

**REAL-LIBERTARIANISM,
STRUCTURAL INJUSTICE
AND THE DEMOCRATIC IDEAL**

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Introduction

In his widely acclaimed *Real Freedom for All* Philippe Van Parijs makes a sophisticated liberal-egalitarian case for the gradual implementation of the highest sustainable basic income as an expression of ideal justice.¹ In the academic debate on basic income many theorists who are sympathetically inclined towards this idea rightly emphasize that a universal and unconditional basic income is not a panacea. I believe that a basic income, in some form and under some conditions, has the potential to empower and liberate the least fortunate in society as well as establishing a new social cornerstone in a liberal-egalitarian democracy. However, if too many hopes are packed into this particular idea and it is not inserted into a broader and well-balanced policy-package it may well turn out to be counterproductive to the cause of justice.

A basic income may provide increased security, employment opportunities and bargaining power for those who have the greatest difficulties in finding decent jobs or other meaningful activities, but it does not address the informal barriers of unjust norms that make some groups more likely than others to be in such a vulnerable position in the first place. Although a basic income could make it less miserable to be a victim of discrimination and demeaning stereotypes, it is likely to make a small or even negative impact by itself to counter such mechanisms of structural injustice. In this paper I will focus on gender-related injustices but similar arguments could be made with respect to the impact of unjust social norms and expectations attached to particular social groups in general.

How does Van Parijs' 'real-libertarian' perspective and its justification of basic income cope with these dimensions of labor market injustice? Can they be properly addressed at all from a liberal point of view or are the starting points of ethical neutrality and respect for actual individual preferences bound to ignore choices and patterns that sustain inequalities between social groups? This paper makes a connection between two dimensions of the current debate on real-libertarianism, namely those on basic income and gender inequality on the one hand and the relation between real-libertarian justice and the status of democracy on the other.² I will argue that the tendency to reduce most injustices to problems that could be effectively

¹ A basic income is an income unconditionally granted to all on an individual basis, without means test or work requirement.

² For recent discussion on basic income, gender and real-libertarianism, see in particular Robeyns (2001), Pateman (2003) and Van Parijs (2001a). On real-libertarianism and the normative status of democracy, see Christiano (2003), Pateman (2003) and Van Parijs (2003).

countered by a basic income alone, and the related vulnerability to the stated objections, is highly present in Van Parijs' real-libertarian justification of basic income. However, by placing real-libertarianism more firmly in a democratic perspective, I suggest that it would be possible to avoid this reductionism and incorporate the values of gender equality – and a liberal stand against structural injustice in general - more convincingly.

The paper is organized as follows. Firstly, I will introduce what I take to be the core of the real-libertarian justification of basic income and bring forth some of its attractions. Secondly, I will situate and explicate two objections to the idea of a universal basic income in the real-libertarian framework, namely the structural problems of gender-based discrimination and unequal distribution of informal work. I argue that Van Parijs' conception of real-libertarianism is inadequate to justify measures against these problems. Thirdly, in exploring possible alternatives I point to some problematic dimensions in the ideal of assimilation with respect to gender as a liberal standard of justice. Fourth, I introduce the notion of substantive political equality and argue that a democratic reinterpretation of Van Parijs' real-freedom-for-all and its justification of basic income would be able to accommodate our feminist concerns without sidestepping its liberal foundations.

Real-libertarianism and the right to an unconditional basic income

At the most fundamental level the idea of a universal right to an unconditional basic income founded on liberal justice is often defended on the basis of two basic notions: the normative ideal of *equalizing access to external resources that we receive* (i.e. gifts in a broad sense) and the empirical proposition that a major part of the social product may be ascribed to a common *technological inheritance* (Van Parijs, 1999). Philippe Van Parijs draws on both ideas in his attempt to combine the libertarian intuition that all individuals, in some sense, own themselves with the egalitarian conviction that real or effective freedom requires individual access to external resources. While it may be unjust to place explicit or implicit taxes on people's talents (i.e. their internal assets) to promote equal opportunity among all self-owners, there is no similar ban or restriction on taxing and redistributing external assets to which those talents may help to gain access (Van Parijs, 1995:121).

The technological inheritance argument claims that the major part of the social product should be ascribed to technological inheritance rather than the work of individuals who live today. This should be evident by considering what a particular individual or association today would

produce if the stock of technology, tools, infrastructure, social institutions, culture, traditions, knowledge etc. inherited from previous generations were unavailable. "If we agree that today's technological progress is akin to a pebble resting on a mountain of previous achievements," Gar Alperovitz argues, "then a substantial portion of society's current income should go as a matter of equal right to each individual, apart from the amount he or she earns from current work or risk, or to the entire community" (Alperovitz, 1994).

But whereas the empirical claim of this argument is surely true it is far from obvious why this would provide a basis for the justification of a basic income since this technological inheritance to a significant extent may be considered a basic income in kind which is already available to all. As Van Parijs emphasizes, the fact that some decide to use this common inheritance productively does not deprive others of the option to make the same choice (Van Parijs, 1995:103-106).³ Hence, the resource-egalitarian argument for basic income as a right must rather depart from the empirical fact that people receive *exclusive* access to valuable external resources very unequally, and the normative claim that a fair cooperation on an equal footing demands an initial equalization of the value of such resources between all world citizens. This, in turn, relies on the Rawlsian conviction that it is unjust that the opportunities to lead a satisfying life (i.e. having the means for *real* and not merely *formal* freedom) should depend on morally arbitrary circumstances of brute luck such as whether or not one happens to be in a position to receive such assets by way of spontaneous transactions through family, friends, job connections etc.⁴

Van Parijs' justification of a universal, unconditional basic income rests on the principle of universal self-ownership and the basic resource egalitarian ideal of equalizing (or 'maximizing') a set of valuable resources where 'value' is specified by a conception of 'opportunity costs', i.e. how costly it is to others not being able to use or consume a set of resources. It is 'the object's having a value, rather than its sheer existence, that provides a potential for cash redistribution' (Van Parijs, 2003:208). However, just as in Dworkin's conception of justice, this idea of equalizing access to (the value of) external assets among all

³ For discussion on this matter, see Alperovitz (1994), Van Parijs (1995), White (2003, 161f), Simon (2001), (Van Parijs, 1998/99).

⁴ For the arguments to be discussed in this paper we need not discuss whether these "equal starts" should amount to a one-time equalization of external assets over an entire lifetime or whether fresh starts in the form of equalization within much shorter intervals should be agreed to. Van Parijs defends a version of the latter position.

world citizens is constrained by a prior principle regarding equality of ‘internal’ (personal) resources in the form of selective compensation for various physical and social handicaps. This criterion, called *undominated diversity* (to which I will return), demands that “what is given to one person over her lifetime, whether as internal or external resources, should not be unanimously preferred to what is given to another” (Van Parijs, 2003:202).⁵

According to Van Parijs’ interpretation of resource egalitarianism natural resources, inherited wealth and other gifts of the ordinary kind should generally be included in the category of external resources to which each person has an equal claim (once undominated diversity is satisfied). However, since the redistribution of the value of those ‘gifts’ would arguably be insufficient to fund a substantial basic income, a key step of his argument is the incorporation of *jobs* (i.e. bundles of tasks and benefits) among the resources to which the principle of value equalization applies in contemporary economies. According to Van Parijs well-paid and meaningful jobs incorporate a *scarcity rent* that should be taxed and redistributed among all citizens. In this context the notion of scarcity refers to situations where, at the going price (i.e. wage in the case of jobs), there is more than one person willing to buy or control them. As long as such job rents exist on top of the hypothetical market clearing wage, as they arguably do on a massive scale in every actual labor market, those jobs should be viewed as ‘taps fitted onto a pool of scarce external assets to which all have an equal claim’ (1995:129). In the absence of redistribution a minority that happens to control those resources will monopolize a scarce asset. Many people could point to those jobs and with perfect honesty claim that they would be happy to perform those tasks at a far lower net wage. As long as there are mechanisms that drive wages above this hypothetical equilibrium, involuntary unemployment and/or great inequalities in the value of the various job assets that different people control, job rents in this sense are obviously highly present. In effect, persistent and systematic inequalities in external resources will remain.

