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**ON TENSIONS BETWEEN VALUES
- DIVERSITY VS. EQUALITY -**

ABSTRACT

The paper discusses a set of issues that are all focused on the following question: how and to what extent should liberal democracies accommodate community cultures that deny the value of gender equality?

In the paper, the issue is mainly approached through an analysis of the complex relationship between feminism and multiculturalism. In such a concept, the dilemma that arises is the following: for those who consider themselves politically progressive and opposed to all forms of oppression – has it been too quick to assume that feminism and multiculturalism are both ‘good things’ that are easily reconciled? The result is a considerable likelihood of tensions between feminism and a multiculturalist commitment to collective rights for minority cultures – since most cultures are highly gendered.

On the other hand, it is also stressed out that the two analyzed schools of thought are in some ways ‘related struggles’ since both seek recognitions of the value of diversity in the contexts of norms that are universal in theory but not in practice. The dilemma remains: what should a liberal state do in case it negotiates with an ethno-cultural group on collective rights that strengthen the subordination, discrimination and inequality of women within the group – if its members, including young women, have in vast numbers declared to support the illiberal aggressive norms and practice of their group?

The paradox remains: the state will be criticized for being unjust both when it advocates the value of equality and when it supports the fostering of the value of diversity. Namely, if gender equality, equal freedom for all, equal dignity and equal respect etc. are demanded, members of ethno-cultural or religious groups might object that their cultural uniqueness is not respected duly, and that their tradition and identity are

jeopardized. Nonetheless, if the dominant group (state) emphasizes cultural diversities and uniqueness, members of religious groups or ethno-cultural communities may comprehend it as discrimination. Therefore, both equality and special status for a certain cultural or religious group can be a source of problems.

Answering the question to which extent and how multiculturalism should accommodate community cultures that deny gender equality, it can be concluded that liberal democracies cannot actually do that without comprising their own fundamental values: equal dignity, equal respect, equal freedom for all, including “exit rights” – a capacity to abandon their cultures or religious origin. Therefore, the article also takes into consideration the “exit solution”. But in many minority (religious or cultural) groups on whose behalf liberal theoreticians (Kymlicka, Raz, Kukathas etc.) have argued for special rights or exemptions, women are far less likely than men to be able to exercise it.

These values present the bottom line that has to be accepted by all members of a society, regardless of their specific group affiliations and group-specific ethics – otherwise they do not make sense at all.

***Key words:** liberal values, equality, diversity, exit rights, collective rights, feminism, multiculturalism*

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I

There are few concepts that have been so widely dealt with in philosophy, politics and legal theory, as is the case with **values**. This has resulted in numerous definitions that view this concept from various aspects. For this paper, however, the most important perspective stems from the viewpoint of democracy. In this context the most significant values are freedom, peace, justice and equality. Their mutual influence of representation

and the political rights that concrete political systems rest on are historically changeable. Nevertheless, the value that is becoming the landmark of this epoch is **equality**.¹

Many recent arguments for rights or exemptions for religious or other cultural groups that may not themselves be liberal are based on liberal premises – whether the **central liberal value** be individual autonomy or equality, or tolerance for diversity of ways of life. Any consistent defense of collective rights or exemptions based on liberal premises has to ensure that at least one individual right – the right to exit one’s group of origin – trumps any group right. Therefore, it is not surprising when a **tension** arises between the mentioned values.

First of all, the tension exists mainly between the feminist idea of achieving equality and the multicultural “project” of recognizing minority (religious or other cultural) groups by granting them special collective rights.² The neglect of significant groups whose interest may differ within groups and the lack of attention to the private sphere, both have resulted in a failure to recognize that in cases where groups with more patriarchal beliefs and practices exist as minorities within contexts that are generally less patriarchal, women may well be harmed rather than benefited by special group rights – which are often supposed to guarantee and preserve **the value of diversity**.

One of the difficulties which occurs is how to address **the tension between gender equality and multicultural collective rights**. Some feminist scholars insist³ that any legitimate liberal model of multiculturalism has to take into account the voices of less powerful group members – notably women. In addition, they are concerned with collective rights by taking into consideration the “exit solution”,⁴ addressing especially the problem of women being offered exit rights as a response if and when they object to their treatment within their cultural group. Not to be able to leave the group in which one has been raised for an alternative mode of life is a violation of the kind of freedom that is

¹ Values can be understood as “independent essences that come into realization by the development of consciousness” (the phenomenological approach). New realism takes the standpoint that it is the question of “objective, universal, inseparable and indefinable concept *sui generis*, which can be comprehended only by intuition”. Tanović, A., *Vrednosti i vrednovanje (Values and Valuing)*, Sarajevo, 1972, pp. 14, 38. Pragmatism views values as a “choice of aims that the most valuable results are expected from”. Rejk, B. – Edkok, B, *Vrednosni stavovi i promene ponašanja*, Beograd, 1978, p. 15

² Okin, Susan Moller, “*Feminism and Multiculturalism: Some Tensions*”, *Ethics*, 108/1998, pp. 661-684

³ Shachar, Ayelet, *Group Identity and Women’s Rights in Family Law : The Perils of Multicultural Accommodation*, in: *Journal of Political Philosophy*, 6/1998, pp. 285-305

⁴ *On Citizenship and Multicultural Vulnerability*, in: *Political Theory*, 28 (February) 2000, pp. 64-89

basic to liberalism. Any group to which such rights are accorded should allow its members the rights of exit. In addition, it seems that any liberal defender of the collective rights should recognize that individuals must have realistic rights of exit. Given this, it is surprising that so little attention has been paid in the literature about multicultural collective rights to the fact that persons in different subgroups have different chances of being able to exit from them successfully.

