

## Multiculturalism and Pluralism in Secular Society: Individual or Collective Rights?

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### ABSTRACT

This paper discusses multiculturalism in view of collectivistic cultural structures in immigrant communities. Women in religious minority communities are ruled according to collectivistic structures as it comes to marriage, divorce, and children custody. Some Muslim leaders demand a plurality of laws, where minority communities can live according to their collectivistic *nomos*. In contrast some Muslim women organisations tend to reject this claim as it is regarded as opposed to equal individual right for every citizen.

### KEYWORDS

multiculturalism, Muslim communities, religious divorce

This paper deals with issues of cultural pluralism in view of individual and collective rights.<sup>1</sup> Multiculturalism has been highlighted in public debate during the last decades, and this paper will look into possible effects of the policy of multiculturalism on women belonging to religious minorities in western countries.

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<sup>1</sup> This paper will in a slightly different version be published in an anthology on Muslims in the Nordic welfare states.

Susan Moller Okin's publication 'Is multiculturalism bad for women?' first published in 1997, marked a turning point for the common acceptance of Multiculturalism as a sought after social system. Liberal political scientists and philosophers, such as Will Kymlicka, Charles Taylor, Chandran Kukathas etc., had discussed issues of cultural pluralism in fairly positive terms during the 1990s, promoting majority acceptance for minorities and the strengthening of cultural elements in minority communities. Kymlicka and Taylor's publications, although presented in general terms, tended to draw their conclusions on the empirical reality of aborigine or historically established communities, such as the Innuits (Kymlicka) and the French community in Canada (Taylor). Kukathas, on the other hand, was dealing more explicitly with the 'new minorities', the immigrant communities in western societies.

Okin's reaction to liberalists' positive evaluation of multiculturalism was based on a feminist perspective. Okin, although also based in a similar liberal tradition as Kymlicka, and Taylor, went further than classical liberalism, taking the step of including the private sphere into the multicultural discourse. Okin questions Kymlicka's confidence of liberal values having penetrated even minority communities in western countries. Her challenge to the debate was to criticize cultural practices, claiming individual rights for women (and children) in minority communities on an equal footing with women belonging to majority populations in western countries.

In this present study on multiculturalism in view of individual and collective rights, the examples focused upon will particularly be drawn from the context of the two Scandinavian countries, Norway and Sweden and based on Muslim communities where members have permanent stay permits or have obtained citizenship. In both these countries immigrants who are granted stay permits would have nearly similar rights as citizens,<sup>2</sup> thus many of the arguments by promoters of a 'strong' form of multiculturalism, such as for instance Homi K. Bhabha and Bhikhu Parekh, tend to have little validity in this context.<sup>3</sup> The empirical data are collected through research in Muslim communities in the two countries from the late 1980s onwards.<sup>4</sup>

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<sup>2</sup> It is mainly in the right to vote in local and national elections, where non-citizens would have 'less rights' than citizens. Moreover, most non-citizens would after a certain amount of years have the possibility to obtain a citizenship.

<sup>3</sup> Bhabha writes for instance in his critical note to Okin's article in 1997, about how it is necessary to understand 'the deprivation and discrimination that shape their [minorities] affective lives, often alienated from the comfort of citizenship [in the metropolitan cultures of the West].' Homi K. Bhabha, 'Liberalism's Sacred Cow' in *Is Multiculturalism Bad for Women?*, Joshua Cohen and Matthew Howard (eds.), (Princeton, NJ: Princeton University Press 1999). Available on the web at

## I. 'MULTICULTURALISM'

Cultural diversity exists in most societies. Bhikhu Parekh speaks, on the one hand, about individuals and groups who share the dominant hegemonic system of meaning, but who want to pluralize this hegemonic system. On the other hand, there are intellectuals critical to the established cultural structure promoting intellectual responses to how to change the existing culture, such as feminists, environmentalists and communists. It is however, what Parekh denotes *communal diversity* which is the target of the ideology of multiculturalism.<sup>5</sup>

There is often a confusion of the conceptual understanding in discourses on 'multiculturalism'. As Tariq Modood has observed, the term 'multiculturalism' as well as multicultural policy in general is understood differently by different states according to their particular socio-political and cultural background.<sup>6</sup> Whereas most nation-states today consist of more than one cultural community and can thus be said to be 'multicultural societies', very few societies are 'multiculturalist societies', in the meaning of cherishing and encouraging more than one cultural approach, incorporating more than one cultural approach into the majority system of belief and practice, and respecting the cultural demands of all or more than one of the nation-state's communities.<sup>7</sup>

The ideal of 'multiculturalism' is built partly on the Enlightenment ideal of individual rights, and partly on the Romanticism concept of 'people' and the right of groups to survive.<sup>8</sup> There is thus a tension within the notion of

<http://www.bostonreview.net/BR22.5/bhabha.html> (accessed October 19, 2009). See also Bhikhu Parekh, 'A varied moral world' in *Is Multiculturalism Bad for Women?*, Joshua Cohen and Matthew Howard (eds.), (Princeton, NJ: Princeton University Press 1999). Available on the web at <http://www.bostonreview.net/BR22.5/parekh.html> (accessed October 19, 2009).

