

Virginia Polytechnic Institute and State University

Respecting Citizens, Protecting Capabilities:

The Role of the State in a Liberal Society

A Thesis Submitted to Professors William FitzPatrick (Chair), Anne Margaret Baxley,
and Harlan B. Miller of the Department of Philosophy

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By

Carolyn M. Sewell

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RESPECTING CITIZENS, PROTECTING CAPABILITIES:

THE ROLE OF THE STATE IN A LIBERAL SOCIETY

BY CAROLYN M. SEWELL

(ABSTRACT)

The free exercise of religion as a basic human right is considered essential by those who are concerned about protecting and maintaining each person's capability to live a good life. Unfortunately, in protecting this right the fundamental rights of women are often violated or overlooked. In order to grant religious freedom, liberal states often permit discriminatory and oppressive practices. Martha Nussbaum maintains that a balance must be struck between the protection of individual rights and the protection of religious freedom. She suggests the liberal state should not take a stand on disputed non-political issues concerning the good. The state should adopt political liberalism, thereby refraining from espousing religious or other "comprehensive" views such as the view that men and women are innate moral equals. By doing so, Nussbaum says the political liberal state shows full respect for its citizens, and protects their ability to lead a good life. This thesis presents the argument that the liberal state need not, and should not, go as far as political liberalism in order to protect and show full respect for its citizens. Although the state should not pressure or force religious groups to change their doctrines to fall in line with liberal principles, the state may assert the truth of some non-political liberal values that are essential to maintaining the liberal political system. Political liberalism ties the hands of the liberal state, leaving it handicapped in its ability to protect individual rights, especially the rights of women and minorities.

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CHAPTER 1

RELIGIOUS FREEDOM AND WOMEN'S RIGHTS

Freedom to engage in critical reflection concerning the meaning of one's life and place in the world is fundamental to leading a good human life. Religion plays an important role in this reflection for the majority of people in the world. For this reason, the free exercise of religion as a basic human right is considered essential by those who are concerned about protecting and maintaining each person's capability to live a good life. Unfortunately, in protecting this right the fundamental rights of women are often violated or overlooked. The structure and practice of many religions are intricately tied to the systematic oppression and subordination of women. In order to grant religious freedom, liberal states often permit discriminatory and oppressive practices that would not be allowed if they were practiced by a secular organization. Laws are often passed and interpreted to favor the protection of religious freedom over women's rights.

In the United States, courts often rule in favor of religious freedom over individual rights, citing the First Amendment as reason for exempting religious or minority groups from laws such as Title VII of the Civil Rights Act of 1964¹, or compulsory education laws. In 1996, the United States District Court in Washington, D.C. ruled that Dr. Elizabeth McDonough, a professor of canon law at The Catholic University of America, is not protected under Title VII. McDonough filed discrimination charges against the university when it refused to grant her tenure, while granting tenure to male professors with similar credentials. The court ruled that the Free Exercise and Establishment clauses of the First Amendment "forbid judicial review of this case

because Sister McDonough's role at Catholic University was 'the functional equivalent of a minister.'" The judges concluded that applying Title VII to McDono employment "requires an intrusion by the Federal Government in religious affairs that is forbidden by the Establishment Clause" (*EEOC v. Catholic University* 1996).

Similarly, a district court in northern Illinois refused to hear a case involving charges of discrimination an African-American female pastor brought against the United Methodist Church. In 1993, Reverend Darreyl Young was fired as pastor of her church by the Board of Ordained Ministry and the Bishop, despite receiving a perfect score on her evaluation by the church. In her defense, the Pastor Parish Relations Committee of her church stated, "We have had white men, black men, and African men as pastors. She is the best pastor of all of them and we are not interested in changing. She has done more for our church than all of the other pastors put together" (Rutherford, 1056). Reverend Young brought suit against the United Methodist Church, claiming the Board and the Bishop fired her because of her race and sex. The official doctrine of the United Methodist Church includes an assertion of the innate equality of all races and both sexes. Therefore, if the Church practiced discrimination, it was not necessitated by their religious belief. Yet, the court refused to hear the case, citing the religion clauses of the First Amendment (Rutherford, 1057).

The First Amendment was also cited as reason to exempt Amish children from compulsory education after the eighth grade in the 1972 case *Wisconsin v. Yoder*. The Supreme Court ruled that the law making school compulsory until age 16 "unduly burdens the free exercise of religion" for Amish parents. The Court declared "that enforcement of the State's requirement of compulsory formal education after the eighth

¹ Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.

grade would gravely endanger if not destroy the free exercise of respondents' religious

Wisconsin v. Yoder 1972). The Amish argued that sending their children to high school interfered with their religious obligation to raise their children to be faithful and conforming members of the Amish community. Pennsylvania attorney general, Amishman Stephen Stoltzfus asked "Why can't the Board of Public Instruction show us leniency and exempt our children when they have a fair education for farm and domestic work? If we educate them for businessmen, doctors, and lawyers they will make no farmers" (Shapiro, 141-142). The Amish parents recognized that if their teenagers were educated in the secular world outside of the Amish community, they were more likely to think of leaving the community as they became adults (Shapiro, 141).

While withdrawing Amish children from formal education after the eighth grade may better prepare them for life within the Amish community, it gives the children less opportunity to explore other options and ways of life. As the Amish parents clearly recognize, the ages of fourteen through sixteen are critical to the development of autonomy. While sending Amish children to high school may interfere with Amish parents' efforts to indoctrinate their children into the Amish faith and way of life, exempting them from compulsory education endangers children's autonomy and religious freedom by not exposing them to different ideas and faiths. By giving Amish parents the freedom to withdraw their children from the outside world, the Court seriously restricted Amish children's freedom to choose how they will lead their lives.

Amish girls run an even greater risk of losing their autonomy and freedom as a result of the ruling. While boys will learn skills such as farming and carpentry in the Amish community which may help them find employment if they ever chose to leave

Amish life, girls learn domestic skills that would be less marketable in the outside world. Even if an Amish woman would like to leave the community, if she did not receive a formal education after the eighth grade, it is very unlikely that she would be able to sustain herself in the outside world. In the case of *Wisconsin v. Yoder*, the Supreme Court ruled in favor of Amish parents in an effort to preserve their religious freedom, but by doing so Amish children's individual rights were severely violated.

As these examples indicate, liberal states are often wary of protecting individual rights by limiting religious freedom, even when what the religious group stands to gain is not as significant as what the individuals stand to lose. However, there are also instances in which religious freedom is wrongfully violated for the sake of individual rights. In France, the highest administrative court Conseil d'Etat (State Council) in 1999 ruled that Muslim girls are forbidden from wearing headscarves in public schools. It stated that wearing headscarves, unlike wearing Catholic crosses or yarmulkes, constitutes "proselytizing" in schools and was a symbol of the idea that women are inferior to men. "While wearing religious symbols was not in itself incompatible with principles of secularity in state schools, anything that could be a provocation, proselytism, or undermining the liberty or dignity of pupils was" (Fazili). Although the 2000 State Department Report on Religious Freedom in France states that students can pursue the right to wear a headscarf through legal channels, in the cases where students have been given the right to wear headscarves to school by the court they faced the humiliation of having teachers and parents hold protests and strikes in opposition to the court ruling. The court placed a large burden on Muslim students' religious freedom in an effort to promote liberal ideals and protect the "liberty or dignity" of students who do not wear

headscarves. While often courts rule in favor of religious freedom over individual rights, sometimes the opposite ruling can occur. The question of how a liberal state should deal with the conflict between religious freedom and individual rights does not have a simple answer. Does the government have a responsibility to protect faculty members of religious universities from sexual discrimination? Should the state grant special privileges to certain minority religious groups, such as the Amish, perhaps at the expense of the protection of individual freedoms? On the other hand, is it permissible for a government to prohibit religious expression, such as the wearing of a headscarf, that some may see as symbolic of women's subordination? The protection of religious free expression is fundamental to liberalism, but so is the protection of individual human rights. Should one be protected at the expense of another?

Martha Nussbaum argues that a balance must be struck between the protection of individual rights and the protection of religious freedom. Using the United States Religious Freedom Restoration Act of 1993 (RFRA) as a guide, she suggests that the liberal state should refrain from interfering with religious practice unless the state has a "compelling interest" in doing so (Nussbaum, Women 202). The RFRA states that "governments should not substantially burden religious exercise without compelling justification." Compelling justification would be situations in which burdening the religious free exercise, "(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest" (RFRA).² The RFRA does not go further in defining what constitutes "compelling

² The RFRA was passed by an overwhelming majority in the U.S. House and Senate in 1993. The Act was proposed as a response to a 1990 Supreme Court case, *Employment Division v. Smith*, in which it was ruled that Native American tribes may not use peyote in a religious ceremony. The Court determined that making an exception to anti-drug laws in the case of religion would cause too much complication for

governmental interest.” However Nussbaum suggests that among other concerns the protection of an individual’s capabilities to perform functions that are central in leading a full human life constitutes compelling governmental interest. The liberal state may interfere in a religious group’s activities if the activities harm individuals or their capabilities (Nussbaum, Women 192).

