



**DIVERSITY WITHIN THE BOUNDS OF JUSTICE: A COMMENT
ON DOMENICO MELIDORO'S *DEALING WITH DIVERSITY: A
STUDY IN CONTEMPORARY LIBERALISM***

Stephen Macedo^{1*}
macedo@princeton.edu

Domenico Melidoro's *Dealing with Diversity: A Study in Contemporary Liberalism*² book is a valuable exploration of the tensions among deep forms of social diversity—especially religious diversity—and liberal guarantees of equal liberty for all citizens. Liberalism is founded on the principle of religious toleration: liberal states are denied the authority to coerce or even encourage religious uniformity or orthodoxy. According to the liberal social contract tradition that runs from John Locke to John Rawls, political authority is limited to citizens' civil or public interests. Religious questions as such fall outside the realm of public authority: they are left up to citizens whose fundamental liberties include rights to decide religious questions and to revise their beliefs and affiliations. Therein lies one of the core tensions that Melidoro explores. Some liberal theorists give priority to toleration of diverse religious beliefs and cultural practices, including ones that may seem “illiberal.” Others emphasize the importance of preparing all children to develop the capacities for autonomy, self-control, and responsibility, that enable them to live their lives freely and exercise their rights and powers as citizens thoughtfully, and on the basis of critical reflection.

On the one hand, religious toleration is a broad and fundamental principle, and the state claims no authority to rule on religious questions as such. On the other hand, as the current crisis of democracy in the US and elsewhere amply demonstrates, constitutional

^{1*} University Center for Human Values, Princeton University. ORCID: 0000-0003-3083-2636.

² Melidoro (2020).

democracies depend on adequate public support for liberal democratic values, and at least minimal levels of citizen competence in their exercise of political power through voting and other means. These cannot be taken for granted: at least adequate civic virtue must be fostered by political and social institutions, norms, and practices.

One aim universally pursued by liberal states is securing at least adequate levels of public education. This is a source of some of the conflicts on which Melidoro focuses. Parents have broad but far from unlimited authority to raise their children in light of their favored values and convictions. Some parents put great emphasis on academic achievement, others place great weight on participation in sports as central to a good life. Parents may induct their children into a religious community and tradition, or not. As they mature, young adults are increasingly free to make their own decisions.

Much of Melidoro's book focuses on the broad contrast between liberals who give priority to respect for social diversity and toleration of religious and cultural differences, and other liberals who emphasize ("also emphasize" is more accurate as we will see) developing in all children civic capacities such as autonomy. He rightly takes my work to fall into the latter camp, which he criticizes. I return to these matters below.

Melidoro's other large theme is more philosophical, and I will mention it briefly. On the one hand there are liberal theorists who base their political principles on a particular philosophical and religious worldview: a comprehensive account of human values, such as William Galston's value pluralism.³ This is how most political philosophers seemed to proceed until fairly recently. Theorists have become more self-conscious about the possibility and advantages of publicly justifying political principles and deliberating about policy decisions solely on the basis of public values and commonly accessible evidence. The fact is that many philosophical and religious questions need not be settled in order to justify and refine liberal democratic political arrangements. Many judges and other public officials—including US Supreme Court Justices—have understood that in a diverse democracy the justification for constitutional arrangements and decisions could not properly be based on sectarian religious or philosophical views,

³ Galston (2002). For a critique see Macedo (2001).

but must rather be capable of being appreciated by a citizen with a variety of such ultimate convictions.

Political, as opposed to comprehensive, liberals affirm that citizens can converge on shared political principles and arrangements while disagreeing about many abstract and ultimate questions.