<sup>4</sup> See Anne Sofie Roald, *Er Muslimske Kvinner Undertrykt?* (Oslo: Pax 2005); Anne Sofie Roald, *Muslimen I Nya Samhällen. Individuella eller kollektiva rättigheter* (Göteborg: Daidalos 2009).

<sup>5</sup> Bhikhu Parekh, *Rethinking Multiculturalism. Cultural diversity and political theory* (London: Macmillan Press 2000), p. 3-4.

<sup>6</sup> See Tariq Modood, 'Introduction' in: Tariq Modood and Pnina Werbner, *The Politics of Multiculturalism in the New Europe: Racism, Identity, and Community* (London: Palgrave Macmillan 1997).

<sup>7</sup> See Parekh, *Rethinking Multiculturalism*, 4-5 for a discussion on the terms 'multicultural' and 'multiculturalism'.

<sup>8</sup> See Thomas Hylland Eriksen, 'Multiculturalism, individualism, and human rights' in *Human Rights, Culture and Context*, Rickard A. Wilson (ed.), (London: Pluto Press 1997), 49-69; Thomas Hylland Eriksen, 'Between universalism and relativism: a critique of the UNESCO concept of culture' in *Culture and Rights. Anthropological Perspectives*, Jane Cowan, Marie Benedicte Dembour, and Richard A. Wilson (eds.), (Cambridge, Cambridge University Press 2001), 127-148 for further discussion.

‘multiculturalism’ itself, between individual versus collective rights. This tension points at some important issues: Is ‘multiculturalism’ the freedom to culture or the freedom to be *without* a specific culture? Is there a possibility for individuals within groups to choose which system they would like to adhere to? And more important: Is there a possibility for individuals within groups to adhere to more than one system?

A similar tension between individual and collective rights can be anticipated in the slight inconsistency between the Declaration of Human Rights from 1948 and the UN convention, International Convention for Civil and Political Rights (ICCPR), from 1966. The Declaration of Human Rights’ emphasis on individual rights was the reaction against how the Nazis had utilised international acknowledgement for protection of minorities in their expansion policy, as well as the Nazis persecution of the European Jewish community. The ICCPR, Article 27’s cautious turn towards the rights of culture(s) was, on the other hand, most probably a response to the growing demands for group rights by the American Anthropological Association (AAA)<sup>9</sup> as well as in the African-American Civil rights movements in the 1950s and 1960s. I will claim that the notion of multiculturalism is an implicit outcome of Article 27 in the ICCPR, a notion which since the 1970s has been a strong underlying force in countries particularly in northern Europe, in the US, Canada and Australia. Article 27 says:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Similar to the Declaration of Human Rights, ICCPR also speaks in terms of the rights of *individuals*. It is, however, the reference to culture and religion which might have been the incentive to the emphasis on cultural rights apparent in the new legislation on cultural pluralism in many countries from 1970s onwards. In Sweden for instance, ‘multiculturalism’ as an ideal was legislated in 1974. This trend towards legal cultural pluralism was, however, not pronounced as ‘multiculturalism’, but as a policy of freedom of choice for ‘members of linguistic minorities domiciled in Sweden’ between ‘retaining

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<sup>9</sup> In 1947 the American Anthropological Association issued a statement in which the Declaration of Human Rights was criticized for being biased in favour of Western thoughts and values. Sally Engle Merry, ‘Changing Rights, Changing culture’ in: *Culture and Rights. Anthropological Perspectives*, Jane Cowan, Marie Benedicte Dembour, and Richard A. Wilson (eds.), (Cambridge, Cambridge University Press 2001), 31-55, p. 33.

and developing their original cultural identity and assuming a Swedish cultural identity.<sup>10</sup> The tension between individual and collective rights becomes apparent by looking at how the understanding of this Swedish official policy of ‘multiculturalism’ was understood differently by official representatives and members of the minority communities. The Swedish authorities understood their multicultural declaration of *equality, freedom of choice, and partnership* mainly in terms of *equality*, meaning ‘equality between universal individuals regardless of culture, ethnicity, race, religion and gender.’<sup>11</sup> Immigrants, on the other hand, tend to regard multiculturalism in terms of equal right to *freedom of choice* to religion, ethnicity, and cultural expressions.

