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Lægaard, Sune

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Sune Lægaard, Department of Communication and Arts, Roskilde University, Roskilde, Denmark

Abstract

Peter Balint identifies three challenges to toleration, one of which is the multiculturalism challenge. This is the charge that liberal toleration fails to accommodate minorities adequately, which requires positive recognition rather than negative toleration. I discuss his response to the multiculturalism challenge and its connection to a classical liberal view of toleration. This involves Balint's claim that liberal neutrality should be understood as reflective and 'difference-sensitive', which should be realised by the state being 'handsoff' in the sense of withdrawing support for privileged ways of life. I argue that Balint's classical liberal view that the state needs to be 'hands-off' is in need of specification and that it does not fit well with his claim that neutrality needs to be reflective and difference-sensitive.

An important contribution of Peter Balint's theory of toleration is his identification of several long-standing but undertheoried themes in debates about toleration: The multiculturalism challenge, that liberalism fails to accommodate minorities adequately, which requires positive recognition. The despotism challenge, according to which toleration is in itself objectionable since it involves one agent having power over another. And the neutrality challenge, claiming that a neutral state cannot be tolerant, since toleration presupposes objection which is ruled out by neutrality (pp. 3-4). I will

focus on his response to the multiculturalism challenge and its connection to a classical liberal view of toleration.

The multiculturalism challenge alleges that traditional liberalism has failed to accommodate minorities adequately, and that fair accommodation requires some sort of positive respect or recognition of minority practices, ways of life, or identities (p. 3). There is a negative and a positive part to the challenge. The negative part targets traditional liberalism. The positive part of the challenge postulates a need to go 'beyond' traditional toleration. This is indeed a quite widespread assumption in many theories of multiculturalism (Lægaard, 2013a, pp. 53-54).

Balint responds to the multiculturalism challenge that liberalism is also about accommodation and that it can accommodate minorities more adequately than many proposed forms of multiculturalism supposedly going beyond toleration. Balint presents toleration as a way of securing accommodation, by which he means that 'someone is relatively free to do the thing they want to do/be, and [that] any political or social restriction is properly justified.' (p. 8) Accommodation spans several different ways of relating to differences, including both classical forbearance tolerance, indifference (usually discussed under the heading of neutrality), and notions of respect for difference often linked to multicultural ideas about positive recognition (pp. 31-32). Furthermore, 'toleration is primarily justified through negative freedom, and toleration is valuable to the extent that this type of freedom is valuable.' (p. 7) He then argues that neutrality is superior to respect for difference as a way of accommodating minorities and that the best way of securing state neutrality is for the state to adopt a 'hands off' approach. His position is thus a classical liberal one at two levels: It assumes individual freedom to be the fundamental value justifying toleration and it takes less state involvement to be the best policy to secure this value.

Balint focuses on neutrality of intent relative to ways of life as a derivative value based on other values. He points out that neutrality is an ideal (p. 54) and a range concept (p. 57). This means that it is not an objection to neutrality that states cannot be perfectly neutral. Neutrality is only supposed to hold relative to ways of life within a given permissible range and is an aspiration, towards which states should strive even if they cannot attain it completely.

Balint's first point is that we should understand neutrality in a 'reflective' and 'difference-sensitive' way. We cannot achieve neutrality once and for all. Because neutrality is about intentionally not favouring specific ways of life over others, a policy that manages to be neutral at time t might be non-neutral at time t+1 because new ways of life have appeared (p. 55, p. 61). This important

insight goes some way towards answering the multiculturalism challenge. The challenge is partly motivated by all too common cases where norms, rules and institutions designed to be neutral regarding established forms of difference are preserved even though they disadvantage newly recognized or groups of recent arrivals and their descendants. The multiculturalism challenge is often a correct criticism of the *status quo*. Balint is correct that this does not show a problem with the liberal ideals invoked as rationales for the *status quo*; it merely shows that majorities often fail to honour these ideals when it comes to newly recognized or immigrant groups. We can understand much multicultural criticism of the status quo as expressions of liberal concerns with neutrality understood in Balint's reflective sense.

