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### Résumé de l'article

Le livre *Equal Recognition* d'Alan Patten contribue de façon majeure aux travaux de philosophie politique sur les droits des minorités culturelles. Je suggère néanmoins que la théorie normative qu'est le « culturalisme libéral », y compris dans la version sophistiquée défendue par Patten, n'est pas outillée pour penser les omniprésents défis concernant le statut de la religion dans l'espace public. De plus, j'avance que Patten n'a pas été en mesure d'offrir une réponse pleinement satisfaisante à ceux qui soutiennent que l'égalitarisme libéral bien compris est en mesure d'offrir des termes de coopération sociale justes aux membres des minorités culturelles, sans devoir être complété par des « droits culturels » ou par le langage de la « reconnaissance » des cultures.



## MULTICULTURALISM ON THE BACK SEAT? CULTURE, RELIGION, AND JUSTICE

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### ABSTRACT:

Alan Patten's *Equal Recognition* is a major contribution to the normative literature on minority rights. I nonetheless suggest that liberal culturalism as a normative theory, even in Patten's sophisticated version, is ill suited to deal with the challenges related to the status of religion in the public sphere that are so prevalent in contemporary democracies. In addition, I submit that Patten did not supply a fully convincing answer to the argument that liberal egalitarianism, well understood, is capacious enough to secure fair terms of social cooperation for members of cultural minorities, making the (allegedly burdensome) language of "cultural rights" and "cultural recognition" superfluous.

### RÉSUMÉ :

Le livre *Equal Recognition* d'Alan Patten contribue de façon majeure aux travaux de philosophie politique sur les droits des minorités culturelles. Je suggère néanmoins que la théorie normative qu'est le « culturalisme libéral », y compris dans la version sophistiquée défendue par Patten, n'est pas outillée pour penser les omniprésents défis concernant le statut de la religion dans l'espace public. De plus, j'avance que Patten n'a pas été en mesure d'offrir une réponse pleinement satisfaisante à ceux qui soutiennent que l'égalitarisme libéral bien compris est en mesure d'offrir des termes de coopération sociale justes aux membres des minorités culturelles, sans devoir être complété par des « droits culturels » ou par le langage de la « reconnaissance » des cultures.

Alan Patten's *Equal Recognition* offers one the most careful and systematic treatments of minority rights in political philosophy, as well as a sophisticated defense of liberal culturalism. It covers the major issues that political philosophers working on cultural diversity have been debating since the beginning of the 1990s, and moves steadily from foundational principles to public policy.

After reading Patten's book, I was nonetheless left with the impression that the current work in political philosophy on cultural rights or multiculturalism was becoming increasingly out of sync with some of the most salient questions of social justice, even within the 'recognition' and 'accommodation' stream of contemporary theories of justice.

I do not mean this claim to be too bold and wide-ranging. My impression comes from the observation that religious and conscience-based claims of recognition and accommodation have taken centre stage in many liberal democracies in the past decade.<sup>1</sup> It is not clear at all that concepts such as *culture*, *multiculturalism*, and *polyethnic rights* are appropriate to describe and make sense of these claims. My point is not that we can do without liberal culturalism and multiculturalism altogether, but rather that these views cannot be thought as the all-encompassing frameworks for thinking about justice and diversity. I take it that a proper—and *partly* independent or freestanding—political theory of secularism is needed to adjudicate religion- and conscience-based claims of recognition and accommodation.<sup>2</sup>

Let's first look at practice. Some of the most heated issues debated in liberal democracies have to do with the status of religion in the public sphere and more particularly with religiously-based exemption claims. Very often these claims are made by members of minority groups such as Muslims, Sikhs, or Orthodox Jews, but not always. Catholic parents in Quebec tried to get their children exempted from the mandatory secular Ethics and Religious Cultures courses a couple of years ago.<sup>3</sup> The case made it all the way up to the Supreme Court, which ruled in favour of the government. More recently, a Jesuit private school got the right to teach its own religious version of the Ethics and Religious Cultures programme.<sup>4</sup> In both cases, moral pluralism was more at play than the cultural diversity brought in by immigrants.

Tellingly, when Patten supplies examples for his principled rather than strictly pragmatic defense of the rights of minority cultures, he first mentions national minorities such as Scotland, and then moves to "accommodations for evangelical families who object to the ways in which religious faith is discussed and presented in the classroom and in textbooks".<sup>5</sup> Why should we use the concepts of culture and cultural minorities to think about the claims of evangelical families? In the same spirit, Will Kymlicka's most frequent examples of polyethnic rights are cases of religious accommodation. There is, in such cases, a mismatch between the concepts used and the phenomena that they are meant to grasp.