To illustrate the discrepancy between the authorities and the immigrant leaders in understanding state policy, I will draw attention to a happening in Sweden linked to the upcoming election in the autumn of 2006. The Swedish authorities have never voiced any intention of accepting legal systems of minority communities. Legal pluralism has therefore never been an option in the Swedish multicultural model.<sup>12</sup> The Islamist, Mahmoud Aldebe, the then head of one of the Muslim organizations and a frequent participant in the public debate, on the other hand, had a different opinion. In April 2006 he distributed a letter to all the political parties.<sup>13</sup> He referred to various issues which he regarded as important for the Muslim community in Sweden, such as the right to get leave from work to attend religious festivals, to have a mosque in every city, to have gender-specific days in the public indoor swimming pools, and to introduce sharia law in family matters for Muslims in Sweden. The important point in this case is that Aldebe particularly referred to the principle of freedom of religion and the UN conventions ‘which Sweden has ratified’. In his view these conventions ‘implies the right to a distinctive legislation (särslagstiftning)’. It is obvious that Aldebe understands Swed-

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<sup>10</sup> SOU (State’s Official Reports), *Investigation of Immigrants 3*. Stockholm: Regeringskansliet, 1974. See also Åke Sander, ‘The Status of Muslim Communities in Sweden’ in *Muslim Communities in the New Europe*, Gerd Nonneman, Tim Niblock, and Bogdan Szajkowski (eds.), (London: Ithaca Press 1996), p. 288.

<sup>11</sup> Sander ‘The Status of Muslim Communities in Sweden’, p. 274.

<sup>12</sup> I have discussed ‘the right to marry couples’ (vigselrätten), a right for religious communities, elsewhere. Anne Sofie Roald, ‘Multiculturalism and religious legislation in Sweden’ in *Muslim Diaspora in the West. Negotiating Gender, Home and Belonging*, Haideh Moghissi and Halleh Ghorashi (eds.), (London: Ashgate 2010). In a sense this ‘right to marry couples’ can be regarded in terms of legal pluralism, although most probably legal pluralism has not been the intention of giving this (collective) right to different religious organisations.

<sup>13</sup> Mahmoud Aldebe, ‘Ett öppet brev till alla svenska politiska partier som deltar i årets val’, Stockholm 2006.

ish multiculturalism as a system open to various value systems living side by side. Furthermore, Aldebe's understanding of UN conventions in collective terms becomes obvious in his claim that the Swedish law of freedom of religion *in contrast to* the recommendations of the UN conventions (probably the International Convention for Civil and Political Rights [ICCPR]) is built on 'an individualised concept of religion'. In Aldebe's Islamistic view 'Islam' is a system where all rules, values, rituals, and even the Arabic language belong to religious expressions, and the concept of religion must therefore, in his view, be broadened in the Swedish context in order to include such expressions. Aldebe's argumentation points at the tension between individual and collective rights in the UN conventions as well as in the Swedish official policy discussed above.

Many of the academic participants in the debate on multiculturalism have until recently belonged to the liberal currents of thought. The main values promoted have been 'freedom', 'equality', 'tolerance' and every human being's right to live 'the good life'.<sup>14</sup> The two binary poles in this liberal multicultural debate have been on the one hand, promoters of a 'weak' or a 'strong' Multiculturalism, i.e., those who endorse more or less autonomy for cultural, religious, and ethnic groups, and on the other, more or less fierce opponents of Multiculturalism, i.e., those who endorse the cultivation of individual rights. Some activists, particularly from minority communities, as the example of Aldebe also indicates, tend to claim a 'strong' form of Multiculturalism including legal pluralism, where minority communities have equal formal, legal, and constitutional executive position with the majority, i.e., the minorities should be entitled to live according to their *nomos* (the community's normative universe where legislation and cultural structures are intertwined).<sup>15</sup> In contrast, most liberal researchers as well as politicians believing in the multicultural ideal, however, tend to speak in terms of a 'weak' form of Multiculturalism; some group claims should indeed be approved of if these are not on the expense of every human being's right to obtain his or her individual rights in society.

The main principle in the liberal multicultural discourse is that human beings should have the greatest possible option to choose their own life which should then be compatible with everybody else's similar freedom of

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<sup>14</sup> See for instance Will Kymlicka, [\*Multicultural Citizenship: A Liberal Theory of Minority Rights\*](#), (Oxford: Oxford University Press 1995).

