

***Never Ask a Woman  
to Do a Man's Job?***

***Gender Difference,  
Workplace Equality  
& Quota Hiring***

Master Thesis – Final Version

Inge van der Leeuw (s0522333)

11-06-2012

Supervisor: Dr. P. Nieuwenburg

Second Reader: Dr. R. Claassen

Word Count: 19.010

## Table of contents

	Introduction: from equality to difference	2
1	The justification from compensation	8
1.1	<i>Main arguments</i>	8
1.2	<i>Concepts and assumptions</i>	11
1.3	<i>Assessment</i>	13
1.4	<i>Concluding remarks</i>	20
2	The justification from difference	22
2.1	<i>Main arguments</i>	22
2.2	<i>Concepts and assumptions</i>	26
2.3	<i>Assessment</i>	28
2.4	<i>Concluding remarks</i>	32
3	The instrumentalist justification	33
3.1	<i>Main arguments</i>	33
3.2	<i>Concepts and assumptions</i>	36
3.3	<i>Assessment</i>	37
3.4	<i>Concluding remarks</i>	42
	Conclusion: from difference to equality	44
	References	54

## **Introduction: from equality to difference**

During the last few decades, feminist authors have come to severely criticize mainstream liberal theory for its assumption that equal treatment can be achieved through the universal application of rules to all people, regardless of their differing circumstances and identities. This critique marks a radical shift in focus in the thinking as well as the practical goals of feminism. For a long time, the emphasis was placed on uncovering the various ways in which women were being oppressed by men and on extending women's opportunities, rights and power in the public and later also in the private sphere. This focus did not clash with a universalist framework: equality would be achieved if women were granted the same opportunities and rights that men already had, and to which women were also entitled by virtue of being human beings.

Today, however, most feminist scholars claim that the very idea of the sexless, universal person is flawed, and is in practice modelled on the male experience. Hence, simply transferring this role onto women is not enough to provide true equality. Instead of applying existing standards to men and women alike, it is now argued that the standard itself should be the object of debate, in which women have an equal voice and opportunity to bring in their experience as women. Featuring prominently in this view is the notion of women as a group, sharing a distinctly female experience, and needs and interests as distinct from those of men. 'Difference' has become a central concept, accompanied by a shift in practical goals: emphasis is placed on women's participation in the construction of social norms. Whereas for some feminist thinkers, the objective of equality has been dismissed altogether as either unattainable or of lesser importance, most of them maintain equality between men and women as a central objective, but insist that achieving such equality requires, at least to some extent, accommodating differences between the two.

The failure of liberal universal laws and standards to be sufficiently responsive to the different needs, interests and views of women has been held chiefly responsible for the faltering emancipation of women in the labour market. While the extension of equal formal rights to women has allowed them to join the workforce, they still constitute a minority of the working population, work lesser hours, earn lower salaries, concentrate in low-status sectors and have difficulty being accepted as full employees

and co-workers – not to mention adequate mothers at the same time. In response to these problems, many feminist authors have called for the use of affirmative action measures to increase the number of women working in certain sectors, employment levels or companies and organizations.

Affirmative action is an umbrella term encompassing a whole range of measures, from the relatively uncontroversial, like advertising positions in a way that is targeted specifically at women, to the highly debated, like imposing or adopting women quotas (Beauchamp, 1998, p. 144). All these measures, however, are about “applying differential treatment procedures to achieve a more balanced composition of individuals according to group characteristics” (Teigen, 2000. p. 63). As such, affirmative action initiatives constitute a departure from the principle of formally equal treatment. Feminist advocates of these policies have argued that this is an improvement from the standpoint of women's equality, since the latter requires that differences between the sexes are taken into account.

This position, however, raises a number of difficulties. Firstly, there is no consensus among these scholars as to what forms of difference are of key importance, and why, or indeed whether it is possible and desirable to try and place people in the dichotomous categories of ‘men’ and ‘women’. This categorization has been attacked on the grounds that it reinforces the idea of the male standard, ignores key differences among women (e.g. Harris, 1990; Spelman, 1988), or is necessarily essentialist and prescriptive (e.g. Butler, 1990). While these objections have raised awareness about the pitfalls of thinking too simplistically about ‘men’ and ‘women’, it has also been pointed out that they tend to make the feminist cause into a self-defeating exercise (e.g. Okin, 1994).

Among those scholars engaged in fleshing out the meaning of female difference, positions are equally scattered. The concept of gender first entered into the debate on women’s equality as a tool to counter the claims of anti-feminists who argued that women’s subordinate position was the natural state of things. Gender was used to denote those behavioural patterns, personality traits and roles that were connected to biological sex not by nature but through social convention (Nicholson, 1998, p. 289). From the 1980s onward, however, the meaning of gender and its relation to sex has become increasingly disputed. Nowadays, there is a wide range of views regarding the

adequate scope of the concept of gender, ranging from outright rejections of its added value compared to sex, to concrete social positions women find themselves in due to their ability to have children and their caring obligations, social roles and personality traits taught to girls from an early age, and, most extremely, the entire experience of women as a group in all facets of their lives.

This disagreement over the meaning of a concept so central to the very existence of feminist research is understandable, given the complexity of the subject and the difficulty of analysing as if from without social practices and identities so deeply rooted in our own experience and thinking. However, in light of the practical goal of social and political change that still seems to motivate most feminists, it is a serious impediment. In order to base concrete policy proposals on a difference-sensitive model of equality, we need to achieve more clarity as to what such a model entails.

Moreover, we need to be able to defend it morally. This aspect has been neglected by most feminist authors: in their efforts to develop a more and more intricate understanding of femininity, the question why there should be equality between men and women has taken the back seat. One might argue that this claim has already been so firmly internalized by our political system and social conventions that it can be taken as a given. However, I would argue that the level of both academic and public disagreement about what equality between men and women entails in practice signals that this is not the case. Whereas most people today will indeed agree that sex as such should be irrelevant in the granting of rights and access to valuable goods and positions, there is no such consensus regarding the irrelevance of all characteristics and aspects of behaviour that have been included in the concept of gender. Thus, the extension of equal treatment to these characteristics still requires further justification.

Feminist justifications of affirmative action tend to address these crucial questions only implicitly, and the theoretical underpinnings of their arguments are often lacking. The purpose of this paper is therefore to try and clarify the conceptualizations of gender and equality underlying various justifications found in the literature, and assess whether one can make a compelling case for gender equality through differential treatment based on these conceptualizations. I will focus on the defences of affirmative action in hiring policies, in order to provide a concrete example of an area in which the relationship between equal treatment and accommodation of difference is highly

disputed.

For the purpose of this paper, I will limit my analysis to the most far-reaching and controversial form of affirmative action, namely that of mandatory quotas of women imposed upon employers (whether in private or public organizations and businesses). In fact, wherever the term 'affirmative action' is used in this paper, what is meant will be first and foremost such quotas. The reason for this focus is that, unlike 'softer' measures such as targeted recruiting and campaigning, quotas at least potentially override the principle of hiring on merit. It is this clash with formal equality that makes quotas so controversial and, in my view, requires defenders of this form of affirmative action to provide a strong justification that either convincingly overrides this concern or demonstrates that it is not a valuable principle to honour. In the words of Rosenfeld (1985):

“widespread consensus has developed over the normative proposition that all individuals are morally equal as individuals. This proposition, the 'postulate of equality', has been a centerpiece of liberal philosophy ... One of the important consequences of the postulate of equality's rejection of certain natural, social, and cultural differences as the basis for treating individuals unequally is that it places the burden of persuasion on the proponent of a factual difference between individuals as providing a sufficient moral justification for treating such individuals unequally. This creates a presumption of equality that stipulates that justice requires that individuals must be treated equally and that each departure from that standard must be separately justified by morally persuasive considerations” (pp. 851-852).

Since practically all feminist advocates of differential treatment of women claim to do so from a commitment to this very same postulate, the strength of their arguments to a large extent depends on whether they can bring their claims about gender difference in line with it.

In keeping with my focus on the relationship between equal and differential treatment with regard to gender, I will only consider those justifications for quota hiring

that are based on the goal of promoting gender equality – though this goal can be and indeed has been interpreted in various ways, as will be demonstrated. This means that this paper will not go into arguments based on group compensation for past wrongs, as well as those centred on the promotion of diversity. This decision does not reflect a belief on my part that these arguments are a priori invalid; they may well turn out to be stronger than the ones I will analyse, but by virtue of serving some other value.

Given these restrictions, many different justifications of affirmative action remain. I would like to organize them along the lines of a typology devised by Radcliffe Richards (1998), who has observed that feminist calls for gender equality are usually voiced in response to an observed inequality of outcome, and can be categorized based on their argumentation as to why this outcome is unfair. Doing this results in three main strands of argument: those claiming that unequal outcomes are inherently unfair, that they are unfair because they are evidence of unequal treatment, and that they are not in themselves unfair but undesirable since they have adverse consequences. Because calls for affirmative action in the form of women quotas are commonly brought forward in response to observations that women do not occupy enough of the available jobs in a certain sector, organization, company or function level – thus, in effect, observations of inequalities in outcome – this seems like a promising starting point in analysing the various justifications of such quotas. I certainly do not aim to provide a complete overview and analysis of all justifications of quota systems out there; such a project would far exceed the scope of this paper. Instead, I will attempt to pick out the most important strands of argument and make explicit what is implicit in them. The categorization used does not reflect completely distinct arguments – on the contrary, this field of study is marked by a lot of overlap between the justifications presented by different authors. I hope, however, that each approach will highlight different elements of the arguments, and thereby contribute to a more thorough understanding of the debate.

In line with the strategy proposed above, the main body of this paper consists of three main chapters, each examining a major line of argument in support of women quotas, as represented by a number of key authors. Each part will start by outlining the core of the argument, including points of disagreement among the authors considered, where relevant. Consequently, each justification will be analysed in terms of its

particular interpretation of the concepts of gender and equality, as well as the empirical assumptions and moral principles on which it rests. Finally, the coherence of the justification and the plausibility of its premises will be critically assessed.



# **1 The justification from compensation**

The first type of justification for affirmative action I will discuss is that which defends quota hiring in response to a perceived underrepresentation of women in certain occupations, sectors or levels; not because such underrepresentation is as such undesirable, but because it is taken to be an indication of unequal opportunities for women, due to both explicit and covert forms of discrimination. Defenders of this view hold that, since these practices are difficult to address or even pinpoint directly, we should counteract their negative effect on women's employment by adopting hiring quotas.

## **1.1 Main arguments**

The claim that unequal distribution of jobs between men and women constitutes clear proof of discrimination is supported by many feminist scholars. Often it seems to be internalized to such an extent that the connection between inequalities in outcome and discrimination is not even explicitly stated. Bergmann (1999), for instance, begins her defence of quotas by painting a picture of race and gender in the workplace that is clearly supposed to speak for itself:

“anyone passing a building site will notice that all the workers are men. Anyone enrolled at a sizeable university is likely to find that among the school’s 150 or so tenured professors of chemistry, economics, and political science none is black, perhaps 2 or 3 are female. When something big happens on the financial markets, and the newspapers run a photograph of the crowded trading floor of the New York Stock Exchange or of one of the commodity exchanges, the picture shows dozens of people, all of them men, all of them white” (p. 759).