As Van Parijs explains, taxing such scarcity rents is not (morally speaking) a tax on someone’s earned income but ‘a fee on the use of lucky opportunities by relatively well-paid workers’ (Van Parijs, 2001:123). It will amount to an equalization of the brute luck

⁵ Self-ownership is ascribed a soft priority in relation to undominated diversity and undominated diversity is ascribed a soft priority in relation to value equalization of external assets. This means “a major improvement of the satisfaction of an inferior principle may justify a minor deterioration of the satisfaction of a superior principle” (2003:202).

consequences of inequalities in ‘a complex set of opportunities...which enable people to tap – very unequally – society’s tremendous income-generating power’ (Van Parijs, 2003:206f). Hence, the technological inheritance argument appears in an indirect way in the argument for jobs as assets. We are able to reap the benefits of that inheritance (society’s ‘income-generating power’) very unequally depending on what slots in the labor market we happen to occupy. This does not beg the objections raised by the technological inheritance argument, for access to the value of attractive jobs are clearly exclusive to those who control them.⁶

On the other hand, full equalization would be counterproductive and often pointless, as the amount of resources available for redistribution is likely to shrink due to familiar incentive effects beyond a certain level of taxation. Real-libertarianism thus joins Rawls in demanding ‘maximization’, i.e. the highest sustainable taxation rather than full equalization of the relevant pool of external resources in order to maximize the opportunities of the least well off. Taxing and redistributing the market value of attractive jobs (‘employment rents’) may be compared to taxing part of the higher income that can be extracted simply due to the luck of possessing a relatively more fertile piece of land or having exclusive access to a piece of technological innovation. Access to equal market value of the relevant set of external resources will boost the opportunity for the least fortunate, not only to consume but also to enjoy leisure time and economic independency. In this sense there is a close alliance between a ‘real-libertarian’ concept of freedom, which emphasizes the values of being individually independent (“the freedom to do whatever one might want to do”), on the one hand and the notion of value equalization (or rather maximin-taxation and distribution) of gifts - broadly conceived - on the other. The latter forms the material substratum of the former.

In order to situate the objection about informal barriers to social inclusion we need to take a closer look at Van Parijs’ discussion on the question about when employment rents exist. How do we know when they have been fully equalized on Van Parijs’ conception? The general idea is that the employment rents of each job should ideally be identified in an auction where everyone - qualified or not - is invited to bid on them. The employment rent is the difference between the current wage and the hypothetical market-clearing wage of such an auction procedure. Somehow, we need to find a way to mimic the outcome of such a

⁶ In Van Parijs’ words, the idea that most of what the ‘tappers’ receive “must be viewed as a gift”, ... “should be clear when comparing the yield of paying the same number of visits to a rich aunt and to a poor one, or the payoff of a given physical and mental effort in Manhattan and in Peshawar” (Van Parijs, 2003:206).

hypothetical (but impracticable) auction in a way that provides conclusive guidelines for non-arbitrary, predictable and sustainable taxation of employment rents in the real world. Van Parijs' response to this challenge is that what reveals the existence of employment rents is the persistent presence of *envy over job endowments* (Van Parijs, 1995:124). As long as some get jobs that others would prefer to their own at the going wages an inequality that is relevant to justice is present.⁷

This does not mean that Van Parijs regards any inequalities of that kind as unjust. People make their choices about jobs and education on the background of expectations established in the community they grow up and given a lifetime of adaptation they may have no real option to opt for other jobs or activities. Taxation mustn't take them by surprise. In a real-libertarian regime, where the relevant set of external resources has been gradually equalized in maximin fashion, people would adapt to the new situation. They would acquire their skills and choose their jobs given the background of a predictable and sustainable taxation of employment rents (Van Parijs, 1995:123f). Moreover, as soon as there would be an unconditional subsistence income they would have the real option of voluntarily not to work. According to Van Parijs, these background conditions would make sure that those who choose and hold on to attractive jobs under such a taxation scheme do not envy those who don't.⁸ Their choice indicates that they don't want to swap positions with the net beneficiaries of this taxation, i.e. those who command lower wages/less intrinsically attractive jobs or those who have no paid job at all. They could have made the same choice themselves. In effect, their net income is not lower than the market clearing wage level in the hypothetical job auction.

Two problems in real-libertarianism: discrimination and the gendered division of work

In trying to sort out the various possible measures to consider in the struggle for a just distribution of job assets we may distinguish between preventative actions directed towards

⁷ The idea of an envy-free distribution is often misunderstood. Of course, whether or not people are envious under a particular distribution has no bearing at all on the question of whether that particular distribution is just or unjust. Many people would no doubt prefer another person's *income* to their own. The question is rather whether among equally endowed persons with different conceptions of the good, one would prefer the other's *combination of income, work and leisure* to their own. Someone who likes to spend her time surfing at Malibu beach all day may prefer the wage of a well-paid lawyer, but she would not prefer the lawyer's situation to her own taking the latter's combination of work and leisure into consideration.

⁸ No doubt, the beneficiaries of this taxation of external endowments in the form of scarcity rents, may well be envious over those who do have more attractive jobs, but as long as the remaining inequalities benefit the least fortunate (those with least valuable external endowments) this is justified from Van Parijs' point of view.

abolishing social mechanisms that cause injustice and ameliorative actions that promote justice by continuously correcting for remaining inequalities of a relevant kind. In the case of unjust job inequalities we may, for various reasons, assume that a combination of both strategies would be desirable in any human society that respects basic liberties and is committed to a fortune-egalitarian ideal (i.e. countering brute luck inequalities). Even if it might seem desirable to make any ameliorative policies unnecessary there are strong reasons to assume that the complete eradication of the underlying causes of job inequalities through preventative measures would only be possible, if possible at all, by violating rights to personal integrity and other basic requirements of an open society (as in the case of abolishing the family to produce greater initial equality of talents).

A liberal society – whether of a capitalist or market socialist kind – that guarantees a set of basic individual rights, including freedom of association and freedom of occupational choice, may be expected to result in ethical pluralism and inequalities of various kinds that reflect the differing social conditions of each individual. Furthermore even if family conditions and talents were equalized as far as socially possible the lottery of natural endowments and other circumstances of chance would still cause deep inequalities of a morally arbitrary kind. Thus we cannot hope to do without continuous ameliorative policies to sustain equal opportunities in a liberal fortune-egalitarian ideal.

In the light of these considerations, let's approach the objection. There is an important problem in the real-libertarian perspective found in the tension between preventative and ameliorative measures for social justice, namely that it fails to deal with the problem of informal barriers to social inclusion, i.e. values, social norms and expectations that arbitrarily constrain the options faced by particular social groups and systematically put them at a relative disadvantage. Below, this problem will mainly be explored in the case of gender roles within two dimensions: those of discrimination in the labor market and the unequal division of paid and unpaid labor between men and women. By direct labor market discrimination, I mean roughly that applicants for a social position are rejected, not because of inferior *relevant* qualifications, but because of their gender, skin color etc. A related phenomenon is statistical discrimination. This concept refers to a situation where a person is included or excluded because of identifying with or sorted into a group that tends to share certain relevant characteristics. For example, being a man or a woman may be associated with certain wants or interests that are relevant to their perceived ability to perform certain tasks. "These

characteristics are then used as proxies for the average productivity of that group” (Robeyns, 2000:127). Individuals may thus be treated differently when applying for a job simply because of belonging to (or sorted into) a particular group regardless of whether they, as individuals, share those characteristics. Simply by being women people face the disadvantage of not conforming to the male characteristics of those who traditionally hold leading social positions.

