The Concept of Neutrality with Regard to Gender and Religion: A Critique Exemplified by the Approach of Martha Nussbaum

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Abstract

This article is about the meaning and the plausibility of the concept of neutrality with regard to debates on gender and religion in political philosophy. As an example, it takes the Capabilities Approach of Martha Nussbaum, which is particularly instructive as she advocates neutrality between comprehensive doctrines and, at the same time, attends to the challenges posed by gender and religion. Starting from an explanation of the meaning of the concept of neutrality in Nussbaum’s approach, the article focuses on objections against neutrality raised by feminist approaches. It discusses Nussbaum’s defence of neutrality and asks whether it is convincing or not, and to what extent. The article suggests a differentiation between neutrality as an ideal and the attribution of neutrality to actual political norms. It further argues that, whereas Nussbaum’s approach implies the latter conception, the former better corresponds to the basic norm of equal respect.

Keywords

Political philosophy; secularism; feminist ethics; Martha Nussbaum.

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Introduction

In the past years, there has been a widespread academic and public debate about religious veiling, particularly about Muslim veiling like the burqa and

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the niqab. That debate that is still recurring demonstrates that the relation of gender and religion is object of continual controversial discussions. Often, the question is raised whether the state should intervene in a regulatory capacity – and in which way and to what extent (for example, in the case of the burqa the debate was to a great extent about the pros and cons of a juridical ban). Questions were raised like: When should the state intervene to oppose religious regularizing that discriminates or at least seems to discriminate people because of sex, gender or desire? What practice has to be regarded as discrimination, how to differ between enforced and self-chosen regulations in terms of clothes or the like? Considering the enormous difficulty in answering questions of that kind, many philosophers and political theorists plead for a state that is ‘neutral’ with respect to the plurality of comprehensive doctrines and that only promotes interventions that are based on minimal – neutral – norms. The concept of the secular state is to a great extent based on such an idea of neutrality. However, critics question whether there really are basic ‘neutral’ norms. In fact, the presumed norms often seem to be rather wide-ranging and restrictive with regard to certain comprehensive doctrines.

In this article I take these questions up and discuss the role of the idea of neutrality in political philosophy: On the one hand, many philosophers regard neutrality not only as an important political principle for state institutions and the public sphere but, more profoundly, link it to the assumption of a set of freestanding moral norms that can be recognized and accepted by virtue of universal human reason; on the other hand, precisely that idea of neutral moral norms is severely criticised from a variety of angles. In the following, I want to have a closer look on those critical arguments that appear in the debate on gender and religion. I will weigh the advantages and disadvantages of the concept of neutrality and plead for an alternative conception. By way of example, I examine the political-philosophical approach of Martha Nussbaum. This approach is particularly instructive, as Nussbaum advocates the concept of a freestanding political conception that is neutral towards comprehensive doctrines and, at the same time, addresses certain difficulties of neutrality in connection with gender and religion.¹

The Importance of Neutrality in Political Philosophy – The Example of Martha Nussbaum

Neutrality is of central importance in political philosophy. Because of the given plurality of comprehensive doctrines in our societies, as the general argument of

¹ The article is based on one main rationale of my PhD thesis, which discusses Martha Nussbaum’s political conception and the plausibility of its claim to universal validity. The thesis was successfully defended but is not yet published.

Note that the opening case of the burqa and the niqab for me only serves as an example for a more abstract debate on gender and religion. Of course, it could be said much more about that specific case, not at least about the role of the Islam and about religious discrimination in the discussion. In fact, Nussbaum addresses these points in her analysis of the case of the burqa (Nussbaum 2012). However, I will not take that complex discussion up but concentrate on the question of neutrality.
liberal thinkers such as John Rawls goes, the basic political norms should not be based on one particular comprehensive doctrine but on freestanding moral ideas (Rawls 1993). The hope is that such comprehensively neutral norms are respectful to people with different comprehensive doctrines and therefore can be endorsed by them. I will explain this idea in more detail with reference to Martha Nussbaum.

