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# Multiculturalism as a Deliberative Ethic

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***Abstract.*** Difficult questions regarding the so-called limits of toleration or accommodation are inevitable in today's diverse, immigration societies. Such questions cannot be satisfactorily answered through simple assertions of the majority's will or by retreating to a defense of 'core liberal values.' Rather, dealing with the challenges of diversity in a manner consistent with liberal-democratic principles requires that decision-making concerning the terms of collective life be informed by sincere and respectful deliberation. But how and where do we go about engaging in such deliberation? This essay suggests that the courts seem to offer an arena that is more conducive than other traditional democratic institutions in terms of enabling the type of dialogue and analysis essential to realizing meaningful deliberation. Paradoxically, then, the judicialization of politics can be understood to be an ally, not an enemy, of meaningful deliberation in diverse democracies.

***Key words:*** diversity, meaningful deliberation, public reason, multicultural democracy, majority-rule decision-making.

Difficult questions regarding the place of minority practices – particularly those that have a religious basis – are inevitable in today's diverse, immigration societies. We must expect that debates over the so-called limits of toleration or accommodation will be frequent and often intense, as suggested by recent headlines (e.g. Peritz 2013; Ibbitson and Friesen 2011; Mansur 2011; Burns 2011; Weaver 2010). Such disagreement cannot be satisfactorily adjudicated by merely retreating to a defense of 'core liberal values,' because, more often than not, those values will be at odds with each other. Rather, dealing with the challenges of diversity in a manner consistent with liberal-democratic principles and procedures requires that the positions of all those affected be seriously considered prior to determinations being made about how best to respond to disagreement concerning matters of public import (e.g. Dryzek 2010; Christiano 2008; Cohen 2002). That sentiment is superbly captured by the *principle of equal consideration of interests*, which requires "that we give equal weight in our … deliberations to the … interests of all those affected by our actions" (Singer 1993, 21). To use a well worn cliché, integration must be a two-way affair, with compromise on the side of newcomers and the host society.

Moving beyond the simple assertion of that cliché has important consequences. Most critically, it requires that decision-making regarding the terms of collective life be informed by sincere and respectful dialogue and deliberation. Genuine deliberation, in which competing arguments are developed systematically and given a fair hearing, is radical; it demands that we be willing to regularly and conscientiously scrutinize longstanding beliefs, conventions and practices. Equally important, it requires that all sides in a dispute be prepared to seriously consider amending their beliefs, conventions and practices, when "a better argument recommends it" (Christiano 2008, 190).[1]

1] As John Stuart Mill (1998, 25) concluded, "The whole strength and value ... of human judgement

But how and where do we go about engaging in such deliberation? We offer a response to that question by examining the often tense relationship between diversity and the realization of meaningful deliberation. First, we briefly explore the character of diversity in Canada and other contemporary liberal democracies. Next, we present our understanding of meaningful deliberation and, in turn, suggest that majority-rule decision-making is often incompatible with such deliberation. We then examine two Canadian cases to observe the extent to which they incorporated what could be labelled meaningful deliberation. Specifically, we review the *Multani v. Commission scolaire Marguerite-Bourgeoys* (2006) case – concerning the right of a Sikh boy to wear his ceremonial dagger (*kirpan*) to school – and the Ontario government's decision in 2005 not to extend the province's *Arbitration Act* to allow for "voluntary private arbitration of family law and inheritance disputes according to Islamic principles." We contend that, while the *Multani* case offers an example of the kind of meaningful deliberation we believe necessary to respond effectively to difficult policy dilemmas (what Ronald Dworkin [1978, 83] has labelled "hard cases"[2]) in contemporary liberal democracies, the Ontario government's decision clearly demonstrates the negative impact that partisan political considerations can have on efforts to realize meaningful deliberation on publicly sensitive matters. We then briefly consider whether, as a general rule, meaningful deliberation is more likely to occur in institutions insulated from the pressures of electoral politics: specifically, superior/constitutional courts. In turn, we conclude by advocating a reconsideration of the condemnation of the 'judicialization of politics,' and identifying some of the practical implications of our argument.

Of course, concerns about the judicialization of politics – "the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl 2008, 94) – have generated a noteworthy amount of scholarship in recent decades. In turn, the fear that judicial activism is transforming the courts into "major political decision-making bodies" (Hirschl 2008, 95) and displacing (or worse, usurping) the legitimate democratic authority of popularly elected representatives and, by extension, the citizenry, has loomed large in that discourse (e.g. Leishman 2006; Cameron 2009; Morton 2003; Roach 2001; and Waldron 1999). However, when considering the most effective ways to facilitate meaningful deliberation in diverse democracies, the courts seem to offer an arena that is notably more conducive than other traditional democratic institutions in terms of enabling the type of dialogue essential to realizing such an end. Paradoxically, then, the judicialization of politics can be understood to be an ally, not an enemy, of meaningful deliberation in diverse democracies.

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... [depends] on the one property, that it can be set right when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand. In the case of a person whose judgement is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism on his opinions and conduct."

2] Dworkin (1978, xii, 83) identifies a "hard case" as one for which "no settled rule" or practice requires or dictates a decision in favour of any given position.

For various reasons (some of which are noted in the preceding paragraph) such a claim is controversial, especially insofar as it seems to restrict the opportunity for genuinely *democratic* deliberation in the broadest possible sense. And to the extent that it suggests that the challenges of 'official' (that is, state-mandated) multiculturalism can be addressed in a manner acceptable to all (or, at least, the overwhelming majority of those) concerned, it might also be considered an optimistic conclusion given the (relatively) recent proclamations by political leaders such as Angela Merkel and David Cameron, regarding the "utter failure" of attempts to create "successful" multicultural societies.

## I. DIVERSITY AND THE INEVITABILITY OF NEGOTIATION

Liberalism has long concerned itself with the socio-political challenges of diversity. The wars of religion that plagued Europe during much of the sixteenth and seventeenth centuries convinced John Locke (1983) and others that toleration of religious diversity was essential to the realization of a stable, peaceful society: Given the critical importance that many citizens attach to their religious beliefs, their ability to live (relatively) contentedly – or, at least, 'acceptably' – requires that they be allowed to pursue their lives in accordance with those beliefs, without fear of persecution for doing so. During the course of the preceding four centuries, the initial focus on religious diversity has broadened to encompass moral, cultural and philosophical diversity in general. In the latter half of the twentieth century, Isaiah Berlin (2002, 213-14; see also 2000, 11) eloquently and persuasively argued that *value pluralism* is an empirical fact, observing that there are many genuine, "ultimate" values that may, and often do, conflict with one another: "the world that we encounter in ordinary experience is one in which we are faced with choices between [many] ends equally ultimate, and claims equally absolute, the realization of some of which must inevitably involve the sacrifice of others." Moreover, those values are at times irreconcilable and incommensurable, thereby denying the possibility of choosing between them based upon an objective or universally acceptable rank-ordering of them (Berlin 2002, 216). Accordingly, conflicts between values are "an intrinsic, irremovable part of human life" (Berlin 2002, 213; see also 216).