Later on in our arguments it will be pointed out that liberal defenders of collective rights tend not to take gender inequality as seriously as other forms of morally arbitrary inequality (such as race) when considering collective rights and limitations that should be placed on them by anyone starting from liberal promises.⁵ Briefly, we will point out some of the reasons that determine women, in many cultural contexts, to be less able than men to chart their own courses of life – outside their community of origin – if they should so choose.

Within contemporary theories of democracies, different concepts have arisen that can be grouped under the banner⁶ of ‘multiculturalism’. Multiculturalists, not denying liberal heritage, approach issues concerning equal opportunities by emphasizing the value of the necessity of bringing together different cultures within given societies. Starting from the idea and practice of political pluralism, they advocate the organization of state that will respect all cultural communities, also focusing the analysis onto the values connected to equality and equal opportunity (or that of equality of results). However, these concepts have provoked a lot of criticism.

Namely, opponents of multicultural pluralism have stated several relevant accusations, claiming that practicing such a policy can result in division of the society and can bring into question the very unity of the state.⁷ Nonetheless, others prove that this process leads to the creation of social and cultural ghettos that limit the possibilities

⁵ Raz, Joseph, Multiculturalism: A Liberal Perspective, in *Ethics in the Public Domain*, Oxford, Clarendon, 1994, pp. 170-91; Galston, William, Two Concepts of Liberalism, *Ethics* 105, April 1995, pp. 516-34; Kukathas, Chandran, Are There Any Cultural Rights?, *Political Theory*, 20 (February) 1992, pp. 105-39, Cultural Toleration in *Nomos XXXIX: Ethnicity and Group Rights*, ed. Ian Shapiro and Will Kymlicka, New York, New York University Press, 1997, pp. 69-104

⁶ Vukadinović, Gordana, *Teorija države i prava, I (Theory of State and Law)*, Futura publikacije, Novi Sad, 2005, p. 39

⁷ Stojković, Branimir, Multikulturalizam, Balkan i planetarna kultura (Multiculturalism, the Balkans, and Planetary Culture), in: Semprini, Andrea, *Multikulturalizam*, CLIO, Beograd, 1999, p.157

of development and prosperity of the ethno-cultural communities themselves.⁸ Finally, the third group of critiques claims that there is a conflict between multiculturalism and the effort towards the endorsement of gender equality since some of the cultures or religions have a deeply rooted subordinate position of women within the family and the society.⁹ This group of critics accuses multiculturalists that in their arguments dealing with collective rights they neglect the rights of women.¹⁰ According to their statements, collective rights are often used to discriminate and subordinate women, particularly in the ethno-cultural and religious minority groups, which are more conservative and patriarchal than the majority culture. Feminist scholars pose the question of what should be done in situations when the claims and values of ethnic and minority groups as well as religious communities clash with the principles of equality that are, at least formally, guaranteed by liberal states.¹¹

In the subsequent part, we shall try to analyze this rather complex relationship between multiculturalism and feminism, by supporting the proposition that there are evident tensions between these two schools of thought – principally regarding (gender) equality. Another point is that the academic and public opinion has probably been too hasty to decide that it is the issue of “two good things” that, by definition, must be in accordance. Furthermore, the answer is being sought to the following dilemma: if members of one ethno-cultural community have a right to preserve and develop their cultural identity, the question remains who or what organization defines the various values of this culture, distinguishes it from others, and determines what is to be cultivated and what discouraged.¹²

⁸ Ibid.

⁹ Okin, Susan Moller, (with respondents), *Is Multiculturalism Bad for Women?*, Princeton University Press, New Jersey, 1999, pp. 3, 9

¹⁰ Jovanović, Miodrag A., *Kolektivna prava u multikulturalnim zajednicama (Collective Rights in Multicultural Communities)*, Službeni glasnik, Beograd, 2004, pp. 169-172

¹¹ Okin, Susan Moller, op. cit. p. 9

¹² Makinson, David, Rights of People: Point of View of a Logician, in: Craford, James (ed.), *The Rights of Peoples*, Clarendon Press, Oxford, 1988, p. 77

II

Since one of the aims of this paper is to lay the foundations for basic theoretical and normative knowledge of values in the field of multiculturalism and feminism, it is essential to delimit the notion of these categories. Although the definitions given in relevant literature vary greatly, it is still possible to draw attention to certain significant ones.¹³ Thus, **feminism** represents “a set of ideas, thoughts and actions that define gender relations as conflicting, it tends to understand the nature of the conflict, and eliminate it.”¹⁴ It is the matter of “a belief that women should not be disadvantaged by their sex”, and “they should be recognized as having human dignity equal as that of men”, so “they should have the opportunity to live as fulfilling and as freely chosen lives as men can”.¹⁵ It is crucial to point out that contemporary feminism goes beyond the boundaries of “the female issue” as a particular one, and manages to define a universal groundwork of gender inequality in modern civilization.

On the other hand, it is much more difficult to characterize multiculturalism, since it is a highly complex and multidimensional question.¹⁶ If we look for its notion in current conditions, it is inevitable to come across a variety of meanings, even more so since its characterization in a given society bears the tension of historical, social, economic, cultural and political aspects.