On the other hand, liberals Susan Okin and Mary Becker take a harder line in favor of individual rights and against religious free exercise. They suggest that concern for human rights should always trump concern for religious freedom. They claim the world’s major religions encourage women’s subordination and perpetuate the view that women are inferior to men. Therefore, although the practice of religion may be permitted, religious groups ought to be encouraged to change their doctrine to fall in line with liberal principles such as equality (Okin, “Multiculturalism” 23).

In what follows I will discuss Nussbaum’s approach to answering the question of what a liberal state should do when faced with conflicting concerns for religious freedom and women’s individual rights, and Okin and Becker’s stricter approach in favor of individual rights. Each approach has difficulties. Okin and Becker, in an effort to sponsor protection of women’s human rights, place too much blame on religion for the subordinate status of women. They fail to recognize the importance of preserving religious freedom, and that preservation of this freedom is a fundamental part of respecting individual rights. Nussbaum’s approach recognizes the importance of

lawmakers and law enforcement. There was widespread public outrage at this ruling. Before the 1990 ruling, the Supreme Court had held that an individual’s religious freedom should not be restricted unless the state had compelling justification for doing so. (See *Sherbert v. Verner*, and *Wisconsin v. Yoder*) Many Americans felt that there was little compelling state interest in restricting the religious freedom of Native Americans in this manner. Although the RFRA was widely supported, it was declared unconstitutional in 1997 by the Supreme Court which judged that it went beyond the scope of Congress’s powers as described in the Fourteenth Amendment.

protecting religious freedom, and presents a solution that more adequately respects both concerns. However, I am inclined to think that Nussbaum's approach is also flawed, because her solution fails to give the state adequate means to combat the oppression and discrimination women face.³

“Compelling Interest” and the Capabilities Approach

Nussbaum says the RFRA may be taken as a good foundation for how the liberal state should strike a balance between protecting religious freedom and protecting individual rights. The state should not place a burden on religious free exercise unless it has compelling interest in doing so. She claims compelling interest involves protecting citizens and protecting their capabilities to perform functions central to leading a full human life.

Although individuals may disagree on what living a complete human life consists in, Nussbaum says there can be a consensus among all individuals concerning what one must be capable of doing and possessing in order to be well positioned to lead a good human life. Nussbaum suggests that these capabilities include the capability to live, to possess good health, to possess bodily integrity, to use the senses and have imagination and thought, to feel emotions, to have practical reason, to affiliate oneself with others and have compassion for them, to live with and have concern for animals and nature, and have some political and material control over one's environment. Under Nussbaum's capabilities approach, it is not ultimately important in every case whether a person

³ This chapter contains merely an introduction to this difficulty in Nussbaum's approach. I discuss it at length in Chapter 3.

chooses to exercise a function, but that the person has a choice whether or not to exercise it. Therefore, a monk may freely choose to live a celibate and isolated life, and still live a full and enriched life, so long as he had a choice of how to live. Respect for autonomy is a fundamental element of the capabilities approach.

Nussbaum says the government has compelling interest in protecting the capabilities of its citizens. It is sometimes permissible to restrict religious freedom in order to protect individual rights. For example, Nussbaum says the Muslim civil court in India ruled wrongly when it declared that a Muslim woman named Shah Bano was not entitled to alimony. The court ruled that the Criminal Procedure Code, which forbids a man “of adequate means” to let close relatives including an ex-wife to live in a state of “destitution and vagrancy,” does not apply to Muslims. This ruling was based on the claim put forth by Muslim clerics that granting the alimony goes against Islamic law (Nussbaum, Women 172). Ruling that respect for religious freedom necessitates that women belonging to a certain religious group are not entitled to alimony is clearly wrong according to Nussbaum’s RFRA-based proposal. The state has a greater interest in protecting women like Shah Bano from destitution and starvation, than it does in protecting Muslim men’s freedom to act according to their religious belief that women are not entitled to adequate alimony.

However, there are many cases where it is not so clear whether the state’s interest in protecting individual rights is compelling enough to override concern for religious freedom. Should the U.S. District Court have ruled that McDonough is not protected by Title VII, simply because she teaches canon law at a religious university? Should the district court have ruled that Reverend Young is not entitled to protection against sexual

and racial discrimination by Title VII? Should the Supreme Court have ruled that Amish children are exempt from compulsory education after the eighth grade, despite the fact that Amish girls may find themselves unable to leave the Amish community because they lack the education to find a job? How Nussbaum's approach would treat these situations is not entirely clear.

In *Bob Jones University v. United States*, the Supreme Court ruled that the university should be denied tax-exemption status because of its racially discriminatory admissions process. Nussbaum suggests this ruling could be taken as a model for how sexual discrimination on the part of a religious group should be treated. "[T]he government must not give favorable treatment to practices that humiliate and stigmatize individuals on account of their sex, especially where the voluntariness of the individuals' participation in those practices is far from certain" (Nussbaum, Women 203-204). She argues that minors who apply to college may have little choice as to where they apply, due to dependence on parental financial support, and therefore a university that practices discrimination in its admissions process should not be granted any special treatment normally given to universities and colleges by the state.

However, if individuals do have a choice as to whether they belong to a particular religious organization, Nussbaum says it is less clear whether the state has compelling interest in interfering in the organization's practices. In cases where there is no compelling state interest, the state must refrain from placing a burden on the religious group. So, while the state clearly has a compelling interest in protecting Shah Bano, who has little (if any) choice in what religious group she is legally affiliated with under Indian law, under Nussbaum's proposal the state may not have a compelling interest in

protecting women like McDonough or Young. Although sexual discrimination is generally harmful to an individual's development and possession of capabilities, Nussbaum says "some choices internal to the religion should still be protected" (Nussbaum, Women 206). She claims a religious group's discriminatory practices or sexist doctrine should be tolerated, so long as it is clear that members of the group are free to enter or leave the organization. So long as members of the Catholic Church are free not to be Catholics, Nussbaum says "[P]ublic norms of sex equality should not force the Roman Catholic Church to hire female priests, although it probably should force them to hire female janitors on the basis of equality with men" (Nussbaum, Women 208). It seems Nussbaum believes discriminatory practices should be allowed when hiring priests, but not when hiring janitors, because the male priesthood is more central to the Catholic religion than the hiring of male janitors.

If we are to take Nussbaum's claim about the Catholic Church as a paradigm, under Nussbaum's approach the protection of McDonough and Young from discrimination would not constitute compelling state interest. McDonough freely chose to be a member of the Catholic Church, and faculty at the Catholic University, as did Young freely enter the United Methodist Church. If the Catholic Church is free to grant the priesthood to men only, and yet still receive the tax benefits granted to religious groups, then it seems the Catholic University is also free to refuse tenure to women in their canon law department, and the United Methodist Church is free to fire a minister on the basis of her race and sex.

Essential to Nussbaum's claim is the assertion that discrimination by a religious group is permissible only if members can freely leave the group. However, is it true that

McDonough and Young freely chose their religious affiliation, and could freely leave their respective religious groups? On the one hand, it seems there is nothing physically or legally forcing them to remain members of their religious group. However, if being a member of their particular religious group is an intricate part of their faith, perhaps they are not so free to give up their religious affiliation as Nussbaum implies. Part of McDonough's and Young's religious expression may involve being members of their religious groups. Perhaps they could no longer practice their religion as they believe they must if they were not active members of their Churches. If their faith involves being a part of their particular religious group, it may be the case that they must remain affiliated with their Church if they are to continue to practice their religion. Therefore, it seems that the discriminatory practices of their religious groups do involve considerable harm to their capabilities. If they are discriminated against by the patriarchal leadership of their religion, they cannot fulfill their religious capabilities, i.e. their desire to be religious leaders or tenured religious teachers. If protection of the possession and development of a citizen's capabilities constitutes compelling state interest, it seems that the state has a compelling interest in protecting women like McDonough and Young, or perhaps any woman who wishes to become a priest in the Catholic Church, from sexual discrimination on the part of their religious group.

