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Defending Differentiated Policies of Multiculturalism

Veit Bader

Affirmative action and multicultural (MC) policies are being challenged by egalitarian liberals, as well as republicans, in theory and politically in recent years. In this article, the author focuses on MC policies, the common core of which is to recognise serious ethno-cultural inequalities under conditions of equal civil and political rights, and find legal and political solutions to address these inequalities. The author argues that egalitarian liberal critics need not reject MC policies as long as such policies are properly conceived and implemented. This, however, requires that their normative justifications and practical implementations be reconsidered.

Keywords: Multiculturalism; Affirmative Action; (Neo-)republicanism; Policy-dilemmas

Affirmative action policies and policies of multiculturalism (MC) both challenge standard liberal ideas of difference-blind state-neutrality and equality before the law. Although these policies originate in different historical and societal contexts, addressing different problems and being based on different normative arguments, both are—with increasing vigour—being challenged by egalitarian liberals as well as republicans theoretically and politically in recent years. Affirmative action policies emerged in different contexts for different reasons. In India, they were introduced after independence in order to address the reproduction of a century-long experience of socio-economic inequalities of the *caste system* and its spill-over into legal and political inequalities. These inequalities could not be expected to be addressed by granting equality before the law, and the civic and political rights specified in the Constitution. In the United States, affirmative action was introduced in the 1960s in order to tackle the ongoing serious socio-economic inequalities faced by Afro-Americans after they were guaranteed equal civil and political rights. This

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policy has been—unthinkingly and eventually self-destructively—extended to the whole ‘ethno-racial pentagon’. In the United States and many other countries in the late 1960s and 1970s, affirmative action programmes were introduced in order to address the ongoing social and political inequalities of women after they were guaranteed equal civil and political rights.

Affirmative action policies have been criticised from the start (by Alfred Bickel (1975), Nathan Glazer and many others) with a whole battery of moral arguments (challenging their aim, means and overall distributional fairness), legal arguments (undermining equality before the law, allowing discrimination, suspect categorisation and ‘class-law’), prudential and realist arguments (stigmatisation, bureaucratisation of justice and its arbitrary, counterproductive effects) (see Bader, 1998a, for an extensive summary and criticism). Such criticism and political resistance could not prevent the implementation of diverse policies of affirmative action.¹ In the 1990s, opposition and resistance to affirmative action policies gained in strength both in the United States (e.g., in 1995, California’s affirmative action programmes were dismantled; see Moen, 2000; Spann, 2000) and in Europe (e.g., the famous Kalanke case before the European Court of Justice in 1996). Defenders of affirmative action were faced with an uphill battle.

The key policies of MC emerged in the late 1960s and early 1970s in Canada (Juteau, 1997), spreading to Australia (Castles, 1997), the United States, Sweden, the Netherlands and many other countries (Vermeulen & Slijper, 2003). Given the diversity of groups (indigenous peoples, national minorities, immigrant minorities, ethno-religious minorities, or the whole colourful spectre of ‘cultural groups’), problems and countries, it is—not surprisingly—difficult to identify a common core. In my view, the key aim is to recognise serious ‘ethno-cultural’ inequalities under conditions of equal civil and political rights, and try to find legal and political solutions to address these cultural inequalities. Neither this focus on serious ethno-cultural inequalities nor the focus on culture in itself is uncontested. Even the most outspoken and sophisticated defenders of MC policies such as Kymlicka (2001) and Carens (2000) do not distinguish clearly between MC policies to address cultural inequalities and ‘identity’ policies or ‘politics of recognition’.

Challenging Affirmative Action and MC Policies

Egalitarian liberal universalists questioned the moral legitimacy of and the need for such policies right from the start (see for a recent and outspoken critique, see Barry, 2001). If equal individual civil, political and social rights are guaranteed in order to address problems of ‘discrimination’, no new laws and policies of ‘collective cultural human rights’ are needed. Such policies are inevitably illiberal and anti-democratic, so it is argued. The liberal state is, or should be, culturally neutral: culture is, or should be, left to the marketplace and civil society (strict anti-perfectionism, ‘strict separation’ of state and ‘ethno-religious’ organisations combined with the full freedoms of association). And these opponents have mobilised the whole battery of

prudential and realist arguments from the affirmative action debates against MC policies.

Republicans (such as Schlesinger, Lind, Hollinger and Sleeper in the United States) agree with the prudential and realist charges, but differ in their moral and ethical evaluation of the 'nation-state'; they defend a much thicker ethno-cultural core of a more perfectionist state, fear that policies of MC threaten minimally required social cohesion and political unity, and undermine or 'Balkanise' the nation. Again, these arguments have not prevented the implementation of MC policies, but the degree of opposition and resistance has increased. In some countries, MC policies have been actually dismantled (Australia from 1996 onwards); in others, they are under serious threat and are being reconstructed, as in the Netherlands (Bader, 2005d).

Why is it that these arguments are now increasingly heard and seem to gain some influence? In my view, a combination of three sets of factors may help explain this shift. First and foremost, there have been important economic, social and political changes that have taken place, including:

- Neo-liberal economic policies and the consequent increase in inequalities of income and wealth in rich states has put a lot of pressure on all redistributive policies, but particularly on those which seem to defend 'illegitimate' particularist privileges for ascriptive minorities.
- The increase in migration pressures in rich countries and in policies of exclusion that create internal assimilatory pressures.
- The activities of different minorities, who use freedoms of political communication, organise and mobilise more effectively and make themselves heard, unintentionally contribute to the counter-mobilisation of majorities and a backlash in these policy areas.
- One of the many intended and unintended consequences of the declared 'War on Terror' is an upsurge in an assimilatory and exclusivist kind of patriotism that even most republicans do not find 'healthy' or modest. The tendency is to stress the importance of 'social cohesion' and the 'unity' of 'the nation' and 'its common institutions' against external and internal 'enemies' (strong and weak multiculturalists among them).