By the norms underlying the unequal distribution of informal care work I refer to the well-known fact that women are still generally expected to carry a primary responsibility for the household and family needs. In effect, their career options tend to be worse and their earnings lower than those of men. Women are generally expected to work less than men in order to find the time for informal work. Every breadwinner is still not equally expected to be a homemaker (Fraser, 1996). As Wasserstrom concludes: “The evidence seems to be overwhelming and well-documented that sex roles play a fundamental role in the way persons think of themselves and the world”, and “By almost all important measures it is more advantageous to be a male rather than female” (Wasserstrom, 1977/1997:581).

Before exploring that claim further, let us return to real-libertarianism. Part of the intuitive support that Van Parijs claims to provide for his principles of justice does in fact seem to work against them on closer examination. One way of illuminating the reasons that the spontaneous distribution of job resources are arbitrary from a moral point of view is the observation that whether one happens to be a woman, or if one happens to be a member of a particular ethnic minority that some employers discriminate against, negatively affects the likelihood that members of those categories receive access to scarce job resources (Van Parijs, 2001b:25).⁹ Obviously there seems to be something unjust about this. But what kind of injustice is at stake here? The arguments that support the principle of value equalization of gifts (as extended to scarcity rents) sort this injustice under a general heading of brute luck inequalities that call for universal redistribution. In other words, the idea of redistributing the value extracted from controlling scarce job assets localizes and deals with this inequality on the ameliorative side of justice. In consequence, observations that such contingencies matter

⁹ This is Van Parijs’ formulation: “Our race, gender, and citizenship, how educated and wealthy we are, how gifted in math and fluent in English, how handsome and even how ambitious, are overwhelmingly a function of who our parents happened to be and of equally arbitrary contingencies.” (Van Parijs, 2001b:25). Further remarks on justice, basic income and gender are found in Van Parijs (2001a:section 7) and Van Parijs (2001b:19ff).

in the real world of unjust societies are used to strengthen the case for redistribution of the value of job assets in the form of an unconditional basic income for all.

However, the right interpretation of the intuition under consideration here would arguably warrant preventative actions for equal opportunity in the labor market since the structural disadvantages that face some groups should not matter to the distribution of job resources in the first place. Whereas some of the mentioned contingencies of brute luck (e.g. having the right family connections, social networks and the right talents at a particular time) to some extent *unavoidably* matter to that distribution in a free society (being no less unjust in the absence of ameliorative policies for that reason), discrimination on the basis of gender, ethnicity or ascribed group belonging in general, does not seem to be stuck in that category. Widespread discrimination is not reason for a universal unconditional basic income but for policies counteracting discrimination that put particular groups at a relative disadvantage.

The second dimension of our problem may be brought to light by recalling the hypothetical job auction and the ideal of an envy-free allocation of job resources. The problem is that Van Parijs' perspective, and the neoclassical toolkit it adopts, is exclusively focused on individual preferences for various kinds of paid work, unpaid work, leisure time etc. as they are revealed by (hypothetical) market interaction under the supposedly just conditions discussed above. Even though there would be no envy in the distribution of jobs in the particular sense described, we may still expect injustice to prevail due to unjust social norms and the impact on wages of a long history of a gendered division of labor. No questions are asked about *why* individuals tend to have certain preferences or whether revealed preference in a particular market structure should be held as genuine wants. Clearly, for all the familiar reasons stated we may expect revealed 'preferences' for holding various types of jobs and mutual expectations about whom is to perform paid and unpaid work, what kind of work (if any) that people would choose in that situation of market interaction to be deeply affected by structural patterns of inequality, such as power as exercised through social norms. For that reason the real-libertarian framework seems unable to accurately capture and deal with injustices caused by social norms and expectations in actual societies. Taking individual preferences concerning paid work, unpaid work and leisure time at face value when trying to construct and mimic the outcome of a hypothetical ideal job auction is likely to have the consequence of concealing such dimensions of injustice.

A pessimistic scenario of basic income

By illustration, we may consider some possible consequences of introducing the highest sustainable universal basic income in a context where these informal barriers to social inclusion are prevalent or reflected in the form of labor market discrimination and a deeply gendered division of paid and unpaid work. Moreover, suppose that no other policies were instated to counter those important dimensions of injustice. Under such circumstances it is reasonable to expect that many groups that suffer disadvantages due to discrimination and various informal barriers to employment may increasingly find themselves in low paid or unpaid work or other activities (but now subsidized by the basic income). The reason is that the basic income provides an exit option to persons who are only weakly attached to the labor market at the same time as it leaves employers free to arbitrarily discriminate among applicants and live by negative stereotypes in general.

It is not strange if some groups of women would partially or fully withdraw from the formal labor market under such circumstances, and spend more time performing household work, caring for children etc. and less time in education and paid work. In consequence, we may expect fewer women in social positions of power and prestige and in the long run this in turn is likely to strengthen traditional gender roles and statistical discrimination. The message to those groups who are denied to compete for jobs on equal terms is that they have no reason to complain since they will be given a share of those scarce assets in the form of an unconditional basic income. ‘Hush money!’ (Robeyns, 2000:122). Taken separately many of the least favorable individuals and groups may surely find this option liberating given the unjust background conditions. They would be increasingly free to engage in activities they find intrinsically valuable whether inside or outside the labor market. The basic income would improve the independence and bargaining position of these women in relation to husbands, bosses or bureaucrats, and it would make it increasingly possible to create one’s own job or working part-time by subsidizing a low market wage. However, once attention is moved from isolated individual choices to the structural group-patterns that emerge from them, we see that such a development is likely to be detrimental to strategic gender interests.¹⁰

¹⁰ Van Parijs becomes vulnerable to this objection by accepting and affirming that some women would, “no doubt...use the greater material freedom the UBI provides to reduce their paid working time and thereby lighten the ‘double shift’ at certain periods of their lives. But who can seriously believe that working subject to the dictates of a boss for forty hours a week is a path to liberation?” (2001:20)

If the outcome of the real-libertarian job auction is to be considered just, the background conditions must be specified so as to rule out the impact of such unjust barriers to social inclusion. Hence, unless the interrelated problems of gender discrimination and the unequal division of informal care work were dealt with in a forceful way basic income may well increase the exclusion of vulnerable groups from the labor market and other important social spheres. The empirical arguments introduced above and paths to avoid such a development have been explored in some detail by others (e.g. Robeyns, 2000, 2001, Pateman, 2003). Whether or not the pessimistic scenario is likely to materialize depends crucially on the general policy packet in which the basic income is incorporated and what kind of basic income we are talking about (Offe et al, 1992). There are also strong reasons to see a crucial positive role for basic income in *promoting* gender equality along something like a “universal caregiver model” and thus help to bring about “a social world in which citizens’ lives integrate wage-earning, caregiving, community activism, political participation and involvement in the associational life of civil society – while also leaving time for some fun” (Fraser, 1996:235f, for further discussion and references see e.g. Pateman, 2003/forthcoming, McKay & Van Every 2000 and Robeyns, 2001).

The point of this study is not to assess such empirical hypotheses but to argue that there doesn’t seem to be any fundamental reasons why we should find the pessimistic scenario unjust from a real-libertarian point of view. Van Parijs’ focus on ameliorative justice (captured by the principle of value equalization) will, if not appropriately supplemented or restricted by other principles that demand preventive policies for equal opportunities in the labor market, conceal and thereby justify social injustice. At this point, Van Parijs may reasonably object to my way of presenting his theory and claim that real-libertarianism would reject at least some of the situations mentioned above as unjust, and thus take on board many of the intuitions advanced against it. After all, in real-libertarianism value equalization *is* constrained by a prior criterion that demands various selective measures.