Authors such as Warren (1977) and Bielby (2000) explicitly share the same assumption, but do not attempt to justify it. The most elaborate defence has been put forward by

Phillips (2004), who, in an influential article, calls for a reevaluation of equality of outcome. Rather than an extreme alternative to the more popular concept of equality of opportunity, she argues that it should in fact be seen as the most appropriate measure of equal opportunity, defined in the broad terms of access to roles, activities and resources. Since it is unlikely that sex is valid as a feature based on which a person is not or less suited for a particular task, we should expect jobs and positions to be divided roughly equally between men and women. Thus, “where there are known inequalities in background conditions, the burden of proof lies with those who proclaim ‘difference’ rather than inequality as the cause” (p. 11). In the case of political representation, Phillips words this argument as follows:

“if nothing were stopping people, if nothing got in their way, we would expect a roughly random distribution of political office and influence among all citizens ...

The only legitimate discrepancies would be those that mapped on to politically salient characteristics, so we would not be surprised if our political representatives turned out to be more literate or articulate than the average citizen ... But we would – or at least should – be surprised if they turned out to be more male or more white, for why would either gender or ‘race’ be associated with whatever the society has come to regard as relevant political attributes? Failing some weird stretch of DNA that attaches sex and race to the capacity to make speeches or deliberate on public affairs, the only explanation for under-representation is that something is blocking the way. The outcome then becomes the measure of the opportunities, for if the outcome is not equal, we can be reasonably certain that the opportunities were not so” (p. 8).

What discriminatory forces are to blame, according to these advocates of compensatory quotas? It seems that the range of practices and phenomena to be combated is fairly wide, although different authors emphasize different problems. All share a concern with what we may call classic or overt sexism, referring to cases where the reason for refusing women a job or giving them lesser benefits or pay is that they are women. Bergmann in particular expresses the concern that this form of discrimination continues

to be omnipresent and still needs to be combated (1999, pp. 757-758).

There is also a growing amount of attention being paid to more indirect and elusive forms of discrimination against women. A good example is the work of Mary Anne Warren. She argues that we can distinguish between two types of sexism. Primary sexism occurs when women (or less typically, men) are unfairly discriminated against due to their sex. The reasoning behind the decision not to hire a woman, whether conscious or unconscious, takes the form of: 'she is a woman, and women are not/less suited for this job, because of *x*'. Equally detrimental to the position of women in the labour market, however, is secondary sexism: hiring practices that are "intrinsically sex-neutral yet *de facto* discriminatory" (1977, p. 242). Warren rejects these practices as sexist since, "while not using sex itself as a reason for discrimination, [they] do involve sex-correlated factors or criteria and do result in an unfair impact upon (certain) women" (ibid.). A similar contrast is drawn by Tomei (2003), who uses the terms "direct sexism" and "indirect sexism", stressing how the latter feeds off the former (pp. 402-403). Secondary or indirect sexism is unfair, say Tomei and Warren, because it builds on and reinforces existing disadvantages women suffer due to instances of primary sexism. Also, covert sexism is all the more dangerous to women because, unlike primary sexism, it can easily be defended by means of referring to at first glance sex-neutral and reasonable criteria.

Warren is predominantly concerned with those criteria that touch upon the time that is and has been available to candidates for work and education, since women, due to caring obligations, tend to be disadvantaged in these areas. Thus, she mentions as instances of sexist hiring practices: hiring by financial need of the applicant, the 'last-hired-first-fired'-principle, refusing benefits and promotions to part-time workers, passing over candidates with known childcare duties, and preferring employees with uninterrupted work records (pp. 245-246). These factors could be called positional in nature. Bielby, however, focuses instead on the capabilities and character traits women are (thought to) bring to the work floor. He points out, among other things, how women have more difficulty adhering to existing moulds of 'the perfect employee' than men, are often uncomfortable with the social climate or negotiating style, and are being treated with mistrust or even hostility because of it (2000, pp. 122-123).

As a result of these factors, women are still deemed to have unequal chances on

the job market, in spite of efforts to combat discrimination by employers. This is why, according to advocates such as Warren, we need gender quotas: they serve “to counteract this ongoing discrimination and thus make the competition for such jobs more nearly fair” (1977, p. 240). Thus, quotas should be seen as compensating for discrimination rather than actively combating it – they mimic the effects of fair hiring (that is to say, hiring based solely on merit) on women’s job opportunities. The ideal shape that such quotas should take is subject to internal debate: whereas Phillips seems to support a strict 50-50 division, Warren prefers a system of 'weak' quotas, where the percentage of jobs filled by women is equal to the percentage of women in the pool of available and qualified applicants (p. 251).

## **1.2 Concepts and assumptions**

The authors discussed so far defend women quotas as a means towards greater gender equality, but what is meant by ‘gender’ and ‘equality’ and how do these two concepts relate to each other? Moreover, what empirical and normative assumptions underlie the way these concepts are interpreted and connected with affirmative action measures?

A first important thing to note is that, for proponents of compensatory quotas, sex and gender are related yet distinct concepts, in that neither of them contains any part of the other. ‘Sex’ refers solely to biology, while ‘gender’ is used to denote those traits, roles and positions that tend to be correlated to sex due to social conventions, divisions of labour both in the home and in society at large, differential education of boys and girls, as well as overt discriminatory acts in response to someone’s sex. The focus on indirect or secondary sexism as an inadmissible form of unfairness considerably extends the meaning of gender: it encompasses not only value judgements and stereotypes commonly attached to sex (which, one could argue, is the interpretation of gender that goes with a focus on primary sexism), but also any disadvantages that are wholly or partially due to these views of femininity. In establishing that being a woman tends to be related to having considerable caring obligations, for example, and concluding that to use such obligations as a ground not to hire someone constitutes discrimination on the

basis of gender, they are made an integral part of gender itself. Bergmann goes so far as to suggest that one of the main goals of affirmative action initiatives is to help the relatively large numbers of women as well as members of ethnic minorities living in poverty, and that this problem is integral to the aim of eradicating discrimination (1999, p. 759). In contrast to this broad understanding of gender, the concept of sex used in the compensatory defence of quotas is a very limited one, which it clearly must be if there is to be no possibility that any differences between the sexes are relevant to work performance. It remains an open question whether this view leaves any room for sex differences at all.

For the authors analysed here, gender appears to be not only wholly socially constructed, but also valued negatively. At the same time, they express little faith regarding the possibility of targeting harmful aspects of gender directly. Teigen (2000) has pointed out how this view ties in with a strongly contextual, situated view of the person, which leaves little room for individual autonomy (pp. 71-72): choice is downplayed as a factor explaining differences in outcome. Phillips, for example, acknowledges the possibility that women as a group have overall different dispositions and value judgements of certain activities or ways of life, which would for instance, make them more inclined to take up caring tasks. However, she claims that the existence of highly unequal social structures makes it impossible for us to know what inequalities of outcome are due to the free choices of men and women. It can even be questioned whether it makes sense to speak of free choices, since are usually not a reflection of 'pure' preferences, but rather "a pragmatic adjustment to an often unwelcoming environment that has made some options more attractive than others" (2004, p. 12), an argument also put forward by Warren (1977, p. 250). Hence, given the abundance of other, more likely explanations, such as prejudice or socio-economic disadvantage, Phillips argues that it is a "safer bet" to assume that men and women's dispositions are the same, and that unequal outcomes are due to some sort of illegitimate impediment (2004, p. 13). Moreover, she worries that in many cases explanations of difference based on sex "reproduce ideologically suspect stereotypes about particular social groups: that 'women' for example, care more about children than men, or have less of a taste for political power" (p. 6). Thus, counterarguments referring to individual choice are viewed as not only conceptually but also morally questionable.

The concept of equality has two different roles to play in this defence of quota hiring. Firstly, the primary motivation for these advocates of women quotas is equality of opportunity, in the sense that the chances of both men and women to be hired for a job are determined only by what would be decided on as valid criteria of merit in a counterfactual non-sexist world. Thus, the definition of equality of opportunity here is still a procedural one, in that, given fair background conditions, the application of uniform standards determines what would be a fair outcome. This test is obviously difficult to conduct in reality, because it requires one to be able to determine what a completely sex-neutral society would look like, as well as what would be the merit criteria in such a context. Luckily, none of this actually has to be attempted: the assumption that sex differences cannot possibly be relevant to one's suitability for a certain function under absence of sexism allows these scholars to use the much more clear-cut measure of equality of outcome. This second type of equality refers to proportionality: the results of fair hiring are correctly mimicked when the share of women occupying the available jobs equals that in either the entire population or some limited segment of it, such as applicants. Thus, while equality of outcome is used as the measure of fairness, equality of opportunity serves to define and justify this aim.

### **1.3 Assessment**

Firstly, let us evaluate the claim that unequal outcomes (an uneven distribution of men and women within a given occupation, field or function level) are a valid indicator of unequal chances of acquiring jobs. While authors like Warren and Phillips are certainly right about the situated nature of choices, the assertion that different dispositions are so unlikely to stem from anything other than discriminatory practices that the burden of proof can be placed wholly with defenders of difference seems overstated. It depends on the assumption that there are few if any substantial natural differences between the sexes that have a bearing on their (perceived) aptitude for certain jobs. As Radcliffe Richards points out, considering the growing body of evidence about biological differences between men and women in terms of their physical, mental and emotional functioning, this assumption is not warranted (1998, p. 234).

The fact that so many people, scholars, popular press and public alike, nonetheless accept it, could be the effect of a deeply ingrained normative axiom being transferred into the domain of empirical facts. This is an understandable strategy for those interested in furthering gender equality: claims to equal moral worth and rights for women are best supported by pointing out ways in which women can do the same things men do. I do not believe that doing so is problematic in all contexts; in fact, it can be the crucial push that shifts the balance of a general perception biased in favour of men's capabilities. However, the bolder the claim, the more solid the evidence must be: it is one thing to say that, in general, we can depart from assumptions of gender equality, and investigate matters further only in cases that strongly suggest otherwise, quite another to jump from 'it is a safer bet to presume A rather than B caused C' to 'B is so unlikely we can conclude that any C is caused by A'. There is no valid reason to *a priori* strike sex from the list of possible causal factors of inequalities in employment if the outcomes are significantly skewed along this dimension.

This is not to say that I expect sex to be a dividing factor in all or even most capabilities or character traits. Most psychological research in this field suggests that sex differences along these lines are usually non-existent or very small. However, the crucial point is that this research needs to be done, not merely imagined. Claims like those made by Phillips, whether they stress the differences or similarities between the sexes, require positive evidence. Obviously, a significant bias along the dimension of sex may not be caused by biological difference directly relevant to the task under consideration, but rather by the effects of socialization, discriminatory social structures and role patterns or overt sexism. In other words, sex may be blamed (or used) where gender is doing the work. This is exactly the phenomenon that prompted the rise of the concept of gender in feminist theory. However, I am less pessimistic than Phillips regarding the possibilities of disentangling the effects of sex and of gender, as well as regarding the degree to which discriminatory mechanisms can be observed in their own right.

