Denaturalizing Group Rights in the Developing World

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Introduction

Many of the world's traditions and cultures, including those practiced within formerly conquered or colonized nation-states- which certainly encompasses most of the peoples of Africa, the Middle East, Latin America, and Asia- are quite distinctly patriarchal. They…have elaborate patterns of socialization, rituals, matrimonial customs, and other cultural practices aimed at bringing women's sexuality and reproductive capabilities under men's control. Many such practices make it virtually impossible for women to choose to live independently of men, to be celibate or lesbian, or to decide not to have children...Sometimes, moreover, "culture" or "traditions" are so closely linked with the control of women that they are virtually equated. (Moller Okin 1999, 14, 16)

The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg. (Jefferson, query xvii)

Thomas Jefferson's delineation of religion to a private sphere protected from public intervention seems to presuppose that membership in a religious group will not bring structural or direct violence upon its adherents. For such adherents, many liberal theorists have posited a natural right to the participation in a world-constructing community that will allow them to better frame and pursue their freely chosen plans of life. Religious liberty, long distinguished as an especially sacred individual right, however, must necessarily also function as a right of collectives. Religious groups act and are legally recognized as collective entities with spiritually conditioned personalities. Functionally, they create- through both doctrine and pastoral practice- a world for their adherents in which individuals come to understand their respective roles in a way that has the potential not only for self-actualization, but also for limitation and violence. These roles, defined and reinforced by participation in a community driven largely by religiously conditioned tradition, are frequently so deeply internalized that those most often and seriously limited in their pursuit of potential life plans by their constraints are driven to kill themselves and their children in response to marital infidelity, to submit their bodies to painful mutilation with negative lifelong health consequences, and to live in crowded apartments with thirty immediate relatives as one of several polygamous spouses. They know no other world into which they might enter, and the costs of exit

imposed by civil or domestic society would be high, perhaps even fatal. It is clear that women are most frequently the victims of the abuse of internal group liberty, relegated as they often are to the realms of reproduction, domesticity, and general subservience to men, hidden by the veil of domestic life, and excluded from conceptions of public human subjectivity and often from accounts of what constitutes a human rights violation. For many women, membership in religious, national, or ethnic groups is not a matter of choosing a rational life plan from the marketplace of ideas, but is rather more akin to showing up to the market, being kidnapped, and being socialized into an imprisonment of subjugation or disadvantage that makes it appear as if their "selection from the market" were freely chosen.

What, however, of the woman who wishes with all her heart to undergo genital cutting? Is it not patronizing to assume she is incapable of freely choosing a path that will allow her to form lifelong networks of mutuality and trust and to feel fully one with her community and with the earth? Are rights claims to non-intervention regarding practices similarly violating women's material integrity substantially different from those in which a young woman longs to be a Catholic priest or in which a Muslim student in France yearns to leave the home and to attend school with her peers who are not allowed to wear the hijab? At the heart of these concerns lie the far more fundamental questions of whether groups even ought to be treated as if they possessed certain rights against the state and against their members, what sorts of groups should be free from non-intervention, and whether religious liberty is a special case in the theory of collective rights. To the end of determining, then, the proper limits of group rights, especially of religious organizations and religious minority groups, I will first analyze what it means to possess a right and identify three different ways of speaking about rights. Ascertaining that collectives do not constitute natural entities and that groups cannot therefore be recognized as possessing natural rights on foundationalist grounds, I shall proceed to argue that the pressing and especial needs of women in much of the developing world demonstrate the incompatibility of concern for their equal material well-being and independence with the vast majority of collective rights claims and with the idea that religious groups ought to be exempt from some normal laws regarding the practice and promotion of sex discrimination and gendered violence. I will then stipulate new standards for determining when groups ought not be

treated as if they possessed functional rights to autonomy and non-intervention that better meet the needs of the women whose interests are often lost in those discussions of collective rights which grant pride of place to identity and culture over protection from individual gendered coercion and restriction.