Undominated diversity and the problem of discrimination

I can find two sets of reasons in *Real freedom for all* that may offer principles to settle our worries. Firstly, we may expect some compelling reasons why discrimination and prejudice is prevented by considerations pertaining to ‘maximin’ justice and its concern for *economic efficiency*. Secondly the norm of undominated diversity introduces some important reasons for

similar measures. Here I will focus on the latter.¹¹ For while efficiency reasons may often be accurate, they are clearly irrelevant to the objective of finding principles that support the intuition that such practices are not only harmful to economic efficiency but also *unjust*. Let us have a closer look at the principle of *undominated diversity*.¹²

In Van Parijs' theory this criterion would operate on the background of the highest sustainable basic income, as justified by the principle of equality of external endowments. Suppose that all individuals (initially) are given equally valuable shares of external resources. Still, in such a situation some people would be disabled while others are not, some have brilliant marketable skills whereas others hardly have any lucrative talents, some are handsome and funny, others are not etc. Because of such differences in internal endowments, the means available to people to do whatever they might want to do are unequal and may give rise to competing claims for various kinds of continuous redistribution or one-time compensation from those who are more favorably endowed. Is there a way to deal with these claims that respects liberal neutrality? This is Van Parijs' suggestion:

'A's internal endowments (a vector of talents) dominates B's internal endowments if and only if every person (given her own conception of the good life) would prefer to have the former than the latter' (Van Parijs, 1995:73).

The intuitive idea behind this principle is that even though the endowments of individuals differ and are unequal within many dimensions, in most cases it would not be possible to settle unanimously that one person is better endowed than another, all things considered. People are good at different things, and there is a wide range of reasonable ethical convictions with respect to what constitutes the most valuable capacities in life. In an ethically diverse society most cases of relative disadvantage may thus be expected to neutralize each other. Generally one person's endowment is not unanimously considered more favorable than another's. Undominated diversity is a relation between citizens A and B that is realized when

¹¹ These are the reasons I have in mind: It may be plausibly argued that diverse experiences among the employed will often benefit the productivity of a firm by bringing new perspectives and opening new markets. It is quite possible that discrimination guided by prejudice and demeaning stereotypes generally turns out to disadvantage companies that reproduce such attitudes and that the criterion of gift maximization thus requires policies to counteract such attitudes for efficiency reasons. More generally, how can we find those who are most talented and productive unless social institutions care to disregard sexual preferences, religious affiliations, ethnic background etc. of its citizens?

¹² The principle of undominated diversity was initially suggested by Bruce Ackerman for justice with respect to genetic endowments and generalized by Van Parijs to deal with any 'internal' inequalities (Ackerman, 1980, Van Parijs, 1995:72ff).

none of them has a comprehensive endowment (internal and external, i.e. personal and impersonal resources – including compensation) that *all* citizens in the relevant community (given their conceptions of the good) find less favorable than the other's. "All" and "unanimously" must be taken with some reservations, given the demands that the persons are sincere, well-informed, have a sufficient understanding of the consequences of having various handicaps, their preferences accessible and understandable to the rest of the community etc.

Unless resources are redistributed from a category of *dominating* individuals A (e.g. non-disabled) that are unanimously considered to be internally wealthier than a category of *dominated* individuals B (e.g. disabled) equality has not been reached according to this norm. However, as soon as external resources have been redistributed from A to B to the point that at least someone finds B's comprehensive endowment, i.e. her internal *and* external endowment (including compensation) better than A's, domination is no longer present. In a society where no compensation at all is allowed to those with various handicaps this norm will be violated. Under such conditions everyone would clearly find that those who are not disabled generally have more favorable endowments than those who are. For this reason the external endowments of the internally wealthy should be taxed until this criterion has been satisfied. On the other hand, it is not evident that compensation would often be triggered by this criterion since within a range of 'normally' endowed people there is reasonable disagreement in the community about what matters in life and thus which abilities or disadvantages are important. Being blind matters to all, being a bad tennis player does not. Though insufficient, I think it must be admitted that undominated diversity has obvious attractions: it brings conclusive and non-contradictory implications and it consistently respects liberal neutrality.¹³

But what does undominated diversity imply for the problem of discrimination? According to Van Parijs, "The more ethnic, sexual, or other discrimination there is...the more likely it is that some people's internal endowment will be dominated by that of others, and the more of society's resources will therefore need to be targeted to specific categories, rather than used to

¹³ As Van Parijs explains, the presence of deep ethical pluralism would: '...make it odd to decree that A is entitled to a transfer from B despite the fact that both A and B find, in the light of their respective conceptions of the good life, that A is better equipped than B. And it would also be odd to decree, in the name of equality, that A is entitled to a transfer from B, while C is not entitled to a transfer from D, in a case in which A and C, and B and D, respectively, are identically endowed. Reducing the requirement of justice to the elimination of all cases of universal preference of one endowment struck me as the only way of ruling out simultaneously these two possibilities.' (Van Parijs, 2003:203f).

maximize UBI [basic income].” (Van Parijs, 2001a). But this reply is hardly satisfactory. Firstly, it is apparent that the implications of such a consensus norm will be highly dependent on how the political community in question is demarcated. The greater diversity in ethical standards, the lower and thinner will the generally agreed social and cultural minimum standard be. In order to allow for interpretations of undominated diversity that are sensitive to the social and economic demands of different cultural settings it might seem reasonable to allow for local interpretations of this principle (Van Parijs, 1995: 83, 258). If undominated diversity is applied to communities where there is a widely held conviction that there is something deeply troubling about discrimination or exclusion of particular groups from important social positions it may be sensible to accept that an effective anti-discrimination policy would be recommended by that moral principle.

The problem with this argument is that it makes the moral relevance of those measures depend on the presence of actual subjective attitudes against discrimination. There are presumably many actual individuals who have adapted to their subordination and regard their lower expectations as a natural fact of life. If some people don't worry much about having equal career opportunities or equal access to other important social spheres, no selective policies to counteract such informal exclusion seem to be warranted by real-libertarianism. The endowments of those individuals would simply not be *unanimously* regarded as dominated by some other individuals. Hence, if undominated diversity is to be powerful in this respect it needs to operate in an environment where such convictions are already widely held.

Secondly, even if most people would react strongly against the structural dimensions of injustice discussed here this would not be enough to trigger selective measures in real-libertarianism. For the redistribution to be blocked it is sufficient that one person in the relevant society (whose preferences are not ill-informed, incoherent or inaccessible to the rest of the community) does not find the discriminating treatment so bad that the comprehensive endowment of the discriminated person is worse than that of some member of another (supposedly non-discriminated or discriminating) group when all dimensions of their internal endowment are considered. Hence the categories of non-discriminated and discriminated need not coincide with those of the dominators and dominated since many of those who suffer from discrimination may be favorably endowed compared to non-discriminated in other respects.

But surely, the wrongness of discrimination is not neutralized or affected whatsoever by whether the person discriminated against is relatively talented or not!

We shouldn't be surprised by the conclusion that undominated diversity is incapable of dealing with these problems. A criterion that puts so much emphasis on comparing individual endowments is not well suited to deal with structural phenomena such as discrimination and negative stereotypes. Does this mean that we should dismiss undominated diversity? The arguments discussed may pose good reasons for doing so, but only if we assume (as Van Parijs seems to do) that his principles of self-ownership, undominated diversity and equality of external resources to be a more or less exhaustive description of the equal opportunity dimension of a just society. However, the problem need not be that this criterion is deficient, but that we ask too much of it. After all, isn't there something odd about assuming that the social phenomenon of discrimination would be comparable to and fall under the same distributive principle as compensation for personal disabilities?

Before moving on, I should mention that there is also a quite different response at hand. Rather than trying to accommodate the intuitions I have appealed to some might prefer to question their fundamental status. Many egalitarian liberals, such as Brian Barry or John Rawls, offer principles against discrimination and unequal opportunity for (potentially) equally qualified persons to compete within the labour market. On the other hand, group-differentiation and unequal access to various human associations (friendships, marriages, clubs) on the basis of that differentiation seem to be inescapable facts of the human condition once basic liberties are accepted.

