

Sara Cabibbo
Introduction to the Seminar

Dear colleagues and guests,
welcome to Rome and to this workshop. As you might know, according to our programme the opening address was to be delivered by the Rector of the University of Roma Tre, Prof. Guido Fabiani, and Mr. Kyriakos Demetriou, a member of the Standing Committee for the Humanities of the European Science Foundation, was also expected to intervene. Unfortunately both of them are unable to be present today. The Rector, who is attending a ceremony for the conferment of *honoris causa* degrees to the European Ministers of University and Scientific Research, has sent us the text he had prepared for this event, and which I will read to you. Mr. Demetriou will join us on Saturday and will speak in the last session.

Let me now briefly introduce you to our workshop. The colleagues who enthusiastically replied to the proposal, submitted by Kari Børresen, Francesca Brezzi and myself to the European Science Foundation, know in detail the text of the project, its objectives, and the results we intended to attain.

It is some time now that the three of us – each within her own area of interest – have adopted a gender perspective in our research, and have engaged, as academics and intellectuals, in encouraging the reflection on issues that, we believe, can further the critical study of a set of current problems: a) women’s socio-cultural autonomy, which on the one hand calls into question a historical process of construction of female identity, and on the other hand asks for analysis on the concept of equality and human rights; b) the influence of religious gender models on the structuring of social policies in the European countries; c) the internal rights of Christian religions and their impact on both the international and domestic legislation of the different countries, and the behaviours of men and women – lay or religious – living in a secular and pluralistic society.

Kar

i Børresen, Francesca Brezzi and I have been led by such common interests to become the convenors of this workshop: Kari Børresen is a Norwegian Catholic theologian, who has since long engaged in providing a gendered interpretation of theological thought; Francesca Brezzi is a philosopher and a scholar of the theory of gender difference; and I am a historian of the modern age interested in the study of gender relations and female religiosity in the Catholic countries between the XVI and XVIII century.¹

In developing the project for the workshop and choosing the keywords for the definition of its contents, we have privileged two requirements: the first was to use the contribution of several disciplines in order to look at the differences and similarities in the religious gender models of the Judeo-Christian tradition from various perspectives, and in order to analyse the complex question of women’s rights in a – past and present – context that is continuously redefining and negotiating their socio-juridical, religious and cultural identities, up to establishing a comparison with human rights. The second requirement was to adopt a broad diachronic perspective in order to emphasize the breaks and continuities in the Judeo-Christian anthropology and the juridical systems, and in order to highlight the role played by social practices and gender representations in the course of the centuries. After having surveyed the recent scientific production on human rights, that often does not take into account the issue of religious identities,² and having looked at the research in the history and philosophy of religions

¹ K. Børresen and I, with Edith Specht, of the Department of Juridical Studies at the University of Wien, have edited the volume *Gender and Religion. European Studies*. Roma: Carocci, 2001. Børresen has also edited the volume *Christian and Islamic Gender Models in Formative Tradition*, forthcoming with Herder (Rome).

² Cfr. *Género y derechos humanos*, eds. Andrés García Inda and Emanuela Lombardo. Zaragoza: Mira

and comparative law, that often overlooks gender difference,³ and after examining the religious gender studies, that are more concerned with multiculturalism and interdisciplinarity than with the diachronic dimension of phenomena,⁴ we had the notion that it could be worthwhile to clarify the impact of religious gender models on the construction of socio-political gender roles in Europe, and on the process of redefinition of human rights.

Thus were conceived the four sections in this conference, to which scholars coming from Finland, France, England, Norway, Spain, Romania, Hungary and Italy are giving their contributions. With them we will move across times and places tackling the issues of our colloquium -- issues that recently seem to have reached the forefront of the European cultural and political agenda, as attested by a renewed attention to the different forms of European Christianity, to the gap between institutions and religious practices, to the civil and religious rights of minorities, and the relationship between civil and religious rights. As it is also attested by the debates that followed the drawing up of the Treaty for the European Constitution, the vicissitudes of the European Parliament in the designation of the Minister of Justice, the vast echo produced on the international press – secular and denominational, Catholic and non Catholic – by the *Letter to the Bishops of the Catholic Church on the Collaboration of Men and Women in the Church and in the World*, signed by Cardinal Ratzinger and divulged in July this year.

I now wish to briefly hint at another essential aspect of our workshop. In submitting the project to the ESF and obtaining its funding, we have also committed ourselves to discuss the dissemination of the results of this meeting: the publication of the proceedings, to begin with, and the planning of one or more meetings that could not only expand our research but also outline a course of advanced European studies (Masters, international Ph.D. degrees, etc.) involving some or all the universities represented here by our speakers. I therefore encourage my colleagues to devote a part of the debate and of our conversations outside this room to work out other possible initiatives.

In conclusion I wish to thank, on behalf of Francesca Brezzi and Kari Børresen too, all the institutions and people who have contributed to the realization of this workshop. First of all, the European Science Foundation that approved and funded our project; the Rector of the University of Roma Tre, who has supported it as well by granting a financial contribution, and by donating the items contained in our folders; the Dean of the Faculty of Economics, who kindly made this room available. I also wish to thank the employees at the Rectorate, at the Faculty of Economics, and the Department of Historical, Geographical and Anthropological Sciences, where I work, who have always been helpful in responding to our organizational and administrative needs.

I wish to mention Adriana Loffredo, who carried out the secretarial work with competence and kindness, relieving me of a large amount of tasks; Nicola Zippel, who translated Francesco Saverio Trincia's paper into Italian, and Sabrina Vellucci, who translated the English abstracts of the papers into Italian, and the present introductory address into English. I resolved, in fact, to provide an Italian version of the abstracts both to acknowledge the linguistic "rights" of the

Editori, 2002.

³ Cfr. *Comparing Religion Through Law. Judaism and Islam*, eds. J. Neusner and T. Sonn. London and New York: Routledge, 1999; *Religion, Law and Tradition. Comparative Studies in Religious Law*, ed. A. Huxley. London: Routledge, 2002; in Italian, *Religioni, diritti, comparazione*, ed. S. Ferrari and G. Mori. Brescia: Morcelliana, 2003.

⁴ Cfr. *Gender, Religion and Diversity cross Cultural Perspectives*, eds. T. Beattle and U. King, ..., 2004. In Italian, cfr. *Archivio per la storia delle donne*, ed. A. Valerio. Napoli: Guida Editore, 2004; and *Donne cristiane e sacerdozio dalle origini all'età contemporanea*, ed. D. Corsi. Roma: Viella, 2004.

host country, and to facilitate the understanding of the papers for the Italian audience. Finally, my special thanks to all the speakers and the three chairpersons (among them there is also a chairman) who, with the convenor Francesca Brezzi, have kindly accepted to chair the sessions: Francesca Cantù, Roberto Rusconi, Sofia Boesch Gajano, all members of the Humanities Faculty in this University.

Unfortunately health problems have prevented Kari Børresen from being here. She has however sent us her paper. To Kari, a dear friend and an important partner in the conception of this meeting, our regards and warmest wishes for a quick recovery.



Il Rettore

Dear colleagues and guests, dear members of the Standing Committee for the Humanities of the European Science Foundation welcome in Rome and to this meeting which takes place at the University of Roma Tre.

I am delighted to give hospitality to this workshop not only because it gives expression – thanks to the subjects to be discussed and the presence of numerous and qualified scholars – to the international “vocation” cultivated by the University of Roma Tre since its foundation in 1992, but also because the workshop’s project, proposed by two scholars of this University – Sara Cabibbo and Francesca Brezzi – has been accepted by an important European foundation which aims to act “as a catalyst for the development of science by bringing together leading scientists and funding agencies to debate, plan and implement pan-European scientific and science policy initiatives”.

The European Science Foundation, which out of 228 applications received in 2003 approved and funded 50 exploratory workshops among which the present meeting, recognized the scientific meaning of this proposal and its ability to implement further developments directed to scientific production through the publication of the acts of the meeting and the dissemination of its results.

As a matter of fact the workshop will

- 1) be of use to postgraduate specialisation;
- 2) provide diachronic, multicultural and multi-territorial knowledge which will allow the interrogation of the present and critical interventions in relation to contemporary problems;
- 3) correspond to the diverse professional opportunities open to students with degrees in Social Science and Humanities.

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Just as the European Science Foundation has recognized the scientific, didactic and civil value of this proposal, so have I greatly appreciated the program of the meeting opening this morning since its main concern is the cultural dimension of the problems facing our society – a dimension strictly connected with my own academic interests.

This meeting not only aims at establishing a relationship between different disciplinary approaches and different scholars coming from northern, southern and eastern Europe with the aim of comparing different perspectives and methods of analysis and showing how the issues connected with gender models and human rights are dealt with in each country, but also intends to focus on a series of topics representing some of the emergencies of a “Europe in progress”. As recent debates evidenced by the Italian media under the title “Europe versus religion” have shown, the problems connected with religious identity, individual rights of men and women, freedom of thought and conscience, are main topics in the agenda of the European institutions, debated in each country by political groups, by church institutions, by lay and religious opinion movements.

I think that the workshop on “The impact of cultural and religious gender models in the European formation of socio-political human rights” represents a good perspective to catch the complexity of a European identity bound to cope with women, minorities as well as the historical and cultural tradition of each country claiming their rights.

It is because of the interest of the University of Roma Tre in these fundamental topics that this athenaeum has been willing to support the organization of the workshop by placing the hall and the university site at its disposal and allotting a small amount of financial resources.

I therefore welcome our guests, wish them a fruitful confrontation of their research, and a full success of the whole workshop.

Senior Professor Kari Elisabeth Børresen
Department of Church History, University of Oslo, Norway

RELIGIOUS GENDER MODELS versus WOMEN'S HUMAN RIGHTS

Methodology

Among the Humanities, Gender Studies of Religion are at the scholarly forefront in applying female and male genderedness, in the sense of connected interaction between psycho-physical sex and socio-cultural gender, as a main analytical category. Human discourse on God, as expressed in religious doctrine and symbolism, is consequently understood in terms of verbalised male or female experience. Since the 1970s, Gender Studies of the Christian tradition have been well developed, whereas gender analysis of Islam has been limited to the Social Sciences and History. Since 1997, I have coordinated an international research group on gender models in formative Christianity and Islam. Our recently published collection of articles is very innovative, because religious anthropology has remained unexplored from a comparative gender perspective.¹

Religious Androcentrism

In a global context, it is essential to observe that women's modern claim to bio-socio-cultural and religious autonomy results from the recent epistemological revolution of feminism, where women and men are defined as human beings of equal status. This collapse of androcentrism is a radically new phenomenon in human history, since gender equivalence and female autonomy is not documented in any known society before the 20th-century European welfare states. In fact, such modern ideals derive from the 18th-century European Enlightenment, claiming civil rights for men. From the 20th century, these *droits de l'homme* are transformed to universal human rights for both sexes (implicitly in the UN Declaration 1948, explicitly in the UN Conference on Human Rights 1993).

It follows that women's universal rights as established in international law are perfectly alien to all millenary world religions. According to Hinduism and Buddhism, women are not properly human beings, but are placed between men and beasts through the universal wheel of reincarnation and rebirth, as determined by the ethical performance of previous lives. A similar ontological gender hierarchy is described in Plato's creation myth, *Timaeus* (41d-42d), a central text in European history of ideas. According to the monotheistic variants from the Middle East, namely Judaism, Christianity and Islam, each human being receives only one terrestrial existence, from birth to death. Given the shared paradigm of one Creator and two sexes, axiomatic precedence of male humanity is defined in functional and not in ontological terms. Consequently, women are included in humankind, but as subordinate members. The Godgiven *raison d'être* of female humanity is to serve men's procreation of offspring by instrumental motherhood. In conformity with these asymmetrical gender models, men and women have strictly different roles, so that non interchangeable male or female rights and duties are established by God. Revealed according to divine law, such specific women's rights are prescribed not only by Islamic *Shari'a* , but remain equally normative in Catholic and Orthodox doctrine and are also promoted by fundamentalist Protestantism..

Freedom of Religion contra Women's Human Rights

It is important to recognise that this theocratic rationale of female rights is incompatible with the secular principle of women's universal human rights as established in international law. The equally secular principle of religious freedom was strongly condemned by the anti-modernist *Syllabus* of Pius IX in 1864. Codified by the UDHR (art. 18), religious liberty was accepted by the II Vatican council in 1965 and served to defend the Catholic Church in Communist states. When transformed from individual freedom of thought, conscience and belief to a collective freedom for pre-modern religious systems in secular societies, this human right is contrary to women's human rights. Often strategically concealed in UN

documents, such basic antagonism is manifested by the religious opposition to the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) from 1979, actually ratified by 174 states. Because secular gender equality is against Godgiven gender asymmetry, the Vatican so-called Holy See has not signed the CEDAW, along with eight traditionalist Islamic states. Some other Muslim states have signed, but with reservations conforming to Islamic *Shari'a*. Due to political pressure by fundamentalist Protestant groups, the United States of America have refused ratification.

According to the CEDAW, state parties shall take "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" (art. 2 e). In fact, social and cultural patterns, prejudices and stereotyped roles for men and women (art. 5 a) derive primarily from traditional religious gender models. Nevertheless, several state parties have national concordats with the Holy See, thereby ensuring Vatican influence on family law and control of religious instruction, like in Italy, Germany, Austria and Ireland. This contradiction needs to be clarified, especially regarding the European Union, where the official policy of gender equality will be counteracted by less developed Catholic countries like Poland, Lithuania, Hungary, Slovakia and Malta.

It is important to observe that women's reproductive autonomy was first defined as a human right in international law by the CEDAW (art. 12,1; 14,2b; 16,1e). Unthinkable before 20th-century methods of contraception, this principle is therefore contrary to women's Godgiven sexual role. The ensuing collision between bio-social reality and pre-modern religious gender models was demonstrated by the concordant votes of the Holy See and conservative Muslim states against women's reproductive rights in UN Conferences on Population 1994 and on Women 1995.ⁱⁱ In the current international debate, such religious obstruction is mainly problematised concerning Islam. This approach is both biased and inadequate, since women's subordinate status in traditional Catholic and Orthodox theology, imitated by fundamentalist

Protestants, represents an equally strong obstacle to women's equality with men.

Inculturation Potential

More acute than the previous breakdowns of geocentrism (Copernicus) and of anthropocentrism (Darwin), the 20th-century Western collapse of androcentrism is now spreading globally. Although less challenged than other world religions, Christianity's reaction to modern feminism ranges from ambivalent endorsement in "civilised" Protestantism, to manifest resistance in Roman and Orthodox Catholicism. Aware of the fact that traditional doctrine is verbalised in terms of androcentric God-language, ecclesiastical institutions rightly fear this new inculturation. Tentatively initiated during the II Vatican council, Catholic theological *aggiornamento* has been deliberately obstructed by the pontificate of Johannes Paulus II (1978-). Since Islamic societies are entirely theocratic, the feminist challenge is considered to be even more threatening and therefore condemned as Western imperialism.

In historical perspective, it is important to observe that Christian and Islamic gender models are equally structured by axiomatic coherence of theocentrism and mancentredness, with correlated exclusion of femaleness from the Godhead. In both variants of Middle Eastern monotheism, human destiny is acted out in three stages, from initial creation, through terrestrial existence, to final resurrection. A basic difference between the two religious systems is that in Islam the primeval fall of Adam and Eve is not catastrophic. Created human nature remains unaltered, so that death is a normal phenomenon and not a punishment for sin. Therefore, no original guilt is transmitted by orgasmic intercourse. It follows that the traditional Christian link between mortality and sexual activity, with ensuing encratite sexophobia, is alien to Islam. Instead, God forgives the protoparents' disobedience and reveals the pre-existent *Qur'an* in order to guide humankind towards eschatological perfection. This means that Islam is a form of divine pedagogy and not a religion of

redemption, in terms of humanity's release by Christ's expiatory death on the cross. It is essential to know that both Christianity and Islam proclaim eschatological gender equivalence, since all human beings are equal before God in Paradise. This shared belief represents an important inculturation potential. Since the 20th century, liberal Protestantism and Reform Catholicism seek to backdate women's future human status as normative already in this world, a strategy recently followed by Islamic feminists.ⁱⁱⁱ

Transformation of God's image

In Christian tradition, women have gradually obtained creational *imago Dei*, through inculturated interpretation of Biblical texts.^{iv} This process can be traced in three main stages: androcentric monism, asexual dualism and holistic Godlikeness.

Starting with scriptural exegesis *ad litteram*, early Christian theology interprets the axiomatic interaction between manlike Godhead and Godlike man in the sense that only male human beings are created in God's image (Gen.1,26-27a; 2,7; I Cor. 11,7). Nevertheless, women can achieve this prerogative by "becoming male" in the order of redemption, through incorporation into Christ (Col. 3,10-11; Gal. 3,28; Eph. 4,13; cf. Ev. Thom. 114). In this first doctrinal period of mancentred monism, which was normative until the 5th century and upheld by medieval Canon Law, women's bio-social inferiority and consequent cultic incapability (*impedimentum sexus*) are justified by women's lack of *imago Dei* in the order of creation.

From the fourth century, the basic conflict between women's created subordination and redemptive equivalence is negotiated by "feminist" Church Fathers. Adopting a Platonised anthropology, where asexual Godlikeness corresponds to a metasexual concept of God, spiritual *imago Dei* is attributable to women's rational and therefore genderfree souls, in spite of their non Godlike bodies. Augustine is the first theologian who directly confronts I Cor. 11,7. Invoking allegorical exegesis, this leading Latin Church Father manages to neutralise

Paul by interpreting his *mulier* in terms of lower human reason, which is not theomorphic, in contradistinction to the higher reason, figured by Paul's Godlike *vir*. Augustine's main proof-text is the negated citation of Gen. 1,27b in Gal. 3,28: "there is not male and female, for you are all one (collective male) in Christ". Quite illogically, such reversal to a combined presexual and andromorphic perfection is invoked to include women as Godlike human beings already from creation, by attaching *homo* of Gen. 1,26-27a to *femina* of 1,27b. In this second doctrinal period of asexual dualism, which became normative in scholastic theology, women's genderfree *imago Dei* does not affect their Godgiven subservience *qua* female human beings. It follows that the axiomatic incoherence between divinity and femaleness remains unchallenged by the Church Fathers' metasexual concept of the Godhead. Therefore, women's spiritual equivalence could only be anticipated in this world by ascetic defeminisation, through virginity or widowhood.^v It is of note that Augustine's "feminist" use of Gal. 3,28 is often apologetically invoked in 20th-century Western theology to affirm that women are created to God' image already according to *Genesis ad litteram*, instead of resulting from subsequent Biblical interpretation. Such anachronistic exegesis serves to claim gender equivalence also in this world, an idea entirely unwarranted in traditional Christian anthropology.

In medieval religious feminism, the ancient stratagems of women's "becoming male" in Christ or invoking defeminised Godlikeness were relinquished. Perspicaciously challenging the correlated andromorphic or metasexual God-language, leading Church Mothers like Hildegard of Bingen and Julian of Norwich describe God with female metaphors in order to provide a divine model for women's *imago Dei*.^{vi} This third doctrinal period of holistic Godlikeness was rediscovered in 19th-century feminist exegesis, first by the Norwegian Aasta Hansteen and then by the American Elizabeth Cady Stanton, arguing for women's civil rights.^{vii} In fact, all Christian churches opposed female suffrage by invoking women's

God-given subordinate status, following from women's female lack of creational Godlikeness. The radically new holistic anthropology, where both women and men are created in God's image *qua* male or female human beings, was first accepted in Protestant exegesis, less from feminist motifs than by abandoning Platonised anthropology. Inclusive *imago Dei* was introduced in Catholic theology after the II Vatican council, whereas Orthodox doctrine preserves the patristic definition of God's image as an incorporeal and therefore asexual privilege.

Islamic Anthropology.

It is important to observe that human Godlikeness is completely alien to the Islamic concept of God's absolute transcendence. Nevertheless, Adam is placed as God's viceroy on earth, *khalifa*, imitating divine hegemony (2,30). It is interesting to note that this dominion over the created world corresponds to the early Christian interpretation of Adam's theomorphic privilege as Godlike governance, inherited exclusively by his male offspring. Islamic anthropology does not need to justify women's uncontested socio-cultural inferiority by invoking the order of creation.^{viii} Given Jewish and fringe Christian influence on emerging Islam, some Biblical material is used in the *Qur'an*. It is noteworthy that the derived status of Adam's woman is less accentuated, since the first man and then his mate are created from a single soul (4,1; 7,189; 39,6). The origin of this *nafs* (self, life energy, nature) remains obscure. As in Gen. 2,7, Adam is moulded from clay and God breathes His spirit into him (15,26-29; 38,71-72). Sexual differentiation is not problematised, since God alone is unique and human beings are created in couples. His creative activity is continuous, all individuals are created from male seed and shaped by God in the maternal womb (13,8; 41,47).

Christian and Islamic eschatology converge in affirming male and female resurrection, universal judgment and ultimate reward according to individual merit. In Ancient Christianity, women were transformed to Christlike maleness, or sexual differentiation was

superseded by resurrected promotion to angelic perfection. Affirming God's unique creation, Augustine is the first Church Father who explicitly states that women will be raised as perfect female human beings, since female humanity was created at the beginning. In Islam, the resurrection of humankind is equally considered as a recreation, thereby rehearsing God's initial activity, which shapes every human being (22,5). Both monotheistic variants proclaim that men and women are equal before God, but such gender parity refers only to paradise (3,195; 4,124; 9,71-72; 16,97, 33,35), otherwise depicted in androcentric terms of male gratification.

Differing Revelation

In a feminist perspective, Christian gender models are not less problematic than those found in Islam. When the conflict between women's universal human rights and women's Godgiven female rights is more acute in Islamic countries than in the Western world, this follows from disparity of inculturation. The main reason is not that the Enlightenment originated in Europe, but that Christian and Islamic concepts of God's revelation are fundamentally different.

According to traditional Christian theology, as verbalised by the ecumenical councils in Late Antiquity (Nicaea 325, Chalcedon 451), Christ's divine nature is uncreated and pre-existent, whereas his human nature is incarnated in a specific historical context. Therefore, revealed truth is acted out through God's Son as experienced by human beings, *humano modo*. In conformity with this incarnate mode of God's revealing, the scriptural canon (Hebrew Bible and New Testament) is verbalised in human language, to be transmitted, interpreted and actualised by continuous inculturation in the course of Christian history. The idea of divine accommodation to human capacity was developed by patristic theologians in order to valorise their Platonic and Stoic heritage, but this concept of unfolding revelation serves to negotiate further challenges.

According to traditional Islam, as interpreted by al-Ash'ari (died 935), the *Qur'an* is an

attribute of God's essence, and thus uncreated and pre-existent. This divine discourse/text is revealed in Arabic through the prophet Muhammad as a passive transmitter, so that neither his person nor his environment were involved in the process of its formulation of ultimate truth (12,1-2; 43,1-3; 56,76-78; 85,21-22). The monotheistic resemblance of God's eternal Holy Book and God's pre-existent Logos according to Joh. 1,1-4 is manifest, but in Christian doctrine this divine Son is incarnated in human history, cf. Joh. 1,14; Gal. 4,4; Phil. 2,6-8. Consequently, the Islamic revelation is defined as meta-historical and transcultural, so that the *Qur'an* transcends scientific investigation.^{ix} Inversely, the Christian paradigm of incarnate inculturation makes the revelatory process accessible to scientific analysis, although fundamentalist Protestantism has a Qur'an-like concept of Scripture.

When Pius X condemned historical-critical methods in 1907, he rightly feared the manifest incoherence of early Christian pluralism and papal infallibility *ex cathedra* proclaimed at the I Vatican council in 1870. With a significant time-lag, this papal anti-modernism is now emulated by the Islamic ban on historical-critical analysis of the *Qur'an*. It is important to observe that Islamic reformist scholars, who therefore work in exile, distinguish between the untouchable status of God's pre-existent Book revealed through Muhammad, and the additional *logia* of the prophet. This *hadith* and subsequent jurisprudence, *fiqh*, are not immune to independent reasoning, *ijtihad*. The same strategy is used by Islamic feminists in order to circumvent the androcentrism of later tradition.^x In fact, this potential of inculturated interpretation has recently been applied by so-called Euro-Islam.^{xi}

As a Catholic feminist theologian, I find it paradoxical that women's human rights of socio-cultural gender equivalence, reproductive autonomy and cultic capability were first affirmed in a Protestant context, whereas Orthodox and Roman Catholicism provide the necessary concepts of redemptive human *theosis* and incarnate *revelatio continua*. As an historian of ideas, I value that the Ancient Greek-Roman Church Fathers and the North-European Church

Mothers are partners in the continuously inculturated human God-language, which transformed Christianity from a Jewish sect to a global religion.

ⁱ To reconstruct theological anthropology in conformity with universal human rights for both sexes, it is necessary to ensure the Church's survival as an instrument of salvation. In the same perspective, many are hoping for a renewal of viable Islam in a European context, emulating Christian inculturation.

NOTES

- ⁱ Kari Elisabeth Børresen (ed.), *Christian and Islamic Gender Models in Formative Traditions*, Roma 2004 (Herder Editrice).
- ⁱⁱ Doris E. Buss, Robes, Relics and Rights: The Vatican and the Beijing Conference on Women, in *Social & Legal Studies* 9, 1998, 339-363.
- Kari Elisabeth Børresen, Religion Confronting Women's Human Rights: the Case of Roman Catholicism, in Øyvind Norderval & Katrine Lund Ore (eds.), *From Patristics to Matristics. Selected Articles on Christian Gender Models* by Kari Elisabeth Børresen, Roma 2002 (Herder Editrice), 289-308.
- Elina Vuola, Remaking Universals? Transnational Feminism(s) Challenging Fundamentalist Ecumenism, in *Theory. Culture & Society*, 19, 2002, 175-195.
- ⁱⁱⁱ Amina Wadud, *Qur'an and Woman*, New York, Oxford 1999.
- Shaheen Shardar Ali, *Equal Before Allah, Unequal Before the Law? Gender and Human Rights in Islam and International Law*, The Hague, London, Boston 2000.
- ^{iv} The doctrinal history of human Godlikeness, with focus on the gradual inclusion of women, is analysed in Kari Elisabeth Børresen (ed.), *The Image of God. Gender Models in Judeo-Christian Tradition*, Minneapolis MN 1995 (Fortress Press).
- Italian edition: *A Immagine di Dio. Modelli di genere nella tradizione quidaica e cristiana*, Roma 2001 (Carocci Editore).
- ^v Elizabeth A. Clark, *Ascetic Piety and Women's Faith*, Lewiston NY 1986.
- Susanna Elm, "Virgins of God". *The Making of Asceticism in Late Antiquity*, Oxford 1996.
- Anne Jensen, *Gottes selbstbewusste Töchter. Frauenemanzipation im frühen Christentum?* 2. Auflage, Münster, Hamburg, London 2003.
- ^{vi} Kari Elisabeth Børresen, *Le Madri della Chiesa. Il medioevo*, Napoli 1993 (M. D'Auria Editore). Section on Matristics, in *From Patristics to Matristics* 2002, 145-272.
- ^{vii} Aasta Hansteen, *Kvinden skabt i Guds billede* (Woman created in God's image), Christiania 1878.
- Elizabeth Cady Stanton (ed.), *The Woman's Bible I*, New York 1895.