Second, the effects of too simplistic, insensitive, inflexible and often counter-productive actual policies of affirmative action (see Hollinger, 1996, 2003 for a critique) and of MC strengthen any opposition because some charges by critics turn out to be true.

Third, theories of MC, unintentionally, contribute to a backlash insofar as they: undermine even modest or decent versions of universalism, thereby sacrificing any notion of impartiality and neutrality; mis-describe liberal concepts of equality as 'sameness'; distract from serious socio-economic inequalities; engage in talk about supposed collective 'rights to identity' and identity politics instead of defending cultural and specified rights and modes of participation in the political process; do not specify which 'rights' would be legitimate for which groups under which

conditions, and which forms of participation in the political process seem fair and appropriate for which groups—instead, they propose one model of MC policies for all categories, groups or issues as if degrees in seriousness of historical and ongoing inequalities do not matter; and defend ‘strong’ multicultural rights and ‘group-autonomy’ in a way that is incompatible with even the most minimalist understanding of the core of liberal-democratic constitutions.

If theories and policies of affirmative action and of MC are seriously threatened—and not only for the wrong (ethnocentric and nationalistic) reasons—why do I believe that differentiated versions can and should be defended? There are a number of reasons why my approach is not vulnerable to these charges: it is a modest universalist defence itself (see Bader, 1998a, pp. 436–438); it is a justice-based defence, not a perfectionist one; it combines policies that address serious socio-economic inequalities as well as those that recognise and address serious cultural inequalities without neglecting the latter; it is highly critical with regard to ‘identity-talk’ and ‘identity politics’; and it is open and flexible with regard to appropriate institutions and policies. Contextualised practical reason forbids a ‘one model fits all’ approach (be it a unitary republican or institutionally pluralist one): institutional contexts and histories matter, groups matter, issues matter, degrees of injustice matter and, obviously, modes of policies matter a lot.

In earlier articles, I have defended differentiated policies of affirmative action (Bader, 1998a) and MC (Bader, 1997a, 1998b, 1999, 2001a,b, 2003a,b, 2005b,c). In this article, I focus on recent theoretical objections to MC policies by Brian Barry and hope to address some of the theoretical reasons why MC policies have been so criticised. I start by summarising my attempts to reconsider moral principles like ‘fairness’, ‘neutrality’ and ‘impartiality’. I then go on to summarise briefly and try to refute Brian Barry’s criticism of all varieties of MC policies. In doing so I hope to show that Barry, if he takes egalitarian liberalism seriously, need not reject policies of MC.

‘Fairness’, ‘Neutrality’ and ‘Impartiality’ Reconsidered

Philosophical opponents of affirmative action policies and of MC base their criticism on ‘deep’ second-order or meta principles such as ‘justice as fairness’, ‘state-neutrality’ and ‘impartiality’. Philosophical defenders have often been tempted to sacrifice these moral principles, thereby unnecessarily weakening their own position. By now, it is urgent to reformulate them. I start with a short clarification of ‘difference’ talk.

‘Difference-blindness’ versus ‘difference-sensitivity’ has played a crucial but very ambiguous role in various traditions of criticism. On the one hand, critical ethnic and racial studies, critical legal studies and critical feminist studies have shown convincingly that so-called ‘difference-blind’ interpretations and applications of fairness, neutrality and impartiality (principles which may or may not be appropriate in ideal worlds) in the real worlds of racist, ethnicist, sexist inequalities serve to reproduce these inequalities and, at the same time, hide this fact from view. On the

other hand, 'differences' actually can mean at least three crucially different things. First, economic, social and political inequalities continue to exist and be reproduced even under conditions of 'strict' legal equality. For the sake of brevity and in order to distinguish these inequalities clearly from cultural inequalities, I call them '*structural inequalities*'. 'Structural inequality' is a very broad and multi-layered concept that includes positional inequalities of class, the presence of elites and predominant hierarchies of prestige, and the respective mechanisms to reproduce these power-asymmetries: exploitation, oppression, selective association, collective discrimination, on the one hand, allocational inequalities and the respective mechanisms of closure/exclusion, on the other, as well as the overall result of such processes: marginalisation.² Second, there are *cultural inequalities* between majorities and minorities that may continue to exist and are reproduced even under conditions of complex economic, social, political and legal equality. And third, there are *cultural differences* or cultural diversity under conditions in which severe economic, social, political, legal and cultural inequalities are absent (in more or less 'ideally fair societies').

In my view, the fatal flaw of predominant difference-talk, particularly of Anglo-American cultural criticism, is that it neither analytically nor empirically makes clear the distinction between *inequalities* (both structural and cultural) and *diversity* or differences: it is not that 'difference is the problem' (as the 'politics of difference' suggests), but rather structural and cultural inequalities. The fatal flaw of many egalitarian critics of MC is that they do not recognise the importance of cultural inequalities. The appropriate ideal approach in fighting structural inequalities is 'fairness as hands-off'; in fighting against cultural inequalities, it is 'fairness as evenhandedness'. The most appropriate arguments, in both cases, are justice-based arguments, not perfectionist ones (see Bader, 2007, see also Kymlicka, 1995, 2001). Structural inequalities may require affirmative action policies, whereas cultural inequalities may require MC policies. Justice-based arguments are silent when it comes to cultural diversity under conditions of structural and cultural equality. Let me explain some of these distinctions and their consequences.