Although the acknowledgement and (at times grudging) acceptance of value pluralism has long been a staple of liberalism, the range of groups privy to liberal recognition and accommodation has shifted over time. As Alan Cairns (1999), Will Kymlicka (2007) and a host of others have persuasively demonstrated, the twentieth century marked a profound shift in our understanding of concepts such as race, ethnicity, nation, and human rights and, consequently, the relationship among groups separated along those lines. Prior to the Second World War, ethno-cultural and religious diversity in Canada and other liberal states was characterized by illiberal and undemocratic relations "between conqueror and conquered; colonizer and colonized; master and slave; settler and indigenous; racialized and unmarked; normalized and deviant; orthodox and heretic; civilized and primitive; ally and enemy" (Kymlicka 2010, 35). These hierarchical

relationships were justified by racist ideologies that cast white Europeans from the British Isles and northwestern Europe as superior and therefore worthy of rule over others. Liberalism was the preserve of 'civilized' Europeans; those outside the sphere of civilized peoples could be treated with coercion without recourse to justification.

The Nazis' grizzly actions during the war demonstrated the perverse logic of racism taken to its extreme (Lauren 1996; Fredrickson 2002). Given their stand against fascism, liberal polities were forced to reconsider how they too understood and mediated difference; the racialized "hierarchy of peoples" that sanctioned a host of discriminatory public policies was discredited, forcing liberals to reconsider the scope and content of their doctrine. The consequences of this philosophical shift were profound, driving the human rights revolution, decolonization and the development of novel approaches to the management of cultural difference in liberal-democratic states. One of the key policy implications of this new era was the liberalization of immigration policies in Canada and other liberal-democratic countries. We now live in a world transformed by those reforms. In Vancouver, Toronto and Montreal, substantial cultural diversity – what Stephen Vertovec (2007) has labelled "super diversity" – is a fact of life. From a sociological point of view, Canada is *intensely* multicultural. And, as demographers and statisticians frequently remind us, that diversity will increase significantly in the years ahead (Statistics Canada 2003; Kunz 2009). Consequently, debates over the accommodation of difference are and will continue to be unavoidable, and the satisfactory resolution of those debates will require negotiations between the affected parties. Given the fundamental shift in normative contexts that has occurred since the end of the Second World War, those negotiations can only be meaningfully carried out in a spirit of respectful dialogue that rejects assertions of hierarchy and civilizational superiority (Mazower 2006).

## II. DELIBERATION IN DIVERSE SOCIETIES

The resolution of conflicts over what is (un)acceptable in "super diverse" liberal-democratic societies will necessarily be a deliberative, two-way, process. There is a substantial and constantly increasing volume of scholarship devoted to exploring the idea of deliberation in contemporary multicultural democracies. In turn (and unsurprisingly), there exist a number of different definitions of 'meaningful' deliberation, offering various understandings of the specific characteristics associated with such an activity.[3] For the purpose of this essay, 'meaningful deliberation' refers to a process whereby members of a political community engage in the critical examination and reasoned, respectful discussion of collectively binding public policies and, in so doing, engage the distinctive positions of individuals and groups affected by such policies, through recognizing their right to speak (and to be heard) and removing barriers to their participation. Such

3] For surveys of a number of the different understandings that have been developed, please see Rummens 2011, Dryzek 2010, esp. chaps.1-5, Thompson 2008, and Chambers 2003.

recognition is provided insofar as one can reasonably demonstrate that the efforts undertaken to secure and seriously consider the views of all interested parties represent the best possible 'good faith' attempt to do so, given the existing circumstances.

The contextualism associated with such an approach merely reflects the complex reality of public policy development in contemporary liberal democracies. The extent to which one can complete the desired processes and provide the preferred opportunities for involvement will fluctuate as a consequence of differing circumstances. The result is that decisions regarding the 'meaningfulness' of a particular deliberative exercise will need to consider elements of both procedural and substantive reasonableness and allow the importance of each to fluctuate depending upon the precise circumstances in question. For example, a complete satisfaction of the demands of procedural reasonableness (e.g. adequate meaningful consultation with affected parties during the development and implementation of policy) may need to be forsaken in times of public crisis, such as during the outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003, when it was necessary (or, at least, desirable) that governments react quickly.[4] Such a compromise may also be necessary when the issue in question is of an extremely sensitive nature, such as matters related to national security, effective responses to which might also 'reasonably' demand certain 'substantive' concessions.

So understood, meaningful deliberation ensures a *fair equality of opportunity* for all viewpoints to be expressed and seriously considered.[5] One of the most effective ways to help achieve that equality is to provide the same political liberties to all individuals. So, for example, all citizens must possess an equal right and opportunity to vote in state-run elections, to stand for political office, and to comment publicly on government policies and practices. It is also necessary to assure the "fair value" of those liberties. What that means is that, regardless of an individual's socio-economic status, the political liberties secured by the constitution, for example, will be of "approximately equal, or at least sufficiently equal" worth to all citizens in terms of enabling them "to influence the outcome of political decisions" (Rawls 1996, 327). Ensuring fair value "might, for example, require public funding of political parties and restrictions on private political spending, as well as progressive tax measures that serve to limit inequalities of wealth" (Cohen 2002, 88; see also Rawls 1996, 235 n. 22). Though ensuring the fair value of political liberties does not guarantee 'perfect' equality among citizens,[6] it does "ensure that the political agenda is not controlled by the interests of economically and socially dominant groups" (e.g. Cohen 2002, 88; see also Rawls 1996, 325 and 360). Hence, when deliberation embodies

4] That is not to suggest that all believe that governments' reactions were appropriate.

5] Rawls (2005, 488) limits the scope of inclusion to only "reasonable" views – as he understands such – and notes that a position is '*un*reasonable' if it "reject[s] the essentials of a constitutional democratic polity." However, many have argued that such a restriction is not only unnecessary, but also undesirable. For thoughtful recent arguments to that end, see Christiano (2008, esp. 190-230) and Dryzek (2010, esp. 85-116).

