

Andreas Føllesdal

*Between Petros and a Hard Place?  
Human Rights to Religious Liberty or to Gender  
Equality in Europe.*

Employment and careers are gendered, with women disproportionately underemployed and in less well paid jobs. Some religions inculcate loyalty to such cultural practices that stunt women's actual choices of careers and life plans. How should liberal states regulate these aspects of such religions?

Beliefs and practices based on religious views often have drastic impact on girls' and women's aspirations to participate in paid work and political positions, affecting their exercise of choice however formally free. Norms may include that women not have offices of authority within the church<sup>1</sup>, and that they should devote their time when mothers of young children to their natural tasks, understood as nurturing and caring for their young rather than paid work. If these norms are successfully inculcated, girls' aspirations regarding professional careers are drastically curtailed as compared to boys'. Those men and women who believe otherwise may work to change the doctrine of the church from within, or exit - which may appear appropriate if their views deviate on what they or the church regard as a central teaching. What limits should the state put on such religiously based inculcation to gender roles? That is: how should the state draw the scope of respect for religious freedom vis-à-vis the scope of respect for women's freedom to form preferences regarding social roles and life plans? Rights of religious freedom - particularly those of religious institutions to inculcate gender stereotypes - may prevent girls and women from developing and exercising a choice over their full set of legally secured opportunities, e.g. regarding education and paid work. Such teaching would seem to violate the CEDAW Articles 1 and 2. An urgent issue is what the state should do in furtherance of the objective of preventing what appears to be discrimination<sup>2</sup>.

The conflict is not easily adjudicated by claiming that rights - human or otherwise - should trump other considerations, since both religion and gender

---

<sup>1</sup> Meaning in this paper all religious organizations.

<sup>2</sup> Possibly to comply with its obligations under EU Equal Treatment Directive Art 2, 5 and 8.

equality appear in human rights conventions, promoting or protecting important human interests. Indeed, they can be discerned in two adjacent Principles of the contested Constitutional Treaty of the European Union, that “The Union shall respect cultural, religious and linguistic diversity (Art II,82). Yet shall also ensure equality between men and women in all areas, including employment and work” (Art II,83).

It is beyond the aims of these reflections to discuss the apparent legal conflicts and their resolution by courts, drawing on readings of human rights conventions and elsewhere - the European Constitutional Treaty, the EU Equal Treatment Directive, the CEDAW, the International Convention on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The issue is rather whether any religion should be so permitted to inculcate certain gender roles in accordance with a particular religious view, in private schools or otherwise.

I shall defend a position that is both liberal and egalitarian, defending the legal right of religious bodies to teach gender-biased role models, yet defending equality of career opportunity for men and women. The details may render this position unpopular with proponents of either camp. People should be legally permitted to attach themselves and their children to churches with doctrines that include differentiated norms for the behaviour expected of male and female members. Still, the right of religious freedom is limited in important ways, for instance constraining what may be taught even in private schools, in ways so as to prevent domination. The legitimate goal of equality, on the other hand, may be secured even in the absence of equality of result: a gendered employment pattern may be consistent with justice.

The view presented here is a liberal contractualist account, which has often been challenged from several fronts on these issues: some hold that liberals will only accept the normative significance of bonds that are voluntarily acquired - thus having trouble accounting for any loyalty to family and the parents' religion that one finds oneself born into (Miller 1995). Others appear to hold that as long as women have real exit opportunities from such religious denominations, true liberals should be prepared to let oppressive practices continue. The state should not be in the business of regulating or correcting preference formation within religious organizations. Others hold that proper egalitarians should hold to the contrary, that religious bodies have no legitimate claim to disseminate gender-specific role models, and that the state is thus free to forbid those aspects of religious freedom. True egalitarians should be prepared to use the state to ensure equal outcome: “that all positions of high

status, income and decisionmaking power ought to be distributed in comparable numbers to women and men" (Young 1990, p. 29).

### *Focus*

The issue here is limited to how institutions - including laws - should regulate such conflicts as may be between on the one hand freedom to teach and practice one's religion, especially those aspects that promote gender-specific social roles, and on the other hand equality between men and women regarding freedom of choice regarding employment - where some religions may discourage women from certain professions - and mothers from paid work in particular<sup>3</sup>. This is not to deny that religions often motivate violations of women's civil or political rights and their rights to physical integrity. Such violations are clearly outrageous - and, if they raise philosophical issues, these are different.

The following comments defend this view in three parts<sup>4</sup>:

On liberal contractualism; and on two central interests to be secured among equals;

The scope permitted for transmitting one's religious views to one's children;  
The kind of equality regarding employment that justice requires.

### **1. Liberal Contractualism: the significance of choice and loyalty**

A long standing strand in European political culture is a commitment that each citizen deserves equal concern and respect. The political tradition of liberal contractualism provides a particular interpretation of this commitment, by holding that social arrangements must be in accordance with principles which persons can reasonably propose as a basis for mutual, informed agreement (Rawls 1971, Scanlon 1982, Beitz 1989). The social order must in principle be justifiable at the tribunal of each person's understanding (Waldrön 1987, p. 149). This justification "manifests our respect for the reasonableness of others" (Macedo 1990).