Perhaps Nussbaum does not want to say the state has a compelling interest in stopping religious groups from sexually discriminating in choosing leaders, because this treads too closely to the state forcing religious groups to adopt liberal views of equality. Although the state has a compelling interest in protecting individual capabilities, according to her view part of individual capabilities involves being "able to search for the

ultimate meaning of life in one's own way," and being "able to form a conception of the good and to engage in critical reflection about the planning of one's life." (Nussbaum, Women 79). (These capabilities are a part of the capabilities for senses, imagination, thought, and practical reason.) Forcing Catholics to accept female priests and tenured canon law professors, or forcing Methodists to accept black female pastors, may harm Catholics' and Methodists' capabilities. By making anti-discrimination laws applicable to religious groups, the state may be guilty of the same harm to capabilities that it wishes to prevent. However, the issue remains that members of a religion may not be as free to leave the group as Nussbaum implies.

Political Liberalism

In an effort to protect individuals' capabilities to search for the meaning of life, or engage in critical reflection, Nussbaum suggests the liberal state should adopt a political liberal, rather than a comprehensive liberal, position. That is, the state should not take a stand on disputed non-political issues concerning the good (Nussbaum, Women 193). A political liberal state, by refraining from espousing comprehensive views such as the view that men and women are innate moral equals, protects citizens' capabilities and shows full respect for the rationality of its citizens. On the other hand, a state that practices comprehensive liberalism allows "liberal values of autonomy and dignity [to] pervade the fabric of the body politic, determining not only the core of the political conception but many noncore social and political matters as well" (Okin, Nussbaum says the comprehensive liberal state fails to fully respect the reason of its

citizens because it declares one vision of the good or of the good life to be true, or ideal. She claims citizens who do choose to live non-autonomously, perhaps under the authority of a patriarchal religious structure, will be treated as “second class citizens” under a comprehensive liberal regime (Nussbaum, Women 51). “Because they don’t share the true doctrine, their vision of truth and objectivity doesn’t get to count in what shapes the polity, even though, let us suppose, it is a liberal regime and their freedom of speech would in no way be curtailed” (Nussbaum, Political 7). Political liberalism does not deny the “reasonableness” of different comprehensive views concerning the good, because it does not espouse any particular comprehensive view. Instead, it recognizes the “existence of a reasonable plurality of comprehensive views” (Nussbaum, “Plea” 109). Nussbaum argues that because the political liberal state recognizes the reasonableness of comprehensive views other than liberal conceptions of the good, it shows respect for the reason of its citizens, and protects their capabilities by ensuring that they will not be given a second-class status in society.

Nussbaum’s political liberalism seems to have several difficulties which I will merely introduce here, and discuss at greater length in Chapters 2 and 3. First, it is not obvious that the comprehensive liberal state fails to show respect for the reason of its citizens, simply by espousing a view that is different from the views held by some of its citizens. For example, it seems possible for a state to declare that men and women are metaphysically equal, and yet not deny that it may be reasonable to hold a view to the contrary. Second, it seems conceivable that a liberal state could declare certain comprehensive views to be true, and yet continue to protect the capabilities of its citizens who do not hold the views espoused by the state. Why should it be assumed that citizens

who do not hold liberal values who live in a comprehensive liberal state will be treated as “second-class citizens”? Finally, as I will discuss at length in Chapter 3, it seems that political liberalism places an unnecessary handicap on the liberal state, leaving it less able to fully protect the individual rights of its citizens. By disabling the liberal state from declaring certain truths, such as the truth that men and women are innately equal, political liberalism leaves the state weakened in its ability to educate citizens in a way that will discourage sexism and discrimination, or at least introduce an alternative to sexist and discriminatory views.

Leaving those difficulties aside for now, it is important to note that Nussbaum does not seem to believe that political liberalism should be adopted by every liberal government. She believes there may be some cases in which an established state religion is appropriate. While she says the United States should adhere to the establishment clause of the First Amendment, given our country’s history of intolerance for minority religions, Scandinavian countries and India may actually be better served by keeping their established state religion(s). She says the established Lutheran church in Scandinavia favors and protects religious pluralism, and India’s establishment of religious systems of civil law ensures that Muslims are granted proper religious freedom despite the Hindu majority. Although Nussbaum seems to accept political liberalism as the ideal, she says situations need to be assessed “contextually.” “If the important issues underlying nonestablishment are really issues about both free exercise and full equality of citizens, it is plausible to suppose that, although nonestablishment is usually the best way of promoting these goals, this may not always be the case” (Nussbaum, Women 211). Many liberals argue that the ideal state is not one that refrains from espousing

comprehensive views. Susan Okin and Mary Becker, liberals whom Nussbaum labels “secular humanists,” believe the state should hold non-political liberal views concerning the good, and should actively discourage non-liberal views.

Secular Humanism

Okin and Becker argue that religion is often to blame for the oppression of women and the violation of women’s rights. They say religions do this by encouraging the subordination of women, and endorsing the view that women (at least in some fashion) are unequal to men. Okin claims that the “founding myths” of many major religions depict with approval the subordination and control of women by men, and the denial of women’s role in reproduction. For instance, in Genesis Eve is created by a male God out of Adam’s rib, and it is her weakness that leads Adam to sin. Okin argues “founding myths” such as these deny women’s equal worth, as well as women’s unique and important role in reproduction. The denial of women’s equal worth in the “founding myths,” Okin claims, often plays some role in a religion’s leaders and followers considering women to be unequal (“Multiculturalism” 13).

Becker places a similar blame on religion. She asserts that “religion perpetuates and reinforces women’s subordination, and religious freedom impedes reform” (Becker, 159). She states that major religions are dominated by male leadership, and stresses that the patriarchal structure of most religious organizations encourages women’s subordination and perpetuates the view that women are inferior to men. She says religion also causes harm to women by imparting in women a sense of strong obligation to the

family and community, above their own desires and needs. She says the fact that Christianity extols the virtues of forgiving and suffering encourages women to stay in abusive relationships, and forgo their own needs in favor of the needs of others. “Forgiving and valuing suffering are not effective strategies for an oppressed group to force social change. These activities reinforce existing power disparities and encourage the disempowered to accept their real-world disadvantages as spiritual advantages” (Becker, 9).

Viewing religion as ultimately harmful to women, Becker and Okin say religious organizations should not be granted the special group rights they are currently allowed by liberal governments. Becker argues that promoting freedom of religion ultimately aids in the oppression of women. Granting freedom of religion affects women in a very different way than it affects men. She claims the patriarchal, anti-feminist structure of dominant religions contributes to women’s subordinate status in society, works in opposition to feminist issues, and hinders women’s participation in politics. Becker suggests that the Bill of Rights either be amended or reinterpreted in such a way that tax exemptions and postal subsidies be denied to religious groups that sexually discriminate when hiring leaders. Her suggestion seems surprisingly mild, given her open objection to religious freedom in general. However, she says she would not like to see all religious subsidies terminated, because she believes “people need sources of authority outside government,” and doing away with all subsidies would lead to too much government control (Becker, 22).

More severely, Okin argues that groups who do not hold liberal views should be encouraged by the state to change their doctrine or practices to assimilate with liberal

society. She says group rights should not be granted at the expense of the rights of individuals within the group. Of particular concern to her are situations in which minority groups are permitted to practice customs that would be illegal if practiced by members of the majority. For instance, until recently polygamy was legal in France for those of Arab and African descent. Okin argues polygamy oppresses women and violates women's autonomy, and therefore legalizing polygamy for these groups constitutes favoring group rights over the rights of the individual. In many U.S. criminal cases, men have received light sentences for kidnap and rape, and wife-murder, based on the argument that such practices are acceptable in their culture (Okin, "Multiculturalism" 18).⁴ Okin suggests that group rights are often anti-feminist because they treat minority cultures as "monoliths," taking patriarchal leaders' claims about the traditions of their culture to be fact rather than consulting women in the matter ("Multiculturalism" 12). Often the cultural practices preserved by group rights concern customs within the family, or practices pertaining to reproduction, and as a result women and girls are usually more affected by the protection of cultural practices than men and boys. Additionally, women are more affected by group rights because "most cultures have as one of their principal aims the control of women by men." (Okin, "Multiculturalism" 13).

