Introduction

To secure gender equality is an ongoing democratic challenge. The “culture of equals” is intrinsic to democracy, as Anne Phillips (2004) has written: Democracy involves an assertion about the fundamental equality of all human beings, and an expectation that this will be reflected in public policies and law. Principles of gender equality are written into international covenants, national constitutions, laws and bureaucratic guidelines. But how gender equality actually translates into law and public policies, is highly controversial politics. Gender equality is conceived of in various ways. But all kinds of gender equality politics contain battles over rights, recognition, participation and distribution.

This chapter discusses gender policies in the Nordic countries, and particularly in Norway, in light of what I call the ‘travel metaphor’, which is embedded in the gender equality discourse. This is the cherished image of the ‘road towards’ gender equality, the view of automatic, gradual equalisation between genders vis-à-vis power and influence. As a way of handling persistent inequality, political leaders often frame “gender equality” as a kind of nationally encapsulated, common journey. In the official gender equality policies that I have analysed, equality rights are mainly treated as consensual, free of controversy and gradually achievable. The travel metaphor portrays “gender equality” as a linear process of evolvement where we
all, together, continuously take new steps towards the goal. This goal might still be “far ahead”, but nevertheless it is securely within our reach; we just have to travel for long and far enough.

A brief example illustrates the case: When the Norwegian representative for gender equality policies recently met with the UN women’s committee in New York, her main message was that although all gender equality goals had ‘not yet’ been obtained, ‘considerable achievements’ had been made. In official gender equality rhetoric, we regularly find references to areas of society which might have “a long way to go”. In others, “considerable steps have been taken”. Some “setbacks” might occur, some parts of society are “lagging behind”, while others are “almost there”.

There is an implicit “be patient” clause to official gender equality rhetoric which makes abundant use of the road/travel/journey. It implies that everybody involved is really working hard and truly doing their best to achieve the common goal. This patience clause makes it tempting to ask when, exactly, will “we” finally arrive “there” - in the gender equal society where justice reigns uninterrupted? Are we “there” when all imaginable equal rights are secured? When all gender structured violence is left behind? When all public budgets are gender equalised? When all organisations are gender mainstreamed? When all “reconciliation problems”, of paid work and unpaid care, are finally solved? When all the world’s religious leaders have left all their gender hierarchies behind? Is there, actually, an end station to democracy that reaches the set ideals?

I wish to contrast the linear optimism of the travel metaphor of gender equality with what I (consequently) call gender equality’s ‘duty to yield’. This expression signifies all the
situations where a general commitment to gender equality is combined with political willingness to grant competing principles or different sets of values precedence in actual conflict situations. Gender equality policies are shaped within complex systems of political negotiations and compromises. In political practice, gender equality often has to give way to other important values. A classic example is the yielding duty of gender equality when confronted with the principle of freedom of religious beliefs. The right to religious freedom is a cornerstone of human rights thinking. In liberal state-religion orders, this right remarkably often translates into a claim for due respect for religious doctrines and customs, and consequent group claims for a rule-based non-interference from the state – so called exemption rights. The gender hierarchies imposed by many religious doctrines and practices are often in direct conflict with women’s rights to equality. When religious groups are granted formal exemption from laws against gender discrimination, a duty for gender equality to yield is imposed. Yielding duties pose actual barriers to the recognition of gender equality rights. In this sense, there is no travelling going on.

Closely connected to the image of the journey towards gender equality, is one particular argument about why gender equality is so important to “achieve”. This argument addresses the usefulness of gender equality - the many ways that women will enrich the public sphere (and men the corresponding private sphere), when gender equality is finally here. Consider for instance the European Commission’s 2005 gender equality report. The introduction is securely set within the travel metaphor of equality: the report ‘shows advances, but inequality remains’. Then follows a standard utility argument for gender equality, which with notable lack of delicacy, is stated as follows: “Increased integration of women into the work force will release the productive potential of the [European Union] EU and increase social cohesion, in line with the Lisbon strategy” (European Commission website, 2005).
In my view this is a prime example of degrading pragmatism in official equality talk. The commission seems to have forgotten that there are democratic obligations which are different from productivity concerns. Democracy cannot be subsumed under productivity. What if increased integration of women into the work force did not increase social cohesion in the EU? Should gender equality principles be abolished?

