



Religion and Clothing: the Capabilities Approach Considered

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ABSTRACT

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

1. DEFENDING THE CAPABILITIES APPROACH.

Proponents of the capabilities approach present it as a philosophical method for answering political questions related to issues of quality of life. Its motivation is the observed failure of applying more 'traditional' ideas in political philosophy when measuring quality of life and proposing international reforms for improving quality of life where improvement is needed. In particular, other approaches such as approaches based on preference satisfaction, or welfare, fail to give a clear account of the fact that women, worldwide, have a poorer quality of life than men, and fail to propose successful means of improving women's lives.

In order to defend the capabilities approach, we can do either of two things. First, we can attempt to vindicate it by arguing that it succeeds where other approaches fail, not just in practice, as this could be due to the fact that proponents of the other approaches do not put forward the best versions of those philosophical theories when they apply them, but also in principle. This would mean arguing that other philosophical theories, in their strongest possible form, cannot give adequate solution to problems relating to measuring and improving quality of life at an international level. It would also mean replying to objections to the effect that the capabilities approach is not viable, in particular because it makes certain Aristotelian claims about human nature. This -book-length - project is not the focus of this article.¹

The second way in which one might attempt to defend the capabilities approach is to take a partisan stand, assume that it is at least as good as other approaches in principle, and show that in practice it can offer interesting solutions to apparently surd problems in international justice. This kind of defence, which is the one pursued here, has a double advantage. From the point of view of those who are not already convinced by the capabilities approach, it shows that it is at least interesting in that it produces satisfactory answers to difficult questions. From the point of view of the proponents of the approach, it adds another potential success to its portfolio.

What we need, then, is a political dilemma which is deep and for which no satisfactory solution has been offered, or is obviously available. The conflict between the demands of secularism and religious rights, culminating in a dispute over whether women should be allowed to wear the headscarf in the Turkish Republic is such a dilemma. I will begin by exposing the dilemma and showing why there is no obvious solution available. I will then argue that the capability approach can offer a satisfactory solution by considering how capabilities are most enhanced. Lastly, I will reply to two objections to my argument. The

¹ For two opposite points of view on this see Sabina Alkire, "Why the Capability Approach" *Journal of Human Development* 6,1:115-133, 2005 and Thomas Pogge "Can the Capability Approach be Justified?" *Philosophical Topics* 30.2: 167-228, 2002. Alkire argues that the capability approach can be justified independently of its practical applications, as a theory of human development, whereas Pogge has argued that a good Rawlsian theory of social justice could achieve more than the capabilities approach as far as measuring and promoting social justice is concerned. According to him, in order to do justice to the capabilities approach, it is better to see it as part of a Rawlsian approach.

first is an objection to the very idea that we should apply the capability approach to the headscarf issue, as this would constitute an act of unacceptable paternalism. The second claims that one fairly well known approach in political philosophy - Rawls's - can offer a solution to the headscarf dilemma and that there is thus no need to appeal to the capabilities approach in the first place. I will refute both these objections.

2. VEILING AND SECULARISM IN TURKEY: A DILEMMA.²

i. The controversy.

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

The impact of this debate and legislation on women's lives is clearly both huge and complex. On the one hand, some women may feel the legislation protects them from becoming victims to more extreme forms of Islam, while for other women, what is under threat is their right to express their religious beliefs and to educate themselves and work in such a way that does not contradict their convictions.³

From the point of view of an international interest in the protection of human rights the Turkish headscarf problem presents an interesting dilemma: should one support Turkish secularism or condemn its excesses? In this paper I want to show that this is a highly complex problem which cannot be resolved by appealing to traditional approaches in

² Since this paper was first written, a law has been passed in France stating that headscarves should be banned in schools, and other public buildings. To those familiar with French secularism and the current battle between the government and supporters of the headscarf, it will be clear that the issues are significantly different from the ones I have discussed here. In particular, as France is not a Muslim country, the fear that the general status of women will be at risk if some women are allowed to cover their heads is somewhat less impressive. The issues arising from the wearing of headscarves in a multicultural society are very different from the ones arising in a mostly uniformly Muslim society such as Turkey. For an interesting discussion of the headscarf issue in non Muslim countries see C. Laborde "Secular Philosophy and Muslim Headscarves in Schools", *Journal of Political Philosophy*, 13,3: 305-329, 2005, and O. Verhaar and S. Saharso "The Weight of Context: Headscarves in Holland", *Ethical Theory and Moral Practice*, 7: 179-195, 2005.

