

Capabilities, Universalism, and Women's clothing

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Abstract:

Proponents of the capabilities approach claim that it should be used to give guidance for the implementation of good constitutional laws. This suggests that it also gives us grounds to support attempts to create or protect constitutions based on something like the capabilities approach. The Turkish Republic claims that in order to protect secularism and the equal status of women, it needs to keep certain Islamic practices away from the public domain. The wearing of the headscarf has been singled out as such a practice, and the Turkish Republic has therefore legislated against headscarf wearing in schools, universities, and government buildings. In consequence many women are forced to choose between religion over education and politics in a way that curtails central human capabilities. Nussbaum claims that the best way to help states resolve the dilemma presented by the conflict between religious choice and other central capabilities is to refer to principles embodied in to the US Religious Freedom Restoration Act 1993, which states that a law can burden a person's exercise of religion only when the burden is a furtherance of a compelling state interest. In this paper I consider how this advice might be applied to the Turkish case.

1. Introduction: capabilities, religion and international justice.

The capabilities approach has a dual role: primarily conceived to measure quality of life throughout the world, the proponents of the approach claim that it is also a tool for giving guidance for the implementation of good constitutional laws. In practical terms this means that nations for whom something like the capabilities approach is an important constitutional basis should recommend this approach to others, and in some cases command it strongly, using economic and other sanctions.¹

The ability of a nation to give guidance may be understood as implying a unified point of view within the nation on what the capabilities approach is and an agreement that it does constitute the basis of its constitution. Anything less could be viewed as hypocritical. But as these conditions are clearly not fulfilled by a significant number of nations (if indeed any) the survival of the capabilities approach as a tool in international politics necessitates a different understanding of conditions required for giving guidance. Something like this may be more reasonable: nations who can provide guidance are those nations whose constitutions would not be drastically different if they were inspired by the capabilities approach, and which contain some political agents or thinkers who believe that the capabilities approach would improve the quality of life in that nation and who are willing to make changes in that direction. Such conditions would mean that more nations are suited to give guidance and that

¹ Martha Nussbaum *Women and Human Development, The Capabilities Approach*, Cambridge University Press, 2000, p.104.

those who do are also committed to self-improvement thus qualifying themselves as full guidance givers.

The viability of the capabilities approach as guiding nations towards better constitutions also runs against the objection that cultural diversity presents a serious obstacle to any universal approach to improving quality of life. This objection need not appeal to any form of relativism but arises within the capabilities approach itself. Religious capabilities have their roots in several of the central capabilities listed by Nussbaum²: senses, imagination and thought, practical reason and formulating one's own conception of the good life, and affiliation, the choice of how and with whom we relate. But central human capabilities are not static - each develops from within, as well as in relation to the others. Religious capabilities in particular, have a tendency to rewrite a person's balance of capabilities. Bodily integrity, play, experiencing pleasure and avoiding pain mean something radically different for a catholic or a buddhist monk as they do for an american college student.

This difference is not a superficial one: it is not simply a matter of lifestyle choice: because of their religious beliefs, the nun and the monk have developed their capabilities in a way that is radically different from the american student. They have prioritised certain rational, imaginative, creative and emotional capabilities, and nearly eradicated other physical and social capabilities. Human nature, it could be argued, is shaped by religion, so that people belonging to different religions are fundamentally different and we should not impose universal values regardless of religious differences.

But a defender of the capabilities approach will reply two things. First, the list of central human capabilities truly is a list of what it is to be human, and although we must allow for variations in the degree in which each capability is represented in a human being, all those capabilities must be represented in a complete human life - a certain equilibrium must be maintained. Secondly, if variations are to be possible, there must be a common core and this common core must be the starting point for the development of variations. In other words we should all start our adult life with a full set of capabilities which we can then choose to develop as fit. Unless we agree on this common core and impose it as a starting point for all in their formative years we loose track of the idea that there is such a thing as human nature which is diverse.

It makes sense to suppose that questions of freedom of religious expressions should be answered against this framework of central capabilities, as even in cases where it is true that a fully mature member of a given religion typically has different capabilities than outsiders, it is nonetheless right to insist that younger members of that religious communities should be encouraged to develop all central capabilities before they can choose to privilege some other the rest.