This article contrasts the image of the gender equality “journey” with actual duties to yield, as such duties can be observed in Norwegian gender equality law. In my view, yielding duties deserve at least as much attention as “the steps taken” at any time. Three examples of yielding duties are given particular attention in this article. Firstly, I discuss the limited scope of regulations to secure equal pay for work of equal value. Secondly, I address the general exemption from anti discrimination legislation which is granted to religious communities. And thirdly, I discuss the incorporation of CEDAW (Convention on the Elimination of All forms of Discrimination Against Women) in Norwegian law, which has been carried out in such a manner so as to give CEDAW less binding force than other human rights conventions.

I shall set my discussion within a framework that is based on a policy analysis study conducted by Mari Teigen and myself. This analysis was a part of a large-scale government initiated research programme on “Power and Democracy” in Norway over the period 1998-2003 (Skjeie and Teigen, 2003). i

The travel metaphor

The rhetoric of linear gradualism, or incrementalism, has been identified as a dominant gender equality discourse in each and every Nordic country (see Freidenvall, Dahlerup and Skjeie, forthcoming). While I do not think that gradualist conceptions of equality journeys are
in any way exclusive to this territorial unit, there is a particular legacy of feminist writings on
Nordic political cultures that might be partly ‘responsible’ for this discursive frame. The
influential work on Scandinavian welfare state policies and the concurrent concept of ‘state
feminism’ launched by Helga Hernes in the late 1980s, was tied to a claim that Nordic
democracies embody a state form that makes it possible to transform them into women-
friendly societies. The concept was largely held to be synonymous with “state
interventionism” aimed at the emancipation of women and the creation of “women friendly”
politics (see Bergman 2004). State feminism captured political settings where mobilisation
‘from below’- i.e. feminist movements - combined with ‘integration politics from above’- i.e.
party political elites and institutions - in state initiatives where social rights expansion, and
party political inclusion, were the two sides of the same transformation vision. In the women-
friendly society, injustice on the basis of gender would largely be eliminated without an
increase in other forms of inequality (Hernes, 1987:15). State feminism coined a gradual
development of policies, which, in the end, would fulfil all claims embedded in a principle of
gender justice.

In my opinion, the concept of state feminism, as it was developed in the 1980s, also mirrored
actual feminist understandings of societies being ‘on the right course’. There was a perception
of a political ‘break through’ in the way political leaders approached gender equality: A
factual alliance between women and the state was being formed (see the discussion in Skjeie
and Teigen, 2003). In the following decade, feminist research elaborated on, and quarrelled
over, the meaning, reality and implication of Nordic State Feminism (Borchorst and Siim,
2002). Political elites have, however, to a large degree stuck with the promise of Nordic
exceptionalism.
Often, the framing of ‘gender equality’ in Nordic political debates is one of ‘almost there’. As Anne Maria Holli has outlined regarding the Finnish ‘national journey’:

It has become increasingly commonplace in the 1990s to regard Finland as a “gender equal” society par excellence already. The Finnish people are considered to have internalised “gender equal” values and behaviour, in contrast to other people and cultures which have not “come so far”. The problems we observe in our country are not considered serious, but as minor blemishes in an otherwise perfect society (Holli, 2003: 17-18).

A similar observation is made by Annette Borchorst (2004), concerning the Danish ‘national journey’. To this, she adds the observation of a problematic ‘We’ – ‘They’ construction of recent gender equality rhetoric. This is the claim that Danish citizens have already reached the end station of the equality journey. As of today, in Danish political rhetoric dominated by a centre–right government, the ‘equality project’ is mainly claimed to be of relevance to ‘Muslim countries’, or to immigrant minority groups now living in Denmark. In this kind of rhetoric, local gender equality ‘exceptionalism’ thus mixes with nationalism in quite disturbing ways.

In a comparison of French and Finnish parliamentary debates on equal representation, the respective ‘parité’-‘quota’ debates, Eva Raevaara (2005) identifies a larger common content of nation-building in the rhetoric of gender equality. It all tends to underscore the country’s ability to progress towards a perfect democracy. The equality discourses have a common content in that they model the road to gender equality as a route of national exceptionalism. For instance, Raevaara describes one strand of the parité debate as insistent on the particular
French obligation to remain a model of equality for all. After all, France is - as the world well knows - the very birthplace of human rights. The Finnish parliamentarians simply maintained that Finland could also excel among nations when adopting a gender quota law. This way, Finland would prove both its firm belonging within the Nordic tradition of excellent equality, and hope to achieve a status of first among equals.