6] Regardless of whether it is desirable – and not all believe it to be so – 'perfect' equality in all senses is unachievable.

fair equality of opportunity, deliberators are not constrained by their lack of social power; rather, what counts is the strength of their claims and the persuasiveness of their arguments – "no force except that of the better argument is exercised" (Habermas 1975, 108).

As already suggested, meaningful deliberation also entails a particular mode of exchange: namely, *civil* discourse that embodies *public reason*. In John Rawls's formulation, the "duty of civility" precludes appeals to comprehensive moral or religious doctrines – "moral ideal[s] to govern all of life" (Rawls 1985, 245)[7] – to justify public policies, requiring instead the use of *public* reasons, which are reasons anchored in shared political values, such as those identified in the constitution. Such justifications respect the "guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant for political questions" (Rawls 1996, 223; see also, Rawls 1999, 132–39; and Rawls 2001, 89). Examples of such guidelines are "the general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science, when not controversial" (Rawls 2001, 89–90). By delineating the boundaries of what constitutes a legitimate consideration when discussing matters of fundamental public import, public reason helps to define the proper parameters of "the reasonable" and thereby reduces the likelihood of irreconcilably divisive conflict between deliberators.[8]

Public reason also requires that deliberators recognize and voluntarily accept what Rawls (2001, 35) labels the *burdens of judgment*, "the many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life." Those obstacles include 1) the presence of conflicting and complex evidence that is difficult to assess and evaluate; 2) reasonable disagreement about the primacy of agreed-upon considerations which, in turn, may generate different judgments; 3) the unavoidable need to rely to some extent on judgment and interpretation when considering matters about which reasonable people might disagree; 4) an inevitable divergence of judgments "on many if not most cases of significant complexity"; and 5) the presence of different types of normative considerations that exert varying degrees of influence "on both sides of a question," thereby making an "overall" evaluation of the related case very difficult (Rawls 2001, 35–36). Reasonable individuals will acknowledge that the burdens of judgment apply equally to all citizens, and freely and willingly accept the consequences of such a condition (Rawls 2001, 197).

Unsurprisingly, such an approach is not without its critics. Arguably, one of the most interesting and noteworthy challenges to Rawls's approach is that offered by Jürgen Habermas. Like Rawls, Habermas promotes the public use of reason as a means for responding effectively to the political challenges generated by ineliminable religious,

7] Rawls (1996, 13, 175; see also 2001, 14, 198) offers utilitarianism, perfectionism, intuitionism, the theories of John Stuart Mill and Immanuel Kant, and the belief systems associated with most organized religions, as examples of "fully comprehensive" doctrines.

8] This approach generates what Thomas Christiano (2008, 190) has labelled the "*narrow conception* of public deliberation," which he believes "imposes [unacceptably] severe constraints on a legitimate process of moral discussion and debate in democracy" (2008, 202).

moral and philosophical diversity. However, according to Habermas (e.g. 1995), Rawls's approach is problematic insofar as it generates constraints that undermine the ability of public political deliberation to achieve a truly democratic character. In particular, Habermas believes that Rawls's requirement that certain issues – such as the character of the principles of justice that regulate society's basic structure[9] – be considered as "correctly settled once and for all" (2005, 151 n. 16)[10] is both unnecessary and detrimental to the realization of genuinely democratic discourse. Habermas also takes issue with Rawls's distinction between "public" and "nonpublic" uses of reason, suggesting that the type of unfettered discussions that occur within the organizations that Rawls categorizes as "nonpublic" (e.g. churches, universities, professional groups, scientific societies, and other associations in civil society [2005, 213, 220]) are, in fact, critical to a healthy democracy and, contra Rawls, should *not* be excluded from public deliberation concerning issues of public policy. Moreover, Habermas contends that the parameters of public political deliberation should themselves be established via public deliberation (e.g. 1995, 1996).

While Habermas's argument is, in a number of respects, quite persuasive, it seems overly optimistic inasmuch as it suggests that a viable voluntary consensus on how to address extremely sensitive and (increasingly) volatile public policy issues can be secured without imposing any significant constraints on the character of the arguments that can be employed and the proposals that can be presented and *must* be considered. Surely even recent history suggests that such an unconstrained approach, especially within the context of contemporary liberal democracies, will often produce endless debate and deadlock and, in turn, render extremely difficult securing any noteworthy change to public policy. Indeed, Habermas acknowledges that "[t]he sphere of questions that can be answered rationally … shrinks in the course of development toward multiculturalism" (1993, 91). Arguably, establishing a deliberative process that enables participants to move beyond debate and deliberation (i.e. establish new policy) in a peaceful, consensual and reasonably timely manner, requires that certain *a priori* constraints be placed upon deliberators; and, in that respect, the constraints entailed by Rawls's approach to public political deliberation – and, in particular, the proposal that one "[remove] from the political agenda the most divisive issues, serious contention about which must undermine the bases of social cooperation" (2005, 157) and adhere to the *duty of civility* when engaged in public deliberations concerning public policy – seem to better reflect the *Realpolitik* of public political deliberation conducted under the conditions of "super diversity" that characterize contemporary liberal democracies.

Having said that, satisfying the demands of fair equality of opportunity and civil discourse informed by public reason does not eliminate the possibility of disagreement.

9] The *basic structure* of a society is comprised of its main political and social institutions (e.g. Rawls, 2001, 4, 7–8).

10] That means that those issues "are no longer regarded as appropriate subjects for political decision by majority or other plurality voting" – they are "not a suitable topic for ongoing public debate and legislation, as if they can be changed" (Rawls 2005, 151 n. 16).

Reflecting that fact, meaningful deliberation also embodies what Charles Larmore (1996, 135) has labelled the norm of *rational dialogue*, which requires that deliberators respond to disagreement "by retreating to neutral ground, to the beliefs they still share, in order to either (a) resolve the disagreement and vindicate one of the disputed positions by means of arguments that proceed from this common ground, or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground." However, the norm of rational dialogue by itself does not explain *why* individuals who disagree with one another would or should continue to dialogue. Consequently, it must be supported by the norm of *equal respect* for persons, which insists that all individuals be treated as "beings capable of thinking and acting on the basis of reasons" (Larmore 1996, 137). That means that "we should never treat other persons solely as means, as mere instruments of our will; on the contrary, people should always be treated also as ends, as persons in their own right" (Larmore 1996, 136). Exercising the norm of equal respect requires that deliberators recognize and accept both the fact of reasonable disagreement, and, in turn, the illegitimacy of seeking to use only force to control the direction of public policy (Larmore 1996, 137). Combined, the norms of rational dialogue and equal respect "work together to yield the liberal ideal of political neutrality," the very foundation of a suitable deliberative framework for contemporary liberal democracies (Larmore 1996, 141).