The contractualist account of normative legitimacy holds that individuals are normatively bound to comply with laws and institutions only if they satisfy principles which can be justified by arguments in the form of a social contract of a particular kind. The principles of legitimacy we should hold institutions to,

---

<sup>3</sup> This is not to say that gender injustice concerning unjust marriage and divorce practices etc. are not important (cf. Shachar 1998, Okin 1989, Barry 2001, 156), or to deny that many of the most urgent damages wrought by the "West" are perpetrated on non-Westerners, primarily the global poor, and women in particular, by means of the global basic structure (cf. Jaggar 2005)

<sup>4</sup> I draw in part on Føllesdal 2005 where some of the issues are developed further.

are those that the persons affected would unanimously consent to under conditions which secure and recognize their status as appropriately free and equal. These standards of legitimacy are specified by consideration of what interests and principles no one could reasonably reject as a basis, given the mutual interest in acting on such non-rejectable grounds. Hence the phrase “contractualist”. This notion of possible consent allows us to bring the vague ideals of equal dignity to bear on the questions of legitimacy and institutional design.

While legitimate institutions must be such that they could secure hypothetical consent under specified conditions, Liberal Contractualism does not hold that individuals are only bound to institutions by voluntary consent. The aim is not to show that all moral claims are acquired by consent, from self-interested premises or otherwise. Consent, hypothetical, tacit or otherwise, does not create the moral obligation or duty in the same way as free and adequately informed consent binds those who so consent. Instead, Liberal Contractualism serves to delineate the limits of one's duties, acquired by birth or by consent. The contribution of Liberal Contractualist theory is thus to delineate some of the limits to the morally binding rules and practices that surround us, employing the apparatus of consent for this purpose.

#### *Interests at stake*

Liberal contractualism is based on normative individualism: The ultimate grounds for all rights must be the interests of individuals. The interests that matter for contractualist arguments are the interests of all individuals affected by the rules, i.e. by the social institutions or practices under consideration. For the purpose of justifying social institutions maintained by the state, contractualism requires that we find suitable descriptions and weights for the interests we are prepared to offer as premises in the arguments. When comparing particular rules or principles, contractualist arguments must therefore appeal to their impact on recognizably important interests of individuals.

To illustrate, consider John Stuart Mill's argument for maintaining minority cultures: that they provide opportunities for learning from each other (Kymlicka 1995, p. 102). This interest in *autonomous individuality*, the critical assessment and improvement on one's existing conception of the good is not shared by all, nor can we offer good reasons to all, regardless of their world view, that such critical distance to one's own culture is of great value.

More generalized, the challenge is this: Every state contains a variety of religious views and cultural minorities, whose members hold partially incompatible views about the good life. Disagreements about conceptions of the good increases the need for reasons, to reduce the fear of illegitimate use of

state power; yet the disagreements also reduce the scope of arguments which can be offered and accepted among citizens of different views. The use of force in establishing and maintaining social institutions among individuals with different practices and beliefs requires a justification that does not depend on adopting one particular religious framework or a particular conception of the good life (Nagel 1987).

I submit that the requirement of equal respect is expressed and secured in part by a general principle of non-malificece . We must be protected against physical and psychological harm. But there are also other interests that must be secured. We consider some of these in the following.

### *Community*

Contractualist theories are sometimes said to deny the intrinsic value of community, and to ignore the "embedded" nature of human beings<sup>5</sup>. However, an important interest is that of partaking in social activities, involving cooperation with others. Liberal Contractualism also recognises that the social institutions, culture and practices shape our expectations and aspirations in fundamental and inescapable ways. Social institutions have a pervasive impact on the development and satisfaction of our interests by framing our expectations. We are concerned with the legitimacy of social institutions precisely because they exercise a strong influence on us, or our life plans and our expectations<sup>6</sup>. This is one reason why individuals must be acknowledged to have an interest in procedural control over the social institutions that inescapably shape values, goals, options and expectations - sometimes including religious communities. The requirement of equal respect entails that individuals must be secured against indoctrination: against inappropriate kinds of control of our religious beliefs, the formation of our conception of the good and our choice of action.

Thus Liberal Contractualism accommodates the communitarian concern for constitutive attachments and commitments, found within the traditions and roles we take part in, and which are not chosen by the individual. Satisfying legitimate expectations is an important interest, and stable social institutions are crucial for making and pursuing life plans. We thus have good reason to maintain social institutions, insofar as it is only under fairly stable institutions and other practices that expectations can be created and met (Føllesdal 1996).

---

<sup>5</sup>. For different sorts of criticisms, and defenses on other grounds: Gutmann 1985; Cohen 1986; Buchanan 1989; Caney 1992; Mulhall 1994; Mulhall and Swift 1996.

<sup>6</sup>. Rawls (1993) [1978].

*Not autonomy but non-domination*

Will Kymlicka argues that cultural membership is valuable as a precondition: it provides the necessary structure for individuals' meaningful pursuit of their various conceptions of the good life. "it's only through having a rich and secure cultural structure that people can become aware, in a vivid way, of the options available to them, and intelligently examine their value." (Kymlicka 1989, p. 165). On Kymlicka's view, the constitutive interest in culture allows drastic changes in culture brought about by government or others, as long as the individuals face "no danger to their ability to examine the options that their cultural structure had made meaningful to them" (Kymlicka 1989, p. 167).

