

Veterans' Extra Point System and Gender Politics: From the Perspective of Capabilities Approach

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This work examines the main debates on the abolition of the veteran's extra point system to argue that as long as the compulsory military service system continues to operate it is difficult to overcome the distinction between public/private sectors according to gender difference, hence the consequent male-centeredness of the state. As an alternative, this work proposes that gender politics should utilize actively the idea of human rights as well as the idea of citizenship to realize the gender equal state. A capabilities approach based on the idea of human rights could serve as a standard in determining the directions and ranges of the gender of equal state policies and provide an exit/alternative that would help women surmount their double binding relations with the state.

Keywords: veteran's extra point system, gender politics, citizenship, human rights, capabilities approach, women's movement

I. Introducing the issues

On 19 October 1998, four senior students and one graduate of Ewha Womans's University together with one handicapped male senior student of Yonsei University filed a constitutional complaint to the Constitutional Court of Korea. All of them were preparing for the civil service hiring examinations to become Grade 7 and 9 civil servants. They claimed that the practice of giving veterans extra points of 3% or 5% in each written test in each subject of the civil service examinations ("veterans' extra point system," hereinafter) violates the claimants' constitutional rights of equality to hold public offices, and

of their freedom to choose their occupations. On December 1999, after one year, the Constitutional Court decided that the veterans' extra point system violated the petitioners' rights of equality to hold public offices, thus violating the Constitution (The Constitutional Court decision 2000).

The veterans' extra point system (VEPS in short, hereinafter) has gone through revisions three times (1969, 1984, and 1998) since it was first put into operation by the government in July 1961 (Chung Jin-sung 2001). It started as a part of the 'Veterans Employment Act' in 1961 which required the obligatory 5% quota for disabled veterans and their family members in civil service employment. In 1969, a new clause on giving privileges in the civil service was added to the Veteran Employment Act. This was the first appearance of the VEPS as currently in operation.¹ In 1984, the Veteran Employment Act and several related acts were integrated into a new act, the Act on the Honorable Treatment and Support of Pensions, etc. of Distinguished Services to the State which included VEPS. In 1998, the part of the latter Act that concerned the discharged soldiers was separated into a new act, Support for Discharged Soldiers Act. This act added further momentum to VEPS by including a clause that mandated private businesses and organizations that had twenty or more employees to adopt VEPS. Finally, the Constitutional Court ruled the Support for Discharged Soldiers Act unconstitutional in December 1999.²

Behind the apparent social appearance of these events starting from

1. The new article in the act revised in 1969 included the following paragraphs: "when employing Grade 6 or lower level positions, including technical officials, specified by Article 2 of the State Public Officials Act and Article 2 of the Local Public Officials Act, and when employing workers in state agencies, local government agencies, and schools specified by Article 2 of the Elementary and Secondary Education Act and Article 2 of the Higher Education Act, except agencies with less than five technical officials and private schools with less than five staff excluding the faculty and public or private businesses and organizations that hire twenty or more employees on a daily basis, except manufacturing businesses identified by presidential decree that hire less than two hundred employees, it is required (advised in the case of private businesses and organizations without any penalty clause) to give 5% extra points to veterans who were discharged after serving two or more years and 3% extra points to veterans who were discharged after serving less than two years" (Chung Jin-sung 2001: 8 and <http://www.ccourt.go.kr/english/DecisionEng.html>).
2. For the Support for Discharged Soldiers Act of the year 1998, refer to the Constitutional Court decision (2000) and <http://www.ccourt.go.kr/english/DecisionEng.html>.

the constitutional complaint against VEPS to the subsequent decision of unconstitutionality by the Constitutional Court underlay changes in the pattern of interaction and emergence of new types of discords and tensions between the state and women.³ When this system first went into operation, the state did not regard women as a social group that needed sincere consideration on the issue of equality with the discharged soldier group. This can be seen from the fact that the hiring examinations for Grade 7 or 9 national public employees were operating under the system of separate examinations for male and female applicants until the Civil Service Hiring Examination Decree was revised in 1991 and employment of female civil servants was limited to under 10% of total employees (Kim and Kang 1999: 186). After abolition of the separate male-female civil hiring examination system in 1991, the real competition between male and female applicants started and the number of women in public offices began to increase rapidly. The number of woman public employees in Grade 7 and 9 public offices increased from 5.6% and 10.9% respectively in 1989 to 14.0% and 23.5% respectively in 1992, then to 18.3% and 39.9% respectively in 1997 which is more than three times an increase in 10 years (Ministry of Government Administration and Home Affairs 1999: 36, cited in Park 2000: 116). This is because each year, around 50 to 60 thousand women who are practically excluded from the job markets in the private sector took the civil service hiring examinations. As competition became intense, VEPS became a decisive factor in passing the examinations.⁴ Throughout these periods, conflicts and tensions had grown on this issue between the state and women as well as between various concerned government, ministries and bureaus.

In 1994, the faculty members and about 1900 students of Ewha Womans' University submitted the petition for the abolition of VEPS to the government offices concerned and various women's movement organizations joined forces by submitting supporting proposals. In response, the Committee for Government Reform decided to lower the percentage of extra points to less than 3 % and the Ministry of Patriots and Veterans Affairs planned to follow the new system starting from

3. For a brief history of VEPS and the responses by feminists movements, see Chung Gang-ja (2000), Park(2000) and Chung Jin-sung (2001: 8-13).