A plausible conception of neutrality indeed has to be reflective and 'difference-sensitive' in Balint's sense. Difference-sensitivity is not a distinct normative commitment requiring positive appreciation of specific differences in addition to standard liberal principles (Lægaard 2013b). It is rather about sensitivity to how the range of differences relative to which the state should be neutral may change, which is important precisely in order to make sure the state continually lives up to liberal principles (p. 62). We should think of multiculturalism as a re-interpretation of existing liberal values under changing empirical circumstances (Lægaard 2017).

Balint's next claim is that difference-sensitive neutrality 'is consistent with two forms of liberalism; that of recognition and an active state and that of withdrawal and a smaller state.' It 'can be realized by the state either withdrawing support for privileged ways of life (being 'hands off') or maintaining this support and extending the privilege to the previously excluded (being 'hands on').' (p. 64)

This distinction is in need of specification since it is not clear what counts as hands on and as hands off policies.

Balint's first formulation invokes an incongruent distinction between an *active* state and a *smaller* state. This conflates two distinctions, one between active and passive, and another between larger and smaller. A small state can be active and a large state can be passive, so the two distinctions do not map on to each other.

If we understand Balint's distinction as one between *active* and *passive*, the state is 'hands on' when it does something and 'hands off' when it does nothing. This way of understanding the distinction requires a standard of comparison: is it hands off to leave the *status quo* in place?

Balint's own argument about difference-sensitive neutrality implies that, when empirical circumstances change so that its policies are no longer neutral, the state should revise those policies. So preserving neutrality requires *doing* something. Being hands off accordingly cannot simply mean that the state does nothing.

Take the example of the individual freedom to wear religious dress like the Muslim headscarf. In a context where Muslims are relative newcomers, say in a traditionally protestant country, freedom of religion might be understood as merely protecting freedom of conscience and the freedom of association required to gather for worship. In such a society, there might be many rules in place preventing individuals from wearing a headscarf, simply because this is not a traditional form of dress. To secure neutrality, the state should adjust the understanding of religious freedom to also include the manifestation of religious belief through religious dress and revise the rules preventing headscarves accordingly (unless other reasons trump considerations of freedom of religion). This requires active intervention on the part of the state.

The other distinction between *smaller* and *larger* is not clear either. In the present context, the relevant understanding is not about the size of the state budget or number of state employees. A more relevant understanding might turn on *the degree of state interference*, which would make the state hands on when it interferes and hands off when it does not interfere. This is not necessarily the same as the active/passive distinction, since state activity can be non-interfering, e.g. if the state provides facilities or active support. State passivity can arguably also be interfering, e.g. if the state refrains from removing previously established structures preventing people from doing what they want.

In the headscarf example, the state might itself be interfering if it prohibits headscarves. The state would then be more hands off if it removed such prohibitions and thereby interfered less. However, the state is rarely the only agent preventing individuals from wearing headscarves. Many private employers might impose dress requirements with this effect. If the state has revised its understanding of freedom of religion to include freedom to manifest religious belief through religious dress, some private dress requirements are likely to violate freedom of religion thus understood (again, provided no other considerations outweigh this concern). Given state commitment to protecting religious freedom, the state then seems required to interfere and compel private employers to revise their dress requirements. It is accordingly problematic to understand being hands off as non-interference, if hands off is to secure difference-sensitive neutrality.

Balint's explanation in terms of 'support' to and 'privilege' of ways of life suggest a third way of understanding the distinction, which is not equivalent to the others since a state can be active and interfere without thereby intending to support or privilege specific ways of life. States do many things, which seem very much 'hands on', that do not take the form of support or privilege.

In the headscarf example, a liberal state committed to non-discrimination and freedom of religion will be both active and interfering. Nevertheless, the aim will not be to support or privilege any particular way of life. An illiberal state bent on privileging an established majority culture, on the other hand, can support it merely by refraining from instituting non-discrimination rules.

So the distinction between 'hands on' and 'hands off' policies is not sufficiently clear and allows different readings. Several of the immediate readings furthermore suggest counterexamples to Balint's next main claim, namely that hands off approaches are preferable to hands on approaches as ways of securing neutrality.