Before elaborating on neutrality in Nussbaum’s approach, however, it has to be clarified what the approach is about as a whole: At the centre of Nussbaum’s so-called Capabilities Approach is the idea that each person should be enabled to pursue a dignified and (at least minimally) flourishing life. A society that does not fulfil the task of enabling each of its citizens is not just. Nussbaum claims further that it is necessary to enable people in a number of ways. Concretely, she proposes a list of ten capabilities ‘that can be convincingly argued to be of central importance in any human life, whatever else the person pursues or chooses’ (Nussbaum 2000a: 74). This list of basic capabilities is supposed to be ‘informed by an intuitive idea of a life that is worthy of the dignity of the human being’ (ibid.: 5). Hence, it presupposes a certain concept of human nature. According to this ‘intuitive idea’, all human beings are both able and needy in various ways; moreover, a flourishing human life requires both the abilities of rationality and of emotions, of freedom and of sociability. The list, thus, includes among others ‘bodily health’, ‘emotions’, ‘practical reason’ (that is closely connected with freedom of conscience) and ‘affiliation’.

Nussbaum claims her capabilities list to be a universal norm that has to be applied to each individual – nobody must be excluded or even limited in his or her basic capabilities, be it because of gender, race or the like: ‘People’s basic opportunities in life should not be violated by unfair hierarchy, whether the hierarchy is based on race or sex or class, or on birth within a particular nation’ (Nussbaum 2006: 264). A particular focus of her work is on gender discrimination. She analyses its numerous kinds and contexts, and criticizes the various justifications given for it (for example, she rejects the social construction of emotional women that corresponds with the assumption of rational men, because it has served as a justification to limit capabilities, Nussbaum 1999). Consequently, she demands political theories to take gender discrimination into account and asks the state to actively intervene in any kind of discrimination that threatens the basic capabilities (Nussbaum 1999, 2000a, 2011a: 146–152).

In addition to her focus on gender, Nussbaum pays significant attention to the discrimination of persons because of their religion or, more generally, to the discrimination of any comprehensive doctrine, religious or non-religious (especially Nussbaum 2008 and 2012). To criticise discrimination of this kind is of special importance to her, as it affects one fundamental aspect of her view of a flourishing life, namely being able to live according to whichever comprehensive doctrine that seems to be meaningful for someone: ‘To be able to search for an understanding of the ultimate meaning of life in one’s own way is among the most important aspects of life that is truly human’ (Nussbaum 2000a: 179).

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2 The ten aspects on the list are: Life; Bodily Health; Bodily Integrity; the Development and Expression of Senses, Imagination, and Thought; Emotions; Practical Reason; Affiliation (both personal and political); Relationships with Other Species and the World of Nature; Play; Control over One’s Environment (both material and social). For a full-length version of the list, see Nussbaum 2011a: 33f.
Therefore, Nussbaum calls for a society that does not determine the kind of flourishing, but enables different kinds of it and respects a plurality of comprehensive doctrines (Nussbaum 2011a: 90). She rejects not only traditionalism that privileges one religious view, but also secularism that privileges a secular way of life and discriminates against religion. Against secularist theories, she pleads for respect for ‘religious belief and practice’ as ‘[o]ne of the ways in which this [the search for meaning] has most frequently been done historically’ (Ibid.: 179).

It is in this context that neutrality comes into play: Following Rawls’ idea of political liberalism, Nussbaum presumes that only a freestanding political conception (that does not opt for any particular metaphysical or epistemological doctrine) could meet the requirements of the plurality of comprehensive doctrines (Nussbaum 2011b). Only such a conception could be respectful of people with different comprehensive ideas and could be endorsed by them – and only such a conception allows stability.3

Given that all societies contain a plurality of religious and secular views of the meaning and purpose of human life it seems strategically unwise to adopt a political view that opts for one of these against the others: such a political regime is likely to prove unstable, at least under conditions of freedom. [...] The deeper moral problem is that any such doctrine is insufficiently respectful of citizens who hold a different view (Nussbaum 2012: 89).

This means that Nussbaum supports the idea of neutrality as the idea of a political conception that is freestanding, meaning that it does not show a preference for or discrimination against any comprehensive doctrine.4 The capabilities list, as her argument goes, fulfils the requirement of the freestanding conception because it is not ‘deduced from natural teleology or any non-moral source’ (Ibid.: 76) and can be endorsed by people with different comprehensive doctrines.

To conclude, it has to be clarified that neutrality with respect to comprehensive doctrines is not to be confused with moral neutrality. Indeed, the capabilities list, as any other political conception, presumes and defends certain moral values: ‘Of course a political view must take a moral stand, basing political principles on some definite values, such as impartiality and equal respect for human dignity’ (Nussbaum 2011: 90). However, these moral values are assumed to be so basic that they can be shared by all ‘reasonable’ comprehensive doctrines and could be claimed to be freestanding.5

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3 It should be noted that there is an important shift in Nussbaum’s thinking: Only starting in the mid-1990s does she endorse Rawls’ idea of political liberalism and acknowledge the importance of the plurality of comprehensive doctrines. Previously, her arguments had been closer to Aristotle’s, suggesting that there is only one version of a good flourishing life.