Alternatives of course exist; these are dominant but not monolithic public discourses. Anne Maria Holli (2003) comments on how a counter tendency is particularly notable, not least because of its loudness, in Swedish official gender equality discourse (see also Borchorst, Christensen and Siim, 2002; Freidenvall, Dahlerup and Skjeie, forthcoming). Consensual ‘travel-talk’ is here challenged by an analysis of structural gender discrimination which is framed as ‘the gender power order’. ‘The gender power order’ is clearly more focused on concepts of gender discrimination, systemic exclusions and misrecognition (Eduards, 2002). It is a counter tendency in gender equality discourse which is not least inspired by the ‘genus system’ analysis of the Swedish power commission from the late 1980s (Hirdmann, 1990) and the following official ‘women’s power investigation’ in the latter part of the 1990s. The ‘gender power order’ has also informed Swedish legislation to combat violence against women, including the legal ban on buying sex (Eduards, 2002; Skjeie and Teigen, 2003; Borchorst, Christensen and Siim, 2002). Thus structural discrimination perspectives are clearly more institutionalised in Swedish party politics than in other Nordic ‘state feminisms’.

The problem of institutional male dominance

In all these ‘best countries’ of gender equality, patterns of strong institutional male dominance persist. This is for instance true in all the Nordic countries, as quite comparable large-scale national surveys have shown. In the research team in charge of the Norwegian ‘Power and
Democracy Study’, we made a comprehensive analysis of official gender equality policies (Skjeie and Teigen, 2003). This analysis included a survey among institutional elite groups. 2000 top leadership positions were identified, and the persons holding the leadership positions were interviewed. The survey revealed an overall male dominance of nearly 85 per cent in national elite positions, with variations from 60-65 per cent in party politics to 98 per cent in private business corporations. The statistics clearly show that male dominance is overwhelming in the societal elites of current Norwegian society. Thus they bluntly demonstrate that in elite levels of society, few “roads” to gender equality have yet been paved in Norway.

The top leaders, in sectors such as business, state administration, party politics, media, church, the arts, academia, law enforcement, and defence were interviewed about attitudes to various aspects of gender equality policies. The survey documented what we call the problem of benevolent non-commitment. Verbal support for gender equality combines with strong male dominance in formal positions of power and influence. Today, there is a broad political consensus at the rhetorical level about the significance of gender equality for societal well-being. Yet a general consensus, across different leadership strata, on the importance of gender equality policies combines with quite specific willingness to subordinate gender equality to competing principles or interests. This often happens when leaders are asked about prioritising political issues which simultaneously pose conflicts of interests in areas of particular relevance to different leadership strata. To give a few examples: Business leaders often support affirmative action in hiring processes in the public sector, but largely reject gender quotas on the boards of private businesses. Most church leaders are eager protagonists for quota regulations in politics, work places, higher education etc, but largely reject the idea that gender discrimination within in the Norwegian state church should be prohibited by law.ii Labour party leaders are clearly more supportive of a prohibition of gender
discrimination within the church, than of politics which prioritise wage increases in the care professions of the public sector. (Skjeie and Teigen, 2003)

In this study, we argue that the extreme male dominance in formal positions of power and influence become more ‘manageable’ through the gender equality travel rhetoric. The ‘journey’ allows for problems of gendered power to be ‘almost’ solved. The travel requires patience. Simply, more time needs to pass for patterns of positional male dominance to gradually evolve into patterns of positional gender balance. Strong (statistical) male dominance in the leaders’ own organisations is not primarily identified as a problem of discrimination, of dubious network recruitment practises or of misogynistic attitudes towards women in positions of authority. Most important, the leaders claim, is the fact that ‘too few women apply” for leadership positions (Skjeie and Teigen, 2003).