According to a compelling formulation, **multiculturalism** is a radical idea about the fact that “people in other cultures, foreign and domestic, are human beings, too - moral equals, entitled to equal respect and concern, not be discounted or treated as a

¹³ Contemporary feminist theory is exceptionally extensive and stratified. However, the orientation towards the elimination of discrimination and subordination of women unifies the existing varieties from time to time – the most significant ones being liberal feminism i.e. the feminism of equality, radical feminism, cultural feminism, and the so-called feminism of diversity. For more details see: Tebbit, Mark, *Philosophy of Law, An Introduction*, Routledge, London – New York, 2005, p. 147. Also Kartag-Odri, Agnes, *New Perspectives in American Legal Theory*, in: *American Jurisprudence of the 20th Century* (Kartag-Odri, A. – Vukadinović, G. [ed.]), Novi Sad, 2007, pp. 40-51

¹⁴ Nedović, Slobodanka, *Savremeni feminizam, položaj i uloga žene u porodici i društvu (Contemporary Feminism, the Position and the Role of Women in the Family and Society)*, CUPS/CESID, Beograd, 2005, p.13

¹⁵ Okin, Susan Moller, *Is Multiculturalism Bad for Women*, op. cit., p. 10

¹⁶ Kartag-Odri, Agneš, *Pravo na (multi)kulturalizam (The Right to (Multi)culturalism)*, in: *Susret kultura (Encounter of Cultures)*, Collection of papers, 4th International Interdisciplinary Symposium, (Ljiljana Subotić ed.), Filozofski fakultet, Novi Sad, 2006, pp. 171-181

subordinate caste”.¹⁷ In view of this, multiculturalism condemns intolerance, sees a human being in other individuals as well, and enhances **the value of cultural diversity**. In order to realize this, its prerequisites in the context of basically liberal democracies are expressed in the way that “minority cultures or ways of life are not sufficiently protected by the practice of ensuring the individual rights of their members, and as a consequence these should also be protected through special group rights or privileges.”¹⁸ Although this term is used to denote a variety of possible groups (including women, the handicapped, and other marginalized communities)¹⁹, what is predominantly understood are ethnic, religious and national communities, i.e. interaction groups with a collective history, common values and cultural tradition. Being a member of any of these groups is usually not considered either voluntary or changeable, and the broader social community can attach negative connotations to a certain group.

Joseph Raz, in his essay “Multiculturalism: A Liberal Perspective” claims generally that “multiculturalism requires a political society to recognize the equal standing of all the stable and viable cultural communities existing in society.” His argument is based on the fact of “value pluralism” in contemporary societies and, in line with his general emphasis on autonomy, on the rights of individuals to freedom and well-being or prosperity – for which he claims that “full and unimpeded membership in a respected and flourishing cultural group” is a prerequisite.”²⁰

III

We are now facing the question whether minority groups, as such, have moral rights to survive and flourish culturally, or the value of cultural existence and preservation of separate identity is derived from moral claims of individual members of the group.

¹⁷ Cohen, J.–Howard, M.–Nussbaum, M. C., Feminism, Multiculturalism and Human Equality, Introduction, in: *Is Multiculturalism Bad for Women*, op. cit., p. 4

¹⁸ *Ibid.*, p. 10

¹⁹ Ingram, David, *Group Rights – Reconciling Equality and Difference*, University Press of Kansas, Lawrence, 2000. Quoted after: Jovanović, Miodrag A, *Kolektivna prava u multikulturalnim zajednicama (Collective Rights in Multicultural Communities)*, p. 13

²⁰ Raz, Joseph, Multiculturalism: A Liberal Perspective, p. 174

Contemporary theories that are engaged in the complex issues of multiculturalism – when analyzing questions regarding the rights of ethnic group to diversity – often underline the difference between the right to equality within the same group and the right to equality with other groups. In this context, some scholars differentiate between “strong and weak multiculturalism”.²¹ The first form provides a direct authority over members of a group through “a strong formal and legal approval”, giving priority to the value of equality among groups, while the value of equality within a group, including that regarding gender, is neglected.²² Weak i.e. integrative multiculturalism – generally put into a liberal democratic context – tends to grant certain rights to groups, but it does not guarantee direct authority over its members. Thus, members of such groups can be exempt from certain laws (even from the constitution!) or have the right to affirmative action. According to feminist critics, it is too often the case that this variety of multicultural pluralism permits immigrant families to practise discrimination, especially against girls and young women.²³

Looking at the endeavour of the state to protect individual rights of members of a certain group, the postulates of justice can pull in two opposite directions. On one side, justice implies the protection of individual rights (and securing gender equality), while on the other side it means that the state allows members of a certain group (ethnic, cultural, national, religious) to maintain or alter their rules concerning the group’s internal questions in the way that it finds appropriate (including cases of physical violence and ill-treatment of women - e.g. honour killing, arranged and child marriages, extrajudicial divorces – in the name of protecting diversity and collective culture).²⁴

The state will be criticized for being unjust both when it advocates equality and when it supports the fostering of diversity. (If gender equality is emphasized, members of ethno-cultural groups might object that their cultural uniqueness is not respected duly, and that their cultural i.e. ethnic identity is jeopardized. Nonetheless, if the dominant group emphasizes cultural diversities and presents them as an advantage and a value, members of ethno-cultural communities may take it as an attempt of

²¹ Shachar, Ayelet, Group Identity and Women’s Rights in Family Law: The Perils of Multiculturalism, *Journal of Political Philosophy*, 6/1998, p. 287

²² Ibid.

²³ Spinner-Halev, Jeff, op. cit., p. 246

²⁴ Ibid.

discrimination. In solving this complex question, it is also necessary to take into account a significant factor: **power**. According to the rule, the majority (the dominant group) is the one that has the power to decide when, and which communities should be similar to it and which should be different. Therefore, **multiculturalism can lead to a paradox**: both equality and special status for a certain group can be a source of problem.