4 In fact, Nussbaum uses the term freestanding conception much more than the term of neutrality. In my view, the reason for this is that the term neutrality can be used in misleading ways. See the differentiation in the following paragraph.

5 Note that Nussbaum, like Rawls, assumes an overlapping consensus regarding the political conception – but that this consensus is only claimed for ‘reasonable’ comprehensive doctrines, not for ‘unreasonable’ ones. However, unlike Rawls, she rejects a determination of ‘reasonableness’ by epistemic criteria such as consistency, an intelligible view of the world and the like, because that would be discriminatory against some religions. Instead, she defines ‘reasonableness’ solely by ethical criteria, i.e., in terms of equal respect (Nussbaum 2011b: 24–33).
The Critical Discussion of Neutrality with Regard to Gender and Religion

The principle of neutrality is disputed from various perspectives. Concretely, it has been strongly criticised with regard to gender and religion. First of all, however, we need to take a closer look at the different concepts underlying the gender-specific critique of neutrality.

Feminist theories have often criticised a concept of neutrality that can be differentiated from the outlined idea of freestanding norms. In fact, this concept is first and foremost bound to the idea of a minimal state. According to this concept, the state is obliged to guarantee minimal just structures, but should refrain from any further intervention and should be particularly respectful of the so-called private sphere. Feminists argue convincingly that such a – neutral – state could not counter gender discrimination (not at least because that often occurs in the private sphere) and therefore could not be just. Instead, a state must not be neutral with respect to gender discrimination but intervene wherever necessary to guarantee equal rights (for example, MacKinnon 1989; Okin 1989). I do not wish to deepen that discussion here, but suggest that this (rightly criticised) concept of neutrality can be differentiated from neutrality between comprehensive doctrines. Even though these concepts sometimes go hand in hand, they are not necessarily tied together. Nussbaum’s approach shows this, as well as how they can be separated.

Nussbaum rejects neutrality insofar as it is understood as indifference to discrimination; according to her approach, the state must counter any threat to the basic capabilities (see above). Correspondingly, she criticises liberal theories that pursue such an idea of neutrality by focussing primarily on just processes and not paying attention to people’s differing needs for governmental support. Instead, any discrimination requires ‘aggressive government action to end unequal opportunity’ (Nussbaum 2011a: 66). Also, the state should not keep its hands off a supposed private sphere, but instead intervene ‘in the home […] whenever the rights of its members are violated’ (Ibid.: 66f). Nussbaum elaborates this critique not only with regard to gender but similarly regarding religion: Often, people have unequal starting positions because some endorse the majoritarian comprehensive doctrines and others endorse minoritarian ones. Also here, there is a need for an active state which guarantees substantive equality and not just sameness of treatment (Nussbaum 2008: 229).6

However, for her it is absolutely compatible to reject this kind of neutrality and to support neutrality between comprehensive doctrines. It even seems to be complementary in certain points: A state that is neutral between comprehensive doctrines can (and, according to Nussbaum, should) not abstain from intervention, but actively ensure that each person is actually able to live according to his or her comprehensive doctrine and that nobody is restricted by any discrimination due to religion or gender. Indeed, it seems to me possible and plausible to differentiate in that way between these two concepts of neutrality.

6 Nussbaum discusses at length the discrimination of people with minority religions (Nussbaum 2012, Chapter 3). To satisfy the norm of equal respect, the state should accommodate them – which is why she emphatically defends the principle of accommodation.
Nevertheless, neutrality with respect to comprehensive doctrines is also disputed in feminist approaches. Its difficulties become particularly obvious when it comes to the relation between gender and religion. On the one hand, there are feminists who consider religion to be one major source of gender discrimination and who therefore sustain the idea of a secular, non-religious state. They often deny neutrality assuming that neutral norms are too weak to justify the necessary critique of religion. Instead, they favour a political conception that takes a stronger position – for example, for a more comprehensive concept of autonomy that implies more restrictions against religions (Chambers 2004). On the other hand, there are a rising number of feminists who are critical of such a kind of secularism. They stress the meaning of religion for a flourishing life and argue for its inclusion in feminist reasoning. Consequently, they criticise the former position for its attempts for a more restrictive state and reject it for being secularist (for example, Mahmood 2005; Reilly 2011). Nonetheless, the principle of neutrality seems to be problematic to many critics of secularism as well. They object that the norms that are claimed to be neutral are not in fact neutral and not freestanding, but rooted in certain comprehensive views. The claim of neutrality, they argue, just serves to disguise these particular roots (Bader 1999). If that were the case, the assertion that (only) a neutral political conception allows equal respect and stability, would be reasonably questioned.