³ One may argue that the problem disappears if we distinguish clearly between practice and public expression of religion. For instance one might say that women should be encouraged to wear a headscarf in the mosque but not in secular settings. Unfortunately this would fail to solve the problem. For one thing, Islam, like many religions, can be perceived not as something which can only be practiced at specific times of the day, but influences one's entire way of life. Secondly, muslim women do not usually pray in mosques which are predominantly frequented by men.

political theory, but that on new approach, from human capabilities, fares better. In the remainder of this section I will give a brief overview of the headscarf problem. In the next section I will show why traditional answers, such as liberalism, won't work, and in the last section I will give details of a possible solution to the problem based on Sen and Nussbaum's capabilities approach.

As is the case with many religious practices, there is not one unified veiling practice in Turkey. Wearing a headscarf means different things to different women, it is clearly not just a religious issue, but it is part of a highly complex debate with social, political, cultural, and personal dimensions. It will not be possible therefore, to give a comprehensive explanation of why some Turkish women wear a headscarf. Instead, I will focus on two observable strands of the headscarf movement which are different enough from one another for it to be clear that a solution to the 'headscarf problem' will not be simple to find.

ii. First aspect : 'Woman and Family'.

Although many headscarf wearers have their own reasons for choosing to dress in this way and cannot be 'recuperated' by any particular movement, there is nonetheless one general movement in Turkey at present which accounts for at least some women's choice. I shall refer to this as the Islamic revival headscarf movement.⁴ This movement is represented in the media by a magazine entitled 'Kadin ve Aile' - Woman and Family, which describes its idea of the good woman as devoted to her husband and home, religious, and hidden from other men⁵

The magazine's purpose is to protect this ideal woman by denouncing the vices and dangers that surround her.⁶

⁴ See Özgald, E. (1998) *The Veiling Issue, Official Secularism and Popular Islam in Modern Turkey*, (Richmond, Curzon Press), and Göle, N. (1996) *The Forbidden Modern: Civilization and Veiling*, (Ann Arbor, University of Michigan Press). Both argue against the view that there is a unique or unified headscarf movement in Turkey.

⁵ 'she is completely devoted to her husband, she does not show herself to strange men, does not look at them. She does not go out without her husband's permission, and does not receive any male and female guests at home [...] You are, in our eyes, hajji mothers and aunts with white, pinked prayer scarves, rosaries in your hands, prayers on your lips; or else serious, merciful, self-sacrificing housewives, loyal to your husbands and homes; or else pretty, clean, twittering, talented little sisters' *Kadin ve Aile*. Translated excerpts from *Kadin ve Aile* are from the following articles: Gül, S.S. and Gül, H. (2000) "The question of women in Islamic revivalism in Turkey: a review of the Islamic press", *Current Sociology*, 48:2, 1-26; Arat, Y. (1995) "Feminism and Islam: Consideration on the journal *Kadin ve Aile*" and Acar, F. (1995) "Women and Islam in Turkey", both in Tekeli, S. (ed.) *Women in Modern Turkish Society*, (London New Jersey, Zed Books).

⁶ 'We shall be against those who look at you with evil eyes. In the press, there are those with bad intentions who try to alienate the housewife from her nest, her relatives, her principal duties; pull her into the world of fashion, sensuality, pleasure, vulgarity, pornography, alcohol, gambling, flirting and deviant relationships... They try to destroy the family that is the foundation of society and sunder ties between individuals'.

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

If we take our cue from *Kadin ve Aile*, it seems that some Islamic revival headscarves wearers believe that men and women have a different nature - at the very minimum, in that they believe it is naturally better for women that they should 'hide their beauty', and in more radical views, that women are nurturing, natural creatures, while men are social and moral, and that women's only contribution to the social and moral order is to bring up children in the Muslim way, to make a home for them and her husband, and to keep out of men's way so they are not tempted to act immorally.⁷

This is clearly threatening to any woman who does not regard herself as having a nature different from that of men and who wants to live her life without being hampered by considerations of a special feminine nature. Were the number of the readers of *Kadin ve Aile* and general followers of the ideology they defend grow significantly, it seems that many Turkish women would find themselves under pressure to veil themselves and change their life style drastically. Hence we might have some sympathy for the claim that the movement should be contained and somehow kept out of public life.

One defence of the headscarf ban is that it purports to protect secularism and the equality of women, and one way in which it may be understood to do so is by fighting the rise of a movement which may eventually be strong enough to overturn the existing constitution - some headscarf wearers are - paradoxically maybe - politically involved, they consider themselves to be the defenders of Islam. Given the presence of fundamentalist Islamic powers in the world today and the threat they represent to women's rights, Turkey's worry is understandable.⁸ However, the 'kadin ve aile' strand of the headscarf movement is not the only one, and there are headscarf wearers in Turkey who neither legitimise, nor deserve, such strong measures.

iii. Second aspect: the university student.