Inequalities versus Diversity

In an ideal moral world, at least from a universalist moral point of view, racist, ethnicist, sexist and gender inequalities (both 'structural' and 'cultural') would have no place. Obviously, there would also not be any reason to talk about affirmative action or MC. What this would mean for ethno-religious diversity and gender differences is more contested. Many universalist cosmopolitans seem to think that such differences would lose all meaning—not only their traditional and important role in the unequal distribution of scarce societal resources and rewards, but also any influence on habits, life styles, ways of life, thus producing a 'gender-free society' (Okin, 1989, p. 171) or a society free of ethnic differences. For a strictly justice-based argument, one can be agnostic. It may, however, be noticed that this overly abstract, rigid and individualistic view is at odds with the equally held opinion that an ideally

just society should allow for all varieties of morally legitimate and permissible cultural diversity. Ethnic, religious and gender cultures under conditions of a rough equality of societal resources would, then, lose all their distributional and most strategic aspects (but not all powers of 'distinction') that have moulded them so obviously. However, when one thinks of the latter issue, it should become clear that analytical and terminological distinction between 'inequalities' and 'differences/diversity' is crucial.

'Structural' versus Cultural Inequalities: Fairness as Hands-off versus Fairness as Evenhandedness

We all know intuitively what economic, social, political and legal inequalities mean. We also know that they have an enormous impact on 'cultures' (broadly meaning a way of life, or ways of seeing, doing and organising things; Bader, 1995, pp. 95ff) and on self-definition, self-respect and identity. In addition, we know some instances where serious cultural inequalities and severe collective discrimination and misrecognition exist despite fairly privileged economic and social positions. Even after legal and political inequalities have, at least partly, been overcome, the traditional 'middlemen minorities' (Chinese in Southeast Asia and Eastern Africa; wealthy Jewish and Armenian minorities), fairly 'rich' national minorities (such as Quebecois and Catalans) and 'rich' gays provide such examples. Taking these examples into account, it also seems intuitively plausible that justice is not only concerned with socio-economic, political and legal inequalities, but also with persistent patterns of collective discrimination and misrecognition, and with ongoing patterns of cultural inequalities (see below).

These distinctions should have consequences for the appropriate policies and the respective ideals by which these policies should be guided. Policies to fight structural inequalities should be clearly universalist, oriented by a principle of justice that Carens (1997) has aptly coined 'justice as hands-off'; we think and require that class or elite descent and ascriptive categorisations should not have any impact on the distribution of resources and rewards. And we think that cultural ways of life should not matter either, except in cases where a clearly demonstrable link exists to individual performances and ambitions and where cultures would be fairly freely chosen. We should 'regard people abstractly, taking into account only generic human interests' (Carens, 1997, p. 817), treat individuals as human beings with equal basic needs or rights and claims to essential natural and societal resources, not as being categorised or belonging to particular categories or groups (not even the sacred 'nation'-state). Simply stated: neither cultural differences nor cultural diversity, self-definitions nor identity-claims should count in matters of distributive justice, including the fair distribution of resources (wealth and income, health-care, housing, social security, education, but also of legal and political chances and collective prestige). In this regard, a 'difference-blind' ideal, goal or aim is right.

Policies to fight cultural inequalities, however, cannot even be conceived from such an ideal because it would neglect the inevitable partiality of all cultures. Fairness as hands-off 'is a very radical ideal. It is hard to know what space would be left for ordinary politics on this account ... apart from libertarians, most of those advocating liberal neutrality do not run up the red flag of revolution' (Carens, 1997, p. 819). In the end, it literally would mean to strip people of all their cultural particularities, from their histories, languages, religious traditions and practices, from their clothes, names and so on, or to declare all this politically irrelevant. The result would be literally a 'naked public square'. A more appropriate reformulation of the ideal in matters of culture is justice as evenhandedness:

To treat people fairly, we must regard them concretely, with as much knowledge as we can obtain about who they are and what they care about. This approach requires immersion rather than abstraction. ... The guiding idea of evenhandedness is that what fairness entails is a sensitive balancing of competing claims for recognition and support in matters of culture and identity. Instead of trying to abstract from particularity, we should embrace it, but in a way that is fair to all the different particularities. Now being fair does not mean that every cultural claim and identity will be given equal weight, but rather that each will be given appropriate weight under the circumstances and given a commitment to equal respect for all. History matters, numbers matter, the relative importance of the claim to those who present it matters, and so do many other considerations. (Carens, 1997, p. 818)

If one recognises, first, that states cannot be culturally neutral (official languages, territorial subdivisions; Kymlicka, 1995), and second, that egalitarian liberals usually do not hesitate to endorse the particularity of 'nation'-states by the standard mix of democratic self-determination in historically contingent political units defined by a common history and some 'national' core; and, third, that all states engage in specific cultural policies in order to correct so-called 'culturally neutral' market mechanisms (e.g., by subsidising high arts, cultural monuments), it seems plausible that cultural evenhandedness is a more appropriate ideal than 'hands-off' (which actually always works in favour of dominant cultural majorities). It is intriguing that the same egalitarian liberals who do not hesitate to seek recourse to particularist cultural claims when it comes to the nation-state and global justice (issues of distributive justice where 'hands-off' is appropriate), play the card of 'strict' neutrality and 'hands-off' when it comes to claims of cultural minorities (see Kymlicka, 2001, Chapter 8, for a criticism of this imbalance). If MC policies are focused, as I claim they should be, on cultural inequalities, then fairness as evenhandedness serves as an adequate ideal.

