A Comment on Njoya's *Economic Freedom and Social Justice*

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Wanjiru Njoya's study *Economic Freedom and Social Justice: The Classical Ideal of Equality in Contexts of Racial Diversity* provides a compelling argument for taking seriously the classical liberal ideal of freedom. At a time, when in the Anglo-American world, freedom has been relegated to a second-order principle, Njoya reminds us of the importance of taking this ideal seriously. Her study offers a powerful counterpoint to the currently fashionable tendency to represent the value of equality as superior to that of freedom. At a time when the idealisation of social justice is virtually unquestioned, the author shows that this ideal has little to do with justice in the sense of 'rendering to everyone their due' (p. 76). The current legalistic and politicised notion of social justice eliminates the relationship between people's action and existence and what is due to them. The legalistic formalisation of justice detaches access to this value from world human interaction and relationships. Justice becomes something that is granted through the medium of state or political intervention. Worse still, with the contemporary emphasis on identity politics, 'political group-justice avoids the bracing need for self-responsibility'(p. 79).

Njoya's book is focused on issue of economic freedom but her discussion touches on all of its dimensions and her contribution can be seen as an important and valiant commitment to upholding the foundational status of liberty. It is testimony to the illiberal *zeitgeist* of our time that the classical liberal ideal of freedom has lost considerable cultural validation in Western society. As the author reminds us time and again the value of equity trumps that of freedom.

Freedom is not against equality as such and it upholds the ideal of formal equality. As Njoya explained, formal equality regards people as equal in virtue of our humanity and therefore before the law. Formal equality does not uphold the case for equal outcomes and recognises that as people exercise their freedom some will achieve far more than others. 'Justice according to the ideals of classical liberalism requires not that everyone must be equal in how they live their life but that the law must grant equal rights to all in virtue of their humanity', notes the author. From the standpoint of formal equality everyone is treated alike. This notion of equality is fundamentally at odds with the values advocated by the social justice movement.

In the 21st century, social justice campaigners advocate not formal but substantive equality. As Njoya explained:

> Substantive equality as defined in equality legislation shifts the focus from due process in the pro-

> tection of rights, to mandating equal outcomes by prohibiting disparate impact or indirect discrimination (p. 65).

The promotion of substantive equality focuses on overcoming socio-economic and cultural disparities rather than facilitating opportunity. In recent times supporters of substantive equality have embraced the term equity in preference to that of equality. Their narrative of equity is oriented towards eliminating differences in outcomes through anti-discrimination and redistributive policies. Paradoxically supporters of the notion of equity have lost sight of their pre-existing concern with equality. Indeed the 21st century advocates of substantive equality have *de facto* broken with previous progressive commitments to egalitarianism. It does not want policies that treat people equally but ones that treat individuals and groups differently with their supposed needs.

In recent times the social justice movement has come under the spell of the cultural politics of identity. As a result it celebrates values like 'difference' and 'diversity' and decries the version of human equality that is founded on the principle of universalism. Typically, the difference and diversity that social justice advocates extol are ones that pertain to cultural and ethnic based identity groups. The implicit disassociation of diversity from individuals and its recasting as a group accomplishment indicates that the institutionalisation of equity works to de-individualise the meaning of equality.

Equity's obsession with the group rather than the individual also has profound consequences for the way that people and their achievements are perceived. People are treated and assessed not on the basis of their individual qualities but on the basis of their pre-given ascriptive and biological and cultural inheritance. Decisions about the life chances of individuals in the Anglo-American world are often taken on basis of their gender, race or sexual orientation. Consequently people are judged not according to the criteria of achievement but of ascription. This inevitably has the consequence of creating a culture where assessing people is carried out in accordance with a bureaucratic template rather than on the basis of their achievement.

Advocates of equity have become deeply estranged from the value of freedom and often depict the principle of individual freedom as if it is a hopelessly outdated myth. As the author notes, many academics insist that the 'notions of free will and choice are valuable only within the privileged echelons of society'. They contend that 'the very notion of choice is said to be meaningless for the underpriviliged' (pp. 205-206). In effect the message that they convey is that freedom and its exercise is pointless.