<sup>15</sup> Ayelet Shachar, *Multicultural Jurisdiction. Cultural Difference and Women's Rights*, (Cambridge: Cambridge University Press 2001), p. 2.

choice.<sup>16</sup> The 'good life' presupposes two things according to Kymlicka. Firstly, individuals should have the possibility to lead their lives in accordance with the beliefs of what gives value to life without being discriminated against.<sup>17</sup> The second precondition is, according to Kymlicka, that we be free to question our beliefs, 'to examine them in light of whatever information, examples, and arguments our culture can provide'.<sup>18</sup> Kymlicka stresses the need for available knowledge through liberal principles such as education for everybody and freedom of expression. If these conditions are fulfilled Kymlicka would promote a 'weak' form of multiculturalism, where group rights are guaranteed to the degree that these rights are compatible with the respect for the freedom and autonomy for all individuals.<sup>19</sup>

Chandran Kukathas has a more expressed multiculturalist perspective than Kymlicka. He argues from a liberal point of view that human beings' 'wish to live according to the practices of their own cultural communities has to be respected,' not because, as he says, 'culture has the right to be preserved but because individuals should be free to associate: to form communities and to live by the terms of those associations'.<sup>20</sup> However, Kukathas, despite his commitment to a rather strong form of Multiculturalism, still emphasises every individual's right to leave his or her community; the right to live according to the community's *nomos* presupposes the right to leave the community. He writes:

If there are any fundamental rights, then there is at least one right which is of crucial importance: the right of the individual to leave a community or association by the terms of which he or she no longer wishes to live. Cultural communities should, then, be looked on in this way: as associations of individuals whose freedom to live according to communal practices each finds acceptable is of fundamental importance.<sup>21</sup>

Kukathas' argumentation might seem 'liberal', in the sense that every individual has the freedom of choice to associate with or to dissociate from a cultural/religious community. However in practice it might not be as simple as Kukathas portrays it. By looking at the Muslim community, women, young

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<sup>16</sup> Kymlicka, *Multicultural Citizenship*, p. 80.

<sup>17</sup> *Ibid.*, p. 81.

<sup>18</sup> *Ibid.*, p. 81.

<sup>19</sup> *Ibid.*, p. 78-79.

<sup>20</sup> Chandran Kukathas, 'Are there any cultural rights' in *Political Theory*, Vol. 20, No. 1 (1992), p.

116.

<sup>21</sup> *Ibid.*, p. 116.

girls and sometimes even boys, who want to leave their community, might be stopped, sometimes violently. Moreover, the socialisation within collectivistic communities tends to create a symbiotic relationship between members of the group making it difficult for some to dissociate from the community. Those who would prefer to live according to majority society's value system, but at the same time also want to be part of the social setting of their cultural community, might lose an important part of their social network. This, due to that majority acceptance of minority groups living according to their *nomos*, might strengthen the notion of group solidarity at the price of loyalty and solidarity with the majority, as well as creating a minority thinking imposing identity policy in various forms into the group's agency. Muslim women marrying non-Muslim men, a forbidden act according to the traditional collectivistic law-school legislation, would for instance risk honour-related violence or be regarded as social outcasts.

It is important to look more profoundly at this prohibition for women to marry outside the fold. Community and religious leaders are often interested in the survival of the group. Traditional collectivistic understandings of religious texts are suitable for securing this survival in contrast to the new understandings of the religious texts often building on the Human rights argumentation. Traditional, law-school Islamic legislation, sharia, reflects pre-modern collectivistic society, where power to a great extent was dependent on the quantity of the group and the loyalty of the group members towards the leaders. It was therefore important to keep the quantitative equilibrium between the groups. The Muslims were in majority and had to keep up this majority in relation to Christians and Jews. The prohibition for Muslim women to marry non-Muslims was therefore a means to keep women and children within the group due both to the principle of patrilineal descent in the Islamic law and to the notion of the man as the head and the guide of the family. If women married outside the fold, the community would decrease in number and Muslim power was at stake. On the micro-level, one reason for keeping women within the group was the religious legislation of female inheritance. In agricultural areas women who married outside the extended family (particularly the paternal cousins) could in accordance with the law (although in practice this did not always apply) bring their inheritance with them into the marriage. This implied an impoverishment for the extended family either through dividing and thus diminishing the land or through a payment equalising the value of the part of the woman's inherited land-lot. Even with urbanisation, the practice of marrying paternal cousins remains a



strong cultural trait in many countries with Muslim majority population and in Muslim communities in the West.