Moreover, there should be strong normative considerations urging proponents of compensatory quotas to care about the precise cause of inequalities; unlike defenders of 'pure' equality of outcome (see chapter 2), they are concerned about eradicating unfair treatment of women, and their justification of affirmative action programmes relies on

the role such unfair treatment plays in bringing about unequal outcomes. As Nagel (1973) stresses, where a compensatory measure “depends on the claim that the disadvantages being compensated for are the product of social injustice, then it becomes important how great the contribution of social injustice actually is, and to what extent the situation is due to social causes not involving injustice, or to causes that are not social, but biological” (p. 350). In a similar vein, Holst (2005) warns that a preoccupation with creating equal outcomes may lead one to lose sight of the role of individual choice, which denies individuals the respect owed to them by principles of justice:

“[p]references may be described as ‘false’ to the extent that they are determined by circumstances over which we have no control. In that case, the focus should be on under what circumstances our choices are made, not on what we choose, whether we, for example, choose gender-typical or gender-untypical. Unbalanced gender distributions can be a result of ‘false’ preferences or ‘real’ preferences. Imbalance on group level does not necessarily indicate lack of freedom at the individual level, regardless of the circumstances, nor are the untypical choices that are made necessarily more free than the typical ones” (p. 330).

The author rightly points out that, while the existence of role patterns and gender stereotypes makes it more difficult to speak of 'real' preferences, this does not warrant the extreme conclusion that choice no longer plays any role in women's behaviour. In the next section, I will argue that, in addition to the potential effects of biological difference and individual choice being unduly rejected, the distinction between fair and unfair social causes of unequal outcomes tends to fall away in the compensatory justification of hiring quotas and, therefore, that its supporters are overstepping their aims.

In addition to the validity of its empirical claims, one can question the coherence of the way in which proponents of compensatory quotas conceptualize their aim of equal treatment of men and women, as well as the reasons they give for declaring practices unfair. On the one hand, unfair discrimination in hiring is defined as any



discrimination causing a disproportionately small number of women to be hired which is not a valid measure of (expected) merit. Thus, this last criterion is the only ground on which any hiring practice that disfavors women can be justified. On the other hand, the examples authors such as Warren give of unfair hiring criteria, such as the time a prospective employee is expected to be able to dedicate to his or her job, suggest that, in their view, any criterion that causes more men than women to qualify for a position is very unlikely to be an adequate measure of merit. The assumption behind this view is clear: these authors do not believe that sex could ever be relevant in determining someone's aptitude for a task. Thus, the merit proviso is effectively a façade, which has no additional value in identifying unfair discrimination: equal treatment of men and women in hiring requires equal outcomes, and any criterion that makes women less likely to be chosen is suspect.

This raises the crucial question of justification: why is such covert or secondary sexism unfair? It is this question that poses a much greater problem for proponents of compensatory quotas than they themselves seem to realize. The unfairness in primary sexism is seen as lying in the fact that judgements are wrongly applied. Warren, for instance, argues that it is primary sexism if a woman is not hired because those in charge of the decision think women cannot do the job, while they can, or if a problematic characteristic does apply to many or most women but not to the particular woman applying for the job (1977, p. 241). In cases of secondary sexism, however, this does not apply: the woman who is not hired because of her extensive caring obligations really does have them; if she did not, we would be facing a case of misapplied stereotypes or generalizations, hence, of primary sexism.

So what is unfair about an employer choosing the employee who can spend the most time on the job he or she is to fulfil? It may be that in most cases, this person will turn out to be a man, given persistent role patterns in our society. But does this make the act of hiring person A rather than B by the employer a case of sexism? I would argue that it does not. To call such practices sexist is incorrect and dangerous, since it misplaces the burden of responsibility. The unfairness in this case lies in the social structures that cause women to be primarily put in charge of caring for dependants. It is these structures that cause the correlation between sex and time available for work. Thus, even if one believes, like Warren, that sex can never be a relevant hiring criterion,

this does not warrant the conclusion that any unequal outcome in job distribution is a sign of conscious or unconscious sexism on the part of the employer, for he may have selected on a criterion which is a perfectly reasonable indicator of future job performance, but which is correlated with sex due to causes beyond his or her control.

These correlations also explain why the expectation that fair hiring should produce a distribution that is perfectly random on all traits that are irrelevant to the situation (Phillips, 2004, pp. 6-7) is misguided. Those traits that are relevant regarding one's aptitude for a job are bound to be correlated with other traits that are not – physical strength with sex and age, education level with socio-economic background, language proficiency with national origin, etc. Thus, the functional nature of the hiring company or organization produces a distribution of employment that is skewed along many dimensions. I would claim that this even holds for the domain of political representation, in which disproportionately small numbers of women and members of ethnic minorities are often criticized as proof that the representation system is flawed. It is not due to this system, however, that relatively many women lack the time for a political career, or that a disproportionate part of minorities have not received the education necessary to do the job. Phillips acknowledges these facts, but stresses that it is of no great importance where in the complex causal chain between sex or ethnicity and representation in parliament lies the root of the inequality in question: “a disparity arising from overt discrimination should not be regarded as significantly different from one that arises out of structural constraints ... These socially constructed differences – themselves expressions of inequality – can be as important in their effects as overt discrimination” (pp. 7-8). The latter is obviously true, but beside the point: the precise cause of an inequality is of crucial importance when it comes to explaining why it is unfair as well as finding the best method to counteract it.

This problem points out a major flaw in the strategy of taking unequal outcomes as proof of unequal chances: it causes scholars to not distinguish adequately between fair and unfair grounds of discrimination. This makes it more difficult to convince others of the necessity of combating sexism in the job market, and risks antagonizing people against measures targeting even overt or primary sexist practices. In this way, paying insufficient attention to defending gender equality in a way that is geared towards each specific situation may harm the entire feminist agenda.

Finally, there are good reasons to question the claim that quotas are the best or even an adequate remedy against either overt or hidden sexism, even if one were convinced of its unfairness. Firstly, hiring quotas for women target sex rather than gender: they increase the chances of acquiring jobs for all women, not just those that are or have been a victim of sexist practices or structures. This makes them a rather imprecise measure: they are bound to give advantages to some that do not need them while denying them to others that do. A quota may for instance bring an organization or company filling a job opening to choose a single woman from a privileged background over a man involved in childcare. One could argue, of course, that the vast majority of women today either is or has been in some way disadvantaged by sexist practices ingrained in society. This may well be so; nevertheless, it is very likely that employers, keen on meeting their women quotas with as little cost to familiar practices and productivity as possible, will seek to fill their 'female' positions with those women who are similarly disposed and situated as their ideal (male) employee. Hence, more disadvantaged women will probably not be helped by these measures.

Defenders of quota systems might also say: so what if we also or even predominantly help privileged women – at least we are giving jobs to *women*, which, surely, is the point of feminism? This argument has intuitive appeal; there is, however, something strange about it in light of the feminist cause as equality between the sexes rather than the rule of women. If it is unfair that a woman with the obligation to take care of her children (or other dependent relatives) has little chance of getting a job, why is it not equally unfair if the same obligation has this effect for a man? Surely, the former may be far more prevalent, and more likely to be due to stereotypical gender roles, but this can hardly be blamed on the child-rearing man. The crucial point here is that women quotas produce their own type of unequal treatment: while starting from the claim that women need help because they face particular disadvantages, they result in men and women that are similarly situated being treated differently. Bergmann provides an insightful argument in this vein. She claims that an important reason to adopt affirmative action initiatives for women and blacks is to help combat their poverty. At the same time, she rejects the alternative policy of targeting aid programmes at the poor in general with the curious argument that the majority of the poor are white (1999, p. 761). I would reply that if one argues blacks need special help because they tend to be

poor, this implies that poverty, not being black, is the key disadvantage at play; so why would aid programmes be aimed at race instead of poverty? Obviously, blacks may deal with many other disadvantages, but propensity to poverty cannot be one used to defend race quotas over income-based measures.

A related question is whether it is fair to hold employers responsible for improving women's position in the labour market. We have already seen that it is highly questionable to blame them for any unequal outcomes their hiring decisions may have: even though these results may be called unfair, they are usually caused by other factors. Thus, in most cases the question is not: should employers be made to correct for their own sexism, but rather: should they be made to correct for the sexism of others, or the social system as a whole? I cannot conceive of any compelling reason to do so. It must be remembered that the costs of women quotas to employers can be considerable: depending on the available stock of candidates, they may have to settle for less able employees, and they may be forced to make serious changes to business practices and codes of conduct which can, especially in the short run, cause friction in the company's dealings with clients and other businesses. If the hiring process were the most effective place to intervene, it could perhaps be argued that this social utility outweighs the costs to employers, but as we have discussed above, this is not the case. Some authors have defended hiring quotas by saying that the job market is part of the discriminatory social structure that is holding women back, and is therefore a valid target. However, as argued above, what is referred to as secondary or covert sexism are not instances of unfair practices by employers, and primary sexism can be addressed with far more effective and targeted measures than quotas. Furthermore, even if employers are guilty of being part of the problem, this hardly justifies making them responsible for fixing it in its entirety.

We can conclude that hiring quotas for women are not an adequate solution to unequal chances in the labour market. Are there any better options? I would say, with Nagel, that it is preferable to target not the connection between job requirements and certain traits or abilities, but rather that between the latter and sex. He convincingly argues that

“[t]here is ... considerable appeal to the position that places should be filled

solely by reference to the criteria relevant to performance, and if this tends to amplify or extend the effects of inequitable treatment elsewhere, the remedy must be found in a more direct attack on those differences in qualifications, rather than in the introduction of irrelevant criteria of appointment or admission which will also sacrifice efficiency, productivity, or effectiveness of the institution in its specific tasks” (1973, p. 351).

Such a targeted approach is hardly new. Compare the following example: the most common strategy to ensure more equal job opportunities for people from a disadvantaged socio-economic background is to provide them with the education and training they need to compete, not to eliminate educational and skills requirements for entry into certain jobs.

Similarly, social conventions should be challenged where they cause women to bear the brunt of unpaid, low-status work, or to think that they cannot study physics or should always comport themselves with modesty and obedience. In this way, equal treatment of the sexes is less likely to clash with the demands of merit. I think that authors like Warren are unduly pessimistic about the possibility of identifying and targeting sexist conventions and role patterns in our society. This pessimism provides another argument against hiring quotas: if the underlying causes of unequal allocation of jobs cannot be remedied, this means that, in order to create a fair outcome, quotas must be a permanent feature of the hiring process. This means that the demands of formal equality are to be overruled not as a temporary transition measure but structurally, which will make it even more difficult to defend.

#### **1.4 Concluding remarks**

This discussion has revealed a number of fundamental weaknesses in justificatory defences of affirmative action measures. The supposition that unequal outcomes can be taken as proof of unfair discrimination is based on questionable and largely unfounded assumptions. Should further empirical research turn out to support these assumptions,

the normative case for targeting hiring practices is far from solid, since it remains unclear what criteria are used to determine when discrimination is unfair, and insufficient attention is being paid to distinguishing between different causes of unequal outcomes. Due to this failure to adequately locate those actions and structures responsible for sexism, the fact that quotas largely target the wrong ones is overlooked. Preferential treatment based purely on sex will distribute benefits very imprecisely, create new inequalities between men and women in similar situations, and place an unduly large burden on employees. The arguments brought up by feminist authors are too theoretically weak to effectively counter these objections.