Important as such an analytical distinction between fairness as hands-off regarding structural inequalities, and fairness as evenhandedness regarding cultural inequalities is it has to be qualified for three main reasons. First, the relative importance of all societal resources and rewards is not simply 'objectively given'; resources and rewards are always culturally interpreted and each of these cultural meanings has consequences for their relative evaluation—a fact recognised by all theories of

rough, complex equality. Such a culture-sensitive approach to inequalities, however, does not make our judgments merely 'subjective', nor does the actual societal importance of resources depend upon the evaluation by dominant classes or elites (see Bader 1998a, pp. 451ff; 1998b, pp. 189ff). Let me hasten to add that 'identity-claims' of minorities are not at stake here. Self-definition and collective identity may be important in many other regards (when it comes to mobilisation and collective action). Such identities may also bring hitherto neglected structural and cultural inequalities to the fore, but they should not be allowed to count when it comes to deciding about target-categories or groups where affirmative action may be appropriate (identity-claims should not pay). Second, all structural inequalities are culturally framed and legitimised, on the one hand, but, on the other, presumed or real cultural differences often also form the basis of structural inequalities—most obviously in cases of discrimination and exclusion, but also in cases of exploitation and oppression.³ And third, policies to deal with cultural inequalities according to the principle of fairness as evenhandedness have to take into account structural inequalities of resources among majorities and minorities, and equally that all cultural policies, directly or indirectly, also distribute scarce public resources.

These three qualifications make the initial distinction more complex, but not worthless. In actual institutions and practices, structural inequalities, cultural inequalities and cultural differences are intrinsically intermingled. This messiness, the interplay of distributive and cultural injustice, implies that all policies to redress structural inequalities will require attention to culture. The ideal of 'difference-blindness' or, better, 'hands-off', should inform the goal or aim of overcoming structural inequalities along group lines, but this does not mean that our means, strategies or policies of achieving this should neglect cultural inequalities.

The revised moral principle of fairness as evenhandedness, more generally, enables us to criticise enforced cultural assimilation and the cultural exclusion of ethno-religious and national minorities without condemning us to 'strict' equality in matters of culture. The latter is not only impossible, but would also imply a reversal of historical unfairness. Histories and numbers, strictly arbitrary and irrelevant from a universalist hands-off morality, are not ruled out as illegitimate particularities right from the start. They have to be taken into account in a contextualised moral balancing of competing cultural claims (see Carens, 2000; Parekh, 2000).

Culture ≠ Identity

Ethno-religious and national cultural inequalities are the result of morally illegitimate discrimination, of the prosecution of those cultural practices (e.g., languages, religious rituals etc.) and enforced cultural assimilation in the past. They may also result from formally neutral mechanisms such as markets or majoritarian decision making, which may reproduce historical cultural injustice (in cases of indigenous peoples and national minorities) and may work to the disadvantage of newcomers (immigrant ethnic and religious minorities). This, in my view, is the focus of MC

policies: they are not designed to address all cultural minorities (e.g., women in patriarchal societies, gays and lesbians in genderist societies); they have to be combined with policies to fight structural inequalities (this is the core of 'egalitarian MC'); and they are inappropriate where the whole spectrum of class and elite inequalities and those kinds of ascriptive inequalities are at stake in which 'culture' is not the problem, but ascriptive exploitation, oppression, discrimination, exclusion and marginalisation are (this is rightly stressed by Barry, 2001, and other critics of MC).

Where serious cultural inequalities are the problem, however, differentiated policies of MC may offer some solutions. This is only the case if they are clearly distinguished from two other strands sailing under the same flag: 'identity politics' and the 'politics of recognition'. Criticising 'identity-talk', I have distinguished questions of culture from questions of individual and collective identity (see Bader, 1995, pp. 100ff; 2001b, pp. 260–264). Unfortunately, even sophisticated defenders of MC such as Will Kymlicka, Joe Carens, Melissa Williams (1998) and Ayelet Shachar (2001) do not clearly distinguish between 'matters of culture and identity' (Carens, 1997, p. 818). Serious cultural inequalities (e.g., the oppression and persecution of minority languages) may require specific collective cultural rights like language rights.⁴ Whether practitioners of usually crosscutting and overlapping cultural practices do identify at all, and if so, in which contexts and with which selected practices and symbols as markers of their individual and collective identity, is a completely different problem. Collective identity is important in organising and mobilising for collective action (Bader, 1991, Chapter 4) and it may be important for developing self-respect. It makes sense to speak of, and claim, collective cultural rights (e.g., to teach minority languages at schools, to speak them in court, etc.) but it is, strictly speaking, nonsense to claim 'identity-rights' as is increasingly fashionable not only in discourse-talk, but also in legal theory and debates about codification.⁵ It makes sense to speak of rights to health care, but it is an erosion of the language of rights to speak of 'a right to health' or a 'right to love'. It makes sense to speak of a right to protect and develop specific languages and cultures, and cultures can be as important for identity definitions as health care is for health. Whether individuals define their identities by identifying with particular cultural practices as markers is up to them, but it cannot possibly be conceived as a 'right to cultural identity'.⁶

Politics of Recognition or Fighting Collective Misrecognition

The negative prestige of categories and groups (e.g., lower castes, estates, classes or certain ascriptive minorities) is often linked to 'structural inequalities' and cultural inequalities.⁷ It may have a negative impact on self-respect.⁸ Collective misrecognition is a serious injustice and the 'politics of recognition' aim at 'equal respect and concern' for all individuals, irrespective of their collective categorisations by others. Protection against collective discrimination, however, is part and parcel of effective anti-discrimination legislation and policy, and non-discrimination is a crucial