January 1996. However, due to “the strong opposition from the various government offices concerned”, its actual operation was postponed (Chung Gang-ja 2000). As a slap in the face, during the process, the fairness of the Women’s Hiring Goal Program in the civil service with respect to VEPS was questioned and the government even considered seriously to extend VEPS to the Grade 5 civil service exam. This extension was nullified due to the objection by the Ministry of Government Administration, which was the chief ministry concerned, who claimed that the introduction of VEPS in Grade 5 civil service exam would cause much confusion since in this exam there were many male applicants who did not fulfill their military duty (*Associated Press* 1995/10/12). Even so, the movement for the abolition of VEPS by women in 1994 could not fulfill its goal due to the differences in the opinions of the various government offices concerned. Then in 1998, a proposal for the revised act that further strengthened VEPS by extending VEPS to private businesses and organizations that employed twenty or more people on a daily basis was submitted to the State Council. This proposal sparked off “showdown between the sexes” and remained unsettled for a time at first, but finally passed at the next Council of Ministers Concerned (*Chosun Ilbo* 1998/7/21).⁵

On the other hand, the proposal submitted in 1997, just before the Presidential Election, that proposed to reflect military service terms in

4. “The lowest passing score for men was 86.42, for women 85.28 in the Grade 7 General Administrative Exam, and 95.50 generally in the Grade 9 General Administrative Exam in 1998. In the Grade 7 General Administrative Exam, of 72 out of 99 hired, 72.7%, were veterans who received extra points. Those who did not receive the extra points numbered only six, 6.4%, three of who were below the cut-off of 86.42 but benefited from the women’s hiring goals program. In other words, 3 people, or 3.3% were all that overcame the wall of the veterans’ extra point system.” The obvious reason is that adding 3 or 5% extra points in the Grade 7 Exam meant an additional 24 or 40 points to the full score of 800 points so that women applicants without extra points found it almost impossible to pass the exam (The Constitutional Court decision 2000: 184, <http://www.ccourt.go.kr/english/DecisionEng.html>).

Suppose a female applicant earned 4.5% extra points (3% by obtaining a certificate for a Grade 2 Information Processing Technician and 1.5% by obtaining a certificate for a Grade 1 Word Processing Technician, which usually takes about 2 years). Then, even if a male applicant earned no extra points except the veterans’ extra points, he has an advantage of 0.5% which amounts 4 points out of the full possible 800 points. Considering the circumstances where a pass or fail is determined by even 0.1 points in these exams, this advantage is almost insurmountable for woman applicants (Park 2000: 122-123).

the salary classes and promotions of civil servants, and to extend VEPS to those who completed their military duties by serving as public duty personnel, faced vehement objections from the women's movement so it was decided to withhold.

In the gender politics⁶ of the nineties that has gone through these events, finally ending in the unconstitutionality decision by the Constitutional Court, as briefly described in the above, whether VEPS is the case of sexual discrimination or discrimination of non-veterans and whether the Women's Hiring Goal Program⁷ and VEPS can be adjusted to be complementary were brought to the fore as major issues. In effect, the Constitutional Court decision gave a kind of answer to them. The Constitutional Court ruled that VEPS formally

5. 1998. 7. 21 At the State Council, "while Chun Yong-Taek, the Minister of National Defense, and Kim Eu-Jae, the Minister of Patriots and Veterans Affairs, were strongly in favor of VEPS, two female ministers, Shin Nak-Kyun, the Minister of Culture and Tourism, and Yoon Hoo-Jung, the Minister of the Special Committee for Gender Equality, were against it, denouncing it as a typical case of sexual discrimination, thus apparently leading to a confrontation between sexes. However Park Sang-Chun, the Minister of Justice, although a man, was on the side of women. Though Kim Jung-Kil, the Minister of Government Administration and Home Affairs, said "Since the Women's Hiring Goal Program that set annual hiring goals for women to 20% is going into operation starting from next year for gender equality, both programs are complementary", Minister Shin replied, "I do not agree". As disputes went on, Minister Park finally said in conclusion "As practically all men are the beneficiaries of VEPS, this system can be regarded as a case of sexual discrimination." Then President Kim Dae-Jung said "the Minister of Patriots and Veterans Affairs and the Minister of the Special Committee for Gender Equality should reach an agreement and submit it to the next State Council" and went on to the next issue" (*Chosun Ilbo/Society* 1998/7/21).

1998. 8. 7 In the Council of Ministers Concerned, Kim Jong-Pil, the Prime Minister nominee, it was decided to pass the proposal to extend VEPS in the next State Council, thus the 'women's side' who was raising objections pointing out the discriminative nature lost the decision. Minister Yoon and other members sympathetic to the women's cause constantly tried to blockade the proposal, insisting that it contained a strong tendency of sexual discrimination. Whereas Minister Chun and other members insisted on passing the proposal by arguing that since there is Women's Hiring Goal Program in operation and a practice of lowering the cut-off for female applicants by 5% is in operation, it does not seem to be especially disadvantageous to women and that VEPS has been operating since 1961. The male members attending today's Council were Chung Hae-Ju, the Minister of Government Policy Coordination, Minister Chun, Minister Kim, Kim Hong-Tae, the Minister of Legislation and the female counterpart consisted of Kim Mo-Im, the Minister of Health and Welfare and minister Yoon" (*Chosun Ilbo/Politics* 1998/8/7).