This latter view—political liberalism—seems to me correct and increasingly dominant in practice.⁴ Melidoro and I agree on this, so I will take it as settled for these purposes that public deliberation, especially about decisions concerning basic political principles and matters of basic justice, is best conducted in the language of commonly accessible, public and political values, without relying on or trying to settle many philosophical and religious questions. I join Melidoro in endorsing, and indeed taking it more or less as settled, that liberal political theory, insofar as it is oriented toward informing actual deliberation and decision making, should be “political” (and moral) but not “comprehensive.”⁵

The main issue between Melidoro and myself lies in the first contrast mentioned above. Melidoro suggests that we must decide whether liberal political principles should give priority to toleration and respect for diversity (PT), or, rather, give precedence to ensuring that all children are equipped to exercise their individual autonomy (PA). Melidoro correctly takes the work of Chandran Kukathas to represent a rather extreme version of the first option (PT). And, as I’ve said, he takes my work more or less correctly to represent a version of the second option (PA).

Melidoro’s book is generally fair-minded and insightful, clearly written and very worth reading. He makes valuable points throughout, and I also believe he has put his finger on a rhetorical, and perhaps substantive, weakness in some formulations of my own work. Nevertheless, Melidoro’s core contrast across liberal theories—between toleration for diversity and educating all children for autonomy and other civic capacities—is overdrawn. Every liberal view has a central place for toleration and respect for diversity. Every sensible liberal view that takes the trouble to consider the problem of

⁴ I have explored and elaborated a version of political liberalism in many places, including Macedo (1988, 1990a, 1990b, 1992, 1995, 1997).

⁵ Melidoro (2020, pp. 9 and *passim*).

constitutional maintenance and system stability will also attend to the problem of forming competent citizens. Melidoro’s account of autonomy-oriented liberalism is, therefore, oversimplified and his criticisms are generally misplaced.

Melidoro is right to criticize Kukathas for allowing very little scope for public authority with respect to children’s education and a host of other matters. Kukathas’ libertarian political principles envision a society on the model of a “liberal archipelago” of distinct cultural and religious groups, governed by a minimal state that requires only that each group should respect the liberty and property of others, and permit their own members to exit the association or community when they should wish.⁶

No doubt, some will find Kukathas’ libertarian utopia attractive, and he may be the most accomplished expositor of this broad position since Robert Nozick. Nevertheless, publics around the world have rejected the minimal state. Everywhere, liberal democracies exercise broad powers in pursuit of a variety of public interests. Those include not only peace and security, the rule of law, and the protection of equal rights, but also the promotion of health and recreation (public parks and recreational facilities), public education in various forms, transportation, protection of the natural environment, the promotion of science and the arts, and economic management with an eye toward prosperity, stability, economic security, and a fair sharing of the gains of the socially managed economy. All of these matters and more are also increasingly sought via cooperative arrangements with other states.

Melidoro is drawn to Kukathas’ vision so he never acknowledges the wide range of aims that liberal states pursue the world over with broad public support. To some degree his position seems contradictory. At one point toward the end of the book he says that, “the distributive implications of PT liberalism ... have not been discussed. ... the book is silent on the possibility of finding an account of social justice that is consistent with PT [or toleration-oriented] liberalism and its general stress on diversity.”⁷ He similarly says that PT liberalism does not endorse libertarian property rights either: the view is agnostic on economic arrangements. This seems to express agnosticism on questions of fair distribution of opportunities and the gains of social cooperation.

⁶ See Kukathas (2003).

⁷ Melidoro (2020, p. 147).

Yet only slightly later Melidoro's tone changes, seemingly ruling out liberal egalitarian and social democratic principles of distributive fairness:

I would add that the realization of a just society, if justice amounts to compliance to a certain distributive scheme, is not included in the acceptable tasks of the state. Instead, one could say that for PT liberalism, justice is achieved when individuals are granted an equal opportunity to realize, either individually or within a group, their life plans in a peaceful and ordered social environment. ... an account of distributive justice should be consistent with the constraints of the state intervention already specified.⁸

It is not clear to me what limits Melidoro has in mind when it comes to the regulation of economic affairs. Melidoro's position seems to be that securing distributive justice is not within the scope of legitimate public authority. That would explain his initial description of liberalism as, "the search for conditions of social peace in the face of this [social] plurality."⁹ Note the absence of any reference to justice. And yet he references "equal opportunity" in the longer quotation above. If he means anything like fair equality of opportunity on the Rawlsian model, then nearly every Western society—certainly including the United States and Italy—requires considerable public intervention to equalize children's life chances. Is that ruled out by the precedence he gives to toleration and group-based diversity?