individual human right recognised in all international human rights treaties and in all modern constitutions. In this case, and completely different from cultural rights, no new generation of ‘collective rights’ or ‘group rights’ is needed for an effective politics of recognition. The development of a collective identity of collectively discriminated categories is needed, as in all other cases of injustice, for the organisation, mobilisation and collective action against misrecognition on whatever illegitimate basis. Part of these struggles, initially, is to bring collective misrecognition to public attention—to make it visible and audible—and to sensitise public opinion and private and public authorities to the many hidden forms of prejudice and unnoticed discrimination. Effective policies to correct such serious collective misrecognition include highly symbolic acts like official apologies, expressions of guilt or shame and the selection or appointment of minority representatives to highly symbolic and visible positions. If, however, the politics of recognition aims at the full and equal recognition of all collective identity claims, this would be beyond what any policy, however radical, could possibly achieve. In addition, it would be a nightmarish totalitarian utopia: we rightly do not want the state to fiddle around with or prescribe our individual or collective identity definitions, and we do not want to ‘respect’, but rather debate and criticise all identity claims: we owe equal respect and concern to individuals, not to their preferences and identity claims. Here again, we find a strange inconsistency plaguing many egalitarian liberals. Like communitarians and republican patriots, they often defend a relatively aggressive inculcation of national collective identity definitions in schools (as if the ‘nation’ would be the only sacrosanct particular ‘community’) without much critical scrutiny, but deny exactly the same to minorities inside the ‘nation’-state. In doing so, they undermine their own rejection of all ‘identity politics’.

Relational Neutrality and Embedded Impartiality

‘Fairness as hands-off’ and ‘strict state-neutrality’ in cultural affairs is not only unachievable, but also undesirable. The underlying moral intuition should be reconceptualised as relational neutrality or embedded impartiality. Constitutions, laws, governments and the judiciary cannot abstract from all existing ‘particular cultures’. The liberal state cannot be completely anti-perfectionist, but should take into account all those divergent cultures that are compatible with the minimal core of liberal morality.

What is Wrong with Multiculturalism? What is wrong with Re-Universalizing Citizenship!

Individualist egalitarian liberals and republicans claim that MC, and democratic pluralist institutional designs in particular, inevitably lead to disruptive conflicts, threaten the stability of the polity by undermining social cohesion and political unity by empowering minority organisations and leaders who, for structural reasons,

engage in particularist 'ethno-politics' and separationist or even secessionist strategies. It is argued that such policies eventually undermine minimally required conciliatory attitudes because they undermine minimal civil and political virtues, and loyalty and commitment, to the common liberal-democratic polity. These charges are indiscriminately directed against all forms or varieties of MC policies from fairly modest claims to exemptions, fair subsidies, modest or radical claims of group rights for cultural minorities and representation in the political process. I have addressed these charges at length in earlier articles and do not want to repeat the counter-arguments. Instead, I want to focus on Brian Barry's book *Culture and Equality* (2001), which opposes MC from a universalist, egalitarian liberal position. By doing this, it is hoped to demonstrate that he systematically misunderstands the problem to be addressed by MC policies, and also to defend my own justice-based legitimation.

The first and most often repeated charge by Barry (2001, pp. 305–317) is that 'culture is not the problem'. At first, it seems that the 'pervasive flaw' is the 'systematic neglect of alternative causes of group disadvantage'—a position which seems to leave at least some space for recognising serious cultural inequalities. In this interpretation, the complaint is 'that the 'culturalisation' of groups inevitably leads to the conclusion that all disadvantages stem from the 'misrecognition' of a group's culture' (Barry, 2001, p. 308). If this charge is correct, such an 'analysis of ethnicity as a purely cultural phenomenon' (Barry, 2001, p. 315) would indeed be a grave error not only sociologically, but morally. The neglect of 'socio-economic structural and class factors' (Barry, 2001, p. 322), of severe inequality of 'material resources', of 'resources and opportunities' would rule out MC as a plausible and morally defensible policy option right from the start. The real problem, then, would not be culture, but 'deprivation, lack of opportunity and discrimination' (Barry, 2001, p. 15) and 'culture is not the solution'. The problem would be structural inequalities (including collective discrimination) and the answer would be egalitarian policies of redistribution based on individual, not group, indicators, and strong and effective anti-discrimination policies.

Culture, however, presents a challenge for Barry if and to the degree to which serious structural inequalities create cultures (like 'cultures of poverty') putting group members 'in a position such that they in some way are less placed to benefit from the exercise of the rights' (Barry, 2001, p. 13). Such 'cultural deprivation' has an impact on 'motivation', 'cultural preferences', ambition, performance and the development of 'human capital'. Barry is prepared to address these issues as moral and political problems, justifying compensatory measures (see Barry, 2001, pp. 12ff, 114ff) instead of neglecting them either as 'free choice' or 'bad luck' (Glazer, 1975; see Bader, 1998a, pp. 455ff). What is absent from Barry's cognitive and normative universe, however, is the possibility of cultural inequalities or cultural injustice in circumstances 'where resources and opportunities are equal' (Barry, 2001, p. 13) and where no grave 'cultural deprivation' exists that would block human capabilities to make use of 'equal rights' (obviously equal 'cultural rights' are not included). Economically, relatively privileged national minorities like the Quebecois or the Catalans provide examples in

which 'cultural inequalities' are disentangled from 'structural' socio-economic inequalities. Though it has taken a while for equal individual civil and political rights to be granted, and although cultural stereotyping and societal discrimination by Anglo-Canadians and Spanish majorities has continued long after such individualist 'emancipation', these minorities do not suffer from Barry's version of 'cultural deprivation'. Instead they, rightly, oppose cultural assimilation and claim some collective cultural rights (e.g., language rights, educational rights) and forms of political autonomy that go further than federal autonomy in nationally homogenous states.