Despite of the fact that Muslim immigrants (with a stay permit or with citizenship) in the western world are citizens in secular states with equal legal rights with the majority population, the wish to strengthen group identities still lingers on. Although the religious and cultural aspects are of importance in this matter, with adherence to the traditional sharia legislation and the cultural tradition to marry within the family, minority identity policy is maybe even a more important incentive. Group identity in most countries with Muslim majority populations still plays an important part in power relation and in social networking. Non-Muslims are for instance excluded from the presidential office even in the more 'liberal' Muslim countries, such as Jordan and Egypt. Thus, members of a Muslim minority community in a secular western state might have the possibility and the freedom of choice to leave his or her community, but in practice, due to the collectivistic structures with an emphasis on family adherence most Muslims are socialised into, it might be hard to choose to leave a social network so different from the individualistic social networks in secular countries in the west.

Susan Moller Okin's path-breaking essay 'Is multiculturalism bad for women' confronted the 'weak' form of multiculturalism promoted by liberalists. Her central question of which norm should dominate; gender equality or minorities' cultural claims, was indeed implicitly stated in some of the liberalists' writings on multiculturalism, but Okin was the first to explicitly state it.<sup>22</sup> Okin points at that 'most cultures are suffused with practices and ideologies concerning gender' and that 'culture endorses and facilitates the control of men over women in various ways (even if informally, in the private sphere of domestic life).'<sup>23</sup> Cultural minorities, she claims, focus on family issues, such as marriages, divorce, custody, etc., but as the liberal multiculturalists tend to ignore the private sphere, they overlook the core of the problem with multiculturalism.

Many important questions have been raised in the debate on 'multiculturalism': which communities should be recognized, on which basis should

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<sup>22</sup> Susan Moller Okin, 1999 (1997). 'Is multiculturalism bad for women?' in *Is Multiculturalism Bad for Women?*, Joshua Cohen and Matthew Howard (eds.), (Princeton, NJ, Princeton University Press 1999 [1997]). Available on the web at <http://www.bostonreview.net/BR22.5/okin.html> (accessed October 16, 2009).

<sup>23</sup> Okin, 'Is multiculturalism bad for women?'

communities be recognized or rejected,<sup>24</sup> and is the ideology of nation-state compatible with the ideology of ‘multiculturalism’?<sup>25</sup> A most pressing issue is whether or not it is the protection for every individual and every individual’s free choice which in the end is the ideological base for a secular society? And should not state policy therefore reflect this aim in its methodology? Okin’s discussion deals with exactly this aspect of treating every citizen (read: woman) equally; should a secular state based on individual rights accept that some women are treated differently just because they have a different cultural background from that of majority population? Moreover, as Okin introduced the issues of gender and the minority within minorities, another most pressing issue has floated up; is not ‘multiculturalism’ actually about fixed and unalterable cultures on the one hand, and elitistic understandings of which elements minority ‘cultures’ consist of on the other? A consequence of this notion is: as ‘culture’ is commonly regarded in processual terms as well as every ‘culture’ consisting of various forms and shapes, is the ideology of multiculturalism really necessary? Would not cultures eventually amalgamate and would not a new ‘culture’ surface in every immigrant country? And the most important consequence of this processual concept of culture: Would not multicultural policy solidify traditional cultural structures instead of letting immigrants adjust to a slow social change inherent in cultural encounters in general? And to draw the question into the religious sphere: are the existing religions homogenous as well as fixed and static systems not prone to change? In contrast to this consequence analysis of processual concepts, such as identity and culture, etc. the philosopher, Charles Taylor’s discussion of the link between identity and recognition indicates how this issue has been treated in the multicultural debate. Implicitly he portrays a group’s identity as unalterable and static, despite that he explicitly states that a person’s or a group’s identity always is defined in dynamic interactions.<sup>26</sup> Similarly, the Archbishop of Canterbury, Rowan Williams, in his controversial lecture in February 2008, discusses the aspects of flexibility and change within Islamic jurisdiction, and yet at the same time he opens up for a possible plural jurisdiction, where some aspects, especially marital legislation, of

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<sup>24</sup> See Kymlicka, *Multicultural Citizenship* for a further discussion.

<sup>25</sup> See Gerd Baumann, *The Multicultural Riddle. Rethinking National, Ethnic, and Religious Identities* (London: Routledge 1999) for further discussion.

<sup>26</sup> See Baumann, *The Multicultural Riddle*, for a critic of Taylor’s concept of identity.

religious law can co-exist with British legislation.<sup>27</sup> As Islamic legislation is flexible, is it thus not possible that sharia rules and regulations will turn in a direction of a Human Rights perspective with emphasis on individual rights? And, if this is a possibility, is it not better to search for creating a 'sense of belonging'<sup>28</sup> in British society for Muslim immigrants and their descendents, rather than arrange a system of plurality, which most probably will enlarge the gulf between members of various religions and cultures in the modern, secular society?