Recruitment by informal networks, friends and family connections may greatly reduce transaction costs in comparison to a perfectly transparent, open and objective procedure. This way of employing people is very common in all real labor markets, since the greater transparency and objectivity, the more costly and demanding the employment procedure. Even if we assume away cases of direct discrimination in the labor market, assumptions about different social groups (and thus statistical discrimination) are likely to arise and figure prominently in any such context. The full realization of fair equality of opportunity in the labor market does not only demand measures to counteract discrimination by making employment procedures as objective and transparent as possible. It would also seem to demand that we do what we can to neutralize the unequal opportunities for having talents

identified and encouraged by allocating resources to those groups who are least favorable in that respect given their social background.

The aim of equal opportunity in that dimension may easily swell huge amounts of resources for subsidizing expensive courses, ever-better schools, more teachers, after-school activities, institutions to control that job positions in all spheres of society are consistently kept open to everyone qualified for them etc.¹⁴ Hence any plan to realize full equality of opportunity in the labor market begs the objections of perfectionism or even work fetishism. For, given that equal opportunity for equally qualified to compete for a job (thus conceived) comes at a substantial opportunity cost beyond the point where such efforts cease to promote economic efficiency, why should all those resources be put into the equal opportunity to compete for a job and earn money whereas the cause of those who find themselves unjustly excluded from associations or partnerships in other spheres of life or being unable to reach other non-employment-oriented aims in life receive no share of those resources? Why put all these resources into the equal opportunity for employment rather than the equal opportunity to do whatever one might want to do ('real freedom')?

Liberalism and the ideal of assimilation with respect to gender

It might be argued that the measures discussed so far are superficial. If one wants to get rid of discrimination and the unequal division of socially necessary informal work, one must opt for nothing less than the full abolishment of gender. The problem of gender-roles is a challenge to liberal theory since unjust social norms and expectations are often internalized among those who are disadvantaged by them. At the same time, most liberals are, in the name of neutrality or autonomy, skeptical to notions of 'false consciousness' in public policy – at least with regards to ethical conceptions.¹⁵ Moreover, in the case of gender it is not always obvious whether some parts of the relevant social norms *are* subordinating or not. There is reasonable disagreement on these matters. Some tend to regard any gender roles as arbitrary and unjust constraints, whereas others feel that gender roles are, in some version, crucial to their own

¹⁴ For a similar argument, see Van Parijs (2002).

¹⁵ Liberals accept the use of false consciousness argument (i.e. reasons claiming that people do not know or express their own good) in moral issues ("the right"). They wish to liberate contented slaves, and in such arguments clearly appeal to objective interests rather than subjective preferences. Egalitarian-liberals are also willing to extend this line of reasoning to cases where the idea of (institutional) violation of rights covers a broad agenda of social rights and inequalities.

identity and of great ethical value. Some consider all gender roles and sexual identities as social constructions whereas others reject such a strong claim as absurd.

The debate on liberalism and gender is intricate and diverse, and I cannot engage in all its complexities here. In order to isolate the potential matters of conflict there are three important comments that need to be emphasized from the liberal camp against those who claim liberalism to be incapable of coping with these dimensions of injustice. Firstly, liberalism has no quarrel with the fact that there are power relations imbued in social norms and cultural values of civil society, which deeply affect the actual set of opportunities faced by different individuals and groups. Nobody can deny that our everyday individual and collective actions, such as the decision to buy one product rather than another, nurturing certain attitudes to gender roles through individual actions, personal characteristics and clothing etc. have or may have important repercussions on the opportunities for other people to lead their lives as they wish. However, from a liberal point of view it is generally assumed that most everyday actions fall within the bounds of ethical politics. They are matters that belong to the sphere of the good, rather than the right. Within that sphere of ethical politics, liberalism asks us to confine our efforts to persuade each other to live differently to other means than the law.

This does not mean that such matters are irrelevant to morality or that liberalism should accept a politics of non-intervention with regards to those dimensions of social life. It merely reflects that such matters are generally not considered relevant to the basic structure to which a Rawlsian theory of justice applies, i.e. matters of constitutional essentials and basic justice.¹⁶ This takes us to the second argument. Many liberals think that neutrality (in some form) should be adhered to at that basic level. But it does not seem reasonable or practicable that the criterion of liberal neutrality is to govern every state action. In fact, Rawls insists that most legislative matters are not of that basic kind, and thus not bound by such a principle (Rawls, 2001:90).¹⁷

Thirdly and more importantly political liberalism must clearly accept that the personal is political, not only by protecting the rights of all to privacy and personal integrity but also the

¹⁶ Matters of political justice in the Rawlsian tradition concern 'the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls, 1971:7).

¹⁷ Hence, on Rawls' understanding – which seems to be intuitively plausible (though in need of clarification) – ethical doctrines passionately advocated in civil society may sometimes legitimately influence the political actions of the state even if they are not formulated in accordance with the norm of liberal neutrality.

rights of equal opportunity in general as well as securing the social conditions for the development of a sense of justice among all citizens. A just basic structure, specifying a just social framework, thus deeply affects activities and arrangements in the family, in associational life and the market. It aims to protect the basic interests and secure justice of all citizens in any social sphere (Rawls, 2001:10).¹⁸ However, it does not specify in detail how people should arrange their personal lives or voluntary associations. As a major social institution that produces gender and shapes the opportunities and constraints that face men and women through a wide range of mechanisms, the family is part of that basic structure. It affects matters of basic justice and therefore seems to belong both to the sphere of the good *and* the right. Plausible empirical studies show that the gender division of labor and its vast repercussions is fundamentally important in understanding the prospects of securing basic liberal rights to equal opportunity for all and the civic virtues that sustain them (Okin, 1989:171, Rawls, 2001:162ff).

But can liberals really accommodate these feminist concerns without abandoning their fundamental commitment to the principle of respect for individual ethical convictions? This will raise difficult questions about how to treat equally those who identify strongly with traditional gender roles, including a gendered division of labor. Against this way of posing the problem some may object that gender is not a matter of personal ethics, but of justice. Considerations on the scope of the principle of neutrality are simply irrelevant. Being neutral to gender is, by this reasoning, being neutral to injustice. This suggests that the dilemma should be resolved by understanding all gender roles as part of a sexist basic structure which a plausible theory of justice must address head on. The conception of justice, and its idea of a rights-violation, could simply be made more demanding by incorporating gender roles in the liberal-egalitarian metric of equality. The idea that we mustn't take sex into account would thus be incorporated in a general set of liberal rights (Kymlicka, 1990, Okin, 1989).

This position would claim that unless all gender roles, and the practices and expectations associated with them (including the cultural basis of sexual attraction) are eradicated people couldn't be *really* free to pursue their lives as they might desire (Wasserstrom, 1997:588ff). In

¹⁸ The basic structure is not a delimited social space or institution, separate from other spaces or institutions. Rather, it is a basic dimension of all social life. Whether or not political principles of justice are triggered in a particular situation depends on whether our basic interests as citizens are affected by the practice in question.

a stimulating and thought-provoking article, Richard Wasserstrom consistently brings out the radical conclusions of this “ideal of assimilation” with respect to gender:

Just as the normal, typical adult is virtually oblivious to the eye color of other persons for all major interpersonal relationships, so the normal, typical adult in this kind of nonsexist society would be indifferent to the sexual, physiological differences of other persons for all interpersonal relationships. Bisexuality, not heterosexuality or homosexuality, would be the typical intimate, sexual relationship in the ideal society that was assimilationist in respect to sex.

This suggests that social norms that generate and reinforce gender are *intrinsically* unjust by imposing arbitrary, involuntary constraints upon citizens, thus causing inequality and exclusion. In many cases it is hard to see any reason why liberals should not endorse the idea of making public institutions minimally intrusive and presumptuous with respect to personal values, sexual preferences etc. A plausible liberal conception of justice requires policies to secure fair conditions for genuine choices and critical ethical reflection possible for all, an education that does not push individuals into traditional gender roles etc. I will return to these important conditions below.