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- viii Barbara Freyer Stowasser, *Women in the Qur'an, Traditions, and Interpretation*, New York, Oxford 1994.
- ix Barbara Freyer Stowasser, Gender Issues in Contemporary Qur'an Interpretation, in Yvonne Yasbebeck Haddad, John L. Esposito (eds.), *Islam, Gender & Social Change*, New York, Oxford 1998, 30-44.
- x Jonas Svensson, *Women's Human Rights and Islam. A Study of Three Attempts at Accommodation*, Lund 2000.
- xi Mohamed Arkoun, *Lectures du Coran*, Tunis 1991.
Nasr Hamid Abu Zayd, *Critique du discours religieux*, Arles 1999.
- i Kari Elisabeth Børresen, Religious Feminism and Catholic Theology, in Carl Reinhold Bråkenhielm, Gunhild Winqvist Hollman (eds.), *The Relevance of Theology. Nathan Söderblom and the Development of an Academic Discipline*, Uppsala 2002, 143-156.

Pirjo Markkola, *Luteranesimo e modelli di genere nordici. Una prospettiva storica*

Nei Paesi scandinavi sono attualmente in corso due accesi dibattiti piuttosto separati l'uno dall'altro. Nel primo si discute il *welfare state* secondo una prospettiva di genere, il secondo verte sul ruolo del Luteranesimo nel modello di stato sociale nordico. È interessante notare come in questi paesi la ricerca sul genere abbia una tradizione consolidata, mentre gli studi di carattere religioso abbiano guadagnato terreno solo di recente nel mondo accademico. Entrambi i dibattiti si basano su dimensioni storiche e sociali rilevate nelle società nordiche, ossia sulle relazioni tra i generi da un lato e su una storia religiosa atipica dall'altro.

Per quanto riguarda le relazioni tra i generi, i sistemi di *welfare state* nordici sono stati spesso considerati modelli esemplari di parità: la quota di donne presenti nella forza lavoro è infatti elevata ed esiste una rete estesa di servizi sociali per i bambini, i giovani e gli anziani. In questi stati il diritto di voto delle donne è stato conquistato relativamente presto – tra il 1906, in Finlandia, e il 1919, in Svezia – e attualmente esiste un'alta percentuale di donne coinvolte nei processi decisionali della politica. Le donne hanno quindi acquisito visibilità sociale nonostante esistano ancora barriere e meccanismi nascosti di esclusione basati sulla discriminazione sessuale.

La peculiare storia religiosa nordica coincide con la lunga tradizione delle chiese di stato

evangelico-luterane. Fino a tutto il XIX secolo il Luteranesimo è stato una ideologia ufficiale dello stato, e anche nel XX secolo le relazioni formali tra stato e chiesa apparivano relativamente strette. Inoltre, più dell'ottanta per cento dei cittadini sono tuttora membri delle chiese evangelico-luterane. In tal senso si può altresì affermare che esista un forte modello religioso nordico.

Nel presente intervento tenterò di collegare i due dibattiti evidenziando alcune nuove questioni in materia di diritti socio-politici. Sosterrò che la ricerca sul genere è stata essenzialmente indifferente al tema religioso (una posizione suggerita dallo storico svedese Inger Hammar), mentre gli studi sul Luteranesimo e sullo stato sociale hanno sostanzialmente ignorato le questioni di genere. Queste due linee di ricerca trarrebbero tuttavia vantaggio da un dialogo e unite potrebbero fornire interpretazioni più esaurienti in materia di diritti socio-politici e di identità culturale dei Paesi scandinavi. Discuterò in primo luogo il modello di stato sociale secondo una prospettiva di genere e suggerirò alcuni modi di introdurre il tema della religione nel dibattito. In secondo luogo prenderò in esame i temi del Luteranesimo e dello stato sociale affermando la necessità di includere la prospettiva di genere nella ricerca in questo ambito. Sosterrò che la relazione tra Luteranesimo, stato sociale e questioni di genere deve essere studiata secondo una prospettiva storica se si vuole comprendere l'evoluzione multiforme dei diritti socio-politici nei Paesi nordici.

Liliane Vana

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Les femmes dans l'espace public: regard sur la société juive à l'époque hellénistique et romaine

Résumé

De nombreuses études portant sur la place des femmes dans l'espace public de la société juive à l'époque hellénistique et romaine ont pour point de départ l'affirmation qu'on peut, avec J. Jeremias, résumer à peu près ainsi: "En Orient, la femme ne participe pas à la vie publique; cela est également vrai du Judaïsme au temps de Jésus, en tout cas des familles juives fidèles à la Loi... (Jérusalem au temps de Jésus, Paris, 1967, p. 671). Dans la plupart des cas il s'agit plutôt d'affirmations, voire de certitudes, ne reposant sur aucune

démonstration, sur aucun examen sérieux des textes.

D'autres études, pour la plupart féminines, démontrent la présence des femmes dans l'espace public et les activités qu'elles y exercent. Cependant, elles y voient le résultat d'une nécessité exclusivement économique touchant les classes sociales les plus démunies de la société et épargnant les plus aisées: les femmes appartenant aux couches pauvres devaient "sortir travailler" afin "d'aider" leurs époux à augmenter les revenus du foyer et subvenir aux besoins quotidiens de leurs familles. En outre, le travail des femmes n'est pas perçu par ces études comme l'exercice d'un métier mais plutôt comme une "occupation" venant prolonger les différentes activités féminines accomplies au foyer tel le filage, le tissage, la préparation du pain.

Or, l'examen des textes législatifs de l'époque qui nous concerne nous a permis d'infirmier les deux thèses. Des femmes appartenant à "des familles juives fidèles à la Loi" (je reprends l'expression de Jeremias) travaillaient à l'extérieur du foyer pour gagner leurs vies et parfois, bien que mariées, étaient seules à assumer cette responsabilité: c'est le cas des épouses de certains docteurs de la Loi qui entretenaient, seules, leurs familles pendant les périodes plus ou moins longues où leurs maris partaient loin de la maison pour étudier la Torah. Ces femmes appartenaient à toutes les couches sociales de la société, les plus riches comme les plus pauvres. Pour d'autres, le fait d'entretenir leurs époux constituait une des conditions du mariage stipulée d'ailleurs dans le contrat nuptial (*ketubbah*). D'autres gagnaient leurs vies sans doute par nécessité, étant donné leur pauvreté.

Dans tous ces cas, le travail des femmes était connu, reconnu et réglementé par le droit hébraïque. Certains métiers exercés par des hommes et des femmes, d'autres étaient exercés soit par des hommes soit par des femmes, mais la réglementation obéissait aux mêmes principes. Ainsi peut-on constater que c'étaient les femmes qui tissaient le voile du Temple et percevaient leur salaire par le trésor du Temple à l'instar des autres corps de métiers qui travaillaient pour le Sanctuaire. Les femmes étaient célèbres dans la branche du textile: celles de Judée l'étaient pour la fabrication des articles en laine et celles de Galilée pour ceux en lin. Les femmes médecins étaient consultées au même titre que les hommes et les femmes aubergistes géraient leurs établissements ainsi que la multitude de services qui y étaient offerts conformément aux lois dictées par la Torah et les docteurs de la Loi... Les textes législatifs réglementent différents métiers exercés par les femmes notamment les suivantes: sage-femme, coiffeuse, boutiquière, marchande, scribe, enseignante et certaines fonctions qu'elles pouvaient occuper notamment celle d'administrateur des biens. La contribution des femmes à la vie économique et sociale du pays d'Israël à l'époque hellénistique et romaine ne fait aucun doute. Ces données transforment de manière considérable l'image que nous avons de cette société et des rôles que les hommes et les femmes y jouaient.

Cependant, partir du III^e siècle des modifications seront apportées à la législation et de

nouvelles lois seront édictées visant, directement ou indirectement, à écarter les femmes de certains métiers ou de certaines fonctions. Progressivement, ces lois finiront par réduire la place des femmes dans l'espace public sans toutefois l'en exclure totalement.

Liliane Vana

Le donne nello spazio pubblico: uno sguardo sulla società ebraica in epoca ellenistica e romana

Molti studi che riguardano il posto delle donne nello spazio pubblico nella società ebraica all'epoca ellenistica e romana hanno come punto di partenza l'affermazione che, con J. Jeremias, si può così riassumere: “In Oriente la donna non partecipa alla vita pubblica; ciò è ugualmente vero per il giudaismo ai tempi di Gesù, in ogni caso per le famiglie ebraiche fedeli alla Legge” (*Jérusalem au temps de Jésus*, Paris, 1967, p. 671). Nella maggior parte dei casi si tratta piuttosto di affermazioni, o di certezze, che non riposano su alcuna dimostrazione, su alcun serio esame dei testi.

Altri studi, per la maggior parte femminili, dimostrano la presenza delle donne nello spazio pubblico e le attività che vi esercitavano. Tuttavia essi vi scorgono il risultato d'una necessità esclusivamente economica riguardante le fasce sociali più deboli della società e che non riguarda quelle più agiate: le donne appartenenti alle fasce povere dovevano “uscire a lavorare”, per aiutare i loro mariti ad incrementare gli introiti familiari e sovvenire ai bisogni quotidiani delle loro famiglie. Inoltre, il lavoro femminile non è percepito da queste ricerche come l'esercizio di un mestiere, ma piuttosto come una “occupazione” che va a prolungare le diverse attività femminili casalinghe: come la filatura, la tessitura, la preparazione del pane.

Ora, l'esame dei testi legislativi dell'epoca di cui ci occupiamo ci ha permesso di contestare le due tesi. Donne appartenenti a “famiglie ebraiche fedeli alla Legge” (riprendo l'espressione di Jeremias) lavoravano fuori casa per mantenersi e talvolta, benché sposate, erano sole ad assumersi questa responsabilità. E' il caso delle mogli di certi dottori della Legge che mantenevano, da sole, le loro famiglie nei periodi, più o meno lunghi, durante i quali i mariti andavano lontano per studiare la Torah. Queste donne appartenevano a tutte le fasce della società, le più ricche come le più povere. Per altre, il fatto di mantenere i loro mariti costituiva una delle condizioni del matrimonio stipulato precedentemente nel contratto nuziale (*Ketubbah*). Altre provvedevano a se stesse certamente per necessità, data la loro povertà.

In tutti questi casi, il lavoro delle donne era conosciuto, riconosciuto e regolamentato dal diritto ebraico. Certi mestieri erano esercitati da uomini e donne; altri erano esercitati sia da uomini che da donne, ma la regolamentazione obbediva ai medesimi principi. Così si può

constatare che erano le donne a tessere il velo del Tempio e percepivano il loro salario dal tesoro del Tempio, come gli altri corpi di mestiere che lavoravano per il santuario. Le donne erano celebri nel settore del tessile: quelle di Giudea per la fabbricazione di articoli di lana e quelle di Galilea per quelli in lino. Le donne medico erano consultate al pari degli uomini medici, e le donne albergatrici gestivano i loro stabilimenti insieme alla miriade di servizi che vi erano offerti in conformità alle leggi dettate dalla Torah e dai dottori della Legge. I testi legislativi regolamentano differenti mestieri esercitati dalle donne, in particolare i seguenti: ostetrica, pettinatrice, negoziante, mercante, scriba, insegnante, e certe funzioni che esse potevano svolgere: in particolare quella di amministratore di beni. Il contributo delle donne alla vita economica e sociale del paese d'Israele all'epoca ellenistica e romana non lascia alcun dubbio. Questi dati trasformano considerevolmente l'immagine che abbiamo di questa società e dei ruoli che gli uomini e le donne vi giocavano.

Tuttavia, a partire dal III secolo, modificazioni saranno apportate alla legislazione, e saranno emanate nuove leggi indirizzate, direttamente o indirettamente, a escludere le donne da certi mestieri o da certe funzioni. Progressivamente, queste leggi finiranno per ridurre il posto delle donne nello spazio pubblico, senza tuttavia escluderle completamente.

Jorunn.Økland

Enlightenment interpretations and uses of St. Paul's texts on women and gender

1 Corinthians 11 and 14:33-36 have been very important texts for the formation of women's roles and appearance in society and church throughout European history. The Enlightenment was a formative period of flux and change with regard to ideas about the human. In many respects, modern European legislation is still founded on Enlightenment ideals. I will trace mainly a Northern European understanding of how the 1 Corinthians-texts were perceived as negotiating gender relations through this formative period, starting with some pre-Enlightenment English (feminists¹, Priscilla Cotton, Mary Cole, and Margaret Fell, going via the English philosopher John Locke who played such an important role for French revolutionary thinkers, and end up in some more (theoretical¹ (i.e. philosophical and exegetical) readings from Enlightenment Germany (Semler, Baumgarten), as well as a more pietistic one, that came to have an enormous influence in the churches in the following centuries

(Bengel)

In post-Reformation Europe Christianity was still an important way of expressing European identity, and Early Christianity was regarded as a formative period for European identity. Due to the effects of secularisation this is often overlooked today, when Christianity is marginal in social and intellectual life, and the academic study of Christianity is relegated to the periphery. The present situation strongly influences the way in which history of earlier

periods is written. The result is often that in histories of intellectual life and ideologies of the Enlightenment, Christian theology is marginalised and compartmentalised into a narrow confine, just as it is perceived today. The paper is a conscious effort to reverse this trend by raising consciousness of how central Christian theology was to the academic debates and what role it played in the intellectual and social life of most European societies at the time. The aim is to show that even at the beginning of the Enlightenment process¹, the Biblical texts on anthropology and gender were not only referred to, but had a formative function and were actively drawn upon, although by the end of this period the Bible was 'dethroned' (C. Hill's expression) in some circles while in other circles one tried to preserve its relevance by reading it in the 'light' of the new ideas.

Rosine A. Lambin

Signification du voile des femmes dans le christianisme

Abstract

Le voile des femmes dans le christianisme est, au début du XXI^e siècle, un reliquat que l'on trouve principalement chez les religieuses orthodoxes, catholiques romaines et protestantes. Toutefois, pendant des siècles, des générations de chrétiennes, mariées ou consacrées à Dieu, durent se couvrir la chevelure. Ce voile, qui prit beaucoup d'importance au cours des premiers siècles du christianisme, a une longue histoire, qui montre qu'imposer cette contrainte aux femmes était un moyen de maintenir un ordre dans l'Église et la société.

La tradition de voiler les femmes n'est pas spécifiquement chrétienne. On la retrouve dans diverses régions des pourtours de la Méditerranée. L'une des plus anciennes règles juridiques sur le voile des épouses, par exemple, a été découverte à Assur et date du milieu du second millénaire au temps du roi Téglath-Phalasar I^{er} (-1115/-1077). Nous trouvons aux temps préchrétiens plusieurs témoignages indiquant que le voile des femmes servait, entre autres, à séparer le monde de l'ordre (bonne naissance, mariage) du monde du chaos (prostitution, abus sexuels des esclaves et des captives). Pourtant, la tradition du voile féminin n'a été ni développée et ni légitimée systématiquement avant l'apparition du christianisme. On ne trouve ni dans les religions dites païennes, ni dans le judaïsme, de théorie religieuse élaborée qui lierait un voile spécifiquement féminin au royaume du sacré et à la relation avec le divin. Seuls les Romains utilisaient un voile rituel pour prier et sacrifier (*devotio*), également porté par les hommes sauf lors de la cérémonie de mariage et dans le cas des vestales.

La première lettre de l'apôtre Paul aux Corinthiens (11/2-16) est le premier écrit

religieux monothéiste à avoir lié le voile des femmes à leur relation avec Dieu. Ce passage, comparé à d'autres textes de Paul et aux coutumes païennes et juives de son temps, permet de distinguer deux courants de pensée chez l'auteur : la tradition théologique de Paul qui libère tous les baptisés, sans spécification de sexe, de la Loi mosaïque et sa volonté de fonder une Église de parfaits qui, comparée aux communautés juives et païennes, jouirait d'un face à face direct avec Dieu et demeurerait moralement irréprochable. Ayant libéré les baptisés de la Loi, Paul se voit forcé de recréer de la loi afin d'assurer le fonctionnement des églises. Dans 1 Corinthien 11, la nouvelle loi paulinienne réintroduit l'inégalité entre hommes et femmes. Cette inégalité a curieusement pour fonction de réprimer le désordre qui règne dans la communauté de Corinthe. Selon Paul, les femmes doivent se voiler en signe de leur subordination et de l'ordre exemplaire qui doit s'établir dans l'Église. En faisant du voile des femmes le signe visible de leur subordination et de l'ordre communautaire, Paul ne réussit pas à concilier sa propre tradition théologique prônant l'égalité fondamentale entre les baptisés avec sa volonté de fonder une Église dont la femme devra refléter la perfection.

Tous les Pères de l'Église qui commenteront le texte de l'apôtre Paul le comprendront dans le sens de la subordination de la femme. Les Pères latins et grecs écriront des traités sur le sujet et élaboreront une théorie du voile des femmes qui sera entièrement complétée dès le III^e siècle. Ces écrits théoriques ordonneront aux femmes mariées et aux vierges de se voiler et en donneront les raisons théologiques et profanes. Celles-ci seront variées mais seront toutes d'accord sur le thème de la subordination de la femme. Pour quelle raison la femme doit-elle être soumise ? Parce qu'elle est cause de désordre, qu'elle a le pouvoir diabolique de piéger les hommes et qu'elle va même jusqu'à séduire les anges. Voilée, en revanche, la femme deviendra l'emblème d'une religion se voulant accomplie, vierge et parfaite, corps du Christ, temple de l'Esprit Saint, épouse de Dieu, mère des fidèles. Exemplaire, effigie de la Vierge Marie et de l'Église, la femme voilée sera exaltée. Mais celle qui ne se comportera pas selon cet ordre sera considérée comme la pire des femmes, Ève, femme nue, tentatrice et origine du péché, et non pas comme un être humain normalement imparfait. Le voile féminin servira ainsi à voiler l'imperfection, la faille et les erreurs inhérentes à tout groupe humain dont l'Église.

Au IV^e siècle, les Pères latins, qui n'avaient plus à combattre le paganisme aussi farouchement qu'avant, s'inspireront des coutumes romaines pour créer la cérémonie de la *velatio* des vierges consacrées à Dieu. En effet, en étudiant les traditions religieuses romaines qui ont un rapport avec le voile, on s'aperçoit que leur sens et leurs fonctions apparaissent dans les rites de la *velatio* des vierges chrétiennes institués au IV^e siècle. Dans la religion romaine, le voile avait trois fonctions majeures étroitement unies : signifier le sacrifice et la dévotion aux dieux, le mariage et la soumission de l'épouse aux dieux domestiques de l'époux, ainsi que la consécration virginale des vestales. Les vierges chrétiennes furent à leur

tour, par l'entremise du voile, offertes à Dieu et mariées au Christ, leur virginité fut consacrée. L'idée d'offrande, de mariage et de virginité, qui se trouve dans les rites du voile de la religion romaine, fut donc intégrée dans le christianisme. Les Pères latins, contrairement aux Pères grecs, marieront toutes les chrétiennes en les voilant, soit concrètement à un homme, soit mystiquement au Christ. Ce mariage et cette consécration virginale par le voile seront un pas en direction de la clôture qui, à partir du V^e siècle, cherchera à s'étendre à toutes les nonnes, qu'elles soient ascètes, vierges, veuves, diaconesses ou pénitentes indépendantes. Toutes ces femmes perdirent ainsi peu à peu le privilège de pouvoir vivre libres en dehors des monastères.

Au XXI^e siècle, même si la plupart des femmes ne sont plus effectivement voilées, elles le sont encore symboliquement dans le discours par ceux qui exigent d'elles qu'elles demeurent dans le rôle qu'ils leur assignent. L'exposé de la curie romaine, proposée par le cardinal Joseph Ratzinger, le 31 juillet 2004, dans sa « Lettre aux évêques de l'Église catholique sur la collaboration de l'homme et de la femme dans l'Église et dans le monde » interprète l'ordre de la création, la théologie mariale et l'ecclésiologie dans ce sens. Lorsque la femme sort du cadre de cet ordre, elle cause le chaos. Comme l'écrit Joseph Ratzinger : « Aux abus de pouvoir [la femme] répond par une stratégie de recherche du pouvoir. Ce processus conduit à une rivalité entre les sexes, dans laquelle l'identité et le rôle de l'un se réalisent aux dépens de l'autre, avec pour résultat d'introduire dans l'anthropologie une confusion délétère [...]. » Afin d'éviter cette confusion, le réflexe de l'Église est de vouloir remettre la femme à « sa » place. Mais cette remise en place contredit toujours, comme au temps de l'apôtre Paul, l'idée de liberté et d'égalité fondamentale entre tous les membres de la communauté. Car lorsqu'il n'y a plus « ni Juif, ni Grec ; ni esclave, ni homme libre ; ni homme, ni femme », la loi, nécessaire à toute organisation humaine, peut alors acquérir son rôle protecteur des droits et des libertés.

QUELQUES SOURCES TEXTUELLES

Paul, Première épître aux Corinthiens, 11 : 2-16, Traduction Oecuménique de la Bible, Paris, Cerf / Les bergers et les mages, 1976, p. 510

² Je vous félicite de vous souvenir de moi en toute occasion, et de conserver les traditions telles que je vous les ai transmises. ³ Je veux pourtant que vous sachiez ceci : le chef de tout homme, c'est le Christ ; le chef de la femme, c'est l'homme ; le chef du Christ, c'est Dieu. ⁴ Tout homme qui prie ou prophétise la tête couverte fait affront à son chef. ⁵ Mais toute femme qui prie ou prophétise tête nue fait affront à son chef ; car c'est exactement comme si elle était rasée. ⁶

Si la femme ne porte pas de voile, qu'elle se fasse tondre ! Mais si c'est une honte pour une femme d'être tondu ou rasée, qu'elle porte un voile ! ⁷ L'homme, lui, ne doit pas se voiler la tête : il est l'image et la gloire de Dieu ; mais la femme est la gloire de l'homme. ⁸ Car ce n'est pas l'homme qui a été tiré de la femme, mais la femme de l'homme, ⁹ Et l'homme n'a pas été créé pour la femme, mais la femme pour l'homme. ¹⁰ Voilà pourquoi la femme doit porter sur la tête la marque de sa dépendance, à cause des anges. ¹¹ Pourtant, la femme est inséparable de l'homme et l'homme de la femme, devant le Seigneur. ¹² Car si la femme a été tirée de l'homme, l'homme naît de la femme et tout vient de Dieu. ¹³ Jugez par vous-mêmes : est-il convenable qu'une femme prie Dieu sans être voilée ? ¹⁴ La nature elle-même ne vous enseigne-t-elle pas qu'il est déshonorant pour l'homme de porter les cheveux longs ? ¹⁵ Tandis que c'est une gloire pour la femme, car la chevelure lui a été donnée en guise de voile. ¹⁶ Et si quelqu'un se plaît à contester, nous n'avons pas cette habitude et les églises de Dieu non plus.

Basile d'Ancyre (+366), De la véritable intégrité dans la virginité, 34, Saint-Benoît, Abbaye Sainte-Croix, 1981, p. 63-64

Que l'homme, bien entendu, qui a le sentiment de participer d'une certaine manière à la dignité de l'ange, se montre tout tranquillement tête nue aux membres de sa fratrie. Mais que la femme, dont la nature assignée par le sort est bien inférieure à celle de l'homme, ait sur la tête un signe de sujétion.

Tertullien (150-160/222 ?), La toilette des femmes, I/2/3-4 Sources Chrétiennes n° 173, Paris, Cerf, 1971 [trad. M. Turcan]

Fallait-il redouter que des femmes qui, sans parure encore et sans apprêts et, si j'ose dire, brutes et mal dégrossies, avaient séduit des anges, ne pussent plaire aux hommes sans les matières de la magnificence et sans les arts de la beauté. [...] La vérité, c'est que, songeant à coup sûr par intervalles au lieu d'où ils étaient tombés et soupirant après le ciel, quand la fumée de plaisirs éphémères se fut dissipée, les anges, qui voyaient dans ce bien propre des femmes qu'est leur beauté naturelle la cause de leur propre malheur, l'ont payé de retour en les empêchant de profiter de leurs dons, et faisant en sorte que, détournées de leur

simplicité et de leur pureté, elles en vissent comme eux à offenser Dieu.

Tertullien, La toilette des femmes, I/1/2, p. 43-47

Tu enfantes dans les douleurs et les angoisses, femme ; tu subis l'attrance de ton mari et il est ton maître. Et tu ignores qu'Ève, c'est toi ? Elle vit encore en ce monde, la sentence de Dieu contre ton sexe. Vis donc, il le faut, en accusée. C'est toi la porte du diable ; c'est toi qui a brisé le sceau de l'Arbre ; c'est toi qui la première a déserté la loi divine ; c'est toi qui a circonvenu celui auquel le diable n'a pas pu s'attaquer ; c'est toi qui est venue à bout si aisément de l'homme, l'image de Dieu. C'est ton salaire, la mort, qui a valu la mort même au Fils de Dieu. Et tu as la pensée de couvrir d'ornements tes tuniques de peau ?

Tertullien, Du voile des vierges, XVII, Patrologia Latina, t. 2, Paris, Petit Montrouge, 1844, col. 912 [trad. J. Lambin]

Les femmes Arabes païennes se moqueront de vous, elles qui couvrent non seulement leur tête mais aussi leur visage entier, si bien qu'elles se contentent de jouir de la moitié de la lumière avec un seul œil dégagé plutôt que d'exposer leur visage entier : la femme préfère voir qu'être vue.

Clément d'Alexandrie (v.150/v.215), Le Pédagogue, II, Xbis/114/3-115/1, S.C., n°108, p. 217 [trad. C. Mondésert]

C'est qu'il n'est pas conforme à la volonté divine que la beauté du corps [des femmes] soit un piège à capturer les hommes.

Basile d'Ancyre (+366), De la véritable intégrité dans la virginité, 35, p. 64

Si, même quand elle est seule, elle évite de se mettre nue avec insouciance, à plus forte raison voudra-t-elle, en présence de ses frères dans le Christ, se parer chastement d'une tunique et de pudeur. Non seulement, elle ne laissera aucun des membres, qu'on doit cacher sous un vêtement, négligemment dévêtu, mais encore, elle se couvrira avec le plus grand soin pour éviter tout danger, afin qu'elle-même, bien sûr, reste à l'abri des outrages, mais aussi pour que sa vue ne

suggère à ceux qui la regardent aucune pensée préjudiciable.