## **2 The justification from difference**

Some of the problems associated with deducing unfair discrimination from unequal outcomes may be avoided by a second, more radical type of justification. This is based on the argument that, regardless of what causes them, inequalities in job distribution are unfair, since all causes are morally arbitrary. Put briefly, whether John will get a better job than Jane because he is more educated or intelligent, better looking or connected, or simply because he is a man, none of these features entitle him to this advantaged position, since he has come to possess them largely through factors other than his own effort (a concept which, in itself, can be said to contain a substantial involuntary component: think of the importance of personality traits, physical and mental strength, etc.). As such, any inequalities in the distribution of jobs between the sexes should be rectified by imposing quotas. This justification is used less often than the first in more popular discourse, arguably because of its serious implications for the moral status of the principle of merit. It remains quite influential in academic literature, however, one of its best-know proponents being Iris Marion Young. It is her argument I will discuss next.

### **2.1 Main arguments**

Young's arguments in favour of gender quotas flow from a rejection of the traditional terms of the affirmative action debate, based on the concepts of discrimination and equal treatment, and an attempt to change these terms. In a chapter of her influential book *Justice and the Politics of Difference*, specifically dedicated to the issue, Young questions the justice of two features of our professional structure that usually go unchallenged: firstly, that of a hierarchical and highly differentiated job market or division of labour, with its strong competition for scarce desirable and well-paid jobs, and secondly, that of the principle of awarding positions on the basis of merit as the default procedure, which one needs good reasons to overrule (1990, p. 193). Whereas the former contributes greatly to the stakes of the affirmative action debate being as

high as they are (p. 200), the latter in particular constitutes a key obstacle to gender justice.

Young argues that “for the merit principle to apply it must be possible to identify, measure, compare, and rank individual performance of job-related tasks using criteria that are normatively and culturally neutral” (p. 193). For most positions, however, it is not possible to limit the desired qualification to purely technical skills and competences, as the tasks an employee is to perform are also or exclusively social in nature, too complex, or only broadly defined. Instead, criteria of good work in these cases tend to extend to the whole of the person: “they concern whether the person evaluated supports and internalizes specific values, follows implicit or explicit social rules of behaviour, supports social purposes, or exhibits specific traits of character, behaviour, or temperament that the evaluators find desirable” (p. 204). Thus, they are largely cultural and normative in character, reflecting the culture of the dominant group. As Tomei (2003) points out:

“[c]ompanies' values and ideas about preferred ways of doing things and about appropriate jobholders, career paths and organizational rewards are commonly presented as expressing a general and shared interest and orientation, while in fact they are constructed on human and power relationships. They reflect arrangements in work organization that result from a series of bargains and compromises between various parties – processes in which women and other groups discriminated against have not played a significant or influential part” (pp. 406-407).

These authors recognize that this is unavoidable, but it does imply that it is impossible to apply neutral work standards equally to all (prospective) employees.

Since the entire notion of equal or neutral treatment is flawed, says Young, equality of opportunity is altogether the wrong way of looking at gender justice; instead, we should view this goal within a framework of domination and oppression (1990, p. 192). By doing so, and thus letting go of the moral primacy of non-discrimination, we can avoid the problematic conclusion that both adopting and rejecting quotas supports



discrimination: within the framework of oppression, it is easy to see the difference between unconscious biases and stereotypes disadvantaging women, on the one hand, and conscious policies giving advantages to women as a disadvantaged group, on the other (p. 195). Obviously, as she also admits, this requires one to let go of the notion that justice is a matter of relationships between individuals and not groups: “oppression, not discrimination, is the primary concept for naming group-related injustice” (ibid.). In this interpretation, what Young calls the “myth of merit” is an unfair selection tool, because it perpetuates oppressive relationships and masks the arbitrariness of many traits determining people's success in life and place in society. In other words, “this principle is central to legitimating a hierarchical division of labour in a liberal democratic society which assumes the equal moral and political worth of all persons” (p. 200). Burns and Schapper (2008) are similarly sceptical about the real purpose of the merit criterion, seeking an explanation for resistance to affirmative action measures in deep-seated feelings of personal desert on the part of those in charge:

“[f]or Western countries with individualistic cultures ... what is honoured and esteemed goes to the very heart of our identity, self-worth and sense making. When we accord certain characteristics or actions a basis of deservedness, by implication we are deeming claimants to those things *worthy* of certain kinds of treatment” (p. 376, emphasis in original).

The adoption of this different approach opens the door for differential treatment as a legitimate means towards gender equality. Other feminist authors working within this approach have gone so far as to abandon the term equality altogether, and framed their aims in terms of power or autonomy instead. Gross (1986), for instance, writes:

“Equality is the equivalence of two (or more) terms, one of which takes the role of norm or model in unquestionable ways. Autonomy, by contrast, implies the right to accept or reject such norms or standards according to their appropriateness to one's self-definition” (p. 193).

Young, however, recognizes that “the participation and inclusion of all groups in institutions and positions” ultimately derives its value from the principle of moral equality (1990, p. 200), and thus, that measures towards this goal are in fact furthering gender equality. Whether differential treatment is just or unjust depends on which groups of people it serves or disadvantages: “if differentiation of groups reinforces undesirable stereotypes about their members, excludes them, segregates them, or puts them in subordinate positions, then it is wrong” (p. 197). Conversely, if it counteracts oppression, there may even be a moral imperative to discriminate.

Young defends the adoption of quotas for women and other disadvantaged groups as a tool of compensation, similarly to the authors discussed in part 1. Unlike these scholars, however, she locates the injustice which is being compensated for explicitly in the biased standards used in the hiring process, instead of the interaction between in principle neutral criteria with sexist structures in other domains of society (2006, p. 260). She claims that, while these standards can be changed, they can never be made neutral or fair: “in a group-differentiated society, ... the development of truly neutral standards and evaluations is difficult or impossible, because female, black, or Latino cultural experience and the dominant cultures are in many respects not reducible to a common measure” (ibid.). One cultural perspective is always dominant; hence, we must use quotas to bypass it.

Justifications for affirmative action like Young's tend to stay relatively theoretical – although a less radical variation of it has proven much more successful, as we will see in part 3. It is not often heard outside of academic debate, arguably because its implication of letting go of merit-based distribution of positions and benefits to a considerable extent is too extreme for most. Arguments similar to Young's have been expressed earlier in the field of legal studies, for instance by Fiss (1976), who has called for a reinterpretation of the American Equal Protection Clause as based on the aim of protecting disadvantaged groups rather than combating discrimination. There is also some overlap with more recent proposals from the field of Human Resource Management regarding the differential treatment of employees based on their specific strengths and preferences, as well as the promotion of diversity of all kinds within the workforce (Liff & Wajcman, 1996, pp. 83-84). Such measures, however, are usually defended with arguments of utility, not justice or equality: it is often claimed, for

instance, that mixed-gender teams achieve better results, or that women bring specifically female skills to the work floor. While such initiatives may in some cases point in the same direction as those aimed at gender equality, they can also be detrimental, for instance by reinforcing stereotypes. Since measures based on the benefits of diversity rely on very different motivations, they are not necessarily a help to those seeking to improve the position of women. As Skjeie and Teigen (2005) put it:

“[t]here is a deeply problematic rhetorical trap in the appealing utility arguments.

When gender equality is argued as a means of securing competitiveness and/or broader points of view, the category of “women” becomes a representation of “means” for companies and organizations to use. Utility puts equality on the defence: A field that must be defended with something else than its own value. And participation becomes contingent on other success criteria: What if women’s equal participation does not change priorities or enforce productivity? Should existing regulations for gender balance then be abolished?” (p. 192).

## **2.2 Concepts and assumptions**

In the difference-based justification of affirmative action initiatives, the possibility that there are significant natural differences between men and women is left open. However, any distinction made between natural or social causes of women’s experience or position is morally irrelevant: both are seen as equally unfair bases for selection. Thus, one could say that for scholars such as Young, there is little meaning in the difference between sex and gender, if the latter is interpreted in the socially constructed sense we have seen in chapter 1. Alternatively, we can choose to define gender as the entire life experience of women, regardless of how similar or divergent these experiences may be: one of the central points of Young's work seems to be that women determine what is feminine, not the other way around. This may well be taken to its extreme in the claim that whatever means women use to identify themselves thereby become part of

femininity.

Whereas the central place of the concept of difference may suggest otherwise, there is still a specific interpretation of equality being defended here. This interpretation is that of equality of outcome, in the sense that varieties in input deserve equal respect – following the equal moral worth of persons – and should be considered equal in the distribution of power and things of value. Thus, rather than equal outcomes serving as proof that the key objective of fair selection has been achieved (as according to advocates of compensatory quotas), equality of outcome itself is the aim, and the procedures guiding the division of jobs should be adapted so as to meet this goal. Where the input of disadvantaged groups in the labour market is too low, we need quotas to fix this: different cases, after all, should be treated differently. The entire notion of fair procedure is put aside as impossible, and formally equal treatment loses its moral force.

Young's propensity to viewing equality as a matter of power relations among groups, together with the aim of overriding existing mechanisms of selection and distribution, leads me to argue that the type of substantive equality defended in her work corresponds to what Tomei (2003; adapted from McCrudden, 2002) has termed “equality as social justice”. In this model, the fairness of a hiring process – whether on merit or by use of quotas – is determined first and foremost by its results rather than its procedures. The problem is seen in terms of domination and disadvantage instead of discrimination, and the primary aim of affirmative action initiatives is to address the negative effects of the power imbalance between privileged and subordinated groups. The use of quotas and other preferential hiring measures is seen as a legitimate tool to ensure fair participation of disadvantaged groups in institutions to which they are traditionally refused access, including the workplace (pp. 411-413).

The justification strategy used by Young does rely on the normative assumption that all people are of equal moral worth, and, more importantly, that respecting this moral worth requires one to abstain from disadvantaging or subordinating some people in favour of others. This claim, in turn, depends on a view of the person that is on the one hand multifaceted, inextricably embedded in social structures and shaped by personal experiences, and on the other hand unified, in the sense that one always carries one's contextual baggage along and cannot act out of merely one role or dimension of oneself. In this sense, the self is at all times a gendered self, and consequently, gender is

relevant in every situation. The connection between the principle of equal respect for persons (in which consists the element of sameness) and equal consideration of differences is the most controversial element of the argument, as we will see in the next section.

### **2.3 Assessment**

How convincing is the interpretation of equality central to the difference approach? At first glance, it seems like a more radical but consistent application of the widely accepted idea that unchosen traits are morally arbitrary and should therefore not affect one's success in life. Given the assumption – which seems to be endorsed by Young – that there is little free choice involved in the subordinated position and the distinct experiences of certain groups, this principle provides a strong justification for trying to divide desirable positions and benefits more equally among groups.

There are, however, a number of theoretical and practical problems with this justification. First of all, the principle sits uneasy with Young's group-based approach to equality. As pointed out by Nagel (1973), such an approach provides no good reason for a preoccupation with the position of certain groups, let alone for a special concern for that of women. After all, there are countless traits which may cause one to be seen as less suited or desirable for a job, in addition to the standard list of what are traditionally seen as politically relevant features – race, sex, religion, nationality and sexual orientation being referred to most often. It is not unlikely to assume that every person possesses at least one morally arbitrary feature that has consistently disadvantaged him or her in the competition for desirable benefits: consider, for instance, the lot of “a left-handed person, an obese person, a genius, and innumerable other persons deemed to be 'different'” (Foster, 1993, p. 109). Thus, Nagel argues, rather than giving preference to oppressed groups, compensatory measures should take place on an individual basis, with everyone having equal access to the positions in question. This means that selection for jobs would essentially have to take the shape of a lottery. He does not elaborate on this thought, but the main point is clear: “if we were to act on the principle

that different abilities do not merit different rewards, it would result in much more equality than is demanded by proponents of compensatory discrimination” (1973, pp. 352-353).

