un.org/esa/socdev/unpfii/en/drip.html>

Saramaka People v. Suriname, Inter-American Court of Human Rights, Judgment of November 28, 2007 at http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

Who can be a member of an Indigenous people?

UN Human Rights Committee *Lovelace v Canada* (30 July 1981) UN Doc CCPR/C/13/D/24/1997 (available <http://www1.umn.edu/humanrts/undocs/session36/6-24.htm>).

Santa Clara Pueblo v Martinez (1977) 436 US 49 (available <http://supreme.justia.com/us/436/49/case.html>) (Majority decision).

Scrimbitt v Sakimay Indian Band Council (2000) 1 CNLR 205 (FCC T Div).
<http://www.canlii.org/en/ca/ctf/doc/1999/1999canlii9381/1999canlii9381.html>

Annie Mikaere “Maori Women: Caught in the Contradictions of a Colonised Reality” (1994) *Waikato LR* 125 (available under http://heinonline.org/HOL/Page?handle=hein.journals/waik2&div=9&g_sent=1&collection=journals).

(4) 26 October 11:00-13:00 Linguistic diversity and language rights

Language is a strong marker of societal diversity, and the phenomenon of linguistic diversity within states is perhaps even more common than that of religious diversity. Whereas the state can at least pretend to be neutral as regards the various religions practiced on its territory, mere tolerance of diversity and non-intervention by the state is not an option with regard to language, because communication between the citizens and public authorities must necessarily proceed in one or a limited number of languages. The pages from Patten highlight the value of having a common language. Van Parijs raises concerns about linguistic justice that are seldom discussed even when the value of a common language that acts as a lingua franca is accepted. Also, we should notice that the value of having a common language is not considered, in most of today’s Europe, sufficiently weighty as to override the legitimate claims to recognition by those who speak a minority language. Finally, there may be a need for language rights accorded to minorities (both old and new) grounded on reasons other than claims to recognition of linguistic identity, as Rubio Marin discusses.

Texts:

Alan Patten, ‘Survey Article: The Justification of Minority Language Rights’, *The Journal of Political Philosophy* (2009).

Van Parijs, Linguistic Justice, in W. Kymlicka and A. Patten (eds), *Language Rights and Political Theory* (2003) 153-168.

Ruth Rubio Marín, 'Language Rights: Exploring the Competing Rationales', in W. Kymlicka and A. Patten (eds), *Language Rights and Political Theory* (2003) 52-79.

Legal Sources:

Framework Convention for the Protection of National Minorities at <http://conventions.coe.int/Treaty/en/Treaties/Word/157.doc> (esp. arts. 10, 11, 12, 13 and 14)

European Charter on Regional and Minority Languages at <http://conventions.coe.int/treaty/en/Treaties/Word/148.doc>

(5) 2 November 11:00-13:00 **Territorial self-government: secession, federalism and political autonomy**

Nation-building projects have generally attempted to match cultural and territorial boundaries by establishing a dominant national language and culture. Do territorially concentrated minorities have claims to self-determination that includes a right to secession?

We will discuss first liberal theories of self-determination as a primary or only remedial right and then liberal approaches to the accommodation of national minority claims through federal solutions.

Texts:

Buchanan, Allen (1998) "Democracy and Secession." In *National Self-Determination and Secession*, ed. M. Moore. Oxford: Oxford University Press: 14-33.

Beran, Harry (1998) 'A democratic theory of political self-determination for a new world order', in: Percy Lehning (ed.) *Theories of Secession*, Routledge, London: 32-59.

Kymlicka, Will (2001) 'Minority Nationalism and Multination Federalism', in Will Kymlicka, *Politics in the Vernacular. Nationalism, Multiculturalism, and Citizenship*. Oxford University Press, Oxford: 91-119.

Miller, David (2000) 'Nationality in Divided Societies', in: David Miller *Citizenship and National Identity*, Polity Press, London: 125-141.

Levy, Jacob (2007) 'Federalism, Liberalism, and the Separation of Loyalties', *APSR* vol. 101, no. 3, August 2007: 459-477.

Legal Sources:

Reference re Secession of Quebec, [1998] 2 S.C.R. 217, at: <http://scc.lexum.umontreal.ca/en/1998/1998scr2-217/1998scr2-217.html>.

(6) 9 November 11:00-13:00 **Cultural liberal nationalism and non-territorial autonomy**

Liberal nationalism comes in statist and culturalist varieties. Some authors consider national identity as instrumentally important to realize important goals of liberal democracy, others see it as an intrinsically valuable expression of cultural belonging. Non-territorial forms of cultural autonomy have been advocated as

an alternative to territorial self-determination based on such cultural interpretations of nationhood, or on pragmatic grounds as a conflict resolution strategy.

Texts:

Coakely, John (1994) Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-territorial Autonomy, *International Political Science Review*, Vol. 15, No. 3: 297-314.

Renner, Karl (1899/2005) "State and Nation", in Ephraim Nimni (ed.), *National Cultural Autonomy and its Contemporary Critics*, London, New York: Routledge.

Bauböck, Rainer (2005) "Political autonomy or cultural minority rights? A conceptual critique of Renner's model", in Ephraim Nimni (ed.), *National Cultural Autonomy and its Contemporary Critics*, London, New York: Routledge: 97-111.