The implications of a well-articulated standard asserting the necessity of a compelling interest in enforcing normal laws to challenging the practices and norms of cultural groups are considerable, given that the set of cases which present a compelling interest shall be shown to be much larger than one might intuit. Such a standard- which appears at first to be quite limited- ends up granting not just the state, but also private actors like non-governmental organizations, the freedom, and perhaps the moral obligation, not to respect cultural practices that limit the life prospects of individual agents, even if those cultural practices are conditioned by religious belief or belonging. What some consider to be a liberal imperialism of ideas shall in some cases be shown to be not poison, but rather a lifeline for the suffering, especially women, that best enforces the properly natural freedom of the marketplace of ideas and treats the moral agency of outsiders involved in development seriously. There exists a pressing need to stop treating religious liberty and other cultural group rights as if they were absolute natural entitlements, a need to recognize that liberty is recognized only for the good of the individual rights bearer and to acknowledge that a fear of accidentally imposing or promoting liberal ideas is misplaced and can even be functionally dangerous for the most vulnerable.

Who Can Have Rights? Do Religious Groups Belong in a Discussion of Collective Rights?

Rights theorist Jack Donnelly notes that, "To have a right to *x* is to be entitled to *x*," and thus to be entitled to make "special claims that ordinarily 'trump' utility, social policy, and other moral or political grounds for action" (2002, 8). Rights are realized as interactions between direct (as in the actual rights bearer or duty holder) or representative agents, with one party having a claim to something with respect to the other, who is duty-bound to provide it regardless of whether they historically end up doing so. Generally speaking, then, an individual could possibly have a right against their landlord to have their furnace fixed, a self-governing ethnic enclave could possibly have the right to be left alone, and the state could possibly have a right against its citizens to collect tax revenues. Rights can be recognized as

intrinsic to the nature of an individual or collective actor, and thus as natural, or the term "right" can be used purely descriptively to convey- in the sense of a legal right- that a certain entitlement is contractually, jurisprudentially, statutorily, or in some other concrete, empirical sense, legally recognized by the state as demanding satisfaction. When this satisfaction is attained to in a condition that Donnelly deems "objective enjoyment," rights bearers never have to actively make rights claims to enjoy rightful entitlements. In other words, "Neither exercise or enforcement is in any way involved," and so one can identify a third type of right: a functional right (Donnelly 2002, 9). Such an entitlement is not explicitly recognized as natural and is not codified, but is functionally recognized as being unassailable. Individuals, organizations, and the state can always, therefore, merely decide to behave as if other entities possessed rights without accounting for whether there exists a conceptual foundation to determine whether they naturally, or in some other substantial sense, actually do.

It is clear that if collectives of any sort are going to be said to possess any rights at all, such rights must be of the functional sort. Groups are fluid, historical, and socially constructed realities bound and fashioned by the decisions of individuals in time. This is true even of those religious, national, or ethnic groups that are treated as natural, or at least as stable or "natural enough" to be included in definitions of genocide. Such groups demand the active participation of their members to maintain their communities and are often treated as if individual group members had the capacity for exit, even if they do not. It is these kinds of durable groups that most frequently make collective rights claims, asserting that the manner in which they have consistently and thoroughly formed and informed their members' life decisions and prospects ought to grant them a special status. If there is to be any talk of natural rights in regard to groups, then, it will probably be in claiming that individuals can make natural rights claims against groups, not vice versa, and not as if artificial collective entities could make natural rights claims against the state. It is not worthwhile, then, to have foundationalist debates about the rights of groups, as they can apparently only reflect, protect, and restrict the rights of their respective members and outsiders as individuals. There is, however, a practical problem with recognizing any sort of group rights at all: groups might benefit from rights in a state of objective enjoyment bereft of challenge or question, but if these

entitlements are ever attacked, the active exercise of their supposed rights demands that individual representatives act on behalf of the group. Elites, then, can make decisions that are not expressive of majority preferences or of the strong preferences of the subgroups or sects that historically and inevitably emerge. If an NGO is working to provide clean water to a village whose denizens are descendants of direct colonial violence, and the former colonial power offers that organization funding that is understood to function as reparations for years of unjust rule, then, should a group be understood to be capable of rejecting those funds as "blood money" if many of its individual members would strongly prefer to have that money invested in their community? Who are the actors that exercise group rights? Often, they are elites whose interests and preferences may not overlap with those of their constituents.