La Didascalie des douze apôtres (III^e s.), III/VIII/17, fac. 1, 2^e éd. , Paris, P. Lethielleux, 1912, III/VIII/24-25 [trad. F. Nau]

Toi donc qui est chrétienne, [...] si tu veux être fidèle, ne plais qu'à ton mari et quand tu marches sur la place publique, couvre-toi la tête avec ton habit, afin que le voile cache ta grande beauté. N'orne pas la face de tes yeux, mais baisse les yeux et marche voilée.

Tertullien, Du voile des vierges, XVII, col. 912

Mais vous aussi je vous exhorte, femmes mariées qui possédez une autre sorte de pureté, à ne pas abandonner, fût-ce un instant, la coutume du voile. [...] Je les plains, si elles ont l'ouïe si faible qu'elles ne peuvent entendre à travers un voile. Qu'elles sachent que la tête tout entière est la femme ; les limites du voile s'étendent jusqu'où commence le vêtement ; sa place est égale à celle que peuvent occuper les cheveux dénoués, de sorte qu'il entoure aussi les épaules ; car ce sont elles qui doivent être soumises, c'est à cause d'elles que le pouvoir doit s'exercer sur la tête ; le voile est leur joug.

Pseudo Sulpice Sévère, Lettre à Claudia sur la virginité, II, dans Sulpice Sévère, Lettres, P.L., t. 20, 1845, col. 228 [trad. M. Riton]

L'autorité de l'Église nous permet d'appeler les vierges épouses du Christ car elle les consacre au Seigneur et les voile comme de jeunes épouses ; elle nous les montre surtout comme aspirant à contracter une alliance toute spirituelle, après s'être dérobées à une union charnelle ; et l'on peut vraiment dire que, par une espèce de mariage, les vierges s'unissent en esprit à Dieu, elles qui, pour l'aimer, ont dédaigné les alliances humaines.

Sur la vierge et l'épouse représentant l'Église pure :

Hermas, Le pasteur, Vision IV, 2/1, S.C. n°53 bis, p. 137

[...] et voilà que vient à ma rencontre une jeune fille [l'Église] parée comme si elle sortait de la chambre nuptiale, tout en blanc, avec des souliers blancs, voilée jusqu'au front et avec un bonnet (*mitra*) comme coiffure.

Cyprien de Carthage, De l'unité de l'Église, P.L., t. 4, VI, col. 502-503

[L'Église] ne peut être adultère, elle est pure et pudique. Elle n'a connu qu'une seule demeure, elle a gardé avec une chaste pudeur la sainteté d'une seule couche.

Comparaison des textes authentiques de Paul

<i>Galates 3/27-28</i>	<i>1Corinthiens 12/13</i>
<p>Oui, vous tous qui avez été baptisés en Christ, vous avez revêtu Christ.</p> <p>Il n'y a plus ni Juif, ni Grec ;</p> <p>il n'y a plus ni esclave, ni homme libre ;</p> <p><u>il n'y a plus l'homme et la femme</u> ; car tous vous n'êtes qu'un en Jésus-Christ.</p>	<p>Car nous avons tous été baptisés dans un seul esprit pour être un seul corps,</p> <p>Juifs ou Grecs,</p> <p>esclaves ou hommes libres [...].</p>
<i>2Corinthiens 3/18</i>	<i>1Corinthiens 11/7</i>

<p><u>Nous tous</u> qui, le visage dévoilé,</p> <p>reflétons la gloire (doxa) du Seigneur, nous sommes transfigurés en cette même image (eikôn), avec une gloire (doxa) toujours plus grande, par le Seigneur qui est Esprit.</p>	<p><u>L'homme</u>, lui, ne doit pas se voiler la tête :</p> <p>il est l'image (eikôn) et la gloire (doxa) de Dieu ;</p> <p><u>mais la femme</u> est la gloire (doxa) de l'homme.</p>
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Résumé Eberhard Gruber

La théo-philosophie lévinassienne défendant la notion constitutive de l'Autre, accrédite un aspect tiers comme «source de la justice» (*Questions et réponses*, p. 68). En quoi cette «justice» liée à l'Autre inappropriable, se positionne-t-elle par rapport au genre humain? Quelle métaphoricité générique est prêtée à l'Autre? En quoi l'asymétrie (pré)originale justifie-t-elle «une certaine prééminence de l'homme» sur la femme (*Du sacré au saint*, p. 142)? Pour comprendre que «la féminité même de la femme est dans cet initial après-coup», il s'agit, peut-être, de déconstruire cette thèse en passant par la différence sexuelle autrement qu'en termes de «féminin» et «masculin», et d'évaluer le coût social de la fausse alternative entre «hiérarchie ou égalité» (ibid., pp. 141-143).

Mireille Calle Gruber

Figure de la mère et circoncision de la langue: lectures de la différence sexuelle chez Jacques

Derrida

Resumé

Je me propose d'étudier quelques enjeux du texte très singulier de Jacques Derrida qui s'intitule *Circonfession*, où s'interrogent, s'interrompent et s'intercroisent textes et réflexions sur le rite de la circoncision et le protocole de la confession. Enjeux qui concernent notre problématique au plus haut point du fait que cette écriture est suscitée et se déroule, en 59 périodes, par, autour, avec, auprès de la mère mourante, dans le coma depuis plusieurs mois.

Figure de la mère juive, rapport de la mère au fils, du fils à la mère, à la mort, à la vie, analyse des différences sexuelles à l'épreuve de l'alliance et de la coupure dans la langue: tels sont les principaux motifs qui seront abordés et qui permettront de mesurer le bouleversant déplacement des «Gender Models» ainsi mis en oeuvre.

The fragility of rights. A comment on Martha Nussbaum

Francesco Saverio Trincia

final version

Martha Nussbaum introduces the meaning of the term "fragility" (*The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy*, Cambridge UP 1986), which is part of the vocabulary of contemporary thought about the relationship between the universe of human values and the circumstances of individual existences. Can this meaning consent us to pass from the "fragility of goodness" to the notion of *fragility of right*, that takes part in the normative regulation of those existences? In Nussbaum's 1986 well-known and successful book, "fragility" means a way to interpret the "moral values" (to express the notion in modern language), namely what human beings have to hope in general to live a lucky and happy life. But more thoroughly, Nussbaum reveals and emphasizes a positive "fragility", which is the universe of goods, of ethical contents and lucky experiences which are possible to find in classical Greek tragedy and philosophy. We would like to investigate the hypothesis to extend the connotation of fragility to modern right, because we are convinced that the right, and therefore, "basic" or "human rights" themselves, if they recognize themselves as fragile, can obtain a change of their own character and increase the "taking on the world" and, in this sense, also their "force". In order to do it, it is necessary to carry out two preliminary passages.

The first should be able to solve the oximoron, otherwise only paradoxical, of a right that "reinforces itself" by means of its recognized fragility, the fragility that Nussbaum has grasped in the Greek notion of ethical goods and in particular in the complex character of Euripides' Hecuba. The second, in the Nussbaum's analysis maintains intentionally a marginal position, concerns the philosophical "method" or the basic theoretical option that leads her entire operation. The second element refers to exemplary and symbolic names of Heraclito, theorist of the flowing contradictory of human affairs and Ludwig Wittgenstein, theorist of necessity that each "explanation" stops in front of a "description" of the world's things, in order to respect it, to not jump over it, to not avoid it. The descriptive procedure is able to adapt to beings harmony only discovering, with Heraclito, that its coherence coincides with its capacity of variation and that "the war is common...justice is struggle"; this procedure consents to turn attention toward the "descriptions" that are presented by *Sexual Orientation and Human Rights in American Religious Discourse* (Oxford UP 1998), edited by S.M. Olyan and M.C. Nussbaum. In this book, the reflection about paradox of a right which has to recognize itself as "fragile" in order to be stronger, finds its modern source of inspiration and its best exemplarity.

The variation of approaches by principal American religious groups (Ebraism, Christianity, Protestantism, Afro-American religions and churches) with regard to rights of free choice about one's own sexuality who are homosexuals (gay, lesbian, transsexuals), offers to the observator the real cultural scene on which theoretical and practice compromises of ethical type take shape - or *have to take shape*.

In fact, it shows that each assignment and each recognition of constitutional rights, as regards to freedom of sexual behaviour, collides and so has to make a compromise with ethical positionings on sexual subject matter that derive from prescriptions, which are from time to time particular and different for each religious faith and each kind of believer. The "descriptions" of the book draws attention of philosophical research to a delicate point: the necessity to understand how is possible to realize the compromise between, on the one hand , the universality, and so the cogency and coercivity, of right, that doesn't admit any dispensation to the principle of absolute freedom of choice and that gives implicitly to the maintenance of such freedom a greater value than the observance of religious rules of particular faith, and, on the other hand, the will of the believer to not betray his own religion neither his own sexual freedom. We will have to understand this possibility, and its realization itself within the conscience of believers who are homosexuals.

What we call a requirement of "mediation" or compromise between the basic rights and the ethical prescriptions that derive from the belonging to a religion and to its precepts on sexual subject matter, contains the possibility that the right increases itself becoming "fragile"; it means that, in accordance with the sense of Aristotelian *phronesis* basing on which Nussbaum interpretes and utilizes the notion of fragility, the right has to adhere to the complexity and to the inner complication of human situations. I believe that mediation and compromise take place on the basis of two convergent attitudes, that concern equally the will of each individual and thus produce a result that is from time to time valid for each contingent existence, which is itself from time to time individual and unrepeatable. This shows, like it is evident, a sort of structural not-definitivity of the compromise itself and, together with it, makes clear the theory of remaining 'open', that is of the intrinsic revocability and of the the non-epistemical absoluteness, of the results constituted by individual choices, where basic rights, religious precepts and sexual freedom and happiness are melted in an impenetrable way. On the one hand, an aspect of moral conscience is at stake, the aspect that requires the respect of basic rights, first of all for ourselves, but at the same time for everybody and independently of religious firm beliefs and sexual options. This holds back state power from introducing limits and prohibitions.

On the other hand, moral conscience itself, which has safeguarded first of all the space of everybody's own free choice, gets ready to direct the sexual behaviour of each person (for example, the practice of homosexuality, that is prohibited by orthodox Ebraism with motivations that concern first of all the refusal of a not-procreative sexuality: cfr. D. Novak, *Religious Communities, Secular Society and Sexuality: One Jewish Opinion*, SO, pp. 11-28); in this way, a moral conscience wants to self-limit its fundamental freedom in order to maintain itself within the boundaries of those particular sexual ethics which derive from the precepts of a specific religion. It follows from this, that while the absoluteness and public inviolability of fundamental rights is not questioned, the emphasis which is set on the circumstance that the own free choice authorizes the religious conscience to the self-limitation of fundamental freedom, it gives to any individual moral conscience the moral weight and the responsibility of compromise between basic rights and religious precepts. It is just the case to observe that the realization of a compromise, which allows to not give up to our own freedom of general choice, when someone accepts to coordinate such freedom with the religious precepts which he doesn't want to forget, favours the side of fundamental freedom. In fact, only the latter authorizes to feel free also within the coercions produced by the compromise

between rights and religious faith.

The theoretical situation, that we are schematizing and analyzing with the aid of *Sexual Orientation and Human Rights*, shows an interesting convergence between basic rights and individual choice of not-heterosexual. For what concerns the rights, these do not renounce to their own absoluteness, rather they adapt themselves to situations where they have to become more flexible and fragile and, at the same time, more strong; one not-heterosexual, in turn, has the opportunity to decide his own behaviour without giving up to his religious option and to the linked ethical precepts, in order to not break the absoluteness of his individual freedom, which is protected by constitutional rights and by ordinary legislation. This is a relevant point, because if it is true, according to Nussbaum's suggestion, that basic rights are themselves a "good" which is destined to come into a horizon of fragility, of revocability, of challenges brought by contingency and variability of existential situations, it is true as much that a good and a value are represented by the choice to remain coherent with the ethical options forced by one's own religious faith. This choice takes place in accordance with the ways and the limits prescribed by that "scene of compromise", that is paradoxically represented by the absoluteness of the individual conscience, which hasn't higher requests to raise, since the freedom of choice of each person (also of *choice of a compromise*) is considered as basic good.

I believe that individual conscience is the ideal point where the right, becoming fragile, reinforces itself, because conscience chooses taking into consideration the basic rights and the corrections that are self-forced by the belonging to a faith that are in accordance with it and its idea of fairness. In fact, here the right is forced to 'touch' the conscience, which requires it to recognize the necessity of compromise and, in this way, leads it to interfere with inner multiplicity of each life-form. Within each life-form the right plays a role that is the more important the less is exclusive and absolute. Here we can ask a relevant question about the change of theoretical scene introduced by modernity when the good, which is emphasized the fragile power, is not any more than one of goods to which classical Greek ethics and tragedy refer, and so it doesn't limit itself within the conceptual boundaries fixed by Aristotelian *Nicomachean Ethics*, but it is the right in its abstractivity and formality, which defends the prerogatives of each individual human being, who is himself abstract and identical to others. This is the modern good which we call "abstract and formal right" and which is the main product of modern rationalistic natural right philosophy; with regard to this right the problem arise about the combination of fragility and force, about the indissoluble relationship between

the adequacy to roughness and contradictory of existence and the safeguard of formality and abstractivity. The ethical goods of the Greek world, fundamentally of Aristotelian universe, do not know the requirement to combine fragility and force, because they do not resound the echo of the abstract right's force. The Aristotelian ethical goods, if they are revealed in their fragility, are simply thought as better for the "good life" than the rational life conceived by Plato on the basis of emphasis about ethical "stable and highly abstract" objects (FG 19).

Nussbaum theorizes the fragility of Greek universe's ethical goods, favouring their Aristotelian meaning, and so she has not to set out the problem in accordance with the form imposed to it by modernity. In this book, Nussbaum does not discuss the question of right, which instead is more important in the successive 2000's *Women and Human Development*. Nevertheless, it is not difficult to find in the book on "luck and ethics" in the Greek world a crucial inspiration for the theoretical scene which here we want to stage. In this way, we will go back to the theme of the relationship between right, religious belonging and individual sexual choices and we will outline a more clear theoretical perspective about the idea that also the modern "good" of abstract right can assume the connotation of fragility and take part in the field of existential conditions of life, in order to be able to rule the human "luck". This is an attempt to recognize in modernity the theme of flexibility of moral and legal categories and of their adaptability to the world by means of action of individual moral conscience. In this way, we exhibit a crucial, although hidden, theme of *Sexual Orientation*: the necessity that right becomes "fragile", in order to maintain its force of universal normative intervention on the world. This necessity requires that individual moral conscience, which takes on the task of "flexibilisation" of law, remains itself absolute.

After talking of the refusal of the absoluteness of Platonic ethics and of the general definition of the concept of "fragility" referring to ethics in Martha Nussbaum (FG, pp. 19-21), we will analyze the concept of justice in Aristotle (pp. 351-352) and the image of Euripides' Hecuba (p. 400), in the same book. Nussbaum dissociates herself especially from the thesis of Jean-Pierre Vernant and Marcel Detienne, according to which the reason that uses *metis*, *dolos* and *teche* in the Greek world is practical reason that is far away from the reason of philosophers, which is interested in "steady objects and abstract contemplations". Only practical reason, which is present in generations of extra-philosophical texts, had the aim to subdue and to master the changing objects of the external world: only this is the not-abstract and not-philosophical reason that refers to the changeable objects and to the world of concrete and particular things. It is true that control on the changeable and concrete world is often apparent,

unsteady and with short duration. But it remains that the specifically philosophical reason does not have the goal of dominating the oscillations of "luck" (those that we could call the changeable contingences of individual lives in their relationship with the social and human world where they live). This reason, on the contrary, tries only to reach the "self-sufficiency" and the elimination of the risk of supremacy exerted by an "ungoverned luck", namely by a luck "out of control".

We find within the Greek tradition a reason of *metis* (of "prudence" and cunning "shrewdness") and the Platonic reason that understands the unreliability of sensorial experience outside objects and so aims at the "capture" of those objects, that are "bounded" to their ideal epistemical truth. Nevertheless, it's possible to recognize an equal importance to a reason which has a sort of excellence that is not comprised neither by the extra-philosophical shrewdness, nor by the Platonic reason. This reason aims at a "virtue" which is thought on the pattern of the "exposure" to the world of external variability; we have to conceive this reason like a plant. The reason of virtue, that Nussbaum has discovered within the Greek tradition, does not escape from the variability either with the instruments of conceptual abstract control on the changeable world or with the instruments of shrewd and "hunter" reason, which tries to obtain, by other means, the same goal of control on world's variability where rational beings live. The reason which is like a plant is like the "crooked timber" of Kantian trees, that, many centuries later, have told us that the social behaviours of human beings can be ruled only on condition that what is structurally not straight remains crooked. This reason evokes "a kind of human worth that is inseparable from vulnerability, an excellence that is in its nature other-related and social, a rationality whose nature is not to attempt to seize, hold, trap and control, in whose values openness, receptivity and wonder play an important part...The picture of reason as hunter is opposed, criticized, constrained by variants of this other picture, which urge on us the value of just that exposure that 'metis' seeks to eliminate" (p. 20).

Nussbaum's construction of a Greek reason, that is not afraid of accepting its vulnerability, helps us to understand the relationship between basic rights, religious belonging and sexual freedom within the options made by individual believers. We have spoken of a right that is the fundamental good of human living together and the essential content of reason which rules this living together; this right becomes "fragile" and, in the same way, remains strong for its rational nature; it remains a segment of reason and, at the same time, exposes itself to the world. Through this exposure, the right adheres with its plant's branches to the roughness of individual existences in order to sustain the religious options of not-heterosexual believers to

meet the otherness and its harshnesses. We think to an "other-related" right, in accordance with Nussbaum's expression. We think namely about a right which is not (only), by its abstractivity and universality, a way to the safe guarantee for our individual freedom. On the other hand, it has not meant to be a shrewd to avoid the roughness of moral world and the compromises that are required by conscience.

When the right exposes itself to the changeable world, it's *not* sure that it *exposes itself without disappearing*; the expression "to expose itself to variability" does not have the expressive strictness that is required by the conceptual universe of the fundamental rights. Its use, then, in accordance with the philosophical perspective opened by Nussbaum, involves a clear theoretical option: that of understanding what happens within the "friction-zone" between right and the world. The relationship between sexual choices and religious belonging produces a lot of frictions and represents an excellent field to studying the deciding role of moral conscience. But it is not true that the individual conscience is just the invaluable mean through which what is rationally absolute exposes itself to the world?

When she discusses the "vulnerability of the good life" and "rational goods", Nussbaum examines the fifth book of Aristotle's *Nicomachean Ethics*, in order to study in depth the concept of practical reason, which is structurally "other-related". The "full excellence" of "justice" (*dikaiosune*) derives from the circumstance that each excellence has a character of reference to the other. Only because each excellence refers to the other, that it deserves the name of justice. The Aristotelian justice is conceived as the excellence of reference to the other; for this reason, it does *not* have the features of abstractivity and formality that belong to a modern right. So, every equivalence of *dikaiosune* and right is unacceptable either from historiographic or conceptual point of view. Nevertheless, here we would like to understand if and how much it is possible to "aristotelize" the modern right, in order to increase its ability to go in touch with the otherness, to which it is vulnerably exposed. The analysis of the relationship between basic rights, choice of religious faith and homosexual option allows to study how the right is connected 'with the other' understood as different. Aristotle, Nussbaum writes, "seems to be claiming that with only solitary concerns, without the excellence that consists in having an appropriate regard for the good of others, a human being will lack an important human end, he will lack all of excellence - for each is , as he says, a thing 'in relation to others' (*pros heteron*) as well as 'in relation to oneself' (*pros hauton*)" (pp. 351-2). If the excellence of action consists in the recognition of the structural reference to other, and besides to oneself , it follows from this an image of justice which has a value also for us as

modern human beings. Such image goes beyond the self-referentiality of modern abstract right, as it introduces the reference to otherness within the abstractivity of right; the otherness has to do with the right, but it is not the right. This point is well seen by Jacques Derrida in *Force de loi*, where he suggests a distinction between justice and right and comes near some thesis of Nussbaum.

We try to utilize Nussbaum's thesis within the modern field and to think together the right and its 'other'. Our problematic field probably does not coincide with the disciplinary boundaries of philosophy of right, since we want to think of the right in its worldly reference: with Olyan and Nussbaum, we ask which function can have the fundamental rights in order that the life-project of happiness, autonomy and self-sufficiency of a not-heterosexual believer is respected. Nussbaum points out that Aristotle turns upside down the sense of Platonic terminology. While according to Plato no value is *pros heteron*, Aristotle believes that only the pursuit of goods, that are relational in itself, assures human beings not only the justice but also the true courage, the true moderation, the true generosity, greatness of heart and so on. We can wonder whether the generosity toward itself, then the greatness of heart, means to be able to welcome different requests, and whether this disposition of heart allows to conciliate the respect of sexual freedom, of religious choices with the guarantee offered by the fundamental rights.

Nussbaum suggests a reversal of relationship between what we consider our goods or values and the requests that, on their basis, we address to the world. It is commonly said that the reduction of ethical and legal demands that we address to the world helps their satisfaction. Within a classic liberal sphere, in effect, the right makes on the world few and essential demands. It asks the world for demands that will surely be satisfied just because the right gives to the world the legal 'form' to which the world itself has to adapt. So the right is able to provide an answer. Nevertheless, if we try to change the relationship between our values and the world where they should find verification, we undertake to increase our activity in the world and toward the world so that it could comply with our higher requests. *"Instead of decreeing in advance that the only important things are the ones that are already under human control, we try to increase our human control over the important things. This would be the proper way for a human being to pursue self-sufficiency"* (italics mine). So, self-sufficiency, autonomy in the modern transposition-transformation of concept, means not only subordination of human beings to values, but concurrently the subordination of values to human beings. It is a thesis that intends to melt the positions of Aristotle and Kant and refuses

the command *fiat justitia et pereat mundus*; moreover, this thesis, in accordance with the romantic and post-Kantian project, aims at a right and its formalism which are something 'for the man' rather than at a man 'for the right'.

Human or fundamental rights obtain their force of rights from their fragility itself, understood as their being 'important things' for the man. So, they bring their aspect close to the Aristotelian "justice", which is one of goods that human beings defend by means their moral conscience, because they are "important". This rights remain important only on the condition that they remain under human control. The human trait of this control means that there is nothing which is always and forever guaranteed as human possession.

The Euripides' Hecuba (p. 400) represents the image of social and relational nature in her essential options of values, in her "reliance upon fragile things", in her antropocentric attitude and in her conviction that "ethical commitments are human things, backed by nothing harder or more stable". Ethical standards exist only within the human world; "it is by 'nomos' - Hecuba says - that we recognize the gods and live our lives, making our distinctions between injustice and justice".

So, in the book *Sexual Orientation* we face a question of "justice", a question to which we finally return. In this book we find the question concerning the behaviour as related to the link between choice of religious faith and sexual freedom, a connection that requires a great amount of control on our part. A pure and simple defense of the rights of a homosexual is correct and necessary, but, at the same time, is difficult and maybe, as such, impossible. The problem emerges if we analyze the question about the rights of homosexuals with regard to religious belonging that contribute to definition of the citizens identity. We have to consider Nussbaum's critics to John Rawls, who believes that fair society is possible only the citizens share not-sectarian positions. Fundamental rights of homosexuals do not always coincide with the religious refusal to practice sexual difference; so, we have said, the right has to become 'fragile' in order to become more fair. We can defend the right if only we compare it with the radical diversity, which is on the line that divides and connects the universality of right and the peculiarity of faiths, beliefs and convictions. The right can "capture" the diversity only on the condition that the diversity "captures" the right.

There are different normative sources that determine the attitude toward the practice of sexual difference; within the liberal democracies, this religious normative directions are connected with human secular rights. This situation involves a double form of loyalty which reflects itself in rights. The first and absolutely basic form turns to the legal system of the state, which

authorizes and protects the freedoms both of believers and *non*-believers. The second form, the second circle within the first, turns to religious normativity (like we have seen with regard to the prohibition of homosexual practice or marriage by orthodox Ebraism). Also an orthodox Jew as David Novak says that two loyalties have to live together and he refers, among other things, to "noachid laws", which bind Jews as well as the whole of humanity. So, the "fragility" of rights consists of their availability to recognize other normative sources. The rights do not appear as *passively* fragile, because they actively accept the plurality of moral and worldly belongings. So, the "fragility of rights" involves that we grasp the cruciality of the meeting point between the belonging to the normative universality of human rights and the belonging to the universality of religious faiths, which is, in any case, the universality of a particular community.

Exit, Choice and Loyalty

A Liberal Contractualist Response to Dilemmas in Europe between Religious Liberty and Gender Equality

In memory of Susan Moller Okin

European Science Foundation Exploratory Workshop

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-- Speaking notes, do not cite! All comments most welcome, to andreas.follesdal@arena.uio.no

A just future would be one without gender. In its social structures and practices, one's sex would have no more relevance than one's eye colour or the length of one's toes... It would be a future in which men and women participated in more or less equal numbers in every sphere of life, from infant care to different kinds of paid work to high level politics.

Susan Moller Okin, *Justice, Gender and the Family*, 1989: 171; cf Okin Susan Moller 2004)

Employment and careers are gendered, with women disproportionately underemployed and in less well paid jobs. Some religions inculcate loyalty to such cultural practices that stunt

women's actual choices of careers and life plans. How should liberal states regulate these aspects of such religions?

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

The conflict is not easily adjudicated by claiming that rights – human or otherwise – should trump other considerations, since both religion and gender equality appear in human rights conventions, promoting or protecting important human interests. Indeed, they can be discerned in two adjacent Principles of the new Constitutional Treaty of the European Union, that “The Union shall respect cultural, religious and linguistic diversity.” (Art II-22), yet shall also ensure equality between men and women in all areas, including employment and work (Art II-23).

Some have suggested that the issues must be weighed by considering how ‘central’ an issue is for a particular religionⁱ. Sometimes the impact on religious beliefs is sufficiently urgent to warrant protection of the religious view. Religious immunity is more important for individuals' central interests than the effect on motivation for occupational achievement. Yet is this to be determined on a case-by-case basis? Sunstein recognizes that this requires great trust in the administrators, to assess the importance of interests to be protected, and depth of interference. Justifications of interference would have to be “supported by a legitimate and sufficiently strong justification.” Might we do better, at least by suggesting how judges'

discretion should be guided, or by suggesting better legal rules? (Barry 2001, 183)

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

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

The view presented here is a liberal contractualist account, which has often been challenged from several fronts on these issue: some hold that liberals will only accept the normative significance of bonds that are voluntarily acquired – thus having trouble accounting for any loyalty to family and the parents’ religion whatsoever that one finds oneself born into (Miller 1995). Others appear to hold that as long as women have real exit opportunities from such religious traditions, true liberals should be prepared to let oppressive practices continue. The state should not be in the business of regulating or correcting the preference formation within religious organizations. Others hold that proper egalitarians should hold to the contrary, that religious bodies have no legitimate claim to disseminate gendered role models, and that the state is thus free to forbid those aspects of religious freedom. True egalitarians should be prepared to use the state to ensure equal outcome: “that all positions of high status, income and decisionmaking power ought to be distributed in comparable numbers to women and men” (Young 1990, 29).