In the case of *Wisconsin v. Yoder*, the Amish were granted a special group right to be excluded from Wisconsin's compulsory education law after the eighth grade, despite the fact that withdrawing Amish children from state-monitored education at that age may severely limit their autonomy. Although the Catholic Church and the United Methodist

⁴ For instance, a Chinese-American man murdered his wife in New York, and was acquitted of murder charges based on his claim that he was practicing the Chinese custom that allows husbands to murder their wives if the wives have been unfaithful. See Doriane Lambelet Coleman, "Individualizing Justice through Multiculturalism: The Liberals' Dilemma," *Columbia Law Review* 96, 5 (1996): 1093-1167. Of course, in

Church are not “minority groups,” as religious organizations they were granted a special right to be exempted from Title VII of the Civil Rights Act. Granting this special right occurred at the expense of limiting the capabilities of women such as Dr. McDonough and Reverend Young. Okin says the basic liberal value of individual freedom is violated when minority groups are permitted to engage in oppressive practices that would not be permitted in the majority culture (“Multiculturalism” 11). A similar claim may be made concerning situations in which religious groups are permitted to discriminate against women in a way that would not be permitted of secular groups. Okin argues that groups that hold illiberal values, especially the view that women are innately inferior to men, should be pressured by the state to accept liberal views of equality. “[Women] *might* be much better off if the culture into which they were born were either to become extinct (so that its members would become integrated into the less sexist surrounding culture) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women – at least to the degree to which this value is upheld in the majority culture” (author’s emphasis, Okin, “Multiculturalism” 22-23). She argues that if group rights are to exist, those who enact them should at least consult women on the matter, avoid treating minority cultures as “monoliths,” and attempt to ensure that such rights would not enable women’s continued oppression. So, group rights may be continued so long as they do not encourage the violation of women’s individual rights, but the state should also actively encourage minority cultures to alter their beliefs to “reinforce the equality of women”

many nations where violent practices are based on the cultural traditions of the majority, those who commit them are still met with harsh sentences.

Objection to Secular Humanism: The Attack on Religion

The secular humanist position, voiced by Okin and Becker, is that religious organizations should never be granted special rights or privileges at the expense of individual rights. They claim that religion is often a source of oppression and discrimination, and the liberal state should encourage religious groups to adopt liberal principles. Although it is clear that religion is often used as an excuse for the abuse of women's rights, and may sometimes be responsible for women's oppression, Okin and Becker seem to place too much blame on the whole of religion. Patriarchal social structures and sexist leadership may often be more to blame for women's oppression, and certainly while a religion may be interpreted in a sexist and oppressive manner in one society, the 'same' religion practiced in another society may not encourage women's subordination. I place 'same' in scare quotes because, if you interpret religion as just being a practice exercised by a group of believers, one may not want to call feminist Islam and oppressive orthodox Islam the same religion. Azizah Y. al-Hibri says Okin is guilty of "religious reductionism," because Okin assumes that one particular interpretation of religious teaching is representative of the whole of religion. Al Hibri says Okin's "understanding of other cultures/religions is derived from secondary sources outside these cultures/religions" ("Multiculturalism" 42). Okin uses the "founding myths" as a representation of the sexist nature of religion, yet al-Hibri says the Qur'an professes sexual equality, and it is local interpretations of the Qur'an that has led to sexism and women's oppression within some sects of Islam. She says Islam was intended to be a world religion, and therefore was intended to be compatible with all local

customs. Unfortunately, some of these local customs included sexist and oppressive beliefs and practices. She says, “many countries retained local customs that we find controversial, and that may have been erroneously viewed in the West, and sometimes locally, as Islamic” (Al Hibri, 43). Al-Hibri says if Okin truly wants to encourage feminism in the Islamic world, she must respect women’s religious beliefs while promoting equality. “A true feminist call to reform in Muslim countries or among Muslim immigrants must respect their religious and cultural sentiments, while recognizing the sanctity of the first and flexibility of the second.” (Al Hibri, 43).

It may be that al-Hibri is a bit too apologetic of Islam. As in the Christian Bible and most other religious texts, there are sections of the Qu’ran that seem to clearly endorse the subordination of women. Okin responds to al-Hibri’s criticism by doubting that Al Hibri provides an accurate account of Islam. “[H]er attempt to present contemporary Islam as relatively sex-egalitarian and open-minded is unconvincing” (Okin, “Reply” 122). Okin asks, why would Muslim law be so patriarchal and so offensive to women’s rights in Islamic countries, if Islam were indeed a sex-egalitarian religion? Okin says feminists must not deny the essentially patriarchal nature of the world’s major religions in an effort to “foster the most woman-friendly strands” within these religions (“Reply” 123). Although she does not deny that there may be feminist “strands” in the major religions, she says the religions are ultimately essentially sexist and oppressive to women.

Nussbaum objects to Okin’s condemnation of religion. “Far from trying to understand what might make large numbers of people in the world hold fast to religious convictions, Okin evinces contempt for religion in the very manner in which she

discusses it...” (Nussbaum, Women 105). In making her assertions about religion, Okin sites secondary sources such as the New York Times, rather than seeking the opinion of religious people. Similar to al-Hibri’s defense of Islam, Nussbaum argues that Reform Judaism, her religion, may be ahead of Western secular society in its promotion of women’s rights and equality (Okin, “Reply” 107). Again, Okin doubts this view of religion, calling Nussbaum’s description of Reform Judaism an “extra (Okin, “Reply” 122). Nussbaum says Okin’s unwillingness to accept feminist interpretations of religion is disrespectful and counterproductive to the project of promoting human rights. By dismissing religion outright, she fails to recognize the contribution religion has had to sex and racial equality, and fails to show respect for religious feminists (Nussbaum, Women 106-107).

Despite Okin’s acknowledgement that the practices and norms of minority groups should not be determined by simply consulting with patriarchal leaders who hold political clout, she fails to adequately acknowledge the diversity of opinions and interpretations that exist within a religion. Although it is true that the texts of the major world religions do contain some passages that seem to clearly encourage women’s oppression, Okin is wrong to place so much blame on religion. For many, if not most, individuals throughout the world, religion plays a vital role in how they come to understand the world, and their place in it. By rejecting religion altogether, Nussbaum points out that secular humanists such as Okin make an enemy of supporters of equality within the religion. In a way, Okin’s dismissal of religion as sexist and patriarchal is surprising, given her warning that we should not treat minority groups as “monoliths.” Religions are not “monoliths” either, and no one should take what the most outspoken patriarchal religious leaders say

about their religion to be gospel truth about the religion. To place blame on religion qua religion, rather than placing blame on certain sexist sects of religions, or patriarchal social structures disrespects and alienates feminists and others religious liberals who would generally support liberal projects such as the protection of human rights.

Al-Hibri points out that according to the Qur'an, women and men are entitled to engage in interpreting religious texts on their own, and there is no central authority that has the unique right to interpret religious doctrine. One could say the same thing about Christianity, Judaism, Hinduism and Buddhism as well. Okin and Becker miss their mark when they blame religion for the subordinate status of women in the world.

A further objection that may be posed to the secular humanist is that the demand that religious groups should change their doctrine to accommodate liberal views of equality is both disrespectful of religious people, and harmful to their autonomy and their rights as individuals. Nussbaum says religions should not be expected or required to adopt "a basic set of international moral standards, without receiving any special protections from the state" (Nussbaum, Women 177). She says there are both pragmatic and philosophical problems with the secular humanist approach. Pragmatically, she says the secular humanist acts counterproductively when she proposes to step in and demand that religious people adopt a new set of foreign moral norms. Religious groups will not change their deeply-held beliefs simply because it is demanded of them, and such a demand leads to resentment rather than cooperation. Philosophically, Nussbaum says Okin's and Becker's approaches are flawed because they deny that religious freedom is a necessary component of living a good human life. Nussbaum says religion has vital importance in maintaining many individuals central human capabilities. To attack

someone's religion is to "risk eviscerating people's moral, cultural, and artistic, as well as spiritual, lives." Acting against someone's religion, Nussbaum argues, is to do a "grave wrong in these important areas" (Nussbaum, Women 180).

While secular humanism fails to show proper respect for individuals by telling them that they should, or even must, change their religious views or cultural practices, Nussbaum says political liberalism offers the liberal state a way of avoiding showing this kind of disrespect. She says the secular humanist view is "at bottom quite illiberal" because it bypasses individuals' autonomy, telling them "they cannot define the ultimate meaning of life in their own way" (Nussbaum, Women 180). By demanding that a religious group change their doctrine, as well as their practices, Okin is essentially telling those religious people that they can't exercise their own abilities to reason and come to their own conclusions about questions concerning life and the world. If the preservation of autonomy, or as Nussbaum would put it the protection of capabilities, is at the center of liberalism, then the secular humanist indeed acts against liberal principles. However, is it necessary to go as far as political liberalism to avoid the type of disrespect shown by secular humanism? Or is it possible to stay within the realm of comprehensive liberalism, and yet show respect for individuals and their capabilities?

CHAPTER 2

SHOWING RESPECT

Americans are a free people, who know that freedom is the right of every person and the future of every nation. The liberty we prize is not America's gift to the world, it is God's gift to humanity. (Applause.)

We Americans have faith in ourselves, but not in ourselves alone. We do not know – we do not claim to know all the ways of Providence, yet we can trust in them, placing our confidence in the loving God behind all of life, and all of history.

May He guide us now. And may God continue to bless the United States of America. (Applause.)