**Nussbaum’s Concept of Neutrality with Regard to Gender and Religion**

Nussbaum defends the idea of a freestanding political conception against the various objections against neutrality between comprehensive doctrines and develops her own specific position with regard to gender and religion. Basically, each person should be enabled to live a flourishing life and any hindering discrimination – be it because of gender or religion – must be countered by the state. Thus, it is necessary to acknowledge the meaning of gender as well as that of religion in moral and political debates. Moreover, Nussbaum stresses the importance of religion for many women (Nussbaum 2000a, Chapter 3). Consequently, she rejects – like the second feminist position – any secularist approach. Nevertheless, unlike many proponents of the second position, she advocates a number of liberal ideas such as individual liberty and neutrality (see above).

With regard to conflicts between women’s rights and religion, it follows that one should recognize the values on both sides and carefully balance them (Nussbaum 2000a: 168). This means that religious claims have to be subordinated wherever they threaten the ‘basic capability’: ‘We should refuse to give deference to religion when its practices harm people in the areas covered by the major capabilities’ (Ibid.: 192). However, whenever a woman makes a religious

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7 Some of them even suggest a direct opposition between women’s rights and religion. For a critical analysis of such an antireligious – and for a long time dominating – tendency in feminism see Sands 2008.

8 Note that Nussbaum often refers to her own religion, liberal Judaism, to demonstrate that religion can support women’s rights and liberal moral ideas in general (Nussbaum 2000a, 182 et al.).
claim for herself and insofar as one can assume that she is able to exercise liberty of choice (that is, insofar as she has the ‘basic capability’), one should respect that claim as an expression of her religious freedom. This also requires respecting ways of life that might seem restrictive in the eyes of certain feminists, as, for example, one in which a more comprehensive understanding of autonomy is not fulfilled: ‘if women fully in possession of the capabilities on the list want to choose a traditional gender-divided mode of life, I believe that any good political liberalism should create spaces for them to do so’ (Nussbaum 2000b: 123). So, for Nussbaum, the main criterion is the ‘basic capability’: Anything that restricts the ‘basic capability’ has to be assessed as not being in the genuine interest of someone, whereas whenever someone has the ‘basic capability’ one should assume that the person is able to choose freely.9

This approach can be further clarified with two illustrative examples. First, Nussbaum demands a prohibition on female genital mutilation/cutting,10 at least for children, because she judges this practice to be a threat to their ‘basic capability’. It has to be noted that, whereas she rigorously condemns this practice in some early texts (Nussbaum 1999: chapter 4, see also Nussbaum 2000a: 94), her more recent arguments suggest that a free decision in favour of this practice is imaginable in the case of adults (provided that they have the ‘basic capability’) (Nussbaum 2012: 125). The second example pursues the direction of that change, that is, the stronger evaluation of the liberty of conscience: In her discussion of religious veiling (in particular, of the wearing of the burqa), she argues for more respect for liberty of conscience and rejects a whole range of objections – both feminist and non-feminist – against this practice (Nussbaum 2012, Chapter 4).11 Also concerning children, she deems that there is no need for a ban, because the burqa ‘does not endanger health or impair other bodily functions’ (Nussbaum 2012: 125). These two examples underline the centrality of the ‘basic capability’: No physical interference must be tolerated that would irreversibly hinder the ‘basic capability’ of women – as in the case of female genital cutting on children. Here, state intervention is also required if this occurs in the private sphere. However, as the liberty of conscience is considered a part of the ‘basic capability’ as well, religious practices should be respected as much as possible even if they oppose certain comprehensive feminist convictions – as in the case of religious veiling.