He justifies this claim in two ways. One justification simply consists in the claim that hands off approaches offer more freedom to individuals (p. 67). His example of hands off policies offering more individual freedom simply concerns an absence of prohibitions, so the more a state permits, the more hands off it is.

This secures individual freedom in the sense that the state does then not prevent individuals from doing a specific thing. However, this assumes a negative conception of freedom as well as an agent-relative perspective from the point of view of the state. While individuals are freer *from state interference* if the state does not prohibit something they might want to do compared to a situation where the state does prohibit the thing in question, this does not guarantee that they are free from interference to do the thing. Other agents might prevent them from doing what they want to do. In such situations, a hands off approach will not offer more freedom to individuals, all things considered, even on a purely negative conception of freedom, and will arguably not qualify as neutral, if the state knows about the interference from other agents. State interference, e.g. in the form of rights protection or enforcement of non-discrimination, is then necessary to secure individual freedom. So once again, an active and meddling state might be required to achieve the aims to which Balint appeals.

However, Balint's 'primary reason' for hands off rather than hands on neutrality is rather based on 'a view of what the state can and should do, given its limitations.' (p. 68) States both lack the knowledge and ability to change required to actually achieve neutrality by way of hands on policies.

This is an important insight analogous to classical liberal ideas about the lack of state ability to plan the economy and arguments that a free market is a better source of information about people's actual preferences than any centralised government agency could ever be. However, this second argument for hands off approaches is a non-ideal argument, since it refers to *practical* limitations. The argument therefore faces the same kind of response Balint gives to the feasibility objection to neutrality, namely that neutrality is an ideal and a range-property. One might therefore acknowledge Balint's claims about the limits of state knowledge and ability and the resultant likelihood that states cannot secure neutrality by hands on means, but still argue that it should be as hands on as possible, within the limits of feasibility. Just as the state should try to be as neutral as possible within the relevant range, the state should perhaps be as hands on as possible in the cases most central for securing individual freedom or in which we are confident beyond reasonable doubt that a hands on policy will actually take us towards neutrality?

Balint actually allows for such a scenario in cases where it is not politically feasible to reverse some areas of favouritism: 'support should [then] be reduced as much as is feasible in order to come closer to the ideal of neutrality. Failing this, there may be occasions where taking a more 'hands on' approach is the right thing to do.' (p. 74) State recognition and support for religious communities might be an example. If a majority wants to retain its religious privileges, the complete separation and disestablishment required by liberal neutrality might not be feasible. This raises problems of the second best. If the political obstacles are unyielding, the right thing may not be to go for the option in the feasible set closest to the ideal of complete state indifference. If feasibility constraints are due to *majority* resistance to disestablishment, it might still be feasible to remove secondary forms of state recognition and support for *minority* religions. This would take the state closer to the ideal of neutrality where the state recognises no religions. However, it would at the same time increase religious inequality.

In such a situation, multi-faith establishment of some sort seems better than partial disestablishment. Balint actually acknowledges something similar in the case of marriage. If it is not feasible to remove state support for heterosexual marriage, then homosexual marriage should be recognized by the state. While this would be less neutral than removing support altogether, Balint

says that it is 'more neutral than only supporting heterosexual marriage, and is thus to be preferred.' (p. 74) But this implies that neutrality is not only about indifference, but about equality, insofar as full indifference is not politically feasible.

Balint's acceptance that equal support would be more neutral than only support for one way of life shows the importance of the comparative aspect of neutrality. Neutrality is just as much a matter of equality as of individual freedom; non-favouritism and hands off policy is only desirable if extended equally. The value of neutrality is only realized when the state is indifferent towards a whole range of ways of life, not if it is only indifferent towards some of them. Even though the state then does less – it favours fewer ways of life – it is less neutral in the sense that matters. Therefore, the claim that a hands off approach is preferable seems false.

Therefore, while I agree with much of Balint's response to the multiculturalism challenge, his claims that toleration is primarily about individual negative freedom and that a hands off approach is the best way to secure difference-sensitive neutrality seem questionable. Balint is right that liberal values underlie the plausible part of the multiculturalism challenge, but I disagree with his classical liberal reading of this claim according to which the primary liberal value is individual negative freedom and the best policy is hands off.

References

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