Embracing the above requirements steers deliberation toward the defense of individual rights – a deliberator's position is not advanced through reference to the 'truth,' as revealed by a sacred doctrine or philosophical position, but rather by its conformity to principles that are widely understood and generally shared. Put differently, in deliberation we are obliged to advance our positions using reasons and practices that are not only familiar to our interlocutors, but that we might expect that they, as free and equal citizens, could reasonably accept. Thus participants in deliberation are prepared to consider each other's positions carefully and accept that they may have to revise their views in light of the arguments put forth by their opponents.

Deliberation structured by the above conditions creates the opportunity for conciliation between conflicting viewpoints and, in turn, sensible compromises in which claims to fundamental rights are carefully advanced, seriously considered and, when appropriate, sensitively balanced. Such an approach does not, however, eliminate all threats to the realization of meaningful deliberation.

## III. DELIBERATION (UN)REALIZED

Democracy and majority-rule decision-making (MRDM) have long been associated with one another. Indeed, for some, the two are inextricably intertwined. According to Alexis De Tocqueville (1988[1835], 145), "The very essence of democratic government consists in the absolute sovereignty of the majority"; similarly, Thomas Jefferson concluded that "the *lex majoris partis* [that is the law of the majority] is the fundamental law of every society of individuals of equal rights" (quoted in Hampsher-Monk 1993, 228). Arguably,

such an understanding best reflects that embraced by the preponderance of citizens of contemporary liberal democracies (e.g. Sin et al. 2007; and Inglehart 2003). Yet, the relationship between democracy and MRDM can generate significant challenges for the realization of meaningful deliberation in diverse democratic societies. Perhaps most notably, politicians' concern with being (re)elected and obtaining or retaining political power renders them vulnerable to considerations that may run afoul of the demands of meaningful deliberation. In other words, the desire to 'win' may (and often does) overwhelm the desire to engage in good-faith dialogue and negotiation. The result is that not all democratic venues are necessarily conducive to meaningful deliberation – a point that Tocqueville conceded upon reflecting on his experiences as an elected member of France's Chamber of Deputies (Boesche 1985). Two examples will help to illustrate that point.

In its *Multani* decision (2006), the Supreme Court of Canada (SCC) upheld the right of a Sikh student, Gurbaj Singh Multani, to wear his ceremonial dagger, or kirpan, to school. The case was prompted by a Montréal school board's attempt to prohibit the wearing of kirpans on school property through a 'zero tolerance' policy on dangerous objects. School board officials argued that kirpans should be completely banned from schools in order to ensure students' safety, pursuant to its code of conduct. Multani and his supporters countered by arguing that such a ban would infringe upon his constitutional right to religious freedom under Section 2(a) of the Canadian Charter of Rights and Freedoms. They also noted that other provinces, including Ontario and British Columbia, allowed students to wear kirpans in school, so long as they were sheathed, blunt and worn under clothing. The fact that kirpans had never been used to threaten students' safety in Ontario or British Columbia – or Quebec, for that matter – was also noted, as was Multani's willingness to abide by a compromise solution reached initially by school officials and later upheld by the Quebec Superior Court, whereby he could wear his kirpan to school so long as it was sealed inside his clothing.[11]

The SCC agreed with Multani, arguing that the potential threat to student safety posed by Multani's wearing of his kirpan in school was minimal and in no way sufficient to authorize the school board's infringement of his right to freedom of religion. The interpretation of the board's 'zero-tolerance' ban on all weapons in schools as applied to the kirpan was deemed an unreasonable infringement on religious freedom and, as such, was overturned in a unanimous 8-0 decision. Hypothetical threats to student safety could not serve as grounds for restricting the exercise of religious freedom, as allowing them to do so would undermine the value of the kirpan as a religious symbol and send the message "that some religious practices do not merit the same protection as others" (Supreme Court of Canada 2006, 7). Thus, as per the compromise initially struck by school officials,

11] The Superior Court's decision was subsequently overturned by the Quebec Court of Appeal. Details regarding the decision are presented in the SCC's (2006) decision.

Multani and other Sikh boys could wear their kirpans to school, so long as they were blunt, stored in a wooden sheath, and worn under the boys' clothing.

The SCC's decision marked the culmination of a sustained and thoroughgoing deliberative process, during which arguments for both sides were aired and carefully considered by school officials, school board officials, the Superior Court, the Court of Appeals and, ultimately, the SCC. The SCC's decision also reflected a deliberative approach, whereby contending positions were treated seriously and, ultimately, balanced in such a manner that the protection of Multani's right to religious expression did not impose an unreasonable burden on the parents, teachers and students whose foremost concern was school safety. In other words, the Courts provided a venue for meaningful deliberation that informed fair and effective decision-making.

If the kirpan case demonstrates Canadian institutions' ability to facilitate meaningful deliberation and balance competing rights such as safety and religious freedom through compromise, the Ontario government's banning of religiously-based arbitration in family law points to the limits of this impulse. The Ontario government's decision followed a sharp debate over whether the province's existing *Arbitration Act* might be extended to allow for "voluntary private arbitration of family law and inheritance disputes according to Islamic principles."[12] Opponents of so-called "Sharia tribunals" argued that the proposal threatened the rights of women and contravened the separation of church and state (Korteweg 2008). Conversely, supporters argued that the move would acknowledge that Ontario's Muslims enjoyed the same rights to voluntary arbitration enjoyed by other religious groups, while also upholding the liberal values of personal autonomy and toleration for cultural diversity.

A report commissioned by the Ontario government and prepared by former Ontario Attorney-General Marion Boyd (2004), similarly viewed the issue as one concerning the autonomy of individuals to voluntarily enter into private arbitration to resolve family disputes. As such, Boyd recommended that the existing *Arbitration Act* be extended to include Islamic personal law, subject to conditions, including the registration of arbitrators. As it stood, the *Arbitration Act* also required that agreements be in writing, signed by both parties in the presence of witnesses, and in accordance with the best interests of children and child support guidelines. Boyd's recommendations recognized that religiously-based arbitration was already a fact of life in Ontario that could not be denied to Muslims. However, safeguards could be extended to protect the interests of vulnerable parties, principally women and children.