I see three main reasons for the fact that Barry is unable to see any problem here: first, a misunderstanding of culture; second, his belief in the possibility of strict cultural state-neutrality; and, third, the unfortunate predominance of perfectionist legitimations of 'cultural rights'. Barry argues that MC inevitably uses essentialist concepts of culture (Barry, 2001, pp. 11, 305–308), that it would have to culturalise groups (Barry, 2001, p. 306) and that it would perpetuate cultural differences indefinitely (Barry, 2001, p. 117). Elsewhere, I have refuted these charges. Even if one uses, as one should, a critical 'anti-essentialist' concept of culture (i.e., cultures are not unchanging, immutable, ultra-stable, homogenous, shared or incommensurable, let alone natural things or essences), cultural practices are important for human beings both because of their constraining and their enabling capacities. They should not be dissolved into the thin constructivist air of discourses as mere processes or identities.

Barry rightly criticises Kymlicka's concept of 'societal culture',⁹ but loses sight of the distinctiveness of ethnic or national cultures that Kymlicka intended to characterise. Criticising romanticist nationalism (Barry, 2001, pp. 309ff) is one thing, neglecting the importance of the specific cluster of languages, ethnic cultures and histories characteristic of ethnic and national categories and groups is quite another (see Bader, 1995, Chapter 3), particularly if one uses this same cluster in a quite unproblematic way in defending the 'nation'-state while presenting it as neutral. People or groups are not only 'culturalised' by romanticist, conservative or communitarian MC philosophers, state-administrators or leaders of ethnic 'communities'.

People, in specific circumstances and contexts, may experience themselves as practitioners of specific cultures and make selective use of such ethnic markers in their collective identity definitions. If they do, they constitute 'ethnic' groups. This is most likely under two conditions: first, if they are subject to involuntary, enforced assimilation into cultures of predominant majorities, and, second, if they command the cognitive frames and skills as well as the resources needed to mobilise and act against such morally illegitimate assimilation policies.

Only strong perfectionists try to perpetuate existing cultural differences indefinitely. Arguing from justice, MC should not oppose 'fairly free' cultural change, cultural blending or loss of cultural practices if these take place under conditions in which gross power asymmetries are absent. MC policies, in this perspective, are only

legitimate insofar as, and as long as, such cultural inequalities persist. The reproduction of old and even the creation of new cultural inequalities by 'neutral' mechanisms such as markets or by majority voting (see Rickard, 1994) may be open for discussion, but Barry fails to recognise the moral problem of forced assimilation in itself and does not even discuss the different forms and mechanisms involved in reproducing cultural inequalities.

Barry (2001, pp. 5, 325) claims that any justification of MC policies would be 'anti-universalistic in their thrust'. This is certainly true for strong postmodernist or conservative and romantic approaches, and it is, unfortunately, also true for some feminists such as Iris Young, who is rightly and extensively criticised by Barry for sacrificing universalism and impartiality. Yet it is certainly not true for egalitarian liberals such as Kymlicka, Carens and Melissa Williams, who, to the contrary, try to give universalist reasons for equal, and necessarily particular, cultural rights. Implicitly or explicitly, such attempts are guided by universalist moral arguments.

Barry argues that not only the 'politics of identity' and 'politics of difference', but all MC policies, are inimical to 'politics of solidarity' (Barry, 2001, p. 300) and 'undermine policies of redistribution' (Barry, 2001, p. 7), 'broadly based egalitarian policies' (Barry, 2001, p. 325, see also pp. 8, 12, 18, 317–328). This is mainly for two reasons: first, because it diverts political effort away from universalistic goals (Barry, 2001, p. 325), and, second, 'MC may very well destroy the conditions for putting together a coalition in favour of across-the-board equalisation of opportunities and resources' (Barry, 2001, p. 325, see also pp. 11ff, 326). The latter is inevitably the case because 'group loyalties have primacy' (Barry, 2001, pp. 301, 325) and the 'politicization of ethnicity was an instrument in the struggle for more of the goods that are sought by almost everybody' (Barry, 2001, p. 314). 'There is money in it' is an incentive to play the ethnic card and motivates ethnic entrepreneurs. The first reason is valid only for a strong particularist legitimization of MC policies, but is not inherent in all such policies themselves.

The second reason is more complex. First, universalistic reasons for *equal* cultural rights (applying equal standards to evaluate the claims of particular groups) do not divert from universalistic goals, but apply universalistic arguments to the (inevitably particular, but by no means 'incommensurable'¹⁰) world of cultures. Second, granting specified cultural rights and (limited) institutional autonomy to those specific groups who can plausibly demonstrate that they suffer from serious, morally illegitimate, cultural inequalities does not undermine, but actually tends to strengthen, loyalty and commitment to the (culturally thinner) 'centre' of the common liberal democratic polity. Third, when it comes to monetary or material claims, it is critical that identity claims should not be counted. There should be, as far as possible, no 'money' in the MC business, at least not with regard to the 'goods that are sought by almost everybody'. Fourth, if there is, inevitably, some money involved (e.g., for courses in second languages, for cultural activities), why would this be any more questionable than sponsoring national heritage, monuments, museums or the fine arts, which are not just an unproblematic 'common heritage of humankind' or of universally

recognised 'excellence' as Barry (2001): 198) sometimes suggests. And finally, in MC policies, as in all other policy arenas, difficult strategic paradoxes and trade-offs are involved, and it is not easy to find optimal or workable solutions. Neglecting these paradoxes and trade-offs or privileging class-politics over ethnic politics will not help much.

Barry (2001, pp. 9–11, 67) claims that all MC-policies would replace equal rights, that their theoretical legitimation would be similar or even identical to conservative counter-enlightenment, German romanticist or conservative communitarian theories, and that their institutional and policy proposals would replicate pre-modern forms of institutional pluralism (estate or caste systems, Prussian corporatism, etc.). Recent defenders of MC try to 'supplement' instead of 'replace' equal individual civil, political and socio-economic rights with some collective political and specified collective cultural rights (third generation of human rights), as they try to supplement territorial political representation (in itself multi-layered) with functional representation and ascriptive minority representation.