While liberal contractualism accepts Kymlicka's conclusions, the premise is incompatible with respecting individuals of non-liberal persuasion. Kymlicka explicitly grounds the constitutive value of culture on a liberal ideal of the *autonomous* individual, in effect providing 'another sectarian doctrine (Rawls 1987, 6, 24, cited in Kymlicka 1995, p. 164). Liberal contractualism attempts to express the interest in cultural membership without relying so heavily on the interest in choice.

Goods may be of value not only because of their role in satisfying existing desires. Social institutions also shape options and self-perceptions in ways that affect our expectations and our plans of life. We must therefore accept, for purposes of arguments about legitimacy, that individuals have an interest in influencing the social institutions which in turn affect their conceptions of the good and life plans. Political power to regulate practices and social institutions must also be considered as an important good for purposes of justifying the allocation of goods and burdens fairly among equals within a state.

I submit that one important reason for having such power is to prevent domination by others. Thus the need for power is not based on a contested interest in autonomy, but rather on what I take to be a less contested interest in avoiding domination.

A social order is objectionable if some individuals can drastically restrict the attractive options of others, prevent deliberation or otherwise leave them at the mercy of the powerful. The reason is that individuals have an interest in maintaining control over the social factors that shape their own lives -- in particular if the alternative is that others wield such control. One important strand of recently resuscitated republicanism has focused on this interest in avoiding subjection to the arbitrary will of others (Pettit 1997, Skinner 1998). Large inequalities of power over the internal life of a religious community can prevent the less privileged from exercising control over their lives and subject them to the arbitrary decisions of the powerful in various spheres of life.

*Not autonomously chosen life plan, but conditions of socialization*

David Miller has argued that: «According to the universalist, we discover what our duties are by abstract reflection on the human condition ad on what others can legitimately ask of us... No considerations about who I am, where I have come from, or which communities I see myself as attached to are to be allowed to influence my ethical reasoning... Talks of universalists seeking to 'derive' limited obligations as either useful convention or voluntary creation (Miller 1995, p. 59)».

But this is not a criticism of liberal contractualism. Religion need not be freely chosen from a smorgasbord of offerings on a market of philosophies of life. Liberal contractualism does not hold that only voluntary obligations are binding, and does not share Mill's ideal of the autonomous individual. Growing up in a family which fosters - yet skews - conceptions of the good life is thus not a fundamental problem to be deplored. Freedom of parents and communities to bring children up in a religious view which predisposes to certain conceptions of the good life is not incompatible with liberal tradition. I submit that a less demanding requirement is that the state must seek to provide background conditions so that individuals come freely to accept their religious beliefs, on the basis of reflective thought and reasoned judgment (cf. Rawls 1993, p. 222).

Thus some constraints are important, and we turn to them below, focusing on the particular concerns regarding explicitly gender-specific shaping of aspiration levels, career plans and high threshold of exit.

*On the exit option - neither necessary nor sufficient*

One condition that is often insisted on by 'liberals' is that individuals should be allowed to exit the church they were born into.

Susan Okin put the challenge with characteristic precision: «Wherever it occurs, the unequal treatment of girls and women can mean, as I shall show, that by the time they reach young adulthood in many cultures and religions, they are effectively far less able to exit their respective groups of origin than are men. Any liberal group rights theorist - especially any who is concerned to defend the claims of illiberal groups to rights or exemptions should be concerned about this inequality. For some individuals not to be able to choose an alternative mode of life, when others in the group are far more likely to be able to do so, is a serious violation of the equality of persons that is basic to liberalism. (Okin 2002, p. 206)».

I agree with Okin, Barry and others that an important normative requirement is to ensure that the "the option of exit should be genuinely open" (Barry 2001, p. 244), and that formal permission to exit is insufficient, as is knowledge of alternatives (*pace* Galston 1995).

However, it appears that a real exit option is neither necessary nor sufficient to render the *content* of church socialization justifiable. Nevertheless, I shall suggest that the right to exit can be justified - on other grounds.

*Not necessary for socialization to be legitimate*

“Communitarian” critics of liberalism sometimes hold that liberals ignore the constitutive role of memberships when holding that all legitimate bonds should be open to choice and exit. If indeed church membership is constitutive, it will be impossible to exit completely from that community, since one’s psyche and mind set will continue to bear traces and sediments of the membership. The “goods internal to the practice” - ranging from well-defined sacraments to vaguer ways of viewing the world - may be so deeply entrenched in one’s sense of what makes life worth living that complete “exit” is impossible.

Luckily, a real and thorough exit of this is not required for legitimate duties to apply. Consider, for instance, duties to parents that can seldom be unilaterally exited by children except in extraordinary cases of abuse.

The question is rather which involuntarily incurred duties hold for individuals. Some, as regarding duties to obey just institutions that exist and apply to oneself, may be tested by considering whether they could have been consented to - which may be the closest we come to relying on choice.

*Not sufficient for socialization to be legitimate*

Some arguments have been offered in favor of allowing close to unrestricted minority authority over own members. Some hold that as long as members have the possibility of exit, little more is required or permissible (Kukathas 1995). The claim would seem to be that an exit option is sufficient for the surrounding society to be able to assume that the individual tacitly or implicitly consents to the treatment. However, contractualism of the variety we lay out is not libertarian. We insist that individuals have other important interests than ensuring formal opportunities for the exercise of choice, maintaining physical integrity being one of them. (Kukathas 1995). Lack of use of a formal exit option is insufficient to conclude tacit consent (Shachar 2000). Moreover, we should be especially cautious since communities may socialize members so deeply that they come to accept complete subjection. Thus Raz (1994) holds that only if no inferior status is conveyed, *and* women’s full development and self-expression is not stunted, it may be acceptable to be socialized into willing acceptance. Thus, an exit option is insufficient. So what more is required?