9 This distinction is important concerning the problem of adapted preferences: One could question whether the articulated interests of someone can, in a meaningful way, be regarded as their own or if they are adapted because of force. For Nussbaum, adapted preferences can only be assumed in cases where someone speaks against his or her own basic capability. Note that, whereas she ascribes adaptive preferences to a number of cases in her earlier work, there are very few cases in her later work in which she regards that as legitimate. See also the change with regard to female genital cutting.
10 By using the term female genital mutilation, Nussbaum already suggests her condemnation of this practice. To keep the discussion with the proponents open, it nevertheless seems wise to use a less evaluating term. Therefore, I adopt the term of female genital cutting (Saharso 2009) that is not only different from ‘mutilation’ but also from ‘circumcision’, which would suggest a quite uncritical position.
11 For example, she discusses the argument of security (that is not motivated by a feminist perspective) and the argument of objectification (that explicitly draws on feminist ideas).
As to the principle of neutrality between comprehensive doctrines, it can be stated that it plays a decisive role in Nussbaum’s position with regard to conflicts of gender and religion. It is not at least the attempt at being neutral that leads to the opinion that a political approach should only enforce minimal norms and otherwise allow freedom of choice (as female genital cutting for adult women and the wearing of the burqa in general). The strong emphasis on liberty of conscience as a basic capability is closely connected with the aim to fulfil the requirements of neutrality. From this starting point, it has to be discussed whether Nussbaum can rebut the outlined objections against neutrality.

On the one hand, one could object that, because of her attempt to be neutral, Nussbaum is too limited in her feminist critique and therefore cannot meet her feminist aims: ‘if justice is about enabling people to make autonomous choices about their way of life in conditions of equality, then justice does not require a politically liberal neutral state which makes no judgements about the content of a way of life’ (Chambers 2004: 26). Furthermore, one could object that she should recognize that preferences are more strongly ‘socially formed in ways which can perpetuate harm and inequality’ (Ibid.). A feminist critic of that kind would demand a stronger concept of autonomy. With regard to the given examples, she would be more sceptical that any woman would freely agree (or more precisely: autonomously agree) to wear a veil such as the burqa. In the end, it seems that this feminist critique does not accept the differentiation between the two understandings of neutrality that I made above – it accuses Nussbaum of supporting a too minimal state.

However, it seems to me possible and convincing to make this differentiation between the two understandings, and the arguments in favour of a broader respect of religion are quite convincing as well. To begin with, Nussbaum does demand a number of interventions by the state. The state shall provide all material and social resources necessary to a flourishing life. In particular, it should take gender inequality into account so that, in the end, each person is really enabled to lead a flourishing life. Moreover, the state should intervene in matters of education and cultivate its citizens, because only a ‘cultivated’ person will be able to make choices according to liberty of conscience. Thus, Nussbaum asks for a relatively strong, non-neutral state in terms of material and social aspects. However, because of the commitment to neutrality between comprehensive doctrines, the competence of the state is limited when it comes to questions beyond the basic capability and the task of ‘enabling’. Here, one could ask whether demand the state should also intervene beyond the scope of the basic capability and, particularly, whether it should be more restrictive towards religions. Against this, I think Nussbaum rightly asks for a stronger acknowledgement of the importance of religious belonging for women. Religions are important for many women in various ways; they can be a central aspect of their flourishing in general and can even be a source of feminist

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12 In fact, Chamber’s argumentation is quite complex, as she distinguishes between first-order and second-order autonomy. Also, she does not take a stand on the case of the burqa in that article. However, her arguments seem to me in line with a more comprehensive feminism that underlies criticism of the burqa as of many other religious practices.
action, as feminist theologies and other feminist religious movements show (see Nussbaum 2000a: 178). Also, the example of the burqa shows quite clearly that many women who wear the burqa or another veil not only claim that they made this decision of their own free will, but also declare their decision to be an expression of political activism.\(^{13}\)

Based on these considerations, it seems meaningful to be oriented towards neutrality between comprehensive doctrines – regarded as the attempt at being responsive to different ways of flourishing, be it religious or non-religious. To totally condemn that ideal of neutrality can lead to positions and judgments that are too uncritical concerning their underlying normative beliefs and that do not sufficiently scrutinize whether these beliefs can legitimately be claimed as political norms. Especially, it involves the danger of not taking the other’s perspectives seriously. But, a serious consideration of the other’s view is a fundamental aspect of equal respect and should be seen as precondition for any political conception. The ideal of neutrality reminds us of the importance of a self-critical investigation, though the question remains whether one can ever actually achieve a neutral position and make neutral judgments.