In elite levels of society, gender equality is rather portrayed as a harmonious common project. It is pasted into a language that creates images of change in ‘the right direction’ happening all the time – even if/when simple statistics clearly demonstrate more permanence than change. There are, again, exceptions to the insistence on gradual progress. Different types of quota policies are controversial, but receive strong support in several leadership strata. For several years, the male hegemony in top leadership levels of large business corporations has been challenged by gender equality policies as constituting an ‘unacceptable’ state of affairs. Here, even cabinet ministers have declared themselves to be simply ‘fed up’ with the situation. In 2004 a new law on the composition of the boards of publicly owned corporations thus came into effect, establishing a regulation minimum of 40-60 per cent female-male gender balance. If private companies do not ‘sufficiently’ improve the gender balance of their boards, the same regulation will apply to the private sector from the year 2006. This law is the only one of its kind. No other government has
demonstrated similar interventionist ambitions as regards the governing bodies of businesses. The law is modelled on the 40-60 regulation of gender balance, which since 1987 has applied to all governmental appointed boards and committees, and today also encompasses locally appointed committees.

However, the politicians’ ‘own’ bodies, the parliament, and regional and municipal councils, are exempted from similar legal regulations. Here a vague, argument about the voters’ right to decide the composition of elected bodies, or else a similarly vague argument of ‘party autonomy’, seems to support politics of non interference. Also, several party political internal quota regulations are already in place. Generally speaking, these suffice to produce an ‘acceptable’ national (statistical) gender balance of about 30 – 40 per cent women among delegates. In the words of the travel metaphor, political bodies have ‘already’ moved ‘sufficiently far’ in ‘the right direction’, and consequently (if somewhat inconsistently) need no permanent rule about their compositions.

**Equality’s utility**

In the Norwegian context of 1980s ‘state feminism’, Helga Hernes (1982, 1987) outlined three main arguments for political representation demands. She distinguished between a ‘democratic right to participation’ argument, which she called ‘the justice argument’, an argument about ‘women’s important contributions’, which she called ‘the resource argument’, and an argument about ‘conflicting, gender structured, political interests’; i.e. ‘the interest argument’. In actual political debate, all three kinds of arguments were often intertwined. Yet the resource argument can be seen to fit exceptionally well with portrayals of society’s harmonious struggle to “achieve” gender equality, in the sense that arguments about ‘women’s contributions’ are consensus building, conflict avoiding and thus non threatening political arguments.
My own analyses of party political conceptualisations of a ‘politics of presence’ (cf. Phillips 1995) in the late 1980s, which included interviews with members of Parliament and the then world famously mediated ‘Women’s Cabinet’ headed by Gro Harlem Brundtland, revealed the importance of what I called a ‘rhetoric of difference’ supporting internal party quota policies and gender sensitive nomination politics (Skjeie, 1992). The rhetoric of difference stressed women’s and men’s different contributions to political life, based on different (gendered) perspectives and experiences, as the ‘inclusion of women’ was here conceived to challenge and change established political priorities within all the major political parties (although in somewhat different, party specific ways).

Correspondingly, in the first attempts to regulate the gender composition of public boards and commissions, one major argument from the initiators (the committee preparing the legislation) was how women would contribute to a broader presentation of ‘the public point of view’. When ‘reserved seats’ for female students were introduced in higher technical education in Norway, ‘women’ were held to provide a new, and much needed, focus on communication skills and user friendliness. All over, we can identify political arguments which stress that women are to enter boardrooms, judicial offices, professorships etc. in order to ‘save the institutions’ – that is, a range of utility oriented arguments which claim that the inclusion of ‘women’ will better serve students, advance the climate in the workplace, improve risk assessments, enhance the company image.

In the book *Menn imellom* we also give an example from the debate on formal regulations for gender balance on company boards, provided by the Norwegian Equality Center: ‘Gender balance on the boards of private businesses means caring for businesses’ own interests, and this way also Norwegian interests […] Affirmative action in this respect is an issue of profits.’ (Skjeie and...
Teigen 2003: 200) In neo liberalist rhetoric the utility argument easily turns into an argument on profitability. This has been witnessed in much of the Norwegian equality debate during the last decade. Anne Therese Lotherington (2002) has described how equality initiatives directed towards the private sector of the economy are now mainly supported by arguments on ‘profit’. These mainly stress how a continuing neglect of ‘competent women’ will hurt businesses as they will not be able to realise their full profit potential. This kind of profitability talk is by no means limited to the private sector. It is a general argument in official gender equality talk: The ‘resources’ of ‘competent women’ are not fully ‘utilised’ in society (Skjeie and Teigen, 2003).