*Why exit options still matter*

Liberal contractualism requires individuals to be able to exit from the religious community they have been brought up in for at least two distinct reasons. Firstly, when considering who should have the authority to determine whether an adult person should be allowed to exit a particular church, that person should have that authority. This is based on her interest in maintaining this form of real control over an important social factor that shapes her life, rather than others wielding such control.

Secondly, Liberal contractualism assumes that the interest in changing one's life plan is fundamental in the following sense: We must recognize and regard as important that interest *some* of us have in changing religious views or cultural membership (cf. Føllesdal 1996, Barry 2001). The aim is not to promote autonomy, but to enable citizens to live autonomously should they wish to. In conflicts, this interest must count for more than the interest others may have in having authority to prevent other members of the community from changing their religion and world view. However, this is not to hold that all must have such an interest in "standing back" from their religious beliefs. Such a right to exit does not rely on a view that the autonomy of individuals is of intrinsic worth. Rather, it can be defended because other modes of distributing discretionary power present avoidable risks to individuals' basic needs.

*Three conditions: ability to exit and choose a valuable alternative*

These two arguments from non-domination and self-chosen change require that several features of a person's choice situation must also be secured. Firstly, that the person not only is formally permitted to leave, but actually able to leave. Thus, her options or capability set must include such an exit.

Secondly, the best alternative to staying must have a decent value - at least in the minimal sense that the person does not risk complete social death (Green 1994) - not to mention physical death. This requires that her church is not hegemonic regarding her social networks.

Thirdly, and more demanding than the "standard" capability approach, she must know about some of these alternative options, and be actually able to choose on an informed basis. Okin notes that: «the right of exit, while no doubt important, does not have the clout it is often thought to have in arguments defending the rights of illiberal groups within liberal contexts. Instead, it is inherently problematic. Those most likely to need it are those least likely to be able to employ it. Neither may they see it as a desirable or even an imaginable option. (Okin 2002, p. 207)».

Christine Korsgaard suggests that: «We may believe that a human being is free, if ever, when she not only has a range of options but an education that enables her to recognize those options as such and the self-respect that makes

her choice among them a real one. Ignorance, lack of imagination, and lack of self-respect are not just external constraints on the range of your options: they can cripple the power of choice itself. The possession of freedom of the will may itself be lucky.(Korsgaard 1993, pp. 60-61)

## **2. Implications for education**

These requirements have important implications for the curriculum in schools. Children must acquire the capabilities necessary to function in a society where the division of responsibility between the individual, the family and the state is of a legitimate kind. This does not require ‘autonomy’ - that individuals should be taught to have a critical stance to their parents’ religion and way of life, but constrains what parents may do regarding the upbringing of their children. For instance, parents may not convey views that would allow husbands or males to physically or psychologically mistreat their wives or all females.

But should parents and their church be overruled when they seek to raise children according to their own religious conception regarding all gender roles? I suggest that they may be allowed to convey such constrained gender roles - but not to give a church uncontested monopoly on teaching gender roles. In particular, it is necessary to convey to children that the surrounding social order permits individuals’ choice of careers, allowing individuals to exit a religion without legal sanctions.

Parents may thus not prevent their children from receiving information about such alternatives regarding careers and the rights of religions. Even private religious schools must convey this information<sup>7</sup> - for a variety of reasons, including the need to ensure that citizens with voting rights can use those rights with due consideration for other citizens of different faiths.

Liberalism requires more than information regarding exit and options. The threshold must be sufficiently low.

All citizens must have information about the limits on her church’s powers of excommunication. Furthermore, all must have information about the social institutions, e.g. that loss of faith or divorce is not a legal crime. But liberal contractualism insists on a distinction between the ‘political’ sphere and the domains of civil society, leaving ample room for religious views and cultural aspects which differ on other matters. Thus even though all children must be taught about diverse ways of life, e.g. about religion, and their different views concerning gender equality, such education need not - indeed should not -

---

<sup>7</sup> My interpretation of parents’ rights in this regard may thus violate EU’s contested Constitutional Treaty Art II-14, 3; and the International Convention on Civil and Political Rights Art 18.4.

convey that such matters are completely subjective and an issue of relativistic choice. Nor should the education promote in all children a critical stance toward religions. An important challenge is indeed to foster certain political virtues and a reflective and critical attitude in children toward the political system and institutions as part of citizenship, without implying that such virtues and critical attitude is always appropriate towards one's church. What is required is that all know that others in the political community have other life plans than themselves, yet have the same legal protection and standing (cf. Macedo 1999, Gutmann 1980, p. 349).

This information about alternatives and the skills of reflection are important components of a liberal education to prevent domination and allow choice for those who so desire. Note, however, that the young citizens may well find themselves accepting the church they were born into.

#### *Criticisms*

In concluding this section we may consider some criticisms: "To require exit options is to regard religion as a market product, to be acquired or dismissed at will".