Seyla Benhabib is one of the few who has developed the implicit implications of Okin's criticism of multiculturalism, stating that '[i]dentity/difference politics is afflicted by the paradox of wanting to preserve the "purity of the impure" and the "immutability of the historical"'.<sup>29</sup> In the following section these two issues will be discussed in view of Muslim communities in Sweden and Norway.

## II. PURIFICATION OF THE IMPURE

The pervasive notion in Muslim communities of Islam as 'one Islam' is an illustration of Benhabib's concept of 'purification of the impure'. In contrast to this ideal of one homogenous Islam are all the different understandings of Islam as well as the variation of Islamic practice in various Muslim communities. There is a tendency both from Muslims and non-Muslims to reify 'Islam', seeing Islam as a homogenous system of belief and practice. On the one hand, this reification reflects the common notion that Islam is publicly spoken of in homogenous terms, mainly due to a certain understanding of Islam which has obtained the hegemony in both the internal Muslim and the external majority discourse. Most Islamic minority communities in western countries today tend to be dominated by leaders with collectivistic theological approaches to the religious texts. This theology is mainly created by male scholars in particular historical periods and in particular social settings quite different from modern society. Muslim leaders tend to either have a

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<sup>27</sup> Rowan Williams, 'Archbishop's lecture - Civil and religious Law in England: A religious perspective' (February 7, 2008) (Accessed November 30, 2009) at: <http://www.archbishopofcanterbury.org/1575>

<sup>28</sup> Tariq Ramadan, Lecture on religion given at the Norwegian Academy of Science, November 1-2, 2007.

<sup>29</sup> Seyla Benhabib, *The Claims of Culture. Equality and diversity in the global era*, (Princeton, NJ: Princeton University Press 2002), p. 11.

traditional collectivistic law-school understanding of Islam; mainly in Pakistani and Turkish communities, or an Islamist understanding; mainly in Arab-speaking communities. The Islamist ideology has to a great extent been manifested in the public discourse as Islam *per se*, due mainly to the *da'wa* (call to Islam) activities in the western world from the 1970s onwards. The extensive dissemination of Islamist literature in the last 40 years together with Islamist activities and Islamist leadership in Muslim communities have created an image of Islamism, i.e. 'Islam as a comprehensive system; a way of life' as '*the Islam*'. Although Islamists have a 'modern' approach to politics, many of them have a collectivistic law-school approach to gender issues and family law matters. As will be discussed below, however, some Islamists have joined the trend of reinterpreting the Islamic sources, in which gender issues have been highlighted.

In contrast to the traditional collectivistic and the Islamist understanding of Islam, in Muslim communities in the western world individuals and minorities within the minority have various other ways to understand and practice Islam. First and foremost, Muslims have different ways to relate to Islam and to practice their religion. Whereas some strictly follow most religious precepts, others are more relaxed. The difference in ways of practicing might have to do with zealotry or laziness, but it also has to do with understanding and interpretation of the religious texts. The issue is whether the Islamic texts are to be understood literally or whether it is considered to be possible to deduce Islamic principles from the texts. For instance, whereas some Muslims believe that the wearing of the Islamic headscarf/face-veil is an obligatory Islamic precept, regardless of geographical locations; others believe that indeed, there are some references to women's covering in the Koran, but do these texts talk about the covering of the head and/or the face or do they refer to a general principle of 'decent' dressing? Moreover, an issue which has been raised lately is: should the Koranic verse 33:59 which says that Muslim women should 'draw their cloaks (*jilbab*) close round them', as 'this will be better, so that they may be recognized and not annoyed', be understood as not wearing the headscarf/faceveil in western countries where women actually might be 'annoyed' when wearing the Islamic dress, whether headscarf or face-veil? The issue on 'veiling' is thus an illustration on variations; i.e. impurity, in an illusion of a 'pure' and homogeneous Islamic tradition.

Difference in educational backgrounds is also an issue of importance. Many first generation Muslims have little formal education and this influence

their understanding and approach to Islam. And a last issue is the variation of practices and understanding of Islam in the different Muslim ethnic and national communities. Is the Somali understanding of female circumcision as 'Islamic' the 'true Islam'? Is honour-related violence as it comes to 'illegitimate' sexual relations or suspicion of such relations an Islamic phenomenon, which some Muslims from for instance Afghanistan and the Middle East tend to believe? Does 'Islam' promote gender equality as many second generation Muslim immigrants in Scandinavia consider true? Or does Islam endorse 'peace' as many Muslims in Europe claim, particularly after 9/11? What is then 'Islam' and what is Muslim 'culture'?