Anna Jónasdóttir (1991) has remarked that ‘utility’ is indeed the defining framework of the gender equality discourse, as utility considerations are woven into a never-ending struggle to define the ‘gender essence’. Is it sameness? Is it difference? Who are ‘women’? Two centuries of political discourse have centred on defining women’s role, and correspondingly - Jónasdóttir claims - elaborating what ‘good’ woman bring to public life - to the order and stability of the state; to the pleasure of men; to the transformation of politics (Jónasdóttir, 1991: 203). All too often, as Martha Nussbaum has observed, women are not treated as ends in their own right, persons with a dignity that deserves respect from laws and institutions (Nussbaum, 2000). This holds true for much gender equality rhetoric as well.

The complacent utility arguments are deeply problematic. When gender equality is argued for as a means to secure competitiveness, the category of ‘women’ becomes a representation of ‘means’ for companies and organisations to use. This utility rhetoric puts equality on the defence, as a field that must be defended with something else than its own value. Such discussions circle around a far too old – and endlessly patriarchal – requirement that women should contribute “as a
gender’ – with their collective empathy, their collective talent, and their collective reason. If not, what are we nagging about?

**Equality’s duties to yield**

Under the harmonising umbrella of the equality “journey”, and/or general references to equality’s ‘utility’, quite specific political negotiations and bargains take place. In the book ‘Menn I mellom’ (Skjeie and Teigen, 2003) we describe these bargaining processes as producing a series of pragmatic compromises where competing rights are prioritised, and the equality ‘contract’ is frozen (cf. Hirdmann, 1990). In Norwegian gender equality politics, three major compromises are particularly notable, as they are literally sanctioned by law. They can all be observed in the actual phrasing of the Gender Equality Act (1978) which covers working life, politics, education, civil society and family life. Here, in an encounter with the constitutionally recognised right to ‘religious freedom’, protection against gender discrimination was set aside. In an encounter with the ‘freedom of negotiation’, the right to pay equity was adjusted. In an encounter with the ‘freedom of association’, the right to equal participation was diminished.

The very restricted scope of the legally guaranteed right to equal pay for work of equal value presents a subtle example of equality’s duty to yield in Norwegian legislation. Until a revision of the Gender Equality Act in 2002 only identical work, performed by a male and a female employee respectively, both employed within the same business/organisation, could be compared under the regulation providing a right to equal pay for work of equal value. The limited scope of the equal pay regulation in the Gender Equality Act was due to intervention from the leadership of the Trade Union movement. They demanded a ‘hands off’ policy on equal pay when their comrades in the Labour Party government prepared the law in the mid 1970s. Any regulation that
could impede the ‘right to free negotiations’ was simply unacceptable, the Trade Union representatives declared. iv

The wage controversy was largely contained within the upper echelons of the labour movement. The negotiations were secret, and threats were being made about the trade union’s possible withdrawal from all ‘cooperative’ work with the government. Yet the issue did undoubtedly relate to a principal dispute over how negotiation freedoms could curb legal interventions to secure equal pay for equal work.

The wage compromise reached in the mid 1970s defines a context where ‘fair wages’ can also be seen to collide with concerns about ‘national productivity’. Resisting all attempts to change the definitional boundaries of equal pay in the Gender Equality Act, the Ministry of Finance, in the early 1990s, took care to list all its objections to a legally based comparison of wages which moved beyond the ‘identical work’ limitation. According to the ministry, such changes would:

- contribute to rigidity in wage formation
- prevent readjustments and new entrepreneurship
- imply increases in the average wage level, and corresponding increases of cost problems in the Norwegian economy
- contribute to weakened public budgets, or reduced employment within the public sector
- create negative competition conditions for employment and value creation in the private sector of the economy (Skjeie and Teigen, 2003: 152).

And that was that. Only comparisons with International Labour Organisation conventions, EU directives and equal pay regulations in other Nordic countries were able, in 2002, to change
the Norwegian legal interpretation of equal pay for work of equal value. Yet the Ministry of Finance’s long list of reservations simultaneously, if indirectly, comments on the European Commission’s concerns to release ‘productive potential’ in the EU (cf. the introduction). Equal pay regulations in Norwegian law was kept on a minimum level exactly because a fair law was perceived to threaten productivity.

