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The Privatization of the Oceans (review)

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Canadian Journal of Law and Society, Volume 20, Number 1, 2005, pp. 218-220
(Review)

Published by Cambridge University Press

DOI: <https://doi.org/10.1353/jls.2006.0008>



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Davina Cooper

Challenging Diversity: Rethinking Equality and the Value of Difference.

New York: Cambridge University Press, 2004.

In recent years, the extreme right, especially in the United States, has shown itself particularly adept at appropriating for its own ends not only symbols with broad inspirational appeal (such as the family and the flag), but also concepts and concerns specifically focused on by progressives. Efforts to pass “academic freedom” statutes that actually threaten to *curb* the academic freedom of liberal and progressive university professors are one such example. Claims of discrimination against men made by fathers’ rights movements and (conservative) men’s movements represent another. Against this backdrop of right-wing appropriation, efforts to theorize inequality are crucially important. Progressive scholarship has roundly and convincingly critiqued the prevailing paradigm of formal equality jurisprudence – which, by equating equality with colorblindness, sex-blindness, etc., exposes benign differential treatment (aimed at eliminating inequality) to labeling as “reverse discrimination.” But progressives have spent little time theorizing their *own* definition of equality – providing an alternative conceptualization of how to distinguish between legitimate and illegitimate claims of discrimination. A valuable contribution to that discussion is presented by Davina Cooper’s book, *Challenging Diversity: Rethinking Equality and the Value of Difference*.

Cooper takes what she calls a “structural” approach to the problem (pp. 38, 63), maintaining that the line between unacceptable (and illegal) “relations of inequality” and allowable “social disadvantage” can be drawn by attending to the effect of differential positioning on the broader social environment. Thus, in approaching what she calls the problem of diversity’s limits (p. 191), her aim is to “differentiate between inequalities according to their constitutive place within the social” (p. 38; see also p. 51) – the extent to which they drive and inform social relations, investing cultural norms with meaning (pp. 63-64). Taking tobacco use as an example, Cooper argues that, even though regulatory policies regarding smoking might enact and reinforce class hierarchy or other relations of inequality, smoking is not *itself* such a relation:

[W]hat impact, if any, does [smoking] have on the meanings and values through which other social phenomena are understood? For instance, just as we talk about institutional or national cultures being gendered in ways that reproduce the asymmetry of values and norms associated with femininity and masculinity, could we talk about them equally as being ‘smoked’, where the values and meanings associated with smoking are ascribed less value than their non-smoking binary counterparts? (p. 63)

In Foucauldian terms, Cooper seems to be suggesting that, while the regulation of smoking might be a disciplinary technique (deploying binaries of purity versus pollution, self-control versus self-indulgence, middle-class

propriety versus low-income vulgarity, etc., to draw distinctions between classes and social contexts), the practice of smoking is not *itself* a relation of power instantiated by such disciplinary techniques. Thus, while “technolog[ies] of power [are] deployed in the service of smoking regulation,” such technologies are not “rendered legible *through* smoking” (p. 63). While Cooper acknowledges that it is always possible that tobacco use could become such a relation of inequality, she concludes that at present there is little evidence that it is (p. 64).

Cooper’s approach definitely offers a useful alternative – or perhaps complement – to other similar attempts at defining what constitutes inequality, such as Iris Marion Young’s “faces of oppression” and Nancy Fraser’s distinction between injustices of distribution and recognition (both of which Cooper succinctly summarizes and critically engages) (p. 40-43, 72-76). But whether it accomplishes her goal of distinguishing between the theoretically infinite list of disadvantaged subjects and a more limited set of structural inequalities is debatable (p. 65). While Cooper’s line-drawing is convincing in the smoking example, that example elides the challenges of distinguishing between inequality and social disadvantage in other contexts. Although it might be clear that the devalorization of tobacco use does not play an affirmative role in constituting social relations, what about differentiations based on size, politics or religion? Don’t those distinctions also drive and inform social relations? U.S. national culture, for example, clearly reproduces an asymmetrical set of values and meanings that elevate physical fitness over obesity, such that some might, in fact, say that the culture is “sized.”