Therefore I propose that for the time being we accept Nussbaum's proposal for a capabilities approach solution to dealing with dilemmas of religious freedom. She proposes that we refer to USS 1993 Religious Freedom Restoration Act (RFRA) which states that a law can burden a person's exercise of religion only when the burden is a furtherance of a compelling state interest just as long (Nussbaum adds) as the state interest in question is grounded in the citizens central capabilities. By linking the act to the capabilities approach Nussbaum is attempting to give content to the concept of compelling state interest, as otherwise it is to be feared that almost anything could be put under that heading so that the act would in fact be an empty justification for just about any political agenda.

² Nussbaum 2000, p.79-80.

The capabilities approach gives an objective touchstone for state interests. The question which capabilities are furthered or hindered by religious practices becomes the focus of legislation and protection of religious freedom. The act is not empty as it requires that we give an account of the capabilities of the individuals affected by the religious practice in question, and that it should be clear whether those capabilities are better furthered by legislating against the practice or letting it stand. In the last part of this paper I will put forward a test case for this proposal, the Turkish Republic's legislation against the religious practice of veiling. In the second part I will argue for the link between women's capabilities and clothing, thus preparing the grounds for the test case I present in the third part.

2. Women's capabilities and dress.

Dounia Bouzar, head of the Conseil Français du Culte Musulman reacted to the revival of the headscarf issue in France by calling it a 'warmed up debate' and saying that democrats today had rather more fundamental fights on their hands than 'the degree of coverage of the female body'. (*Le Monde* 28 April 2003) The headscarf, unlike the body veil worn in Iran and Afghanistan is a fairly small piece of clothing which covers at most hair and shoulders. It is not, on any account incompatible with wearing the same attractive, fashionable clothes that non headscarf wearers sometimes wear (although many young women believe that together with the head scarf they should wear loose skirts or trousers and knee length jackets). So from this point of view, it is indeed hard to see what the fuss is all about.

Thinking along the same lines, one might also say that dress in general, when it does not interfere physically with bodily health, has nothing to do with capabilities and should not be the object of moral scrutiny, let alone legislation.

There is no obvious link from the premise that women have the same capabilities as men to the conclusion that they should dress in the same way. Indeed, one thought is that women should be able to function fully both in the public and private domain and that they should be able to reflect these functions in their dress as they see them, and as they choose. To interfere with this choice of self-expression is to interfere with personal liberty and identity at a very basic level. In this sense it is morally obnoxious.

Yet, some philosophers have argued that equality of status is not independent of dress. These philosophers, the Stoics, are relevant to the capabilities approach for many reasons as they believe that there is a human dignity which is determined by natural human functions, and their ethical theory is led by the belief that we should respect and promote human dignity wherever we encounter it. In this section I will concentrate on one aspect of Stoic thought and show how it can further our understanding of women's capabilities and dress.

The stoic philosopher Zeno wrote that men and women should wear similar clothes and that no part of their bodies should be deliberately hidden from sight.³ In its context, this claim easily makes sense, as in Ancient Athens, whereas free men met naked in the gymnasium, women stayed at home and covered their bodies. So when difference in clothing is a mark of inequality of status and corresponds to differences in functioning it may be appropriate to attempt to suppress it.

³ Diogenes Laertius, VII32-4

Zeno's pronouncement is motivated by a belief that human nature is the same in men or women. This belief is shared by other Stoics (Seneca, Musonius Rufus) but not all (Epictetus). What these have in common is the belief that women having the same fundamental nature as men their flourishing depends on their being able to function in the same way. As these philosophers also believe that virtue is the only good worth having, and that to live a virtuous life, one needs to study philosophy, they advocate that women, just as men, should study philosophy. This has many implications. In order to study philosophy - and this is especially true in Greek and Roman times - one must be able to get out of the house, meet up with teachers and other students, engage in debate with them on a basis of mutual respect and with confidence that one's words will be listened to, and not too many inhibitions about putting forward one's point of view. A woman who has been confined all her life to home and children is unlikely to find any of this easy. If she has moreover been taught that the most important female virtues are modesty and tenderness, to behave as a student of philosophy will seem to her like behaving viciously, and unnaturally. Also, to study philosophy is often to engage in debates about things that matter to all, especially morals and politics. Again, this is especially true in ancient city states where the same men who discussed philosophy would then go on to vote on issues which concerned the entire city. To recommend that women study philosophy is thus to recommend that they do not confine themselves to the home and that they take part in policy making.