Focus

The issue here is limited to how institutions – including laws – should regulate such conflicts as may be between on the one hand freedom to teach and practice one’s religion, especially

those aspects that promote gender-specific social roles, and on the other hand equality between men and women regarding freedom of choice regarding employment – where some religions may discourage women from certain professions – and mothers from paid work in particular¹. This is not to deny that religions often motivate violations of women’s civil or political rights and their rights to physical integrity. Such violations are clearly outrageous – and, if they raise philosophical issues, these are different.

The following comments defend this view in 3 parts:

- 1 On liberal contractualism; and on two central interests to be secured among equals:
- 2 The scope permitted for transmitting one’s religious views to one’s children;
- 3 The kind of equality regarding employment that justice requires.

1 Liberal Contractualism: the significance of choice and loyalty

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

The contractualist account of normative legitimacy holds that individuals are normatively bound to comply with laws and institutions only if they satisfy principles which can be justified by arguments in the form of a social contract of a particular kind. The principles of legitimacy we should hold institutions to, are those that the persons affected would unanimously consent to under conditions which secure and recognize their status as appropriately free and equal. These standards of legitimacy are specified by consideration of what interests and principles no one could reasonably reject as a basis, given the mutual interest in acting on such non-rejectable grounds. Hence the phrase ‘contractualist’. This notion of possible consent allows us to bring the vague ideals of equal dignity to bear on the questions of legitimacy and institutional design.

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

practices that surround us, employing the apparatus of consent for this purpose.

Interests at stake

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

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

More generalized, the challenge is this: Every state contains a variety of religious views and cultural minorities, whose members hold partially incompatible views about the good life. Disagreements about conceptions of the good increases the need for reasons, to reduce the fear of illegitimate use of state power; yet the disagreements also reduce the scope of arguments which can be offered and accepted among citizens of different views. The use of force in establishing and maintaining social institutions among individuals with different practices and beliefs requires a justification that does not depend on adopting one particular religious framework or a particular conception of the good life (Nagel 1987).

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

Community

Contractualist theories are sometimes said to deny the intrinsic value of community, and to ignore the "embedded" nature of human beings.¹ However, an important interest is that of partaking of social activities, involving cooperation with others. Liberal Contractualism also recognises that the social institutions, culture and practices shape our expectations and aspirations in fundamental and inescapable ways. Social institutions have a pervasive impact on the development and satisfaction of our interests by framing our expectations. We are concerned with the legitimacy of social institutions precisely because they exercise a strong

influence on us, or our life plans and our expectations.¹ This is one reason why individuals must be acknowledged to have an interest in procedural control over the social institutions that inescapably shape values, goals, options and expectations – sometimes including religious communities. The requirement of equal respect entails that individual must be secured against indoctrination: against inappropriate kinds of control of our religious beliefs, the formation of our conception of the good, and our choice of action.

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

Not autonomy but non-domination

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

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

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

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

take to be a less contested interest in avoiding domination.

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

Not autonomously chosen life plan, but conditions of socialization

David Miller has argued that

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

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

Thus some constraints are important, and we turn to them below, focusing on the particular concerns regarding explicitly gender-specific shaping of aspiration levels, career plans etc by religious institutions?

and preventing low threshold of exit due to lack of ability to perceive life outside as worth living, or unavailable.

On exit option – neither necessary nor sufficient

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

Susan Okin put the challenge with characteristic precision:

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

I agree with Okin, Barry and others that an important normative requirement is to ensure that the “the option of exit should be genuinely open” (Barry 2001, 244), and that formal permission to exit is insufficient, as is knowledge of alternatives (*pace* Galston 1995 - check), However, it appears that a real exit option is neither necessary nor sufficient to render the *content* of church socialization justifiable. Nevertheless, I shall suggest that the right to exit can be justified – on other grounds.

Not necessary for socialization to be legitimate

‘Communitarian’ critics of liberalism sometimes hold that liberals ignore the constitutive role of memberships when holding that all legitimate bonds should be open to choice and exit. If indeed church membership is constitutive, it will be impossible to exit completely from that community, since one’s psyche and mind set will continue to bear traces and sediments of the

membership. The ‘goods internal to the practice’ – ranging from well-defined sacraments to vaguer ways of viewing the world – may be so deeply entrenched in one’s sense of what makes life worth living that complete ‘exit’ is impossible.

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

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

Not sufficient for socialization to be legitimate

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

Why exit options still matter

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

Secondly, Liberal contractualism assumes that the interest in changing one’s life plan is fundamental in the following sense: We must recognize and regard as important that interest *some* of us have in changing religious views or cultural membership (cf. Brighouse in Barry 2002, 224) The aim is not to promote autonomy, but enable citizens to live autonomously

should they wish to. In conflicts, this interest must count for more than the interest others may have in having authority to prevent other members of the community from changing their religion and world view. However, this is not to hold that all must have such an interest in "standing back" from their religious beliefs. Such a right to exit does not rely on a view that the autonomy of individuals is of intrinsic worth. Rather, it can be defended because other modes of distributing discretionary power present avoidable risks to individuals' basic needs.

Three conditions: ability to exit and choose a valuable alternative

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

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

Thirdly, and more demanding than the 'standard' capability approach, she must know about some of these alternative options, and be actually able to choose on an informed basis. Okin notes that

the right of exit, while no doubt important, does not have the clout it is often thought to have in arguments defending the rights of illiberal groups within liberal contexts. Instead, it is inherently problematic. Those most likely to need it are those least likely to be able to employ it. Neither may they see it as a desirable or even an imaginable option. (Okin 2002, 207)

Christine Korsgaard suggests that

We may believe that a human being is free, if ever, when she not only has a range of options but an education that enables her to recognize those options as such and the self-respect that makes her choice among them a real one. Ignorance, lack of imagination, and lack of self-respect are not just external constraints on the range of your options: they can cripple the power of choice itself. The possession of freedom of the will may itself be lucky.

Implications for education

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

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

Parents may thus not prevent their children from receiving information about such alternatives regarding careers and the rights of religions. Even private religious schools must convey this information¹ - for a variety of reasons, including the need to ensure that citizens with voting rights can use those rights with due consideration for other citizens of different faiths.

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

All citizens must have information about the limits on her church's powers of excommunication. Furthermore, all must have information about the social institutions, e.g. that loss of faith or divorce is not a legal crime. But liberal contractualism insists on a distinction between the 'political' sphere and the domains of civil society, leaving ample room for religious views and cultural aspects which differ on other matters. Thus even though all children must be taught about diverse ways of life, e.g. about religion, and their different views concerning gender equality, such education need not – indeed should not – convey that such matters are completely subjective and an issue of relativistic choice. Nor should the education promote in all children a critical stance toward religions. An important challenge is indeed to foster certain political virtues and a reflective and critical attitude in children toward the political system and institutions as part of citizenship, without implying that such virtues and critical attitude is always appropriate toward one's church. What is required is that all know that others in the political community have other life plans than themselves, yet have the same legal protection and standing (cf. Macedo 1999, Gutmann 1980, 349).

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

Criticisms:

In concluding this section we may consider some criticisms

“To require exit options is to regard religion as a market product, to be acquired or dismissed at will”

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

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

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

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

I suggest that this concern is due to a misperception of the role of voluntary choice. Miller argues that liberals fail to grasp the normative significance of cultural belonging:

"cultures, unlike ships, are not vessels to be boarded and abandoned at will." (Miller 1994: 154). We have many duties that we have not explicitly or tacitly consented to. Actual, tacit or hypothetical consent is not the source of moral obligation to comply.

“Allowing exit, information about other religions, and information about other gender roles is contrary to the religious view, and hinders its survival”

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

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

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

More centrally, the issue is with what right a religious community can claim that members should not be allowed such information, necessary to allow exit, in order to secure the good of the survival of the church. The liberal contractualist claim is that this information is required to prevent domination, and that this interest overrides the interest of church members in continuing the membership through such practices that violate members’ legitimate interest in avoiding domination. Nevertheless, a church may well object that women with this kind of education are likely to protest and exit. However, while possibly a correct prediction, this is not a sound objection.

“Assumes a contested ideal of individual autonomy”

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

But liberal contractualism claims to be distinct from the comprehensive liberalism of Mill.

Liberal contractualism does not rely on a comprehensive liberal view of life centered on autonomy or individuality. Rational deliberation is not regarded as the correct way for an individual to decide how to live one's life. Rather, this view only holds that a wide variety of world views must endorse political toleration, justified on grounds that can command assent even among conceptions of the good which differ on many substantive points. Comprehensive conceptions may hold that others are mistaken, and regret that there is pluralism of conceptions of the good within a society. Contractualism does not regard multi-national state as a good because it is needed to provide cultural pluralism, liberty or vitality (pace Acton 1907, cf. Miller 1993, 10).

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

What kind of equality does justice require: equality of result? Equality of opportunity?

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

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

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

Why equality?

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

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

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

a Remove destitution and dire need

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

b Remove stigmatising status inequalities

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

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

c Avoid domination

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

We can prevent domination in at least two ways. One strategy would be to allow certain inequalities, for instance in education or employment patterns, but prevent them from having worrisome consequences by ensuring that education or certain modes of employment does not serve as a tool to obtain influence. This may require that education no longer serves as a ticket to professions and positions of power. However, this arrangement seems neither feasible nor attractive. To remove the risk of domination by the educated by decreasing the value of education would easily entail the dumbing down of those in positions of power and influence. An alternative strategy seems better: to remove the sources of worrisome inequalities through

providing education and opportunities for employment for all up to the level required to prevent domination. This strategy may require some limits on the differences in levels of competence. Also it will require that differences in career choices are known to young citizens choosing employment, and limiting the opportunities for domination by some professions or by some forms of employment.

d Secure fair procedures

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

Let's assume that the distribution of employment should be based only on the talents and interests of the applicants, expressed by grades and requests for employment, rather than be distributed according to inappropriate criteria such as gender or social background (Rawls 1971). Given these relatively uncontroversial claims, then employment must be available to all, regardless of geographical location, gender, ethnic or social background. Special efforts may be required to secure that such selection procedures work according to plan.

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

e Equal distribution of products of cooperation

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

Such goods as professions and institutionalised power are in an important sense created through our joint practice as citizens. Educational and career resources – professionally trained teachers, pedagogical materials, employment opportunities - are goods created and maintained through common efforts to uphold the social order, that all therefore have fundamentally equal claims to. A principle of fair distribution of such goods would seem to be that all should have equal right of access to these goods. At least their access should be independent of differences that are irrelevant for the social benefits of having such positions in the first place. I submit that equality of opportunity expresses such a basis of distribution.

Equality of result, on the other hand, would seem to strict a claim: this would seem to ignore an appropriate role for motivation and commitment by the individual. However, the criteria for access to positions of power must seek to benefit the society at large, and it may well be that the benefits justify limits to inequality of result – for instance, that service professions will provide better services to a diverse population by reflecting the varieties of cultures, religions, ethnic groups – and gender – in society.

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

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

Why inequality of result still is a matter of concern

Liberal contractualism seems at first glance to differ from Okin's statements regarding equality of result. She held that

A just future would be one without gender. ... in which men and women participated in more or less equal numbers in every sphere of life (Okin 1989, 171),

and that unequal proportions of exit from religions is an indication of unequal treatment of girls and women:

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

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

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

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

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

I have suggested that statistical differences in career choices for men and women – inequality in result – may be an indicator of violation of equality of opportunity though it need not in itself be unjust. However, the different power – economic and otherwise – of careers in the gendered labour market seem hard to square with justice. The central problems of justice is thus not that women and men choose different careers, but that such choices may now be a result of unacceptable forms of inculcation, and that some of the careers – typically womens' – are underpaid and otherwise provide unfair conditions of work.

Conclusion

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

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

of education.

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

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Abstract presentation ‘Women caught between religion and equality?’

Developments in international and European human rights law’

Workshop ‘The impact of cultural and religious gender models in the European formation of socio-political human rights’, Università di Roma Tre, 11-13 November 2004

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In Western Europe, human rights have been very valuable in improving the position of women, both as legal and as moral norms. Especially the right to equality and non-discrimination as enshrined in all major human rights conventions and national constitutions has shown itself to be very instrumental in achieving this. Yet, the notion of equality of men and women has never completely triumphed. Especially (orthodox) religious groups and institutions have proven quite stubborn in modifying traditional notions on the position of women.. In Europe, the influence of such notions is still pretty strong in the Mediterranean countries.

Recently new challenges to the equality of the sexes have been introduced in Europe by orthodox Islamic groups who claim space for ideas and practices like separate education for boys and girls, the right to wear headscarves in public functions, the recognition of divorce according to Islamic law, or even female circumcision, polygamy and arranged marriages. In all such issues the position and rights of women are (potentially) at stake. Interestingly, just as women did and still do, these Islamic groups invoke human rights to corroborate their claims. Not just the right to freedom of religion (in combination with the right to enjoy ones own culture and religion), but also the right to equality and non-discrimination. In this context it concerns the right not to suffer from discrimination on the basis of religion or racial discrimination, which includes discrimination on the basis of ethnic or national origin.

So how should we assess these issues from a human rights perspective?

In the presentation I will start with analyzing the way human rights law has dealt with these issues so far. Which limits does it set, if any, to religious ideas and practices which potentially

limit the rights of women? I will focus on the major human rights conventions relevant to European countries: the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of all forms of Discrimination against Women (Women's Convention).

Secondly, I will explore the question how to use the space left by international human rights law. As a case study I will discuss the issue of wearing a headscarf in public functions.

Katrine Ore

Ambivalent State Feminism: How Can CEDAW be implemented in Norwegian Law?

**“The influence of statefeminism on gender roles in The Norwegian Church”
Abstract by Katrine Lund Ore**

The controversies over women in theological seminars and the ordination of women in The church of Norway has been going on since Valborg Lerche finished her degree in theology in 1899. The Norwegian parliament voted for women's rights to be ordained priest in 1938. The first women to be ordained was Ingrid Bjerckås in 1961. Women have been ordained priests in the Church of Norway for about 40 years, and it is now widely accepted in Norway both among the clergy and in the Norwegian population.

However the resistance to women priests and women bishops can be found in documents that shows how the Church of Norway as a religious institution is a source of genderdiscriminatory practices that undermines The Church of Norway's willingness to implemented the secular society's policy on genderequality.

Every step towards genderequality in The Church of Norway has been carried out by what is termed statefeminism¹. Statefeminism as part of the governmental structure has forced The Church of Norway to integrate modern thinking about gender in their institution by instructing the Church of Norway to ordinate women priests and bishops. In this paper I will investigate the confrontation between two different systems of norms concerning gender. The secular state is organized according to international laws and conventions on equal rights for both men and women. The Norwegian Government has signed and ratified CEDAW which means that the Norwegian State is committed to implement equality between men and women in every institution in the State and in all areas of society. The Church of Norway is based on a theological tradition in which gender is defined in a specific mode¹. The Church of Norway

is an institution in the Norwegian State, and is obliged to follow Norwegian jurisdiction concerning laws that regulate the labour market. The Church is the only institution with an exception from the law about gender equality (Gender Equality Act) since this secular law can not be implemented in “godgiven” institutions. The discourse on women being priests and bishops is an example of how exclusion and inclusion of secular thoughts in religious institution such as The Church of Norway is carried out in a modern welfare state where the government argues that all human beings have equal rights and dignity.

Magda, Tomei

Religious Integralism and Fundamentalism versus women's human rights.

Where > In the Mediterranean Area and Europe
When > Since 1980 up to now
Why > Because of patriarchal societies of the southern Mediterranean Area and Middle East

Nowadays we witness a mass migration from the south coast of the Mediterranean sea to Europe. This big movement of people houses the germ of different cultures at the basis of which religion plays a primary role. Religious integralism and fundamentalism are the obstacles Europe has to face to enable immigrants to accept the rules of democracy. Democracy allows everybody to express himself in freedom and respect others' freedom. A pluralism of life attitudes and points of view enriches the culture of peoples. One of these points of view is secularisation as well as religion is another. Fundamentalism means a strict respect of rules, which overcomes the religious spirit and at the same time disregards human needs and rights of people imposing inadequate ways of life. These rules, strictly imposed, in the most of cases prevent women in patriarchal societies from achieving gender rights and keep them longer in the private sphere. To respect the rules of democracy that we, western people, accept and want to share with those we believe are far from them, we can't oppose a lay fundamentalism to a religious one. See the use of veil in french schools. As well as we must make a distinction between religious integralism and traditional practices. Women's genital mutilations are not suggested by religious rules and are on the other hands a violation of fundamental human rights as they attempt integrity of life. In the past centuries in Europe we had to face catholic integralism and we can help countries now trying to find their own way to democracy and the achievements of women's human rights.

**The Influence of the Catholic Church on Spanish Political Debates on
Gender Policy (1996-2004): Sexual and Reproductive Rights, Domestic
Violence and Reconciliation of Work and Family Lifeⁱ**

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Introduction

The catholic Church has had a long standing tradition of influence on Spanish political

debates on sexual and reproductive rights, such as birth control measures, abortion, and divorce, both during the dictatorial and the democratic regimes. In the last decade the debates have also included the area of domestic violence and reconciliation of work and family life. The influence that the catholic Church has sought to exercise on the democratic political life has been targeted both at centre-right and left governments. In some cases the influence is direct and explicit, while other times it has been a more implicit threat on the policy-making of governments. For instance, despite the advances achieved with the law on divorce, the UCD (*Unión de Centro Democrático*), the political party in government during the Spanish transition to democracy (composed of conservative, demo Christian, liberal, and social democrat groups) did not dare mentioning the issue of abortion for fear of the Church's reaction. Although the UCD had to revoke in 1978 the articles of the Penal Code that prohibited the sale of contraceptives, due to the pressure of the Spanish society, it did not promote any campaign to encourage the population to use them. The Church's opposition to birth control measures is still strong in Spain, as reveals the Bishops' Conference reaction against the 1990 'Condom campaign' organized by the socialist government (Gibson 1993).

In this paper I will explore how the catholic Church has affected Spanish political debates on feminist issues such as reproductive rights, domestic violence and reconciliation of work and family life in the period comprised within 1996 and 2004ⁱ. The argument shows that the influence has taken place both directly, through the intervention of the Church in the above mentioned debates, and indirectly, through the Church's role in the Popular Party (PP), that took office for the first time in 1996, when the Socialist Party (PSOE) lost general elections after four legislatures. From then until March 2004, the conservative party (PP) has been in government in Spain, ruling in the second term (2000-2004) with absolute majority. Most electors from the PP are catholic and share a conservative-patriarchal discourse on women's role in society. However, it seems that the ideological convergence between the Church and the conservative party is not equally strong in all debates analysed, as other factors such as social pressure or party philosophy may influence PP's political decisions in slight divergence with the Church.

In each of the three debates, the Church's capacity to influence policy outcomes on women's rights will be assessed taking into account the six following factors:

1. The strength of the Church's mobilisation, that depends on the level of interest the Church has for a particular issue.
2. The colour of the party in government, united to the political will to act.

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3. The activism of the opposition party/parties.
 4. The power of women's movement mobilisation.
 5. The ideological union between the Church and the conservative party on a given issue.
 6. The strength of 'pro-Church' civil society's mobilisation.

The different combination of these factors in each debate will help us to understand the reasons of the success or failure of the Church's impact on the definition of women's rights in the Spanish socio-political context.

The analysis is based on sources such as literature on gender equality policy, Spanish press articles from *El País* and *El Mundo*, the 2004 Church's Directive on family issues in Spain, elaborated after the Bishops' conference in November 2003, conservative government's law and policies on the reconciliation of work and family life and domestic violence, the Popular Party's (PP) electoral programme in March 2004, the Spanish feminist movement's texts, and interventions of the theologians from the Association 'Juan XXIII', a group critical with the more traditional and repressive tendencies of the catholic Church.

The structure of the paper is as follows. The first section deals with the Church's influence on the debate on sexual and reproductive rights, particularly the issue of abortion. In the second section the direct and indirect impact of the Church on domestic violence is discussed, together with the position of the feminist movement on the issue. The last debate, that is analysed in section three, is on the reconciliation of family and work life. In the latter, the Church had a more indirect role, partly convergent and partly divergent with the politics of the conservative party PP. A final section will summarise the three debates and draw conclusions on the Church's capacity to influence the definition of women's rights in Spain.

1. Sexual and reproductive rights: abortion and contraception

Sexual and reproductive rights are one of the issues of major interest for the Church, due to the control it allows them on people's personal and relational choices. According to the feminist theologian Margarita Pintos (2002), the first aspect to take into account when analysing the influence of the catholic Church on Spanish policy on sexual and reproductive rights is the state's conspicuous funding of the Church's activities (approximately 3000 million euros each year). In her opinion, the Spanish state, thank to its financial support, has contributed to transform the catholic Church into an economic, cultural and educational

power through which ‘instructing and forming’ people in all areas including sexuality and reproduction. Catholic associations receive most of the state funding in the field of social assistance and charity, with an investment of 155 million euros, and the area of education, with a subvention of more than 2.520 million euros to religious orders (Pintos 2002).

Education is a crucial element of influence on sexual and reproductive behaviour, due to its effect on the indoctrination and shaping of young people’s minds in line with the catholic morality. Pintos (2002) explains in numerical terms the extent of the catholic influence on education. In Spain there are 33.440 teachers of catholic religion (15.600 in public education and 27.840 in private education), that require the investment of 600 millions euros for each course. As mentioned, the state’s funding of arranged private catholic education (*enseñanza concertada*) is of 600 million euros, that represents 85% of the state’s contribution for all arranged education. In total, there are 45.240 classrooms, 1.500.037 students, and 80.959 teachers, not including six universities owned by religious orders, 41 theological centres, 11 university colleges, 55 university schools, especially on nursing and teacher training, and 72 higher education institutesⁱ. This context can provide an idea of the growth of the economic, cultural, and educational power of the catholic Church in Spain, which is a starting point to consider when we analyse the influence exercised by the Church on the definition of sexual and reproductive rights.

The Secretariat for family and the defence of life is the institution within the Bishops’ Conference in Spain that is in charge of making public the Bishops’ Conference’ positions and documents with respect to sexual and reproductive rights. The Secretariat has been particularly active on the issue of contraception and abortion. The only contraceptive that the Church allows is the natural method, which does not empower women to autonomously control their reproductive capacity. Anti-AIDS condom campaigns such as ‘*Póntelo-Pónselo*’ (‘Put it on me- put it on him’) were criticised by a Church representative, Msgr. Carles, with this words: ‘chastity, abstinence and faithfulness to a non contaminated partner’ are the best way to avoid contagion (Pintos 2002).

The Spanish Parliament unanimously approved in 1998 a non legislative proposal on the potential marketing of the abortive pill RU-486. The Spanish Episcopal Conference immediately replied with a letter to the Parliament describing the pill as a ‘lethal chemical weapon’, and asked the government to avoid taking any measure which could contribute to its distribution (El País 15/9/1998). The marketing of RU-486, best known as ‘the day after pill’, was finally approved by the Parliament in 2001, causing the anger of the Spanish Episcopal

Conference that described the emergency contraceptive as ‘murder’, ‘anti-human pesticide’ and a ‘new threat against life’ (Pintos 2002; El País 11/5/2001). In July, the Spanish bishops sent a letter to each MP (Member of Parliament), claiming that practising abortion through a pill is a crime that consists in the elimination of an innocent human life. In spite of the fact that in Spain there are approximately 18.000 unwilling pregnancies among girls under-nineteen, the spokesperson of PP for health issues reassured the Church that the contraceptive would not be distributed by the public health system (El País 11/5/2001; Pintos 2002).

The position of the Church on abortion is that it is a crime committed against an innocent who has rights from the moment of conception. In Spain abortion is legally permitted since 1985 in three cases: first, when the physical or mental health of the mother is at risk (the law does not fix a deadline for the interruption); second, in case of rape, when the latter has been denounced (the interruption of pregnancy must occur during the first 12 weeks); third, due to fetus deformity (during the first 22 weeks of pregnancy and after a dictate from specialists). This excludes the free abortion due to a personal decision of a woman, that, according to the feminist writer and activist Lidia Falcón, was not introduced by the socialist government for fear of offending the Church. The abortion law was criticised not only by the most conservative forces such as the Church and the Popular Party PP, but also by the progressive side of the population due its restrictive character, which was attributed to the socialist fear of offending the Church and losing catholic votes, in spite of the absolute majority that the government enjoyed at the time (Gibson 1993).

Although the law was approved in 1983, it was not effective until 1985, since it was condemned as anti-constitutional by a verdict of the Constitutional Court (responding to a denounce presented by the right wing party *Alianza Popular*, refunded in 1989 as *Partido Popular*). After some minor revisions to the project, the PSOE government presented the law for a second time in Parliament, and achieved its approval. However, women’s access to their abortion right was not easy. Catholic doctors and nurses refused to practice abortion in public hospitals, making it difficult for poor women to have access to abortion, due to the high costs of private hospitals. This affected particularly the autonomous community of Navarra, where a catholic lobby managed to interrupt the practice of abortion for two years, forcing women to move in order to have an abortion.

A number of right-wing judges had also dictated harsh and debatable sentences against doctors practicing abortions, while the socialist government received strong criticisms on the part of feminist organizations for not intervening or reforming the law by granting women the

right to self-determination (Gibson 1993). According to the latest data from the Spanish Health Ministry, more than 77.000 women had an abortion in 2002, that is 10% more than the previous year (Cadena SER/Mariola Lourido 25/3/2004). Since the legalization of abortion, the Church's declarations on the latter have tended to influence the decisions of every catholic politician and in general of every catholic who performs a public function (doctors, nurses and judges included). The Pastoral of the bishop of Cuenca, written immediately after the legalization of abortion in Spain in 1985, is exemplary in this sense: 'The general rule is clear. Catholics enjoying a public charge who promote or facilitate, and in any way legally protect abortion as an option, through laws or government acts, will not be able to escape the moral qualification of public sinners' (Bulletin of the Episcopal Council of USA 1986).