Similarly, Enlightenment values so imbue Western national cultures, investing countless institutions and practices with notions of neutrality and objectivity, that one could certainly say that those cultures are “liberalized.” Thus, the social stigmatization and disciplining of leftist academics (Colorado University professor Ward Churchill being one recent example) and extreme right-wing figures or groups (such as creationists or white supremacists) could, under Cooper’s analysis, both be said to enforce a relation of inequality that elevates liberal political views. Or, switching the context slightly, social practices that take as true the knowledge produced by Western allopathic medicine and scientific-method-based empirical research over more osteopathic or Eastern descriptions of human bodies and understandings of social reality could be seen as illustrating a relation of inequality based on valorization of a “liberal epistemology.” The implication of this latter argument would be that, when insurance companies refuse to cover alternative health modalities such as Reiki or Rolfing, or when public schools refuse to teach creationism along with evolution, they indeed *are* discriminating; they are enforcing a relation of inequality that prefers “scientific” ways of knowing to holistic or religious ways.

However, although liberal values seem clearly to satisfy Cooper’s criterion of having a “constitutive place within the social,” it seems unlikely she (or most progressives) would want to identify the religious right as

victims of a “liberal” organizing principle of inequality. Thus, Cooper’s creative attempt at theorizing inequality sharply illustrates the (perhaps insurmountable) challenges of articulating formal criteria for defining what it actually is.

Cooper makes an explicit decision to eschew a substantive approach that, instead, critically assesses the values informing different social struggles and positionings. That choice, at least for this reader, is unfortunate. While her analysis is enriching on its own terms, its plasticity illustrates the inherent limitations of any attempt to justify progressive political stances on the basis of any set of formal criteria that do not engage or articulate the *substantive* moral and political commitments informing progressive political engagement. Ironically, even though Cooper clearly eschews liberal theorizing, her substantive disengagement, as well as the individualist focus of her analysis (described below), may thus actually reinforce the liberal approach she disavows.

I also found rather puzzling Cooper’s refusal to use a values-based approach on the grounds that values analysis will necessarily reflect privileged views: “For the operation of social inequalities will also shape the norms and values brought to bear in evaluating particular practices, interests, and desires” (p. 194). While she is certainly correct that socially constructed filters will inevitably affect such an assessment, that observation would seem to be equally true of Cooper’s own standard. That is, any determination as to whether a particular differentiation invests social norms with meaning is *also* bound to be affected by dominant perceptions. At least an attempt to draw lines based on substantive commitments would explicitly draw attention to those differences and begin a public dialogue about them.

In chapter 4, Cooper more fully develops the concept of inequality. For her, while equality of resources and recognition are important, alone they are insufficient to identify how inequalities can be rectified. A theory of equality must also seek equality of power. In contrast to other power-focused theorists, however, Cooper does not seek to measure the relative power of groups, instead selecting the individual as the focus of her inquiry. In rejecting diversity politics’ centering of groups (pp. 69-70), Cooper argues that the socially constructed and heterogeneous nature of social groupings – which render identities “[not] liberatory collectivities but [rather] disciplinary fictions” (p. 20) – precludes such an approach. Groups are “the effects of power,” she says, “not its cause.” (50) Her concern, then, is “the pursuit of individual equality of power through the dismantling of organizing principles of inequality (...)” (pp. 89-90). In other words, individuals – regardless of how they may be sexualized, racialized or gendered – should have equal abilities to impact their social and physical environments, including equal “participation within the making and operationalising of collective decisions (...)” (pp. 77-78).

But what is this? An embrace of the autonomy of the self-actualizing liberal individual? A Habermasian turn to process-focused analysis? While Cooper clearly means to be endorsing neither of those two alternatives, she

fails to adequately distinguish her approach from both, or to sufficiently trace its parameters. Nor does she explain how the social impacts sought by these individual subjects are any less socially constructed than the preferences that ground much of liberal theory – such as, for example, Ronald Dworkin’s work on resource equality, which she indicts for treating such preferences as fixed and pre-social. (pp. 72-74)

The second major focus of *Challenging Diversity* (beyond the “limits of diversity” issue), is the role of the broader normative context within which equality struggles take place. (p. 191) While Cooper takes off from a common critical insight – that the meanings of legal terms are socially constructed and the results of legal cases politically determined, she offers a particularly rich and detailed analysis of how social norms are infused into legal discourse about equality in specific contexts. Exploring the discourse of harm reflected in nuisance law, for example, in chapter 6 she suggests that demands for attention by powerful actors are less likely to be seen as illegitimate (and therefore as harmful nuisances) than similar claims by less powerful actors (pp. 124-25). Moreover, in treating certain interferences with liberty as actionable injuries and not others, nuisance law “helps sustain a negative conception of freedom in which propertied mental space plays a central part” (p. 126).