George W. Bush, State of the Union, January 28, 2003

References to religion and God are commonplace in American politics. The country's founding documents contain references to God and a Creator. Presidents commonly refer to God and religion in their rhetoric and speeches, though President George W. Bush may use religious jargon more frequently than other American

presidents have in recent history. Bush commonly refers to his religious faith, his belief in the soul and salvation from sin, and his admiration for Jesus Christ in interviews and speeches. He uses rhetoric saturated with religious language when speaking about, and providing justification for, the second war with Iraq and the “war on terrorism.”

In a pluralistic democratic society such as the United States, is it desirable for politicians and political documents to proclaim the truth of a religion or the existence of God? Approximately 45 million people in the United States are non-Christians, and 28 million do not believe in any religion.⁵ When Bush says “We Americans have faith in ourselves, but not in ourselves alone,” he is certainly not speaking about all Americans. Does this type of language show disrespect to those citizens to do not subscribe to Bush’s set of beliefs?

According to political liberalism, no politician (when speaking as a head of state), and no political document should espouse a particular religious conception or secular comprehensive conception of the good. A comprehensive conception “includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole” (Rawls 13). The political liberal view is that, in order to maintain respect for each citizen’s ability to reason and develop her own comprehensive view of the good, the state must refrain from espousing any comprehensive view of its own. A political liberal state bases its polity on a conception of justice that is “freestanding.” “It offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself”

ical liberalism. I will discuss this more in a moment.

⁷ However, to be a reasonable *person*, according to Rawls, is to be willing to cooperate with others, and establish laws and terms of cooperation that you, as well as others, can live by, and then agree to live by them (Rawls, 50). Rawls says a reasonable person thinks it unreasonable to forcibly

⁷ It isn't clear why Rawls believes the last characteristic is necessary for a view to be comprehensive. It seems it is at least possible for an individual to develop her own comprehensive view, without using any prior religious or philosophical view as its foundation.

impose her own comprehensive view on others or repress unreasonable comprehensive views (Rawls, 60).

Society contains a plurality of views that are reasonable in Rawls' sense. Rawls says that for the state to be just and stable it must function under principles that all citizens who hold reasonable views can endorse. The state should hold to a political conception of justice that is not based on any particular comprehensive view, but rather can serve as "a module" that can be supported by any reasonable comprehensive view. Rawls is ultimately unconcerned whether the political conception of justice coheres with unreasonable views, and says that unreasonable views that "reject one or more democratic freedoms" should be contained "like war and disease so that they do not overturn political justice" (Rawls, 64 f19).

He is also not concerned about the political conception of justice being acceptable to unreasonable *people*. He says the political liberal state takes some things as given, such as the assumption that all people are equal and free, at least as citizens. A person who cannot accept that all people are free and equal, at least for political purposes, would not find the political liberal state satisfactory, since she may not wish to agree to the standards of fairness and cooperation. Rawls says his view is meant to apply to those who have a basic democratic conception of justice, so his version of political liberalism is simply not concerned with including "unreasonable" people in the "overlapping consensus." Although, because his is a liberal view, "unreasonable" people will certainly still be granted equal rights and freedoms.

Martha Nussbaum agrees with Rawls' view that political liberalism is necessary, given the existence of a plurality of comprehensive views. She maintains that political

liberalism is the best way to ensure that a state show proper respect for its citizens. She believes that in a comprehensive liberal society those who do not share the views expressed by the state will have a “second-class” status. While she says that it may be the case that such citizens will be treated equally politically, she is concerned that the mere fact that the citizens hold views not espoused by the state will “rank the holders of the ‘false’ views below the holders of ‘true’...” (Nussbaum, Political 7).

Nussbaum claims a state that does not abstain from judgment concerning issues of religion, philosophy and morality that are outside of the political realm fails to show respect for its citizens’ ability to reason. “Political respect for his [the citizen’s] reason requires respecting his comprehensive doctrine, and that, in turn, requires not building the polity on the contradiction of that doctrine” (Nussbaum, Political 8). Certainly, when politicians such as John Ashcroft say “We have no King but Jesus,” or even when President Bush says, “We Americans have faith in ourselves, but not in ourselves alone” and that we can place “our confidence in the loving God behind all of life, and all of history,” these statements seem to show an amount of disrespect to the sixteen percent of the US population who do not claim to be Christian, or at least to the ten percent that do not adhere to any religion. These claims seem particularly disrespectful because not only are they making comprehensive claims about what beliefs the state espouses, they also make an assumption about what all Americans believe, when clearly a large percentage of Americans would not agree with the statements. Statements like these *do* seem to give some citizens “second-class status” by failing to ignore the very existence of those who do not share the belief that God exists and is “behind all of life, and all of history,” and that Jesus is the true king.

However, it is not just statements such as these that concern Nussbaum. Nussbaum says that a state must refrain from espousing *any* comprehensive view, including partial comprehensive views such as the belief that men and women, or people of different races, are innately morally equal (and not just equal as citizens for political purposes). If we are going to politically respect and cooperate with others who do not share our comprehensive views, Nussbaum says we must establish principles that are reasonable for all. “We must believe that the principles that undergird our political order are the result of a reasoned search for a reasonable basis of a mutually respectful political life, and that, in their status and their content, they express respect for the reason of all citizens” (Nussbaum, Political 17). She argues this respect is dependent upon the state’s not espousing any view that is contrary to a comprehensive view held by citizens. Therefore, the state must not only refrain from making divisive religious proclamations, or gross generalizations about the beliefs of all citizens. The state must also abstain from declaring the truth of liberal comprehensive views concerning equality, the innate possession of human rights, or any other view that extends outside of the political realm. She says any liberal state that does espouse one of these views fails to show proper respect for the rationality of citizens who do not accept them. Even if these citizens are granted equal rights under the law, she says they will be “second class citizens” in the comprehensive liberal society (Nussbaum, Political 7).

Respect and Second-class Citizenship

The critical reason why Nussbaum subscribes to political liberalism is out of a concern for respect of citizens. She believes that if an individual's comprehensive view "doesn't get to count in what shapes polity," then the person is a "second-class citizen" compared to citizens who hold the comprehensive view espoused by the state. She says, as philosophy professors and instructors, we would not conduct a class assuming the correctness of one particular comprehensive view, let alone think it desirable that the state conduct itself in such a way. She is concerned that in such a classroom, and indeed in such a state, not all major positions will be "studied and debated, and treated with Political 7-8).

However, is it true that only a political liberal state can show proper respect for the reason of its citizens? Is it inevitable that in a comprehensive liberal society, those who do not share the state's comprehensive views will be "second class citizens"? Although I think there is reason to assert that liberal governments should refrain from espousing a fully comprehensive view, such as asserting the correctness of one particular religion, it seems it is possible for a liberal state to assert the truth of certain partial comprehensive conceptions without showing disrespect to any of its citizens.

To address Nussbaum's classroom analogy, is it necessarily the case that in a class where the instructor obviously takes one position to be true, or the most plausible, that the other major positions will not be treated with respect? Although there may be unfortunate situations where a teacher asserts a particular point of view, and dogmatically asserts its truth while inadequately examining other positions, it seems in many instances

the opposite situation would be the case. A professor who makes clear her position on a particular subject should find it absolutely necessary, and indeed helpful in supporting her position, to fairly present differing views on the subject. In fact, in my experience, many philosophy courses are conducted in just this way. It seems there is no good reason to believe that just because an instructor espouses a particular view, this means that all other important views will be neglected or treated with disrespect.

Likewise, it seems that the state could espouse a particular comprehensive view, yet treat citizens who hold different comprehensive views with respect, and give them full opportunity to express and present a case for their views. Although it is certainly undesirable for a government to espouse a particular comprehensive conception that ignores or disregards human rights, and then proceed to act in accordance with this conception, this is a violation of liberal principle, not just political liberalism. If the state makes liberal assertions such as the existence of human value, moral equality, and innate human rights, and then enacts and enforces laws that are in accordance with these assertions, it seems we have little reason to believe that those who do not share the state's assertions will be treated as "second-class citizens." On the contrary, as I will argue in Chapter 3, making such assertions often aids the state in protecting individual rights and capabilities. Further, it seems that in a comprehensive liberal state a greater effort should be made to show respect and fairness to those who hold views that differ from that of the state's. Just as a professor who admits to holding a particular position may go the extra mile to ensure that other positions are examined thoroughly and fairly, it seems the state would take extra care to ensure that citizens who hold views not subscribed to by the state are treated equally and fairly.