Barry (2001, pp. 305, 318ff, 327ff) rightly reminds us that 'minorities are capable of oppression, too'. Instead of addressing the dilemma of 'minorities within minorities' in a balanced way (see Bader, 2005b), he thinks that democratic majoritarianism and a strictly individualist universalism would resolve all problems. Neglecting the fact that meaningful associational or group autonomy is of importance for individuals (again, collective autonomy seems of importance only for democratic self-determination of 'nation'-states), no prudent balancing between individual and collective autonomy is required. His correct criticism of strong MC leaves minorities within minorities with the old, miserable choice: 'either your culture or your rights' (Shachar, 2001, pp. 90, 114). Like many other secularist individualists opting for one universalist citizenship (Okin, Galenkamp, Tamir, Becker), he loses sight of the fact that majorities and the state 'are capable of oppression' in the first place.¹¹

If MC policies are only 'a side show' and 'cannot stand public scrutiny', Barry has a problem in explaining how MC policies came into being (Barry, 2001, Section 8.1: 'The Curious Political Success of MC') and how they might be maintained in democratic polities (Barry, 2001, Section 8.2: 'MC versus Democracy'). His options for doing this are limited: either people are easily fooled by normatively groundless and indefensible ideologies and claims, in which case Barry would have a problem with democracy generally, or there has to be a powerful conglomeration of self-interested, particularist elites (minority leaders and state-administrators). Then he has a problem in explaining why the dominant majority, their organisations and leaders, and 'their' state have lost. Both options are tried out in combination: debate on theories and 'the general principles of MC is strenuously avoided' (Barry, 2001, p. 295) and practical MC policies have been 'negotiated behind closed doors' (Barry, 2001, p. 299) by 'the cosy circle constituted by these managers of ethnic diversity' (Barry, 2001, pp. 295, 299). Consequently, the more the theories, legitimations and principles get discussed publicly, the more hostile the public becomes and the more MC policies are in decline: 'it is precisely because the Canadian public is, by

international standards, familiar with both the theory and practice of MC that it is so markedly hostile to it' (Barry, 2001, p. 294). That MC policies have been implemented and 'that MC policies continue to be pursued in the face of a high degree of public hostility is a remarkable tribute to the effectiveness of the elites who are committed to them' (Barry, 2001, p. 299).¹²

In general, his explanation of a backlash to MC policies is poor sociology or political science,¹³ discounting two obviously prominent processes previously mentioned: learning from experience with undifferentiated MC policies, and changes in the economic and political opportunity structures. Under conditions of zero-sum games, declared 'wars on terrorism' and campaigns against 'illegal' immigrants, all redistributive policies are put under pressure and 'threats' from abroad, and from within, can mobilise political opposition. If predominant majorities are still susceptible to old-fashioned racism, ethnocentrism and xenophobia, all reasonable policies, including MC policies, have a hard time.

Conclusion

Let me summarise the main objections to Barry's position. First, his universalism seems too abstract and immodest to me because he insufficiently addresses the multi-layered character of our moral obligations. His universalism and individualism, however, does not prevent him from, unjustly and inconsistently, privileging one particularist collectivity: the 'nation'-state. A more modest universalism does not preclude arguments for an important shift in our moral obligations in the direction of giving global or really 'universal' moral obligations more weight, and at the same time, recognising moral obligations towards 'sub-state' collectivities: not only families, but also unjustly treated ascriptive minorities. An ambiguous universalism and individualism characterises many egalitarian liberal theories, but it is not an inherent limitation of egalitarian liberalism as such (Bader, 2005a).

Second, Barry sticks to an uncritical notion of the strict cultural neutrality of state-institutions and policies, neglecting the impossibility and the undesirability of this second-order principle. Instead of moving uncritically and often even unnoticed from 'ideal' to 'real worlds' (Barry, 2001, p. 321), my concept of relational neutrality starts from existing cultural biases and actual 'embeddedness'. It is better able to express the moral intuition that people should be treated fairly in a situation of 'reasonable pluralism' in relation to all legitimate varieties of a good life. Barry treats actual 'liberal' states as if they would, or could be, culturally neutral and, consequently, tends to neglect forced assimilation to the culture of predominant majorities deeply engrained in actual state-institutions and policies.¹⁴ Relational neutrality and embedded impartiality, to the contrary, requires that there should be a recognition of the variety of competing, morally legitimate, cultural ways of life—not banning them from politics into a so-called 'private' or 'apolitical' civil society, but rather giving them public and political voice.

Third, Barry's proposal to re-universalise citizenship is not only opposed to 'multicultural citizenship' and different forms of representation of ascriptive minorities, it is also inimical to 'social' or 'industrial citizenship' and different forms of representation of functional groups (like neo-corporatism or 'associative democracy') and to multi-layered models of territorial political representation like federalism (see Bader 2003b). He strongly favours a unitary state and defends strictly majoritarian democracy, defending the 'Westminster model of democracy' in England, an anti-pluralist conception of the modern state and indiscriminately accuses all forms of democratic institutional pluralism of being incompatible with equal civil and political rights and democracy (identifying them with pre-modern, anti-liberal and anti-democratic forms of institutional pluralism). For ethno-religious and national minorities, this model has two serious disadvantages: it does not provide constitutional protection of minority rights, but trusts that cultural traditions are tolerant and majoritarian decision making is wise; and it does not provide meaningful forms of institutional autonomy and institutional representation.