The second aspect of the headscarf movement I want to consider is the growth in recent year of university students who choose to veil. These women tend not to come from 'traditional' families. Indeed, many of them are breaking the Turkish secularist tradition by putting on a headscarf. Nor are they reverting to an even older traditional understanding of religion.

⁷ See Arat (1995) and Acar (1995) for an exposition of the view that the form of Islam represented in *Kadin ve Aile* depends on such a view of male and female nature.

⁸ One may fear, in particular, that the situation would develop in such a way that Turkish women would be forced to veil, as they are in some muslim countries and were in Afganistan.

Many of them are challenging previous readings of the Koran and putting forward interpretations which emphasise gender equality at home and in the public domain.⁹ Given the Turkish ban on wearing headscarves in schools, universities and government or law buildings, these women are typically discriminated against. Students lose weeks of study because they are caught on campus with a veil, several are simply not able to enter university either because they can not afford private tuition and the rules in state universities are much stricter, or because they systematically lose points on the university entrance exam for having attended a Koran school. Thus, many educated women are regularly made to choose between their education and their deeply held religious beliefs.

In the above, I have tried to present two very different aspects of the 'headscarf movement' in Turkey, in order to illustrate the depths and complexities of this movement. There are, of course, more aspects which I have not discussed, such as the 'political' headscarf wearers, the extremist movement, and those villagers who seem to wear headscarves simply because that's how women in their village have always dressed.¹⁰

iv. Easy answers that don't work.

A reader who is not acquainted with the headscarf problem in Turkey will no doubt be struck by the following consideration. No matter what the complexities of the issue are, surely, the problem can be solved by appealing to basic principles of liberty: let people wear what they will! The thought behind this view is that dress, when it does not interfere physically with bodily health, should not be the object of moral scrutiny, let alone legislation. For example, whereas most of us believe that it was right to ban the Chinese practice of bandaging little girl's feet in order to stunt their growth, we are not on the whole sympathetic to the imposition of the 'Mao suit' on men and women in the Chinese Republic. The first reform is clearly for the best as it stops the systematic deformation of women's bodies and the handicaps that necessarily follow. The second looks merely like a curtailment of individual expression through dress, and an intrusion of the state on one of the most basic aspect of human life.

This argument bears some resemblance to the liberal argument for freedom of speech. Whereas there is a right to say what one wants to say nonetheless legislation applies to speech in some cases, such as Mill's example of shouting 'fire' in a crowded theatre. There is also a distinction to be made between what we can morally disapprove of, and what we can

⁹ See Elizabeth Ozdalga and Nilufer Gole for in depth studies of the veiled student phenomenon, including several detailed interviews. Dounia Bouzar argues that a similar challenge to traditional understanding of Islam from young women who choose to veil is taking place in France. See *Le Monde* 25/04/03.

¹⁰ For more thorough discussions of the many layers of the headscarf movement, see Ozdalga and Gole Also for a more general discussion of history and cultural significance of the headscarf see El Gundi, F. (1999) *Veil: Modesty, Privacy and Resistance*, (Oxford, Berg Press).

forbid by law. For example, whereas there is a good case to be made for despising Nazi sympathisers, one cannot (unfortunately) justify jailing them simply because of the speeches they make - unless they do it in the work place in such a manner that they mistreat their colleagues. The issues involved in legislating freedom of speech are complex and far from clear cut. They involve considerations of harm done, and the harm need not be of a physical nature.

If the issue of freedom of speech is a complex one, why should we expect the issue of freedom of dress to be any more straightforward? Several considerations would lead us to water down the 'let them wear what they like' attitude. Considerations of security for example: in a part of the world in which many countries are under Islamic rule, a secular country might legitimately worry that the headscarf would introduce more severe threats to democracy in general and women's condition in particular.¹¹

There are considerations to do with women's rights: if a certain piece of clothing 'brands' women, marks them as inferior to men in any way, then it is legitimate to try and prevent its use from spreading. But what if women do want to be branded in this way? What if they do believe that they are not equal (although not necessarily inferior) to men? This objection is a serious one, and I will come back to it in more details in section 3.iii. For the time being I will simply appeal to Sen's claim that preferences are highly malleable, i.e. that the mere fact that a person states that they are happy with their lot does not constitute evidence for their lot being a good enough one.¹² Cultural conditioning, 'false consciousness', may in some cases (but of course not all) be a sufficient reason for some women believing in their unequal status and the appropriateness of veiling themselves. When it is, it would seem that we have strong reasons not only to try and persuade them otherwise, but to attack the framework which leads them to think in that way.