Zeno's recommendation can be read as another one of those implications: if women are dressed in a manner which suggests that it is not proper for them to be seen by men and publicly, they are unlikely to be able to partake in philosophical debate with them and more unlikely still to take part in policy making. So in order to be equally capable of living the good life, men and women must dress in the same way. Of course his conclusion is too strong: all he needs say is that dress should not mark any human beings as fundamentally different from others, and that it should not mark any human being as being unsuited to live the good life as it is understood by the others. So Stoic universalism need not entail that we should all dress the same, merely that difference in clothing should not signify difference in status. This seems like a reasonable argument.

Zeno's view reflects the attitude embraced by critics of the muslim headscarf or veil. The imposition of headscarves on young women can mark a supposed difference in their nature which makes them unsuited for public life and able to flourish at home while bringing up children only. It may also (but this is disputed by many headscarf wearers and their supporters) mark their subordination to men and older members of the community. If, like the Stoics, we care that women should be allowed to develop and flourish as human beings as much as men are, then it seems we should take care that no social status indicating that they may not flourish in that way, or clothing reflecting such a social status, should be imposed on them.

3. Veiling and Secularism in Turkey: a dilemma.

If headscarf wearing is supposed to mark a difference between men and women's nature, and if it does limit women's capabilities for functioning in the private and public domain, it seems

as though the capabilities approach which offers guidance to states with legislation, should condone, in certain cases, legislating against veiling in order to protect young women from being forced to veil by their relatives. The relevant question would have to be: is the legislation in question necessary for the furtherance of compelling state interests which are grounded in the protection of human capabilities? If the answer is yes, then we should support that legislation.

This is the line of reasoning taken by secularist state Turkey in response to the so called headscarf problem. In order to protect secularism and the equal status of women, Turkey has legislated against women being allowed to wear headscarves or other forms of 'veiling' in certain public areas, including schools, universities, government buildings, and law courts. These states of affairs have given rise to several disputes between religious communities and the state, but also between individual women and public institutions. They have resulted in women being excluded from schools, universities, public careers and political participation.

The capabilities approach proposal for dealing with religious problems, a version of the US Religious Freedom Reformation Act should help us consider whether on the whole capabilities are enhanced or repressed by such legislation. However, as is surely the case with most religious practices, there is not one unified veiling practice in Turkey. Wearing a headscarf means different things to different women, so that their capabilities are affected differently by anti-headscarf legislation. I will discuss two aspects of this legislation, show how capabilities are very differently affected in both cases, and argue that nonetheless the capabilities approach gives us grounds for recommending some form of legislation across the board.

Although many headscarf wearers have their own reasons for choosing to dress in this way and cannot be 'recuperated' by any particular movement, there is nonetheless one general movement in Turkey at present which accounts for at least some women's choice. Let's call it the Islamic revival headscarf movement.⁴ This movement is represented in the Media by a magazine entitled 'Kadin ve Aile' - Woman and Family, which describes its idea of the good woman in those words:

'she is completely devoted to her husband, she does not show herself to strange men, does not look at them. She does not go out without her husband's permission, and does not receive any male and female guests at home [...] You are, in our eyes, hajii mothers and aunts with white, pinked prayer scarves, rosaries in your hands, prayers on your lips; or else serious, merciful, self-sacrificing housewives, loyal to your husbands and homes; or else pretty, clean, twittering, talented little sisters' *Kadin ve Aile*.⁵

The magazine's purpose is to protect this ideal woman by denouncing the vices and dangers that surround her:

⁴ See Elisabeth Özgaldı *The Veiling Issue, Official Secularism and Popular Islam in Modern Turkey*, Curzon 1998, and Nilüfer Göle *The Forbidden Modern: Civilization and Veiling*, University of Michigan Press 1996. Both argue against the view that there is a unique or unified headscarf movement in Turkey.

⁵ Translated excerpts from *Kadin ve Aile* are from the following articles: Songül Sallan Gül and Hüseyin Gül "The question of women in Islamic revivalism in Turkey: a review of the Islamic press", *Current Sociology* 2000, 48:2, 1-26; Yesim Arat "Feminism and Islam: Consideration on the journal *Kadin ve Aile*" and Feride Acar "Women and Islam in Turkey", both in Sirin Tekeli (ed.) *Women in Modern Turkish Society*, London New Jersey, Zed Books.

'We shall be against those who look at you with evil eyes. In the press, there are those with bad intentions who try to alienate the housewife from her nest, her relatives, her principal duties; pull her into the world of fashion, sensuality, pleasure, vulgarity, pornography, alcohol, gambling, flirting and deviant relationships... They try to destroy the family that is the foundation of society and sunder ties between individuals'.