6. Gender politics understands gender as a central axis that determines the status of various social groups and individuals, their interests and division of labor, and seeks a procedural democracy that reflects gender relations.

appears to discriminate against those who are not veterans but is effectively discrimination based on gender and that Women's Hiring Goal Program and VEPS cannot be made complementary(2000: 179).⁸

After the decision by the Constitutional Court, the debates over VEPS entered a new phase. The participating members and fields of disputes expanded almost indefinitely, veterans themselves started to express their opinions rather vehemently⁹, and the points at issue

7. The Women's Hiring Goal Program, based on the "Framework Act on Women's Development" Article 6 "Provisional Favored Treatment Measures", has been operating during a limited period from 1996 to 2002. For the promotion of women's participation in public offices, this program has set annual hiring goals for women and, when the goals are not met, hire additional women within three points below the cut-off for Grade 5 hiring (senior civil service examination, senior foreign service examination, and senior technological service examination) and five points below for Grade 7 or 9 hiring. In Grade 7, the goals were 10% in 1996, 13% in 1997, 15% in 1998, 20% in 1999, 20% in 2000, 23% in 2001, and 25% in 2002. In Grade 9, 20% in 1999, 20% in 2000, 25% in 2001, and 30% in 2002. The number of women hired from 1996 to 1999 by the application of the Women's Hiring Goal Program was 93 in total (16 in Grade 5, 77 in Grades below 6). 1998. 7. 21 At the State Council, "while Chun Yong-Taek, the Minister of National Defense, and Kim Eu-Jae, the Minister of Patriots and Veterans Affairs, were strongly in favor of VEPS, two female ministers, Shin Nak-Kyun, the Minister of Culture and Tourism, and Yoon Hoo-Jung, the Minister of the Special Committee for Gender Equality, were against it, denouncing it as a typical case of sexual discrimination, thus apparently leading to a confrontation between sexes. However Park Sang-Chun, the Minister of Justice, although a man, was on the side of women. Though Kim Jung-Kil, the Minister of Government Administration and Home Affairs, said "Since the Women's Hiring Goal Program that set annual hiring goals for women to 20% is going into operation starting from next year for gender equality, both programs are complementary", Minister Shin replied, "I do not agree". As disputes went on, Minister Park finally said in conclusion "As practically all men are the beneficiaries of VEPS, this system can be regarded as a case of sexual discrimination." Then President Kim Dae Jung said "the Minister of Patriots and Veterans Affairs and the Minister of the Special Committee for Gender Equality should reach an agreement and submit it to the next State Council" and went on to the next issue" (*Chosun Ilbo/Society* 1998/7/21).

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moved from VEPS to the compulsory military service system.¹⁰ The topics of debates were touching the rather more complex points that lay under the surface of the VEPS debates. We can summarize the main issues of these debates that went on in this period as follows. First, what position should women take on the issue of the Compulsory Military Service System (CMSS, hereinafter) for men? That is, is CMSS just distinguishing women from men or is it a sexual discrimination? Second, how should we recompense veterans without discriminating non-veterans? Third, can we adopt these debates as a subject in gender politics, considering that VEPS has no bearing on the lives of most men and women? In other words, is such gender politics that embodies the differences in women and, going even further, the differences in men, possible?

In this work, I will recapitulate the standpoints of various social groups in our society on these three issues, then I will argue that as long as CMSS continues to exist, the demarcation into public and private sectors and the one by gender will continue to overlap and that, in this case, the male-oriented system of the state will go on, giving only limited roles to women's rights as citizens. Therefore I will claim that when we investigate the debates on VEPS and CMSS and the consequent issues of gender equality emanating from them, we should not confine our angles of view to the concepts of the state and citizenship

8. Though "the veterans' extra point system has the form of distinguishing veterans and non-veterans", "the veterans' extra point system factually discriminates against women in comparison to men." Since "more than 80% of men can become veterans" and "the veterans' extra point system distinguishes most men from most women, the current status of law must be considered as discrimination based on gender" (The Constitutional Court decision, 2000: 179, <http://www.ccourt.go.kr/english/DecisionEng.html>) and "the hiring goal-system is aimed at raising the status of women to that of men who are otherwise in an advantageous position. Unlike this, the veterans' extra point system operates regardless of the male to female ratio and may end up solidifying directly and indirectly men's vested interest in their advanced position" (The Constitutional Court decision 2000: 187, <http://www.ccourt.go.kr/english/DecisionEng.html>).
9. As a representative group, we could mention SSAW (<http://ssaw.co.kr>).
10. This paper utilizes as data various debates and discussions that unfolded in internet space after the Constitutional Court decision. The data includes the reports and columns from women's movement organizations, mass media, universities, veterans' organizations, the Korean Bar Association, etc. that express their respective standpoints and the debates on major internet sites.

but should exploit the concept of human rights. I will propose that, in this case, the “capabilities approach” (Nussbaum 1995, 1999, 2000; Nussbaum and Sen 1993) that tries to realize gender politics through the concept of human rights could prove to be quite useful.

II. Three issues raised by the debates on the abolition of VEPS

When the debates raised after the Constitutional Court decision are considered from the perspective of gender politics, the problems of whether a woman can enjoy all the rights of a citizen, that is, what is/what should be the proper relations between women and the state, whether compensation without discrimination is possible, and the feasibility of gender politics with the differences between women duly considered are all on the table. In this section, I will summarize the debates focusing on these problems.