One last consideration against the 'let them wear what they like' approach is that a large part of the headscarf controversy concerns children - whether girls should be allowed to wear a headscarf in school. It is clear that the 'let them wear what they like' approach does not apply here, as parents typically decide what their children should wear, and this decision has a somewhat greater moral impact than simply deciding what one is going to wear oneself. For all these reasons, it seems that we cannot answer the Turkish dilemma simply by saying that dress should not be legislated against.

A second attempt at giving a simple solution to the problem is to appeal to secular humanism. Religious values are seen as negligible compared to the other values at stake, women's equality of status and rights. If the sensibilities of a few traditionalists are hurt by the legislation, then so be it, for after all it is these same traditionalists who have oppressed

¹¹ We may even be persuaded by considerations less powerful than of security. For instance naturists are asked not to go naked outside of designated areas, simply because if they were to do so, it would make a number of people feel uncomfortable.

¹² Sen, A. (1985) *Commodities and Capabilities*, (Amsterdam, North Holland Press).

women in the past.¹³ The problem with this view is simply that it ignores the fact that for women's rights to be fully respected, they must have the right to choose for themselves what they believe, and how to express that belief. Simply to tell them that they are not allowed to act according to the belief that god wants them to cover their head is not the best way to achieve this!¹⁴ The secular humanist view may in some respects fail to grasp the fact that not all women are forced by others to wear a headscarf.¹⁵ If some women have deeply held beliefs about the good life and headscarves, it seems wrong that their capacity to choose the best life they can for themselves should be sacrificed on pragmatic grounds in order to protect the capacity of other women to choose also for themselves.

3. SOLVING THE DILEMMA: THE CAPABILITIES APPROACH.

i. Capabilities, religion and international justice.

The capabilities approach, pioneered by Amartya Sen, and defended by Martha Nussbaum addresses a practical problem in international politics: how to measure quality of life in a nation with a view to influencing public policy? Sen and Nussbaum argue that the two known and tested alternative methods for measuring quality of life - GNP per capita and preference satisfaction - did not yield an adequate result. Wealth in itself is not a measure of quality of life, but only in so far as it contributes to human functioning. GNP per capita measures the funds available per person should they be in a position to access them and use them in a manner that will improve their lives. This is not always the case, however, as illustrated by Martha Chen's case study of a Pakistani widow who was a landowner but whose family did not allow her to leave the house to work that land or earn the money she needed to feed herself and her family.¹⁶

One might hope to solve this deficiency of the GNP per capita approach by asking whether the subjects of a quality of life study have the kind of life which they think they ought to have. The problem with the Pakistani widow, one might say, is that she thinks she ought to be allowed to earn a living for herself and her children, but is prevented from doing so. So what is relevant to quality of life assessment is preference satisfaction. The problem with this approach is that preferences are malleable.¹⁷ It would not be unheard of, for example, if

¹³ For a statement of this argument, see Okin, S.M. (1999) *Is Multiculturalism Bad for Women?* (Princeton, Princeton University Press).

¹⁴ See Nussbaum, M. (2000) *Women and Human Development* (Cambridge, Cambridge University Press) pp. 186, 188.

¹⁵ This is not, of course, what Susan Moller Okin believes.

¹⁶ See Chen, M. (1995) "Women's Right to Employment in India and Bangladesh" in Nussbaum, M. and Glover, J. (ed.) *Women, Culture and Development* (Oxford, Clarendon Press) .

¹⁷ Preference based approaches such as Richard Brandt's (Brandt, R. (1979) *A Theory of the Good and the Right* (Oxford, Oxford University Press)) tend to focus on 'rational' preferences, i.e. preferences one would have if one had considered all relevant information. It is likely that this type of

someone in a similar position to Martha Chen's widow in fact shared her family's view about whether it was suitable for her to work outside the house - especially if that person had only herself, and no children to think of. But this would not make it the case that her life was any better for it. A person who is used to poor health and habitually undernourished may simply not know what it is to be healthy and well fed. Because of this, they are unlikely to regard themselves as disadvantaged and demand better health care.¹⁸

The capabilities approach aims to avoid these problems by focusing on what the people whose quality of life is being measured are actually able to do and be.¹⁹ This is then compared to a list of human capabilities which is itself based on a universalist account of central human functions, an answer to the question "What are the characteristic activities of the human being? What does the human being do - characteristically, as such - and not, say, as a member of a particular group, or a particular local community?"²⁰ This approach is opposed to relativism and some forms of liberalism as its central claim is that there is a clear picture of the human good which applies across all human communities.