One could go even further and argue, like Radcliffe Richards, that ultimately Young's reasoning must lead one to accept a core principle of “general egalitarianism”, according to which any inequality in the outcomes concerned is unjust. In other words, there is “injustice unless everyone is a CEO” (1998, p. 237) – a principle which few would conceive of bringing into practice. This also means that inequalities between men and women are of no more importance than any other, while a special concern with an oppressed group like women, on which the feminist cause is based, requires a principle that calls for gender equality within a wider context allowing for inequalities between people along other dimensions. Viewing equality as equality between groups does not make a significant difference here: due to the endless possibilities of defining groups, this ultimately comes down to the requirement that all individuals are equal (*ibid.*), and equality of all in all respects does not provide any guidance for action.

Approaching gender justice in terms of domination and oppression causes Young to focus entirely on certain specific group identities and corresponding experiences and viewpoints, while ignoring others which are equally arbitrary, yet consistently used as selection tools, such as intelligence, talents and personality traits. Consequently, there is an inconsistency between her argumentation in favour of difference and her support for affirmative action initiatives favouring certain groups. Her justification lacks a convincing basis for determining which differences should be recognized and which should be ignored in the allocation of positions and benefits. As Foster puts it, it “lacks a mediating principle for determining which differences should count in its mandate of affirmative inclusion” (1993, p. 130).

This brings us to a second major problem with Young's argument: treating all differences between people equally leaves us without means to discriminate between people at all, whereas the workplace is certainly an area of society where it would be rather hard to avoid doing so. Companies and organizations have specific purposes, and they will not survive long unless they select their employees based on their ability to contribute to achieving these purposes. Accepting the consequences of ignoring all arbitrary traits is a lot easier – though still controversial – when it comes to the

distribution of wealth and income than that of jobs and positions. That is because money is an all-purpose good, which everyone can use to his advantage, whereas jobs need to be done a certain way. It is much less invasive to our economic system to collect and redistribute what is earned by all through market mechanisms than to start randomly giving jobs away, or even to try and make everyone's job equally enjoyable and lucrative. Radical as it sounds, this would be the ultimate consequence of a non-differentiating respect for difference. It is certainly true that the question of which inequalities should and should not have a bearing on one's access to rewards and positions is an open one, but the further the answer is taken, the more it inevitably clashes with both other values and practical constraints. Any moral theory aiming to have practical relevance should take these into account.

I am not convinced that letting go of the concept of merit is a conceivable option in selection of employees – as well as in many other fields. While I am sympathetic towards Young's critique of the injustice inherent in our hierarchical, differentiated economic structure, I tend to agree with Nagel that she is wrong in interpreting this as a problem of group oppression. Rather, racial and gender inequality in the job market should be seen chiefly as a symptom of the more general injustice of the system. As Nagel convincingly argues:

“if it is unjust to reward people differentially for what certain characteristics enable them to do, it is equally unjust whether the distinction is made between a white man and a black man or between two black men, or two white women, or two black women. There is no way of attacking the unjust reward schedules ... of a meritocratic system by attacking their racial or sexual manifestations directly ... Justice may require that we try to reduce the automatic connections between material advantages, cultural opportunity, and institutional authority. But such changes can be brought about, if at all, only by large alterations in the social system, the system of taxation, and the salary structure. They will not be achieved by modifying the admissions or hiring policies of colleges and universities, or even banks, law firms, and businesses” (1973, pp. 357-358).

Finally, there is something inherently contradictory about Young's attitude

towards women's experience. If the views and interests originating from their subordinate position in society are included into the concept of gender and consequently become a locus for equal consideration, we arrive at the strange situation in which the social processes of exclusion and oppression by which women have acquired them are seen as objectionable, but they are at the same time protected by their inclusion into womanhood, which warrants respect. Thus, despite the use of the language of oppression, this approach ultimately tends to place certain differences outside their context and presenting them as given in a way that is hard to justify. Consider the example of women defending their lives as housewives or stay-at-home moms, not as an expression of their right to choose how to live their lives, but with the argument that they are 'doing what good women are supposed to do'. If one reacts to such statements by unquestioningly accepting them as a woman's legitimate interpretation of womanhood, one is ignoring the effects of long-standing restrictive role patterns and relationships of domination, and potentially providing these with a new justification. As Okin (1994) has pointed out,

“we are not always enlightened about what is just by asking persons who seem to be suffering injustices what they want. Oppressed people have often internalized their oppression so well that they have no sense of what they are justly entitled to as human beings. This is certainly the case with gender inequalities” (p. 19).

This also holds, incidentally, for demands at the other extreme: those seen as disadvantaged may claim more, in the name of justice or equality, than it necessarily owes them. Gender equality may, for instance, require that men and women have equal opportunities to divide their time between work and childcare as they see fit, but it is quite another thing to claim that women, in order to be equal, should be facilitated in 'having it all'. After all, there is nothing inherently unequal gender-wise if spending time raising one's children means one will get ahead less quickly at work. Where sex can be decoupled from social and economic roles, this is by far preferable, from the point of view of equality, to overriding justified inequalities along other dimensions.

All this is not to say that the views of those seen as suffering oppression and



disadvantage are completely irrelevant to determining which policies are serving the goal of gender equality. What I have tried to stress is that the difficult question of equal distribution of rights, positions and means cannot be addressed simply by giving certain groups of people whatever they want. To a certain extent, we need to make a choice between trying to eradicate those mechanisms of conditioning and oppression we see as unjust, or embracing them along with the gender pattern that results from it; doing both is useless at best, and harmful at worst.

## **2.4 Concluding remarks**

The difference-based justification of women quotas has turned out to be no more convincing than the one discussed previously. The theoretical basis on which authors like Young defend their ideal of equal outcomes for groups does not warrant a special preoccupation with the lot of women, or indeed that of any specific groups, since the number of arbitrary traits disadvantaging one in the labour market is potentially infinite. In addition, the subjective and extensive interpretation of gender does not leave us with any valid basis to make distinctions between people at all, which can hardly be avoided in a work environment. Young has not provided any plausible alternative to replace the concept of merit she so strongly rejects. Finally, treating the role patterns and viewpoints which are the result of women's oppression as something to be *a priori* respected works against the feminist cause of ending such oppressive structures and practices. For these reasons, I would argue that this justification does little to promote the ideal of gender equality.

### **3 The instrumentalist justification**

The third and final strand of justification of affirmative action can be seen as a variation of the second, but is discussed separately here because it diverges in crucial places from the previous argument. It takes the idea of gendered perspectives one step further by presenting an essentialist picture of 'the female view', which advocates argue is not or insufficiently represented in existing standards of good work. Unlike Young, however, the authors discussed below do believe that these standards can be made fairer, and the means by which they propose to achieve this is to make employers hire more women who can consequently make workplace norms more feminine.

#### **3.1 Main arguments**

The argument that quotas will serve to introduce a much-needed 'female' point of view to traditionally male-dominated institutions is widespread in feminist academic discourse. Women quotas in various domains have been arduously defended on these grounds by authors such as MacKinnon (1987) and Abrams (1990). Like Young, MacKinnon has been one of the most influential feminist authors in stressing the male bias present in practically every institution in our societies. She argues that formally equal application of rules and standards cannot lead to true equality when the nature and origin of these standards makes them much more difficult – or even impossible – for women to meet. Given the fact that, for centuries, men have been in charge of shaping the vast majority of roles and positions, including jobs, it is hardly surprising that

“virtually every quality that distinguishes men from women is affirmatively compensated in this society. Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially-designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines

citizenship, their presence defines family, their inability to get along with each other – their wars and rulerships – define history, their image defines god, and their genitals define sex. For each of their differences from women, what amounts to an affirmative action plan is in effect, otherwise known as the structure and values of American society” (p. 36).

Gender inequality is thus, according to MacKinnon, not chiefly a matter of discrimination against women, but of domination of the structure of society by male values and interests. Hence, attempts to remedy this inequality must be aimed at breaking this ongoing process of domination. The most effective way of doing this may be by placing more women into positions from which they can participate in the very creation and application of standards, giving them the power to create roles that are either modelled on the female rather than the male experience, or equally suited towards both genders.

Abrams (1990) has expressed a similar message, inspired by her own experience in the field of legal education. She identifies a wide range of features of life as a student or faculty member at a law school that make it much more challenging for women to get access to and succeed within this institution, from a lack of parental leave and sexual harassment policies to social conventions. Abrams recounts the illustrative story of how she and a female colleague struggled with the frequent use of sports metaphors during meetings, by which they felt handicapped in their functioning and excluded as a gender, since “women are less likely to understand what it means to make a 'full court press' or be 'behind the eight ball’” (p. 491). She also notes how the male bias affects more formal standards of work at her college: the criteria by which scholarship is determined, for instance, reflect a typically 'male' style of writing – authoritative, abstract, detached, while a more 'female' style – tentative, contextual, subjective – is valued negatively (pp. 492-493).

Abrams notes that, in most law schools as well as other institutions and companies, the number of women is usually so small that they have a very difficult time trying to change these 'masculine' features, and that the burden it places on these women is considerable. In order to be successful, she argues, much more women need to be hired into such male bastions, so that they can bring in “the perspective of a life lived as a woman” (p. 490). In line with this objective, she prefers to use the term “hiring for

diversity” rather than “affirmative action”, so as to stress the fact that the goal is not to lower standards but to re-examine them (ibid.).

Another important contribution to the instrumental justification of women quotas has been made by Gilligan. While her work has not dealt much with affirmative action directly, it has been the main catalyst for feminist research on the content of the 'female voice', especially concerning morality. In her influential study, based on interviews with a group of women deciding whether or not to have an abortion, she argues that traditional psychological understandings of moral development have been modelled on men, leaving women to be evaluated as somehow lacking in this dimension. Put briefly: a male bias has continuously been masked as female deficiency (1977, p. 482). She claims that women have a specific style of moral reasoning, which should be recognized and respected as such. The main features of this 'female voice' – as opposed to its male counterpart – she describes as follows:

“[i]n this conception, the moral problem arises from conflicting responsibilities rather than from competing rights, and requires for its resolution a mode of thinking that is contextual and narrative rather than formal and abstract. This conception of morality as concerned with the activity of care centers moral development around the understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to the understanding of rights and rules (1982, p. 19).

It is quite plausible that, if such a female moral voice exists, it can be a hindrance to women's functioning in the workplace. They may, for instance, be inclined to solve conflicts with supervisors or co-workers differently, or divide their time over multiple tasks according to different priorities. In response to this, employers may be led to conclude that a woman is not doing her job properly, or does not fit into the team, and decide to lay her off – or, if these issues come up during a job interview, to not even hire her. In such cases one could argue that establishing women quotas will cause the female style of moral reasoning to be more familiar to at least some of the people in charge of selecting new employees.

### **3.2 Concepts and assumptions**

The instrumentalist justification of hiring quotas for women shares a great deal of assumptions and conceptualizations with the justification from difference discussed earlier – indeed, one could say that both are variations of the same argument, sharing a theoretical basis but awarding different functions to affirmative action measures. The instrumentalist justification also relies on a broad and to a large extent subjective interpretation of gender, which arguably incorporates the concept of sex. It views the self as wholly gendered and predominantly shaped by circumstance, from which it cannot be decoupled.