However, even given such background conditions, we have seen that the ideal of assimilation would demand something more radical. Some may prefer to soften their ideal of assimilation so as to stay out of sexual identities but to state firmly that the gender division of labor is unjust. To liberals the difficulties begin to emerge when one opts for a strategy that Brian Barry calls “coercive assimilation” with respect to gender roles, i.e. a politics that will forbid certain cultural expressions and force people who identify strongly with established gender roles to change their minds. Liberals who regard the ideal of assimilation as attractive may feel that it is their ethical obligation to join the fight to change such heterosexual norms, or any norms that connect one’s sex to particular expectations and ideals in life, as part of their political activism in civil society.

On the other hand, a liberal society – a society of free associations where individuals will share and debate ideas of the good and live according to their personal convictions - will unavoidably make it possible for people to associate with whomever they want, and to attach significant cultural meaning to whatever body parts they like (Barry, 1996:543). Claiming that something is part of an attractive social state of affairs is different from claiming it to be just. Freedom of thought and freedom of association will, for example, guarantee people the freedom to live by some religious or other ethical ideals that encourage a traditional gender

division of labor. Hence, if we take basic liberties seriously, we cannot strive towards the complete abolishment of traditional gender roles by way of coercive assimilation (Rawls, 1999:600, Young, 2000:178f).

I suspect that most people would accept the conclusion that such a coercive assimilation with respect to gender is undesirable. However, in order to assess the implications of such a conclusion it is important to track down our reasons for doing it. One strategy in defense of the ideal of assimilation is to insist that justice does ideally demand all gender roles to be abolished, but claim that the reason for not doing so would be merely the best pragmatic adaptation to actual moral opinions. We cannot justify such an assimilationism today, not because it wouldn't conform to the best ideal of justice (it would according to this position!), but that it is not the right thing to do under the present non-ideal conditions. It would simply be counterproductive to the effective realization of justice.

The reason for such a position would be analogous to the reason that liberals find it acceptable (though regrettable) to violate basic rights in order to protect them, or the reason that some communists find exploitation acceptable (though regrettable) as long as the necessary conditions for the abolishment of all exploitation have not been reached (DiQuattro, 1998:92f, Rawls, 1971:542). We simply need to put up with injustice if all feasible alternatives would be even more unjust. A second set of reasons for supporting the conviction that coercive assimilation would be wrong under contemporary conditions without leaving the ideal of assimilationist justice aside could refer to democratic values. While the abolishment of gender *is* part of ideal justice, the transition towards that just state would have unacceptable moral costs as long as a democratic majority would not support that step.

I would suggest that the fundamental reason is neither about pragmatism nor unacceptable moral transition costs, however important such arguments may be. Rather, they originate in problems that are intrinsic to the ideal of assimilation itself, *once that position is ascribed the status of ideal justice for our non-ideal societies*. A theory of justice should be able to provide a compelling answer on how to ideally settle the competing claims on resources made by those people who live today, not under some radically different historical conditions. It should be able to say what is unjust about current social institutions in this world and what should ideally be done about it – not by referring to a counterfactual state with other people, other ethical convictions and other circumstances. The reason is simply that such a world would be

irrelevant to considerations on justice in the world we live and the person's inhabiting it. In adopting such a perspective we would, once the crucial background conditions of open deliberation and effective participation hinted at above are satisfied, not take the identities, projects and equal standing of actual individuals seriously. The members of current generations, with their personal dreams and aspirations (gender-structured or not) would be dealt with as means or obstacles to some future state of justice, rather than ends in themselves.

Whatever the merits of this position, resource egalitarianism or any egalitarianism that uses some metric of resources that relies on opportunity costs, *do* allow current conceptions of the good (including those of gender) to influence the implications of ideal justice.¹⁹ This stand also conforms to Amartya Sen's intuition that the application of a principle of equal capabilities must be sensitive to differences in the social demands of particular (culture-dependent) customs (Sen, 1980/1997:484). But if the full ideal of assimilation with respect to gender outlined above is hard to accept as ideal justice for current conditions this should not make us conclude that efforts to weaken the impact of gender are unjustified from a liberal point of view. On the contrary, I have taken for granted that such efforts are demanded by a plausible liberal theory of justice. Is there another option at hand? I think that the most fundamental response to the challenge of gender inequality is brought forward once we place democracy and the values of political equality at the center of discussion. However, this seems to require an unambiguous deviation from Van Parijs' own understanding of real-libertarianism.

A case for democratic liberalism: The priority of substantive political equality

I will now take one step back and present arguments that rely on a principle that I believe to be more fundamental than the concerns of distributive justice discussed so far, namely *the right to substantive political equality*. I argue that this will successfully explain the intuitions advanced against unjust informal barriers to social inclusion without relying on perfectionist or 'false consciousness' premises. This is not the place to set out a full-fledged theory on the relationship between political equality and a liberal conception of (the equal opportunity

¹⁹ In other words, this is the position taken by any theory that allows the value of resources to be assessed by the importance ascribed to those resources by other members of society (given their values and intentions). To some extent the influence of immoral preferences may be "filtered away" or softened by paternalist considerations, but this strategy cannot be pushed that far in a liberal context. From a liberal point of view the burden of proof as regards the limits for legitimate state-intervention is firmly on the side of paternalists rather than non-paternalists.

dimension of) distributive justice. Some general remarks, which are compatible with many different positions in that debate, will suffice to make my point.

According to Van Parijs “real freedom” may conflict with democracy since “a (maximally) democratic society [where people have equal power over one another] cannot plausibly be said to coincide by definition with a society of (maximally) free people [by real-libertarian standards]”. In case of an actual conflict undemocratic justice should be preferred to unjust democracy, i.e. a democratic community accepting unjust laws and institutions. Democracy is morally important to Van Parijs, but eventually its justification turns out to rely on nothing more than its contribution to the effective realization of real-freedom-for-all as described by real-libertarianism (Van Parijs, 1995, 8-9, 15-17, Van Parijs, 1996).

I will argue that this purely instrumentalist justification of democracy should be rejected. In order to frame the disagreement in the right way it is important not to relate ideal justice to non-ideal (real-world) democracy, but rather relate one ideal to another. Non-simplistic conceptions of ideal deliberative democracy, whether purely procedural or significantly outcome-oriented, are generally and for good reasons *substantive* by incorporating a basic norm of moral equality in the conditions of ideal democracy. Unless such preconditions are fulfilled and respected the democratic ideal is violated. I thus assume – with Cohen, Christiano, Dahl, Habermas, Pettit, Young and others - that the democratic ideal itself incorporates some general substantive requirements of adherence to moral equality (often phrased in terms of “equal concern and respect”, “equal consideration” or the broader notion of “non-domination”), a basic set of human rights and general ideals for reasonable deliberation and public justification. I join Christiano and Rawls in expressing those values in terms of a layer of democratic rights demanded by justice, but not reducible to their contribution to a particular notion of just outcomes of that procedure.²⁰

Even if this ideal is substantive and would rule out the tyranny of a majority as undemocratic, it must be emphasized that much more is left open to democratic contestation by such general democratic ideals than a society that is perfectly well ordered by a full, particular conception

²⁰ However, the conclusions of the argument are unlikely to differ much if one justifies this basic layer of (democratic) individual rights with reference to a purely procedural conception of democracy, disconnected from the language of justice altogether.

of liberal-egalitarian justice (Pettit, 1997: 130-147).²¹ The democratic ideal is pluralistic and dynamic. Within such a democratic framework, there are obviously many competing theories of justice that all respect the foundations of democracy. While citizens can present arguments that support one position rather than another as to what would be the just outcome of a political procedure they should always accept that they might be mistaken.

My first and most fundamental objection against Van Parijs' instrumentalist justification of democracy is that the epistemic claims underlying such a conception of justice are too strong. The conclusions of moral arguments are always provisional and open to reasonable disagreement. Convictions about justice are fallible and subject to contestation and revision in the light of new arguments and experiences. It is hard to see how Van Parijs, who accepts that the object of scrutiny in his search for 'reflective equilibrium' is always a provisional conjecture, could reasonably reject such a stand (Van Parijs, 2003:202). Secondly, even if some significant faction of particularly skilled citizens were convinced that they had found exceptionally strong arguments for their position, there would normally be something morally wrongful – perhaps unjust - about introducing their policy prescriptions if most people, after a genuinely open and rational deliberative procedure, were still not convinced by those reasons. The great moral values of democratic legitimacy would be damaged.