The capabilities approach, pioneered by Sen and defended by Nussbaum has two basic roles. The first is to measure quality of life across the world in a way which avoids the shortcomings of the preference satisfaction and welfare measurement methods. The second is to provide guidance for the implementation of good, internationally binding, constitutional laws.²¹ In practical terms this means that nations for whom something like the capabilities approach is an important constitutional basis should recommend this approach to others, and in some cases command it strongly, using economic and other sanctions.²²

The viability of the capabilities approach as guiding nations towards better constitutions runs against the objection that cultural diversity presents a serious obstacle to any universal approach to improving quality of life. This objection need not appeal to any form of relativism but arises within the capabilities approach itself. Religious capabilities have their roots in several of the central capabilities listed by Nussbaum²³ : senses, imagination and thought, practical reason and formulating one's own conception of the good life, and affiliation, the choice of how and with whom we relate. But central human capabilities are not static - each develops from within, as well as in relation to the others. Religious

approaches would be more successful than the 'actual preferences' approach Sen discusses. A paper which attempted to defend the view that the capabilities approach is better than other approaches would have to address this issue. However, as I stated in my introduction, this is not the aim of this paper.

¹⁸ For a defence of this argument with reference to health care see Sen, A. (1985), *Commodities and Capabilities*, (Amsterdam: North Holland Press).

¹⁹ Nussbaum (2000), p.5.

²⁰ Nussbaum (1995) p.72. For a list of the capabilities see p.83-85.

²¹ This aspect of the approach is defended more by Nussbaum than Sen. See Nussbaum (2000), 115-116.

²² Nussbaum (2000), p.104. This claim is not uncontroversial: it could be argued that economic or other sanctions are themselves highly detrimental to the capabilities of the inhabitants of the countries receiving them.

²³ Nussbaum (2000), p.79-80.

capabilities in particular, have a tendency to rewrite a person's balance of capabilities. Bodily integrity, play, experiencing pleasure and avoiding pain mean something radically different for a catholic or a Buddhist monk as they do for an American college student.

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

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

Two implications can be drawn from the above for the problem of headscarves. First we are concerned with human capabilities and therefore not receptive to the idea that male and female natures differ in a way that will be reflected by the capabilities which they need to develop in order to live a fully human life. Secondly, although the freedom to practice one's religion is part of human capabilities, it should not be developed in such a way that it threatens the development of the whole range of human capabilities. These points will bear on the conclusion I draw in the next section.

The requirement for a common core of capabilities need not represent any threat to diversity. Even if one has a certain capability, one may choose not to function in that way. On the other hand, it matters that one at least has the capabilities we deem human, and that one can choose whether or not to exercise them. Compare, for example a nun who has taken a vow of silence with a child who has not been taught to speak. Neither of these makes use of the function of speech, but only the nun has the capability to speak. But to claim that she has a right not to speak certainly does not imply that anyone has a right to stop a child from learning to speak.

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

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

The capabilities approach gives an objective touchstone for state interests. The question which capabilities are furthered or hindered by religious practices becomes the focus of legislation and protection of religious freedom. The act is not empty as it requires that we give an account of the capabilities of the individuals affected by the religious practice in question, and that it should be clear whether those capabilities are better furthered by legislating against the practice or letting it stand.

ii. Dress and Capabilities.

While we may be prepared to accept that the capabilities approach is the best approach for dealing with issues of religious freedom, it may still be unclear what useful contribution it can make to the headscarf issue. Are there capabilities at stake in dressing, one might ask, and how much do they really matter? Dounia Bouzar, head of the Conseil Français du Culte Musulman reacted to the revival of the headscarf issue in France by calling it a 'warmed up debate' and saying that democrats today had rather more fundamental fights on their hands than 'the degree of coverage of the female body'. (*Le Monde* 28 April 2003) The headscarf, unlike the body veil worn in Iran and Afganistan is a fairly small piece of clothing which covers at most hair and shoulders. It is not, on any account incompatible with wearing the same attractive, fashionable clothes that non headscarf wearers sometimes wear (although many young women believe that together with the head scarf they should wear loose skirts or trousers and knee length jackets). So from this point of view, it is indeed hard to see what the fuss is all about. In this section, I want to show why dressing, even when it does not restrict bodily movement, can have an impact on capabilities.