Thus, as Benhabib has pointed at, multiculturalism is about purification of the 'impure', and in other words, about homogenizing the heterogeneous. Culture and religion are not homogeneous entities and multiculturalists' effort to try to identify specific cultural or religious expressions which are supposedly 'genuine' in each cultural and religious community might be virtually impossible.

### III. 'IMMUTABILITY OF THE HISTORICAL'

The vital question is whether religions, and in the present context, 'Islam' really is a fixed and static system as commonly believed, or whether the Islamic tradition, as other religious systems have proved to be, is in a flux of change. The common notion of Islam as static and unchangeable reflects Benhabib's concept of the 'immutability of the historical'. However, is Islam understood in the same way today as in the past in its formative period? The Islamic legal rules were consolidated in a time where social developments, political systems, as well as social relations were based on collective rights and family adherence. This socio-political structure is in contrast to modern secular society. Whereas some Muslims in the west tend to live in segregation from majority society with social networks mostly in the Muslim community, many Muslims today participate in majority society in schools, at work, and in socio-political and economic activities. Although this goes for some from the first generation Muslim immigrant communities, it is particularly their descendants, the first, second, third, and fourth generation Scandinavian Muslims, who is partly socialised into majority society through schools, friends and the public discourse, who tend to be influenced by majority cultural ideas and thought. One example is the view of gender equality.

As most first generation Muslim immigrants believe that women and men have equal values but different social roles in Islam, their descendants tend to see Islam in terms of gender equality.<sup>30</sup> Even the notion of female leadership has come under scrutiny lately, due to influences from Islamists living in western countries and pressure from the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Traditional legislation most often promoted by men and religious leaders indicate that the cultural content of minority communities in the secular state will often consist of the hegemonic ideology instead of alternative interpretations of the holy texts. This is particularly apparent in family legislation. Traditionally speaking, both in Judaic and in Islamic legislation, women have for instance difficulties in obtaining a divorce against the will of their husbands. This pertains to religious minorities in western countries, but even to countries with Muslim majority populations, as well as to Israel where the family law is based on traditional collectivistic interpretations of the Jewish scriptures. In Judaism the need for acceptance for the divorce from the partner pertains also for men, as a woman is able to deny to accept a religious divorce (a *get*), but it is the man who issues the divorce statement and the man is also able to live with another woman if his wife refuses a divorce. This is in contrast to the Jewish woman who has to have divorce papers before being with a new man.<sup>31</sup> It is thus more common that Muslim and Jewish women in western minority communities are victims of 'limping' marriages, i.e. being divorced in one legal system (the secular state) and married in another legal system (the religious), than men. Lately, discussions within the Muslim communities indicate a change in the field of family legislation. Scandinavian Muslims, men and women, are influenced by the Human Rights discourse of gender equality. The increase in women with higher education in Islamic studies as well as in other academic fields has had an impact on the Muslim leadership. Interesting to note is that the Council of Fatwa and Research, based in Ireland and headed by the famous Islamist, Yusuf al-Qaradawi, for instance has discussed whether a divorce in the secular western societies should count as an Islamic divorce. There is a disagreement within the Council, but the Sunni decentralized and thus individualistic ap-

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<sup>30</sup> See Roald, *Er Muslimske Kvinner Undertrykt?*

<sup>31</sup> Adin Steinsaltz, *The Essential Talmud*, (New York, NY: Bentham Books 1976), p. 133; Bente Groth, 'Mann og Kvinne skapte Han dem. Ekteskapets betydelse i jødisk tradisjon' in *Evig Din? Ekteskaps- og samlivstradisjoner I det flerreligiøse Norge*, Berit Thorbjørnsrud (ed.), (Oslo: Abstrakt 2005), p. 146.

proach (that every Muslim is in principle free to follow the scholar of his or her own choice) has made it possible for some women to adhere to those scholars who promote the idea of a secular divorce equalising an Islamic divorce.