There are, however, a number of significant differences. This argumentation demands more than that discussed before that it is possible to speak of a clear female experience, interest or voice which is both distinct from men's and sufficiently homogeneous internally. The reason for this is that introducing more women into positions of power and authority over selection – by means of quotas – is supposed to have the result that selection criteria are modified so that women have an easier time meeting them. This requires that the women hired through quotas, via exercising their personal judgement regarding the fairness of criteria, introduce to notions of merit and work performance a range of features that are overwhelmingly possessed by women. It also relies on the empirical assumption that standards as they are disadvantage women, in the sense that women are less likely to meet them. The existence of such a distinct and uniform female voice has been subject to heated debate, as we shall see later on.

As with the justification discussed in chapter 1, two distinct interpretations of equality play a role in that forwarded by Abrams and MacKinnon. The first is, again, equality of outcome, which corresponds to the nature of the quotas used as a means towards the ultimate goal. This goal, in turn, can be characterized as a particular interpretation of equality of opportunity – not in the standard sense of positions being equally open to talents, but in that of the positions themselves being remodelled so as to ensure that the corresponding talents will be roughly equally divided between men and women, and positions are, effectively, equally open to persons. In other words: access to jobs is seen as equal when men and women have equal chances of meeting the criteria

for them. In the typology presented by Tomei (2003), this understanding of equality fits best with that of “equality as diversity” (p. 413). This type of equality demands that different identities are recognized and respected as being of equal moral worth and, consequently, as deserving equal standing and rewards. Rather than being assimilated to existing norms, different groups have the right to have these norms adjusted in their own image (pp. 413-414). It should be noted that this justification only endorses differential treatment of the sexes instrumentally and temporarily. Once hiring criteria are deemed to be sufficiently 'democratized', they are in principle to be applied in the same way to both sexes.

### **3.3 Assessment**

Easily the most debated element of this argument is the existence of the 'female voice'. Can we say that a shared experience of oppression has produced a shared outlook, a set of values or preferences, or a common interest among women, which is also relevant to their (perceived) eligibility for jobs? This question is a challenging one to answer, because such variables are quite difficult to pinpoint, and the interpretation of results tends to be directed by one's own perspective. Just how 'different' must this different voice be, and from what? And how much shared content must the perspectives of women have in order to warrant the claim that they are female?

To start with the latter, an immediate problem is the existence of cross-cutting categories. There is a large body of critical literature arguing that, in seeking to extract the essence of womanhood, significant differences in experience between women of different races, socio-economic backgrounds, cultures, religions etc. are ignored. In doing so, feminist writers unwittingly create a new biased standard, this time of the 'essential woman'. As Harris (1990) writes,

“in feminist theory, as in the dominant culture, it is mostly white, straight, and socioeconomically privileged people who claim to speak for all of us. Not surprisingly, the story they tell about 'women', despite its claim to universality,

seems to black women to be peculiar to women who are white, straight, and socioeconomically privileged” (p. 588).

Especially if the female experience is said to rely strongly on a shared history of oppression, ignoring such cross-cutting distinctions is a serious flaw, because categories like race and class have their own particular backgrounds in unequal power relations, which may significantly alter the 'standard' picture relationship between men and women. As Foster (1993) explains,

“[a] focus on increasing the expression of a variety of previously excluded, or under- represented, viewpoints assumes a necessary correlation between a person's "difference" and her viewpoint. By treating personal characteristics such as race as a 'plus' in the allocation of social goods, the concept of diversity treats those characteristics as a proxy for certain viewpoints or ideas” (p. 139).

It is this straightforward relationship between gender and perspective that is being challenged by the presence of multiple 'differences'. In addition to traditionally salient categories such as class and race, we can expand this concern further by including any other traits that may have a bearing on a person's perspective, from occupation to basic personality traits to taste in music. The core problem we touch upon here is that, even if we accept the assumption that one's circumstances determine one's perspective, there are many more elements to each person's circumstance than his or her sex or gender. How can we know, under these conditions, which parts of a woman's experience stem from her being a woman, whether this word refers to a biological category or to a particular social position? A formidable downside of a subjective interpretation of femininity is the risk that the term is used to cover too many things, because the person expressing the 'female voice' is always more than just a woman.

What can we say about the overall difference between the perspectives of men and women? The thesis that both groups clearly possess a different style of reasoning, making decisions, framing relationships and in general understanding themselves and the world around them has been widely criticized as being, if not simply wrong, then at

least overstated. In reaction to Gilligan's moral dualism, some authors flat out deny that justice-centred and care-centred morality are distinct approaches. Instead, they argue that men and women reason in pretty much the same way, but are conditioned into thinking about their own style of moral reasoning differently (e.g. Greeno & Maccoby, 1986). Others, while going along with Gilligan's typology, doubt that these modes are closely correlated with gender: some people are more disposed to using one or the other, but any real differences between the sexes even out in larger populations.

Most research attempting to isolate the impact of sex from that of other key factors has not found much support for the 'different voice thesis', especially not in the area of work performance. Rhode (1994) concludes from a meta-analysis of psychological studies that these

“generally find few attributes on which the sexes consistently vary ... [and] even for these attributes, gender typically accounts for only about five percent of the variance. The similarities between men and women are far greater than the disparities, and small statistical distinctions do not support sweeping sex-based dichotomies. Most empirical studies of moral development or altruistic behavior do not find significant gender distinctions. Nor does related research on managerial behavior reveal the consistent sex-linked variations that relational feminism would suggest. Employees who confront the same occupational pressures tend to converge in work-related responses” (pp. 42-43).

Of course, surveys conducted among the working population can be biased in the sense that the most 'different' women have less chance of getting a job and are therefore under-represented in the sample. Also, survey answers may be coloured by stereotypical self-perception, as mentioned above. These results do suggest, however, that especially in the field of work performance, the existence of a distinct female voice is far from obvious, and is therefore a rather weak basis on which to justify invasive quota measures. In my view, it does not suffice to merely point to the fact that current standards were set by men and therefore reflect a male perspective and interest. This claim, while plausible, does not demonstrate that women are not or less able to meet the same standards: in order to draw this conclusion, we must establish separately that they



concern dimensions on which men and women structurally differ. In addition to these empirical difficulties, promoting an overly essentialist conception of womanhood may actually do harm to the feminist cause: as Malleon (2003) notes, there is a danger that “the assertion that women have a particular way of [working] recalls the old myths that women have struggled to put behind them and threatens to establish new categories of ‘women’s work’ to which women are confined” (p. 13).

Suppose we accept the claim that there is such a thing as a distinct female voice, and it is underrepresented in the shaping of job requirements, with the result that these requirements disadvantage women in the job market. Then there are still a number of practical as well as normative problems with using this claim as a basis for affirmative action measures. First of all, it is not at all clear how the women introduced into the workplace by means of quotas are supposed to change standards of good work. This question is largely ignored in the literature. Most authors supporting this argument seem to foresee a substantial degree of male adaptation: they expect that the mere presence of women on the work floor will make their male colleagues and superiors see that 'she can do the job just as well'. It can be questioned, however, whether this is a plausible supposition: given the assumption that these women will work in a distinctly 'female' way, which conflicts with what is traditionally seen as the right or best way of doing things, a more likely reaction on the part of men may rather be a feeling of being confirmed in their beliefs of female inferiority (Malleon, 2003, p. 14).

It may of course well be that the women hired will be exactly those women who are already thoroughly assimilated to or naturally disposed towards the standard, 'male' style of working and socializing, since these will appear to biased bosses as most competent. In this case, however, the transformative potential of such female employees will not be too great: they may make superiors aware of some of the basic practical needs of women on the work floor, such as custom work clothing or rubbish bins in the toilets, but they will not be the ones to introduce more cooperative teamwork styles or point towards the importance of context in making business decisions. The most promising role in this regard is probably that of 'feminine' women in higher positions or in human resources departments, who have a direct influence on the standards used to evaluate potential employees. Nevertheless, even here the problem remains of how to create a single standard out of two fundamentally different viewpoints. Taking into

consideration the further complications of introducing other categories such as race, we are dealing with a potentially endless number of perspectives which, in order to ensure proper balance, must all be represented equally in the final outcome – a negotiating nightmare (Tomei, 2003, pp. 408-409).

In addition to its limited plausibility, this proposal faces a problem of normative justification. As pointed out above, it relies on an interpretation of equality in which women should have the same chance of meeting hiring criteria as men. But why should they? Given that defenders of this view reject the possibility of a neutral conception of merit as a tool for distinguishing between valid and invalid grounds for discrimination, it is difficult to see what principle they foresee as taking over this role. One could argue that a gendered perspective is an immutable trait for which people cannot be held morally responsible; this is, at least, a distinction that is well-known and widely accepted in theories of justice. However, for many elements that have been presented as part of gendered viewpoints – especially those not directly physical in nature – proving that they are indeed natural in origin and/or unchangeable will prove very difficult. Moreover, immutability is not per definition a sufficient ground to exclude a trait as a basis for discrimination, as stressed by Rosenfeld (1985, p. 853). To give an obvious example, intelligence – to a large extent a benefit that one is born with or not – is still widely seen as a legitimate factor in determining someone's professional success (if not necessarily his or her income). Similarly, one could well argue that the use of care-centred moral reasoning, even if it has become an immutable personal trait, may still be judged less suitable in a work environment, exactly due to its orientation towards domestic and private situations and relationships, and therefore a valid ground to refuse someone a job.

An even more fundamental problem arises from the notion of the wholly gendered self on which the instrumental justification rests. As we have seen above, its proponents have consistently rejected recourse to sameness and universality, claiming that these are merely an excuse for the domination of the male standard. However, we can ask whether this leaves any moral basis for demands for equality. Ward (1997) argues convincingly that any valid justification of equality between men and women requires one to recognize some form of descriptive sameness between the two (pp. 98-99). She points out that

“justifications of liberal principles of legal equality, even in their progressive modes, are ultimately grounded in descriptive assumptions of human sameness. Asked *why* people should be 'treated as equals' legally, the liberal replies by articulating some common faculty related to the capacity of persons for agency, autonomy, rationality, or a variant that justifies whatever version of political and legal equality the liberal finds appropriate. The move from 'equal treatment' to 'treatment as equals' simply breaks the symmetrical connection between equality as justification – the descriptive sense in which all humans are the same – and political-legal egalitarianism, which has moved from being grounded in sameness to the acknowledgment of difference” (p. 72).

It is exactly these familiar loci of sameness – rationality, agency, autonomy – that difference feminists claim are in fact part of the masculine experience, and therefore not able to serve as a lowest common denominator between the sexes. They have not, to date, presented a plausible alternative type of justificatory equality. The most popular strategy in difference feminism is to try and argue that one can ground equality in difference – without much success. In this manner, emphasizing difference between men and women works against the aim of securing equality for women. I would therefore concur with Malleson when she says that the difference approach to gender equality turns out to be “theoretically weak, empirically questionable and strategically dangerous” (2003, p. 1).