One might think that women should be able to function fully both in the public and private domain and that they should be able to reflect these functions in their dress as they see them, and as they choose. To interfere with this choice of self-expression is to interfere with personal liberty and identity at a very basic level. In this sense it is morally obnoxious. Yet, there are some good philosophical reasons why equality of status is not independent of dress.

If women have the same fundamental nature as men then their flourishing depends on their being able to function in the same way. But in order for women to develop the same capabilities as men develop, they need to be able to engage in debate about flourishing, and

about how best to achieve it. In particular, they need to be able to discuss which political arrangements will be more conducive to the development of their capabilities. If policies are made in ignorance of what women perceive as their needs, and with reference to what men perceive women as needing instead, then it is unlikely (as history shows) that these policies will encourage and support women's capabilities particularly well.

So in order to promote their own capabilities, women must be able to get out of the house, meet up with other people - men and women- , engage in debate with them on a basis of mutual respect and with confidence that one's words will be listened to, and not too many inhibitions about putting forward one's point of view. A woman who has been confined all her life to home and children is unlikely to find any of this easy. If she has moreover been taught that the most important female virtues are modesty and tenderness, to behave in this manner will seem to her like behaving viciously, and unnaturally.

These considerations are clearly linked with questions of dress: if women are dressed in a manner which suggests that it is not proper for them to be seen by men and publicly, they are unlikely to be able to partake in debate with them and more unlikely still to take part in policy making. So in order to be equally capable of living the good life, men and women must dress a same way that does not signify that they are different in status. Dress should not mark any human beings as fundamentally different from others, and that it should not mark any human being as being unsuited to live the good life as it is understood by the others. So without claiming that we should all dress the same, we can support the view that difference in clothing should not signify difference in status.

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

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

It seems, therefore, that the capabilities approach yields the following twofold answer to the Turkish dilemma. First, there seems to be no reasons, from the point of view of the capabilities approach (in the form of a Religious Freedom Restoration Act) why grown women should not wear a headscarf if they choose to do so. A general ban on the headscarf is not necessary for the protection of the capabilities of Turkish citizens. If this is the case, it is not legitimate to 'burden' a woman's exercise of religion in such a way that she has to choose between it and her education or career. This is not to say that a choice made by an adult woman can not be open to charges of false consciousness. Indeed, as I noted in an earlier section, a case may be made why some women wear a headscarf because they wrongly suppose that their nature is radically different from men's nature. It may even be the case that if a woman feels this way because she has been brought up in such a way that she has not developed the capabilities requisite for reasonable choice, then we should challenge the way of life responsible for her having been brought up in that manner. However, this is clearly not applicable to the Turkish case. A grown woman choosing to wear a headscarf in Turkey today will have had access to secular education and thus, we have no reason to suppose that the choices she makes are unreasonable.²⁴

Secondly, it seems equally clear, from the perspective of the capabilities approach, that the practice of veiling minors is a threat to women's capabilities in general and therefore, that a strong case can be made for the curtailing of this practice even at the cost of 'burdening' the parents' exercise of religion in such a way that they are unable to educate their daughters into their religion as they see fit. The current ban does not even preclude all aspects of religious upbringing but is limited to an interdiction to wear the headscarf in schools. Young women can thus benefit both of secular and religious education, which enables them to make a real choice later.

iii. Two challenges: Parekh and Okin

As I stated in the introduction, my aim in this paper is not to defend the capabilities approach against other approaches. However, if some approaches present objections specifically to my proposal for a capabilities approach solution to the headscarf issue, then we need to consider what replies are available. In this subsection I will consider two such objections, one which questions the legitimacy of applying the capabilities approach to the headscarf problem, and one which claims that the capabilities approach is redundant as there is an obvious Rawlsian solution to the problem - hence, that I have not succeeded in showing that the capabilities approach had interesting consequences at all.