Similarly, in chapter 5, Cooper uses the issue of gay marriage to illustrate both her individual-focused analysis of inequality and her interest in exploring how inequality discourse interacts with the broader normative context. It’s not enough, she asserts, to ask for inclusion of gays as a group into the institution of marriage. First, framing equality as access to benefits already accorded other groups ignores the heterogeneity of “gay and lesbian constituencies” (p. 102). Second, it too narrowly conceptualizes equality as “remediating a ‘lack’” (p. 102). Rather, one should see a spousal rights regime for gays as disciplinary, as assimilating gays into heteronormative marital conventions and drawing the line between acceptable and unacceptable relationships. “[Spousal rights] threaten to reclassify and discipline, to break up – through the institutionalization of rights and duties – continua in lesbian and gay relationships of friends, lovers, ‘families of choice,’ and acquaintances” (p. 104).

The spousal rights issue also provides Cooper the opportunity to explore one of her most interesting preoccupations, the possibility of deploying normative principles for counternormative ends. Thus, in chapter 5 she asks whether spousal rights, despite their disciplinary implications, can be used *against* the incorporation of gays into heteronormative conventions. Here, she moves beyond the Butlerian insight that the master’s tools can in fact be used to dismantle – or at least disrupt – the master’s house, attempting to describe with some specificity the complex ways in which spousal rights can intersect with other social factors to impact gays, lesbians, and the broader society. Emphasizing the importance of assessing the effects of reforms on more than one organizing principle of inequality (p. 114), she notes that recognition of spousal rights might indicate “a shift towards private rather

than public norms” (p. 113), reinforcing other social inequalities by constructing strangers as beyond the scope of individuals’ or society’s concern (pp. 111-12). And of course, spousal rights reforms would take place within, rather than disrupting, existing social structures. On the other hand, to the extent that such reforms constitute “ergonomic” regulation – state policies that fit who society’s members really are – they constitute a positive step (pp. 113-14).

This sort of detailed exploration of the complex interrelationships among subordinating structures and practices in particular contexts is very useful. Throughout the book, Cooper attends to detail in this way, carefully laying out the pros and cons of various techniques for challenging prevailing societal norms – ranging from individual reform programs to alternative communities. Indeed this brief summary does not begin to capture the richness of her book. Its strength is in its commitment to providing a detailed, nuanced analysis of the interrelationships among organizing principles of inequality and various other social norms and institutions.

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The Privatization of the Oceans, Cambridge : MIT Press, 2004, 202 p.

The Privatization of the Oceans ne traite pas de l’appropriation des mers, mais plutôt des « quotas individuels transférables », par lesquels les États côtiers attribuent des droits de pêche exclusifs aux pêcheurs, leur conférant le droit de débarquer une quantité déterminée de poisson. Ces quotas sont alloués aux patrons de pêche, le plus souvent en fonction de la taille de leurs bateaux et des débarquements des années antérieures. Souvent négociables, les ITQ (*individual transferable quotas*) peuvent être définis comme de véritables droits de propriété, en Nouvelle-Zélande par exemple, ou encore, considérés comme des privilèges, en Amérique du Nord. Il s’agit d’une étude de l’efficacité économique de ces quasi-droits de propriété sur les ressources, les ITQ représentant la part individuelle du total des prises admissibles. L’analyse économique de ce livre porte sur les programmes de quotas de plusieurs États côtiers: Nouvelle-Zélande, Chili, Norvège, Canada, Islande et Etats-Unis, depuis l’avènement de la zone économique exclusive, à la fin des années 1970.

Les quotas individuels transférables constituent, pour l’auteur, la réponse économique la plus avancée à la crise de la pêche. D’entrée de jeu, il souligne qu’il s’agit avant tout d’un instrument d’efficacité économique, même si on s’attend généralement à ce que ces quotas contribuent à la

conservation de la ressource, à la fois grâce à une surveillance accrue des prises et à une plus grande sensibilisation de l'industrie : « Property rights, if adequately defined and enforced encourage efficient use of resources in the present with an appropriate regard for the future » (p. 2). Encore faut-il, note l'auteur au passage, que toutes les conditions soient réunies pour favoriser cette exploitation optimale.