1. CMSS and citizenship

Examining the debates on CMSS, however, it is unrealistic to change CMSS to a voluntary recruiting system until the unification of South and North Korea and extending the military duty to women will lead to more recruits than necessary. Therefore a realistic remedy for CMSS will be seeking measures that do not allow CMSS to strengthen the division of the public/private sector according to sexes.

In the unconstitutionality decision, the Constitutional Court judged that in CMSS “serving in the military pursuant to the Military Service Act is mere discharge of one’s sacred duty. Each instance of performance of that duty cannot be compensated as if it were a special sacrifice” (2000: 177-178). Also the Court judged that in Article 39 (2) of the constitution stating that “no citizen shall be treated unfavorably on account of the fulfillment of his obligation of military service,” ‘unfavorable treatment’ in the provision does not cover all factual or economic drawbacks but only means legal disadvantages. Thus the Court judged that VEPS can not be founded on CMSS.

Behind the decision that VEPS cannot be said to be founded on CMSS since the military duty is one’s sacred duty, lay the firm belief that military duty forms one of the core parts of Korean Citizenship. At

present, according to the Military Service Act,¹¹ military service is a duty imposed only on men, thus Korean citizens could be divided into two groups: 80% of men who have fulfilled the most basic requirement of citizenship by serving the military and the men who are exempt from military services and most women that could not fulfill this most basic requirement of citizenship. CMSS for men not only contributed to the veteran/non-veteran discrimination through VEPS but also, by dividing the citizens into the fully qualified and those who are not, fortified the structurization of whole areas of society centered on male veterans. Since most men served in the military and almost all women are exempt, and the military system still forms a core of the public sector, this naturally leads to the fortification of the gender structure of the public men and private women. Ueno Chizuko (2000: 18) claims that the modernization project is the nationalization project and the exclusion of women forms the very heart of the modernization project. Through CMSS, the communal spirit of men is consolidated and women are excluded, thus leading to the distinction of the first and second class citizen and making the modernization project, that justifies social inequality, possible. Thus, according to this nation-state scheme, the claim that to qualify for full citizenship, women that are second class citizens should do military service and finally obtain gender equality through the military service logically follows. As long as gender politics accepts the gender concept drawn by the nation-state, women's liberation has no alternative other than to aim for the transformation of women as 'fully qualified citizens.' As an alternative out of this *cul-de-sac*, we could call the concept of 'citizenship' into question, hence try to rearrange the relation between women and the state.

Granting the necessity of CMSS, though some men from rather liberal groups or veterans' groups were raising questions on the problematic aspects of CMSS for men such as "it might be unconstitutional that only men should fulfill their military duty" or "women should serve as backups in public interest service if not in the military to fulfill their

11. The Military Service Act, Article 3:

1. All male citizens of the Republic of Korea have a duty of serving in the national defense as determined by the Constitution and the present law. Women can volunteer for full-duty services.

duties of serving for the state.”¹² The opinion that it was childish or unreasonable to insist that “women, too, should serve the military” prevailed.¹³ As an alternative to CMSS, a voluntary recruiting system was the most favored proposal and women’s movement organizations, in particular, proposed a “voluntary recruiting system for both men and women” (Chung Gang-ja 2000: 28). Among other proposals, a proposal to reduce the term of military service to one year and impose the military duty to both men and women was also voiced with some reservations (ChoHan 2002).

Meanwhile, after the unconstitutionality decision by the Constitutional Courts, the People’s Council Party, which was the ruling party, announced that it would make every effort to maintain VEPS and introduce a “Public Service Duty Extra Point System” as an alternative for women to VEPS. However, this proposal by the People’s Council Party was withdrawn after a barrage of criticism, suspecting the purity of their intention in that it was announced just before the Presidential Election to be held in year 2000 and doubting the feasibility of the proposal, poured in. Instead, starting from January 2000, the government extended the upper age limits for veterans in the Grade 5 hiring exam from the previous one of 32 years old to 35, in the Grade 7 hiring exam from 35 to 38, and in the Grade 9 hiring exam from 28 to 31. Within these limits, the upper age limits for veteran applicants in these exams will be determined by adding their terms of military services to the previous age limits. At present, in year 2002, the Grand National Party, the present majority party, announced in its presidential policy pledges that it would curtail the military service term from the current one of 2 years and 2 months to 2 years and the Democratic Labor Party

12. As a representative case, the debates between Choi Yong-Ho from “SSAW” (<http://ssaw.co.kr>) and professor Ryu Dong-Min could be cited. After the Constitutional Court decision, the site www.ssaw.co.kr was opened to discuss its injustice. “SSAW” was formed by those netizens, who were expressing their opinions, at this site and other kindred ones, just after the Veterans’ Association held a rally demonstrating against the abolition of VEPS on December 30, 1999. “SSAW” demands that the National Assembly should legislate a “Special Act for Discharged Soldiers Support”, that the government should stop providing aid to several designated women’s organizations, and apologies from these women’s organizations to veterans and to the “whole Korean people” (<http://ssaw.co.kr/ssaw3/notice.htm>).
13. An editorial in *Hankook Ilbo* (2000/1/10), a special topic 2 (http://www.jabo.co.kr/31th/spe02_1_31.htm).

announced in its presidential policy pledges that it will reduce the number of armed forces from the present one of seven hundred thousand to five hundred thousand, shorten the military service term to 18 months, and change the current CMSS to a voluntary conscription system if a peace treaty with North Korea is concluded (*Hankyöre Shimun/Politics* 2002/10/9).

