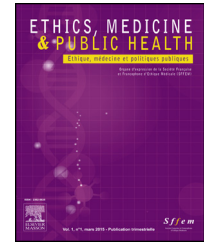




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## THOUGHTS

# Universal principles of justice and respect for cultural and religious diversity in the capability approach

*Principes universels de justice et respect de la diversité culturelle et religieuse dans l'approche des capacités*

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### KEYWORDS

Brain death;  
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**Summary** Should a theory of justice that yields universal principles for the allocation of goods be sensitive to cultural differences, and should there be a limit to the respect for cultural and religious diversity? I address this question from a liberal point of view and more specifically based on the Sen-Nussbaum capability approach. Three possible arguments within this approach are analyzed: dignity, internalist essentialism, and positive freedom. The interplay between a universal principle of distribution and respect for cultural and religious diversity is demonstrated by using a particular version of the capability approach that is applicable to the health care sphere, namely the Sufficiency of Basic Human Functional Capabilities. I discuss the account's commitment to a universal allocation principle and its respect for cultural and religious diversity, and demonstrate the possible tension between them using two examples: treatment of congenital strabismus and the definition of death as a prerequisite for organ removal. It is shown that liberals can present and defend universal principles of justice if they can clearly define what the universal principles for justice require and if they can provide strong justification for these universal claims. I argue that by means of the same argument in favour of respecting cultural diversity, liberals can justify not respecting it under certain circumstances. It is shown why these circumstances apply

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to the case of congenital strabismus and why in the case of the definition of death respect for religious and cultural pluralism is compatible with universal principles of justice.

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## MOTS CLÉS

Mort cérébrale ;  
Capabilité ;  
Multiculturalisme ;  
Pluralisme religieux ;  
Principes universels

**Résumé** Une théorie de la justice qui expose des principes universels de distribution des biens doit-elle être sensible aux différences culturelles et doit-il y avoir une limite au respect de la diversité culturelle et religieuse ? J'aborde cette question d'un point de vue libéral et, plus précisément, à partir de l'approche des « capacités » d'A. Sen et de M. Nussbaum, en analysant les trois arguments que mobilise cette approche : la dignité, l'essentialisme interne et la liberté positive. L'interdépendance qui lie le principe universel de distribution des biens et le respect de la diversité culturelle et religieuse est démontrée depuis une approche particulière de la théorie des capacités, qui peut être utilisée en santé, à savoir « le niveau suffisant des capacités fonctionnelles humaines fondamentales ». J'examine son intérêt vis-à-vis du principe de distribution universelle et les implications qui en découlent pour le respect de la diversité culturelle et religieuse. Je montre les tensions possibles entre ces deux enjeux par le biais de deux exemples : le traitement du strabisme congénital et la définition de la mort en tant que prérequis pour le prélèvement des organes. Cet article montre qu'il est possible de défendre les principes universels de justice d'un point de vue libéral à condition de définir clairement ce que ces principes requièrent et de fournir une justification valable de leur portée universelle. Je soutiens que les mêmes exigences appliquées au respect de la diversité culturelle ne permettent pas à un point de vue libéral de justifier le non-respect de cette diversité en certaines circonstances. Je montre ainsi comment, dans le cas du strabisme congénital et dans le cas de la définition de la mort, le pluralisme religieux et culturel est compatible avec les principes universels de justice.

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## Introduction

For the liberal point of view, one of the most important principles is respect for the freedom to shape one's life according to one's values and norms<sup>1</sup>. From there, it is only a short distance to the obligation of respecting cultural diversity and religious pluralism. At the same time, it also seems to be an untenable position for liberals not to object when a culture employs practices that impinge on an individual's autonomy and freedom (whether or not they are consistent with the culture's values). It can be argued that liberals must at least maintain the universal principle according to which a just social policy should provide the minimal conditions to guarantee an individual's freedom. Here liberals differ on whether these conditions should guarantee negative freedom (not interfering with an individual's choices

and actions, such as the Rawlsian version of liberalism) or positive freedom (providing the conditions for individual autonomy, such as Sen–Nussbaum's stance). It is reasonable to argue that accounts which support positive freedom and yield more extensive and detailed conditions for guaranteeing individual freedom, such as the capability approach, would have more difficulty in tolerating cultural norms that attribute little value to providing these conditions. Two questions therefore emerge: first, can liberals provide a consistent account that applies universal principles and at the same time respects cultural diversity? Second, how can liberals justify not respecting cultural diversity under some circumstances?

In the discussion that follows, I will focus on the Sen–Nussbaum capability approach and show its commitment to a universal allocation principle and its emphasis on respect for cultural and religious diversity, and I will consider why these two features might appear to be incompatible. The tension between them will be demonstrated using a version of the capability approach that focuses on health care, namely the Sufficiency of Basic Human Functional Capabilities account. In order to resolve this tension, I will present and analyze the strengths and weaknesses of three possible arguments for the capability approach's commitment to a universal principle of justice. I will also show why the commitment to a universal principle of justice (guaranteeing positive freedom to individuals) also carries an obligation

<sup>1</sup> I am using the term "liberal" to refer to any political theorist who assumes that freedom is a normatively basic value and that any suggestion to limit it must present a justification. Despite their common ground, liberals come in many shapes and sizes and they often disagree on fundamental issues, such as the value of individual freedom, the notion of the individual (atomistic or embedded in social and communal roles and relationships), the proper interpretation of tolerance, the role of government and so on. When the discussion relates to the specific views of liberalism, that will be stated explicitly.

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