Melidoro goes too far with Kukathas. There is no withdrawing the state from deep and pervasive involvement in economic affairs, and that is not only (or even mainly) because of the needs of the poor. Whenever the banking system or financial markets face a crisis and the possibility of collapse, the wealthy insist that governments come to the rescue, just as states stepped in to curb losses in the face of a financial collapse of 2008–10. All citizens will insist that the state act in the face of a crisis like the Covid epidemic of 2020–21: to halt evictions, coordinate public health measures, and invest heavily in medical research and the production and distribution of vaccines.

My own account of the scope of the authority of liberal states is closer to the realities of constitutional democracies. I accept that states should be active across a wide range of legitimate public concerns. And they must implement fair systems of distribution or else the rich and powerful will step in and rig the system in favor of their own interests, as

⁸ Ibid. (p. 148).

⁹ Melidoro (2020, p.2)

they have done to an appalling extent over the last forty years in the US and many other states.¹⁰

Melidoro's insistence on the priority of toleration and diversity is excessively abstract. He owes his readers more particulars, examples, and applications. Would he allow people to opt out of vaccinations? Not only for Covid but for other diseases?

Melidoro says that, "within PT liberalism, individuals' integrity (namely, the consistency between someone's values and her/his conduct) should be respected, even when it demands illiberal behaviours."¹¹ What does this mean in practice? In many cultures and religions around the world, parents are allowed or even encouraged to arrange marriages for their very young sons and daughters. Should "illiberal behaviors" such as arranged marriages for teenagers of 14, 15, or 16 years be allowed? If parents and particular communities prefer that their children work in factories rather than attend schools ought we to defer in the name of toleration and diversity? I think Melidoro would say "no" to all of these proposals, as I would: I believe he would allow for public educational requirements and insist that young adults be empowered to make their own decisions about marriage.

Melidoro says that,

Political pro-toleration liberalism, in fact, far from telling people how they should live, sets limits to the power of the state. A state directed by the precepts of PT liberalism does not interfere in the life of individuals to impose controversial conceptions of the good. Such a state has accomplished its tasks once it has ensured that, within a peaceful social environment, basic individual rights are not violated.¹²

But what are those individual rights? He doesn't say much about that.

In fact, very few liberals wish to use the power of the state to "impose controversial conceptions of the good," and I certainly would not. Civic liberals such as myself also argue for the importance of public efforts to promote competent citizenship not as a conception of the good life but for the sake of securing a stable and orderly political

¹⁰ For a recent excellent account, see Hacker and Pierson (2020).

¹¹ Melidoro (2020, p. 141).

¹² Ibid. (p. 146).

system. The public goods that liberal democratic states pursue—health, prosperity, efficient and convenient transportation, etc.—are widely valued by members of society with different conceptions of the good life.

Melidoro advances the abstract claim that, “Political pro-toleration liberalism, ... only authorizes state intervention in order to avoid inter-group conflicts, to guarantee that the mainstream society is welcoming to all the individuals and their needs, and to protect basic individual rights.”¹³ But what does it mean to ensure that “mainstream society is welcoming to all individuals and their needs”? Does this mean that states must insist that businesses do not discriminate against gay people and trans people in employment? In providing adequate bathroom facilities for trans people? And what happens when a religious employer asserts that this interferes with their religious freedom? Melidoro says that states may intervene in group affairs “to control the mistreatment of weaker groups by the stronger ones.” Which is the weaker and which is the stronger group when it comes to gay rights vs. religious conservatives?