As Donald Forbes (2007) and Anna Korteweg (2008) have noted, the ensuing debate demonstrated the difficulty in reconciling competing liberal values, namely, a secularized liberal conceptualization of gender equality and the separation of church and state, on the one hand, and individuals' right to autonomy and freedom of religious practice, on the other. Whereas the values of autonomy and freedom of religion pointed

12] Background on the specifics of the issue and the related debate is provided in Boyd 2004.

to the extension of the Act, those of gender equality and secularism pulled in the opposite direction. This was most clear with regard to autonomy and gender equality. While Boyd and others felt that individual Muslim men and women should enjoy the right to enter into private religious arbitration if they so chose, their opponents claimed that such a view naïvely misjudged inequalities in power relations between men and women and neglected the inherently patriarchic nature of virtually all religions. As such, opponents argued that the government had to act to *protect* women, even if this meant limiting their range of choice in the area of religious expression.[13]

The battle over the *Arbitration Act* was waged in the opinion pages of newspapers, radio call-in shows and other highly politicized venues – including the front lawn of the Ontario legislature (Korteweg 2008). Meaningful deliberation based on a careful weighing of competing rights claims gave way to finger pointing and, in some cases, outright fear mongering, with opponents arguing that religiously-based arbitration would mean the denial of gender rights and a return to medieval barbarism. Premier Dalton McGuinty was assailed as both a naïve dupe, blinded by the mythology of multiculturalism, *and* a cynical political tactician "desperate for votes" (Gillespie 2005). A highly personalized politics of recrimination gathered steam as the Ontario government sat on the Boyd report through the spring and summer of 2005. By early-September 2005 the anti-*Arbitration Act* camp included high profile Canadian feminists, such as Margaret Atwood, June Callwood and Maureen McTeer, who in an "open letter" to McGuinty, "accused his government of undermining the 'cornerstone of liberal democracy' – the separation of church and state" (Urquhart 2005).

The ban on religious arbitration was hastily announced (on Sunday, September 11, 2005) and adopted without consulting the affected groups, including those that had been conducting religiously-based arbitration for many years (e.g. CTV News 2005). Arguably, the Ontario government's decision was driven less by a principled stance on the issue than by political concerns, including the need to respond to intense pressure from within its own caucus (e.g. Freeze and Howlett 2005; Urquhart 2005; and Simmons 2010). The time and effort that went into the drafting of the Boyd Report was largely wasted and little thought was given to precisely how such a ban on hitherto legal private arbitration would be implemented. Observers also noted that religiously-based arbitration would continue, albeit without the oversight of the Ontario government and in the absence of the safeguards recommended in the Boyd report (Khan 2005). As some critics of the government's decision pointed out, opponents of the *Arbitration Act* scored a pyrrhic victory, as Muslim women would find themselves "in exactly the same position they were in before the prospect of government regulated arbitration" (Emon 2005).

While the Ontario government's decision successfully quelled concerns over the sanctioning of "Sharia tribunals," it also demonstrated the degree to which democratic

13] For excellent summaries of the debate and the Ontario government's decision, please see Forbes 2007 and Munro 2011.

institutions animated by partisan political incentives can fall short of settling debates over competing rights in a manner consistent with the norms of meaningful deliberation. Whatever one's opinion of the decision itself, the means by which it was arrived at were, from a deliberative democratic position, questionable at best. The actions of the Ontario government also underscore the importance of procedures in helping to facilitate and protect meaningful deliberation. The perceived fairness of the procedures through which decisions are made – which, in a democracy, includes the presence or absence of deliberative processes and opportunities – greatly influences the perceived legitimacy of, and, subsequently, support for and commitment to, society's governance framework and related political institutions. This relationship is a consequence of the ability of procedural fairness to 'cushion' the impact of what some will consider 'unpleasant' decisions. George Klosko (2000, 210) has referred to this cushioning as the "fair-process effect." A noteworthy volume of social science research – public opinion polls, surveys, and the like – suggests that, provided individuals believe decisions are the product of fair procedures, they seem willing to accept those decisions even should they disagree with them (Klosko 2000, 226). Conversely, decisions reached through the exercise of brute power or coercion alone are, unsurprisingly, much less likely to generate such voluntary acceptance.

Procedures are generally considered "fair" if the resulting decisions are "made honestly, on the basis of the facts, with a lack of bias, and not (unduly) influenced by political considerations; and if decision-makers are trustworthy, i.e. motivated to be fair, and respectful of people's rights" (Klosko 2000, 226). In turn, political institutions that exhibit procedural fairness are able to secure the support and allegiance of citizens who affirm a diversity of often competing and conflicting viewpoints. As already noted, the fact of value pluralism means that one should expect reasonable disagreement regarding what constitutes the correct response to a policy dilemma. However, when one supports procedural fairness, s/he is endorsing "the means through which decisions are made," as opposed to "what is decided" (Klosko 2000, 116). Procedural fairness thus enables the establishment and maintenance of a consensus on a general decision-making framework for pluralistic societies, "even in the absence of agreement on important moral principles and even if, as is inevitable, decisions are far more advantageous to certain groups than to others" (Klosko 2000, 228).

## IV. MAKING DELIBERATION SAFE FROM DEMOCRACY?

A consideration of the Multani and Sharia examples suggests that meaningful deliberation is more likely in institutions insulated from the pressures of partisan politics, such as courts. For many, such a conclusion will seem obvious. After all, many of the principles and practices critical to realizing meaningful deliberation are also considered essential to the legitimate operation of courts. Providing an opportunity for all affected parties to be represented, allowing for the consideration of all available relevant evidence before a decision is rendered, and treating all involved equally and according to known

rules and procedures that are applied uniformly are features of both meaningful deliberation and court operations (for example, see Hausegger, Hennigar and Riddell 2009; and Van Hoecke 2001). Indeed, Rawls (1996, 235) famously identified the United States Supreme Court (USSC) as the *exemplar* of reasoned deliberation. According to Rawls (1996, 235), the USSC is "the only branch of government that is visibly on its face a creature of … [public] reason and of that reason alone."

Conversely, adherence to such principles and practices is unlikely in a politically-charged environment in which the parties involved are concerned more with securing a specific outcome – namely, continued or enhanced electoral support – than with necessarily arriving at a reasoned and balanced decision. The need for elected politicians and social movement leaders to constantly try to satisfy the wishes of as many of their constituents as possible frequently necessitates the use of general arguments that more often than not are "poorly argued, shallow or manipulative" and, consequently, unsuitable to "serve as acceptable justifications of public policy" (Chambers 2004, 389). It is not that such arguments cannot or do not "appeal to what … [the speakers] think are common or public values," but they typically "appeal to the worst that we have in common" (Chambers 2004, 393). As Simone Chambers has noted, "there is a great deal of research … [that demonstrates] the poor quality of debate in the public sphere" (Chambers 2004, 393 n. 10; see also 399).