Instead of criticising Nussbaum for taking a position that is not strong enough with regard to her feminist goals one could, on the other hand, argue that her position is too strong, meaning that it makes too many comprehensive presuppositions for claiming neutrality. Starting from a perspective that is critical towards liberal secular approaches (as in the second outlined feminist position), one could query whether she does in fact establish a certain (secular liberal) view. Along those same lines, Michael Skerker argues that ‘if the capabilities approach were adopted by a polity, it would fail to be other than a heteronomous imposition of a sort of comprehensive liberal doctrine’ (Skerker 2004: 385). Particularly, it could be suspected that the approach is discriminatory towards religious doctrines.\(^{14}\) One could, for example, invoke that the individual liberty that is central to Nussbaum’s position is not that central for many religious people, who instead consider communal aspects to be much more important. In this respect, one could further argue, her approach is not neutral between comprehensive doctrines.

In response to that critique, one should first remember that Nussbaum is not dismissive towards the meaning of (religious) communities and affiliations. This becomes apparent in her list, which values ‘affiliation’ as one of ten central aspects for a flourishing life. It is further manifested in her plea to respect religiously grounded decisions. Nevertheless, she focuses on individual liberty when it comes to decision-making. Secondly, this focus should be interpreted as solely necessary for pragmatic reasons and is mainly meant to serve as an

\(^{13}\) The film ‘Niqab Hors-la-loi’ by Agnés De Feo impressively illustrates the perspective of these women.

\(^{14}\) Some go even further and classify Nussbaum’s approach as one dealing with religion primarily in a negative way and her as being a secularist feminist (Bader 2003; Reilly 2011). Some of her older texts may give that impression (e.g., the articles in Nussbaum 1999). However, as my argument shows, she clarifies in her more recent texts that she does take the meaning of religion into account (above all in Nussbaum 2012) – and even in her older texts she argues that she does not judge religion as such as being problematic.
orientation for politics. It does not establish individual liberty as a definitive priority value. This is manifested in her critique of a comprehensive concept of autonomy (see above) and is illustrated by her judgment in the burqa case. Moreover, it also surfaces in the view (that I suggested as her later position) that female genital cutting should not be prohibited for adults. In both cases, the free choice of the individual is central, but is regarded as part of the comprehensive flourishing life of the person that also includes the capability of affiliation: The individual can choose to value communal aspects more than his or her individual autonomy.

In the end, it seems legitimate to focus on individual liberty for this kind of pragmatic political reasons. Nevertheless, one can reasonably ask whether this focus can be regarded as comprehensively neutral, as it is not as easy to accept for some as for others and, on an epistemic level, it puts more strain on some than on others. This difficulty also appears in the case of female genital cutting: Although it seems legitimate to prohibit this practice on children in light of their undeveloped basic capability and the strong intervention it implies, it could be argued that even this prohibition limits the flourishing life at least of the parents, who consider the cutting (as practiced on children) as part of their religious belief. Again, this raises the question of whether the political conception that judgment is based on can truly be labelled comprehensively neutral. Note that Nussbaum herself concedes that the political conception may ‘put more strain on some doctrines’ (Nussbaum 2011b: 37), but that she does not consider this fact as a questioning of its being freestanding. Instead, she points out that she never claimed to be morally neutral – her political conception is of course based on minimal moral values, but these, it is assumed, are freestanding and compatible with any (reasonable) comprehensive doctrine. However, it is exactly this idea of a freestanding morality that is called into question here with reference to the ‘unequal strain’.

Serious Difficulties of Neutrality and an Alternative Conception

In the previous discussion I argued that neutrality is a meaningful ideal for political norms. At the same time, there are reasonable doubts that Nussbaum’s

15 Critics of female genital cutting could argue that this practice eventually had nothing to do with religious beliefs. I think, however, that a theory that aims at equal respect should respect the conviction of those people who defend this practice for themselves as part of their religious belief.

Instructive for the case of female genital cutting is the discussion in La Barbera (2009). It demonstrates that this case is much more complex than is suggested in many discourses and even shows that it is not totally clear that the practice hinders a flourishing life.

16 Let me emphasize that this objection not only concerns Nussbaum’s approach, but any liberal theory that focuses strongly on individual liberty. As I showed, Nussbaum provides an even better answer to the difficulty of such a focus because she gives affiliation an equally important role in her capabilities list – different to other liberal approaches, which do not similarly value this aspect. This also indicates that the objection against neutrality does not only and not specifically affect Nussbaum, but the concept of neutrality in general.
approach – like any approach to political liberalism – can ever actually reach
neutrality, as the claim of the freestanding conception suggests. Therefore, it
seems necessary to think about an alternative way of dealing with the ideal
of neutrality. Before doing so, however, I want to make clear that the doubts
about attributing neutrality to actual norms (and in what way) raise serious dif-
ficulties for political liberalism.