Nussbaum admits that in a comprehensive liberal society citizens who hold illiberal views may not “encounter any specific political disability,” yet she still worries that they will hold a lower status in society than those who affirm the liberal views held by the state. For example, an ultra-conservative Southern Baptist who maintains that women are innately inferior to men, may hold a “second-class” status in a society where the state declares that men and women are morally equal, even if she encounters no political oppression. It is difficult to know what to say to this worry. Obviously, if the state is liberal, there should be no form of political oppression or restriction of freedoms. Unlike the dogmatic professor who ignores or is disrespectful toward positions that differ from her own, a liberal state should take extra pains to ensure that those who hold illiberal views be free to hold and express them.⁸ Nussbaum says just by virtue of expressing the truth of a particular comprehensive conception, the state is not showing respect for the rationality of citizens who hold an opposite view. However, it is not clear why this must be the case. A liberal may not respect the *view* that women are inferior to men, but this does not mean that she can’t respect the *person* who holds that view. Likewise, the state may assert the moral equality of men and women, and yet respect individuals who hold views that are to the contrary. Although the state may maintain the correctness of a particular liberal conception, that doesn’t necessarily mean that the state is asserting that illiberal views are *unreasonable*, though they may maintain that they are *wrong*.

⁸ Of course, if the expression of these views would seriously endanger others in the society, the state may be justified in putting limits on the expression. For instance, members of the Ku Klux Klan in the United States are permitted to hold meetings and express their views, but they are not permitted to hold cross-burning rallies (which may lead to civil unrest).

Although she seems to conflate them, Nussbaum mentions three separate objects that need to be respected by the liberal state. She says the state should show respect for “our fellow citizens,” for their “views,” and for their ability to “reason,” and that political liberalism is necessary to show respect for all three. While it is certainly the case that the state is obligated to show respect for all citizens, and even respect for their ability to reason, it is not clear that it must show respect for all their comprehensive views. It is essential to the liberal position to respect individuals, their rights and their freedoms, even (or perhaps especially) the illiberal citizen’s right to hold and express her views. But it doesn’t seem that this necessarily entails showing respect for each and every view some individual may hold. Why should the liberal state be obligated to respect sexist, racist, or other illiberal *ideas*?

The liberal state should be concerned with showing respect for citizens, their rights, and their capabilities. However, it seems the state can assert the truth of a non-political liberal view, such as the view that women and men are innate moral equals, and yet show full respect for citizens, and ensure that illiberal citizens have equal status in society. A distinction should be made concerning what types of claims a liberal state can make without showing disrespect for citizens. It seems that although it may be best, in most cases, for a state to refrain from espousing full comprehensive views, it is permissible (and sometimes even ideal) for the state to assert the truth of certain liberal comprehensive conceptions. The state should not make religious or moral claims that are openly divisive and exclusionary, such as Ashcroft’s, or even Bush’s. Their statements make general claims about what all citizens of the U.S. believe, blatantly ignoring the fact that there are many Americans who do not believe in God, or Christianity. This

shows obvious disrespect for citizens. The state should, in most cases, suspend judgment about the truth of specific religions, or specific philosophical doctrines (such as Rawls-type Kantian constructivism, or Singer-type Utilitarianism). The danger of exclusion and discrimination for minorities is real enough for the state to avoid embracing these types of views.

However, there are situations in which national governments embrace a particular religion or philosophical doctrine, and yet succeed in showing full respect for its citizens. In fact, some nations that hold the world's best human rights records openly espouse particular comprehensive views. For example, Denmark has a state church, established in the national constitution, to which every citizen must pay taxes. However, at the same time, Denmark possesses a very good human rights record, and is known for its respect for plurality and tolerance for minority religions. Nussbaum herself says that in the Nordic nations "it seems plausible that the established Lutheran Churches actually protect religious pluralism more effectively than would a purely secular regime: they have been staunch defenders of religious pluralism in education, for example, and of other measures favorable to minorities" (Nussbaum, Women 210). However, she says she does not consider the Nordic nations to be endorsing particular comprehensive views, "since ample funding is provided to minority religions, and one may choose whether or not one's tax dollars go to support the dominant church" (Nussbaum 2003). In Denmark, taxpayers must pay an amount of taxes to the Evangelical Lutheran Church of Denmark (Kirk), so it isn't clear whether Nussbaum believes that Denmark, then, is espousing a comprehensive view. Either way, the case could be made that whether or not the taxpayer is required to pay taxes to the state church, in virtue of having an established

church the state is espousing the Church's religious doctrine. If the Church is a staunch defender of religious freedom, and this helps protect religious minorities, it seems that the state is adopting, or at least acting in accordance with, the Church's comprehensive view in at least some fashion.

For the most part, though, it is best for the liberal state to refrain from asserting the truth of any particular full comprehensive view. Nussbaum is correct to say, "Given the specific history of intolerance toward minority religions, in the U.S. it seems wise for the U.S. to support a strong form of nonestablishment..." (Nussbaum, Women 210). The liberal state's main concern should be to protect and respect the human rights and capabilities of its citizens. While in some cases this may best be done by the state advocating some full comprehensive view, in most cases the state should avoid doing so. However, this is not to say that it is best for most liberal states to abstain from making any judgments about non-political moral concerns. The confines of political liberalism are not necessary to show full respect for citizens. The plurality of views in society should always be acknowledged, and no reasonable view should be condemned or dismissed as unreasonable or unpatriotic.

But, it is possible for the state to assert that men and women, and those of different races, are intrinsically morally equal, without disrespecting citizens who hold opposite views, and without saying that illiberal views are unreasonable. In some cases, it may be in the best interest of the state and of society for the government to assert the truth of particular liberal comprehensive conceptions such as these. Sometimes it is useful, if not absolutely necessary, for the state to take a stand and assert the truth of fundamental liberal comprehensive conceptions. In this chapter, I have provided an

argument for why political liberalism is not necessary for the state to show respect for citizens and their ability to reason. Chapter 3 will address why it is not just permissible, but sometimes necessary for the protection of citizen's rights and capabilities, for the state to assert the truth of certain moral ideas.

CHAPTER 3

EDUCATION AND EQUALITY

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

United States of America's Declaration of Independence

Religion plays a fundamental role in how many people come to understand the world and their place in it. For this reason, the protection of religious freedom is an important liberal value. Unfortunately, many religious sects and interpretations of religious teachings encourage the oppression of women, and hinder the protection and growth of women's fundamental human capabilities. Pressuring religious organizations

to change their doctrine to accommodate liberal principles demonstrates a blatant disrespect for religious people and their ability to critically reflect on the nature of the world in their own way. However, to adopt political liberalism in an effort to avoid showing this type of disrespect gives the liberal state an entirely new set of problems.

The political liberal state may not acknowledge that men and women are innately equal, or encourage citizens to adopt such a view. As I discussed in the previous chapter, it seems it is not necessary for the state to adopt political liberalism in order to fully respect its citizens. In this chapter I argue that not only is political liberalism unnecessary, but that it sometimes leaves the state unable to adequately protect and nurture the capabilities of its citizens. In some cases promoting “political equality” may be enough to ensure the protection of women’s rights. However, in other cases, political liberalism leaves the state with a handicap, unable to as effectively protect individual rights as it could under comprehensive liberalism.

There are two points at which political liberalism leaves the state at a severe disadvantage when it attempts to protect human rights and capabilities. The first concerns the state’s limitations in setting curriculum for public education, the second concerns the state’s role as educator and advocate for human rights. Rawls and Nussbaum maintain that comprehensive liberal conceptions may not be taught within the public schools. While public schools may teach that women are “fully equal citizens,” they may not teach that men and women are equal in a moral sense. For many people, public school is the only place in which they are exposed to liberal ideas such as fundamental equality. Without the ability to teach children, or college-age adults,

comprehensive liberal conceptions of justice and equality, the liberal state suffers a severe setback in the effort to discourage sexism and racism in the society.

Political liberalism also places a handicap on the liberal state by removing the state's ability to espouse and promote liberal ideas. The role of the state is not merely to facilitate society's organization as a "fair system of cooperation."⁹ The liberal state also has a role to play as a protector of individual rights, freedoms, and capabilities. I will argue that this role necessitates that the state not only legislate and enforce laws, but also that it serve as an educator and an advocate for the protection of human rights.

Nussbaum supports political liberalism essentially out of concern for showing respect for individuals, and protecting their basic capabilities. I will begin with a discussion of how Nussbaum's political liberalism is intricately tied to her capabilities approach. Then, I will suggest that political liberalism may be a detriment to the protecting and nurturing of individual capabilities, rather than a benefit.