In two occasions on February and September of 1998 opposition parties from the left proposed the introduction of a fourth case of legal abortion to grant women the autonomy of choice on the interruption of their pregnancy. The PSOE proposed to depenalise abortion in case of 'serious personal, family, or social conflict' within the first 12 weeks of pregnancy, while IU (*Izquierda Unida*), NI (*Nueva Izquierda*) and BNG (*Bloque Nacionalista Galego*) asked for free abortion respectively within 16 weeks for IU and 14 weeks for the other two parties. In September 1998 the Church's mobilisation to affect the political decision on abortion in conformity with the catholic morality was particularly strong and intrusive with the decision of the political sphere (Pintos 2002). The Episcopal Conference published a document that invoked the motto of James Bond movies 'Even greater licence to kill your children' to criticize the law proposals from PSOE, IU, NI and BNG. The text was read in the homilies and prayers of many Churches across Spain, while there were priests who encouraged believers to demonstrate in front of the Parliament (El País 21/9/1998).

Members of the ecclesiastic hierarchy jointly condemned the proposals for extending the abortion law. The archbishops of Madrid, Barcelona and Granada and the bishops of Málaga and Jaén agreed with the text of the Episcopal Conference and asked members of Parliament to vote against what they defined an 'unconstitutional' law. The archbishop of Madrid, Antonio María Rouco Varela, employed the harshest words when he claimed to be 'surprised that Europe's experience during the thirties and forties had been so early forgotten', alluding to the Nazi regime. The Catalan archbishop argued that this law would increase the number of abortion and oblige a great number of 'defenceless human beings' to death. Women who decide to have an abortion were attributed direct responsibility for these deaths, according to the archbishop of Málaga, by counting on the 'complicity and cooperation of the

state' (El País 16/9/1998).

The Church moved quickly from words to deeds, by organizing special sessions of prayers in the main towns in which believers would light their candles so that 'God may enlighten members of parliament', particularly those to whom their parties have given freedom of vote: CiU (*Convergencia I Unió*), PNV (*Partido Nacionalista Vasco*) and *Coalición Canaria*, whose vote would be decisive for the result of the election (El País 16/9/1998). The catholic Platform 'United for Life', that groups several anti-abortion organizations, organized demonstrations in front of the Parliament and sent letters to all MPs (Members of Parliament) asking them to vote against the law.

The freedom of vote is directly attacked by the General Secretary and spokesperson of the Episcopal Conference, Juan José Asenjo, who declared to Europa Press that, in spite of the freedom that nationalist parties grant their MPs, 'for a catholic there is no freedom of vote as concerns such a law' as 'there is a very serious moral law in the Ten Commandments that is 'thou shall not kill' that binds every catholic person, whatever the party of membership is' (El País 21/9/1998). The Episcopal Conference knows that the result of the election depends on the vote of members of those parties who have been left free to vote according to their consciousness. This is why Asenjo declares that the briefing of the Episcopal Conference 'seeks to enlighten Christian consciousness of those Catholics who have not clear ideas about the issue of respect of the sacred dignity of every life'. The conservative party PP maintained a unitary position against the law, in spite of the internal differences, and invited undecided socialist MPs to reflect on the words of the archbishops and to take into consideration public opinion's expectations on the issue (El País 14/9/1998).

The intrusion of the Church into the political debate on a greater decriminalisation of abortion provoked a reaction from the opposition parties that promoted the law, namely PSOE and IU, women's movement organizations, and religious groups of progressive theologians. The Parliament spokesperson from IU, Rosa Aguilar, denounced the pressure that the Episcopal Conference had exercised on the Parliament, arguing that this shows the anti-democratic and intolerant attitude of the Church, as the latter has not respected a proposal elaborated from the legislative power that emanates from the citizens (El País 14/9/1998). For the PSOE spokesperson and member of the Justice Commission of the Parliament, María Teresa Fernández de la Vega, the 'Church's attitude does not show solidarity with women', while for the socialist MP Cristina Alberdi the bishops' declarations are inadequate as they break the constitutional pact that gives the Church a place in the private but not in the public

sphere. As she says: ‘Bishops, according to the Constitution, must stay away from legislative matters. We have never seen such radical declarations’ (El País 14/9/1998).

The feminist movement and progressive theologians also reacted to the Church’s interference in the political debate on abortion. Feminist associations such as the Federation of Progressive Women, the Association of Women Lawyers, the Forum against violence, and the women departments of trade unions in different occasions showed their support to the legislative proposals on the modification of abortion law. They reclaimed women’s right to decide for themselves and reminded people that at the UN Beijing Conference on Women the Spanish government, together with other 189 countries, had committed to revise domestic laws that penalise women who decide to have an abortion. Some feminist groups explicitly denounced the ‘dogmatic, intolerant and disrespectful attitude’ adopted by the Church and the Episcopal Conference on the issue of abortion (El País –C. Valenciana 19/9/1998).

Criticisms of the Church’s condemnatory campaign on abortion came also from progressive groups of theologians members of the association ‘Juan XXIII’. Representatives of this stream of thought such as Enrique Miret Magdalena disapprove the authoritarian attitude of the religious hierarchy as it hinders the possibility of opening up a debate within the Church on the issue (El País 21/9/1998). In their opinion, if the Church continues to refuse dealing with issues such as abortion, it will end up losing women’s support. The more the catholic hierarchy promotes a dogmatic and conservative theology, as it currently does, the more critical movements will arise against the Church, as it is the case with theology of liberation, feminist and political theology.

After the intense debate that generated, when the law proposal of depenalising abortion in case of ‘serious personal, family or social conflict’ was submitted to election on 22 September 1998, it was refused for only one vote of difference. Four of the MPs from nationalist parties who in February had given a positive vote to the law proposal changed their vote into a ‘no’, thus tilting the balance in favour of the anti-abortion coalition leadered by the conservative party (El País 23/9/1998). The Church had won its battle, using all its power to influence political outcomes. Confident of this result, it became even more blunt in attempting to affect the political decision on abortion in conformity with the official catholic morality (Pintos 2002). While there were 300 open trials against doctors and women who had practiced abortion, cardinal Rouco, the president of the Spanish Episcopal Conference and Madrid’s archbishop, complained about the fact that the conservative party did not dare to abolish the socialist abortion law of 1985 (El País 12/2/2000). Although cardinal Rouco was hoping to

persuade the conservative party (PP) in government at the time to abolish the law, PP did not consider abortion as a priority on the agenda. It did, however, allow the projection of anti-abortion videos (one of which was entitled 'The quiet scream') in religion classes of public and private institutes, thus granting the Church the freedom to indoctrinate young people on the issue according to the official catholic morality (El País 3/3/1999).

After four years in which the conservative party ruled with absolute majority, thus hindering any attempt of renewing the law proposal on abortion, the newly elected socialist government has announced in March 2004 its intention to reform the current law to give women the right to decide autonomously on the interruption of pregnancy within the first 12 or 14 weeks. The socialist proposal has been welcomed by feminist organizations, though it is to be expected that PSOE's 'courage' to face the likely strong opposition of the catholic Church will be put to the test. After the first six months of government, PSOE's declarations on abortion were already more cautious. Both the Minister of Justice and the General Secretary of the PSOE have claimed that the reform of the abortion law is not a priority issue and that it will be postponed to 2006, following a social and political debate. The Leftist Party *Izquierda Unida* fears that the Church's belligerent attitude with respect to abortion, and the continuous declarations of its bishops on the assimilation of abortion to the Nazi holocaust, could weaken the socialist government's position (El País 10/8/2004). The Church has already promised strong mobilisations against any possible socialist proposal to further legalise abortion.

In spite of the struggles of the women's movement and left parties, the Church has in the last decade won its battle on abortion (it could not avoid the first law on abortion, though), thanks to the support of the conservative party in government. The extent of mobilisation on the part of women's groups and, on the opposite side, of the so called 'pro life' groups, the Socialist Party's determination to act notwithstanding of the Church's will, and the public opinion's position on the issue of abortion will be crucial in influencing future political decisions.

2. Domestic violence¹

In the political debate on domestic violence the Church has had both a direct and an indirect influence, the latter being exercised through the PP and conservative members of the judicial power. Violence against women has increasingly become a hot issue in Spain throughout

1996-2004, due to the sadly high number of women murdered by men (around 100 each year, according to the Spanish Committee of Investigation of Violence Against Women). The media have been more involved in the issue since 1997, after the case of a woman victim of domestic violence who spoke in a TV show and was killed soon after by her husband (who set fire to her). The problem of violence against women is at the centre of an on-going discussion in the political arena, on the media, and in the feminist movement. Since 1998, each year on the 25th November feminist associations assisting victims organise demonstrations against gender violence. Women's organizations argue that it is a state problem that must be regulated by public policies and call for a comprehensive law (*ley integral*) to tackle violence. The governmental answer has been the elaboration of specific laws and plans against violence, and the inclusion of a section on violence against women in the general Equality Plans issued by the national and regional Women's Institutes (the governmental institutions responsible for gender equality policies in Spain).

The Church's direct intervention in the debate has tended to give a higher priority to the indissolubility of catholic marriage than to the defence of women's integrity and life. The Episcopal Conference has declared its opposition to the annulment of marriage for reasons of domestic violence. The spokesperson from the Spanish Episcopal Conference, Juan José Asenjo, has justified the decision of an Ecclesiastic Court that rejected the annulment of marriage for domestic violence, arguing that physical or psychological abuse is not included among the causes that permit to declare null a canonical marriage (El País 1/10/2002). By contrast, according to Barcelona's archbishop, mental disorders in the personality of the aggressor can be considered a cause for annulment of marriage. The Church is *de facto* giving more relevance to psychological disorders than to the violent act of battering that is legally considered a crime.

The 2004 Church's Directive on family issues states that only 'severe' physical abuse could legitimise separation. The feminist theologian Margarita Pintos argues that even in relation to the issue of violence against women the catholic Church clashes with women's rights. In a communication to the press, Pintos says: 'the catholic Church must understand that when the ecclesiastic hierarchy claims that men who commit violence are sick and that marriage always requires sacrifice and difficulties, it is not only promoting a spirit of sacrifice and resignation that women victims of violence should put aside, but also indirectly encouraging a step backwards in the legal progress reached so far' (Católicas para el Derecho de Decidir 10/16/2002).

The divergence between the feminist organisations and the Church can be found in questions of definition too. In documents by the Church and the conservative government, the expression employed is ‘domestic violence’ or ‘family violence’. This concept tends to weaken the gender dimension of violence against women, blurring the patriarchal component of violence in the more ‘neutral’ and less feminist concept of ‘family violence’, in which the roles of perpetrators and victims are not clearly defined. The result is that responsibility for violent actions appears as widespread rather than focused on a male dominated society. The definition of the problem as ‘domestic violence’ has an impact on the measures adopted by the conservative government to tackle the problem, which privilege individual rather than structure oriented actions. Measures are not designed for men in general to change their attitudes. Rather, they tend to be targeted at individual women (and men) rather than at the dismantling of the patriarchal structures that provoke and maintain male domination over women (Bustelo et al. 2004).

Women’s organizations, governmental regional agencies such as the Basque Women’s Institute, and gender experts prefer to use instead the expression ‘gender violence’. For those who employ the concept of ‘gender violence’, the problem of inequality is attributed to the existence of a ‘gender order’¹ of hierarchical relations between the sexes which are part of the complex and interrelated phenomenon of gender. As a result of this interpretation, solutions and proposals put forward by advocates of the concept of ‘gender violence’ have to do with a structural change of society, that would require actions not only targeted at female victims but also at male perpetrators and society (Bustelo et al. 2004).

In spite of the women’s organisations’ debate on the patriarchal origins of gender violence, the Church insists in avoiding to condemn domestic violence as a product of ‘machismo’, preferring instead to identify a whole range of causes which have more to do with women’s emancipation. In the 2004 Directive on family issues elaborated after the LXXXI Bishops’ conference in November 2003, the Spanish Catholic Church argues that domestic violence is a sign of the ‘bitter fruits’ of the sexual revolution, as the latter has led to distorted gender roles. The bishops are greatly concerned about the situation of the family in Spanish society and consider the sexual revolution the starting point of family problems such as domestic violence (Bustelo et al. 2004). When the text was made public in February 2004 politicians, women’s organizations and the media criticized it, particularly the statement that domestic violence is caused by the sexual revolution.

In other bishops’ declarations, divorce is considered the cause of domestic violence¹.

The position of the Church, as argued from the director of the Episcopal subcommittee on family and life, is that separated and divorced couples are behind a great number of violence cases, which would prove that divorce and separation do not solve the problem of battering. The bishops do not possess data on whether facilitating divorce could provoke an increase of domestic violence. However, they point out that most judicial sentences state that after the divorce the woman will keep both children and house and the husband ‘does not accept to be left on the streets’ (El País 23/4/2004).

Apart from the direct intervention in the debate, the Church has also an indirect influence on political decisions concerning the issue of domestic violence, through conservative members of the PP and the General Council of the Judicial Power. Both actors have on different occasions rejected the women’s movement petition of a *ley integral*, i.e. comprehensive law, on gender violence, that was proposed by the Socialist Party both when being at the opposition (in 2000 and 2002) and in government. The latest rejection of the comprehensive law on gender violence, presented by the current socialist government in June 2004, was signed by the president of the General Council of the Judicial Power, a well known member of the Opus Dei, and other conservative members of the judicial body.

The socialist law proposal, elaborated with the support of feminist organisations, is an attempt to tackle the dramatic problem of women battered and killed by their male partners. It is based on the feminist concept of ‘gender violence’ (which is reflected also in the name of the law), that is defined as ‘that used as a means to maintain discrimination, inequality, and power relations of men on women’ (Art. 1.2). The law is thus targeted at those women who suffer violence from a man with whom they have or had an intimate relationship and in all cases in which women experience violence for the mere fact of being women. As it deals with a violence that is exercised specifically against women (in more than 90% of cases women are victims of male violence), the law introduces positive actions for women. These consist in the fact that threats and medium coactions are more strongly penalised when exercised by a man against his female partner with the intention of maintaining male power relations over women. The law also creates courts with a specific competence on gender violence and promotes educational and social measures to raise people’s awareness of the problem of gender violence (El País 25/6/2004).

The General Council of the Judicial Power (GCJP) rejected for one vote the socialist proposal of law against gender violence. José Luis Requero, the conservative representative of the GCJP and member of the Opus Dei who wrote the negative report on the law, criticised,

among other things, the fact that the law only regulates violence against women (rather than against men, children or other family members). He also objected that the use of positive actions to favour women is unconstitutional, rejected the proposal to create specific courts on gender violence, and opposed to the definition of ‘gender violence’ employed to maintain power relations of men over women (El País 24/6/2004). The conservative party PP approved the report and reinforced the point that the law does not equally protect men and children. Women’s groups promptly mobilised against Requero’s report, in an attempt to save the law, by organising demonstrations in front of the General Council of the Judicial Power and giving declarations to the press.

The president of the Committee on violence against women claimed that the report of the GCJP reveals the ideological approach of a member of the Opus Dei who does not prove familiar with the reality of battered women (Europa Press, Madrid 22/6/2004). She is in favour of adopting positive actions to compensate for the ‘equality deficit’ existing in Spanish society (proved, in her opinion, by the 100 women murdered every year) by invoking the legitimacy of United Nations and European Union legislation. She explains that the law does not include children and elderly people as it is a very specific project that does not deal with violence within the family but rather against women, and adds that there is already a legislation that protects these subjects. In turn, minors are protected in the sense that they will not have to face their father’s visits, limiting in this way the learning of violent behaviour. Finally, she argues that the creation of specific courts on gender violence is needed as it is important to see ‘who will apply the law’, as this will require a change of mentality that is more likely to occur in courts that can count on experts in gender violence.

This has not been the first time that the women’s movement had to react to the gender biased intervention of the conservative side of the General Council of the Judicial Power. In 2002, the Spanish women’s movement wrote an ‘Answer to the Report presented by the General Council of the Judicial Power on the issue of Domestic Violence’, accusing the measures proposed in the report to minimize violence and its impact on women victims and their children (Bustelo et al. 2004). The women’s movement argues that the GCJP’s report contains a male view of private life that reveals a lack of awareness of the impact of these measures on women victims. The movement condemns the report for classifying violence against women as a minor crime, thus granting it a certain legitimacy. This is also reflected in the fact that, according to the women’s movement, perpetrators’ rights are considered as a priority in the report, whereas the children’s and victim’s wellbeing are taken for granted

without assessing the current legal and material resources to assist them (Bustelo et al. 2004). The women's document points out that the report does not revise a number of bad legal practices concerning violence, such as the fact that restriction orders are limited by certain conditions (e.g. women must denounce first), sentences against perpetrators are excessively light, and petitions for restriction orders are often ignored. This gives male perpetrators a sense of impunity and generates women victims' mistrust in the legal assistance. Finally, women's movement criticises that, according to the current law, women victims are held responsible to end men's violence through their denounces, as if they shared responsibility for violence.

The controversy between progressive forces in the laic and catholic civil society and the most conservative and patriarchal sector of the Church on the legal and social definition of male violence against women continues to monopolise the Spanish public debate. Women's non governmental organisations are particularly active in the monitoring of institutional work on violence, as women's lives are literally at stake. The Church, through its direct and indirect action (through the most conservative and gender biased sectors within the General Council of the Judicial Power and the Popular Party) does not show changes in its positions towards a higher consideration of women's integrity and well being. However, the recent Parliament's approval (7/10/2004) of the socialist proposal of a 'Comprehensive Law against Gender Violence' (*Ley integral contra la violencia de género*) can be considered a great success both of the women's movement and the socialist party in government. The first law approved by the newly elected socialist government will be, according to the Spanish President Zapatero, a 'powerful instrument to defeat criminal sexism' (El País 8/10/2004).

3. Reconciliation of work and family lifeⁱ

The issue of reconciliation of work and family life is part of a more general group of measures named 'family policies'. The post-authoritarian Spanish state from 1975 to 1995 has dedicated very few resources to family policy, both when it was ruled by right-wing (*Unión de Centro Democrático*, UCD, in government from 1977 to 1982) and left-wing political parties (*Partido Socialista Obrero Español*, in government from 1982 to 1995). This can be explained with the democratic government's rejection of pro-natalist and anti-feminist family measures established during Franco's regime (1936-1975), whose aims were to increase population and to keep women at home and away from the labour market (Valiente 1996).

The Socialist Party has preferred to promote equality policies and to ignore family policy, that, according to PSOE feminists is an area that tends to be conservative as it indirectly focuses on women's tasks within the family. The UCD and the *Partido Popular* have both been careful to avoid issues and symbols that could be associated with the authoritarian past, which explains the little relevance given to family policies beyond public rhetoric (Valiente 1996).

In this context, the type of impact that the Church could have on the issue of reconciliation of family and work life is different from the case of abortion and domestic violence, as other factors have played a relevant role in influencing political decisions, such as the will to reject symbols of the authoritarian regime and the slightly divergent goals of the Popular Party. The Church's idea of family, as expressed in documents and public discourses, the latest of which is the 2004 Directive on family issues in Spain, is that traditional gender roles are the foundation for an appropriate relation between women and men (the Directive complains about the fact that in contemporary society gender roles have been troubled). The ideal of a family union is the heterosexual catholic marriage in which the couple is always prepared to have children (the main goal of a family union being procreation), otherwise it should refrain from sexual intercourse (Bustelo et al. 2004). Woman's role should be that of a 'wife subordinate to her husband, and a mother who sacrifices for her children' (Scanlon 1990: 85).

Apart from its direct influence on families through public documents and catholic education (see section 1.), the Church has had a certain indirect impact on political decisions through the policy-making of the Popular Party. However, although the family model proposed by the conservative party is similar to the patriarchal and traditional concept diffused by the Church, the PP has also promoted policies that encourage the incorporation of women in the labour market. The Popular Party's programmes defend the family unit granting it a social and ethical mission, but since 1982 start referring to the promotion of women's employment through the creation of childcare services. The PP believed that these measures would not have negative effects on family union, but rather considered it a 'pragmatic and realistic politics' that answered women's demands of the time, but also enabled them to maintain their 'feminine nature' and their 'traditional and moral values' (Ruiz Jimenez 1999). Stronger policy references against women's discrimination in the labour market on the part of the PP start in 1986. Meanwhile, the family model proposed by the conservative party continues to be that of a traditional catholic married heterosexual couple with children. The

key to understand how the apparently incompatible areas of family and work can combine easily with the ideology of traditional family and female employment is the role of women.

The legislation on the reconciliation of family and work life issued by the Spanish conservative government since 1996 seems to reflect part of the Church's expectations with the traditional role of women in the preservation of family. However, the latter is also combined with the goals of full employment and non discrimination of women at work. The result of this combination of goals, that emerges from the analysed legislation on family policy, is the elaboration of a normative image of women as mothers and workers (in this order) who need to be supported and encouraged to be able to reconcile work and family life (Bustelo et al. 2004). Although the Church had preferred less emphasis on women's role in the labour market, its influence on the conservative party was not wholly successful. This could be due to changes in Spanish society with respect to the issue of women's access and participation in the labour market, the effective increase of women's presence in employment, and the party's market-oriented ideology itself. To these reasons, we could add the possible impact of the European political context on the agenda of Spanish political parties, as Spain entered the European Community in 1986, the same year in which PP increases its discourse against women's discrimination in the labour market. The combination of these factors forced the Popular Party to include the issue of reconciliation in the political agenda if it did not wish to lose power and voters (Ruiz Jimenez 1999).

In order to understand better the type of measures introduced, and the extent to which they reflect the Church's influence, we must consider the Popular Party's policies on reconciliation of family and work life since 1996, year in which it was elected in government. The Law 39/1999, on the promotion of the workers' reconciliation of family and work life (known as 'reconciliation law'), is one of the most relevant legal measures approved by the conservative government on the issue. Although the law pretends to implement the European Union Directives 96/34/EC on parental leave and 92/85/EEC on maternity protection in the labour market, it actually transposes the minimal content of the Directives, not interpreting their intention, i.e. the promotion of equal sharing of family and work responsibilities between the sexes. Criticisms to the law have been addressed by opposition parties (PSOE and IU), trade unions, and women's organisations. These actors consider that the law tends to define reconciliation as an issue of which women only are responsible. The more explicit example of this tendency is the fact that only working mothers have an individual right to take the 16 weeks parental leave. Fathers can only access paternity leave if, in the case that both parents

are employed, the mother agrees to pass ten of the last weeks of leave to the father (if the mother is not employed, the working father has no right to paternal leave whatsoever). Women's and Trade Union's organisations consider that an individual right to paternity leave is 'essential to promote a change of mentality with respect to the equal sharing of family responsibilities' (Brunel 2003).

In an interview given soon after the approval of the reconciliation law, the Director of the *Instituto Andaluz de la Mujer* and socialist MP Carmen Olmedo argued that the law could have negative implications for women, as it will make it even more difficult for women to find a job¹. In fact, employers are already worried about hiring women as they are unwilling to pay them maternity leave. This law adds new types of leave, in order to take care of the elderly and/or sick relatives. As women have always been the ones taking such leave, because there is no cultural habit for men to do so, they will probably end up taking all the categories of leave. This will discourage employers even more from hiring women, as they will be given further reasons to be concerned about the money they must spend on leave if they hire a woman. The effects of the reconciliation law elaborated by the conservative government could, thus, converge with the Church's expectations of a greater role for women within the family rather than in the labour market.

In January 2003, the Spanish conservative government introduced a new tax measure through the law 46/2002 (the so called '100 Euro law') which gives working mothers the possibility to apply for a subsidy of 100 Euro per month for each child under three years of age. This governmental measure forms part of a wider program of actions that aim to facilitate the reconciliation of work and family life and to reduce the fall in birth rates in Spain. The law has been criticized for being neither non-contributory, i.e. supporting those with lower income, nor universal, i.e. related to citizens' rights. At least two kinds of restrictions can be identified in this law. First, the law only addresses mothers, taking for granted the role of women as mothers and caretakers. Second, several groups of women are excluded from benefits, such as unemployed women, women in the informal sector and housewives (Bustelo et al. 2003).

In both the reconciliation and the '100 Euros' laws the Spanish conservative government has chosen to maintain the traditional 'gender order' that assigns women the main responsibility for family care, not promoting changes in the gender roles necessary to favour an equal sharing of family care responsibilities between women and men. We could conclude that, in spite of the combination of goals of 'female work' and 'traditional family',

the PP has still promoted the Church's concept of woman as wife and mother first, who must work 'double day' within and outside the household to satisfy both the Church and the market requirements.

The emphasis on the 'working mother' is still present in the 2004 Electoral Programme of the Popular Party. The main goals stated in the sections on family and equality are the increase in birth-rate policies, women's participation in the labour market and full employment. The family is defined as the fundamental institution for care-taking and women are described as 'mothers a priori' and universal care-takers. This means that reconciliation of work and family life is an issue that concerns women and working mothers in particular. This perpetuates a traditional model of family that reflects the Church's expectations on the role of women, but which tries to be sufficiently modern as to include the idea of employed women. As the PP programme clearly states: 'we want mothers to develop their professional careers and have as many children as they want. To make the family and work responsibilities compatible is a possible and desirable goal in Spain'. In sum, women entering the labour market are the problem group and they must be helped to reconcile work and family life: reconciliation is not a problem for working men (Bustelo et al. 2004).

The alliance between the Church and the PP on the role of women as the only problem-holders having to reconcile family and work, however, is contrasted not only by the feminist movement and Trade Unions, but also by other political parties. At the time when the conservative government was ruling in Spain, opposition parties have intervened in several parliamentary debates with proposals for promoting a sharing of family care responsibilities between men and women and discharge the woman from being the only bearer of the care task. One of the most recent cases is a 2003 parliamentary debate in which the Socialist Party presented a law proposal for extending women and men's rights in the area of reconciliation of work and family, and the Catalan Nationalist Party proposed an individual right to paternity leave. In another 2003 parliamentary debate, the reconciliation law 39/1999 is discussed after the Socialists' proposal to investigate the effects of the law. However, since the Conservative Party had absolute majority in parliament, both law proposals were rejected soon after the debate in spite of the fact that all the other parties had voted in favour.

Rather than accepting the changed role of women and men in contemporary society, the Church continues to insist on the female 'mission' within the family, as the Cardinal Ratzinger's letter to bishops has recently shown. The document of the Congregation for the Doctrine of Faith explicitly demands governments to reconcile legislation and labour

organisation with the needs of ‘women’s mission within the family’, highlighting her ‘maternal vocation’ and the importance to value the work of housewives (El País 31/7/2004). A different concept of reconciliation from that proposed by more progressive political parties and feminist movement, which requires men and women’s common involvement in care and family responsibilities. The official Spanish reaction to Ratzinger’s letter came from the newly elected socialist General Secretary for Equality Policies, Soledad Murillo, who claimed that the Vatican seeks to persuade governments to create conditions of inequality, precisely when they are attempting to encourage family reconciliation both for men and women (El País 31/7/2004) .