Attributing the notion of neutrality to norms that, at the same time, put
more strain on some than on others and are more easily acceptable for some
than for others, is problematic because it emphatically legitimizes this inequality
and is accompanied by a closed attitude towards any deeper objection: To
claim neutral – freestanding – norms implies the assertion that (principally) all
‘reasonable’ doctrines could endorse these norms. Accordingly, the reason for
putting more strain on some than on others is that these norms are not so
central in some comprehensive doctrines – though they could be found in any
‘reasonable’ doctrine. If, however, they cannot be found at all in some doctrine,
then the doctrine must be unreasonable and it is legitimate and necessary to
restrict it. In the end, many objections against the supposedly neutral norms
are not regarded as reasonable and the unequal strain is not seen as a real
challenge to the political conception. This leads Nussbaum not to take the dif-
ficulties that the list presents for some people seriously and to ignore objections
against it. (This does not mean that Nussbaum does not allow changes to the
list. To the contrary, she even characterizes the list as a proposal and makes
some changes over time [Nussbaum 2000a: 77]. But these changes result mainly
from her insight into their necessity – and fittingly correspond to the ignorance
of certain objections.) Thus, she is not truly open for a critical discussion and
does not sufficiently correspond to the important requirement of
self-scrutiny (that I value as a major aspect of the ideal of neutrality). Iris Young similarly
points out this difficulty when she accuses Nussbaum of being ‘less open than
we should be to listening to the others we are judging explain their understand-
ing of the situation’ (Young 2001: 822).

So, a fundamental problem of the attribution of neutrality is that it leads
to a position that is too determined and that neglects deliberations that were
worthy of consideration. This can, once again, be illustrated by the two exam-
plary cases. For instance, regarding the burqa case, some feminists invoke that
women are socially enforced to wear the burqa and that Nussbaum’s state mea-
sures aiming at ‘basic capability’ cannot reach them. Even though Nussbaum’s
arguments against a ban on the burqa are convincing all things considered
(they are further supported by other theories, see, for example, Spohn 2013),
this objection presents a reasonable challenge and should be discussed in detail.
Nussbaum, though, does not attend to it and does not acknowledge that her

17 See note 5 for the idea of an overlapping consensus and the notion of reasonable
doctrines.

18 Note again that there is some development in Nussbaum’s position and that, whereas
she is often dismissive of certain ‘other’ cultural and religious views in her earlier texts
(to which Young refers in her article, namely to Nussbaum 1999), she actually elaborates
on the problem of inconsistency in judging one’s own and other’s (religious) views and
practices in her more recent texts (Nussbaum 2012, Chapter 4). However, the fundamental
difficulty of being too determined remains in her later writing.
solution might not be good for everyone, but just for most people. In my view, by doing so, she does not take the remaining difficulty for some people seriously and does not show enough respect for them. Likewise, with respect to the second case, Nussbaum does not recognise that a ban on female genital cutting still offends the religious liberty of those who support it as part of their religious beliefs. Although, all things considered, one should embrace a ban in the case of children as the best political positioning, this solution cannot be regarded as being equally respectful of all people. In both cases, to better do justice to the norm of equal respect, one should at least admit that the suggested solutions are imperfect in that sense – and that essentially requires not claiming the underlying norms to be neutral.

In the end, the difficulty of attributing neutrality to actual norms results in the deeper problem of not adequately responding to the norm of equal respect: Equal respect requires taking the view of the other into account, being responsive to their critiques and seriously caring about the difficulties that the acknowledgment of the political conception might create for some people.19

Instead of claiming neutrality for actual political norms (namely a freestanding political conception), one should confine oneself to being oriented towards the ideal of neutrality. That is, a political conception should strive for neutrality between comprehensive doctrines while knowing – and firmly admitting – that the formulated norms are always bound to a particular perspective and will never reach neutrality. With this as a base, one should further acknowledge that unequal strain, even though it is unavoidable, can never simply be legitimised by the moral rightness of the norms, but always constitutes a difficulty – and necessarily stimulates further discussion about the norms. This approach to neutrality keeps the mind more open toward the other’s view and involves a higher degree of self-scrutiny. In this way, one better corresponds to the norm of equal respect.20