Advocates of liberal theories regarding minority rights often set off from the supposition that cultures that need protection are homogenous and monolithic. The issue becomes even more complex taking into account that the private sphere of life in communities that enjoy the autonomy of collectivity is given insignificant attention by the state (and this is exactly the place where collective rights can be preserved and protected – if not subordination and discrimination at all times, but at least the control of men over women).

There can also be differences within ethno-cultural groups themselves regarding **what is considered to be a value**. Therefore, for instance, members of Muslim communities in certain countries can deal with issues of marriage and divorce in accordance with Islamic law. Even in countries where this possibility was overruled, it turned out that numerous members of the community – especially women – had previously been against certain norms of Islamic law.²⁵

However, a vastly greater problem, and even more striking for many Arab and African immigrant women, is the problem of polygamy. The French government quietly tolerated this to immigrant men; nevertheless, it has recently decided to recognize only one wife and to consider all the other marriages annulled. (The problem of “discarded” wives and their children is alarmingly grave considering that only in Paris over 200,000 polygamous families have been registered.)

There arises the question of what is to be done when the values and demands of ethno-cultural and religious societies conflict with the norms of gender equality, which are, at least formally, endorsed by liberal states. Although in many liberal states of the

²⁵ There was a case in the late 1980s in France, which is frequently cited in literature, when wearing the traditional Muslim headscarves for Magrébin girls in public schools was simply forbidden by the government.²⁵ The French government – even at the cost of their being expelled from school – remained consistent that schools are strictly secular institutions, and that no religious symbols whatsoever, Muslim or other, may be worn. Stojković, Branimir, *Multikulturalizam, Balkan i planetarna kultura (Multiculturalism, the Balkans and Planetary Culture)*, op. cit., p. 152

West, the tendency is to create a climate and devise a policy that foster the value of cultural diversity, in debates and propositions of measures it has gone virtually unnoticed what is happening with the claims of communities that oppose the prohibition of all forms of oppression, discrimination, subordination etc.

It should be noted that a number of possible approaches and legal mechanisms and techniques are used in different countries in the sphere of multicultural pluralism in order to protect women's human rights. By doing so, it is important to distinguish between minority practices that are intolerable, i.e. fall "so far outside the minimum standards of acceptable behaviour"²⁶ – which can be often treated as criminal offence. As regards minority practices, which are otherwise considered to be unacceptable, but not to the extent that they would warrant criminal prosecution, "a common technique is to deny legal validity to the conduct in question". Child marriages, polygamy and extrajudicial divorces are denied legal validity. The next method of preventing unacceptable practices is "simply to exclude the persons liable to indulge in them from entering the country."²⁷ In that respect, the immigration legislation does not allow the entry of spouses under the age of sixteen, as well as the second or subsequent wives of polygamists. As for the legal protection of minority practices, the first measure to be employed is *laissez-faire* approach, according to which everything is permitted, unless it is expressly forbidden. Religious minorities are entitled to construct and manage religious buildings, to celebrate religious festivals etc. The same approach is adopted towards the validity of arranged marriages. In some spheres, implementation of the principle of non-discrimination suffices, while in some others, the specific differential treatment is needed. Finally, certain minority practices, like instruction in religious schools, are state-funded. In distinguishing between tolerable and intolerable minority practices, "the critical test has ultimately been whether the custom in question offended against the general public interest." Although this criterion is the vague one, the recent practice of highest judiciary demonstrates that "a link has been made between modern conceptions of public policy

²⁶ Poulter, Sebastian, *Ethnicity, Law and Human Rights – The English Experience*, Oxford University Press, 1998, p. 59

²⁷ Op. cit., p. 60

and internationally recognized human rights treaties to which a particular country is a contracting party.”²⁸

IV

Contemporary debates on multiculturalism, particularly concerning the relationship between collective and individual rights, are largely contributed to by numerous advocates of feminism. Among the scholars who strongly support the opinion that on the course of endorsing the policy of multicultural pluralism human rights of women are often neglected, one of the most significant authors is Susan Moller Okin.²⁹

Taking feminist criticism as a starting point, according to which “strong multiculturalism” with a distinctive autonomy of collectivity can harm the position of women, the question that arises is what a liberal state should do if it negotiates with an internal ethno-cultural group on collective rights that strengthen discrimination, violence and gender inequality within the group.³⁰

Reminding of the above-mentioned cases in France (wearing traditional headscarves in public schools and the problem of polygamy etc.), Okin states that it has probably been too soon to conclude that feminism and multiculturalism are two “good” things that by definition have to be in accordance. As opposed to this view, she argues that there is a tension between them that cannot go unnoticed.

It is argued that many cultures are interwoven with practice regarding gender (i.e. most cultures are highly gendered), and that in many ethno-cultural communities, especially in the sphere of domestic life, there are fairly clear disparities in power between the sexes. The consequence of this is that men determine and articulate the group’s beliefs, practices and values (as main elements of group identity) as well as their interests. Since cultures are the primary transmitters of the mentioned elements of group identity, culture plays a significant role in identity creation and maintenance of the values

²⁸ Op. cit., p. 66

²⁹ Sulan Moller Okin is known as “the one who has stepped onto something like a legal-political minefield” (or as some would phrase it – the one who has thrown a “verbal grenade” into a smoldering discussion), by publishing the book bearing the title *Is Multiculturalism Bad For Women?*, as well as a series of papers on the subject of the clash between feminism and multiculturalism. Okin views herself as a follower of John Rawls, who also supported the elimination of the existence of gender inequality. Okin, Susan Moller, *Is Multiculturalism Bad for Women?*, op. cit., p. 9