Of course, any suggestion that the courts be used as the default forum for deliberation about public policy issues like those identified above is likely to be met with the objection that to do so is to circumvent democracy. After all, the justices of superior/constitutional courts are neither elected by, nor accountable to, 'the people' – at least not in the same way as are members of legislatures.[14] Furthermore, effective democracy demands inclusiveness and transparency in deliberation and decision-making concerning matters of public policy and, it might be argued, such qualities cannot be adequately realized if the courts are assigned as the primary forum for deliberation.

However, such a non-democratic characterization of the courts fails to consider the complete range of ways in which the courts might legitimately be considered to manifest meaningful democratic qualities (e.g. Greene 2007; Rush 2010; and Van Hoecke 2001). For example, insofar as the courts and their operations are themselves the product of democratic governments, they can legitimately be understood to represent and embody the democratic principles and authority upon which the polity is founded and with reference to which it continues to function (Ferejohn and Pasquino 2002, 24; see also Hirschl 2008, 96, 113; and Van Hoecke 2001). Similarly, to the extent that the decisions of the courts are grounded in the moral principles that animate the polity, they provide "indirect democratic justifications for public actions" (Ferejohn and Pasquino 2002, 24). As well, it is also possible to understand the courts as enhancing "the [democratic]

14] Hausegger, Hennigar and Riddell (2009, 206-9) offer a wonderfully succinct and informative summary of different types of judicial accountability.

authority of the people (either as a collectivity or as individuals)" by providing the latter with a voice and power distinct from that of their elected representatives (Ferejohn and Pasquino 2002, 24; see also, for example, Rush 2010; Kyritsis 2006; and Kelly 2002). Finally, the powers and operation of courts are, themselves, subject to the control of popularly elected legislators.

To the extent that concerns exist regarding the inclusiveness or representativeness of court-based deliberation, as John Dryzek (2010) has recently argued, the effective representation of all interested parties need not require that the parties themselves, or even multiple representatives of each position, be directly involved in the deliberations: "Democracy does not have to be a matter of counting heads – even deliberating heads" (Dryzek 2010, 40; also see Van Hoecke 2001, 422). Rather, what is vital is that the relevant "discourses" be adequately represented in deliberations. According to Dryzek (2010, 31), a "discourse" is "a shared way of comprehending the world embedded in language. In this sense, a discourse is a set of concepts, categories, and ideas that will always feature particular assumptions, judgments, contentions, dispositions, intentions and capabilities." Importantly, "discourses are not just a surface manifestation of interests"; rather, they "help constitute identities and their associated interests" (Dryzek 2010, 32).

A *discursive* deliberative approach requires that we abandon "the idea that legitimacy must be based on a head count of (real or imaginary) reflectively consenting citizens" (Dryzek 2010, 30). Rather, deliberation can be considered legitimate insofar as the decisions generated by it "respond to the balance of discourses in the polity" (Dryzek 2010, 21), though, the range and number of discourses involved in a deliberation will vary depending upon the issue in question. However, Dryzek cautions that even in those instances in which the number of discourses involved is relatively few, it would be foolish to expect "any decision fully to meet the claims of all competing discourses" (Dryzek 2010, 35). The discursive approach does not guarantee that all affected parties will be completely or equally satisfied with the outcome of deliberations; but, of course, no approach can provide such a surety.

In the final analysis, there seems to be little reason to believe that court-based deliberation using the discursive approach and conducted in accordance with the other constraints noted above will necessarily be any less representative or procedurally acceptable than deliberation conducted in other official government venues, such as a legislature. Arguably, court-based discursive deliberation can just as easily and effectively produce an opinion that represents the "considered judgments of the people," "the deliberative opinion the public would have" if it deliberated under conditions that enable "informed and balanced discussion" free from political pressure (Fishkin 2009, 26-28). Indeed, a study by Jeffrey Rosen (2006) suggests that, in fact, the decisions of the USSC, for example, historically have done a good job of generally reflecting public opinion. Similarly, Ran Hirschl (2008, 109) has observed that "the transfer of foundational collective identity questions to the courts seldom yields judgments that run counter to established national meta-narratives."

## V. CONCLUDING OBSERVATIONS

Canada is an extremely diverse society and, by all accounts, it will only become more so in the future. Though diversity offers many benefits, it also poses many challenges for policy-makers. Foremost among such challenges is that of trying to ensure that decisions concerning public policy are based upon thoughtful and careful discussion and deliberation of relevant facts and reflect an equal consideration of all affected interests. If we are genuinely interested in realizing meaningful deliberation and reasoned decision-making with regard to matters of public import, we should resist condemning the so-called 'judicialization of politics,' and instead recognize that the reconciliation of competing rights might be best pursued by avoiding the shrill sloganeering that so infuses the political marketplace and opting for reasoned arguments, evidence based on facts, and the conscientious, deliberative manner of the courts.

Genuine democracy requires an equal opportunity for all interested parties to be heard and considered. However, as many have noted, wealth and political and/or social 'connections' often significantly influence both the opportunity to be heard and the seriousness with which one's opinion and proposals are considered, especially by those in positions of power. Arguably, among contemporary industrialized liberal democracies, the United States offers the most egregious example of the potential for wealth and connections to undermine the realization of 'democratic voice.'

Because members of superior/constitutional courts are generally not subject to the political pressures that confront and typically guide the decisions of legislators and the strategies of social movement leaders, the determinations of the former can be guided by reasoning that focuses on "the good of the public" and produces decisions that rely upon publicly shared values for their justification (Rawls 1996, 213). Arguably, only decisions that embody such qualities effectively satisfy the fundamental principles of *liberal* democracy, at least as it is generally currently understood. That is not to suggest that members of superior/constitutional courts are "personally" politically neutral – that is, in their capacity as individual *citizens* – only that in fulfilling their official duties they are relatively free from many of the political considerations with which legislators must necessarily be concerned, and they are expected to base their decisions on nonpartisan considerations. As Simone Chambers (2004) has documented, there is good reason to believe that court-based deliberations can provide the environment needed to generate such decisions.

Given the significant (and seemingly expanding) challenges to realizing democratic voice within the public political realm, and in light of the democratic qualities possessed by courts operating in contemporary constitutional democracies, it seems both plausible and reasonable to suggest that courts offer the best opportunity for achieving meaningful democratic deliberation (as defined above) with respect to the difficult and extremely sensitive issues associated with the accommodation of diversity.