The first challenge comes from a form of cultural relativism defended by Bikhu Parekh. He writes that "If some [women] do not share the feminist view, it would be wrong to say that they are victims of a culturally generated false consciousness and in need of liberation by

²⁴ Of course, the situation is very different in the poorer parts of Turkey - notably the east - where girls frequently miss out on education, partly for religious reasons. However, those girls do not grow up to claim the right to wear a headscarf at university or in the parliament. There are not, therefore, part of the relevant sample.

well-meaning outsiders." He goes on to quote as an example young French Muslim women who 'freely opted for the hijab' and refers to their act as "a highly complex autonomous act intended both to remain within the tradition and to challenge it, to accept the cultural inequality and to create a space for equality. To see it merely as a symbol of their subordination, as many French feminists did, is to miss the subtle dialectic of cultural contestation."²⁵ Although he is right to say that the veiling movement in question was more than passive conformity, he too misses the point. The French women he is referring to chose to veil as adults, but his argument seems to apply more generally to all women who live in a way which does not conform with feminist ideals. Whereas it is not right to tell an adult woman who chooses to challenge the way she has been brought up that she is victim of 'false consciousness', surely the same does not apply to a woman whose preferences for such a life have been formed by enforced veiling from an early age.²⁶ In these cases, it seems inappropriate to speak of veiling as a choice at all, let alone a 'highly complex autonomous act'.

Parekh asks us not to interfere with women's choice to conform to their culture's traditions, or with the way in which these traditions are perpetrated. But this perspective simply fails to take into account the moral difference between women who wear headscarves because they have chosen to do so as adults and women who wear it because that is how they were brought up. If in order to protect young women's capabilities, i.e. enable them to develop during their formative years, it is necessary to legislate against a religious practice, then, the capabilities approach should support such legislation. That wearing the headscarf should be the practice singled out makes sense. The headscarf is that which distinguishes religious from non religious girls in schools, and that which marks women as having a different nature from men. The Turkish solution is to forbid the wearing of headscarves in schools: this makes sense as girls from religious families benefit from a religious education at home and a secular one at school thus ensuring that they get the necessary opening on the world and are made aware of a world view according to which their nature is the same as men's.

The capabilities approach, however, because it makes the distinction Bikhu Parekh fails to make, does not support extending the headscarf ban to grown women who wish to participate in public life in one way or another, as the Turkish law does. It does not recognise it as legitimate or necessary to prevent students, lawyers, or politicians from wearing a headscarf if they see fit. It does not use the 'false consciousness' argument to prevent women from acting according to their beliefs. It does not in fact propose interference with religious practices in Turkey except insofar as they affect children directly. Thus from the point of view of the capabilities approach it is possible to disagree with some parts of Parekh's argument while at the same time supporting some of the same conclusions. This is the case

²⁵ Parekh, B. (1999) "A Varied Moral World" in Okin (1999), p.73.

²⁶ We may actually also want to reserve judgment on Parekh's assessment of what went on with the young French women who decided to veil in order to show that 'they were not available for certain kinds of activities' as it has come to light recently that gang rape is quite a common form of 'activity' engaged in especially in city areas where there is a large Muslim population, and that the victims of these 'activities' tend to be girls who dress in a 'feminine' manner and go out freely. See Samira Bellil's *temoignage* (2003) "Dans l'Enfer des Tournantes" (Paris, Editions Denoel).

because the approach can offer a more precise and a more adequate analysis of the issue in terms of capabilities.

A second challenge comes from Susan Moller Okin when she claims that Rawls's veil of ignorance, suitably modified, can be used to propose solutions to gender issues of justice. If she is right, the capabilities approach is redundant. But I will show that her attempt has to be unsuccessful, in the cases she mentions and in the headscarf case, and that in order to make sense of her failure we need the capabilities approach.

Okin argues that from the perspective of the veil of ignorance, no man would choose to perpetuate extreme sexist practices, such as foot-binding, purdah or clitorrectomy just in case he turned out to be a woman in the redistribution.²⁷ Unfortunately, it is not at all likely that the veil of ignorance would lead men (or women) to revise their beliefs in this way. This is due to the fact which Okin notes, that sexist practices are often tied in with a conception of female nature and flourishing and a belief that these are significantly different from male nature and flourishing. For example, the writers of 'Woman and Family' claim that a woman's nature is to be docile, self-sacrificing, and modest. If that were indeed the case, then a life spent at home and hiding from strangers would indeed be more conducive to women's flourishing and proper development than the life of a western professional woman. If, on top of that, one suspects that sexual appetite presents a certain danger to the fulfilment of this quiet, homely nature, then one might conceivably believe, that it is right to act in such a way as to prevent this from happening, even if it means removing part of women's genitals.

Of course, Okin believes that extreme sexist practices are consciously self-serving and hypocritical and she would have little or no time for the suggestion that men sincerely believe that women's nature is different from their own. However, it does seem plausible that in some cases, at least, they do, i.e. cases in which the stated belief that men and women have different natures is not matched by a taking of advantage, cruel or not, in well-off families in which no hard work, and not much sacrifice is expected from women. Also, it is not surprising that men brought up in an environment in which women are treated differently should develop the belief that they are in fact different.