³⁰ Spinner-Halev, Jeff, op. cit., p. 87

of the particular group. As many cultures are based on the premise that women should be if not subordinated, then at least controlled by male members of the community, this means that collective rights are potentially, and in many cases actually, antifeminist.³¹

Advocates of collective rights within liberal theories have not adequately addressed this critique for several reasons. Firstly, they tend to treat cultural groups that need protection by collective rights as monoliths, so they pay more attention to differences between and among groups than to differences within them. Therefore, little or no recognition is accorded to the fact that ethno-cultural groups are gendered, with considerable differences in power – the advantage being given to men. Another reason is that little attention is paid to the private sphere of life of ethno-cultural groups. Bearing in mind that for the majority of these cultures the central focus are the personal, sexual and reproductive life functions, it can be concluded that collective rights protecting a certain culture have a much greater impact on the lives of women.

Therefore, it is not surprising that by relocating customs (like polygamy, arranged marriages, child marriages, honour killing etc.) into the context of western societies, in which these acts are legally sanctioned, there are cases that defendants defend themselves before the court on grounds of their ethno-cultural membership, where the practice of these customs is considered common.

Hence, Okin concludes that despite numerous examples and proofs of cultural practices the aim of which is to control and subordinate women, none of the prominent advocates of multicultural collective rights has reflected on the problematic connections between gender and culture, or the conflicts that so often arise between multiculturalism and feminism. In this respect, it is interesting to draw attention to her discussion with Will Kymlicka.³²

Kymlicka's arguments in defense of collective rights are based on rights of individuals, and confine privileges and protection to cultural groups that are internally liberal. Following John Rawls, Kymlicka emphasizes the fundamental importance of self-respect in a person's life.³³ He argues that membership in a rich and secure cultural

³¹ Okin, Susan Moller, *Ibid.*, p. 12

³² *Ibid.*, p. 20

³³ Kymlicka explicitly denies rights to cultural or religious groups that overtly discriminate against women is insufficiently attentive to private sphere discrimination, which often has serious impacts on women's

community, with its own language and history, is essential both for the development of self-respect and for giving persons a context in which they can develop the capacity to make choices about how to lead their lives.³⁴ Otherwise, without guaranteeing special rights, these cultures may be threatened with extinction. In a word, special rights give minorities equal opportunities as the majority has. Therefore, according to Kymlicka, a group that claims special rights must also be governed by liberal principles without discriminating its members on grounds of sex, race and sexual orientation.³⁵ This requirement is essential in the justification of collective rights since no discriminatory culture could provide conditions for the individual development that liberalism requires, and because otherwise collective rights might result in oppressive subcultures within and facilitated by liberal societies.

Okin is dissatisfied with Kymlicka's argumentation, for it does not provide a convincing enough response to the challenges of feminism. On grounds of the provision that collective rights of ethno-cultural groups can be justified only if there are no internal limitations of individual rights within the group, the number of groups that would have a right to claim special collective rights is fairly small. That is, although ethno-cultural communities do not impose their beliefs and practices on others, and though they may appear to respect the basic civil and political liberties of women and girls, many cultures (particularly in the private sphere) treat them with anything like the same concern and respect with which men and boys are treated, or allow them to enjoy the same freedoms.³⁶ Okin supports this by stating that "discrimination against and control of the freedom of females are practised, to a greater or lesser extent, by virtually all cultures, past and present, but especially by religious ones and those that look to the past – to ancient texts or reverted traditions – for guidelines or rules about how to live in the contemporary world."³⁷ There are certain patriarchal ethno-cultures within the majority

well-being and life opportunities. Kymlicka, Will, *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1989, p.165

³⁴ Not surprisingly, though, liberals who defend the right of illiberal, overtly discriminatory groups to regulate the lives of their members pose greater problems from a feminist point of view. Okin, Susan Moller, *Mistresses of Their Own Destiny: Group Rights, Gender, and Realistic Rights of Exit*, *Ethics*, 112, January 2002, pp. 206-230

³⁵ Kimlika, Vil, *Multikulturno građanstvo, Liberalna teorija manjinskih prava (Multicultural Citizenship, A Liberal Theory of Minority Rights)*, Centar za multikulturalnost, Novi Sad, 2002, p. 204 etc.

³⁶ Okin, Susan Moller, op. cit., p. 21

³⁷ Ibid.

or dominant cultures that can be more or less patriarchal. In either case, the fact to what extent each culture is patriarchal and how much it is willing to become less so should be crucial factors in judgment about the justifications of collective rights – provided that equality of women is to be taken seriously.

Evidently, Kymlicka regards cultures that discriminate overtly and formally against women, by denying them education or the right to vote or hold office, as not deserving special rights.³⁸ However, Okin argues that sex discrimination is rarely direct i.e. overt. Therefore, in many cultures, control of women is enforced in the private sphere by the authority of either actual or symbolic fathers, often acting through or with the complicity of older women of the culture. In many cultures in which women's basic civil rights and liberties are formally assured – including constitutional guarantees as well - the discrimination practised against women and girls within the family not only severely constrains their choices but also seriously threatens their well-being and even their lives.³⁹ And such sex discrimination – whether severe or milder – often has very powerful cultural roots.