Again, in order to track down the moral implications of this conviction, it is important to see that people may agree to this general stand for different reasons.²² Proponents of a strictly instrumental, outcome-oriented conception of democracy might agree that such steps would often be problematic, not because those democratic rights are intrinsically valuable, but rather because of the assumption that if we sidestep political equality that would, generally speaking, make it harder to implement just institutions in a sustainable way. Such deviations are often likely to break down social trust and if the citizens themselves would regard arrangements as radically unjust, the programs would not work properly for long. On the other hand, if there would be circumstances where those assumptions do not hold, there would be no deep moral reasons that block such undemocratic options. Van Parijs' instrumental justification of democracy leans heavily towards this latter stance by accepting the moral relevance of

²¹ By a particular conception of distributive justice I refer in this context to the part of an ideal of justice that is solely concerned with the distribution of non-political rights, and thus conceptually free standing from the rights and obligations that regulate the democratic ideal.

²² For a more systematic treatment of these matters with respect to the real-libertarian framework, see Christiano (2003).

exploring deviations from political equality (e.g. the principle of one citizen, one vote) in order to make institutional outcomes conform better to his preferred theory of distributive justice.

But even leaving aside the deep problem of exaggerated epistemic claims, it is not plausible to say that the values associated with democratic legitimacy are merely instrumental to social justice. Clearly, there is something intrinsically demeaning about treating adult citizens like children – i.e. presuming that the members of demos are not, generally speaking, the best interpreters of their common interests (Dahl, 1997:122, Pettit, 1997). Such a perspective diverts from the appropriate starting point of democratic deliberation, namely the acceptance of all citizens as moral equals who are epistemically fallible (Christiano, 2003:185f). This conviction against political domination, which is deeply embedded in the traditions of deliberative democracy and democratic republicanism, claims that politics is ideally not a process where citizens try to force their truths upon each other and where the political rights of others are unfortunate obstacles to the end of implementing one's preferred conception of the good society. Instead, equal citizens need to justify their claims and suggestions to each other in a spirit of responsiveness, moderation and mutual respect. In contrast to pure instrumentalism, such democratic perspectives provide a normative basis for advancing the common good and the civic virtues of critical reflection and reasonableness that supports it. As Rawls puts it in his explicit rejection of a purely instrumental justification of democracy:

Taking part in political life does not make the individual master of himself, but rather gives him an equal voice along with others in settling how basic social conditions are to be arranged. Nor does it answer to the ambition to dictate to others, since each is now required to moderate his claims by what everyone is able to recognize as just. The public will to consult and to take everyone's beliefs and interests into account lays the foundations of civic friendship and shapes the ethos of political culture /---/ These [political] freedoms strengthen men's sense of their own worth, enlarge their intellectual and moral sensibilities, and lay the basis for a sense of duty and obligation upon which the stability of just institutions depends (Rawls, 1971:234).²³

Some may find it tempting to accept these values but deny them intrinsic value by simply adding them to the list of possible instrumental reasons discussed above for accepting democracy from within a particular conception of justice. But that suggestion is likely to

²³ On my interpretation John Rawls accepts a basic epistemic hierarchy between the first and second sets of principles of his theory, i.e. political equality and basic liberties on the one hand and the difference principle on the other. He finds that whether or not the difference principle is the right expression of distributive justice is less certain than the justification of more basic rights and liberties. He also finds it less urgent to find a workable agreement on the nuances of distributive justice than the basic political rights covered by the first set of principles.

become self-contradictory, for we cannot have the effect without the cause. The beneficial effects listed by Rawls cannot come about (at least not ideally) unless people - including ourselves - sincerely believe in the legitimacy of any outcome of this ideal democratic procedure and thus act upon that conviction (rather than “the ambition to dictate to others”). And if we do believe in them, we have given these democratic convictions a more fundamental status than any pure instrumentalist justification of democracy admits.

Of course, philosophers should do their best to develop sensible suggestions for a democratic community on what to decide and they will give their own view a privileged position (Van Parijs, 2003: 214). We are often likely to find legitimate decisions unjust. But the fact that some proposals and principles are considered just or unjust by some philosopher (or other citizen) does not by itself make the enactment of such prescriptions legitimate as the latter will depend on whether the policy in question has been adopted as part of a democratic procedure that respects a principle of substantive political equality (Rawls, 1996:428). Van Parijs rightly points to the fact that there are cases where actual democratic procedures and justice conflict, for example where citizens make decisions that are unjust to current non-citizens or future generations (Van Parijs, 2003:213). However, he does not show that this problem of actual (non-ideal) democracies couldn't be addressed by moving closer to ideal democracy (that leaves the meaning of distributive justice open to democratic disagreement) rather than social engineering to promote real-libertarian justice.²⁴ A combination of policies to advance democratic inclusion (cosmopolitan citizenship) and institutional measures to systematically take interests of children and the unborn into consideration would arguably be a promising path if one wishes to explore the former option.

If the moral priority of substantive political equality is accepted, this would mean that a society which accepts a particular interpretation of the equal opportunity dimension of liberal-egalitarian justice, such as Rawls' justice as fairness or Van Parijs' real-freedom-for-all would always rely on a fundamental layer of democratic rights that are morally prior to and constrains the particular interpretation of distributive justice suggested by such a theory.

²⁴ It is not obvious that giving democracy a more prominent place than Van Parijs does would lead to dramatically different policy-recommendations than those discussed by Van Parijs in the context of unstable or non-ideal democracies. For once we turn to non-ideal theory we may find that sustainable democratisation may sometimes only be effectively carried through by non-democratic measures.

I have argued that if an ideal market structure or auction device is to remain plausible as a procedure of resource allocation that can accommodate our most fundamental convictions of justice, we must do what we can to eliminate the influence of informal barriers to social inclusion on the outcome of such a procedure. If resource-egalitarianism operates in a democratic context, where the conditions of substantive political equality are fulfilled, these problems would not occur to the same extent.²⁵

Some requirements of substantive political equality

What would a democratic reinterpretation of real-libertarianism entail? I should now briefly spell out some of the relevant policy suggestions that flow from this emphasis on substantive political equality. Realizing the ideal of effective participation on an equal and well-informed basis would arguably require access to a gender-neutral education for all, access to deliberative arenas and all the information that citizens need to make well-considered judgments. Free libraries, subsidized day-care services for children and some kind of minimum income scheme to make effective participation possible for all are basic and straightforward suggestions on how to realize some of the demands of this principle. The guiding idea here is to find means that provide citizens with a real opportunity to engage in public debate and well-informed deliberation, to question their current attachments and identities as well as an effective exit option from voluntary associations and relationships.

In the light of these considerations, what properties of a highly traditional gender structure is it that allows us to state that it harbors injustice? In the previous section I accepted that the democratic ideal itself incorporates a principle of equal concern and respect for all human beings. It is true of course that there are many reasonable interpretations of what such a general moral principle requires and prohibits, and the right interpretation of such a principle should be open to democratic disagreement. On the other hand, it is equally true that some

²⁵ Even if resource egalitarianism is explored in isolation from such a democratic context we should arrive at some conclusions that coincide with those of democratic liberalism. The outcome of any hypothetical or actual auction depends crucially on the baseline of rights that regulates this process, i.e. the rights and liberties of those who participate will have a great impact on their intentions. Dworkin has introduced some important principles that are necessary parts of a normatively plausible version of the auction for external assets, of which I will only mention one. The principle of authenticity demands that preferences are authentic in the sense that participants in the auction have 'both an opportunity to form and reflect on their own convictions, attachments, and projects, and an opportunity to influence the corresponding opinions of others, on which their own success in the auction in large part depends' (Dworkin, 2000:160). The procedure resulting in 'true' opportunity costs would 'allow no constraint on the opportunities to form, to reflect on, or to advocate convictions, attachments, or preferences' (Ibid: 122, 158f). This suggests that the priority of effective opportunities to participate on equal terms in the public sphere ought to be fundamentally important even to those who prefer to abstract from or deny the intrinsic values of democracy in their assessment of resource egalitarianism.

notions do unambiguously fall outside the boundaries of that norm by explicitly rejecting the moral equality of all citizens and spreading false beliefs that members of some social groups are essentially less capable than others. Susan Moller Okin concedes that while we should respect the choices of people who opt for traditional gender roles, there is a limit (though not easily identified) where respect for individual choice is turned into an excuse for misogyny: “We need not, and should not...admit for consideration views based on the notion that women are inherently inferior beings whose function is to fulfill the needs of men” (Okin, 1989:174).