Of course, such a turn to the judiciary as a matter of standard procedure would need to be accompanied by a review of existing practices and procedures to determine whether any modifications are required to realize fully the potential benefits of such an approach. In particular, it would be necessary to think through how marginalized groups' access to the courts might be better facilitated. Here, the now defunct Court Challenges Program in Canada stands as a potentially useful example – all the more so given increasingly serious reservations regarding the public's access to the legal system (McLachlin 2007). One would also need to consider the range of issues that should be subject to such an approach. It would be absurd to suggest that deliberation concerning all public policy decisions be automatically referred to superior/constitutional courts. Rather, it seems appropriate to adopt such an approach when dealing with what Rawls (1996, 214; see also 2001, 28) labelled "constitutional essentials and questions of basic justice" – for example, "who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity."[15]

Assigning courts deliberative primacy in such instances does not preclude broader public deliberation on the issue(s) in question. We would expect some forms of deliberation to continue to occur in legislatures, the media and the broader public sphere. The point worth emphasizing, we believe, is that these differing venues will reflect and be driven by their respective logics. Whereas meaningful deliberation is more likely to be realized in the domain of the courts, a more partisan, polarizing and often incomplete discourse is likely to prevail in settings in which actors are tempted to score 'political points' by maligning ethno-religious and other marginalized minorities and unreflectively championing prevailing "national values."

If non-judicial venues are to facilitate meaningful deliberation, we must expect more of our politicians, journalists, and fellow citizens. As we have stressed throughout this essay, sharp debates over the accommodation of difference are to be expected – they cannot be wished away. In the same vein, a liberal-democratic society cannot erect barricades and hide behind statements of principle, belittling newcomers in the process. Rather, its citizens, in all their roles, must live up to the standards of their regime and engage in the serious, difficult and often trialing work of meaningful deliberation.

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15] Alternatively, Ran Hirschl (2008, 94) has referred to the concept of *mega-politics* – matters of outright and utmost political significance that often define and divide whole polities. These range from electoral outcomes and corroboration of regime change to matters of war and peace, foundational collective identity questions, and nation-building processes pertaining to the very nature and definition of the body politic."

**REFERENCES**

Berlin, I. 2000. *The Power of Ideas*. Edited by Henry Hardy. London: Chatto and Windus; Princeton: Princeton University Press.

———. 2002. *Liberty – Incorporating "Four Essays on Liberty."* Edited by Henry Hardy. Oxford and New York: Oxford University Press.

Boyd, M. 2004. *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*. Ontario Ministry of the Attorney General. http://www.attorneygeneral.jus.gov.on.ca/ english/ about/pubs/boyd/fullreport.pdf (accessed March 15, 2011).

Burns, J. 2011. Cameron Criticizes 'Multiculturalism' in Britain. *The New York Times* (New York), February 5. http://www.nytimes.com/2011/02/06/world/europe/06britain.html?_r=1 (accessed February 17, 2011).

Cairns, A. 1999. Empire, Globalization, and the Fall and Rise of Diversity. In *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives*, edited by Alan C. Cairns et al. Montreal and Kingston: McGill-Queen's University Press.

Cameron, A. 2009. *Power without Law: The Supreme Court of Canada, the Marshall Decisions and the Failure of Judicial Activism*. Montreal/Kingston: McGill-Queen's University Press.

Chambers, S. 2003. Deliberative Democratic Theory. *Annual Review of Political Science* 6: 307-26.

———. 2004. Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation. *Journal of Political Philosophy* 12: 389-410.

Christiano, T. 2008. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford University Press.

Cohen, J. 2002. Delib eration and Democratic Legitimacy. In *Democracy*, edited by David Estlund. Oxford: Blackwell Publishers.

CTV News. 2005. Faith-Based Arbitration. http://www.ctv.ca/CTVNews/PromoNewsletter/20050912/faith_special_050912/ (accessed March 11, 2011).

De Tocqueville, A. 1988[1835/1840]. *Democracy in America*, introduction by Thomas Bender. New York: Random House/Modern Library.

Dryzek, J. 2010. *Foundations and Frontiers of Deliberative Governance*. Oxford: Oxford University Press.

Dworkin, R. 1978. *Taking Rights Seriously*. Cambridge, MA: Harvard University Press.

Emon, A. 2005. A Mistake to Ban Sharia. *The Globe and Mail*, September 13.

Ferejohn, J., and Pasquino P. 2002). Constitutional Courts as Deliberative Institutions: Towards and Institutional Theory of Constitutional Justice. In *Constitutional Justice, East and West*, edited by Wojciech Sadurski. The Hague: Kluwer Law International.

Fredrickson, G. M. 2002. *Racism: A Short History*. Princeton, New Jersey: Princeton University Press.

Freeze, C. and Howlett K. 2005. McGuinty Government Rules Out use of Sharia Law. *The Globe and Mail* (Toronto), September 12. http://www.nosharia.com/Globe%20and %20Mail%2012,09McGuinty%20goverment%20rules%20out%20use%20of%20sharia%20law.htm (accessed March 11, 2011).

Fishkin, J. 2009. *When the People Speak: Deliberative Democracy and Public Consultation*. New York: Oxford University Press.

Forbes. H. D. 2007. Liberal Values and Illiberal Cultures: The Question of Sharia Tribunals in Ontario. In *Citizenship and immigrant Incorporation: Comparative Perspectives on North America and Western Europe*, edited by Gökçe Yurdakul and Y. Michal Bodemann. New York: Palgrave Macmillan.

Ghosh, E. 2010. Deliberative Democracy and the Countermajoritarian Difficulty: Considering Constitutional Juries. *Oxford Journal of Legal Studies* 30: 327–59.

Gillespie, K. 2005. Sharia Protest Gets Personal." *Toronto Star*, September 9, A9.

Greene, I. 2007. *The Courts*. Vancouver: University of British Columbia Press.

Habermas, J. 1975. *The Legitimation Crisis of Late Capitalism*, trans. Thomas McCarthy. Boston: Beacon Press.

———. 1993. *Justification and Application: Remarks on Discourse Ethics*, translated by Ciaran Cronin. Cambridge, MA: MIT Press.

———. 1995. Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism. *The Journal of Philosophy* 92: 109-31.

———. 1996. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, translated by William Rehg. Cambridge, MA: MIT Press.

Hampsher-Monk, I. 1993. *A History of Modern Political Thought: Major Political Thinkers from Hobbes to Marx*. Oxford: Blackwell.

Hausegger, L. et al. 2009. *Canadian Courts: Law, Politics, and Process*. Don Mills: Oxford University Press.

Hirschl, R. 2008. The Judicialization of Mega-Politics and the Rise of Political Courts. *Annual Review of Political Science* 11: 93-118.