### **3.4 Concluding remarks**

We can conclude that the instrumental variety of the difference-based justification of affirmative action fails as well. The notion of women's 'different voice' lacks empirical backing and is difficult to detach from the voices of complete persons who possess many defining features besides their sex. These authors' account of how women introduced via quotas are to change biased work standards seems overly optimistic

regarding the transformative potential of these women, given their claims about the resilience of existing norms. The most serious problem that advocates of this justification face, however, is that it fails to provide any compelling reason why hiring and work standards should be formulated so that women can meet them just as easily as men – in fact, it lacks any principle by which to distinguish between valid and invalid grounds for discrimination. Even more seriously, their view of the person as unified and wholly gendered is incompatible with the aim of equality, because it precludes the existence of a dimension of sameness between the sexes, which is required as a basis for equal treatment. Thus, it seems that this strategy does not succeed either in making clear that gender equality requires preferential treatment in the shape of women quotas.

## **Conclusion: from difference to equality**

This paper has analysed three different strands of argument that have been put forward in justification of affirmative action policies for women in the workplace, and concluded that each suffers from major practical as well as theoretical flaws, which make them a very weak basis on which to defend quota measures in the face of accusations of reverse discrimination. Naturally, such measures could still be defended on grounds other than their contribution to bringing about greater gender equality, which I have not discussed here. I conclude, however, that when it comes to equality, quota systems are not the way forward. On the contrary, the promotion of quotas brings with it a way of thinking that is clearly detrimental to this cause – so focused on the exploration of female difference that, at times, women and men indeed seem to come from different planets, mutually incomprehensible aliens whose capacity for meaningful interaction, let alone on an equal footing, is negligible. As pointed out before, such an understanding of gender, applied to all aspects of people's lives - including the professional space, leaves little room for justification of the claim that these two species should be treated equally in the first place.

How, then, can we tackle the problem of unequal treatment of women in the workplace while avoiding the pitfall of overstating the scope and effect of gender? I have argued that, first of all, we should take more care to locate the problems correctly. We are looking to combat sexism in hiring and work evaluation, that is, discrimination against women, as compared to men, based on their being women. Despite the preoccupation of most authors discussed in this paper with covert or secondary sexism – behaviour somehow resulting in women suffering some aggregate disadvantage – I would argue that the professional world still harbours plenty of primary sexism to be getting on with. It is vital that we do not neglect such practices as 'old news', but continue to point them out and challenge them, and facilitate both men and women employees or rejected applicants in doing so by maintaining able and empowered control mechanisms and sources of (legal) recourse.

As for secondary sexism, I have rejected the use of this term as misleading and obfuscating. If we treat the chains of actors and influences leading up to a perceived underrepresentation of the category of 'women' in some part of the job market as a

black box, we are not able to address the causes of the criticized outcomes, while these causes should be our primary target. I believe feminist scholarship could be of great value in exploring where actual sexist behaviour is taking place and how this can be combatted. Let us take the example, omnipresent in feminist studies, of women being less attractive candidates for jobs due to their time-consuming childcare obligations. Instead of (incorrectly) calling employers failing to hire these women sexist, scholars should investigate why women take up the brunt of this socially necessary work. It may turn out that their (male) partners are not facilitated in working less than full-time, that they feel it is the woman's duty to take care of their children, that the women in question themselves have this view, that they feel emotionally unable to spend a lot of time away from their children, or, most likely, a combination of these and other factors. It is then up to feminist scholars to identify loci of sexism that may be changed, be it through legislation, public policy, education, campaigning, media debate, or some other means.

It may be argued, and rightly so, that waiting for sexist conventions that have been with us for decades or even centuries to change will take a very long time indeed. There is no denying that it will: these patterns and expectations are still deeply ingrained in our social structures, from government to media and from the workplace to the home, and their transformation will most likely be a matter of multiple generations to come. We cannot expect any kind of policy, apart from brutally invasive dictatorship, to bring it about in a matter of years. This also goes for affirmative action policies, even more so since, as demonstrated in this paper, they may not be nearly as effective as they are assumed to be. This is not to say, however, that nothing can be done to speed up and direct the process. State as well as private sector measures should be focused on making work more flexible for both sexes, where the nature of the job allows this. Many problems now depicted as instances of (secondary) sexism can be ameliorated by sex-neutral measures, such as expansion of part-time work and job sharing, and enforcing the principle of equal pay for work of equal worth. The key is to decouple specific social roles from sex, not necessarily eradicating such roles as full-time worker and stay-at-home parent. Reality is, barring cheap full time childcare for all, not all adults can work full time, since dependants and household tasks must be looked after. In my view, this is not a major problem from the perspective of sex equality as long as it is not

automatically women taking up the caring role. Finally, women should take their own responsibility in changing sexist conventions as well. Having been made aware of the force social conventions and expectations play in their self-perception and life planning, they need to recognize that they themselves are perpetuating such restrictions as long as they adhere to them uncritically. To give a very basic but acute example: the more women decide to have breast implants to meet dominant standards of female beauty and attractiveness, the more this standard is entrenched and the stronger the pressure on other women to follow suit. Similarly, when women continue to fall into the caring role without thinking or arguing, this role will continue to be seen as female. Thus, being a full member of the workforce may start with them standing up for themselves at home.

The recommendations made in this paper regarding the need to reemphasize sameness in the face of difference and to focus efforts on process rather than outcome apply not just to emancipation of women in the workplace, but to many of the other spheres and issues covered by feminist scholarship as well. Feminism, both as a social/political movement and as an academic field, is currently under threat from various sides. From without, it is forced into downplaying its claims by the onslaught of cultural and moral relativism sparked by multiculturalism, as well as attacked by male counter-movements portraying women's continued efforts to challenge male dominance as an illegitimate attack on 'masculine identity'. From within, feminist scholarship is at risk of losing its focus and with it its social relevance. The shift from equality to difference has even led feminist authors to bring in moral relativism and traditional accounts of femininity and masculinity themselves. It is difficult to see how this change of direction is ultimately to provide women with equal chances and standing in society.

This is not to say that feminist research has brought nothing of value to social and political theory. Feminists of the last few decades have enriched these fields by emphasizing previously excluded issues, such as the importance of private sphere structures and power relations, the value of caring work in context of distributive questions, and an emphasis on obligations as the flip side of rights. I argue, however, that their presenting these issues as women's issues is currently doing more harm than good to the feminist cause. I agree heartily with Baumeister (2000) that

“the difficulties which surround feminist postmodernism suggest that, if

feminism is to retain its political force and critical edge, this regard for difference needs to be balanced by a recognition of the potential strength of traditional liberal commitments, such as those to universality at the point of participation and to the equal moral worth of all persons” (p. 66).

I therefore propose a reoriented feminist approach that combines attention for self-definition with the original objective of equality between the sexes. In this approach, this objective is not equality of outcome, nor purely formally equal treatment in all cases, but equal possession of what I will refer to as subject status, meaning social recognition of a person’s standing as an agent allowed to pursue his or her own interests and goals. I use the term status, rather than right or power, because I wish to emphasize the importance of widespread social recognition of one’s standing as a subject, although it obviously in many cases must include legal recognition as well. The limited results of first-wave feminism have demonstrated, however, that the mere granting of legal equality is not enough to give women equal standing in society. A benefit of choosing equality of subject status as an objective for feminists is that it follows more readily from the postulate of equality (see p. 5) than equality of outcome, and yet it is, I believe, capable of providing substantial direction in the interpretation of equality in specific situations, as will be demonstrated below.

The approach defended here has the potential of avoiding many of the problems with the difference-based approaches investigated in this paper. For one thing, it involves a clearer separation of sex and gender, where instances of the latter are the phenomena under scrutiny, their admissibility depending on whether they leave intact the equality in subject status between both sexes. In this way, this approach also moves away from the black-box view of sexism and looks at the implications for equality of each part of the process separately, rather than being led by equal or unequal outcomes. This prevents scholars from mislabeling more general instances of inequality as sexism, allows for the effects of choice, and provides insight into the most promising loci of interference. If this is not done, as we have seen, policies are likely to target structures or people who are not mainly responsible for women’s disadvantage, both causally and morally.

Put briefly, the core problem for feminists is gender, defined as socially



constructed roles, views and behaviours prescribed to women – as well as men – because of their sex. These structures, wherever they limit the subject status of women compared to that of men, ought to be the target of feminist equality politics. It is crucial to note that it is equal status, not maximum status, that is the objective here: the approach outlined does not prescribe the mere fulfillment of the wishes of women without formulating them in relation to those of men, due to the fundamental moral difficulties with this endeavor outlined in response to Young’s theory. To address a much-debated example: applying the equal subject status approach to the issue of maternity leave, sex equality does not demand that women get to set the terms of their own leave, individually or collectively, up to some level that allows them to be ‘real women’, however this concept may be defined. It does require, however, that women have the same space to plan their lives as men do, especially regarding the combination of work and parenthood. Employers should therefore not be allowed to fire or refrain from hiring women because they are pregnant, for instance, without knowing how childcare will be arranged: after all, expecting fathers are not getting laid off either. Of course, the problem remains that nature is ill-disposed towards women in this case, causing a physical necessity for them to leave work temporarily that men do not face, and which is potentially harmful to the economic interests of employers. If legal prohibition and monitoring will not be able to prevent women in this position from losing or losing out on jobs, it may be necessary to make paternity leave obligatory, so as to equalize the cost of employing mothers and fathers.

Is asking the question ‘do men get to do this’ not an inadmissible confirmation of the male standard, which requires women to give up their womanhood and act like men if they want power and recognition? I would answer that, yes, it does come down to using men as a benchmark, but not in the sense feared by difference feminists. I have remarked earlier on the in my eyes illegitimate move of concluding from the male origin of many norms and institutions governing our society that these are therefore unfit – or at least, less fit – for women. I propose we approach the issue the other way around: instead of claiming that women should reject existing roles because they are ‘male’, we should recognize that it makes perfect sense for women to aspire to what men have and do, since men are the people that have traditionally been granted the status of subjects. Put differently: being male has historically been strongly correlated with being a

subject. Demanding this same status is thus not a negation of one's femininity: if men are the ones recognized as subjects, asking 'what would a man do' can be translated to asking 'what would a subject do'. What feminism is originally and, I believe, fundamentally, about, is exactly this equal standing with men. The comparison is necessary to even give meaning to the ideal of equality, as well as to the two sexual categories, and attempting to avoid it makes feminism an unfocused and self-destructive discipline.

The refocused feminist approach I have outlined may help clarify many areas of feminist scholarship and activism that suffer from similar shortcomings as the discourse on affirmative action in the workplace. Another arena in which quotas are often employed to remedy a supposed injustice deduced from observed inequalities in outcome is that of political representation. If, for instance, less than half of MPs or party candidates are women, it is easily assumed that something must be wrong with the electoral system or with the internal dynamics of the political parties and other organizations involved. The exact cause of the inequality seems unimportant: as in the professional field, targets and quotas are adopted everywhere, with parties carefully balancing out their ballots regarding sex as well as ethnicity, age etc. and governments called to justify themselves if they do not contain some minimum number of female ministers. Again, it seems more likely that the causes of inequality lie somewhere else: as long as social norms dictate that women take up most of care obligations and household tasks, there will be relatively fewer women who manage to get and maintain jobs that are extremely stressful and time-consuming, such as those in politics.