In conclusion, the alliance between the Church and the Popular Party on the issue of reconciliation of work and family has been a relative success due to a series of factors. One of them is the quasi absence of policy making on family issues due to the will to reject symbols of the authoritarian regime (Valiente 1996). Another is the conservative party’s combination of the goals of full employment and non discrimination of women at work, the latter of which does not fit with the Church’s idea of women’s traditional role (Ruiz Jimenez 1999). There exist several reasons to explain the PP’s behaviour: changes in Spanish society in favour of women’s access and participation in the labour market, the effective increase of women’s presence in employment, the party’s market-oriented ideology, and the impact of the European political context on the agenda of Spanish political parties. The combination of the two goals that is translated in the conservative government’s legislation since 1996, however, proposes a model of woman as first mother and then worker who is the only subject who must work ‘double’ or even ‘triple day’ in order to reconcile family and work responsibilities. A woman’s ‘mission’ within the family that is ultimately what the Church is advocating.

Conclusions

In this paper I have argued that the catholic Church has had an influence on the political debates on sexual and reproductive rights, domestic violence and reconciliation of work and family life in Spain during the years 1996-2004. The three debates analysed are evidence of the Church’s efforts to influence the definition of women’s rights in Spain according to a conservative conception of gender roles in which the woman is subordinate to the man, her primary role is to be a good wife and mother, and she has no right to autonomously control

her sexual and reproductive life. Although it is not possible to claim that there is a direct link between the Church's mobilisation and its impact on the political outcomes, the influence appears indeed tangible in all debates. It can be both direct and mediated through the Popular Party or other institutional and social conservative forces. Its success in influencing political decisions varies depending on the different combination of factors playing in favour or against it. These factors are the strength of the Church's mobilisation, that depends in turn on the Church's interest for a particular issue, the colour of the party in government, the activism of the opposition party/parties, the power of women's movement mobilisation, the ideological union between the Church and the conservative party on a given issue, and the strength of 'pro-Church' civil society's mobilisation.

The success of the Church in influencing the debate on abortion could be explained with a favourable combination of four different factors. Firstly, the Church's interest for the issue of abortion was strong and so was its active mobilisation against it. Secondly, the conservative party in government at the time totally supported the Church's position on abortion. Thirdly, there were wide mobilisations of the co called 'pro-life' groups supporting anti-abortion policies. Finally, it can be hypothesised that abortion is still a controversial issue in Spanish society and its penalisation continues to have some support from large catholic sectors. All of these factors played against the socialist and left political parties proposals in favour of abortion, which were supported by the women's movement.

In comparison with abortion, the Church's impact on the issue of domestic violence was less successful, in spite of both the direct and indirect influence it has exercised through the PP and conservative members of the General Council of the Judicial Power. In the case of domestic violence, the factors which played a relevant role in the advance of women's rights through the recent approval of a 'Comprehensive Law against Gender Violence' were the colour and political will of the socialist party in government since March 2004 to put legislation through, and the strength of women's mobilisations to stop violence. The issue for the Church was not as 'hot' as abortion, and there were no catholic mobilisations against the socialist comprehensive law on violence. Moreover, the Popular Party at the opposition finally accepted to vote in favour of the law, following the socialist government's acceptance of a number of PP's amendments. The fact that domestic violence has become a public issue that is daily present in the media has been determinant in capturing public opinion's consensus in favour of the law.

In the case of the debate on reconciliation of family and work life, the alliance

between the Church and the Popular Party in government has been a partial success for the Church. The legislation on reconciliation of family and work life issued by the Spanish conservative government reflects in part the Church's expectations with the traditional role of women within the family. However, the latter was also combined with the goals of full employment and non discrimination of women at work. Other factors apart from the catholic influence played a role in influencing PP's political decisions on reconciliation: the increase of women's participation in the labour market, a changed Spanish society more open to women's presence in employment, the conservative party's market-oriented ideology, and the influence of the European political context. The opposition parties from the left have criticised the PP's reconciliation policy for not promoting the sharing of care responsibilities between women and men, but have not succeeded in changing legislation accordingly. In spite of the apparently minimal effort of the Church in influencing political decisions on reconciliation, and notwithstanding of the partially divergent goals of the Popular Party on the matter, the result of policies is still perpetuating a traditional gender order in which women are the only bearers of the burden of care.

The picture that emerges from the analysis of the three debates on sexual and reproductive rights, domestic violence, and reconciliation of work and family life is a complex one. This is due to the combination of a variety of actors both from the catholic hierarchy and the base who seek to influence political decisions concerning women's rights in different ways according to their diverse agendas and ideologies. Although the Church's influence on the definition of women's rights is strong, its capacity to affect political decisions is usually the result of political battles and negotiations among different institutional and civil society actors. In this context, windows of opportunities offered by the colour of the party in government play an essential role either to facilitate or to hinder the Church's impact on gender equality policies. Other factors that can tilt the balance against or in favour of the Church are the determination on the part of the opposition party in putting an issue on the agenda, the strength of women's movement mobilisation, and the pressure from Spanish society. Progress towards gender equality is part of a complicated process of interaction among different social, religious, and institutional forces, where feminist battles must face gendered contexts and practices in cultural, religious, and political structures.

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Women and Religion in European Law: Challenges and opportunities

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1. Law and Religion as Church and State

Limiting women rights through the “autonomy” and the recognition of the religious groups

1. Pius X, Encyclical *Vehementer Nos* (on the French Law of Separation), 11 February 1906, n. 3

That the State must be separated from the Church is a thesis absolutely false, a most pernicious error. Based, as it is, on the principle that the State must not recognize any religious cult, it is in the first place guilty of a great injustice to God; for the Creator of man is also the Founder of human societies, and preserves their existence as He preserves our own. We owe Him, therefore, not only a private cult, but a public and social worship to honor Him. Besides, this thesis is an obvious negation of the supernatural order. It limits the action of the State to the pursuit of public prosperity during this life only, which is but the proximate object of political societies; and it occupies itself in no fashion (on the plea that this is foreign to it) with their ultimate object which is man's eternal happiness after this short life shall

2. Concordate Italy–Holy See, 1984, art. 8. sect. 2

The judgments of nullity of marriage pronounced by ecclesiastical tribunals, together with the decree of execution issued by the superior controlling ecclesiastical authority, shall be declared, at the request of the parties or of one of them, effective within the Italian Republic by judgment of the competent Court of Appeal, upon verifying:

(A) that the ecclesiastical judge was the competent judge to adjudicate the action, the marriage having been celebrated in accordance with the present Article;

(B) that in the proceedings before the ecclesiastical tribunals the right to sue and to defend in Court has been assured to the parties in a way not dissimilar from what is required by the fundamental principles of the Italian legal system;

(C) that the other conditions required by the Italian legislation for the declaration of efficacy of foreign judgments are present. The Court of Appeal may, with the judgment that recognizes a canonical judgment, take temporary economical measures in favor of one of the two spouses whose marriage has been declared null, referring the parties to the competent judge for a final decision on the matter.

2. Law and Religion as Church and State + Religious Freedom

The competition between religious freedom and sex/gender freedom

3. A. B. Seligman, *Tolerance, the Protestant Virtues and the Public Sphere*, Piacenza, 2004

Within the public sphere, boundaries are, in these societies, parsed into razor thin edges and individuals interact not as members of groups, but as bearers of rights (citizen right, social rights, human rights and so on). Group identities have been, in the public sphere, replaced by individual identities and the problem of tolerance of difference has been replaced by the legal

recognition and entitlements of rights. As we can see, modernity has elided the problem of tolerance, obviated the necessity to be tolerant, rather than make people tolerant. It has replaced tolerance with rights.

4. Constitution of Ireland, 1937–1992–1995, art. 44

(2.1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen. (…)

(2.5) Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

Fifth Amendment of the Constitution Act, 1972 *[Removed from the Constitution the special position of the Catholic Church and the recognition of other named religious denominations.]*

5. Constitution of Spain, 1978, art. 16

1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression as may be necessary to maintain public order as protected by law. (…)

3. There shall be no State religion. The public authorities shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate co-operation with the Catholic Church and the other confessions.

6. ECHR, Palau-Martinez v. France, 16 December 2003, n. 42

La Cour relève tout d'abord que, dans son arrêt, la cour d'appel n'énonça, dans les deux paragraphes précités, que des généralités relatives aux témoins de Jéhovah.

Elle note l'absence de tout élément concret et direct démontrant l'influence de la religion de la requérante sur l'éducation et la vie quotidienne de ses deux enfants et notamment la mention, qui, selon le Gouvernement, figurerait dans l'arrêt de la cour d'appel, du fait que la requérante emmène ses enfants avec elle lorsqu'elle tente de propager sa foi. Dans ce cadre, la Cour ne saurait se contenter du constat fait par la cour d'appel lorsqu'elle a relevé que la requérante « ne dénie pas son appartenance aux Témoins de Jéhovah pas plus que le fait que les deux enfants recevaient auprès d'elle une éducation conforme aux pratiques de cette religion ».

7. ECHR, Pellegrini v. Italy, 20 July 2001, n. 40.

40. The Court notes at the outset that the applicant's marriage was annulled by a decision of the Vatican courts which was declared enforceable by the Italian courts. The Vatican has not ratified the Convention and, furthermore, the application was lodged against Italy. The Court's task therefore consists not in examining whether the proceedings before the ecclesiastical courts complied with Article 6 of the Convention, but whether the Italian courts, before authorising enforcement of the decision annulling the marriage, duly satisfied themselves that the relevant proceedings fulfilled the guarantees of Article 6. A review of that kind is required where a decision in respect of which enforcement is requested emanates from the courts of a country which does not apply the Convention. Such a review is especially necessary where the implications of a declaration of enforceability are of capital importance for the parties.

8. ECHR, Pichon et Sajous v. France, 2 October 2001.

The Court notes that in the instant case the applicants, who are the joint owners of a pharmacy, submitted that their religious beliefs justified their refusal to sell contraceptive pills in their dispensary.

It considers that, as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere.

3. Law and Religion challenged by the European Integration Process

Women rights and religion in the competition between European, national, and religious actors

9. Council Directive 2000/78/CE, 27 November 2000, art. 4, sect. 2.

The Directive "shall not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos".

10. Home Office Faith Communities Unit, *Working together. Cooperation between Government and Faith Communities*, February 2004

Advice to Faith Communities

(...)

Familiarise yourself with Government and take the initiative in raising issues

Be persistent, reminding Departments of the importance of involving faith communities.

Speak with a common voice, coming to the consultation with a position that has been negotiated and agreed in advance.

Develop appropriate structures to maximise capacity to be an effective partner.

Be clear and aim to meet deadlines.

Include women, young people and older people and demonstrate how this has been achieved.

Become involved in local structures and raise your profile by taking part in consultation.

11. Constitution of the European Union, 2004, preamble

(...) Drawing inspiration from the cultural, religious and humanist inheritance of Europe, the values of which, still present in its heritage, have embedded within the life of society the central role of the human person and his or her inviolable and inalienable rights, and respect for law (...)

12. Constitution of Poland, 1997, preamble

(...) We, the Polish Nation – all citizens of the Republic,

Both those who believe in God as the source of truth, justice, good and beauty,

As well as those not sharing such faith but respecting those universal values as arising from other sources,

Equal in rights and obligations towards the common good – Poland,

Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values (...)

13. Constitution of the European Union, 2004, art. 52

The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

The Union equally respects the status of philosophical and non-confessional organisations.

Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

4. The internal and/or external perspective

14. Suzanne Last Stone, “In Pursuit of the Countertext: The Turn to the Jewish Legal Model in Contemporary American Legal Theory,” *Harvard Law Review* 106 (1993): 813

Contemporary Jewish legal theorists, by contrast, point out that the Jewish legal system as rabbinically elaborated is not a precursor of Western law, which translated biblical themes through Christianity into liberalism, but rather an alternative model to Western law and thus a conceptual source for both criticizing modernist, liberal law and re-imagining its possibilities. Recent comparative legal scholarship has pursued the thesis that Jewish law, despite its male-centeredness, incorporates many features and ideas that feminists seek to incorporate into law. The Jewish legal model, these scholars contend, is decentralized and pluralistic rather than statist and monistic, communitarian rather than individualistic, addressed to a legal subject embedded in relationships rather than to the autonomous and self-sufficient subject of liberalism, and organized around interpersonal, particularistic responsibilities rather than abstract, universal rights.

15. ECHR, *Case of Lotter and Lotter v. Bulgaria*, 19 May 2004

17. On 26 October 2003 the Court received a friendly settlement agreement, signed by the representatives of the parties on 6 August 2003 in Sofia, in the presence of the Director of Religious Denominations at the Bulgarian Council of Ministers. The agreement was approved by a decision of the Bulgarian Council of Ministers of 24 February 2004. The text of the agreement reads, insofar as relevant:

“Whereas Article 9 of the [Convention, the Court’s case-law and the Bulgarian Constitution protect freedom of **religion** and religious pluralism, including as far as Jehovah’s Witnesses are concerned], ...

Whereas on 9 March 1988 Bulgaria and Jehovah’s Witnesses reached a friendly settlement ... in application no. 28626/95 under the supervision of the European Commission of Human Rights, stating that Jehovah’s Witnesses would be officially registered as a **religion**,

Whereas in its preamble the new Religious Denominations Act [of December 2002] confirms the right of every individual to freedom of ... **religion** ... [and prohibits persecution on the basis of religious belief],

Whereas [Jehovah’s Witnesses’ cult is registered as a religious denomination in Bulgaria],

Whereas on 6 February 2003 the European Court [of Human Rights] declared [this] application admissible,

The parties hereby agree:

1. That the respondent Government shall pay the applicants Alfred Lotter and Edith Bernhart Euro 3,000 (three thousand euro) for non-pecuniary damages (Euro 1,500 each) and Euro 5,000 for costs and expenses.

2. That the respondent Government shall cancel orders nos. 1759 and 1761 of December 1, 1995, issued by the Director of the Regional Directorate of the Ministry of the Interior in Plovdiv, whereby the applicants['] residence permits were withdrawn,

3. That the respondent Government shall submit before [the] Court ... additional observations reflecting the legal and administrative changes in Bulgaria concerning Jehovah's Witnesses.

4. Due to the fact that the Bulgarian Government fully agrees to the conditions listed above in points 1, 2 and 3 and the applicants agree to withdraw their appeals against Bulgaria, filed with the European Court of Human Rights."

(...)

19. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

16. Catholic Bishops' Conference of England & Wales, *Cherishing Life*, 2004, n. 135.

Sometimes, after long investigation, the Church will declare that what appeared to be a valid marriage lacked an essential element such that it was not, in fact, a marriage. This is different from a divorce and is called an 'annulment'.

17. J. Behrens, *Church Disputes Mediation*, Leominster, Gracewing, 2003.

18. V.S. Naipaul, *Beyond Belief. Islamic Excursions Among the Converted Peoples*, 1998.

'Why do you think the religious people place such stress on rules?'

'They are the rule makers. If you deny the rules you are denying the rule-maker. If you put the rule-maker away you are against the Leader. If you oppose the Leader you are against the Holy Prophet you are against the Holy Book, and the Holy Book comes from God. Someone against God must be killed. But who does the killing? Only the rule-maker. Not God'.

19. A. Huxley, *Introduction*, in *Religion, Law and Tradition*, ed. by A. Huxley, London, Routledge, 2002, p. 3.

The concept of *religion* alone does not help us analyse these similarities. We need a more detailed examination of how the authors of the law-texts (the Brahmin exegetes, the Muslim 'ulama, the Chinese erudites, the Jewish rabbis, the Buddhist *vinayadhara* and the Christian

canonists) related to political structures, and to their own tradition and to their own public.

Hege Skjeie

The following is a brief statement on my research background and main research interests, which for more than twenty years have been centered on gender studies, covering mainly national political leadership, social democratic traditions of governance, trade union politics, equality legislation and policies and women's human rights.

I hold a doctorate in political science, with a thesis dealing with issues of women's integration into elite politics in Norway - covering the period since the early 1970s. I work as professor at the Department of Politics at Oslo University, where my work for the past six years has been defined by my appointment to the research group appointed by the Norwegian government to investigate new trends of power/ democracy configurations in state - society relationships. The group delivered its final report in 2003, under dissent. The Prime Minister's office is currently preparing a report to Parliament based on the findings and controversies of this investigation. This report will be presented in the spring of 2005. In this project, my main area of responsibility was to promote research investigating trends and changes in gender structured power relationships in the Norwegian society over the past thirty years.

For the next three years I will be co-chairing an interdisciplinary project on Democracy, religious freedom and women's human rights, financed by the Norwegian Research Council. The project combines theoretical and empirical research projects with an extensive research network organization. I also take part in several international, but mainly european based, research groups which are preparing conferences and publications on issues of equality, diversity, and politics of rights.

Board memberships include the Center for Gender Studies at the University of Oslo, the Norwegian Institute for Social Research, the Publishing Committee for Humaniora and Social Sciences of the Norwegian Research Council, and formerly, the Center for International Climate and Environmental Research and the Norwegian Research Council's programme on "Gender in transition". I have also served as member of the advisory board for the Minister of equality policies, and as Norwegian representative to UN, UNESCO and Council of Europe committees on gender and political participation issues. Editorial experience include two major Norwegian journals; in political science and - interdisciplinary - for the social sciences, plus shared editorial responsibility for the book series of the Power and Democracy investigation, covering app. 50 books.

Among articles published in English are "The Rhetoric of Difference: On Women's Inclusion into Political Elites" in *Politics and Society* (1991), "The Uneven Advance of Norwegian Women" in *New Left Review* (1991), "Ending the Male Political Hegemony: the Norwegian Experience" in Joni Lovenduski & Pippa Norris (eds): *Gender and Party Politics* (1993), "From Movement to Government" in Alida Brill (ed): *A Rising Public*

Voice: Women in Politics Worldwide (1995), "Women in Politics in Norway" in Kathrin Arioli (ed): *Quoten und Gleichstellung* (1996), "A Tale of Two Decades" in Kåre Strøm and Lars Svaasand (eds): *Challenges to Political Parties* (1997), "Agendas of Change: Gender Politics in Norway", in I Azza Karam (ed): *Women in Parliament: Beyond Numbers* (1998), Scandinavian Feminist Debates on Citizenship. in *International Political Science Review* no. 4, 2000, "Quotas, Parity, and the Discursive Dangers of Difference", in Jytte Klausen and Charles S. Maier (eds): *Has Liberalism failed Women?* (2001), Changing Patterns of Gender and Power in Society, I *NIKK Magasin*, no. 3, 2003 , and "The Scandinavian Model of Citizenship and Feminist Debate", i Richard Bellamy, Dario Castiglione and Emillio Santoro (eds): *Lineages of European Citizenship: Rights, Belonging and Participation in Eleven Nation-States*.(2004)

Kornélia Buday

Gender Roles Mirrored Through Images of the Hungarian and the Hungarian Speaking Gypsy Religious Folk Tradition

Putting tradition into showcases within the frames of museums, is obviously a political decision, in consequence of which powerful images of the past should surely lose real intensity. Their living roots should be considered merely untouchable, fixed, petrified memorials, or, what is even worse, marketable souvenirs of the past and subjects of several disciplines keeping the scientific distance. I would like to lift these vigorous images out of their artificially created conserving environment, while restoring them and replacing them to their original living function to fulfil their everlasting duties.

We might ask, "*why to invest a good deal of energy in order to revive something that is dead*

and seems to have nothing to do with our modern and late- or post-modern reality?''ⁱ The rediscovery and reinterpretation of ancient images helps us, on the one hand, to preserve the richness and powerfulness and, on the other hand, to understand the derogatory aspects of our gendered self-interpretation in historical-social-cultural continuity with all the previous generations left behind us.

Closed, therefore more archaic Hungarian minorities and Hungarian speaking gypsy communitiesⁱ living in Transylvania/Rumania, and in Vojvodina/Serbia-Montenegro inherit the ancient elements of Hungarian tradition stronger. The ordinary daily routine of those old rural people are still deeply permeated by faithfulness to a female fertility goddess, the female figure called Happy Woman (Boldogasszony). When these people speak about the events of their life, they are still instinctively connected with female fertility symbolised by the circulation of nature expressed in feast days of the Happy Woman (who is budding, bearing, reaping) linked with agrarian activities.

The feasts of rural people embrace the universal threefold classification of the phases of female life, all described by agricultural terms. The fertility periods of flower-growth-harvest demonstrate close connection with the Mother Earth.ⁱ The life-giving aspects of growing are described as female principles.

*“The earth has given birth to Anne,
Anne has given birth to Mary,
Mary has given birth to the Redeemer of the world.
Whoever gives birth to a greater one,*

Can only do harm to us.”ⁱ

In the Hungarian oral tradition the central female divine figure, the Happy Woman is often surrounded and supported by female trinities. These protagonist powerful caring women accompanying the divine effective activity of the Goddess can be detected in several verses. The three female characters practically confirm the almighty state of the Goddess.

*“[...] The Happy Woman is in front of me,
Three Mary’s are above my head [...]”ⁱ*

*“[...] There are three Mary’s keeping an eye on him¹,
The fourth is waiting for my soul [...]”ⁱ*

*“Beside the field there are three virgin girls,
one is carrying golden fire,
the other one is carrying golden water,
the third one is carrying the golden broom.*

Let the Happy Virgin Mary sweep the soul of this child.”ⁱ

The four elements (earth [~ field], fire, water and air [~ symbolised by the broom]) having *magic* function in various pagan cults are in our case helping means of the Happy Virgin Mary to purify the soul and in this way to heal the ill body.ⁱ

The symbolic meaning of the *broom* of the third virgin went through a long and deep transformation in the course of history. Witches of the Middle Ages were called “*broom-amazons*”.ⁱ The broom has been associated with female magic since the Roman age. Midwives, who swept the whole house after delivering a baby, and in a symbolic way also the bad feelings between mother and infant,

were regarded as a type of sacral magician. The broom functioned almost as a female priestly symbol at wedding rituals. During gypsy wedding ceremonies jumping over the broom of the assisting midwife is still a living part of fertility ritual.ⁱ Nevertheless in the medieval world of superstitions women under sentence of heresy were most often regarded as witches and were represented by a broom. In this way its original life-giving message also expressed in the Hungarian folk religion has been left out, and is generally turned to be the symbol of danger.ⁱ The image of the curing good witchⁱ went through the process of the “*Verhexung der Göttin*”,ⁱ which basically means the harassment of all Wise Womenⁱ, who made themselves masters of natural healing (*magia licita*)ⁱ.

The particular significance of “*Babba Mária*”, the guide of life events, is a special, localisable name for the Happy Woman in Transylvania.

The divine power of “*Babba*”, the all-knowing and omnipotent Transylvanian female figure seems to overcome God of Christianity:

*“I have asked the Beautiful Virgin Mary and the blessed Babba Mária and the good God to deliver her [cf. the daughter of the narrator, italics mine]. [...] But we ask Babba Mária first, before the good God”.*ⁱ

„Babba“ literally means “Beautiful” in her Transylvanian surroundings. Strangely the power of *beauty* describing the goodness of the Happy Woman, who basically herself is the Babba (~ the *Beautiful*), and identified with the “*Beautiful Virgin Mary*” is often associated rather with the dangerous and harmful “Beautiful Woman”, whose activity is surrounded and supported by further numerous “beautiful women”. These female mischievous fellows sometimes appear in the figure of three cursing, bewitching womenⁱ who are the negative equivalent of the three healing women assisting the Happy Woman. Their witchcraft is a rather negative, destroying power against everything that represents Life coming

from the Happy Woman.

The bed of the Beautiful Woman, in opposition to the life-giving and protecting bed of the Happy Woman, is the childbed of the unfortunate, which can mean the birth of a dead or ill child, or the death of the mother. According to the Hungarian popular belief the Beautiful Woman can easily exchange the healthy infant for an unhealthy, ugly childⁱ whenever the mother is not wide-awake enough. Her evil power can be also the cause of venereal diseases. “*She destroys those she loves, or, at any rate, they come to grief.*”ⁱ Her beauty and love seemed to be dangerous.

Drinking from the cup of the Beautiful Woman causes headaches, contrary to the cup of the Happy Woman used at blessing toasts. All those, who are full of rashes, surely fell previously into the dish of the Beautiful Woman. Her name, in contradiction to the always-praised name of the Happy Woman, should not be mentioned at all, because then She does them harm with absolute certainty. Her spit is bewitching, and hounds the person to death.ⁱ As contrasted with the holy healing breath of the Happy Woman, Her wind is rather an all-destroying tornado or hurricane that arises from Her and Her fellows’ gaiety and often called the “dance of the beautiful women”. The negative mythological beings go to drink to the well of the beautiful women.ⁱ

According to the popular belief the beautiful women usually come together, dance and clap hands in the darkness of the night on the lawn. Whoever is lured to their group, will be danced to death by them.ⁱ Their invisibility at midnight or from midnight until daybreak manifests ghostlike features. Some believed that these female characters lived in caves and took care of treasures being under

curse.

In Hungarian speaking areas unmarried rural women working in the local pub and having nevertheless temporary partnership with several male residents of the village, were not at all accidentally called *beautiful woman* (szépasszony) in the past. At the same time the wife had to hide her beauty from the public behind closed doors, her value was measured after her *assiduousness and obedience* to her husband. According to idealising arguments these characteristics were regarded as the *inner beauty* of the woman, much more valuable than her *outer* features. A man, though *never* wanted to marry a *beautiful woman*, beside his marriage *still kept* relationships with them. In this way both female characters were disdained and used only to fulfil male yearnings.

Moreover the split between inner and outer female qualities – the former symbolised by the Happy Woman, the latter symbolised by the Beautiful Woman – again refer to the dualistic view of body and soul. As if interior happiness (soul) and exterior beauty (body) could not get on well together.

After all, the *Happy Woman*, as the symbol of creating motherhood, fertility and nourishment, can basically be identified with the so-called “*bough-goddess*”, “*tree-goddess*” or “*vegetation goddess*”, which means constant, stable shelter. The *Beautiful Woman* however is reflected more in the character of the mobile “*lion-goddess*”,¹ Inanna-Ishtar, the erotic-aggressive Sumerian Goddess, whose essential features though have nothing to do with protecting motherhood, but rather with *seducement* (courtesan), *domination* (lady) and *fight* (warrior).¹ The latter is not very far from the *combatant* woman being anxious for her child, who is, according to our texts, actually incarnated personally in the

Happy Woman.

In *her-story* the female storyteller re-evaluates female beauty. She does not experience it as an evil temptation anymore, but rather as the mirror of her inner harmony with her ancient female roots. Her female issues can be understood only by someone who is in community of fate.