²⁷ Let us think for a moment about what light [the veil of ignorance] might shade on some of the most cruel or most oppressive institutions and practices that historically or currently have been used to 'brand' women - foot binding, clitorrectomy and purdah. As Papanek shows, 'well-socialised' women in cultures with such practices internalise them as necessary to successful female development. [...] Now clearly a theory of human flourishing, such as Nussbaum and Sen have been developing, would have no trouble deligitimising such practices. [...] But behind the veil of ignorance, is it not much more likely that both the oppressors and the oppressed would have second thoughts? What Muslim man is likely to take the chance of spending his life in seclusion and dependency, sweltering in head-to-toe solid black clothing, or being forbidden to earn a living by the rules of purdah? What pre-revolutionary Chinese man would have cast his vote for the breaking of toes and hobbling through life, if he well might be the one with the toes and the crippled life? What man would endorse gross genital mutilation, not knowing whose genitals?

Okin, S.M. "Inequalities between the sexes in different cultural contexts" in Nussbaum 1995.

Whether the claim that women are essentially different from men is always hypocritical or not matters for the following reason. The veil of ignorance works on the presumption that all participants have the same nature. If, instead of including only human beings, it included animals, no one (in their right minds) would come to the conclusion that trout ought to be granted the right to vote on the grounds that in a 'redistribution' one might end up in the trout's place. One might conclude that intensive trout farming should be outlawed, maybe even fishing, but these are considerations drawn from our understanding of trout nature. If I was a trout, I wouldn't want the right to vote, or equal work opportunities, but I would probably want the freedom to swim around in clean water (for example). Similarly, a man who believes that female nature is significantly different from male nature might not wish for himself a man's life if he were to be recast as a woman. He would want for himself whatever he deems necessary for the flourishing of women.

So unless all sexist practices are hypocritical and self-serving (rather than based on ignorance and false beliefs about human nature), it seems that Okin is wrong: the veil of ignorance experiment will not suffice for de-legitimising sexist practices - instead it might well re-enforce them. But in the case of the headscarf wearers in Turkey, the experiment is even less helpful. A person confronted with the question of the headscarf legislation from behind the veil of ignorance might conclude one of two things. He or she might think that if she were a woman, she would not want to run the risk of the headscarf being imposed on her if its influence were to grow unchecked. He or she might think instead that they would not want to be in a position where they had to choose between their education or career and the proper observance of their religion. Thus the dilemma remains intact.

The reason why the Rawlsian experiment does not help here is that it takes it as a starting point that all the subjects of the experiment have the same nature, and hence that considerations of nature will not make a difference to the experiment. However, cultural practices that differentiate between the sexes are practically always (and one might say necessarily so) based on a conception of female nature as different from male nature. It is not wise, therefore, when attempting to de-legitimise them, to ignore the question of nature and flourishing. So again the strong points of the capabilities approach stand out: because the approach draws its claims about which institutions or laws are good ones from a study of human capabilities which is itself linked to a theory of human nature and flourishing, it can argue more effectively against sexist practices by opposing one conception of flourishing to another.²⁸

4. CONCLUSION.

The question whether headscarf wearing should be banned, and of the scope of that ban (whether it should be banned only in schools, or also university and places of government), is both deep and complex. Each side of the debate seems to present compelling arguments, deep conviction and strong evidence for their point of view. Nor are there any obvious principles for ruling on the dispute. Religious tolerance, secular humanism, freedom of

expression through dress all fail to address some aspects of the dilemma. The capabilities approach, on the other hand, by adapting the US 1993 Religious Freedom Restoration Act, and making it into a requirement that we may interfere with religious freedom when and only when it is necessary to do so in order to protect (promote or defend) some capabilities, is able to rule clearly and plausibly on the issue. Its conclusions are that it is right to ban the wearing of headscarves in schools, as such an overt religious sign is liable to prevent the development of young girls' capabilities. On the other hand, the capabilities approach does not clearly support legislation against the wearing of the headscarf by grown women wherever they wish. According to the approach these women's capabilities are sufficiently developed (especially so if they have benefited from a secular education) so that they are able to choose which of their capabilities they exercise and which remain in the background. Moreover, a general ban of the headscarf may harm women's religious capabilities, and more, in cases where they are made to choose between the headscarf and a university education or a public career. Although there may arguments for a more general ban of the headscarf which are independent of the Capability Approach, I have singled out this approach because, unlike a number of other approaches I mentioned, it succeeds in accounting for and accommodating diverse perspectives on the headscarf issue.