I agree with much in Melidoro’s argument, but it remains at too high a level of abstraction. The tensions that arise when we care deeply about both toleration and diversity and civic capacities like autonomy can only be seen and grappled with closer to ground level.

Every version of liberalism—including my own—regards religious toleration and respect for diverse ways of life and systems of belief as core commitments. Virtually every version of liberal democratic constitutional theory also accords authority to public agencies to ensure that children receive an adequate education. So, the contrast between liberalisms of toleration and liberalisms of autonomy is easily overdrawn. There are contrasts of emphasis. I accept that emphases differ. Among those who have given more weight than I have to educational pluralism, for example, are not only liberals like William A. Galston but many “conservatives” (or classical liberals) such as Michael W. McConnell¹⁴ and others. The differences here often concern the degree of deference that should be paid to parents’ preferences when it comes to educational curricula in public schools. Those are specific matters of educational policy and institutional design about

¹³ Ibid. (p. 142, see also p. 121).

¹⁴ See McConnell (2002).

which reasonable people often differ, and inquiring into them requires more detailed analysis than can be elaborated here. The important point is that these controversies do not typically involve choosing between either toleration and diversity, or autonomy and civic education, but rather how these values should be weighed, and most effectively pursued, in complex institutional contexts. It is not a question of “either/or,” but more typically how best to pursue both.

Leaving aside libertarians like Kukathas, for a broad swathe of liberal political theorists the question is not whether, but *how states should take care to attend to the character and capacities of citizens*. While I affirm that these are matters of not only legitimate but important public concern, I also believe that states can and should promote civic virtues in ways that are tolerant and respectful of diversity.¹⁵ I would join with Melidoro in seeking ways to promote citizen’s civic capacities while also respecting diversity and tolerating even many illiberal ways of life.

In a book on the institution of civil marriage I endorsed and made a public case for same-sex marriage, marriage as a civil institution, and full public recognition of only monogamous marriages. Others, in the name of greater diversity and toleration of illiberal ways of life, argue that the state should recognize polygamous marriages (not Galston, I should hasten to add, who has written eloquently on the advantages of two-parent marriages for children). The social consequences, including educative consequences, of differing marital norms are enormous. Historically, polygamy has contributed to great inequalities between men and women, inequalities between high and low status males, and worse health outcomes for children and women generally.¹⁶

I do not, however, argue for enforcing criminal prohibitions when people do engage in polygamous unions. That is too oppressive, and fails to respect people’s sexual freedom. A married couple should be able to have an “open marriage” if they wish: that is to turn their relationship into a threesome or foursome or moresome. Having multiple sexual partners should not, I argue, be criminalized. Similarly, public policy can favor monogamy while respecting people’s freedom to live in less egalitarian arrangements, including in patriarchal marriages.¹⁷

¹⁵ See Macedo (2000).

¹⁶ See Macedo (2015), Part III, and the sources cited there.

¹⁷ *Ibid.*

Melidoro criticizes me for being too heavy-handed in authorizing the state to pursue civic education at the expense of religious and cultural dissenters. He says that I put too much emphasis on the hope that illiberal religious communities will be transformed in the direction of greater conformity with fundamental liberal and democratic values, as seems to have been the case with the Catholic Church with Vatican II. He quotes me as saying that, “the important point is that we must decide which communities are to be accommodated, and that there is nothing wrong with deciding on the basis of the best reasons that are available, and with due confidence in the worth of preserving liberal institutions.”¹⁸

Melidoro charges that what I seem to favor here and elsewhere is a process of *one-way assimilation*: of illiberal religious and cultural communities becoming more liberal and democratic. What we should instead favor is a two-way process of *integration* such that changes take place on both sides.

Here again we have excessive abstraction. Whether we should favor one-way assimilation or two-way integration, with changes and mutual adjustments being made on both sides, depends entirely on what is at stake. It is an error to prefer two-way mutual accommodation without specific reference to the which values and practices liberal democratic societies being asked to accommodate. Many Nazi’s fled Germany for South America as Hitler’s regime collapsed: should their abhorrent values and practices have been accommodated? Should Uruguay have embraced just a little anti-Semitism to make them feel more at home? Of course not.