With regard to the two cases that approach can lead to the same final political solutions as Nussbaum suggests (because a ban on the burqa seems, all things considered, much less convincing than its refusal and, likewise, a ban on female genital cutting for children remains, all things considered, a better solution than no ban). Nevertheless, in the process of finding the solution one should pay more attention to the outlined objections and, in presenting the solution, acknowledge that difficulties remain which cannot be resolved. Now, it could be asked whether such a minimal differentiation significantly changes anything. I have attempted to show that it is indeed significant with regard to the norm of equal respect. Let me recapitulate the main argument: Equal respect requires being seriously taken into account with one’s comprehensive view and one’s particular situation – including one’s specific objections to and

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19 This corresponds to Skerker’s observation that Nussbaum underestimates the high costs of endorsing the political conception for some: ‘the field of people grudgingly accepting the trade-offs of political union – at a high cost to their own way of life – would be larger than Nussbaum expects’ (Skerker 2004: 403f).

20 For me, that suggestion is in line with demands such as that of Saba Mahmood, who argues: ‘Critique, I believe, is most powerful when it leaves open the possibility that we might also be remade in the process of engaging another’s worldview, that we might come to learn things that we did not already know before we undertook the engagement’ (Mahmood 2006: 209).
difficulties with the political norms. To be sure, it is necessary to take political positions in many disputed cases and it seems unavoidable in a pluralistic society to privilege some over others. However, this should be clearly affirmed instead of veiled behind the claim of neutrality.

Finally, it could also be asked whether such a proposal is too weak to provide stable political norms. Not at least, Nussbaum herself suggests that there is such a problem because she introduces the idea of freestanding neutral norms as being required for stability (Nussbaum 2011a: 89). If, however, the claim of neutral norms itself is a threat to equal respect, then the attribution of neutral norms does not support stability either: People who feel that their beliefs have not been taken seriously can react by opposing the conception more than ever and by forming ‘their own narrow public where resentment and prejudice will flourish’ (Bhargava 2011: 100).21 This less ambitious project – being oriented towards neutrality as an ideal – can then, in some way, also be taken as a gain of stability.

Conclusion

Using the example of Martha Nussbaum’s Capabilities Approach, I showed that neutrality towards comprehensive doctrines is an important principle for liberal political theories. Its importance arises from the idea that the plurality of comprehensive doctrines can only be respected by a freestanding political conception. According to Nussbaum, her freestanding list of ten capabilities also leads to convincing results regarding the challenges of gender and religion. Thus, she rejects most objections against neutrality made by feminist theorists and by critics of secularism.

In my discussion I showed that, on the one hand, neutrality with respect to comprehensive doctrines is indeed a meaningful ideal because of the involved intention of respecting people with different comprehensive views and, more generally, of considering the view of the other. Hence, one should strive for political norms that cope with the ideal of neutrality (instead of emphatically favouring one comprehensive view). On the other hand, attributing neutrality to actual norms leads to serious difficulties. In particular, it gives rise to a position, which does not sufficiently attend to the view of the other and, finally, does not adequately respond to the norm of equal respect. Thus, I have pleaded for being less ambitious, that is, confining oneself to being oriented towards the ideal of neutrality instead of claiming the actual neutrality of the political conception: One should strive for norms that are respectful to any comprehensive doctrine so that any proposal for political norms has to be assessed according to how close it comes to the ideal of neutrality. But, unlike Nussbaum, one should emphatically acknowledge that actual norms cannot reach this ideal as they are always bound to a particular perspective. As a consequence, one could – and should – be more critical with regard to one’s own comprehensive convictions

21 Note that he addresses a stronger version of secular liberalism in that context, namely that of Richard Rorty. The fundamental problem however applies to other secular liberal theories, too.
and more open-minded to opposing views. In this way, the requirements of equal respect could be met more satisfyingly.

To conclude, I am convinced of the necessity of a neutral state that carefully analyses and balances the demands of religion and gender – therefore, its principles should be based on moral norms that seek neutrality. But it must be clear that no actually articulated norm can be really neutral, in politics as well as in moral theory. With regard to gender and religion that means: We need to criticise discrimination because of gender while at the same time trying to be as much respectful to people with different comprehensive doctrines as possible; and we need to strive for laws that integrate these two purposes. (Concretely, considering the case of the burqa, Nussbaum’s standpoint that a ban does not correspond to the two purposes is convincing.) Yet, no morally motivated judgment, criticism or law with regard to gender and religion can be regarded as really neutral, but, instead, any judgment or law is potentially in need of revision – not only because of an imperfect implementation of the moral norms that it is based on or because it is just wrongly based on certain comprehensive norms, but because there is no actually neutral moral norm it could be based on.

References

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