Although Kymlicka rightly objects to the granting of collective rights to minority cultures that overtly practise sex discrimination, his arguments for multiculturalism fail to show what he acknowledges elsewhere: that the subordination of women is often informal and private, and that virtually no culture in the world today, whether majority or minority, could pass his “no sex discrimination” test if it were applied in the private sphere. Advocates of collective rights on liberal grounds should address these very private, culturally reinforced kinds of discrimination since self-respect and self-esteem surely require more than mere membership in a viable culture. Naturally, in order to protect a culture it is not enough simply to be able to “question one's inherited social roles” and to make choices about the life a person wants to lead. What is important for the development of self-esteem and self-confidence is our place within our culture? It is also at least as important to question our social roles (i.e. whether our culture instills in us

³⁸ Kymlicka, Will, *op. cit.*, p. 168 etc.

³⁹ Okin, Susan Moller, *op. cit.*, p. 21

and forces on us certain social roles). As much as a woman's / girl's culture is patriarchal, her healthy development is endangered in both these respects.⁴⁰

Arguing that the subordination of women and discrimination within ethno-cultural groups is primarily practised informally and in the private sphere, Kymlicka's liberal theory of minority collective rights cannot count on being the bearer of these rights, and from a feminist point of view, they are merely a part of the solution. As Okin has put it, "it is by no means clear from a feminist point of view that minority group rights are 'part of the solution', since they may well exacerbate the problem."⁴¹ In order to make the solution entirely satisfactory, she emphasizes that this socially endorsed, actual inequality of sexes within ethno-cultural groups needs to be especially looked at. She is also convinced that women, members of minority groups, must be active elements of political processes so that collective rights would not disadvantage them even more.

On several occasions, Okin concludes that it is not her task to elaborate in detail on the answer to this complex question; thus she claims that those who have the actual capacity to do so are, in each specific context, the women who are in the focus of the problem – i.e. women who within any minority, ethno-cultural or religious group claim collective rights that are necessary for the protection of their group values as well as their way of life.⁴² Hence, the issue being far from simple, the answer cannot be simple either. Consequently, if one asks the question "Is multiculturalism bad for women?", the context in which it is posed and its specific eventualities are of crucial importance, which represents one of the factors that make it so important for women to be involved in the tendency to develop a form of multicultural pluralism that will advance their position most and harm them the least.

Feminist scholars also pose the following question: What should a liberal state do in case it negotiates with an ethno-cultural group on collective rights (that strengthen the subordination, discrimination and inequality of women within the group) if its members –

⁴⁰ Ibid., p. 22

⁴¹ Ibid., p. 23

⁴² Okin, Susan Moller, *Multiculturalism and Feminism: No Simple Questions, No Simple Answers*, op. cit., p. 49

including young women - have in vast numbers declared to support the illiberal oppressive norms and practice of their group?⁴³

Is it better to accept liberal or democratic solutions? Democracy demands that claims for guaranteed collective rights do not impede but encourage – although it is obvious that, as a result, it will have subordination and violation of equality within the groups. On the other hand, liberalism founded on equal rights of the individual does not accept such solutions since fundamental human rights include equality in the most intimate sphere of private life. Hence, these rights have to be guaranteed to everyone – even to those who would dispose of it.

Okin finds part of the solution in accepting the liberal answer, especially in cases of conservative, long existing religious groups that have an institutional framework that protects them from the broader social community and impose a greater threat to equality and autonomy of women and girls. The second part of her solution is accepting the democratic principles in the case of immigrant ethno-cultural and religious groups that are still oppressed by the dominant group i.e. broader society.

Therefore, is it less advantageous for an illiberal, undemocratic culture to be forced to become democratic or liberal? Although it is not apparent, it should be considered that imposed liberalism would be permanent, while imposed democracy would most probably be only temporary – what is insisted on only with the aim to observe the position of the oppressed, discriminated, and less protected members of the community. Would the solution opted for include what is called “the disadvantage of granting today’s generation control over the conditions under which future generations will live” remains to be seen – hopefully in a more humane future.

Finally, we shall refer to the reply that Susan Moller Okin gives to her critics. She agrees with Kymlicka’s standpoint that multiculturalism and feminism are in a way two related battles, since both tend to recognize diversity in the context of norms that are universal in theory but not in practice. The crucial difference, nonetheless, remains. The few specific needs that women claim do not give the right to women in dominant position to control and oppress less powerful women within the group. As opposed to that, collective cultural rights often (not quite overtly) strengthen the existing hierarchies. The

⁴³ Ibid.

difference is that Kymlicka advocates collective cultural rights, while Okin prioritizes women's equality. What should be worked towards is the form of multicultural pluralism that will treat all members of a society as each other's moral equals; in other words, the form of feminist, egalitarian multicultural pluralism should be established.

V

As we have already mentioned, since most cultures are to some degree patriarchal, it is very difficult to reconcile the claim that women should be treated equally (with the practices of religious and other cultural groups, including many of those claiming special rights). But gender inequality is a problem that any liberal theorist needs to understand since, despite the common tendency to forget the fact, women represent more than half of the world's population, and any theory based on the liberty or well-being of individuals cannot afford to ignore them or to pay relatively little attention to discrimination against them. Therefore, if women are treated unequally in various important ways within their cultural groups, it affects their capacities to exercise the **right of exit** that is of crucial importance to each theory. Moreover, women's having an unequal capacity to exit leads to another significant inequality, for it cannot but affect their potential to influence the directions taken by the group.

