**Respecting Multiculturalism? Respecting Religion?**

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This response to Balint focuses on his views on stance towards minority cultural and religious practices where he is in general sceptical of special accommodation. I argue that there are grounds to grant special rights and other accommodative measures towards such minorities on the basis of freedom and citizenship (both values Balint endorses), and appraisal respect, a value he rejects. The upshot is more support for a hands on, active state than the hands off state that Balint favours.

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Peter Balint’s *Respecting Toleration* makes an important contribution to debates around toleration, neutrality, freedom, the role of the liberal state, and the appropriate response to cultural and religious diversity in contemporary liberal societies. Other contribution to this symposium have commented extensively on toleration and neutrality; here I focus on the book’s arguments around cultural and religious accommodation. More specifically, (1) I suggest there’s a limited role for the appraisal respect rejected by Balint; (2) claim that his view of individual freedom can be used to defend minority cultural rights, contrary to his scepticism towards that idea, and (3) contrast that with a status-based argument for cultural rights; and (4) on analogous lines argue that, again contra Balint, there is a freedom-based case for religious accommodation.

(1). What Balint calls the multicultural challenge to political toleration maintains that the traditional liberal approach to it has failed to treat minorities’ cultures, practices, ways of life and identities fairly and reveals a majoritarian bias against them (p.3, pp.8-9). What is needed, by those who makes this case, is positive recognition for minority identities where the state affirms and supports them. Balint identifies Bhikhu Parekh, Tariq Modood and James Tully as three principal writers who make this argument. Modood for example urges ‘active support for cultural difference (cited at p.3), while Tully argues that the condition of citizens’ self-respect can only be met ‘in which the cultures of all others are recognised and affirmed’ (cited at p.100). Such affirmation can be interpreted in more than one way. Perhaps it just means that minority cultures should be acknowledged not ignored, symbolically incorporated into society and recognised as having something to say on questions of human flourishing and social organisation. This might amount simply to recognition respect, although it could be interpreted as a taking culture seriously, something over and above respecting the political status of its citizen members. Balint, however, interprets the cultural recognition argument as a form of appraisal respect for cultures’ achievements, history and practices, which he is sceptical towards for a number of reasons. Appraisal respect is (i) too contingent and easily lost when cultures change; (ii) confuses respecting with liking; (iii) has only a weak connection with policies of accommodation towards cultural and religious minorities (pp.104-6); and (iv) puts unnecessary social pressure on citizens who are – somewhat intolerantly – all urged positively to evaluate each other’s cultural differences. I agree with (iii) and shall shortly consider some alternative grounds of cultural accommodation, but I disagree with (ii). Balint has a very subjective view of appraisal respect where ‘whether or not something is deemed respectable is entirely subjective - it is up to the respecter whether they find, for example, a musician’s playing good enough to be respected (p.114). However, this seems somewhat in tension with the view of Stephen Darwall who introduced the term. According to Darwall, appraisal respect consists in ‘approbation [for a person] as a moral agent’, something that is ‘merited or earned by conduct or character’ (Darwall 2006, p.122 emphasis removed). This view suggests appraisal respect is not in its bestower’s gift as much as Balint claims, and hence offers a reply to (i), especially if we believe cultures have enduring features which evolve only slowly. The truth in Balint’s critique of appraisal respect is that citizens can’t be expected positively to evaluate every last cultural identity in plural societies given only modest assumptions about moral disagreement and cultural pluralism. But we should note, first, that we can and do use the notion of appraisal respect in our private judgements, it makes sense as a practice, and second that the claim about pluralism is an *aggregate* level claim about the tendency of citizens in liberal societies to employ different criteria in their judgements of cultures’ achievements etc. But at the *individual* level it seems tendentious to rule out from the start particular instances of consensus, if they emerge through unforced dialogue (i.e. are not the result of social pressure) especially in societies characterised by some degree of inter-cultural engagement. Thus we admire African art, Islamic architecture, Chinese cuisine and so on, and these forms of positive appraisal can garner symbolic recognition through state sponsored cultural festivals and the like. Such judgements cannot be demanded, but it seems dogmatic to rule out their possibility, given at least some motivation among citizens to engage with and understand each other’s differences.