Political Liberalism and the Capabilities Approach

Nussbaum's concern for respect, and support for political liberalism, stems from her capabilities approach. The capabilities approach is presented as a "moral core of a specifically political conception," providing the groundwork for a political conception of justice and human rights, without relying on any particular comprehensive view. As discussed in Chapter 1, the capabilities approach states that individuals' capabilities to perform certain functions essential to leading a good, distinctly human, life should be fostered and protected. The approach contends that it is the state's responsibility to

provide the resources necessary for these capabilities to be developed and sustained. However, Nussbaum makes no assumptions about what comprehensive view may support this concern for capabilities. Rather, she says there is a universal acknowledgement that there are functions essential to leading a good life, and that there is something tragic in a life that does not realize certain essential capabilities. “When a human being is given a life that blights powers of human action and expression, that does give us a sense of waste and tragedy.... This sense of tragedy crosses cultural boundaries; it does not depend upon any particular metaphysical view of human nature” (Nussbaum, Women 83). In the same way, she says that certain capabilities can be recognized as essential, and that, in fact, it is possible to construct a list of capabilities that all people can accept, regardless of their comprehensive views. In this way, the capabilities approach stays within the confines of political liberalism.

In addition, she says political liberalism ensures the protection of capabilities, especially the capabilities involved in the belief in and practice of a religion. The capabilities approach stresses the protection of capabilities, rather than functions, because this leave individuals a choice as to whether they will perform a particular function. Nussbaum says an approach that stresses functions, rather than capabilities, does not show proper respect for a person’s ability to choose how she will live her life. “When we tell people that they cannot define the ultimate meaning of life in their own way – even if we are sure we are right, and that their way is not a very good way – we do not show full respect for them as persons” (Nussbaum, Women 180). Political liberalism is preferable to comprehensive liberalism, she says, because the political liberal state does not

⁹ One of Rawls’ basic claims is that society should be a “fair system of cooperation.” See John Rawls’ A Theory of Justice (Cambridge, Mass.: Harvard University Press, 1999), and Political Liberalism.

proclaim the truth of a comprehensive view. She believes that a state that asserts a particular comprehensive conception will, in effect, tell citizens that their view is not the true view, if they do not accept the state's conception. She characterizes the comprehensive liberal politician as saying to the illiberal, "You hold a sexist doctrine, and that doctrine itself is un-American. We hold, as Americans, that it is self-evident and a deep metaphysical fact that men and women are equal and that this equality follows them wherever they are" (Nussbaum, Political 26). The comprehensive liberal will not restrict the speech or rights of those who do not accept the state's conception of equality, but will label views that do not coincide with the state's as "unreasonable" (Nussbaum, Political 26).

On the other hand, Nussbaum characterizes the political liberal as saying that the illiberal view may be "reasonable." "If... you agree to affirm and respect all these basic rights that follow from the basic structure of political conception, we will treat your comprehensive metaphysical doctrine with respect, and we will never say that it is a second-class or unreasonable doctrine" (Nussbaum, Political 27). However, because the illiberal agreed to live by the terms set by the political liberal government, it will be demanded that the illiberal follow the laws of the state, and stop any policies that oppose anti-discrimination and sexual harassment laws. While the comprehensive liberal state makes claims about the truth and reasonableness of different religious, philosophical and moral conceptions, the political liberal state simply abstains from judgment. By doing so, Nussbaum says the political liberal state shows respect for all citizens, not simply those who agree with the state's comprehensive conception.

As discussed in Chapter 2, it seems that it is possible for a liberal state to show full respect for citizens and not go as far as political liberalism. Certainly the state that espouses some comprehensive liberal conception is, in a way, claiming that opposite conceptions are false. However, that does not mean that the state labels those opposite conceptions “unreasonable,” or that the state is necessarily showing disrespect for those citizens who hold those views. Nussbaum is concerned that a comprehensive liberal state tells citizens “they cannot define the ultimate meaning of life in their own way,” and therefore brings harm to individual capabilities. It doesn’t follow that simply because the state proclaims the truth of a certain partial comprehensive conception such as the moral equality of men and women, that the state then is telling citizens that they can’t hold views to the contrary.

Public Education

In addition to being unnecessary, it seems that political liberalism gives a handicap to the liberal state, making it less able to protect individual capabilities. An example of how political liberalism gives the state this handicap concerns children’s education. As the *Wisconsin v. Yoder* example shows, compulsory formal education is an important way for children to develop autonomy and independent thinking. Amish parents were opposed to sending their teenage children to compulsory education at an institution that meets state guidelines for education, because they realized that if their children are exposed to secular education and thought, they will be more likely to leave the Amish community. Political scientist Ian Shapiro says, “The Amish educational

system is designed to prepare children for life in the Amish community, not the outside world. To this end, the Amish try to shield children from the secular world, and they actively discourage critical questioning of Amish values and beliefs” (Shapiro, 141). As the Amish parents recognized, the teenage years are critical. It is a time when individuals are more likely to explore, and even adopt, ideas that are different from those held by their parents. Amish children are probably more likely to question the patriarchal and sexist assumptions that may be held in the Amish community, if they are exposed to liberal ideas of equality in the high school classroom.

Children who are raised in households that espouse racist, sexist, or otherwise illiberal views may find school to be the only place where these views are challenged. Public schools in the U.S. make the teaching of liberal conceptions such as equality part of the curriculum. In many public schools, racism and sexism are not only discouraged, but children are taught that these ways of thinking are “wrong.”¹⁰ The public schools are a powerful tool for the liberal state to promote liberal values, and discourage ways of thinking that may be detrimental to the promotion of human rights and freedoms.

However, both Nussbaum and Rawls argue that it is not permissible for comprehensive liberal conceptions such as moral equality be taught in public schools. Rawls says children may only be taught “knowledge of their constitutional and civic rights” to “prepare them to be fully cooperating members of society and enable them to be self-supporting” (Rawls, 199). The public school curriculum should not contain “requirements designed to foster the values of autonomy and individuality as ideals to

¹⁰ As an example, Gary Burton, superintendent of Wayland Public Schools in Maryland writes, “The involuntary segregation of students, racial slurs and the elimination of passive acts of racism are being systematically eliminated from our public schools. Political correctness aside, racism is wrong and many

govern much if not all of life” (Rawls, 199). He says it may be the case that students will choose to explore comprehensive liberal views on their own, inspired by their political liberal education. However, he says this affect is unintentional, and views it with “regret” (Rawls, 200).

Nussbaum agrees with Rawls, saying the state-funded schools may not teach any comprehensive liberal conceptions. They must stick to “a bare minimum,” and teach students “the rudiments of civic affairs and of the existing constitutional order.” They may only teach that women “under the public constitutional order, are fully equal with equal rights and responsibilities” (Nussbaum, Women 232). The state-funded school may not teach that men and women are innate moral equals, because this teaching may conflict with illiberal comprehensive views.

As described earlier, Nussbaum believes political liberalism is necessary in order for citizens to be respected, and their capabilities to be protected and nurtured. She believes the state should not espouse a comprehensive conception, or sponsor the teaching of comprehensive conceptions that may conflict with someone’s religious or philosophical views. The comprehensive liberal state, she says, places restrictions on what people can believe, and disrespects the views that citizens hold. This harms individual capabilities, such as the individual’s fundamental capability to form ideas about the world and their place in it.

This harm to the capabilities, however, need not occur as a result of the state espousing a comprehensive liberal view. Further, it seems that political liberalism may bring about greater harm to citizens’ capabilities than Nussbaum believes it prevents.

educators now actively teach children to expose the culture of racism wherever it is found.” See http://www.aasa.org/publications/sa/1999_01/col_Burton.htm

Protecting individual human rights, or capabilities, involves more than simply enforcing laws. In order for women and minorities to truly be treated equally, and have equal opportunities, it is important that the state have resources to adequately support liberal ideas. Certainly, it is not the place of the liberal state to dictate to individuals what they should believe, or demand that they change their religious or philosophical beliefs. It is the responsibility of the liberal state to protect individual rights to freedom of speech, expression, and thought, regardless of whether the views citizens hold coincide with the liberal ideas.¹¹ However, these responsibilities need not entail that the state cannot promote liberal ideas such as moral equality within the public schools.

Through education, children in the U.S. are exposed to liberal conceptions of moral equality. They are taught that those of different races, and women and men, possess equal moral worth. Blacks and whites, men and women, are worthy of respect not simply because they are granted equal rights under law, but because they are equally *human*. It is in the best interest of the liberal state, as well as in the best interest of citizens, for children to be taught basic liberal ideas such as these. For those children who are not taught liberal conceptions of equality in the home, public school may offer them the only opportunity they will have during their childhood to be exposed to coherent, informed arguments against sexist and racist ideas. By placing the political liberal limitations on state-sponsored education, the liberal state may lose one of its only opportunities to promote liberal values.

Rawls may be correct in his concern that some students may explore comprehensive liberal views after receiving a political liberal education. However, it

¹¹ There are some instances, such as when there is a serious risk to public safety, where restriction of freedom of speech is justified. For instance, as I mentioned last chapter, the state may be justified in

seems likely that many will continue to hold the illiberal conceptions held by their parents, if they are not exposed to comprehensive liberal thought. The political liberal education will tie the hands of the liberal state, making it even more difficult for the state to protect the capabilities of women and minorities that are threatened by sexism and racism in society. Further, political liberalism prevents the cultivation of capabilities by denying students exposure to liberal comprehensive ideas. Without this exposure, it seems students will be less likely to develop their own views, challenge the ideas of their parents, and achieve greater autonomy. Their capabilities to form their own ideas about their place in the world and the nature of their lives will be stunted by the restrictions political liberalism places on the state and its educators.