Undoubtedly, Liberal Contractualism relies on the notion of choice in determining that some institutions are illegitimate. One aim of these liberal theories is to bring the commitment to justice to bear on our rules, institutions and practices in order to determine whether they are compatible with the equal respect and concern accorded every person. We do not have a political duty to comply with regimes that are clearly illegitimate.

But the existing legitimate institutions are not binding on us because we actually consent, or participate in a daily tacit plebiscite (Renan 1939). To be sure, we usually act according to the practices we find ourselves part of (Walzer 1977, p. 54), but we do not have, and have never had, a real freedom with regards to the social institutions. Indeed, ordinarily we cannot choose to reject them, and not even the act of voting expresses a morally binding tacit consent to be governed.

The idea of possible consent in the contractualist tradition does not provide the source of moral duty, but is an expression of one important condition for such duties. Obedience is required only when power is distributed fairly. Appeals to consent thus serve to recognize and delineate the limits of legitimate authority, but consent is not held to generate the moral authority of institutions (Murphy 1994). Rather: any actual obedience on the part of individuals can at the very most be taken as evidence of their belief about the legitimacy of institutions, rather than as a justification of these institutions themselves (Raz 1994, p. 339; *pace* Walzer 1977).

The role of choice in contractualist liberalism is sometimes thought to prevent involuntary obligations. David Miller questions whether universalist liberal theories can account for the intuition that "in a national community a case can be made out for unconditional obligations to other members that arise simply by virtue of the fact that one has been born and raised in that particular community." (Miller 1995, p. 42; cf. Tamir 1993, p. 105). Samuel Scheffler holds that "the idea that unchosen ties to a community or tradition can carry moral weight may seem, at the very least, completely alien in spirit." (Scheffler 1999, p. 273).

I suggest that this concern is due to a misperception of the role of voluntary choice. Miller argues that liberals fail to grasp the normative significance of cultural belonging: "cultures, unlike ships, are not vessels to be boarded and abandoned at will." (Miller 1994, 154). We have many duties that we have not explicitly or tacitly consented to. Actual, tacit or hypothetical consent is not the source of a moral obligation to comply.

"Allowing exit, information about other religions, and information about other gender models is contrary to the religious view, and hinders its survival".

Some religions hold that other faiths are mistaken, that information about such faiths is false, and possibly misleading, and that departures from the own religion merits excommunication. Information about other gender models may also tempt members to exit, making it impossible to sustain the community over time.

In response, we should note that the information required does not address the veracity of the different faiths, but informs that there are different such world views and that members of different faiths and of other understandings of gender roles live in the society with equal protection of the law, preventing some possible false threats about the impossibility of exit. It is compatible with such information about equality of religions in the eyes of the law that the religious community holds that these views are mistaken in the eyes of God. Thus that the conflicts with these religions may be more limited than appear at first glance regarding the kind of information needed, and the restrictions required.

We may also note that some such claims about the threats to a religion are empirically false: it is an open question whether the religion is dependent for its survival on maintaining ignorance about the outside world. Moreover, the history of most religions show that their leaders adapt teachings to new circumstances and new information, e.g. regarding the biological and intellectual abilities of both sexes.

More centrally, the issue is with what right a religious community can claim that members should not be allowed such information, necessary to allow exit,

in order to secure the good of the survival of the church. The liberal contractualist claim is that this information is required to prevent domination, and that this interest overrides the interest of church members in continuing the membership through such practices that violate members' legitimate interest in avoiding domination. Nevertheless, a church may well object that women with this kind of education are likely to protest and exit. However, while possibly a correct prediction, this is not a sound objection.

“Assumes a contested ideal of individual autonomy”

Critics may hold that this limitation of religious socialization is based on a controversial individualistic world view, insisting on autonomy.

But liberal contractualism claims to be distinct from the comprehensive liberalism of John Stuart Mill. Liberal contractualism does not rely on a comprehensive liberal view of life centered on autonomy or individuality. Rational deliberation is not regarded as the correct way for an individual to decide how to live one's life. Rather, this view only holds that a wide variety of world views must endorse political toleration, justified on grounds that can command assent even among conceptions of the good which differ on many substantive points. Comprehensive conceptions may hold that others are mistaken, and regret that there is pluralism of conceptions of the good within a society. Contractualism does not regard multi-national state as a good because it is needed to provide cultural pluralism, liberty or vitality (*pace* Acton 1907, cf. Miller 1994, p. 10).

To clarify: the interest at stake is not personal autonomy but political non-domination. Thus the aim of the education is not to secure liberal “critical moral autonomy”, but political non-domination. But parents cannot opt out of certain educational measures to be received by their children, because that makes it more difficult to pass on their own religious beliefs about gender roles.

### **3. What kind of equality does justice require: equality of result? Equality of opportunity?**

Equality of opportunity is an important liberal norm (cf. Rawls 1993), but seems at first to miss the fundamental challenge of the religious inculcation of gender models. It would seem that justice requires not only that careers should be open to all with the same educational qualifications and motivation. Rather, the problem enters earlier in the process. Individuals' motivation is affected by their culture, and the aspirations of women in particular are skewed away from paid careers. So even if they get the careers they are motivated for, their

motivational setup is skewed to their detriment. Should not this inculcation be regulated by considerations of justice?