En termes clairs, on doit comprendre que l'État et les pêcheurs ne doivent être motivés que par la rentabilité économique et l'appât du gain, car le système des quotas transférables s'est avéré jusqu'à maintenant incompatible avec les objectifs sociaux et environnementaux, que ce soit le maintien des communautés côtières ou la conservation de la diversité biologique (p. 110, p. 168). Notons aussi que les ITQ ont suscité une « formidable opposition » malgré leur succès économique (p. 163). Ils ont été contestés à la fois par la société et par l'industrie de la pêche elle-même, car ils tendent à favoriser très rapidement la concentration d'entreprises. Bref voilà un livre sur une controverse, mais un livre qui prend parti sans nuance en faveur de la seule efficacité économique des pêches, tout en reconnaissant au passage que les ITQ ont entraîné une augmentation générale des débarquements de poisson et la disparition de nombreux acteurs économiques. Voyons donc de quoi il retourne.

The Privatization of the Oceans fait le tour de la question des droits de pêche en trois temps, comportant sept chapitres. Les deux premiers chapitres nous rappellent le contexte historique et théorique général : les droits de propriété, d'une part, le droit de la mer et des limites des zones de pêche, d'autre part. Ces deux chapitres sont à la fois succincts et suffisamment complets pour constituer une très bonne mise en situation des quotas individuels transférables.

Dans les deux chapitres suivants, l'auteur s'intéresse aux efforts étatiques pour mettre fin à la « tragédie des communaux » dans le domaine des pêches maritimes (p. 48), en attribuant peu à peu des droits de pêche aux bateaux, avant même de déterminer les conditions d'accès aux ressources et de réglementer les saisons et engins de pêche. Car, rappelle l'auteur, les moyens habituels de contrôle se révèlent inefficaces à plus ou moins long terme, se voyant plus ou moins rapidement neutralisés. En effet, l'expérience démontre que, lorsque des réglementations limitent la longueur des bateaux, les coques doublent bientôt en largeur; quand les saisons de pêche raccourcissent, la taille des équipages augmente (p. 70), de sorte que les mesures sectorielles perdent rapidement leur portée. Ainsi, malgré les réglementations sur l'accès et les engins de pêche, les surpêches continuent de menacer l'ensemble des stocks de poisson. Tant et si bien que dans de nombreux pays, conclue Hannesson, la rareté de la ressource halieutique et la surcapitalisation de l'industrie de la pêche motivent peu à peu le recours aux quotas individuels transférables, malgré l'opposition que ce régime suscite.

Les derniers chapitres de ce livre commentent six cas de figure. Dans le chapitre 5, la question est abordée sous l'angle des succès et échecs des

programmes d'ITQ, à partir de l'expérience de quatre États (*Successes and Failures : New Zealand, Chile, Norway, and Canada*). On y apprend que seul le programme du Chili a connu un échec retentissant, principalement en raison de l'opposition de l'industrie, contrairement à ce qui s'est passé en Nouvelle-Zélande où l'industrie en a au contraire assuré le succès. Pour leur part, les programmes norvégien et canadien se sont heurtés à de nombreuses difficultés qui en ont considérablement réduit l'efficacité économique, car, dans ces pays, explique l'auteur, les politiques publiques de la pêche poursuivent également un objectif de soutien des petites communautés côtières. Les chapitres 6 et 7 présentent de manière plus détaillée l'évolution des programmes de quotas individuels transférables en Islande et aux États-Unis et leur efficacité économique malgré les controverses dues à l'augmentation des prises ou à la concentration d'entreprises.

Dans sa conclusion, l'auteur analyse plus globalement les facteurs de succès de ces programmes et les difficultés qu'ils suscitent à titre d'institutions économiques. Selon lui, les quotas individuels transférables ont fait la preuve de leur efficacité économique, l'industrie, de manière générale, voyant ses profits augmenter en raison d'une hausse de productivité, due à la fois à la baisse de ses coûts de production et à l'augmentation de la valeur des débarquements (p. 163). De surcroît, la pêche n'est plus une opération à risque pour les détenteurs d'ITQ. Cependant, dans la plupart des pays, l'attribution des quotas soulève tôt ou tard des questions d'équité intergénérationnelle et de justice distributive, les ITQ étant réservés aux patrons de pêche et alloués le plus souvent en fonction des prises des années antérieures.

Selon l'auteur, la société civile peut elle aussi profiter des ITQ, et ce, en proportion de la part de la pêche dans l'ensemble des activités économiques. À quel prix? Sans ambages, l'auteur répond : l'État et la société civile doivent d'abord neutraliser tout ce qui peut compromettre l'efficacité économique des pêches, que ce soit le soutien apporté aux petites communautés côtières ou les lobbys environnementaux qui s'offusquent de l'augmentation paradoxale des débarquements: « The greatest threat to fisheries in the future may not be overfishing and depletion of fish stocks but rampant environmentalism » (Conclusion, p. 178).

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