Ibbitson, J. and Friesen, J. 2011. Tories Tread Carefully on Immigration Policy. *Globe and Mail* (Toronto), February 14. http://www.theglobeandmail.com/news/politics/tories-tread-carefully-onimmigration policy/article190 7286/ (accessed February 17, 2011).

Inglehart, R. 2003. How Solid is Mass Support for Democracy – and how can we Measure It? *PS: Political Science & Politics* 36: 51-57.

Kelly, J. 2002. The Supreme Court of Canada and the Complexity of Judicial Activism. In *The Myth of the Sacred: The Charter, the Courts, and the Politics of the Constitution in Canada*, edited by Patrick James, Donald Abelson, and Michael Lusztig. Montreal/Kingston: McGill-Queen's University Press.

Khan, S. 2005. The Sharia Debate Deserves a Proper Hearing. *The Globe and Mail*, September 15, A21.

Klosko, G. 2000. *Democratic Procedures and Liberal Consensus*. Oxford: Oxford University Press.

Korteweg, A. 2008. The Sharia Debate in Ontario: Gender, Islam, and the Representations of Muslim Women's Agency. *Gender and Society* 22: 434-54.

Kunz, J. 2009. Religious Diversity in Multicultural Canada: Quo Vadis?. *Policy Research Initiatives Horizons* (special issue on Religious Diversity in Canada) 10: 6-13.

Kymlicka, W. 2009. The Rise and Fall of Multiculturalism? New Debates on Inclusion and Accommodation in Diverse Societies. In *The Multiculturalism Backlash: European Discourses, Policies and Practices*, edited by Stephen Vertovec and Susanne Wessendorf. New York: Routledge.

———. 2007. *Multicultural Odysseys: Navigating the New International Politics of Diversity*. New York: Oxford University Press.

Kyritsis, D. 2006. Representation and Waldron's Objection to Judicial Review. *Oxford Journal of Legal Studies* 26, 4: 733-51.

Larmore, C. 1996. *Morals of Modernity*. New York: Cambridge University Press.

Lauren, P. 1996. *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination*. Boulder, Colorado: Westview.

Leishman, R. 2006. *Against Judicial Activism: The Decline of Freedom and Democracy in Canada*. Montreal/Kingston: McGill-Queen's University Press.

Locke, J. 1983[1689]. *A Letter Concerning Toleration*, ed. James Tully. Indianapolis: Hackett.

Mansur, S. 2011. Lies, Damned Lies and Multiculturalism. *Toronto Sun* (Toronto), February 12. http://www.torontosun.com/comment/columnists/salim_mansur/2011/02/11/17246941.html (accessed February 17, 2011).

Mazower, M. 2006. An International Civilization? Empire, Internationalism and the Crisis of the Mid-Twentieth Century. *International Affairs* 82: 553-66.

McLachlin, B. 2007. Remarks Presented at the Empire Club of Canada, Toronto, March 8. http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm07-03-08-eng.asp (accessed April 28, 2011).

Mill, J. S. 1998[1869]. *On Liberty*. In *On Liberty and Other Essays*. Edited by John Gray. Oxford: Oxford University Press.

Morton, F.L. 2003. Can Judicial Supremacy be Stopped?. *Policy Options*: 24-29.

Munro, D. 2011. Faith, Democracy, and Deliberative Citizenship: Should Deliberative Democrats Support Faith-Based Arbitration?. *Contemporary Political Theory* 10: 102-22.

Peritz, Ingrid. 2013. Quebec Soccer Federation Eager to Settle Turban Ban 'Impasse.' The Globe and Mail (Toronto), June 12. http://www.theglobeandmail.com/news/national/quebec-soccer-federation-eager-to-settle-turban-ban-impasse/article12489986/ (accessed June 16, 2013).

Rawls, J. 1985. Justice as Fairness: Political not Metaphysical. *Philosophy and Public Affairs* 14: 223–51.

———. 1996. *Political Liberalism*, paperback edition. New York: Columbia University Press.

———. 1999. *A Theory of Justice*, revised edition. Cambridge, MA: Harvard University Press.

———. 2001. *Justice as Fairness: A Restatement*. Edited by Erin Kelly. Cambridge, MA: Belknap Press.

———. 2005. *Political Liberalism*, expanded edition. New York: Columbia University Press.

Roach, K. 2001. *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*. Toronto: Irwin Law.

Rosen, J. 2006. *The Most Democratic Branch: How the Courts Serve America*. New York: Oxford University Press.

Rummens, S. 2011. Staging Deliberation: The Role of Representative Institutions in the Deliberative Democratic Process. *The Journal of Political Philosophy*. doi: 10.1111/j.1467-9760.2010.00384.x

Rush, M. 2010. Constitutional Dialogues and the Myth of Democratic Deliberation: Defusing the Countermajoritarian Tension?. Paper presented at the 82nd Annual General Meeting of the Canadian Political Science Association, Montréal, Québec, Canada, June 1-3.

Shin, D. et al. 2007. Popular Conceptions of the Meaning of Democracy: Democratic Understanding in Unlikely Places. Paper presented at the 65th Annual National Conference of the Midwest Political Science Association, Chicago, Illinois, USA, April 12-15.

Simmons, H. 2010. "One Law for All Ontarians."*The Toronto Star* (Toronto), September 14. http://www.thestar.com/opinion/editorialopinion/article/860513--one-law-for-all-ontarians (accessed March 11, 2011).

Singer, P. 1993. *Practical Ethics*, 2nd edition. Cambridge: Cambridge University Press.

Statistics Canada. 2003. *Ethnic Diversity Survey: Portrait of a Multicultural Society*. Ottawa: Minister of Industry.

Supreme Court of Canada. 2006. *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256.

Thompson, D. 2008. Deliberative Democratic Theory and Empirical Political Science. *Annual Review of Political Science* 11: 497-520.

Urquhart, I. 2005. McGuinty Faced Rebellion in His Caucus. *Toronto Star*, September 12.

Van Hoecke, M. 2001. Judicial Review and Deliberative Democracy: A Circular Model of Law Creation and Legitimation. *Ratio Juris* 14: 415-23.

Vertovec, S. 2007. Super-Diversity and Its Implications. *Ethnic and Racial Studies* 30: 1024-54.

Waldron, J. 1999. *Law and Disagreement*. Oxford: Oxford University Press.

Weaver, M. 2010. Angela Merkel: German Multiculturalism has "Utterly Failed." *The Guardian* (London), October 17. http://www.guardian.co.uk/world/2010/oct/17/angela-merkel-german-multiculturalism-failed (accessed February 17, 2011).