**Religious exemptions to equality**

In the Norwegian Gender Equality Act there is one generally stated rule of exemption. The prohibition of gender discrimination applies to all areas of society excepting the ‘internal conditions’ in religious communities. The yielding duty of gender equality, when the principle clashes with religious beliefs, is an all too familiar theme. Historically, religious freedom has implied safeguarding forms of worship from transgressions by a state with the power to define the conditions for religious practise as well as ensuring equal treatment of different religions (Ketcher 2001). And modern liberal democracies typically hold the protection of religious freedom to be ‘among the most important functions of government’ (Nussbaum, 2002: 168). But as such, ‘religious freedom’ has often been understood as to be a special group right. That is, religion constitutes an area where a general law might have limited application. This is the conventional understanding of religious freedom in Norway, where religious communities have the right to discriminate on the basis of gender, or on the basis of sexual orientation, if and when such discrimination is rooted in religious conviction. This exemption also encompasses the official state religion’s main institution; the Church of Norway (‘ the state church’).

The general exemption was made politically possible through the collective intervention of the whole state church establishment, including the bishops, the theological colleges and the
ministry of church affairs, during the preparation of the act in the mid 1970s. The labour party government at first had no such general exemption plans; the plan was, to the contrary, to regulate all equality matters of the official state church firmly within the scope of this law. But the fury of the bishops when faced with this infringement on the institutional autonomy of the church, simply became too much for the government to handle.

In principle the exemption right in the Gender Equality Act means that neither the general ban on discrimination, the obligation of authorities and employers to promote equality, the protective measures regarding employment, dismissal and pay equity, nor regulations pertaining to equal rights to and during education and training apply to the internal affairs of religious communities. To paraphrase ‘travel-talk’ once more: The Norwegian Gender Equality Act presents no road at all towards equality for religious women. Within their own communities of faith, they are, to the contrary, principally exempted from the protection of the law.

In a new chapter on equality in working life in the Act relating to worker protection and the working environment, religious communities are correspondingly exempted from the general ban on discrimination on the basis of sexual orientation. And in a new law prohibiting ethnic and religious discrimination, corresponding exemption rules accommodate religious practices, although with a notable ‘exception to the exemption’ for employment relations that have no religious aims.

One other ‘exception to the exemption’ is at least as noteworthy. This relates to a recent controversy over the content of textbooks used in Christian private schools in Norway, within the so-called Accelerated Christian Education (ACE) scheme. Here religious utility
considerations of ‘women’ combine with instructions to subordination in clear contradiction of any gender equality principle. In social science classes in ACE schools pupils would learn that:

When God had completed the creation, he saw that all was good. With only one exception: It was not good for man to be alone. Man needed a close community with other people, or he would be lonely. To accommodate this need, God created woman and instated the family (http://www.kjonnsrettferdighet.no/Utdanning/62 [Accessed 11 May 2005]).

Younger pupils in other social science classes were invited to mark the best answer to the following multiple-choice assignment:

- Wives will be (sorry, sad, happy) to obey their husbands.
- (Wives, cats, dogs) shall obey their husbands.
- A wife obeys God when (he, she, it) obeys the husband.


These textbooks have, however, been declared in violation of the Gender Equality Act. This decision, in 2001, by the Equality Ombud and the Complaints Board was possible due to a separate clause in the act which stipulates that all teaching materials used in schools shall build on gender equality (§7). In this case, the claim to a general exemption right was simply overruled, with the complaints board’s decision integrating state obligations following from CEDAW in its ruling. vi.

CEDAW in Norwegian law
CEDAW does not regard the relation between religion and women’s rights as a legitimate area of exemption. Religious stereotyping and gender hierarchies are directly challenged in the provisions of the Convention (see Vuola, 2002; Børresen, 2004; Hellum, 2004). By ratifying the Convention, states commit themselves to ‘take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise’ (Art 2 c).