Legal Sources:

Framework Convention for the Protection of National Minorities, ETS 157, at:
<http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>

(7) 16 November 2009 11:00-13:00 **New minorities? Integration or cultural recognition for migrant groups**

Should immigrant groups have similar cultural rights as traditional national minorities? Or have voluntary immigrants waived their rights to membership in their culture of origin? Which degree of cultural integration or assimilation can be expected or required in societies that are open for immigration? Which rights and prerogatives can legitimately be rendered conditional on integration/assimilation?

Texts:

Parekh, Bhikhu. 2008. *The New Politics of Identity*. Houndmills: Palgrave Macmillan, chapter 5: 80-98.

Kymlicka, Will. 1995. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Oxford University Press, chapter 2: 10-33.

Brubaker, Rogers W. 2004. *Ethnicity Without Groups*. Cambridge, MA: Harvard University Press, chapter 5: The Return of Assimilation?: 116-131.

Wimmer, Andreas. 2009. 'Herder's Heritage and the Boundary-Making Approach: Studying Ethnicity in Immigrant Societies'. *Sociological Theory*, vol. 27, no. 3: 244-270.

Legal Sources:

UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (esp. arts. 31, 45.2 and 3, 67.2) at <http://www2.ohchr.org/english/law/cmw.htm>

Excerpts of Belgian Case regarding the Flemish Housing Act, Constitutional Court, decision 101/2008, of July 2008.

Case in French: <http://infoportal.fra.europa.eu/InfoPortal/caselawFrontEndAccess.do?id=310>

Case in German directly accessible via the court's webpage at <http://www.const-court.be/>

(8) 23 November, 11:00-13:00 **Multicultural accommodation and gender equality**

Over the last decades, both gender equality and accommodation of cultural diversity have been embraced as elements of a shared project, namely that of challenging general and undifferentiated notions of citizenship to unveil patriarchy and cultural domination disguised as universalism. However, is there a tension between the two? Must the accommodation of cultural diversity in Western societies necessarily come at the expense of entrenching sexual subordination? In other words, is multiculturalism bad for women?

Texts:

Leti Volpp, “Feminism versus Multiculturalism”, *Columbia Law Review*, June 2001, 1181-1218.

Okin, Al-Hibri, Parekh, *Is Multiculturalism Bad for Women?*, (Cohen, Howard and Nussbaum, ed.), Princeton University Press, 1999, pp. 9-24.

Shachar, A., “Group Identity and Women’s Rights in Family Law: the Perils of Multicultural Accommodation”, *Journal of Political Philosophy* 6, 1998, 285-305.

Legal Sources:

European Court of Human Rights, *Eskinazi and Chelouche v. Turkey*, 6 December 2005.

(9) 30 November 2009 11:00-13:00 **Religious diversity and secularism**

With David Koussens (MWF LAW)

Whereas in principle it is easy to agree on the fact that a fundamental premise of liberal states is the recognition of freedom of religion and accordingly the need of the State to remain neutral vis-à-vis different religious faiths, in reality one finds among Western democracies quite a range of State-Church models ranging from militant secularism to official state Churches. The picture is further complicated by the fast increase in religious diversity stemming from migration and rendering the quest for “neutrality” ever more elusive. In view of such diversity, is the gradual disestablishment of traditional religions the only legitimate option? But is secularism, understood as a rigid separation between State and Church, a truly neutral option? Could we instead embrace a model of equal accommodation? What would it require in practice?

Texts:

Excerpts from:

Building the Future- A Time for Reconciliation, Report by Gerard Bouchard and Charles Taylor to the Quebec Government, 2008, at: <http://www.accommodements.qc.ca/documentation/rapports/rapport-final-integral-en.pdf>.

p. 63-65: “The Need for Definitions” (What is reasonable accommodation?)

p. 131-154: “Chapter VII - The Quebec System of Secularism”

p. 173-177: “Controversial Questions: Conflicting Rights and the Subjective Conception of Freedom of Religion”

Weil, Patrick (2004) ‘Lifting the Veil of Ignorance’, *Progressive Politics*, Vol. 3.1 March 2004, Policy Network, www.policy-network.net.

Milot, M. (2009). Modus co-vivendi: Religious Diversity in Canada. In P. Bramadat & M. Koenig (Eds.), *International Migration and the Governance of Religious Diversity* (pp. 105–130). Montreal, QC & Kingston, Ont.: McGill-Queen’s University Press.

Excerpts from, the “Stasi Report”, December 2003, *Rapport au Président de la République de la commission de réflexion sur l’application du principe de laïcité dans la République*. The full text is available at <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>

Legal Sources:

ECtHR, Grand Chamber, *Refah partisi and other v. Turkey*, 13 February 2003 at <http://www.iilj.org/courses/documents/RefahPartisivTurkey.pdf>

European Court of Human Rights, *Lautsi v. Italy*, 3 November 2009, at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Lautsi%20%7C%20v%20%7C%20Italy&sessionid=55842575&skin=hudoc-en>

European Court of Human Rights, *Dogru v. France*, Judgement of December 4, 2008 at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Dogru%20%7C%20v%20%7C%20France&sessionid=55842575&skin=hudoc-en>

Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 at <http://csc.lexum.umontreal.ca/en/2006/2006scc6/2006scc6.html>

(10) 7 December 11:00-13:00 **Guest lecture Michal Bodemann, University of Toronto**

Co-constituted Cultural Spaces and Inter-Ethnicity: On the Production and Consumption of Jewish Culture between Jews and non-Jews in Germany