This denunciation takes the form of interviews of religious professional women with an emphasis on how they cannot meet their responsibilities if they work outside the home, and a regular column about the horror of a life of vice: they tell stories of non religious westernized women's fall into drugs, divorce, prostitution, prison and suicide, those evils being the inevitable consequences of a non-religious life.

If we take our cue from *Kadin ve Aile*, it seems that some islamic revival headscarves wearers believe that men and women have a different nature - at the very minimum, in that they believe it is naturally better for women that they should 'hide their beauty', and in more radical views, that women are nurturing, natural creatures, while men are social and moral, and that women's only contribution to the social and moral order is to bring up children in the muslim way, to make a home for them and her husband, and to keep out of men's way so they are not tempted to act immorally.

A young woman brought up according to those principles will fail to develop fully certain capabilities, especially of bodily integrity - a muslim woman may not go outside the house unless she covers her body and has her husband's permission- of affiliation - she is not allowed to choose her friends or partner, her place in life has to be within the family - of practical reason - her conception of the good life is dictated by her religion. This is not an exhaustive list. If these capabilities are not developed in the child, then, according to the capabilities approach this child will not grow into an adult capable of living a fully human life. On the other hand, a child who is allowed to develop her capabilities will be able to choose the kind of life she wants. In fact, many headscarf wearers today were not brought up to be so, but chose their own lifestyle when they became adults.

If in order to protect these young women's capabilities, i.e. enable them to develop during their formative years, it is necessary to legislate against a religious practice, then, the capabilities approach should support such legislation. That wearing the headscarf should be the practice singled out makes sense. The headscarf is that which distinguishes religious from non religious girls in schools, and that which marks women as having a different nature from men. The Turkish solution is to forbid the wearing of headscarves in schools: this makes sense as girls from religious families benefit from a religious education at home and a secular one at school thus ensuring that they get the necessary opening on the world and are made aware of a world view according to which their nature is the same as men's.

The Turkish law, however, also forbids the wearing of headscarves in University and public buildings, so that female students, politicians and lawyers may not observe their religion should they want to. These laws also purport to protect secularism and the equality of women and one way in which they may be understood to do so is by fighting the rise of a movement which may eventually be strong enough to overturn the existing constitution - some headscarf wearers are - paradoxically maybe - politically involved, they consider themselves to be the defenders of islam. Given the presence of capabilities threatening fundamentalist islamic powers in the world today, Turkey's worry is understandable. But this is not to say that the

legislation against headscarves in universities and public buildings can be justified from the point of view of the capabilities approach.

First, it is unclear that forbidding grown women from dressing as they see fit protects any body's capabilities. Those who do wear a headscarf are old enough to choose for themselves, those who don't are too old to suffer from undue peer pressure (or at least they ought to be). On the other hand, the laws do repress some women's capabilities. It represses their capability to choose the best life for themselves, to live according to what they are convinced is right. In some cases, the conviction that it is wrong to go out without a headscarf leads women to give up their education and their chosen career path. These are not for the most part, Kadin ve Aile readers, but young women with deep religious convictions who also want to live a fruitful life in the modern world as educated, professional women. Clearly, a law telling them they cannot wear a headscarf in their adult life will repress their capabilities one way or another.

4. Conclusion.

Relativism and many liberal universalist approaches fail to deal with the headscarf problem satisfactorily – they either ignore the threat posed to young girls by muslim fundamentalism, or they push aside women's deepest convictions about the good life. It seems that the capabilities approach, on the other hand, can take these subtleties into account and come up with proposals for legislation that seems to protect everyone's interests. A form of the religious freedom act which focusses on capabilities would enable Turkish women to choose to live a religious life, and at the same time prevent the removal of the capacity for choice from young girls. Thus the capabilities approach succeeds where other have failed in proposing a prima facie satisfactory solution to a deep conflict.

The application of the approach to the headscarf problem also seems to point to a general conclusion, namely that the assessment of religious practices in the context of the capabilities approach is best done with references to formative years and the questions we must ask are primarily whether a given practice affects the development of capabilities in children. This is because questions of religious freedom seem to affect the capability for choosing the best life for oneself - those who are deprived of this freedom are unable of choosing to live in the manner they believe best, but those on whom strong religious practices are imposed at birth are less likely to develop the ability to choose for themselves. Therefore, in order to protect and further human capabilities, religious legislation should concern mostly the education of children,