Melidoro characterizes my position thus: “Macedo’s liberalism is unapologetically transformative up to the point that it does not even despise assimilation, provided that it operates in non-oppressive ways and is directed towards justifiable values.”¹⁹ I plead entirely guilty to that charge. The crucial phrase is “justifiable values.”

Of course, few migrants are fascists or extremists of other sorts, and it is quite right to say that when societies welcome for example an influx of Muslim migrants, adjustments and accommodations should take place to ensure that their dietary and other requirements are addressed. Multicultural policies—what Melidoro calls “mutual

¹⁸ Melidoro (2020, p. 84, and see footnote 63).

¹⁹ Ibid. (p. 76).

adaptation”²⁰—are altogether justifiable so long as they do not involve denying equal rights to women or gays or other minorities. The important point is that multicultural policies and accommodations of this sort are extensions of liberal equality and fair opportunity, not qualifications of it.²¹ Melidoro’s discussion is too abstract and removed from specific policy conflicts on the ground to really grapple with the relevant issues.

But let me conclude with this. In earlier work I did sometimes adopt a tone that was excessively unilateral with respect to groups who dissent from the liberal values. Melidoro also often seems to support those values, saying that, the state should ensure that “mainstream society is welcoming and responsive to the needs of all. This means that everyone should feel welcome when they leave their original community,”²² or when they interact in public institutions and, presumably, the commercial sphere.

I agree with Melidoro that we cannot and should not try to cram liberal values down people’s throats. He is surely right that, “an individual can have a good life even living in traditional and non-autonomous groups.”²³ And he is right that social transformations, including ones that lead to greater acceptance of liberal values, wider respect for the diversity of forms of life, some people, wedded to more traditional forms of life and who disapprove of others’ reasonable choices, may come to “feel that they live in an alien environment.”²⁴ Melidoro is right to worry that the pace of even justified change may leave some people feeling deeply alienated from their communities, it can also provoke dangerous backlash.

It is for these reasons that I endorsed, in part, Justice Anthony Kennedy’s opinion in the *Masterpiece Cakeshop*²⁵ case, which postponed a decision on the underlying merits. The now famous case concerned a “cake artist,” Jack Phillips, who refused to bake a wedding cake for a same-sex couple in apparent violation of Colorado’s anti-discrimination laws. That anti-discrimination law was precisely aimed at requiring that citizens long subject to invidious discrimination should feel welcomed as equal citizens in “mainstream society,” or the field of everyday commercial transactions. Phillips was not asked to endorse the marriage or approve of it, and the anti-discrimination law would

²⁰ Ibid. (p. 87).

²¹ For the best available account, see Patten (2014).

²² Melidoro (2020, p. 121).

²³ Ibid. (p. 141).

²⁴ Ibid. (p. 138).

²⁵ *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018).

leave Philips free to live according to his own beliefs in his faith community. The issues in the case are complex, but I at least drew attention to the value of postponing a decision by the US Supreme Court, so soon after its decision requiring the equal recognition of same-sex marriages under the US Constitution.²⁶

I would describe this as a “tactical” and prudential compromise, and not one at the level of fundamental principle. I think we should look forward to a future in which fundamental disagreement on the issue of civil equality for sexual minorities is a thing of the past, but should hesitate before cramming that down people’s throats. We should sometimes give people time in some circumstances, and hope that they freely adapt to our improved understanding of what justice requires.

So, it may be that Melidoro and I largely agree. If he wants to live in a society in which people of different races, religions, and sexual orientations feel welcomed as equals in mainstream society, including by the fellow citizens they encounter there, and in which women are treated fully as equals by employers and co-workers, he should accept that this depends on a profound transformation in the attitudes, norms, and beliefs that still prevail in many places.

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²⁶ Macedo (2019).

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