The social justice narrative of equity rejects the idea of moral autonomy and free-will. Their scepticism towards the exercise of individual freedom is the most disturbing and paternalistic feature of its doctrine. As Njoya argues,

> Our freedom and ability to make choices, to exercise free will, to exercise individual agency or autonomy in ordering our own lives, to experience self-realisation or self-actualisation is inherent in everyone's humanity and a necessary component of living a meaningful life (p. 207).

Of course, in many cases there are real material and social obstacles that stand in the way of exercising freedom. But when that happens that serves as an argument for struggling to overcome those obstacles rather than give up on freedom.

IN PRAISE OF AUTONOMY

Scepticism towards the capacity of people to possess the ability to make choices is integral to the dogma of social justice. One of the most fervent opponents of the ideal of moral autonomy is Herbert Marcuse, who in his well-known radical left critique of tolerance argued that the 'false consciousness' of the people made it difficult if not impossible for them to choose between competing values and arguments. Political theorist Wendy Brown echoes Marcuse's scepticism regarding the exercise of individual autonomy. She warns that the free exercise of conscience may well be illusory. 'What makes choices "freer" when they are constrained by secular and market organizations of femininity and fashion rather than by state or religious law', she asks (Brown 2006, p. 189). In other words what's the use of individual freedom if people's ability to make choices is circumscribed by the influence of market forces and institutions such as advertising and cultural norms.

Unfortunately Brown collapses the idea of formal with social freedom and refuses to recognise the importance of the former. However, formal freedom is not just an empty right since the non-interference of the state in the domain of belief and opinion gives people the freedom to choose their truth in line with their selves. It does not provide a guarantee that people will be able to exercise that freedom in line with their personal interests or individual conscience. But just because a formal freedom doe not inexorably lead to the realisation of an individual's desires does not mean that it is unimportant. It merely signifies that it provides the precondition for the exercise of freedom rather than a guarantee of its realisation.

Opponents of moral autonomy look to the state and to legal intervention in public life to create the conditions for the realisation of equal outcomes. Advocates of state intervention and the juridification of everyday life implicitly and often explicitly reject the classical liberal commitment to freedom. Writing in 1935, Carl Becker, in his study *New Liberties For Old*, recalled that liberty 'formerly thought of by the unprivileged in terms of the emancipation of the individual from social restraint, had in our time come to be identified with the social regulation, in the economic realm especially, of the individual freedoms so often fought for, and in large part won, during the nineteenth century' (1941, pp.xi-xii).

Social regulation does not abolish inequality it merely recasts it in a new form. But it has deplorable tendency to infantilise people. When regulators make choices for you people's capacity to flourish moral agents becomes compromised. Implicit in *Economic Freedom and Social Justice* is the understanding that freedom and moral autonomy are inextricably linked concepts.

It is worth reflecting on the significance of moral independence because it has come under such relentless attack by supporters of substantive equality and social justice. Autonomy is an attribute of a person, who engages with the world as an active, reasoning and conscious individual. The etymology of this word: *autos* (self) and *nomos* (rule or law) conveys the meaning of self rule. This term was first used in the Greek city-states. According to one account, a 'city has *autonomia* when its citizens make their own laws, as opposed to being under the control of some conquering power' (Dworkin 1996).

An autonomous person is presumed to possess moral independence, in other words to act with moral responsibility. It is a moral value that protects and upholds that capacity of people to express themselves and to be themselves. Through the exercise of autonomy people can develop their personality through assuming responsibility for their life. The cultivation of moral independence requires that people are free to deliberate and come to their own conclusions about the views and opinions they hear. As Ronald Dworkin explains:

> Government insults its citizens, and denies their moral responsibility, when it decrees that they cannot be trusted to hear opinions that might persuade them to dangerous or offensive convictions. We retain our dignity, as individual, only by insisting that no one—no official and no majority—has the right to withhold an opinion from us on the ground that we are not fit to hear and consider it (1996, p. 200).