In Norway, a recent controversy over the formal status of CEDAW has added to the cataloguing of gender equality’s yielding duties. In February 2004, the conservative-Christian democratic coalition cabinet decided not to afford CEDAW the same legal status as other human rights conventions have been given in Norwegian legislation. The Human Rights Act of 1999 incorporates four international human rights conventions ratified by Norway directly into Norwegian legislation, with precedence granted to the incorporated conventions in cases when a conflict arises between these and other statutory provisions. These conventions have thus been given what is often referred to as ‘semi-constitutional’ status. The Human Rights Act incorporates the European Convention on Human Rights, the Covenants on Civil and Political and Economic, Social and Cultural rights, and the Convention on the Rights of the Child. Both CEDAW and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) have, in accordance with the parliament’s wishes, been in line for incorporation. But now the Government has decided that neither of them will be included in the Human Rights Act. CEDAW will be incorporated into the Gender Equality Act, and ICERD into new law which prohibits ethnic discrimination. This decision simply means that no precedence clause will apply for CEDAW and ICERD. In all probability it also means that when a conflict arises between CEDAW’s protection and human rights’ guarantees that are secured through the Human Rights Act, CEDAW guarantees will simply have to yield. vii
I have a personal interest in challenging this new hierarchy of human rights in Norwegian legislation. The cabinet cites a final conclusion of the Power and Democracy study as the prime reason behind this move. This conclusion, which was made with my dissent, states that the Norwegian political system is in a process of fragmentation, where ‘democracy’, understood as national majority rule through party political representation and formal chain of governance, is in a process of disintegration. Many processes of change were interpreted as pointing in this same direction. In particular, however, this main conclusion stressed an increase in legislation on citizen rights as contributing to a trend in which courts take control of political issues. When human rights conventions are incorporated in Norwegian law, the rulings of international courts become increasingly important in defining the limits of national political decision-making power. The expansion of legally binding human rights regimes, particularly during the past decade, was thus portrayed as a threat to ‘democracy by popular will’. (NOU, 2003: 19, Østerud, Engelstad and Selle, 2003) viii

The formal status of CEDAW has been through an extensive process of review and comment. Virtually all of the institutions and agencies consulted during the review process in 2003 recommended that the convention be incorporated into the Human Rights Act. Only two were negative: the Legislation Department at the Ministry of Justice and the Office of the Attorney General. Both declared that they were deeply worried about the relationship between ‘judicialisation’ and the overall political room to manoeuvre (Skjeie, 2004: 19-21). ix

The stated objection to the incorporation of CEDAW into the Human Rights Act is not, then, based on any form of substantive evaluation of the significance of the convention’s equality principles. Incorporation into the Human Rights Act is instead rejected on the basis of general considerations about the appropriateness and/or danger of institutional power shifts. The
reasoning behind this particular instruction to yield might still be assumed to go roughly as follows: The human rights safeguarded in CEDAW are only of ‘minor importance’, (because) women’s rights are safeguarded ‘adequately enough’ in Norway already, while the discrimination against which women are not protected, is generally viewed as not ‘too harmful’. What this reasoning actually implies, is a political acceptance of the relativisation of women’s human rights.

Conclusion

There might be an overwhelming appeal to a gradualist way of thinking and talking about gender equality. The travel metaphor can be seen to offer both hope and optimism in its harmonious evolvement-oriented outlook on society and life. But in important ways the equality journey remains at odds with human rights based reasoning. Rights discourses do not similarly engage in gender small talk, about the few steps remaining, or the goal already in sight. Rather, they present equality as a principal right. Although sets of rights are obviously - in actual political life in different territorial bounded settings - gradually claimed, recognised, rejected or reinforced, and very differently so, ‘the journey’s’ gradualism remains at odds with a perspective of democratic rights and obligations. To set the opposition maybe far too bluntly, travel perspectives advocate, or encourage, patience, pragmatism and local partial ‘solutions’. Democratic rights stress principally non-negotiable, state/societal ‘obligations’. Interpretations of rights are not fixed, but rights perspectives still resist ‘the journey’s’ pragmatism and partiality.