Not many egalitarian liberals would go as far as Barry (certainly not Rawls who is so often used in his book as 'the' egalitarian liberal; see Miller, 2002) because that would mean that egalitarian liberalism would lose contact with recently increasing 'multi-level' politics and the development of a whole variety of mechanisms of 'polycentric governance'. His preferred model of the sovereign state and of rational, centralised state administration is in decline. Egalitarian liberals need not reject universalistically based policies of MC. On the contrary, they should think about them seriously if they take cultures and their inevitable particularity seriously, if they recognise severe and unjust cultural inequalities, and if they are ready to balance individual and associational autonomy. Balancing conflicting moral principles is part and parcel of any theory and policy that takes into account the fact of moral pluralism. Contextualised theories of morality need to identify some general rules for accommodating minority cultures. They cannot provide one institutional design or one set of policies as appropriate for all minorities, on all issues, in all societal fields, in all countries, under all circumstances. Elsewhere I have sought to state some of these general rules and explained why 'associative democracy' is the most plausible, open and flexible institutional option in this regard; let me conclude, by inviting concerned egalitarian liberals to join the collective endeavour to clarify and specify these principles and rules and to elaborate more appropriate institutional options and policies for specific contexts.

Notes

- [1] See excellent overviews from a comparative perspective in Çinar (2001); Perchinig (2001).
- [2] See Bader (1997b, pp. 103ff). In this approach, 'status-hierarchies' are structural inequalities, not to be lumped together with 'cultural inequalities' like in Nancy Fraser's Tanner Lecture or by Kymlicka (2001, pp. 331ff) where a simplistic dichotomy between 'economic hierarchy' and 'status hierarchy' paves the way for a misleading dichotomy of policies of redistribution and of recognition. As a consequence, the specific focus of MC policies on cultural

- inequalities is lost and the quite traditional mixture of 'culture and identity' is reproduced. In 2003, Fraser tried to develop a three-dimensional analysis by adding 'representation'.
- [3] This is one of the many flaws of neat distinctions between 'race neutral, class-conscious' policies proposed by Lind (1995, p. 12), Sleeper (1997) and others.
 - [4] See Office of the High Commissioner on National Minorities (1989), European legislation on linguistic rights of minorities; Packer (2002).
 - [5] See Donders (1999) for developments within the Council of Europe, particularly the Framework Convention 1995 and the aborted Additional Protocol to the ECHR 1996.
 - [6] Jeremy Waldron (2000) rightly criticises the wrong justificatory identity claims in favour of group rights, but like Barry and many others, wrongly thinks that no collective cultural rights are needed.
 - [7] In my own approach, collective prestige is part of the package of essential societal resources (Bader & Benschop, 1989, pp. 133, 141ff) for the social and cultural bases of negative and positive prestige.
 - [8] Valadez (1999, Chapter 3) is too impressed by a 'culture of poverty' approach, overestimating the 'internalization of oppression' and the predominance of ideologies (see Bader & Benschop, 1989, pp. 145–153; Scott, 1988; Berg, 2004; Bader, 2007b).
 - [9] See Carens' (2000, Chapter 3) for a lucid criticism of Kymlicka's central concept of 'societal culture'. In 2001, 346f Kymlicka focuses exclusively on language and core institutions.
 - [10] See the excellent criticism of incommensurability by Bhashkar (1986); see also Barry (2001, Chapter 7).
 - [11] See Spinner-Halev (2001, p. 86), who has rightly criticised Shachar for not distinguishing clearly enough 'between oppressed and non-oppressed groups', as if the problem of Jewish personal law in Israel would be the same as the situation of Muslim personal law in India. His justice-based approach, however, indiscriminately mixes 'structural' and 'cultural' inequalities. He rightly insists that demands for group autonomy have to be based on reasonable claims of severe injustice, but wrongly gives the impression that marginalisation across-the-board would be required.
 - [12] In some countries, MC policies may have been elite-driven and not hotly contested. This may be partly true for the Netherlands where researchers (like Penninx and Entzinger) and reports by the *Wetenschappelijke Raad voor het Regeringsbeleid* (WRR) have played a crucial role—together with higher civil servants—in initiating MC policies. These policies have, of course, been opposed by social scientists and politicians, but this criticism by concerned republicans opting for re-universalising citizenship (e.g., Paul Scheffer, following Barry) as well as by right-wing populists (such as Bolkestein and Pim Fortuyn) became more widely shared, dramatised and politically effective after 9/11. However, it is certainly not true for Canada (see Hiebert et al., 2003).
 - [13] The democratically honorable indignation against policies by stealth should be tempered by the insight that fairly intelligent, effective and also normatively wise policies are often only achieved by policies of 'subterfuge'. See Héri-tier (1999) for the EU, and V. Guiraudon (2000) and Engelen (2003) for immigration and incorporation policies.
 - [14] See also Barry (2001, pp. 317ff). In discussing the question 'What kinds of local variation are consistent with liberal universalism?', Barry rightly makes space for 'customising' laws to conventional norms (see his distinction between First- and Second-Order Impartiality). He mistakes my criticism of 'illegitimate, even stupid, ethnocentrism' as if I would 'condemn any filling out of the liberal "thin moral code" in accordance with local norms' (Barry, 2001, p. 288), which I clearly do not (Bader, 1997a). We disagree significantly, however, when it comes to the critical scrutiny of these local norms and how to fight illegitimate ethnocentrism. I take Barry to defend Rawlsian content-constraints of public reason, trying to purify public debate, keeping contested cultural claims out, whereas I insist that only through voice, organisation and mobilisation of cultural minorities can we detect such

illegitimate ethnocentrism and move forward towards a more neutral and impartial interpretation and application of this moral core (Bader, 2007).

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