I here explore the implications of liberal contractualism for these issues of inculcation to gender roles that result in gendered patterns of paid employment.

The commitment to equality of opportunity follows from several reasons why liberals are committed to equality.

*Why equality?*

Social institutions supported by public laws must be defensible to those subject to them as participants and contributors of equal worth. This commitment to equal respect finds expression, for instance, in the claim that individuals should never only be treated as means, but also always as ends with intrinsic worth.

But this abstract commitment does not give clear answers with regards to how institutions should be structured. In particular, it is not obvious that abstract equal dignity also requires equal treatment, equality of results, or some other form of real equality.

Society must secure the equal worth of all, among individuals with different talents and interests, in different local communities and with different religious views. Let us consider the reasons for equality of various sorts (for a partially overlapping list, cf. Fraser 1994 and Scanlon 1997).

*a) Remove destitution and dire need*

One fundamental claim of justice is that social institutions should secure a minimum level of living conditions for all. Education is important to achieve this, particularly in complex societies with extensive division of labour. We need education to get work, which we need in order to get money. Moreover, we need education about the social structures available to us when we need help. This is an important aim but it does not support claims to *equality*. Instead, it supports bringing everyone up to a level of material well being, knowledge and skills sufficient to meet their needs.

*b) Remove stigmatising status inequalities*

Some forms of inequality appear as a public stigmatisation, difficult to accept if we are also committed to the equal dignity of all. In earlier times in much of Europe, higher education was only available to men, and mainly to those whose families could afford secondary education. To be excluded from educational opportunities for reasons of gender or poverty was gradually perceived as such a public expression that these citizens are inferior (cf. Wollstonecraft, 1982).

The argument from stigmatisation does not rule out all inequalities, but only those that are indefensible. Certainly citizens whose community and education fails to equip them with certain skills, character traits and knowledge will have reason to feel inferior. But again, this is not really an argument for equality: there is no clear sense in which the citizens are made *equal* as a result. Again, the aim is instead to bring all above a certain level.

*c) Avoid domination*

A third reason to worry about inequalities is the fear that those in power can dominate the rest of us: control our options, our choices, and perhaps even our self-understanding. Lack of education and exit options can result in such domination.

We can prevent domination in at least two ways. One strategy would be to allow certain inequalities, for instance in education or employment patterns, but prevent them from having worrisome consequences by ensuring that education or certain modes of employment do not serve as a tool to obtain influence. This may require that education no longer serves as a ticket to professions and positions of power. However, this arrangement seems neither feasible nor attractive. To remove the risk of domination by the educated by decreasing the value of education would easily entail the dumbing down of those in positions of power and influence. An alternative strategy seems better: to remove the sources of worrisome inequalities through providing education and opportunities for employment for all up to the level required to prevent domination. This strategy may require some limits on the differences in levels of competence. Also it will require that differences in career choices are known to young citizens choosing employment, and limiting the opportunities for domination by some professions or by some forms of employment.

*d) Secure fair procedures*

Many goods and burdens are distributed by procedures, such as markets, courts, and application procedures. If such arrangements are to function acceptably, the participants must often start from positions of rough equality. For instance, all those who need something in the market must have something to barter, all sides using the judicial system must have access to competent legal advice, and so forth. With regards to employment, this concern applies in at least two areas: to secure the common interests of society at large - all of us - and in order to secure fair treatment of individuals.

Let's assume that the distribution of employment should be based only on the talents and interests of the applicants, expressed by grades and requests for employment, rather than be distributed according to inappropriate criteria such as gender or social background (Rawls 1971). Given these relatively

uncontroversial claims, then employment must be available to all, regardless of geographical location, gender, ethnic or social background. Special efforts may be required to secure that such selection procedures work according to plan.

Such arguments may constrain acceptable differences in starting positions, possibly requiring extra efforts to favour those with special educational needs. We should scrutinize the impact of differential access to education and different conditions for establishing one's aspiration levels, with regards to the students' later ability to function as democratic citizens on a footing of equality in the labour market.

*e) Equal distribution of products of cooperation*

A further argument for equal shares is that those who participate equally in producing goods also have equal claim to benefit from them. I suggest that this claim can support equality of access to professions and positions of power in society.

Such goods as professions and institutionalised power are in an important sense created through our joint practice as citizens. Educational and career resources - professionally trained teachers, pedagogical materials, employment opportunities - are goods created and maintained through common efforts to uphold the social order, that all therefore have fundamentally equal claims to. A principle of fair distribution of such goods would seem to be that all should have equal right of access to these goods. At least their access should be independent of differences that are irrelevant for the social benefits of having such positions in the first place. I submit that equality of opportunity expresses such a basis of distribution. Equality of result, on the other hand, would seem too strict a claim: this would seem to ignore an appropriate role for motivation and commitment by the individual. However, the criteria for access to positions of power must seek to benefit the society at large, and it may well be that the benefits justify limits to inequality of result - for instance, that service professions will provide better services to a diverse population by reflecting the varieties of cultures, religions, ethnic groups - and gender - in society.

Such arguments for equality of opportunity and limits on inequality hold for those goods that can be regarded as produced through cooperation - at the national, European and global level.

We have considered five arguments for various kinds of equality and against various forms of inequality. Certain forms of inequality are unacceptable owing to their consequences or expression of social inferiority, but I have not found any argument for equality in general, and no argument for equality of result. Still, equality of opportunity seems justified as a matter of justice.