More generally, in the context of arguments for group rights, the **right of exit** is cited as helping to legitimate the illiberal treatment of group members. Discrimination against women is overlooked or mentioned briefly, only to be passed over, given a special status in a negative sense – by being perceived as somehow not really discrimination or at least absolved from the scrutiny that is given to other types of discrimination. It is not surprising that gender inequality is less or differently scrutinized, even often ignored, by liberals arguing for group rights.⁴⁴ Many liberal defenders of collective rights insist that such rights cannot be justified unless individuals have the right to exit their cultures or religious origin. Those who reject the centrality of individual freedom in favour of toleration and a **value of diversity**, and who are more concerned that the state should not interfere with the internal lives of groups than that groups should

⁴⁴ Okin, Susan Moller, Mistresses of Their Own Destiny: Group Rights, Gender, and Realistic Rights of Exit, *Ethics*, 112, January 2002, pp. 206-209

not restrict their own members' beliefs of behaviour nevertheless express the view that individuals must have the right of exit.⁴⁵ Disagreement does not begin until the question arises as to what such a right requires, and here views diverge widely.

According to Kukathas, however, there are some conditions for those wishing to leave one's group: a wider liberal society that is open to those wishing to leave their groups.⁴⁶ Although he is aware that substantial freedom to leave depends in part in having somewhere to go, he largely ignores another important prerequisite: that one must have the capacity to get there.⁴⁷ Similar to Kukathas, Raz also tries to mitigate the rights or exemptions by specifying that individuals must have the right of exit, (but in no case is the argument convincing). Raz sees the right of exit as a safeguard while this lengthy process takes place. However, he neither specifies what having a realistic right of exit would entail nor considers the substantial obstacles that are likely to impede women's exit from such groups. On the other side, Kukathas states that individuals must have "substantial" rights of exit from their own religious or cultural groups, but the only condition he specifies is the existence of a wider liberal society that is willing to take them in. He takes no account of the extent to which many of the practices he advocates permitting groups to practice would make some of their members' exercise of their exit options extremely difficult or even impossible. Therefore, usually the most repressed are the least able to exit. Liberal scholars often are not aware of the fact that the exit may not be an option at all desirable, or even thinkable, to those most in need of it. But this is not infrequently the case, which partly explains why women put up with some of the practices they do.

For instance, Raz raises the issue of the individual's right of exit from his or her cultural group explicitly in the context of groups that oppress at least some of their own members. "Such cultures," he says, "may be supported only to the degree that it is possible to neutralize their oppressive aspects, or compensate for them (for example, by providing convenient exit from the oppressive community to members of the

⁴⁵ Ibid., p. 223

⁴⁶ Kukathas, Chandran, *Are There Any Cultural Rights?*, *Political Theory*, Vol. 20, 1992, pp.105-139. We should point out here that the article by Ch. Kukathas has been translated into Serbian: *Postoje li kulturna prava?*, *Treći program*, 111/2001, pp. 219-251

⁴⁷ According to his critics, it is perhaps not surprising that Kukathas does not elaborate what capacities individuals must have in order to have a "substantial" right of exit, since such requirements would run into serious conflict with many of the group's practices he thinks should be permitted. Okin, S. M., *ibid.* p. 228

discriminated-against group).⁴⁸ For Raz, it is obvious that there are many difficulties of leaving one's cultural group. He implies that especially young women are often successfully socialized into the acceptance of practice that they would be likely to come to regard as oppressive if they were living in a less sexist cultural context. The right of exit from one's cultural group is, surely, often not at all desired as the sole option to such modes of female deprivation or oppression. Young women often value their cultural and familial ties extremely highly, even though they suffer from and chafe against their oppressive aspects. Leaving their family and culture of origin may find this choice very far from a convenient opportunity to exit. It may well be such an unbearable choice as to be, in practice, no choice at all.

Kukathas also claims that the members of religious or cultural groups have the "inalienable right to leave – to renounce membership of the community."⁴⁹ The right to exit is of considerable importance in Kukathas' argument for several reasons. First, an important basis for his argument against positive group rights is his liberal attachment to individual rights, and not being captive in a group one wishes to leave seems fundamental among such rights. Second, like Raz, he thinks that the right of exit mitigates the harm of group injustice or oppression. Third, he notes that "the nature of his community is transformed" by the individual's freedom to leave, "particularly if the formal right comes with substantive opportunities."⁵⁰ Thus, implicitly, at least, he acknowledges the important relationship between exit and voice.

* * *

Answering the question to what extent and how multiculturalism should accommodate community cultures that deny gender equality, it can be concluded that liberal democracies cannot actually do that without comprising their own fundamental

⁴⁸ Raz, Joseph, Multiculturalism: A Liberal Perspective, p. 184

⁴⁹ Kukathas, Chandran, Are There Any Cultural Rights?, p. 117

⁵⁰ *Ibid*, p. 128. See more in: Okin, Susan Moller., Mistresses of Their Own Destiny..., p. 227

values: equal freedom for all, equal dignity, equal respect. These values present the bottom line that has to be accepted by all members of a society, regardless of their specific group affiliations or group-specific ethics – otherwise they do not make sense at all.

In the liberal multiculturalist perspective, which sees group-specific rights as legitimate only to the extent a liberal justification for them can be provided, in the case of this conflict, women's rights should enjoy primacy. The reason for this is that special protection of women can be justified as an adjustment necessary to reach the point of liberal equality.

Religion-based or other group-specific cultural practice that violates liberally understood autonomy of women as individuals cannot be justified within the framework of constitutional democracy. This is why they should not be constitutionally upheld.

It should be stressed that the internal dynamic of the groups are important determinants of ethnic relations and peace between the groups (also including majority—minority relations) depends on a negotiation made within the groups and further among the groups. In these processes, both the ethno-cultural groups and the state have to overcome collective action problems.