2. Remuneration and discrimination

How should the remuneration for the CMSS for men proceed? Most participants supporting the Constitutional court decision in the debates argued that there should be some form of compensation for veterans, but not in ways that discriminate women or non-veterans. The prevalent proposals suggested were that all the claims of compensation should be filed to the government¹⁴ and the forms of compensation provided by the government should be economic ones such as tax-reductions for the employed for the period corresponding to the term of the military service, paying pensions, and lifting the age limit for those searching for jobs (Chung Gang-ja 2000), or paying appropriate monetary compensations during and for some period after discharge of the military service and providing various social aids such as vocational training, employment search services, etc. (Kim El-lim 1999).

On the other hand, SSAW, which represents veterans, doubts whether it is possible to compensate without infringing the rights of non-veterans.¹⁵ According to their argument, the proposal that the government should provide a fund for compensation is actually to suggest that veterans should provide compensation for themselves by themselves since the veterans form the main body of the workers in economic activity, i.e. the taxpayers. The arguments like this are based on the logic that the state is a de facto veterans' organization. And VEPS was one of the showcases by which the state confirmed this logic by

14. Manifesto II (2000, <http://go.jinbo.net/webbs/pdtext.php?board=actwo-7&id=27&class=1>).

15. Choi Yong-Ho "In fact, how could the compensation be made without distinguishing between veterans and non-veterans, and if it is claimed that the compensation should not infringe on the rights of other groups, what differences are there from asking that veterans should provide compensation for themselves by themselves? The veterans form the main body of workers in economic activity would have to bear the burden, which means a double burden for them...."

ripping off the non-veterans' rights and paying compensation to veterans without bearing any economic burden (that is, without dirtying their hands with a single drop of blood).

The methods of compensation for veterans depend on how to arrange the triangular relationships between veterans, non-veterans, and the state. VEPS was one of tools that maintained the male-centered state system by sacrificing women since most non-veterans are women. To free ourselves from the male-centeredness of the state, gender politics should delve deeply into the question, "What is equality?" and should make efforts to render the concept of human rights flexible and relative.

3. Equality and difference

In the cases of Grade 7 and 9 civil service examinations that were the main focus of the debates, most female applicants were university students. Considering the fact that there are many young women who could not even dream of taking these exams, some might wonder whether this is a case of women's issues or class issues (Chung Gangja 2000: 22). On the other hand, many veterans do not seem to be much attracted to these exams, leading us to conclude that the difference in class plays a somewhat similar role for men. Contrary to what women's organizations insist, many veterans do not regard themselves as belonging to the category of veteran = man = the socially powerful, but to the category of the socially weak, that strongly contrasts with those belonging to the group that is called sarcastically God's son = general's son = the man exempt from the military duty = the socially powerful. While the woman regards herself as the socially weak, compared with veterans, the veteran bears a similar feeling, comparing himself with the special group of men exempt from military duty through some doubtful/illegal means such as power and money which most veterans feel to be prevalent in Korean society to his chagrin.¹⁶ Veterans insist on man-man equality whereas women insist on man-woman equality first of all.

Differences among men and among women begin to operate in more complex and diverse manners as we delve into details. In many cases, women's issues emerge in the manners interrelated with the class issues, the problem of regional differences, etc. Moreover, to find

better solutions to the women's issues, the gender politics should not regard women only as victims but should be willing to treat their problems from more diverse angles, giving more balanced attention to class problems and the problem of regional differences, to cite a few. As the issues become more complicated and diverse, since in Korean society the gender politics, the class politics and regional politics are not on equal terms, the gender politics is vulnerable to distortion into the issues of classes and regional differences. To recognize the complications of a problem is one thing and to trivialize it by diversification would be quite another. To actually maintain the tension of complexity, it is necessary to establish a scheme of gender politics that reflects and incorporates the differences between men and between women.

III. Ideas of citizenship and human rights

It is vital for gender politics in Korean society to develop an idea of human rights that operates in a manner independent of the idea of citizenship. As a method to incorporate the differences in men and the differences in women, the least common sets of criteria that all the differences are willing to agree on will provide the ground on which we can accept the differences, without our acceptance of them deepening inequality.¹⁷

What is human right? According to Sen, human rights are based on

16. Byun Hee-jae (2000), "the probable reason why Ewha Womans' University is under crossfire is because the veterans regard the students at this university as belonging to the socially powerful group."
17. Finding out the least common sets of criteria that all the differences are willing to agree on will prevent difference and diversity from deteriorating into inequality. According to the post-modern feminist argument that regards the process, by which differences and diversities becoming ineffective through confrontation with the absolute standard and a monolithic norm, as the frontline that gender politics in 21st century should keep constant watch on, the attempt of Liberal Feminism to provide a common standard based on human rights might look suspiciously akin to the idea of western-centered universalism (Quillen 2001). However, as long as it is kept in mind that the idea of human rights is not the one unique in western culture and, moreover, they should not be left as such, human rights could serve as a framework that can protect difference and diversity (Nussbaum 1999, 2001; Sen 1997; Nussbaum and Sen 1995). There seems to a niche for postmodern feminism and liberal feminism to make amicable reconciliation in the idea of human rights.

common human nature and every human has them by right (Sen 1997). Human rights are not rights that derive from what the constitution guaranteed to specific people, that is, the citizenship of the state. Human rights are what each individual is endowed with independently of what the government desires and regardless of the state to which he belongs. The government can dispute the legal rights of an individual but not his human rights since human rights are independent of citizenship. Rather they are an ideal of a higher level than citizenship.