(2). Freedom is a central value for Balint; the foundation for his account of toleration as indifference, grounding a strong presumption against interference which applies equally to the state and to citizens. It’s connected to his preference for a principled ‘hands off’ approach withdrawing support for privileged ways of life over ‘hands on’, extending benefits previously only available to a privileged group to those who did not enjoy that privelege. Hands on, he writes, is ‘generally inferior’ as removing favour ‘is more likely to increase the space for individuals to realise […] freedom’, conceptualised as living one’s life as one sees fit (pp.65-7). For example, a hands on approach would favour legal recognition for same sex couples to marry, but a hands off alternative would see the state ‘withdrawing from the more symbolic and normative aspects of marriage’ (p.66), and enforcing in a neutral way only those regulations needed to address issues of taxation, welfare, inheritance, separation, and the care of children (pp.66-7). In a hands off neutral liberal state, persons non-romantically involved such as close friends or siblings might also enjoy some of these regulated rights. As far as minority cultures are concerned, Balint is somewhat sceptical of special rights such as devolved powers and self-government (pp.137-40); hunting and fishing rights for indigenous peoples on their territories (p.139), and state support for minority languages. This scepticism is motivated partly by the freedom argument and also by other considerations such as the complexity and dynamic nature of group identities, worries about the vulnerable position of groups (often women) within minorities; and a Millian concern about epistemic limits to state action. These are all legitimate concerns, but don’t seem to me to rule out in principle reasons for granting (‘hands on’) minority rights on at least some occasions. In fact, Balint himself recognises this. ‘[I]f respect for culture has a neutral and necessary justification (such as its importance for realizing individual welfare better than any alternatives) then it is an appropriate response’ (p.139). This respect might ground special rights for indigenous peoples, but a more neutral alternative would be to mainstream such rights so that, for example, ‘[h]unting and fishing rights… could possibly be extended to non-indigenous Australians in some areas (p.139). My question is, if welfare is an appropriately neutral justification for minority cultural rights, presumably on the grounds that it can command broad support, then why isn’t individual freedom too? There is an argument for minority cultural rights which begins precisely from individuals’ pro tanto right to pursue the conception of the good which they have freely endorsed. Alan Patten makes this case powerfully in his recent book, *Equal Recognition*. According to Patten where a conception of the good reflects a person’s deeper commitments and sense of identity, targeted state assistance is justified on the grounds that it gives individuals a fair go at realising their aims (while not guaranteeing them) (Patten 2014, pp.131-48). Thus for example increasing the number of languages recognised by public institutions or funding a minority language TV station promote the aims of those languages’ speakers. The same argument can be made for hunting and fishing rights for indigenous peoples where non-indigenous citizens don’t have analogous commitments

These two examples are instances of hands on levelling up, not hands off levelling down. By levelling up we increase the freedom of members of cultural minorities to live their life as they see fit, according to their cultural convictions. The baseline for determining whether we should level up is not the pattern of legal privileges and disabilities which citizens currently enjoy, but rather a deeper principle of egalitarian liberty.

(3). Although it doesn’t figure much in the book, Balint is sympathetic to the idea of citizenship as a common identity which binds together the members of a polity. An alternative to appraisal respect for difference, he writes, is recognition respect for citizenship’s status and its associated rights (p.114). For instance, he notes that ethnic minority citizens subjected to persistent racial profiling ‘often feel second class’ (p.136); racial profiling communicates a message that they have a lesser status than their fellow citizens. Building on this notion of equal civic status, we might claim that every citizen has a right that their citizenship has the same public political value as that of other citizens. On this view, racial profiling policies targeted at, for example, black citizens erode the publicly recognised value of their citizenship; there is a tension between black persons’ equal civic status and the invidious treatment to which they’re subject. I think this argument might be extended to ground an argument for minority cultural rights, distinct from, though complementary to, the freedom argument sketched above. On this view group-differentiated rights are a way of symbolically upgrading the public political value of citizenship for disadvantaged cultural and ethnic minorities. Consider for example affirmative action policies, another issue Balint briefly mentions (p.140). The most familiar argument for affirmative action appeals to the value of equality of opportunity and removing the social, economic and cultural obstacles which stand in its way for citizens from disadvantaged backgrounds. The citizenship argument has a slightly different logic. It says that if minority citizens are represented in public (and perhaps also private) institutions such as universities in much smaller proportion than their numbers in the population warrant, then their citizenship has a lesser public political value. Affirmative action policies, by practically enabling larger numbers to attend university, would symbolically upgrade the value of their citizenship; they would affirm its equal status with the majority’s. Increasing the numbers of minority citizens who attended university to what their representation in the population suggests would give them parity of public recognition. Again, this is an instance of levelling up.