Finally, yet importantly, concerning women's right to exit their religious or cultural groups, it can be concluded that instead of strengthening the value of equality – in practice it may lead to a more serious inequality (in order to strengthen the value of diversity). Namely, women have less chance of being able to change the group's norms and practices (including being able to remedy their status and to achieve gender equality within the group). To call on the right of exit as a palliative for oppression and discrimination are unsatisfactory for another reason, too, for in many circumstances, oppressed persons, women in particular, are not only less able to exit but have many reasons not to *want* to exit their culture of origin; the very idea of doing so may be unthinkable. Rather, they want, and should have the right, to be treated fairly within it. Therefore, the right of exit, while no doubt important, does not have the power 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.

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O TENZIJAMA MEĐU VREDNOSTIMA - RAZLIČITOST NASUPROT JEDNAKOSTI –

U radu se iznosi niz problema koji su usmereni na pitanje kako i do koje mere liberalne demokratije treba da regulišu vrednosti kultura onih zajednica koje ne priznaju (rodne) jednakosti.

Ovom problemu se prvenstveno prišlo analizom veoma složenog odnosa između feminizma i multikulturnog pluralizma. U tom pogledu se javlja sledeća nedoumica: oni koji sebe smatraju politički naprednim i suprotstavljaju se svim oblicima ugnjetavanja i diskriminacije – nisu li previše rano zaključili da su feminizam i multikulturalizam „dobre stvari“ koje je lako pomiriti? Velika je verovatnoća da će doći do tenzija između vrednosti (rodne) jednakosti i multikulturne težnje ka kolektivnim pravima za manjinske kulture – s obzirom da je većina tih kultura u velikoj meri rodno diskriminisana.

S druge strane, takođe se ističe da su ove dve suprotstavljene teorije na neki način „povezane borbe“ budući da obe idu ka priznavanju vrednosti različitosti u kontekstu normi koje su univerzalne u teoriji, ali ne i u praksi. Dakle, tenzija ostaje: kako liberalna država da postupi u slučaju da pregovara sa jednom manjinsko-kulturnom grupom o kolektivnim pravima koje se zasnivaju na potčinjenosti, diskriminaciji i nejednakosti žena u okviru te zajednice – ukoliko njeni članovi/članice, uključujući i mlade žene, u visokom procentu otvoreno podržavaju neliberalne agresivne norme i prakse svoje zajednice?

Tenzija se javlja u sledećem: država će biti kritikovana zbog nepravdičnosti i u slučaju kada zastupa vrednost jednakosti i u slučaju kada podržava poštovanje vrednosti različitosti i razlika. Naime, ako se zahteva rodna jednakost, jednaka prava za sve, jednako dostojanstvo i jednako poštovanje za sve, itd., članovi manjinsko-kulturnih i verskih grupa mogu prigovoriti da se njihova kulturna specifičnost ne poštuje, i da su njihova tradicija i identitet ugroženi. Međutim, ako dominantna grupa (država) podstiče

kulturne različitosti i vrednuje specifičnosti, članovi verskih grupa ili manjinsko-kulturnih zajednica taj čin mogu da shvate kao diskriminaciju. Stoga, vrednosti kako jednakosti tako i različitosti (tj. poseban status za određenu kulturnu ili versku zajednicu) mogu da predstavljaju izvor tenzija.

Kao odgovor na pitanje do koje mere i na koji način multikulturalizam treba da reguliše kulture zajednica koje ne poštuju (rodnu) jednakost, može se zaključiti da liberalno-demokratska društva zapravo to ne mogu da učine bez uključivanja svojih fundamentalnih vrednosti: jednake slobode za sve, jednako dostojanstvo, jednako poštovanje. Ove vrednosti predstavljaju osnovu koju svi članovi društva moraju da prihvate i poštuju, bez obzira na versko-kulturne specifičnosti svojih zajednica – jer u suprotnom nemaju nikakvog smisla.

U radu se takođe daje osvrt na tzv. „pravo na izlaz“, dakle realno pravo na napuštanje grupe iz koje osoba potiče. Međutim, u mnogim manjinskim grupama u čije ime liberalni teoretičari (Kimlika, Raz, Kukatas itd.) iznose argumente za posebna prava ili izuzetke, žene su manje u prilici da sprovode ova prava nego muškarci. Što se tiče prava žena na izlaz iz svoje verske ili kulturne grupe možemo zaključiti da umesto učvršćivanja vrednosti jednakosti u praksi to može da dovede do mnogo ozbiljnijih nejednakosti u cilju učvršćivanja vrednosti različitosti. Naime, žene imaju manju mogućnost da menjaju norme i prakse grupe, uključujući tu i mogućnost da poboljšaju svoj status i ostvare veću jednakost unutar grupe. Pozivanje na pravo na izlazak iz grupe kao lek protiv represije ne zadovoljava iz još jednog razloga – u mnogim slučajevima osobe izložene represiji, naročito žene, ne samo što su manje sposobne da izađu iz grupe, nego iz mnogobrojnih razloga ne *žele* da napuste matičnu kulturu jer im se to čini nezamislivim. Umesto toga, one *žele* – a na to imaju pravo – da se prema njima ophodi pravično. Stoga, pravo na izlazak iz grupe, koliko god bilo važno, nema moć kakva mu se pripisuje u raspravama u kojima se brane prava neliberalnih grupa unutar liberalnog konteksta. Šta više, ono je suštinski problematično jer oni kojima je to najpotrebnije imaju najmanje mogućnosti da ga iskoriste smatrajući to nepoželjnom, pa čak i nezamislivom opcijom.