Several passages indicate that, despite her divine characteristics, Mary, just like her Son and all the poor people who say the prayers, come from the lower class:

*“Your nurse is not a queen, from a servant I turned into your mother.”*ⁱ

Mary from the lower class, just like all poor women, had to work hard for a living, usually in the absence of her husband:

*“The Blessed Virgin earned her daily bread by spinning.ⁱ She spun for other women, and the little Jesus carried the yarn made by the Blessed Virgin to them [...]”*ⁱ

Through maternal features like birth giving, nourishing and forgiveness the same female character, just as her rural female fellows, practises sacerdotal functions. Examples of Mary the priest refer to the pagan roots of female magical power, but sacerdotal activities attributed to Mary are not alien in Christian tradition either. She exercised priestly functions by offering Jesus as a sacrifice both after His birth at the Presentation in the Temple,ⁱ and before His death on Calvary. As Salazar, a Jesuit of the 17th century put it: “[...] *She always offers the Eucharistic sacrifice, just as, at one with Him, she offered the sacrifice on Calvary.*”ⁱ

Nevertheless for a woman *blood* is rather “routine, and the message it gives is

usually fertility and birth”, while for a man “the sight of his own blood must always be associated with trauma, violence”,ⁱ and wounds, just as rituals of initiation, circumcision and castration. This is why Neumannⁱ is criticised by Weiler for identifying menstruation and birth with female *blood offering*. That seems rather the projection of the patriarchal psyche.ⁱ

Women’s need for a *redeeming* answer to their own everyday torments is most beautifully expressed in the image of the *one cup* offered at the altar which include *both the blood of Christ and the tears of Mary*, the symbols of both male and female suffering.

*“As the Virgin Mother was crying,
her tears fell into the blood of Jesus,
the angels picked them up,
put them into a golden cup,
placed it on the high altar.
Then the Virgin Mother told them:
Amen, amen, I tell you [...]”ⁱ*

Hungarian archaic prayers show a clear *exchange between the roles of Jesus and Mary*. It is often she who sends the apostles or even Jesus to the world to proclaim the good news. And it is usually Mary who says: “*Amen, amen, I tell you [...]*”.ⁱ It is called “*valid implicit, latent Tradition*” by Wijngaards.ⁱ This

sentence is in harmony with a Hungarian representation of the Pieta, print of Pozsony,ⁱ of the turn of the 17th-18th century: The dead body of Jesus held in his mother's arms is covered by a sacerdotal stole hanging down from Mary's shoulders.

In other selected prayers the power of blood and the power of the maternal substantial *milk* appear together and are used together for purifying (= healing).ⁱ

*“There I see a golden tree, gold without, merciful within,
under that there is a golden basin,
there are three drops of our Virgin **Mother’s milk**,
three drops of the Lord **Jesus’ blood** in it,
whoever washes oneself in it in the morning, in the evening,
will be remitted one’s seven mortal sins.”ⁱ*

The above mentioned positive female images are coming exclusively from rural women. In male versions of biblical interpretations *Mary* plays both resisting (Mary the “new”, perfect Eve opposed to the devilish “old” Eve) and supporting (Mary the whore: common lot with women in their evil fate) roles, depending on the context of the narration. Nevertheless in those stories the outcome is always the same: women, including or not the figure of Mary, remain evil, because of their origin from the devil. It is consequently not Mary who supports or resists women, but the narrator all by oneself.

Creation stories speak about the presumed origin of earthly life and of its order. They were however plainly invented by human beings, who tried to give answers to their questions by drawing an order of the world with the help of means of their own cultures. Later on these attempts built up a whole system of religious ideas, that served as defining the way of progress of the individuals and

of the whole community. The attempts became strict, binding definition, and its original formation fell into oblivion.ⁱ The storytellers are convinced of the divine will hidden behind the message of the orally transmitted texts.

In numerous re-narrated biblical texts there is a split already at the beginning point of creating the two sexes. In these narratives the woman has obviously nothing to do with God. She is created by the devil instead. It means that her whole existence is in communication merely with diabolic forces rather than with divine ones.

The devil has to dive three times into the water for some mud to create the earth in co-operation with God, because God finds that deal always too little. When God is finally satisfied with the mass of mud, they pug the clay together, till it is well flatten to be put onto the surface of the waters. The mud grows earth, but empty without life. Therefore both God and the devil scratch off the mud left under their nails to form human beings. Both God and the devil blow their breath into their created figures: “*the former made by God is the man, the latter made by the devil is the woman.*”¹

Although the material used by the creation of both sexes is the same mud, the subordination of the woman to the man is affirmed in these variations not only from a biological aspect, but also from a moral point of view. She is attributed to devilish, sinful, destroying power in contradiction with the male character originating from the perfectly good God.

A sad, but very illustrative example of the existed patriarchal order comes from a female narrator, who seems to have gone through a complete patriarchal brainwashing during her life.

*“When God created Eve, God asked Adam: ‘How is it going with your wife, Adam? Are you not bored?’ ‘No, my Father, but she **smells earthy**.’ The woman had an earthy smell. Therefore God took the rib of Adam, and put into Eve. Since then she no longer smelt earthy.”ⁱ*

The female genealogy based on the earth is strongly despised and humiliated here. Belonging to Mother Earth and owning Her heritage becomes a shameful position. Patriarchal interpretations represent Her and all her daughters as stinking, repulsive beings, whose nauseous, loathsome character can only be redeemed by a much higher quality, namely, by Adam’s rib, the male essence. The female storyteller experiences herself as a malodorous reality, and looks at her husband as her “better part”, with which her lower female existence is not even to be compared.

Male and female narrators see the foresight of both the frightened Adam and Eve driven out of Eden differently. This distinction is best expressed in the content of dreams attributed to Eve or to Adam. According to the female storyteller only Eve had a dream about the future after being chased out.

“She had seen that women suffered a lot of pain by giving birth, not like she before, who had no idea of what pain meant. Then the devil showed her a lot of torments, hatreds and wars her descendants had to go through. Finally she saw fire that burnt everything. A black horseman passed by with a jug of water. Many thirsty people, who drank from it, became engaged to Satan. Eve suffered very much from her dream, and when she woke up, she fell on her knees, and asked God to remit her sin, and to save people from the dread she dreamed about.”ⁱ

The female narrator does not draw a distinctive parallel between man and woman; she only expresses her own fears and anxieties that finally lead her to guilty feelings. She looks at herself as the *reason of all troubles*, she begs for

God's pardon and practises penitence.

In the male version Eve shares with Adam the horrible future vision she had seen in her dream, while dissolving into tears. The man however consoles the woman by saying that he was also shown a dream

“By God, in which he was encouraged to make trappings, to start to plough and to sow, to build houses, to give birth to children, and not to worry about their fate, because God would take care of them, if we kept God's advice, did our job and were constructive.”ⁱ

The male narrator emphasises the divine source of Adam's dream in contradistinction to Eve's prompted by the devil. The male attitude to the new situation outside of Eden, out of the divine blessing seems to be much more flexible, inventive, quick-witted, “constructive”, as the storyteller himself puts it. Adam's fear completely disappears at the end of the narrative; the optimistic man supported by God's positive message is full of vivid energy for a new beginning. Eve's dream is rather pessimist by paralysing and hindering the advance. Here she is manifested as a psychically impeded person to explore the new possibilities offered by the new situation.

Nevertheless whenever a sign of female independence appears, it is seen from a male perspective as sinfulness and disobedience to both *man and God*. According to male storytellers, God or an “accident” established this order. When Eve is disobedient to Adam, the man usually runs to *his* God to complain, who, certainly, always supports *him*.

God helps Adam for example *to grow a beard which makes him look more frightfulⁱ* and more authoritarian towards the seemingly disobedient, but in reality only fair-player Eve, who is inclined to work in the garden with, rather than without her husband.ⁱ

Male storytellers of the so-called Peasant Bible demonstrate also caring for the child as a result of *female disobedience* (to male desire) followed by divine *punishment*.

Once the women went to Jesus. All carried a child in their arms. They asked Jesus to allow them not to carry the child anymore, but as it is also in the world of animals, after a few days let their new-born walk. “Jesus replied: ‘All right, but then let you give birth to children like the animals. Let you meetⁱ your husband as often as the animals.’ The women answered: ‘In that way rather not, my Lord, Jesus!’” This is why women carry their little children in their arms to this day.ⁱ

Frequent sexual relations were obviously not the suggestion of Jesus, but of the

subconscious of the man telling the story.

Several male narrators acquaint us with the original set up between woman and man. These male narratives unambiguously speak for male authority established by Jesus, even if He acted against the original divine order of female superiority proclaimed by several storytellers.

According to these narratives the woman was primarily the head of the family, until Jesus changed the order. While she was much stronger than her husband, she thrashed him regularly, until the man asked Jesus for help, who then changed the situation by saying that “*From now men are the lords instead of women*”.¹

In other versions the wanderers Jesus and Peter get accommodation for a night from a timorous husband in a house, where they themselves become eyewitnesses of female brutality. In this version the drunken wife coming home from the pub late in the night kicks the front door while shouting at her husband, “*Open the door, you, whore!*” Then she thrashes her husband and his guests (Jesus and Peter), until Jesus takes off her hat and puts it on the head of the husband while telling him, “*It is yours!*” Since that time the man wears the hat symbolising his priority in the family, which means that since then he is the one who is endued with power and authority to say “whore” to his wife and to all women.¹

Typical male characteristics like *being away from home, drunkenness, swearing, brawl* and further examples of brutality are attributed here to women, and considerably judged by the narrator (and so much the more by Jesus Himself). The final change of gender roles ordered by Jesus transfers the might and authority to the man, while confirming his superior status and even his violence.

According to another male storyteller¹

Whoring origins from the ancient time of Noah, who had four daughters and three sons and paired them. Because of being left without male partner, the fourth girl cried all the time. She did not know what to do, but Noah suggested to her to put on beautiful dresses and an ever-laughing face so that she will be able to live among her brothers and sisters. Then she prepared herself exceptionally nicely, in the consequence of which she was loved by one after the other. This is the origin of whoring.

The question of incest obviously does not arise here at all. The main reason for becoming a whore seems to be the lack of the male partner. According to the narrative whoring is a role given to women. The narrator however seems to have sympathy with the girl by describing

her as a lost, sad woman, to whom in Noah's opinion (in the opinion of the storyteller) whoring is the only, even if not really satisfying solution. Noah as a father has the privilege to decide the fate of all his children. The legend is not interested in the future of the other children, and does not comment on the quality of their lives at all.

Being single seems to be equivalent to being left alone, the greatest tragedy and shame of human life. Whoring is seemingly the only opportunity to help the girl to be integrated into the expectations of the society, in which everlasting maidenhood without sexual act has probably a lower respect than the state of a courtesan. It mirrors the strong social pressure existing in the surrounding local community. Beauty and merry liveliness, even if they are illusory ones, are highly valid in most cults. The problem of subjection and materialisation of human relationships has no room in this context.¹

The following story of the Peasant Bible shows childbirth also from the perspective of a *single* female left alone with *her* responsibility. The narrative focuses on divine punishment of all women who give birth out of wedlock:

*Jesus and Peter wander from village to village. Once they see a woman giving birth with great pain. Peter asks Jesus to pass half of this pain of women to men... Then they arrive at another village, where a woman, out of marriage, gives birth in the midst of the local residents, but no one knows, who is the father of the child. A man starts to wail, making obvious his paternal identity to the crowd. Therefore Peter asks Jesus again "to give back the whole pain to the women, otherwise everyone will get to know whose child it is. In this way at least nobody will know."*ⁱ

Jesus and Peter's arrangement seems to defend the father and to leave the mother alone in the midst of communal scandal.

As we have seen, images of god represented in the religious folk tradition show us the everyday life of the faith community, the dominant family structure, the relation between man and woman, the gender roles, and the division of labour within the family of not only past

times. Texts relating to religion demonstrate clear gender-based characteristics. It depends, what kind of ideologies had to be supported by the gender groups within the community, or, exactly on the contrary, had to be withdrawn into “inner emigration” within the burdensome domination of the commonly defined rules. All these obvious or hidden expressions of convictions can be explored in the pictorial descriptions of oral tradition. The derogatory female images in biblical stories, which were interpreted and enforced from a typical point of view of rural story-telling men, inform us unambiguously about their own self-preservation and hidden fears against women. The prayers and stories of peasant women, on the other hand, do not concentrate on men, but rather avoid the male elements, and, contradicting the everyday experiences of male oppression, they visualise the absolute female power.

Judith Herrin

Femina byzantina: social and political practices in the Byzantine Empire

In the early centuries A.D. most of the regulations governing the behaviour of Christian women derived from the Gospels and the Epistles of St Paul. These were particularly meaningful in the East Christian tradition because they were preserved in familiar Greek (the New Testament *koine* seems to have been well understood in medieval Byzantium), and referred to familiar places in the Mediterranean world where individual women had sustained the faith. Despite the restrictions imposed by such patriarchal societies, some exemplary women were praised for their devotion (for instance, Phoebe, or Aquila and Priscilla, who organised a church in their house). While members of the social élite could support Christian communities with their inherited wealth, slaves like Blandina could set a magnificent example of fortitude in the face of martyrdom. At this stage, the familiar saying of Paul, that there is neither male nor female, slave nor free Jew nor Gentile, but all are one in Christ Jesus, had a certain resonance.

Imperial support for Christianity altered this situation. Constantine I repealed the legislation of Augustus concerning marriage and procreation, and so some women were able to resist their fathers' pressure for them to marry. In choosing to lead celibate lives, whether as young girls or widows, they could devote themselves to Christian activities. Even those who had been obliged to marry could maintain the Roman principle of *univira*, the woman of one man, and thus avoid remarriage. Divorce was made less easy as Christian aspects of marriage and principles of a life-long commitment were established.

Some dedicated Christian women retired from the world into celibate communities, like St Makrina, the sister of St Basil of Caesarea. She used the death of her fiancé as a pretext for not marrying and managed to persuade her mother to join her in the monastic environment she created in the family home. There Makrina received women (including poor girls who sought refuge and support during a famine) and men into distinct areas of the house. Founders of male monasteries often set up equivalent institutions for women so that the female relatives of monks could embrace a similar life. Women also adopted the ‘caring’ roles of looking after the poor and the sick, devoting themselves to washing lepers, or attending to the needs of orphans and older widows. These roles were recommended and could be followed by both rich and poor.

But during the fourth century this rapidly gave way to a rather more considered view of Christian women. For the spread of Christianity created social problems which Church Fathers tried to overcome by ecclesiastical laws (canons) designed to limit the public activity of women and to keep them out of sight at home. These collections, issued by both oecumenical and local councils, document such concerns, e.g. canon 11 of Laodicea (first half of the fourth century), which states that so-called female presbyters or presidents should not be ordained in the church. This does not, however, condemn the existence of such *presbytidas* and *proskathemenas*, and it would be fascinating to know more about their roles. Canon 44 repeats that women are not allowed to enter the sanctuary (*thysiasterion*, where the mysteries are celebrated, i.e. the altar area, or bema), and 30 prohibits Christian men (priests, other clerics and ascetics) and all other Christians and laymen from washing in the baths with women. This is condemned as a most reprehensible pagan custom. Later on, celebrating any pagan festival with the atheists is similarly condemned and also receiving gifts from Jews or heretics and celebrating their festivals. Canon 53 specifies that Christians are not to dance or jump about at wedding banquets but must behave themselves decently as behoves Christians. And canon 54 orders that priests and clerics who attend such wedding celebrations are not to stay and watch the spectacles or actors (entertainers, *thymelikous*), but must leave before they come in.

Groups of virgins (*subintroductae*) who lived in proximity to celibate priests, bishops and ecclesiastical leaders and provoked thoughts of scandal, were condemned by St John Chrysostom and further regulations were issued to control them. Even the recognised order of widows was ordered initially not to admit women who were under the age of 60, later reduced to 40; and the age of admission to the order of virgins was also set very high (25) given that many young girls expressed the desire to dedicate their lives to Christ at puberty (rather than

marry, according to canon 126 of the Council of Carthage held in 419). Indeed, the reasons for admitting them earlier include fears for their virginity, which might be under attack by a powerful fiancé or a rapist, fear of death from a mortal disease, or the express wish of the parents or guardians.

It is clear that groups of virgins and celibate widows posed problems for men. Canon 38 of Carthage says that clerics and monks must not enter their houses without the permission of the bishop and if they do, they should go accompanied by others, not alone. Canon 44 further specifies that consecrated virgins who leave their parents' home must be settled by the bishop or priest with most highly honoured women, *timioterois gynaixi*, or they must get them to live together in mutual care, *katoikousas allelas phyllatein*, so that they are kept under control and do not wander around bringing the good name of the church into disrepute.

In this way, the Christian faith of women was directed into particular channels deemed safe by men. Ancient forms of patriarchal control (such as the *patria potestas*) were reinforced by Christian ones. Tertullian's misogynistic views may not have been widespread, but many church leaders were apprehensive about the enthusiasm of female members of their Christian congregations. The prophetic and pedagogic talents of women such as the female followers of Montanus or Marcion were condemned, as was public preaching of any kind. All the courage manifested by early Christian martyrs was tamed. If women did not understand what they heard in church, they were not to ask the priest but to consult their husbands at home. Although in principle women could aspire to an equal devotion and to a life in Christ, the male hierarchy of the church made sure that there were no dedicated positions open to women. They had to find useful roles in the secular community or in nunneries. And even though these all-female groups could elect their own abbess (*hegoumene*), they were dependent on a priest to bring in and consecrate the Eucharist for them on Sundays. There was never any question of women being ordained to the priesthood in the Greek Church.

By the sixth century these patterns of thought were set in Byzantium and established a framework for all later activity. Women were expected to lead a secluded domestic existence and to cover their heads when they went out. The 'natural' tendency of women to slip from the high road of moral behaviour meant that they needed extra protection by their menfolk. Of course, all working women had to participate in economic activities, whether rural or urban, and these might require them to bare their arms. It is common to read of women selling things to eat in the streets of cities as well as at fairs; some worked in shops which sold woven garments; others looked after poultry, participated in the grape picking and might even help reapers at the harvest. But the model of beauty recorded in Byzantium stressed a pale skin

colour which could only be attained by those who did not work outdoors. Social expectations were in contradiction with everyday practice.

Nonetheless, women of the medieval period sought to develop social and political practices that would allow them greater fulfilment. Although the ever-virgin Mother of God was an impossible model to follow, they sought to emulate her characteristics in order to overcome their condemnation as Eve. The saying: 'Through woman all evil came into the world', was parried by the response: 'And through woman salvation came into the world' (recorded in a ninth century dialogue attributed to the hymnographer Kassia).

Kassia herself came from the social élite; she had sufficient inherited wealth to establish a nunnery and was so well educated that she could compose hymns for her nuns to chant. She was also very independent-minded and wrote verses which explicitly criticise moral weakness in both men and women. Kassia is in every way an exceptional woman. But others, including members of the imperial family, also founded nunneries. And these communities not only provided a retreat from the world for individuals, but also created groups of dedicated Christian women, who managed their daily routines and their finances, and provided education and discipline for all those who joined.

On rare occasions individual women attained extensive political power in Byzantium, as members of the ruling dynasty and wives of emperors. Empresses always had a public role, which might become more prominent after the death of their husbands. In particular, when a young son had been designated by his father as his heir, by coronation as co-emperor, but was not old enough to assume the responsibility of governing the empire, his widowed mother might assume greater power. In the case of Empress Irene, she kept her son Constantine VI in the background for as long as possible, and even ordered him to be blinded and so disqualified from ruling after he failed to provide good leadership. She then ruled alone for five years (797-802), negotiating with Caliph Harun al Rashid and Emperor Charlemagne.

The model of her imperial power was later followed by others, Theodora, widow of Theophilos in the ninth century, Zoe, widow of Leo VI in the tenth, and the daughters of Constantine VIII in the eleventh. Even when they did not take political initiatives, they remained in the public eye as legitimate rulers, associated with imperial power by birth or marriage. Other princess of ruling families performed an equally significant role when they were married to foreigners, usually to strengthen political alliances. Women like Theophano, who was sent to marry the German Emperor Otto II in 972, or Anna, who married Vladimir of Kiev at the end of the tenth century, exercised considerable influence in regions far away from the empire. They served as unofficial ambassadors for Byzantium, spreading Byzantine

customs in distant lands.

There are therefore certain factors which set Byzantine women apart from their sisters in the medieval West. This paper will explore the circumstances which enabled them to stretch beyond the parameters established for them by men.

MARINA CAFFIERO

Entre juifs, chrétiens et convertis: les mères juives et leurs droits sur leurs enfants. Aux racines historiques d'une question contemporaine

1. En premier lieu, il convient de faire une petite introduction concernant le cadre normatif dans le monde chrétien et dans le monde juif. Les principes de tutelle et les droits de l'autorité paternelle sur les enfants dans le monde chrétien, et durant toute l'époque moderne, dérivent des lois du monde classique : le père détenait l'autorité de laquelle les mères étaient exclues. En outre, dans le monde antique, même en cas de veuvage, les femmes étaient exclues des droits de tutelle sur les enfants mineurs en faveur d'un parent de sexe masculin, plus proche du père. Sur le plan normatif, il y eut un changement au cours du IV^e siècle quand on reconnut à la mère veuve, en l'absence de tuteur testamentaire, la possibilité de demander et d'obtenir la tutelle, à condition qu'elle ne se remariât point. En l'absence de la mère, c'était l'aïeule paternelle qui rentrait également dans cette lignée féminine de la tutelle. A l'époque médiévale et contemporaine, la veuve indiquée dans le testament du mari en tant que tutrice, maintenait ce rôle, généralement encore au prix du renoncement à un deuxième mariage. Toutefois, il arrivait souvent que la mère se vît assigner par les autorités publiques, la tutelle des enfants orphelins de père et cela même en l'absence d'un testament du mari et même après les secondes noces, sur la base d'une sorte de "contrat moral" entre les juges et les mères, en défense des mineurs, non confiés aux oncles tuteurs qui pouvaient en hériter. En outre, dans les testaments les époux pouvaient nommer la mère comme tutrice unique ou la faire épauler par d'autres consanguins qui en général étaient leurs frères – les oncles paternels – ou leurs mères – l'aïeule paternelle.

La normative juive était « plus ouverte » aux femmes. En ce qui concerne l'organisation familiale juive, la centralité et la force assumées par les

femmes au sein de celle-ci sont bien connues, surtout celle des mères, aussi bien du point de vue du principe de la transmission matrilineaire de l'identité hébraïque que pour des raisons économiques. Parmi celles-ci on distinguait l'importance des dotes dans la répartition des patrimoines familiaux et donc le favoritisme des filles dans la répartition des richesses de la famille. La centralité de la figure maternelle dans la famille juive, qui expliquerait également la faible propension féminine aux conversions, est révélée par ailleurs par les testaments des maris qui confiaient, en générale, la tutelle des enfants à leurs épouses, souvent épaulées par les parents des femmes : donc des représentants de la branche féminine. En conséquent, dans la société hébraïque, le principe de patrilinéarité, qui existait également comme dans celle chrétienne, était contredit par les pratiques réelles, confirmant ainsi le rôle influent des femmes. Les pouvoirs des veuves juives étaient également remarquables: à Rome, déjà au seizième siècle, à la mort de leur époux, les femmes ne dépendaient pas de sa famille à lui et elles stipulaient seules, et personnellement les contrats : elles étaient également tutrices et curatrices des enfants et administratrices des biens de la famille et il n'était absolument pas sûr que les oncles soient les tuteurs des neveux.

La situation normative des femmes juives devenait très délicate en cas d' "offrande" à la religion catholique, contre la volonté de la mère veuve et juive, des ses fils par les oncles et les grands parents convertis. Il convient avant tout d'expliquer le phénomène de l'offrande ou oblation, qui aujourd'hui est encore peu connu . Il s'agissait d'une pratique que les juifs convertis accomplissaient formellement devant le notaire du tribunal ecclésiastique et par le biais de laquelle ils offraient à l'Eglise et à la religion catholique les membres de leur famille, mineurs et adultes, même quand ceux-ci n'étaient pas consentants. Dans tous les cas, l'offrande était irrévocable, même si l'offrant changeait ensuite d'idée. Mais tandis que les adultes offerts pouvaient résister aux pressions de la conversion et retourner dans le ghetto, dans la mesure où ils étaient considérés comme étant responsables et autonomes, les enfants offerts étaient immédiatement baptisés sur la base présumée du droit de tutelle détenu par les offrants.

Le phénomène, qui s'est étendu du seizième siècle au dix-neuvième siècle, et a continué de s'accroître de la fin du dix-septième jusqu'au dix-neuvième, se révèle d'un intérêt fondamental, non seulement sur le plan quantitatif mais en raison des implications délicates qu'il comportait en ce qui concerne les

questions d'héritage, de mariages, de droits sur les enfants nés, sur les enfants à naître et sur le fœtus, de l'exercice de la *patria potestas*, de la perception du corps et des droits de la mère : en plus, naturellement, on doit ajouter le poids exercé sur les expériences et les vécus personnels par les violentes formes psychologiques de pression, parfois très dures et brutales, par l'exaspération des rapports interfamiliaux et par les véritables « enlèvements » d'enfants arrachés à leur famille et à leur mère. Les offrandes mettent au cœur du problème le thème, d'un intérêt plus général et aussi en relation avec la société chrétienne, de l'exercice des droits de la *patria potestas* ; droits qui, pour justifier les offrandes, étaient de plus en plus étendus aux différents proches mais aussi assujettis aux manipulations. Il s'agissait en particulier de restreindre les droits de tutelle de la mère juive, dont celle-ci jouissait selon la loi hébraïque, et de soumettre ses droits à l'autorité prétendue plus ample des parents convertis. L'aïeul paternel, une fois converti, sur la base du droit romain encore absolument prédominant, gardait certainement sa *patria potestas* sur ses enfants et sur ses neveux majeurs, et cela même après l'émancipation : cela a été confirmé, par exemple, dans le cas de l'octogénaire David Citone qui en plein milieu du dix-huitième siècle, en 1816, avait offert sa nièce Judith âgée de 4 ans contre la volonté des deux parents, sur la base de l'assertion que la *patria potestas* appartenait toujours à l'aïeul, même quand le fils était émancipé et autonome. Toutefois le droit d'offrande fut étendu jusqu'à comprendre également l'aïeule paternelle qui, bien que n'étant pas mentionnée dans la doctrine thomiste de la *patria potestas* naturelle et civile, était récupérée, parfois sur la base du droit à la tutelle reconnue à l'aïeule par Justinien, à d'autres moments, au contraire, mettant en cause aussi le droit naturel moderne, et suspect (pour l'Église). La *patria potestas*, était cependant à nouveau restreinte dans le cas de revendication de l'*autorité naturelle* de la part de la mère veuve et juive si elle tentait de s'opposer aux offrandes de ses enfants faites par les oncles et grands parents paternels convertis. On assiste ainsi, au-delà d'une discussion juridique très animée sur ce thème, à un jeu pour lequel, tour à tour et selon les cas, on faisait valoir le droit romain ou celui naturel – jamais celui juif –, mais de toute façon toujours le droit qui se révélait en faveur de l'offrande. Il apparaît évident ici qu'il y avait une manipulation désinvolte des droits en fonction des intérêts de la religion et de ce qui était défini le *favor fidei*. De tels intérêts conduisaient les autorités ecclésiastiques à des manœuvres de contournement et de manipulation des droits, naturels et civils, de tutelle dont les mères jouissaient, afin de s'emparer des enfants. Ces pratiques étaient

beaucoup plus graves lorsque la femme était enceinte et que l'enfant « offert » n'était pas encore né.

