Why Multiculturalism isn`t Dead: Liberal Law and the Empowerment of Gays and Muslims

There has been much talk about the retreat or even death of multiculturalism. Much of this discussion confounds multiculturalism with explicit policy under that name. I argue that liberal law itself, in particular majority-constraining constitutional law, requires multiculturalism, understood as multiple ways of life that cannot and should not be contained by a state that is to be neutral about individuals’ ultimate values and commitments. The workings of “legal multiculturalism” are demonstrated through a comparison of benchmark jurisprudence on gays in America and Muslims in Europe. An interesting difference is that for Muslims, liberal law has also functioned as constraint, not only as resource, especially in the post-2001 period of heightened integration concerns.

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