(4). Finally, we come to religion and encounter once again Balint’s general scepticism towards measures which would accommodate the specific beliefs of religious groups whose conscientious convictions bring them into conflict with exceptionless laws, rules and regulations. A number of examples are discussed in the book: the Sikh boy unable to wear his turban at school (p.119); a female Muslim lifeguard who wants to wear a burkini (p.67) the Muslim cricketer reluctant to wear an armband sponsorship for a brewery (p.69); the Christian registrar who could not in good conscience officiate at a same-sex civil partnership ceremony (pp.110-1); members of various religions who for different reasons don’t wish to show their face on the photograph for their driver’s licence (pp.135-5). Balint’s position here is similar to Brian Barry’s on the issue: either there are compelling reasons for the law or rule, in which case it should apply to all without exception (for instance Sikh men have the same interest as others in avoiding head injuries, however reluctant they are to wear a motorcycle helmets) or the reasons aren’t so strong after all in which case we should dispense with having a rule in the first place (Barry 2001, pp.44-50). For example, Balint wonders whether all women, not just Muslims, might be permitted to wear a burkini (and one might add: if all women, why not men too?). This seems reasonable, but I think there are instances where there are good reasons for a general rule (for example, no hats at school), but also reasons for exceptions (Sikh turbans, Muslim headscarves and Jewish kippah permitted). Balint writes that ‘there is no reason in themselves [sic] to favour making space for conscientious beliefs over preferences when a law, institution or policy unjustifiably does not permit certain actions’ (p.73). A reluctance to distinguish between mere preferences and deeper commitments is a theme throughout the book (see especially, pp.72-5). However, if we are to defend the rule-plus-exemption approach then, that is a distinction we need to make. (Of course, Balint could simply say here that we shouldn’t defend the rule and exemption approach). In the case of legal accommodation, a number of authors have seen religious commitments as reflecting an interest in moral integrity, a non-partisan value (equally available to the non-religious) which speaks to our interests in manifesting our convictions, so that there is not a fracture between thought and action (Seglow, 2017; Laborde, 2017). There are two different ways this integrity-based argument can go. One of them appeals to the individual right to freedom of conscience, and says that, for example, the Sikh boy unable to wear his turban at school has his integrity set back: he is no longer able to live by his religious convictions if he remains at the school where the turban is banned. This argument has a structural similarity with Patten’s freedom-based argument for minority cultural rights in the case of identity-conferring commitments. The other way appeals to the comparative justice of non-discrimination and it claims that the Sikh boy is treated unjustifiably worse than other children if he is unable to manifest his religious commitments at school than non-religious children or for instance Christian children whose preference for Sunday worship will likely be accommodated at boarding school. But in neither case does the integrity argument necessarily over-ride other considerations. The Christian registrar who won’t conduct civil partnership ceremonies is herself behaving in a discriminatory way, and arguably communicating a message that gay and lesbian people have a lesser civic status. That kind of reasoning impressed the European Court of Human Rights which held against her in a recent high profile case.[[1]](#endnote-1) But to concede that integrity need not over-ride other values is nonetheless consistent with according it high value as part of a principled case for accommodation; it is not simply of religious individuals’ preferences. As in the case of multiculturalism, therefore, we can reassemble some traditional liberal commitments that Balint would fully endorse to found a more sympathetic case towards those who reasonably ask for more than simply toleration as forebearance.

I much admire Balint’s *Respecting Toleration* and believe its powerful arguments will help shift the terms of the debate on the topic. However, I think his rejection of cultural and religious accommodation is a little too swift and I’ve tried to show above how there’s a bit more to be said for a more sympathetic stance towards minorities.

**Notes on Contributor**

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1. *Eweida and Others v. the United Kingdom* 37 (2013). [↑](#endnote-ref-1)