The viewpoint that human rights are an ideal of a higher level than citizenship attracted much attention as the borderlines between nations became vague and globalization made rapid progress. This is due to the recent circumstances that, as financial capital and labor move over the narrow boundary of each individual nation and contacts and consequent conflicts between disparate cultures, disparate races and citizens of disparate nations became frequent, interests in other parts of the world beyond one's own region and nation heightened naturally, thus ideas like "citizen of the world," "love of mankind" and "human rights" began to be felt less hollow.

In other words, while the politics of difference within the boundary of a nation has been serving as alternative logic to the politics of nation-state, now it has become necessary to expand the horizon to political considerations on the level of a global standard as a more productive alternative. Just as the nation-state disparaged the "politics of difference" as group egoism, by the same logic, relying on the ideas of love of mankind and human rights, a nation-state's greedy emphasis on the interests of its own nation could be criticized as state egoism. In short, the strata of the region, state, and world and their interactions reenact those of the politics of difference, citizenship, and human rights. As globalization made the borderlines faint, the idea of human rights allows one to raise questions on the idea of citizenship not only of one's own nation but also of other nations.

As an aside, the above circumstances lead us to anticipate strongly that the idea of human rights could become politicized. From the political stratum of nation-state, the criticism that human rights movements merely serve as a political argument for multinational corporations to make inroads into the markets of the third world could be raised.¹⁸ It is claimed that, though the idea of human rights emphasizes the univer-

sality of mankind, in actuality this is one of notions that were developed by and for the westerner, thus it will just serve the political purpose of the western-centered globalization. On the other hand, from the stratum of globalization, the criticism that the nation-state violates human rights at will on the pretext of cultural uniqueness might be raised. In other words, the argument is that when a nation emphasizes the cultural uniqueness against the idea of human rights, it could serve as a tool to justify the authoritarian dictatorship and oppression in that nation.¹⁹ Under the circumstances where the idea of human rights is conceptualized and utilized as a counter argument against globalization by the nation-state on the one hand and as an argument justifying the intervention into the nation-state on the other hand, it is imperative to concretize the idea of human rights by incorporating the universality of human experiences. Alongside, it is necessary to investigate carefully whether, in fact, the idea of human rights is a western value and whether there was really no idea of human rights in histories and cultures of the third world (Sen 1997).

The project by Sen (1999) to justify human rights by associating them with justice and equality, both being the universal values of mankind, can be considered efforts to prevent human rights movements from being exploited as political tools. Sen argues that to realize the idea of equality among humans with diverse backgrounds, the focus of debates should be on 'equality of what' (1997: 34-41). Equality can be evaluated by comparing the specific aspects of a person (income, wealth, happiness, freedom, opportunity, right, satisfaction of desires, etc.) with those of others. Hence evaluation of equality will depend on the choice of variables among various aspects. The choice of a specific variable means that we should choose a specific perspective at the most fundamental level. Sen chose "freedom to achieve" as a specific variable. The freedom to secure "functional capabilities" that an individual might consider to be important is chosen as a standard of evaluation (1998: 59). This implies that equality should

18. Lee Jeong-ok, "The future of women's movement in the age of globalization," presented in the 31st Keimyung Women's Studies Seminar (2002/9/17).

19. The catchword "Dictatorship is the daily meal of globalization" implies that the idea of human rights can intervene in the idea of citizenship of nations.

be accomplished not at the level of the equality of fair opportunities in obtaining primary goods, but at the level of equality of the capabilities to transform these primary goods to achievements at the level of welfare (1999: 59). Sen insisted on changing the standard of equality from the perspective of income distribution to one of functional capabilities.

The functional capabilities approach intends to conceptualize equality into the equality of freedom to achieve. The functional capabilities approach is a perspective that keeps the inequalities due to races, classes, and gender to minimum and it is also an idea that can serve as a measure of human rights that all mankind should make efforts to protect despite human diversity. According to Sen's idea of equality, VEPS is a system that violates equality by allotting unequal "freedom to hold public offices" between men and women. Moreover, even though only a few women out of the whole group of women actually take the civil service examinations, since this system limits the freedom of the whole group of women to choose, it could be regarded as a gender issue. In gender politics, women should also endeavor to accommodate the idea of human rights alongside with efforts to secure citizenship since it is imperative for women to possess visions broad and flexible enough to transcend the state while remaining as citizens, that is, as members of the state.

In Sen's approach, could it be concluded that CMSS severely restricts young men's "freedom to achieve" in comparison to those of women and the men exempt from military duty, thus is unfair? It will depend on the estimation of what kinds of effects CMSS has on Korean young men. It is evident that CMSS has postponed the Korean young man's "freedom

to achieve" until 26 months later. However, as remuneration for such postponement, by discharging the duty of being Korean, the status and rights as a "complete citizen" are bestowed upon the Korean man for the rest of his life. In contrast to the remuneration such as VEPS that is given more or less once, these status and rights of a complete citizen are reproduced through the policy, structure, and culture of Korean society that gravitate around the veterans as a center. Considering this, it seems difficult to conclude that the only effect of CMSS is restriction of the men's "freedom to achieve."