*Why inequality of result still is a matter of concern*

Liberal contractualism seems at first glance to differ from Okin's statements regarding equality of result. She held that: «A just future would be one without gender... in which men and women participated in more or less equal numbers in every sphere of life (Okin 1989, p. 171)».

Unequal proportions of exit from religions is an indication of unequal treatment of girls and women: «Wherever it occurs, the unequal treatment of girls and women can mean, as I shall show, that by the time they reach young adulthood in many cultures and religions, they are effectively far less able to exit their respective groups of origin than are men. Any liberal group rights theorist - especially any who is concerned to defend the claims of illiberal groups to rights or exemptions - should be concerned about this inequality. (Okin 2002, p. 206)».

However, we agree that deviations from equality of result have an important role as triggers for public concern.

One reason concerns how to measure whether fair equality of opportunity has been achieved. Citizens holding different conceptions of the good life may often rank similar options differently. Thus we cannot conclude whether their opportunity sets are different on the basis of differences in their actual choices - since similarities or differences in their choices are products of both their own values and their capability sets. However, observed inequalities of result between groups should lead us to investigate whether fair equality of opportunity is violated. This is especially appropriate when the inequalities have an impact on individuals' future resources or power, and when the pattern reflects previous patterns of domination, social exclusion or other forms of social injustice.

This reason seems to fit with Okin's claim (at 2002, p. 206), that this inequality of result can be the consequence of unjust socialization within the group. However, inequality of result is not itself a problem of injustice, but an indicator that injustice is being perpetrated.

Similarly, statistically different career choices among men and women may indeed indicate that there is a problem - (cf. Barry 2001). The concern of justice is, however, not to prevent all gender differentiated role socialization, but to prevent standard forms of domination - including certain forms of inculcation to such gender roles.

I have suggested that statistical differences in career choices for men and women - inequality in result - may be an indicator of violation of equality of opportunity though it need not in itself be unjust. However, the different power - economic and otherwise - of careers in the gendered labour market seem hard to square with justice. The central problems of justice are thus not that women and men choose different careers, but that such choices may now be a result of

unacceptable forms of inculcation, and that some of the careers - typically women's - are underpaid and otherwise provide unfair conditions of work.

### **Conclusion**

Liberalism can recognize the value of religious community and its role in inculcating aspirations; allowing gender differentiated role models - but will also require that citizens are aware of their legal rights and formal capability set. Religions should have limited domination over pupils, by insisting that students have access to information about alternative careers, and alternative religious communities. Individuals should also be in a position to accept - though not necessarily "choose" - their life plan as laid out by their community - and they should be in a position to exit if they so decide.

However, we have good reason to believe that some religious communities disseminate specific gender models with content or methods beyond what justice requires, e.g. concerning obedience of wives to husbands. Some use unacceptable means in preventing access to information about other ways of life, in effect preventing real exit and real equality of opportunity. Their hegemonic influence over aspiration levels is incompatible with liberal contractualist theories of education.

There are also good reasons to believe that many women fail to secure equality of opportunity regarding career choices. Liberalism is committed to a footing of equality, but regarding careers the standard is equality of opportunity rather than equality of result. Inequality of result may reflect unjust procedures. However, if gender models are fostered by religious groups within certain limits that provide exit and reasoned acceptance, this may leave women with lower aspirations regarding occupations than men. That may be compatible with justice.

### **References**

- John Acton E.E.D, «*Nationality*». *The History of Freedom and Other Essays*, J. N.Figgis (ed.), London, Macmillan, 1907.
- Brian Barryn, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, Oxford, Polity, 2001.
- Charles R. Beitz, *Political Equality*, Princeton, N.J, Princeton, University Press, 1989.
- Allen E. Buchanan, *Assessing the Communitarian Critique of Liberalism*, «*Ethics 99*», 1989, 4, pp. 852-82.
- Simon Caneyn, *Liberalism and Communitarianism: a Misconceived Debate*,

- «Political Studies», 1992, 40, pp. 273-89.
- Joshua Cohen, *Review of Walzer's Spheres of Justice*, «Journal of Philosophy», 1986, 83, pp. 457-68.
- Andreas Føllesdal, *Minority Rights: A Liberal Contractualist Case*, in Juha Raikka (ed.) *Do We Need Minority Rights? Conceptual Issues*, The Hague/London/Boston, Kluwer Academic Publisher/Kluwer Law International, 1996, pp. 59-83.
- Føllesdal, *Exit, Choice and Loyalty. In memory of Susan Moller Okin*, «Journal of Social Philosophy» 2005, 36, pp. 407-420.
- Nancy Fraser, *After the Family Wage: Gender Equity and the Welfare State*, «Political Theory», 22, 1994, 4, pp. 591-618.
- William Galston, *Two Concepts of Liberalism*, «Ethics», 1995, 105, pp. 516-534.
- Leslie Green, *Internal Minorities and Their Rights*, in Judith Baker (ed.), *Group Rights*, Toronto, Toronto University Press, 1994, pp. 100-117.
- Amy Gutmann, *Children, Paternalism, and Education*, «Philosophy and Public Affairs» 9, 1980, 4, pp. 338-58.
- Gutmann, *Communitarian Critics of Liberalism*, «Philosophy and Public Affairs», 14, 1985, 3, pp. 308-322.
- Alison M. Jaggar, 'Saving Amina': *Global Justice for Women and Intercultural Dialogue*, in Andreas Føllesdal and Thomas Pogge (eds.), *Real World Justice (to Appear)*, The Hague, Kluwer, 2005.
- Christine M. Korsgaard, *Commentary on G. A. Cohen and Amartya Sen*, in Martha Nussbaum and Amartya K. Sen (eds.), *The Quality of Life*, World Institute for Development Economics Research (WIDER) of the United Nations University, Oxford, Clarendon, 1993, pp. 54-61.
- Chandran Kukathas, *Are There Any Cultural Rights?* in Will Kymlicka (ed.), *The Rights of Minority Cultures*, Oxford, Oxford University Press, 1995, pp. 228-256.
- Will Kymlicka, *Liberalism, Community and Culture*, Oxford, Clarendon Press, 1989.
- Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford, Oxford University Press, 1995.
- Stephen Macedo, *Diversity and Distrust:Civic Education in a Multicultural*