Rights discourses engage with ‘cultures of discrimination’ as clearly contrary to democratic ‘cultures of equals’. Freedom from discrimination forms one cornerstone of international conventions on human rights. Women’s right to equality is at the heart of CEDAW. International debates on democratic diversity, and in particular on multiculturalism, are specifically focused on

Yet much work initiated under the umbrella of CEDAW also makes more than abundant use of the travel metaphor. Opening the session of the Commission on the Status of Women marking of Beijing + 10, Secretary-General Kofi Annan leapt straight into the travel metaphor – reminding the audience how ten years ago, women gathered in Beijing ‘took a giant step forward.’ Over this decade, there has consequently been ‘tangible progress on many fronts’ (Press release SG/SM/9738). UNIFEM’s gender equality web pages are, quite correspondingly, filled with ‘travel’ allusions. For example, UNIFEM’s executive director, Noeleen Heyzer, indicated UNIFEM’s key role in supporting countries to ‘move forward’ on all gender equality fronts. Yet UNIFEM has also seen how ‘gains can be lost’, and ‘advances reversed’. ‘Four steps’ were highlighted in the preparation for Beijing + 10. Achieving gender equality demands a ‘two track’ approach – gender mainstreaming and renewed investment in women’s human rights. And we all need to work together to give countries a single, clear set of benchmarks for ‘monitoring progress’ on the implementation of gender equality and women’s empowerment (Heyzer, 2004).

The proposition advanced in this article is somewhat at odds with this belief. Here I have argued that by encapsulating gender equality as a common, step-wise, joint journey, the positioning of equality as an individual and democratic right is at risk of being more easily ignored. Prototypically, the state binding norms of CEDAW play almost no role in Norwegian elite structured, travel oriented gender equality discourse. CEDAW’s specification of equality rights is mostly thought of as being of relevance ‘abroad’\textsuperscript{x}. When women’s right to non-discrimination, and the concurrent discrimination ban in the Gender Equality Act is invoked in debates otherwise
informed by the travel metaphor, the issue soon enough turns into one of ‘how big’ a problem discrimination ‘really’ is – in ‘our’ society. The belief often stated is that it is ‘really not so big’.

Various ways of downplaying rights imply that the dominant gender equality discourse also hesitates to address the actual political problems posed by conflicting rights. Yet any law has to confront this challenge of gender justice: How are cultural and religious claims to institutional autonomy, and specific, group differentiated, rights, reconcilable with women’s right to equality? The harmonising strategies embedded in travel metaphors and journey rhetoric have obvious difficulties in coping with these kinds of democratic challenges. What is imposed in the absence of confrontation, far too often turns out to be a tacit duty for gender equality to yield.

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i A similar research programme was carried out in Denmark during the same period. Scandinavian governments have repeatedly initiated comprehensive scholarly investigations of the state of power and democracy in their countries. The tradition started with a ten-year long Norwegian “Power study” (1970-1980), followed by a five-year Swedish investigation (1985-1990) and then these two new parallel studies (1998-2003). Both surveys have, as did a Swedish investigation ten years earlier, focused on gendered power relations. For an overview, see Skjeie and Borchorst (2003).

ii With the notable exception of the few women church leaders.

iii Although quite dramatic differences in perceptions between men and women in leadership positions should be noted.

iv Under no circumstances should gender structured wage differences which followed from collective agreements by labour market parties be subjected to scrutiny by the Equality Ombud. Such cases are referred to the corporatist labour court; Arbeidsretten.

v This, however, is not the Equality Ombudsman’s current interpretation of the exemption right as regards the Church of Norway. But no discrimination cases within the Church have so far been tried by the Ombud and the Complaints Board. A further presentation of legal assessments is offered in Skjeie, 2004, 2005.

vi Which was made with an interesting majority-minority voting pattern: the women members
of the complaints board formed the majority, the men the minority. According to the minority, the constitutionally guaranteed right to religious freedom ought to trump the gender equality act in this case.

vii In all probability this legal “solution” also implies that the government’s earlier statement about ‘no conflict’ between CEDAW and the general exemption clause in the Gender Equality Act will remain unchallenged (cf. Skjeie, 2004, 2005).

viii In the final report to the government, I consequently made a largely contradicting argument, i.e. on the democratic importance of an (internationalist) discourse and politics of rights, new majority-minority challenges, and CEDAWs importance in balancing dilemmas of conflicting rights (NOU 2003:19, 74-87).

ix And they both referred to the majority statement from the Commission on Power and Democracy regarding how “judicialisation” in general, and international human rights regimes in particular, shift power from the political arena to the courts, thus adding to the breakdown of the democratic infrastructure (See Skjeie, 2004: 19-21).

x Two kinds of gender based violations form an exception to this rule: international trafficking in women and children, and domestic violence and abuse, which are officially framed as violations of human rights (NOU 2003:31, Governmental Plan of Action against Trafficking, Skjørten, 2004)
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