IV. Beyond the male state: the perspective of the capabilities approach

To determine the concrete contents of human rights that everyone can agree on, it is important to incorporate the cultural difference and gender difference. By modifying Sen's functional capabilities approach to incorporate the idea of gender, Nussbaum was able to develop the capabilities approach (Nussbaum 1995, 1999, 2000) which promises to be a valuable tool that can be used to evaluate the state policy for women and suggest new directions.²⁰

The capabilities approach (1) believes that there are certain functions that are particularly central in human life, and (2) starts from the presupposition that it should be allowed to perform these functions in a truly human way (Nussbaum 1999: 234). Nussbaum classifies the "capabilities" into basic capabilities, internal capabilities, and combined capabilities. Basic capabilities are the innate equipment of individuals that forms the ground of moral concern. Though they are sometimes, like the capability for seeing and hearing, ready to function, most of them cannot be directly converted into functioning. The new born has, as basic capabilities, the capability for speaking and reading, the capability for loving and gratitude, the capability to use practical reason, and the capability for work. Internal capabilities are the states that are sufficient conditions for the exercise of the requisite functions at the level of the person. Unlike basic capabilities, these states are mature conditions of readiness. Lastly, combined capabilities are defined as internal capabilities combined with suitable external conditions for the exercise of function. Even though an individual is equipped with internal capabilities, he can not put them into practice unless suitable external conditions for the exercise of the function are provided with. For example, a citizen under dictatorship, though he has the capabilities for thought and expression according to his conscience, does not have the combined capabilities since the government prohibits their use (Nussbaum 2000: 84-86).

20. During the last decade, Amartya Sen and Martha C. Nussbaum have been making efforts to produce standards based on the idea of human rights to realize gender equality in the state development plan (Nussbaum 1995, 1999, 2000; Nussbaum and Sen 1993; Sen 1997, 1999).

Nussbaum's capabilities approach is realized by ten central combined capabilities (refer to Table 1). The fact that each item of the list is a combined capability implies that for each capability, the individual should be allowed to develop his internal capabilities and that once developed, appropriate social conditions should be provided for their exercise. According to Nussbaum combined capabilities are concrete forms of human rights. Therefore it is claimed that citizens can make demands to their governments according to the standards set up by capabilities approach (Nussbaum 2000: 98).

Table 1 cites, as central combined capabilities, life (normal life expectancy); bodily health; bodily integrity (freedom of movement, freedom from violent assault, opportunities for sexual satisfaction, and reproductive choices); being able to use the senses, imagination, reason, and thought; being able to plan one's life in accordance with one's own conception of the good; being able to love and to play; being able to shape one's political environment through the rights of political participation, association, and free speech; and being able to shape one's material environment through the right of property ownership and through equal opportunity for employment. An important point of emphasis is that the aim of the capabilities approach is not that an individual should exercise those capabilities. Instead, an individual should have a right to be given opportunities for such exercise (Nussbaum 2000: 87). As an example, there is a great difference between to choose fasting in the circumstances where one is equipped with the ability and conditions to have well-balanced meals, and starving. The capabilities approach does not insist that everyone should have well-balanced meals but that everyone should have a right to choose to them. In this case, one must be left free to determine their own choice.

Nussbaum's capabilities approach works as cross-cultural norms beyond an individual culture. Thus when in a certain culture women are not allowed the right to exercise even one of these capabilities for a specific reason, women could request it in the name of human rights (Quillen 2001: 93). Since the capabilities approach serves as a cross-cultural norm, it becomes justified to form an international alliance of human rights movements and to put pressure on an individual nation to realize human rights.

The following list of central human functional capabilities is prepared by incorporating cultural differences and gender differences.

Table 1. Central human functional capabilities

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1. Life. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so diminished as to be not worth living.
 2. Bodily health. Being able to have good health, including reproductive health,²¹ to be adequately nourished; to have adequate shelter.
 3. Bodily integrity. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
 4. Senses, imagination, and thought. Being able to use the senses, to imagine, think and reason - and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable
21. The 1994 International Conference on Population and Development (ICPD) adopted a definition of reproductive health that fits well with the intuitive idea of truly human functioning that guides this list: "Reproductive health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have satisfying and safe sex and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so" (United Nations 1995: 40, para.7.2). The definition goes on to say that it also implies there be information and access to family planning methods of their choice. A brief summary of the ICPD's recommendations, adopted by the Panel on Reproductive Health of the Committee on Population established by the National Research Council specifies three requirements of reproductive health: "1. Every sex act should be free of coercion and infection. 2. Every pregnancy should be intended. 3. Every birth should be healthy" (see Tsui, Wasserheit, and Haaga 1997: 14).

experiences, and to avoid non-necessary pain.