I am personally not too concerned that male politicians are fundamentally unable to defend the much-cited female voice, if only because I am highly skeptical about the existence of such a distinct point of view, as well as about the superior ability of women to represent one another. Those feminists who are deeply committed to seeing more women in office, however, may do better to attend to the private power relations and role patterns present in society at large. Alternatively, one could argue that the inability to combine parenthood and a political career is unfair in itself. In this case, however, we are no longer dealing with a specifically feminist concern – if this implication of the way our society is structured is unfair, it is so for men as well as women: their subject status remains equal. While a legitimate question of justice, it is thus not one of gender

justice.

The division of care and housework is another area in which the danger of declaring certain issues part of the particularly female interest or experience, as discussed above, is highly relevant. By calling the act of balancing work and care or the availability and cost of professional childcare women's issues, as is common in media and academic research alike, we are reifying the very power structures feminists should be exposing and challenging. It perpetuates the notion that it is mothers' jobs, not parents', that day-care centres and nannies are taking over, or that fathers, unlike mothers, are not to be judged on the time and effort dedicated to actually raising their children. In trying to flesh out the unique virtues of womanhood, such as a propensity towards care, feminists have effectively reaffirmed the very stereotypes they once fought to eradicate. Viewing gender roles and power relations between the sexes, as exceedingly permanent is counterproductive to the feminist cause: it legitimises and perpetuates oppression by glorifying its results. It is not a tenable position to treat the same phenomena as a problem and as an asset warranting respect at the same time; these judgements point to contradictory reactions.

Insofar as the female experience is one of subordination and constricted opportunity, we should not want it to be recognized as a type of life valid as any other. Wherever gender serves to connect sex to diminished subject status for women, we should fight its prescriptions rather than reifying them by making them a basis for special treatment, as if they were an inherent part of the person. This point can be illustrated by the example, frequently used in defence of differential treatment, of a person in a wheelchair, who needs special help to be on an equal footing with his able-bodied fellows (e.g. Koggel, 1994, p. 50). My point is simply to argue that, before we proceed to widening doors and installing ramps, we would do well to make sure we have done everything possible to make this person walk again. Similarly, we should seek to decouple womanhood from childcare before we try to get full-time mothers jobs.

A final example I shall mention here is that of female beauty standards that are often criticized as perpetuating inequality between the sexes. Fashion models on the brink of starvation, ever more popular breast augmentations and vaginal reconstruction surgeries, among other things, are subject of fierce public debate. From the perspective

of difference feminists, there may be little ground for protest against these developments: after all, women are doing this to themselves, and are often heard defending their actions as ‘an expression of their femininity’. Employing an open-ended and subjective understanding of womanhood, one has little choice but to go along with such reasoning, and perhaps even praise these practices as expressions of empowerment. In this framework, *a priori* respect for subjective female identity prevents one from analyzing and critically evaluating the various processes involved in identity formation. As such, is it the most deeply entrenched and internalized relationships of domination that go unchallenged and are even reconfirmed.

What can the insights presented in this paper contribute to more general theories of justice? There are a couple of observations worth highlighting here. The analysis conducted in this paper demonstrates that when it comes to dealing with inequalities – whether between the sexes or other categories of people, such as ethnicities or classes – it is crucial to both the effectiveness and the moral justifiability of policies that their causes are adequately identified and precisely targeted. In particular, the aim of social equality for women and other disadvantaged people cannot be achieved by merely restructuring the workings of (public) institutions. A true commitment to such equality will therefore necessitate greater incursions into the private sphere than political liberals in particular would like (this does not, incidentally, support the case for differential treatment; the personal may be political, but it is not necessarily particular).

This ties in with a related point that has been largely obscured by difference feminists: the analysis above shows that the pursuit of equality along one dimension is likely to cause increased inequality along others. In line with authors such as Okin (1994) and Nussbaum (2011), I hold that an appeal to universal values and standards is by far the most effective means of achieving equality for women. Unlike Nussbaum and with Okin, however, I do not believe that attachment to such values is necessarily compatible with a wide range of cultural, religious and ideological viewpoints; rather, it is based firmly in a tradition of individualism and autonomy. This means that sex equality as defended in this paper is not fully compatible with certain conceptions of justice, such as those inspired by communitarianism. Universal values, in this context, are thus values deemed applicable to all, not necessarily shared by all.

This brings us to the most important implication of my analysis: both the

empirical and theoretical arguments brought up against an excessive focus on and accommodation of difference strengthen the case for those theories based on assumptions of human universalism. One of the best-known examples here is Rawls' Original Position. This device has been subject to a wave of critique from feminist scholars for illegitimately abstracting from the concrete instances that make up social life (e.g. Matsuda, 1986). This claim, frequently expressed by difference feminists, that seeking to arrive at principles of justice from a point of neutrality is either pertinently impossible or normatively suspect, since it forces those involved to abandon or ignore all those differences that define them (including gender), relies on a conception of a fully gendered personhood that has been firmly rejected in this paper. Once we do so, allowing for a loosening of ties between experience and ideas, it becomes clear that we can assume a universal standpoint in discussing specific issues of justice without forcing anyone to give up their womanhood or any other specific identity: we can exclude a particular 'difference' as practically or morally irrelevant to the question at hand without excluding complete persons.

Moreover, I argue that, similar to equality, justice cannot be conceived of in a society composed of such overly situated individuals. Coming up with shared principles of justice requires participants to think and reason outside the borders of their strictly personal experience and context, be it defined by gender or any other factor. In spite of repeated pleas for an incorporation of personal ties, love, concern and care into thinking about justice, we should recognize that principles of justice are largely about governing the relationships between people who do not share such ties. It may well be that different principles are appropriate to personal relationships, either existing side by side with or replacing public ones. This does not, however, in any way invalidate the need for such public understandings of justice.

Postmodern and deconstructivist feminist attacks on the classical image of universal morality have proven their value as critiques, but have patently failed in the area of reconstruction. Overly focused on avoiding generalization and categorization, they have not been able to provide any substitute for the universal basis of justice and equality they have worked so hard to dismantle. Is this merely a matter of time and extended research? I think not. Plainly, the problem is that the entire difference-centred approach does not allow for any such basis. At the same time, we have seen it fails at

morally justifying its recommendations without it. It is time, for feminist authors and those political theorists keen to incorporate their insights, to remember their original goal, and once again take up the tools needed to do the job.

## References

- Abrams, K. (1990). Hiring Women. *Southern Illinois University Law Journal*, 14, pp. 487-505.
- Baumeister, A. (2000). The New Feminism. In N. O'Sullivan (Ed.), *Political Theory in Transition*. London: Routledge, pp. 49-69.
- Beauchamp, T. (1998). In Defense of Affirmative Action. *The Journal of Ethics*, 2, pp. 143-158.
- Bergmann, B. (1999). The Continuing Need for Affirmative Action. *The Quarterly Review of Economics and Finance*, 39, pp. 757-768.
- Bielby, W. (2000). Minimizing Workplace Gender and Racial Bias. *Contemporary Sociology*, 29, 1, pp. 120-129.
- Burns, P. & Schapper, J. (2008). The Ethical Case for Affirmative Action. *Journal of Business Ethics*, 83, pp. 369-379.
- Butler, (1990). Gender Trouble, Feminist Theory, and Psychoanalytic Discourse. In L. Nicholson (Ed.). *Feminism/Postmodernism. Thinking Gender*.
- Fiss, O. (1976). Groups and the Equal Protection Clause. *Philosophy & Public Affairs*, 5, 2, pp. 107-177.
- Foster, S. (1993). Difference and Equality: a Critical Assessment of the Concept of Diversity. *Wisconsin Law Review*, 105, pp. 105-161.
- Gilligan, C. (1977). In a Different Voice: Women's Conceptions of Self and Morality. *Harvard Educational Review*, 47, 4, pp. 481-517.

- Gilligan, C. (1982). *In a Different Voice: Psychological Theory and Women's Development*. Harvard University Press.
- Greeno, C. & Maccoby, E. (1986). How Different is the 'Different Voice'? *Signs*, 11, 2, pp. 310-316.
- Harris, A. (1990). Race and Essentialism in Feminist Legal Theory. *Stanford Law Review*, 42, pp. 581-616.
- Holst, C. (2005). *Feminism, Epistemology and Morality*. Bergen: University of Bergen.
- Koggel, C. (1994). A Feminist View of Equality and its Implications for Affirmative Action. *Canadian Journal of Law and Jurisprudence*, 7, 1, pp. 43-59.
- Liff, S. & Wajcman, J. (1996). 'Sameness' and 'Difference' Revisited: Which Way Forward for Equal Opportunity Initiatives? *Journal of Management Studies*, 23, 1, pp. 79-94.
- MacKinnon, C. (1987). *Feminism Unmodified: Discourses on Life and Law*. Harvard University Press.
- Malleson, K. (2003). Justifying Gender Equality on the Bench: Why Difference Won't Do. *Feminist Legal Studies*, 11, pp. 1-24.
- Matsuda, M. (1986). Liberal Jurisprudence and Abstracted Visions of Human Nature: a Feminist Critique of Rawls' Theory of Justice. *New Mexico Law Review*, 16, pp. 613-630.
- Nagel, T. (1973). Equal Treatment and Compensatory Discrimination. *Philosophy & Public Affairs*, 2, 4, pp. 348-363.



Nicholson, L. (1998). Gender. In A. Jaggar & I. Young (Eds.). *A Companion to Feminist Philosophy*. Oxford: Blackwell, pp. 289-306.

Nussbaum, M. (2011). *Creating Capabilities. The Human Development Approach*. Harvard University Press.

Okin, S. (1994). Gender Inequality and Cultural Differences. *Political Theory*, 22, 1, pp. 5-24.

Phillips, A. (2004). Defending Equality of Outcome. *Journal of Political Philosophy*, 12, 1, pp. 1-19.

Radcliffe Richards, J. (1998). Feminism and Equality. *Journal of Contemporary Legal Issues*, 9, pp. 225-247.

Rhode, D. (1994). Gender and Professional Roles. *Fordham Law Review*, 63, pp. 39-72.

Rosenfeld, M. (1985). Affirmative Action, Justice, and Equalities: a Philosophical and Constitutional Appraisal. *Ohio State Law Journal*, 46, pp. 845-924.

Skjeie, H. & Teigen, M. (2005). Political Constructions of Gender Equality: Travelling Towards ... a Gender Balanced Society? *Nordic Journal of Women's Studies (NORA)*, 13, 3, pp. 187-197.

Spelman, E. (1988). *Inessential Woman: Problems of Exclusion in Feminist Thought*. Boston: Beacon.

Teigen, M. (2000). The Affirmative Action Controversy. *Nordic Journal of Women's Studies (NORA)*, 2, 8, pp. 63-77.

Tomei, M. (2003). Discrimination and Equality at Work: a Review of the Concepts. *International Labour Review*, 142, 4, pp. 401-418.

Ward, C. (1997). On Difference and Equality. *Legal Theory*, 3, pp. 65-99.

Warren, M. (1977). Secondary Sexism and Quota Hiring. *Philosophy & Public Affairs*, 6, 3, pp. 240-261.

Young, I. (1990). *Justice and the Politics of Difference*. Princeton University Press.

Young, I. (2006) [1989]. Polity and Group Difference: a Critique of the Ideal of Universal Citizenship. In E. Goodin & P. Pettit (Eds.), *Contemporary Political Philosophy: an Anthology*, pp. 248-263.