It is through reflecting freely on opinions and deciding for ourselves on what is good and bad that we learn to behave as responsible and independent citizens. In the course of such deliberations people not only forge their own opinions but also influence the views of others. The exercise of moral responsibility also possesses an active dimension of seeking to communicate one's views to fellow citizens.

The exercise of moral autonomy also requires that people are able to be themselves, act in accordance with their inclinations and tastes and feel free to adopt the lifestyle that allows them to express their personality. As Dworkin (1996, pp. 200-201) stated 'citizens have as much right to contribute to the formation of the moral or aesthetic climate as they do to participate in politics'. Hence tolerance towards social attitudes is as necessary as towards beliefs and opinion in order to respect people's moral autonomy. As Raz (1988, p. 158) writes, 'autonomy requires that many morally acceptable though incompatible, forms of life be available to a person'.

To be sure even at the best of times, individual autonomy is an ideal that can at best be realised inconsistently. People live in a world not of their own making and in circumstances that often elude their aspiration to determine their affairs. The exercise of autonomy has always come up against external constraints – natural obstacles, economic exigencies, wars and conflict and social dislocation. Today it also faces a cultural climate that is deeply suspicious of the aspiration for autonomous behaviour.

The recognition that autonomy is morally valuable and that attempts by people to make their own life should be respected does not mean that people always make the right choices for themselves. Nor should an ideal be confused with the attempt to realise it. There are always formidable obstacles that stand in the way of individuals who wish to be authors of their own life. The difficulties that stand in the way of the realisation of personal autonomy should not be interpreted as representing the negation of this ideal. People possess the potential for making their own lives. However, as with all freedoms, how autonomy is exercised and whether its potential is realised depends on specific circumstances. As Dworkin (1993, p. 224) points out there is a clear distinction to be made between the 'general point or value of autonomy and its consequences for a particular person on a particular occasion'. It is precisely because autonomy is difficult to realise that there is such a great need for the valuation of individual freedom. In fact as Raz (1988, p. 155) states, a 'powerful argument in favour of toleration is derivable from the value of personal autonomy'. Sadly, western society has drawn the exact opposite conclusion and in line with its loss of valuation for moral independence does not regard tolerance as a value in its own right.

DON'T TRADE OFF FREEDOM FOR SECURITY

One of the least attractive features of contemporary western culture is its devaluation of the status of freedom. In my own studies of the history of liberty I have noticed a reoccurring tendency to subject freedom to limits and cultural and legal restraints. It is evident that contemporary society feels estranged from the ideal of liberty. In the contemporary era most statements on freedom have a rhetorical platitudinous quality about it. Freedom is used in a casual taken-for-granted manner as if it is no big deal. More importantly, it is far too clear that the ideas of freedom and liberty have lost significant cultural support. Liberty, in particular is often represented as a right wing myth. So whereas throughout most of human history liberty was associated with radical future oriented movements today it is often portrayed as a central feature of reactionary thought.

In effect freedom has become – at best – a second order principle, one that is trumped by safety, security or public health. What I characterise as the Freedom-Security trade off is based on the premise that the right to liberty should be balanced against a variety of other concerns. Many supporters of this trade-off claim that the freedom to pursue individual goals may well create or intensify inequalities. Consequently, it is suggested that freedom needs to be reconciled with equality. In public life there is widespread affirmation for the presumption that equality is a first-order concept to which freedom must defer. A similar sentiment is conveyed in relation to the Covid pandemic and governments openly argue that curbs on freedom is the price we need to pay for securing public health.

In Wanjiru Njoya's book, the principal form assumed by the freedom-security trade-off is the state supported narrative of trading off freedom for supporting diversity. Though well intentioned, equality and anti-discrimination legislation promote their goal through forms of social regulation that limit individual freedom. Unfortunately experience shows that once freedom becomes a negotiable commodity it becomes only a matter of time before more of our liberties are lost. And yet as Njoya's study suggests, to tackle racial discrimination, we need more freedom and not less.

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