5. Emotions. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in people's development.)
6. Practical reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life (which entails protection for the liberty of conscience).
7. Affiliation.
 - A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
 - B. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin.
8. Other species. Being able to live with concern for and in relation to animals, plants and the world of nature.
9. Play. Being able to laugh, to play, to enjoy recreational activities.
10. Control over one's environment.
 - A. Political. Being able to participate effectively in the political choices that govern one's life; having the right of political participation, protections of free speech and association.
 - B. Material. Being able to hold property (both land and movable goods); having the right to seek employment on an equal basis with others; having freedom from unwarranted

search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

(Nussbaum 1999: 235; 2000: 78-80)

Three objections can be made on the work that tries to realize the contents of human rights by the idea of “capability” and to utilize it as cross-cultural norms (Nussbaum 1999: 229-231; 2000: 41-58). The first is the argument that cross-cultural norms ignore the uniqueness of traditional culture. However, the reason why we respect the uniqueness of cultural tradition is because we believe that it is a value system favorable to other forms of living i.e. the diversity of life. Contrary to this belief, in too many cases, the cultural tradition, which finds support for their continual existence from the argument based on diversity, serves as an absolute norm in reality compelling a person to follow a life based on the tradition. Thus, the cultural tradition based on relativism negates the relativism. Nussbaum argues that the cultural tradition frequently means norms of female modesty, deference, obedience, and self-sacrifice. Actually, in the modernization process of each nation, women were required to reproduce the cultural tradition and during this process women were excluded from the construction of the ‘modern citizen’ (Kim Eun-shil 1994; Chizuko 2000; Felski 1995). If women’s preferences change from the traditional life to economic capability and opportunity, it is not because they are following western values but simply because they began to realize the potentiality and merits of themselves as humans. However, on the other hand, if a woman makes a choice of a traditional life under the circumstances where the political and economical opportunities are secured, it should be respected as a case of personal choice.

The second is the argument that cross-cultural norms annihilate diversity. Each cultural norm has its own distinctive beauty and the world becomes culturally impoverished by becoming more homogeneous due to cross-cultural norms. Nussbaum differentiates the claim that diversity should be preserved further into the claim that diversity is good as such, and the claim that points out the problems with the values of economic efficiency and consumerism becoming more domi-

nant. The latter claim is not objecting to the cross-cultural norms but just implies that the content of the norm should be critical of the currently dominant economic norms based on economic efficiency. In the capabilities approach, it is argued that the people's right of choice should not be allowed to lie dormant because of economic efficiency (Nussbaum 2000: 33). The capabilities approach is basically ethical norms and aims to prevent each nation from enforcing policies that are based on economic efficiency by making an alliance of world citizens. Thus the cross-cultural norms are not incompatible with the second claim.

The challenge lies in the first claim basing its objection on the goodness of diversity as such. Cultural diversity is different from linguistic diversity. It is not worth preserving simply because the culture is unique and has colorful history. Certain culture is surely harmful to people. Moreover, despite their diversity in other aspects, male-centered cultures reveal surprising homogeneity in oppression of women. Therefore, to pursue a genuine diversity harmless to people, cross-cultural norms are prerequisite. Cross-cultural norms provide a useful set of criteria that will allow one to decide whether a specific cultural norm is worth preserving in the context of human rights.

The third is the argument that cross-cultural norms are paternalistic. This argument claims that whereas people best know what is good for them, thus their freedom of choice should be respected, cross-cultural norms, by suggesting the criteria of choice, treat people like children that need guidance. In a similar vein, Spivak regards Nussbaum's project as a "civilizing mission" that reminds us of the age of imperialism and criticized that Nussbaum took the responsibility of the western white woman that tries to teach citizens of starving countries what they should desire (Scott 2001). By the way, what cross-cultural norms presuppose is that it is desirable that political freedom and opportunities of choice should be guaranteed, not that a specific life should be chosen. Nussbaum argues that, for a citizen to be able to choose his own life in a diverse manner in a pluralistic society, it is necessary to establish cross-cultural norms that guarantee the most important choices and freedoms and that protecting the freedom of choice is not paternalism (Nussbaum 1999: 229-231; 2000: 41-59).

Nussbaum's attempt to utilize the capabilities approach in order to

establish the cross-cultural norms that can be applied to each diverse culture is not incompatible with the postmodern feminism that emphasizes politics of difference, but complementary. The capabilities approach establishes the norms of human rights as minimum requirements that do not allow difference and diversity deteriorate into discrimination and hierarchy, and the politics of difference can pursue genuine diversity within the framework of human rights. Moreover, without minimum concrete efforts to preserve human rights, we will be dragged into the globalization process based on economic efficiency helplessly as Nussbaum convincingly warns. Of course, the problem of adjusting items in the list and of determining priorities among items to reflect the characteristics of each culture deserves detailed studies through active participation from each cultural region.

V. Conclusion

VEPS should be abolished since it infringes on citizenship and human rights. In particular, VEPS essentially prevents women from holding public offices, thus violating the human right for equal employment.

Throughout the nineties there had been remarkable improvements in laws, systems, and policies concerned with women, thus the UN chose Korea as an exemplary successful nation in improving women's status. This was possible because there had been a national consensus on the relatively dire legal and social status of women. Thus gender politics had been going on in the pattern of women's organizations taking the initiative on gender issues by proposing policy alternatives and leading to their adoption or at least, some improvements. However the abolition of VEPS and the aspect of debates in its aftermath clearly show that it will be no longer possible to proceed in this pattern. In Korean society, women are moving on from the status of victims and the disadvantaged who need protection and assistance to those that can substantiate gender politics. Therefore women should realize that now, gender issues are interrelated with other social issues on an equal footing and try to find their solutions in the general framework of participation and interrelationship with a broad range of social issues. The

idea of human rights will serve as a compass for gender politics to navigate through the rough sea of a region-state-world complex to its substantiation in Korean society without losing sight of interrelationship between gender politics and other politics.

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