Une telle manipulation se révèle également sous un autre aspect. En fait, le recours au droit naturel, afin de pouvoir transformer les femmes en sujets juridiques dotées de *patria potestas*, se traduisait dans le fait que même la mère qui se convertissait, bien que n'ayant pas ses enfants sous son autorité, pouvait toutefois les offrir contre la volonté du père qui restait toujours de confession juive et qui était celui qui détenait encore l'autorité à la fois naturelle et civile. De cette façon, le droit naturel était valorisé contre le droit romain pour transformer les femmes converties en sujets juridiques, même avec l'objectif d'un abus juridique à l'égard du droit naturel lui-même, qui est en soi universel et donc toujours valable, même pour le père juif.

2. Dans la vaste casuistique que j'ai recueilli sur le phénomène des offrandes entre le dix-septième siècle et le début du dix-neuvième, je me limiterai ici à indiquer certains éléments dont les retombées sur le plan juridique et culturel sont importantes soit en raison des conséquences et des prolongements dans la période suivante, jusqu'à aujourd'hui, soit pour l'histoire même des rapports entre juifs et chrétiens.

Avant tout, le phénomène des offrandes concerne surtout les enfants, les femmes adultes et, en particulier, les femmes enceintes. Les enfants et les femmes constituaient une ressource religieuse dans laquelle puiser avec la plus grande confiance par rapport aux adultes de sexe masculin. Les mineurs étaient placés au centre de l'intérêt et l'on faisait tout ce que l'on pouvait pour obtenir des offrandes d'enfants et de garçonnets sur lesquels les conversions opéraient avec plus de résultats, par rapport à celles toujours suspectes des adultes. C'est un intérêt qui rentre d'ailleurs dans l'importance plus générale accordée par l'institution ecclésiastique à tous les mineurs – évidemment les chrétiens aussi – en relation avec une idée de plus grande malléabilité et récupération des jeunes-gens: il suffit de penser, par exemple, aux nombreuses institutions destinées à la récupération et à la discipline des jeunes dans les pensionnats et dans les prisons et à leur insertion dans le monde du travail. Mais aussi l'attention pour les femmes juives rentre dans l'intérêt plus général, qu'à l'époque moderne les institutions adressent de plus en plus au monde féminin en tant que moteur de christianisation de la société. Les femmes juives, surtout les veuves, auxquelles on arrachait les enfants offerts par d'autres parents convertis, étaient les principales victimes de cette pratique courante. *Fletus Rachelis plorantis filios suos*, extrait du texte biblique *Geremia*, 31, constitue l'*incipit* de nombreux mémoriaux de protestation des juifs au Saint Office, comme dans le cas de Grazia Anticoli, en 1702, qui, restée veuve de Joseph avec six enfants desquels elle avait été nommée tutrice en testament par son mari, se les vit arrachés par l'offrande faite par l'oncle paternel converti à la religion chrétienne.

Toutefois, une fois que les mères s'étaient converties pour suivre leurs enfants, le lien affectif constituait la meilleure garantie de persévérance et d'intégration des femmes de la nouvelle communauté, d'autant plus si, comme cela se produisait souvent, la néophyte épousait un chrétien et avait d'autres enfants .

Un phénomène particulier et riche en conséquences était ensuite constitué par ce que l'on appelle "l'offrande du ventre gravide" (*ventris pregnantis*): en fait l'oblation de femmes enceintes avec l'enfant attendu de la part des maris ou d'autres parents soulève, au-delà du problème de la *patria potestas*, la question complexe et délicate des droits sur le fœtus – les droits de la mère ou de l'Église – et sur le corps de la mère, et le problème de la nature même du fœtus. Ces cas particuliers sont projetés sur un plan doctrinal et politique plus général, avec des implications beaucoup plus vastes par rapport au simple « problème hébraïque ». Ces cas, au-delà du fait qu'ils concernent les limites posées aux droits de l'autorité et de la tutelle des mères sur les enfants et au-delà de l'anticipation des pratiques et des comportements mentaux de l'antisémitisme contemporain, portent à des réflexions relatives aux récentes discussions européennes – et surtout italiennes – sur le statut juridique du fœtus et sur ce que l'on appelle les « droits » des fœtus et des « non nati » (des enfants pas encore nés) et en conséquent, sur les droits des mères. L'"offrande" du "ventre gravide", c'est-à-dire du fruit qu'une femme juive portait encore en son sein, détermina auprès des plus importantes autorités ecclésiastiques romaines, et en particulier auprès du Saint Office, un débat très animé. Celui-ci démontre comment, en plein dix-huitième siècle, n'était absolument pas acquise et officialisée l'*opinion* selon laquelle le fœtus, selon les nouvelles doctrines médicales et théologiques qui allaient s'affirmant, prenait tout de suite sa pleine autonomie par rapport à sa mère et il était totalement "personnifié" et individualisé: théorie de laquelle dérivait le redimensionnement consécutif du rôle maternel, renforcé également par l'hypothèse de l'attribution immédiate d'une âme à l'embryon au moment de sa conception. En réalité, la question fut loin d'être résolue et défini par la discussion théologique et canonique. La "nature et la qualité" du « non nato » (l'enfant à naître), pendant longtemps – et pendant tout le dix-neuvième siècle et avec des résistances présentes également en plein vingtième siècle – furent considérées par les nombreuses autorités de l'église catholique de façon à présenter le foetus comme totalement dépendant et fusionnant avec le corps de la mère: comme le fruit avec l'arbre, on devait considérer le fœtus comme faisant « partie de son corps » (*portio*) et donc dépendant d'elle, sans droits de « citoyenneté » à part entière. Ce qui, du reste, sur le plan doctrinal, était confirmé par l'interdiction traditionnelle des baptêmes *in utero* et des foetus. Ce sont des thèmes sur lesquels les consultants du Saint Office discutaient et différaient entre eux, comme on peut le voir dans un cas de 1762 qui concerne l'offrande faite par une grand-mère néophyte de ses petites filles et aussi d'un petit fils qui devait encore naître. Dans cette affaire, si les consultants se trouvèrent en désaccord sur le droit lui-même de l'oblation de la part de l'aïeule, la discussion fut encore plus tendue en ce qui concernait le bébé à naître. La Congrégation demanda son opinion sur l'offrande du "ventre gravide" à l'assesseur (secrétaire) du Saint Office, qui démontra de nombreuses perplexités sur sa légitimité, affirmant que le foetus devait être considéré comme faisant "partie du corps de la mère elle-même"; donc il n'était pas indépendant par rapport à elle mais totalement dépendant par "axiome philosophique et par consentement des juriconsultes" (il citait Tommaso et Ulpiano). Donc, si le foetus fusionnait intimement avec le corps de la mère et si la grand-mère n'avait aucune autorité sur le corps de sa belle-fille, elle n'en n'avait pas non plus sur celui de l'enfant à naître: "les Foetus, affirmait-il, sont sous tutelle de la mère". L'assesseur du Saint Office allait même plus loin, affirmant que l'enfant à naître, tant qu'il était dans l'utérus maternel, était exclu de la société et de tout consortium humain et il n'était soumis à aucune action humaine ni aux lois: et on ne pouvait certes pas offrir "quiconque était encore à l'extérieur de la société humaine". La conséquence était que l'on ne pouvait pas offrir à la religion chrétienne un être qui n'était pas encore distinct de ses parents. Donc, la tradition juridique d'origine gréco-romaine reprise par le christianisme, avec sa présentation d'une fusion totale des corps de l'enfant et de la mère, même après la naissance,

constituait un fort empêchement par rapport à la représentation plus moderne - médico-scientifique, juridique et puis également théologique - qui s'affirma, bien que lentement, à partir de la moitié du dix-huitième siècle et qui annonçait une indépendance du corps de la mère de façon à éliminer tout contrôle de celle-ci sur le fœtus et sur l'enfant. Cette représentation moderne rendait également plus facile le discours du baptême des enfants juifs, nés et à naître, considérés comme séparés du corps de la mère et autonomes. Cette thèse aurait, en fait, fini par admettre également le baptême dans l'utérus. Les changements de la doctrine théologique et de celle médicale, qui miraient à la "personnification" du fœtus et à la reconnaissance de sa citoyenneté totale, répondaient naturellement aussi à la nécessité d'élever un rempart plus solide contre la pratique de l'avortement: de toute façon, ils redimensionnaient le rôle et le pouvoir de la mère sur son enfant. Toutefois, à la moitié du dix-huitième siècle encore, comme on l'a vu, les nouvelles théories n'étaient pas du tout affirmées par rapport aux doctrines traditionnelles; même si, dans la pratique, avec différents *escamotages*, on réussissait à garder la juive enceinte dans la Maison des catéchumènes "pour la protection du fœtus" jusqu'à l'accouchement et à baptiser l'enfant, sous prétexte de danger de mort. En conséquent, c'était seulement en pleine opposition avec la doctrine dominante, que la femme juive enceinte, dont le fœtus avait été offert, était considérée comme la simple porteuse d'un fruit déjà chrétien à tous les effets, même si celui-ci n'avait pas encore été baptisé.

C'est l'histoire de Chiara del Borgo qui en 1712, enceinte de sept mois fut traînée de force à la Maison des catéchumènes après la dénonciation d'un converti selon qui la femme avait déclaré de vouloir se convertir au christianisme avec l'enfant à naître. Malgré les protestations de Chiara, celle-ci fut retenue jusqu'à l'accouchement et, tandis que la petite fille était baptisée sous prétexte de danger de mort, elle dut subir une autre quarantaine finalisée à sa conversion: à la fin, après presque quatre mois de réclusion, la femme accepta le baptême. La pratique était donc de retenir la femme jusqu'à l'accouchement et même au-delà, pour la convaincre à se convertir. En cas de refus de conversion de la part de la mère, ce qui était plutôt très difficile et rare surtout après le début de vie commune avec l'enfant, se produisait la séparation définitive du nouveau né.

En conclusion: on peut donc comprendre comment les positions catholiques actuelles sur les « non nati », c'est-à-dire sur les enfants à naître, sur leurs droits et sur les droits des mères, soient le fruit d'une évolution historique et théologique absolument récente. Celle-ci porte le débat sur les fœtus et sur les embryons – débat duquel dépendent les décisions législatives – sur le plan des opinions, des constructions culturelles et non pas des vérités absolues – théologiques et scientifiques. La pratique de l'offrande du *ventris pregnantis* des mères juives, qui considérait l'enfant à naître comme autonome et déjà « personnifié », comme déjà un "individu" chrétien, indépendamment de la volonté de la mère, contribua donc certainement à l'affirmation du nouveau cours doctrinal et au résultat final – mais, je répète, très tardif – de la discussion sur l'identité et sur le statut des fœtus dans le monde catholique.

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The present paper propose a comparison between the sociological and religious gender models, insinuated in Romanians orthodox Christians' perception and representation, which exert an important pressure on their individual behavior. Through the secular or sociological gender model I tried to evaluate the very frequent and stereotyped masculine/feminine characteristics and behavior, which represent the statistic socio-cultural norm or model of gender roles. Through the assessment of the religious gender model I underlined the typical masculine/feminine traits as they appear in the perception of the Saints and very virtuous biblical characters. These models are elements of the group's and individual's moral Self ideal; they assure the conformity of individual behavior with the socio-cultural recognized one. These models have contributed to the definition, stabilization, and extraordinary maintenance in time of the traditional sociological gender models, of the "androcentric" legal regulations of the human's rights and of the men's and women's positions in the family and society. If women traditionally hold at least some kind of familial or sexual power, which has been termed *dyadic power* (Glik & Fiske, 1996), this power exists mainly in the private sphere, that is the family and other close relationships. As I will argue, gender roles models and stereotypes are inextricably implicated in keeping women's power confined mainly in the private sphere and in denying women equal access to position of power in large/scale organization and government.

The second axis of comparison takes into account the Romanian orthodox Christians' attitudes towards religious practice, according to which I have distinguished between practising and non-practising orthodox believers. I have presumed that even if they belong to the same religious tradition, the believers are not homogenous in their motivation of belonging to their religion and to a certain believers' group, in their traditional or modern practical religious orientation, in their religious education etc. All these differences between practising and non-practising Romanians orthodox will produce a specific paradigm or conception of the world, of gender relation, and gender rights which will influence the perception of the sociological and religious gender roles.

Thus, the aims of the present paper are those of underlining the existing differences between the two categories of orthodox Christians, and the extent of their impact on the process of internalising these models (religious and sociological), at both sexes. Another objective was to put in evidence the existing differences in the perception of both models (practising and non-practising subjects, men and women).

The hypothesis of the paper are: 1. There are significant differences in attitudes towards religious norms and practice between the practising and non-practising orthodox subjects of both sexes; 2. The different attitude towards religious traditions and practices determined differences in the perception of religious and sociological gender models at both sexes; 3. Gender role models (sociologic and religious) are differently internalised by the practising and non-practising orthodox believers of both sexes.

For the validation of the hypothesis I have constructed and used three instruments: 1. *A questionnaire* for identification of the type of orthodox: practising or non-practising believer; 2. *A list of adjectives* for the assessment of sociological and religious *masculine* role models and 3. *A list of adjectives* for the evaluation of sociological and religious *feminine* role models.

Our research design is justified by the absence in the recent psychosocial studies on gender roles and relations of comparison between sociological and religious gender roles models and their linkage. The great majority of the researchers had focused their studies on the analysis of men and women traditional roles, without the intention to search the deep and profound interaction between religion and socio-cultural pressure on individual gender conformism.

Adriana Valerio

**Beyond law:
The Divine Revelation to women**

Law and Divine Revelation

H. L. Bergson, in his work entitled *The two Sources of Morals and Religion* (La Scuola, Brescia, 1996), differentiates between “morals of pressure”, which is based on the immobility of law (where the subject submits to the life-rules imposed by the community), and “morals of aspiration”, which is based on a definite model, on a definite example to be imitated. The latter can be understood as “morals of the call”:

it is an *announcing Thought* , through which human being are called to be one with God. It is morals of mystics women and men.

Without going deeply into Bergson's thought, I draw inspiration from this distinction to ask myself questions about the possible connections between Law (minded as "pressure") and Revelation (minded as "aspiration"). Furthermore, going deeply into the meeting's matter, I intend to underline the relations between Divine Revelation and human rights (particularly, the "gender rights").

We can observe an hermeneutical circularity in the relations between Law and Divine Revelation. In the Holy Scriptures, it is God to reveal Law to mankind; Law, though refers to Him, is submitted to a constant "explanation-process", most of all tanks to Prophets who, in being constantly attentive to what happens in the present time, go beyond the fixity of Law itself: they read it differently; they contextualize it; they reinterpret it... or contest the same. I wonder whether the tension which we discover between religious ideality (the Revelation) and codification of reality (the Law) may be seen, for women as well, as a possibility to redefine models and rights.

The so called *women's rights*, in fact, mature in a constant struggle between the rules and the breaking of them; between the reality of the absolute principles and the overthrowing of it, in the name of a more universal foundation of Law. Which is the role that women had in this process of re-definition of social roles and amplification of rights?

I think that both the women who act in the Bible, widening the narrow limits of rights (Ruth, Judith, Ester) and those who have been Prophetesses (I allude to Joan of Arc, for example), who testify a Law which is *other* (in the sense of *different*), and the mystics, who are looking for a never fulfilled sense of life, represent three different modalities of going *beyond Law* in the building process of new religious gender models.

The Halacha in the Book of Ruth

Therefore, we can say that Law knows evolution and abandoning of the old

traditions, not only in passing from the Old to the New Testament, but in each one of the Holy Texts as well. In the Book of Ruth (Confr. I. Fischer *Rut*, Herder, Freiburg, 2001), we find Noemi. She is a Jewish woman who goes out of Israel to Moab; there, she will experience the condition of being a foreign widow without any child. Her sons, in fact, had married two Moabite women, Ruth and Orpa, living them, after their own death, without a descent. In this situation Noemi thinks better to go back to Bethlehem, her birth-place, wishing her daughters-in-law a happy life. But Ruth decides to follow Noemi, swearing loyalty to the mother in law till death. Once they have arrived to Bethlehem, Ruth accepts, for the sake of herself and Noemi, to get married with Booz, Noemi's relative, who can exercise the right of redemption.

The Book of Ruth, where are reflected two different Jewish juridical institutions, the *Levirate* (the brother-in-law of a women, who is a widow, must get married with her to generate a son, who will be considered son of his dead brother) and the *duty of ransom* (an act of solidarity towards those relatives who are poor), is a text of *trend* against the attempt, which can be noticed in the Books of Esdra and Neemia, of promulgating laws which forbid mixed marriages (Exsodus 10, 18-44). The author of the Book of Ruth has not only overturned such prohibition; more, he has refused, as unjust, that law: Ruth has provided to Noemi's maintenance, till the end of her days of life, in getting married with Booz, who welcomes both of them in his house, securing the widows' survival and her social integration. That is the *Halacha*, the exegesis of the paragraph against the Moabites, which points out a law when it becomes meaningless. Therefore, the author accepts the possibility of mixed marriages, in evident contrast with the male authors of the Books of Esdra and Neemia; he intends to propose a new interpretation of the Torah, to safeguard women's interests. According to the narration, one of David's female ancestors was a Moabite woman (in spite of the Torah prohibition, in Deuteronomy 23, 4ss, which says that: "Moabites must not enter the Tent of the Lord"). Some scholars assume that the Book of Ruth may have been written by a woman, in virtue of the way of looking at women's condition: in fact, Ruth conceives a son neither to give a child to her dead husband or to the new one - something absolutely normal in the mentality of a patriarchal society - but in favour of Noemi (Ruth 4,15).

Such narration, together with the stories of Ester, Judith (and Jona) – which affirm the universalistic values of Salvation – shows us both the diversity of opinions

contained in the Holy Texts and the concrete presence of a women's history, which belongs to the history of God's People as well; in reading the Torah, it offers new female models and wider opportunities of social and political advancement for women.

The fact that the Book of Ruth has been accepted in the Canon of the Holy Texts, means also that opposition and contradiction have right of citizenship in the Bible. Let us think to the Prophets (Isaia, Geremia, Osea, and so on...): they have defended always those who had no rights and have been polemical towards the Law, when it was becoming an instrument of power, of discrimination, of oppression.

The women who act in the Gospels testify the existence of *another* Law as well. They are often presented as the ones who overthrow the Law. For instance, the Cananean woman manages to make wider the temporarily limited horizon of Jesus' Mission; the woman who is affected by hemorrhagic syndrome; the one who is a public sinner; the one who belongs to the Samaritan people: they infringe the prescription on the purity as they touch him, speak with him, kiss his feet. In following Jesus, the female disciples overcome the traditional exclusion of the women from the rabbinical circles: female apostles, missionaries, deaconesses and the women who are in charge of Paul's communities contradict the prohibition a public role, which is, sometimes, a teaching role as well.

Beyond Law through the voices of women

I shall not go back to the history of those women who have determined the modification of uses, the breaking of prohibitions, the infringement of the laws, through their referring to a voice, a deep experience, a call of conscience, to imperative reasons (getting straight in contact with the God, who was revealing

himself to them). I am thinking to the *Parrhesia* (that is the freedom of the common citizen in front of the authority) of female martyrs of the earliest Christian centuries. I am thinking to peculiar actions: Ildegarde of Binden, for instance, in the name of a universal right about burial, doesn't obey bishop's order of exhuming the body of an heretic man, to burn it; more, I am thinking to the self-consciousness of Caterina da Siena, who challenges papal authority (she says : I Caterina); I refer to those women who have preached the Word of God (starting from the followers of Valdo, coming to Domenica da Paradiso, till Maria De Mattias): they overthrow the prohibition of exercising the right to speak in public (*Let be women silent in the assembly* 1 Cor 14,34); I am thinking also to the Prophetesses (I make reference to the cases mentioned by Marina Caffiero in her *Religion and modernity*, Rome, 2000; and other texts of the same), who, through their intervention in the political sphere, overcome the exclusion of women from such ambit; finally, I go with my thoughts to the first women who have been conscious interpreters of the Scripture (Cady Stanton and the women belonging to the Women's Bible circles), who have made present the tension which springs from the missed accomplishment of the Christian assumptions. Those examples are, maybe, isolated actions; nevertheless, they have become part of the common tradition and memory, provoking a wider social awareness, both in women and men.

Through their action, thought and words they have modified and deepened women consciousness about their own rights, something which is possible thanks to the dynamism of religions, to their being projected towards a search-process which tends towards the discovery of a deeper meaning of themselves . Religions, as says Marta Nussbaum in her work (*Becoming persons*), "orientate themselves as they can, to answer to the new semantic horizons of their believers" . All religions contains within themselves a plurality of "voices", included the female ones; it would be to simplistic to see them as consisting only in the aspect of authority, which is a privilege of few persons, and the one of the passive submission of the multitude of people.

The apory between the vision of the Gospel and human rights

Another question, which is certainly more complex, is the relationship between the announcement of the Gospel and the coding of the human rights. They are, in fact, two asymmetrical realities; ethics of brotherhood doesn't mean democracy and the way of living proposed by the Gospel is not informed with a retributive justice criterion. It is an *aporia* or, at least, a whole of conceptual models showing differences which are hard to harmonize: justice – benevolence, duty – free will, symmetry of rights – asymmetry of donation. (Confr., for ex., P. Ricoeur, *Love and justice*, 1990 and F. Brezzi' work *Ricoeur. Interpreting Faith*, Padova, 1999).

I cannot dwell upon samaritanism, humanitarianism, solidarity: They are the result of Philosophy of Law theories, which go beyond justice (I am thinking to the studies of Isabel Trujillo); nevertheless, I think it is important to reflect upon the modalities of combining religious values with justice, considering the fact that justice doesn't exhaust itself simply in a question of rights: Many questions of justice, in fact, because of our narrow-minded vision, escape the logic of rights.

Coming back to the Gospel, I am convinced that, if Beatitudes go beyond Law because of their being set on different levels, nevertheless they can push us to sanction new rights. Human believes springing from Divine Revelation (in other words: our being image of God; the call to exercise responsibility; the concept of Salvation which calls everybody without distinction; and so on...) urge us to carry out a dynamical research to find the concrete modalities of realization of such announced values.

Theological life as ground of the ethics of responsibility

In such dynamism have been conceived the Holy Texts; but also their interpretation, according to the belief of the Church, is alive thanks to the dynamism of the Spirit. It means that research's path is something which is endless. Research is articulated on theological life. According to it, the Holy Texts are the springs of our **faith**; the present represents our being inserted in a determined historical contingency, in virtue of which we are called to the practise of **charity**; and future feeds on **hope**, in projecting us to the heavenly Jerusalem.

Finally, I would say that the heavenly Jerusalem doesn't represent the return to

Paradise – because man and woman in going out from the Garden will not come back any more - . It is not the reproduction of an ideal situation: it is novelty; and we are called to be ironic de-constructors of particular demands, most of all the ones which refers to a praxis of the Church, which sanctions a juridical inequality between man and woman, excluding the latter to take a more respectable place in it : the right to the full citizenship.

Rome: The Impact of Cultural and Religious Gender Models in the European Formation of Socio-political Human Rights.

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Let's Not Overlook the Visual: the question of architecture, gender, and social relations in early modern Italy:

What part do architecture, urbanism and the built environment play in articulating social and religious relationships, specifically in relation to gender? How should we consider the role of architecture in relation to the generation of cultural religious and gendered identities in and through the body? In my paper I consider architecture and urbanism, not simply as the locus where social relationships are enacted, nor simply as the focus where they are rhetorically articulated, but as a means by which social relationships (including those of gender) are shaped and produced -- so, not as a neutral container, but as a vitally important -- indeed, quite unavoidable -- shaper. I explore these issues in relation to the architecture of religious institutions of early modern southern Italy in order to shed light on the intersections and inter-relationships between gendered and socially classed religious identities, architecture and urbanism.

After the Council of Trent, conventual enclosure -- physical separation -- became the principal means towards discipline.¹ Enclosure produced what Foucault calls, 'the protected place of disciplinary monotony' within which, space and time can be organized to suit the needs of the institution, without reference to the world beyond that enclosed. Indeed, enclosure became the focus and subject of ecclesiastical tests of conventual obedience. The respectability and prestige of convents were measured not by the degree of religious devotion pursued by nuns therein, but by the effectiveness of their enclosure, the symbol of their

separation from the world and the guarantee of the virginity of the disciplined bodies inside.

Conventual architecture, therefore, emphasized enclosure, containment, control. Yet it contains contradictions and inconsistencies, which betray competing social functions. I examine conventual architecture in relation to these contradictions and tensions, focused on the issues of containment, enclosure, virginity, and the high birth of nuns in aristocratic convents.

Virginity lay at the theological heart of monasticism, as well as the system of familial honour. While virginity in the home was increasingly supported, that in an enclosed convent was regarded as the greatest good, not just for the individual nun, but for her family and indeed for her city. It allowed the individual nun to live the life of an angel and to make a heavenly marriage with Christ, which also fortified the city against evil. Virginity, therefore, constituted a value-made-body, or body as value, which served to emphasize the relationship between physical space and social space and to radicate the fundamental structures of a group in bodily experience. The link between aristocratic familial honour and virginity was forged by the system of conventual dowries, an issue I touch upon, but do not have time to develop in my paper. Instead, I interrogate the urbanistics of conventual architecture, their often ferocious competition to dominate vistas and to ensure that their inmates, while remaining invisible, were yet forcefully represented architecturally and urbanistically in relation to the city, and to the politics of sight inside convents themselves. How were power optics organized within convents and in particular within their churches, the most porous and the most symbolically and liturgically charged places in the conventual complex?

¹ The most important decree in this regard was the renewal of the Bull Periculoso (1298) of Boniface VIII, which required bishops to reinstate the strict enclosure of nuns (absolute prohibition against their leaving the convent, except in case of emergency) wherever it had been violated ("ubi violata fuerit") and to preserve it wherever it was inviolate ("ubi inviolata est, conservari maxime procurent"). This opened gaping uncertainties about the correct measures to be taken with the open monasteries where enclosure had never existed.