- Democracy*, Cambridge, Mass., Harvard University Press, 1999.
- David Miller, *The Nation-State: a Modest Defence*, in Chris Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives*, London, Routledge, 1994, pp. 137-162.
- Miller, *On Nationality*, Oxford, Oxford University Press, 1995.
- Miller, *In Defense of Nationality Citizenship and National Identity*, Oxford, Polity, 2000, pp. 24-40.
- Stephen Mulhall, *Liberalism, Morality and Rationality: MacIntyre, Rawls and Cavell*, in John Horton and Susan Mendus (eds.), *After Macintyre: Critical Perspectives on the Work of Alasdair Macintyre*, Cambridge, Polity, 1994, pp. 205-224.
- Mulhall and Adam Swift, *Liberals and Communitarians. Revised version*, Oxford, Blackwell, 1996.
- Mark C. Murphy, *Acceptance of Authority and the Duty to Comply With Just Institutions: a Comment on Waldron*, «Philosophy and Public Affairs», 1994, 23, 3 Summer, pp. 271-277.
- Susan Moller Okin, *Justice, Gender and the Family*, New York, Basic Books, 1989.
- Okin, 'Mistresses of Their Own Destiny, Group Rights, Gender, and Realistic Rights of Exit', «Ethics» 2002, 112, pp. 205-230.
- Okin, *Justice and Gender: an Unfinished Debate*, «Fordham Law Review», Symposium: *Rawls and the Law*, 2004, 72, 5, pp. 1537-1567.
- Philip Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford, Clarendon Press, 1997.
- John Rawls, *A Theory of Justice*. Cambridge, Mass., Harvard University Press, 1971.
- Rawls, The Idea of an Overlapping Consensus, «Oxford Journal of Legal Studies», 1987, 7, pp. 1-25.
- Rawls, *The Basic Structure as Subject* in John Rawls (ed.) *Political Liberalism*, Lecture 7, New York, Columbia University Press, 1993, pp. 257-288. [Previously published in Alvin Goldman and Jaegwon Kim (eds.), *Values and Morals: Essays in Honor of William Frankena, Charles Stevenson, and Richard B. Brandt*, Dordrecht, Holland, D. Reidel, 1978, pp. 47-71].
- Rawls, *Political Liberalism*, New York, Columbia University Press, 1993.

- Joseph Raz, *Government by Consent*, in *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, [reprinted from «Nomos», 1987, 29], Oxford, Clarendon Press, 1994, pp. 339-353.
- Ernest Renan, *What Is a Nation?*, in Alfred Zimmern (ed.), *Modern Political Doctrines*, London, Oxford University Press, 1939, pp. 186-205.
- Thomas M. Scanlon, *The Diversity of Objections to Inequality*, The Lindley Lecture,.Lawrence, University of Kansas, 1997.
- Samuel Scheffler, *Conceptions of Cosmopolitanism*, «Utilitas», 1999, 11, 3, pp. 255-276.
- Ayelet Shachar, *Group Identity and Women's Rights in Family Law: the Perils of Multicultural Accommodation*, «Journal of Political Philosophy», 1998, 6, pp. 285-305.
- Shachar, *On Citizenship and Multicultural Vulnerability*, «Political Theory», 2000, 28, pp. 64-89.
- Quintin Skinner, *Liberty Before Liberalism*, Cambridge, Cambridge University Press, 1998.
- Cass R. Sunstein, *Should Sex Equality Law Apply to Religious Institutions?* in Joshua Cohen, M. Howard and M. C. Nussbaum (eds.), *Is Multiculturalism Bad for Women? Susan Moller Okin with Respondents*, Princeton, New Jersey, Princeton University Press, 1999, pp.85-94.
- Yael Tamir, *Liberal Nationalism*, Princeton, New Jersey, Princeton University Press, 1993.
- Jeremy Waldron, *Theoretical Foundations of Liberalism*, «Philosophical Quarterly», 1987, 37, pp. 127-150.
- Michael Walzer, *Just and Unjust Wars: a Moral Argument With Historical Illustrations*, New York, Basic, 1977.
- Mary Wollstonecraft, *Vindication of the rights of women*, ed. Kamnick, Miriam Brody, Harmondsworth, Penguin, 1982.