This is not only problematic for conceptual reasons. It also leads normative reasoning to an impasse. If one thinks—like liberal culturalists do—that religious exemptions are, under the right conditions, ‘required’ by justice (and not only ‘permissible’<sup>6</sup>), this logically raises the question of the status of *secular* conscience-based accommodation claims, and multiculturalism is not designed to answer it. One of the most basic reasons why many citizens (including some political and legal theorist<sup>7</sup>) oppose religious accommodations is that they think that they are incompatible with state neutrality with regard to reasonable conceptions of the good. Is religion special? Do religious convictions deserve a special and *sui generis* moral and legal status?<sup>8</sup> These questions fall outside the scope of liberal culturalism, although Patten could use his ‘neutrality of treatment’ approach to expand his theory.

In addition, several key normative issues, both in officially secular countries such as France and in countries where a weak form of establishment prevails, have to do with the status of the majority’s symbols and practices in public institutions: Can a prayer be said before classes or town hall meetings? Can the religious symbols of the majority be displayed within public institutions such as legislatures and courtrooms? Here again, Patten uses religious establishment as a test-case in his discussion of liberal neutrality.<sup>9</sup> But something like a political theory of secularism is needed to assess the weaknesses and strengths of different forms of state-church relationships.<sup>10</sup>

What all these examples reveal is that the normative questions raised are not always “minority-regarding” in Patten’s sense and, when they are, culture is not always the relevant identity marker. This is why I gradually came to the view that multiculturalism has to play a more limited role in our normative theories than what liberal culturalists assume.

## CULTURAL RIGHTS AND LIBERAL JUSTICE

At a more foundational level, I was not convinced that Patten provided a sufficiently compelling response to concerns about the role of principles such as cultural recognition or multiculturalism within a theory of justice. Consider, for instance, Samuel Scheffler’s nuanced critique of multicultural theories of justice.<sup>11</sup> Scheffler’s basic claim is that liberal egalitarianism, well understood, is already capacious enough to secure fair terms of cooperation for members of cultural minorities. Religious accommodations, anti-discrimination laws, and positive representations of diversity can all be derived from general liberal principles, and the space of personal autonomy created by individual and associative liberal rights allows groups to pursue their own cultural preservationist projects. According to Scheffler, cultural rights raise thorny questions about cultural essentialism and the status of internal minorities without being necessary from the perspective of social justice.

Scheffler does not address the status of national minorities. Perhaps he would have been more sympathetic to the politics of recognition had he done so. But

here again it is not clear that liberal culturalism has the normative weight that it claims. Can we not derive the collective rights of minority nations from the principle that nations or peoples ought to enjoy some form of political autonomy or self-determination right? With regard to multinational political communities, liberal culturalism seems to enjoin us to apply an already established principle—the right to self-determination of peoples—in a consistent and fair way. When one reads the jurisprudence and doctrine on the rights of indigenous nations, for instance, the right to self-determination carries most of the normative weight, whereas discussions of the recognition of aboriginal culture often leads to the cultural essentialism that Patten rightly wants to steer clear of.<sup>12</sup>

It might be the case that the linguistic rights of immigrants cannot be derived straightforwardly from liberal egalitarianism—except perhaps for rights such as to have a translator in court, for instance, which can be derived from due process—but then we have to show precisely what the normative underpinning of such rights is and what they involve at the level of public policy.

Scheffler also challenges the idea that cultural belonging should be thought as a source of the kind of reasons for action that deserve a special moral and legal status in the same way that religion, ethics, and philosophy do. Evolving in a culture might be a necessary condition for developing the capacity to form a conception of the good, but might not provide the substance of one's conception of the good in the way that faith or moral reflection do.<sup>13</sup>

In response, Alan writes:

But attachments to a culture can be of crucial importance to individuals too in ways that track, if at some distance, the importance of religious convictions. Violating a cultural attachment may not produce a feeling of having sinned, but it may lead to a sense of having betrayed or compromised a relationship of community that is of central importance in an individual's life. Likewise, attachments to culture may not be worthy of autonomous protection because they represent ethical or metaphysical judgments, but they may represent judgments about the basic social relationships that a person wants to be part of which are also worthy of protection. In addition, both religion and culture are matters that can play a central role in a person's ends, and where publicly established inequality can be consequential for the respect that minorities feel they are getting from others.<sup>14</sup>

It seems like Patten is putting cultural preferences on par (normatively speaking) with moral and religious beliefs. I would like to know more about the family resemblances between cultural attachments and religious/moral beliefs here. The legal duty to offer accommodation measures such as exemptions is often thought to derive from freedom of conscience/religion or from antidiscrimination laws. How does the derivation work for cultural preferences or attachments?

Is Patten's point that citizens have deeper interests and attachments that deserve special recognition, and that these include cultural attachments? Or is it that neutrality of treatment implies that the state does not hierarchize at all among people's preferences, but that cultural recognition is nevertheless sometimes necessary because there are some significant public norms and institutions that simply cannot be neutral with regard to culture? The second answer opens the door to the accommodation of all subjective preferences, as opposed to what we can call "meaning-giving beliefs and commitments" or "strong evaluations," since the state might fail to treat any cluster of desires, interests, values, and commitments in a neutral or even-handed way.