The principles underlying democratic equality imply that no citizen should be viewed as morally inferior to another and that everyone should have the real freedom to participate as an equal citizen in the public sphere. Fulfilling the values of democratic equality, and protecting the fair value of political liberties for all would require that arbitrary systematic exclusion of some groups from the public institutions of society as well as demeaning stereotypes to be countered both directly and by preventative measures. Such practices tend to clash with the principle of moral equality and the ideal conditions for the development of democratic virtues.

How are we to look upon the fact that women tend to be underrepresented in influential and powerful jobs? Does this fact by itself constitute group oppression? According to Brian Barry we cannot infer from just looking at the group-patterns that injustice is present. Members of social groups tend to cluster in different occupations by choice. If patterns are uneven this *is* unjust if it is the result of systematic labour market discrimination but if the outcome reflects the fact that women may on average be less career-oriented than men this will pose no problem to his conception of liberal justice. Equality of opportunity is one thing, the patterns resulting from individual choices on the background of equal educational and occupational opportunities is another (Barry, 2001:93). Standing on it own, Barry’s remark is valid.

But having said this and also having in mind the possible objections against the supposed intrinsic wrongness of all cases of discrimination raised in previous sections, the widespread conviction that there *is* something deeply problematic about statistical underrepresentation of women in attractive and influential social positions (and the statistical discrimination to which it is likely to lead) is given a firm support by the notion of substantive political equality. The marginalization of particular groups within strategically important social domains are likely to introduce a slippery slope towards a state of affairs that makes mutual understanding among citizens more difficult and the prevalence of negative stereotypes and prejudice more

frequent. In effect, the ideal of general adherence to the democratic principle of equal consideration in public deliberation and the real opportunities for effective political participation for all would become harder to satisfy. Hence, if we are to break the structural chains that generate and reinforce such systematic patterns of political inequality underrepresentation of significant social groups does matter to justice. Calls for a 'politics of difference' and 'a politics of presence' often stem from the fact that actual societies of homogenous elites fail to live up the ideal of equal respect for all individuals and that some categories of people tend to be (whether consciously or not) considered more equal than others (Phillips, 1996). Widespread blindness to that fact makes good sense of the assumption that the actual presence of individuals of particular groups are crucially important to assure that the interests and perspectives of the members of those groups are not systematically neglected and thus making equality genuine and universal. Of course, these are not only means to facilitate mutual understanding and identification between members of different social groups, but also to offer positive ideals for members within subordinated groups.

If this general empirical assumption about the importance of presence holds, such a democratic liberalism may largely accommodate Iris Marion Young's stand that 'positions of high status, income and decision-making power ought to be distributed in comparable numbers to women and men', not as a matter of endowing each person with equally valuable resource bundles but as a matter of protecting the conditions of substantive political equality (Young, 1999:29). The notion of substantive political equality thus offers a strong link between the ideal of treating people as equals and the suggested moral ugliness of discrimination of social groups in general. In the case of direct discrimination that connection is obvious. In the case of statistical underrepresentation of women or men in some social spheres, and the related phenomenon of statistical discrimination that tends to follow as a result of that, it is mediated by the factual claim that such unequal patterns are likely to have detrimental effects on political equality. In addition, the development of empathetic abilities and public responsibility among all (parents and children) is often claimed to be facilitated better by a structure where men and women would be more or less equally expected to share in care-taking responsibilities and participate in public social spheres than a rigid gendered division of work. Hence, if these empirical assumptions about the relation between the gender division of labor and substantive political equality are true, there is a strong case for claiming that the state is morally obligated to assure that the impact of gender on occupational choice is weakened.

If the demands of substantive political equality are satisfied, should people who make traditional choices, for example a woman who chooses to become a full-time housewife, be penalized or stigmatized for that choice? Surely not. It would be wrong to forbid individual actions that are no rights-violations, and that have harmful consequences that are merely indirect and small. On the other hand it would seem equally disturbing if political institutions chose to ignore them if it could be plausibly expected that those consequences contribute to structural injustices and exclusion when repeated by many. For example such problems of unintended social harm may be dealt with by way of programs that establish soft incentives and (where applicable and not counterproductive) affirmative action programs to prevent those choices from leading to structural patterns that generate injustice. It is thus possible to avoid coercive intervention in the freedom to pursue perfectionist values (including the freedom to choose and live according to traditional gender roles) *and* justify a politics against the impact of gender on substantive political equality. Such a feminist response does not rely on a false consciousness argument, or perfectionist arguments that reject traditional gender roles (within the bounds of democratic equality). People remain free to associate with whomever they want, and nourish whatever traditions they like as long as they do not violate other people's basic liberal rights or systematically deviate from the norm of moral equality. What *does* happen under such a policy is that some choices become more expensive than others as long as a strong empirical case can be made that the structural patterns resulting from those choices will significantly disadvantage some citizen or groups of citizen.

Conclusion

What do these arguments imply for the problem of informal barriers to social inclusion in the real-libertarian theory of justice? By illustration, it may be sensible to combine the implementation of basic income with policies such as a non-transferable parental leave scheme and/or shorter standard work day if there are powerful reasons to assume those strategies to be effective means to break down a gendered distribution of work and its negative side effects on political equality. These are empirical matters that cannot be pursued here.²⁶

²⁶ Again, see Robeyns, 2001 for a well-balanced discussion.

The measures called for by the principle of substantive democratic equality need not be restricted to employment, nor unlimited since they would only be warranted insofar as that would be effective to the general aims of preventing negative stereotyping, promoting inclusion of all in the public sphere and spreading the norms of equal concern and respect. No doubt, considerations on “how much” introduce various priority problems that I cannot deal with here. But these concerns of political equality limit the relevance of labor market discrimination to justice, thus avoiding both a rigid obsession with discrimination and the equal opportunity for employment at the cost of other dimensions of justice and the associated criticism of perfectionism. It avoids intrusive interventions into choices that are only indirectly and unintentionally harmful without collapsing into an atomism that fails to capture the interrelatedness and structural background of individual actions. Finally, it avoids the problem of reductionism with respect to basic income, which I located in Van Parijs’ real-libertarianism.

What does this democratic reading of real-libertarianism imply for the plausibility of undominated diversity? I will not take a stand on this issue. Several options are left open by my argument. However, I do wish to note that the alliance between (initial) equality of external endowments and undominated diversity seems to capture our well-considered convictions much better once it operates against the background of the democratic principles suggested here. We have seen that the principle of undominated diversity, whatever its other shortcomings, does not beg the criticism of supposedly arbitrary, exclusive focus on labor market and the ability to earn money. Most cases of inequality that seemed troublesome in the criterion of undominated diversity are removed once a principle of substantive political equality is introduced. Such a democratic version of real-libertarianism would, by this reasoning, unambiguously support measures against unjust social norms. This moves resources away from the pool of external assets that would fund universal and unconditional basic incomes in favor of measures to secure the fair value of political rights for all. In a democratic reading of real-libertarianism, that would largely coincide with efforts to prevent grounds for the occurrence of dominated comprehensive endowments. More fundamentally, it would make the desirability of basic income itself contingent on not being harmful to strategic gender interests or other dimensions of political injustice.

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