It is permissible for certain non-political liberal conceptions to be taught in public schools because teaching the truth of liberal values such as equality is essential to maintaining the liberal political system. However, it is not permissible to teach the truth of a particular religion or a certain full comprehensive philosophical doctrine in public schools, because it may harm certain capabilities, and it is unnecessary to the maintenance of a liberal democratic society. Advancement of fundamental liberal values such as equality is necessary for the capabilities of all citizens to be protected and promoted. Without the ability to forward these values, the state is left with a severe handicap, able to protect legal rights, but unable to guard or promote equality outside of the political realm.

The State as Educator

stopping the Ku Klux Klan from holding a cross-burning rally that may incite violence.

In an article written in 1996, before she was committed to political liberalism, Nussbaum suggested that the state should encourage religious free speech that falls in line with liberal ideas such as women's equality.

It is... a legitimate function of the liberal state to encourage the liberal elements in the religious traditions.... By giving prominence to the type of religious speech that accords with constitutional fundamentals and to its speakers, a state legitimately strengthens the political consensus around these fundamentals and dramatizes to citizens the fact that religious argument in the major traditions can support them (Nussbaum, Sex 116).

Now, as a political liberal, Nussbaum believes that the state cannot support or encourage one particular comprehensive view over another. The state cannot even espouse partial comprehensive liberal ideas. Not only does political liberalism severely, and unnecessarily, restrict the liberal state by limiting what can be taught in public schools, it also restricts the state in a more general way, by prohibiting it from making any non-political liberal assertions.

The role of the state is not simply to make, enforce and interpret laws. The state is also a source of education and guidance. Politicians are not simply lawmakers, they are advocates and leaders. Citizens do not simply look to the state to help them make and fulfill contracts; citizens look to the state to tell them what their country stands for, and to express their nation's moral and social ideology.

Within the U.S., the Declaration of Independence is often seen as a representation of American ideology. Although it is not an official legal document, it is a document of the American state. It declares that we Americans "hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Whether or not the signers of the Declaration intended "men" to include women, or non-

white men, doesn't really matter. Today, the Declaration represents the state's view that all people are moral equals, entitled to life, liberty and the pursuit of happiness.

Abraham Lincoln, in his speech on the Dred Scott decision, contests the idea that the Declaration was merely a statement about the equality of British citizens living in Great Britain, and British-Americans living in the colonies. Rather, he says it was meant to be an assertion of the equality of all men.

I think the authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal—equal in “certain inalienable rights, among which are life, liberty, and the pursuit of happiness.” This they said, and this they meant.¹²

Lincoln doesn't mention whether he believes the term “men” was meant to include women, but he does assert his belief that women are moral equals. In the same speech, he says of a black woman, “In some respects she certainly is not my equal; but in her natural right to eat the bread she earns with her own hands without asking leave of any one else, she is my equal, and the equal of all others.”

These assertions made in the Declaration, and by politicians like Lincoln, we take to be representative of the views held by the U.S. state. In a speech made in honor of Thomas Jefferson's birthday, President Bush said, “Jefferson holds the American imagination because he articulated the American creed. We declared our independence with his words, that all men are created equal and that they are endowed by their creator with unalienable rights. Jefferson is the poet laureate of American freedom.”¹³ The U.S. government asserts all people are innate moral equals, this is the American “creed.”

¹² Abraham Lincoln, “Speech on the Dred Scott Decision,” June 26, 1857.

¹³ George W. Bush, “Remarks by the President During Event in Honor of Thomas Jefferson's Birthday,” Washington, D.C., April 12, 2001.

American women used it as justification for demanding women's suffrage, people throughout the world have used it as a model for their own declarations of independence and constitutions.

Nussbaum argues that the state should not make moral declarations such as these. She says the state cannot say, "even without reference to God, that all human beings are really metaphysically equal, or created equal. It must simply say, they are equal as citizens and have equal entitlements within the political conception" (Nussbaum, Political 19). However, by placing this restriction on the liberal state, political liberalism prevents the state from fulfilling its role as educator and advocate for equality and human rights.

The Declaration and the American "creed" of innate equality arguably provided significant assistance to the campaign for women's suffrage. Advocates for women's suffrage, inspired by the Declaration in the 1850s wrote, "We hold these truths to be self-evident, that all men and women are created equal."¹⁴ The comprehensive liberal claim of innate moral equality was already an established part of the American state, and appeal to this claim made women's proclamation of equality of the sexes more powerful and more convincing. The "creed" also aided Lincoln in his assertion of the moral equality of the races. Speaking as the head of state, Lincoln showed support for a particular liberal comprehensive view, while appealing to a previous liberal assertion made by the American state. Perhaps if the idea of being "born equal" was not already a familiar part of American ideology, emancipation would not have gained the support that it had.

In order to discourage sexism and racism, and to advocate equality and equal opportunity, the state must be able to make assertions beyond the obvious acknowledgement that women are equal to men as citizens, and that all races are entitled

to the same legal rights. Stating that citizens are legally equal proves to be an unconvincing and weak defense against illiberal views and practices. In order to protect the capabilities of women, the state must be able to encourage society to abandon sexist and patriarchal ideas that limit freedom and autonomy. This ability is essential the liberal project of protecting and promoting the basic human rights and fundamental capabilities of all people. Saying that women “under the public constitutional order, are fully equal with equal rights and responsibilities” does precious little to dispel the views that encourage women’s oppression, and restrict women’s realization of their capabilities. The state must be able to assert that not only are women *legally* equal to men, they are also *morally* equal. They deserve not only equal treatment under the law, but also equal treatment in the home, in the neighborhood, in the school, and in the workplace. They deserve this equal treatment not simply because the it is the law, but also because it is what they deserve as human beings.

It is the role of the liberal state to educate about and advocate for liberal conceptions of equality, rights, and justice. As Nussbaum correctly stated in her 1996 article, the state can, and should, support positions that acknowledge the equal moral worth and dignity of all human beings. Doing so does not show disrespect to those who hold illiberal views, so long as the state is careful to protect the rights of these citizens, and refrains from labeling their views “unreasonable” or “unpatriotic.” It does give strength to those groups that hold liberal views of equality. These groups may be facing an uphill battle, fighting against traditional sexist and racist assumptions that have existed in the culture for many years. If women, and racial minorities, are ever to experience true justice and equal treatment, their voices must be heard over the din of traditional illiberal

¹⁴ See Sara M. Evans, Born for Liberty (New York: Free Press Paperbacks, 1997), 95.

views. It is the state's role, as a protector of the capabilities of all citizens, to ensure that these liberal groups have the strength to combat illiberal ideas that threaten their very ability to express their views. Political liberal laws can only go so far. The basic liberal assumptions of moral equality embraced by the ideology of the state give emotional and ideological strength to the demands for freedom and equal treatment made by oppressed groups.

In an effort to protect the capabilities of all citizens, Nussbaum claims that the state should refrain from espousing any comprehensive views that may contradict views held by some citizens. I have argued that political liberalism harms the capabilities of citizens, especially women and racial minorities, more than it helps. Certainly, the state should not assume that all citizens hold the same comprehensive conceptions, nor should it claim that all non-liberal views are unreasonable or unpatriotic. But it is not necessary for the state to abstain from all judgment, in order to show proper respect for all citizens. Rather, the capabilities of citizens are better protected if the state is able to take a stand and assert the truth of certain partial comprehensive conceptions, such as the moral equality of all human beings. Only by holding truths like these to be self-evident, can the state provide an adequate foundation for the oppressed to demand equal treatment not only under the law, but in the family, and in society.

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CURRICULUM VITAE

Office Address

Philosophy
Virginia Polytechnic Institute & State University
Blacksburg, VA 24061
Internet: csewell@vt.edu

Education

2000 B.A. Philosophy and History, University of Missouri-Columbia
2003 M.A. Philosophy, Virginia Polytechnic Institute and State University

Professional Experience

- Instructor, Philosophy, Virginia Tech 2003-
- Teaching Assistant, Virginia Tech 2001-2003
- “Sympathy, Altruism, and Obligation: Arguing Against Feminist Support of Hume’s Moral Theory,” Presentation, University of Kentucky Graduate Conference, *Becoming the Other: Exploring Empathy*, 2003.
- “Donald Davidson and Self-Knowledge,” Presentation, Truman State University Undergraduate Philosophy and Religion Conference, 1998.