It is also noteworthy to look into the difference in understanding of sharia and family issues in for instance Sweden, between the first generation Arabic-speaking Islamist Aldebe, mentioned above, and the Muslim political activist with a pronounced Islamic orientation, Mehmet Kaplan, of Turkish origin. They have both belonged to the leadership of the same Islamic organisation, but Aldebe who came to Sweden as a grown-up is a proponent for introducing Islamic family legislation in Sweden, as 'it is family legislation which is important for Muslims in Sweden; marriage, divorce, custody of children, etc.'<sup>32</sup> Aldebe's concept of sharia reflects the practice of ancient rulers in the Muslim empire of distinguishing between the family law -- dealing with the private sphere and subordinated to the Islamic scholars -- and the rest of sharia legislation, dealing with the public sphere and subordinated to the political leadership. Kaplan, on the other hand, who came to Sweden as a toddler, decisively turns down Aldebe's claim, saying that it is completely 'taken out of the air'.<sup>33</sup> Kaplan's attitude reflects the secular society's legislation with legal gender equality. This example illustrates both the heterogeneity of ideas in the Muslim community, as well as the development of Islamic ideas, in both a historical and national context. As the example of Aldebe and Kaplan indicates, the first generation Muslims are more prone to adhere to a traditional and collectivistic theology, whereas their descendants are more tuned into a Human Rights perspective of secular society.<sup>34</sup>

Traditional sharia legislation is a product of a different society than the contemporary European. Moreover, Muslims on a global level differ concerning the content of sharia, i.e., which sharia legislation should be applied in countries with Muslim majority populations and in Muslim communities in the West: the traditional law-school legislation or legislation more in line with the Human Rights perspective? In addition is the wide spectre of views

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<sup>32</sup> Dagens Nyheter (DN) 27/4-2006. 'Muslimskt Förbund kräver egna lagar'.

<sup>33</sup> Dagens Nyheter (DN) 28/4-2006. 'Muslimskt krismöte efter krav på särslagstiftning'.

<sup>34</sup> There are also examples of second generation Muslim immigrants who tend to end up in rigid belief system such as salafism and some might even have a terrorist approach to the Islamic sources, as the actors involved in the 7/7-2005 happenings in Great Britain. However in my research I have discovered a stronger general tendency towards a human right perspective among the new generation Muslims than a trend towards extremist understandings of 'Islam', without denying its existence.

among Muslims of whether sharia legislation indeed is desirable or not in the European context. It is interesting to note that many Muslim women organisations in Canada protested against a proposal in the beginning of the twenty-first century, to introduce sharia in Canada.<sup>35</sup> Thus, the suggestion of opening up for religious legislation by the Archbishop of Canterbury referred to above would probably create more problems than it will solve.

#### IV. REFLECTIONS

In the context of Muslim communities, the impossibility to 'purify the impure' in cultural expressions as well as the rapid theological changes going on in contemporary Islam, it is pertinent to ask whether multiculturalism with acceptance for Muslim cultural and religious practices would lead to a situation where traditional Islamic interpretations will be congealed/frozen in time and space. This applies particularly to gender issues, as even Islamists of various directions tend to cling to the traditional law-school understanding of gender. Would multiculturalism thus not hinder the development of ideas common in all societies with more than one cultural or religious group? It is even pertinent to ask whether such granting of concession for cultural practice and ideas would also be an obstacle for a rapprochement of Islamic interpretations with liberal individualistic human right ideas, a development which many Christian and Jewish groups have gone through. Particularly for minorities living in western countries with the possibility for a dynamic interaction with other minorities and majority society it is important to see culture and religion in terms of processual changes which can make it possible to empower weak and vulnerable community sections such as women, children and homosexuals.

As multiculturalism is about avoiding the hegemonic majority to control minority positions it is just as important to find ways to prevent the hegemony *within* the communities to take charge over opposing members. What possibilities do members of minority cultures have to belong to more than one cultural community? For instance what about homosexuals with a religious direction of life who wants to be part of a religious minority community, but are not able to, due to biases within the community? And what

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<sup>35</sup> Alia Hogben, 'Balancing gender equality & religious diversity: Muslims Women in Western Societies, Islamic Law & the Justice System', Unpublished contribution at the Metropolis Conference, October 17-21, Toronto, Canada, 2005.



about Muslim and Jewish women with a religious outlook who want to belong both to the community and to majority society? The 'weak' form of multiculturalism tends to safeguard individual rights, but as long as it accepts some group claims it signals the possibility for minority communities to live according to their *nomos*. By accepting cultural demands, particularly as it comes to legal pluralism, whether in a 'weak' or a 'strong' multicultural model, minority thinking with emphasis on identity policy and demarcation towards majority culture and society might arise, leading to a segregated society where individuals look upon each other in group terms instead of as individuals. As it comes to religious legislation in Islam, Judaism and even Christianity, the legal claims by minorities tend to focus on family issues, as family law in many countries with a Muslim majority population as well as in Israel is the last bastion of the theocratic governing of the past.