I myself think that we need to distinguish between the beliefs and commitments that are central to the agent's moral identity and provide moral orientation in a strong sense from the other preferences that we have. Only the first should trigger an obligation to accommodate.<sup>15</sup> So my question is whether Patten wants to include cultural attachments in the meaning-giving category and distinguish them from the desires, tastes, and preferences that all agents have, or whether the neutrality of treatment argument entails that all preferences or interests are treated identically. Could Patten give examples of cultural attachments that "track, if at some distance, the importance of religious convictions," and of the way in which such attachments translate into legal claims?

## CONCLUSION

As I said, I do not want my claim to be too wide ranging. My point is not that we can do without liberal culturalism or multiculturalism altogether. We still need a principle of *respect for cultural diversity* as an interpretive principle at the level of political morality—an interpretive principle that acts as an axiological filter in our interpretation of more basic and more directly regulative principles such as equality, freedom, and self-determination. In addition, culturalist theories of minority rights remain highly useful for thinking about the claims of national and linguistic minorities. That said, religious and moral diversity looms very large at the moment in the public sphere, and liberal culturalists should acknowledge that normative theories of secularism and freedom of conscience/religion are needed to address the questions that it raises.

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## NOTES

- <sup>1</sup> Islam, of course, is the centre of the resurgence of the concern about religion in the public sphere. As Will Kymlicka concedes: "We have witnessed a partial backlash against liberal multiculturalism, particularly in countries where Muslims form a clear majority of the immigrant population and hence are the focus of debates around multiculturalism." (Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, New York, Oxford University Press, 2009, p. 125.)
- <sup>2</sup> Such a theory has been sketched by Maclure, Jocelyn and Charles Taylor, *Secularism and Freedom of Conscience*, Cambridge, MA, Harvard University Press, 2011.
- <sup>3</sup> S.L. v. Commission scolaire des Chênes, 2012 SCC 7, [2012] 1 S.C.R. 235.
- <sup>4</sup> Loyola High School v. Quebec (Attorney General), 2015 SCC 12.
- <sup>5</sup> Patten, Alan, *Equal Recognition: The Moral Foundations of Minority Rights*, Princeton, Princeton University Press, 2014, p. 12.
- <sup>6</sup> See *ibid.*, pp. 21-24.
- <sup>7</sup> Barry, Brian, *Culture and Equality*, Cambridge, MA, Harvard University Press, 2002; Leiter, Brian, *Why Tolerate Religion?*, Princeton, Princeton University Press, 2012. For an insightful critical assessment of Leiter's position, see Boucher, François and Cécile Laborde, "Why Tolerate Conscience?," *Criminal Law and Philosophy*, Original Paper online: <http://link.springer.com/article/10.1007/s11572-014-9325-2/fulltext.html>. Last consulted on 28th July 2015.
- <sup>8</sup> Koppelman, Andrew, "Religion's Specialized Specialness," *The University of Chicago Law Review Dialogue*, 2013, pp. 71-83: <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Koppelman%20Online.pdf>. Last consulted on 28th July 2015; Maclure and Taylor, *Secularism and Freedom of Conscience*, *op. cit.*, Part Two; Nussbaum, Martha, *Liberty of Conscience*, New York, Basic Books, 2008.
- <sup>9</sup> Patten, *Equal Recognition*, *op. cit.*, chap. 4.
- <sup>10</sup> Maclure, Jocelyn, "Political Secularism. A Sketch," *The Public Management of Religion: From State Building to New Forms of Minorities' Mobilization*, RECODE Working Papers # 16, 2013.
- <sup>11</sup> Patten spends more time on Brian Barry's more sustained but less persuasive critique. See Scheffler, Samuel, "Immigration and the Significance of Culture," *Philosophy & Public Affairs*, vol. 35, no. 2, 2007, pp. 93-125.
- <sup>12</sup> See Patten, *Equal Recognition*, *op. cit.*, chap. 2, and Tully, James, "The Struggles of Indigenous Peoples for and of Freedom," in James Tully (ed.), *Public Philosophy in a New Key volume 1*, Cambridge, Cambridge University Press, 2008.
- <sup>13</sup> For another response to Scheffler, see Maclure, Jocelyn, "Multiculturalism and Political Morality," in Duncan Ivison (ed.), *The Ashgate Research Companion to Multiculturalism*, Farnham, Ashgate, 2011, pp. 39-56.
- <sup>14</sup> Patten, *Equal Recognition*, *op. cit.*, pp. 168-169.
- <sup>15</sup> This argument, I believe, needs to be combined with the fair equality of opportunities argument defended by Jonathan Quong in his defense of (allegedly misnamed) cultural exemptions. See Quong, Jonathan, "Cultural exemptions, expensive tastes, and equal opportunities," *Journal of Applied Philosophy*, vol. 23, no. 1, 2006, pp. 53-71.