Nonetheless, one might argue, as Will Kymlicka has, that groups ought to be granted rights to preservation or non-intervention because group cultures can provide "members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres" (1995, 76). Individuals often consent to the reasonable restrictions of a group and the authority of its representatives because living in the world constructed by their culture, a culture in which religion likely plays a pervasive and definitive role, confers the individual self-respect that goes along with having, for example, a distinct history, language, and traditions. "Cultural minorities [therefore, seem to] need special rights…because their cultures may otherwise be threatened with extinction, and cultural extinction would be likely to undermine the self-respect and freedom of group members" (Moller Okin 1999, 20). To apply this understanding to religion, many religious organizations and subcultures would seem to fall within the category of those groups which ought to deserve special protection, functioning as they do as substantially distinct cultural minorities in themselves that inform one's identity and self-understanding so strongly that many of the same arguments used to appeal for the recognition of the functional rights of ethnic and national groups could also be applied to religious groups.

The sociological work of Peter Berger seems to indicate that such an application would be appropriate. In *The Sacred Canopy*, he delineates the role of religion in social world construction, a task

necessarily implied by the biological nature of *homo sapiens* as a "curiously unfinished" creature driven by its "double relationship to the world" (1990; 5). The nature of this dual relationship is such that humanity encounters the world as antedating itself, but also as one that fails to demonstrate complete and total prefabrication. People then come to express themselves actively and relationally, externalizing themselves into such a world, facing what they have constructed as an objective reality- as culture- and internalizing the culture-world such that "structures of the objective world" become "structures of the subjective consciousness" (Berger 1990, 4). The ultimate consequence of this is that human beings can only self-actualize and understand themselves and others through the necessarily emergent lens of culture, out of which the other social arrangements recognized as society emerge; in fact, people's "continuing cultural existence depends upon the maintenance of specific social arrangements" (Berger 1990, 7). People therefore choose to create their cultures. They are actively maintained by the choices of individual human beings. Yet, personal identity quickly becomes synonymous with what the objectivized world, acting back on the individual, chooses to call someone, and so the costs of what outsiders might imagine to be a possible "exit" from the cultural lens through which one has constructed meaning have the potential to produce a "nightmare *par excellence*, in which the individual is submerged in a world of disorder, senselessness, and madness" (Berger 1990, 22). It is from this possibility of anomy, indeed of chaos, that religion, in constituting the ultimate self-externalizing meaning construction that bridges humanity's socially created world and the universe itself, derives much of its power. As an animal driven to create, to reach out and to self-externalize, an inability to connect with the overwhelming reality of the nomic universe can prove self-destructive. There is, then, an entire sphere of existence that is only accessible by means of the external reality of religion acting back upon the human person, and those who most actively serve as the mediators between the world of culture and the world of the cosmic inherit an incredible power to form and re-form the experience of human beings in society and their potential to lend meaning and structure to their existence. This power is socially conditioned and is often functionally inseparable from the other realms of culture, merging into the rhythms of everyday life and granting them meaning.

It seems like it would be a grave injustice, then, to deny people the means by which they can engage with others in coming to understand the cosmic world beyond humanity. The question of religious liberty is especially pressing for some subgroups operating as a minority culture, for which it is the case that what sets them apart from the world around them is their spiritual meaning construction alone. Under these sorts of conditions, a subculture in itself emerges that is fundamental to its members' ability to self-actualize and to understand the world. For others, especially in the developing world, religion is one of many astonishingly resilient cultural forces blurring the liberal duality between secularity and spirituality. This boundary transcendence encompasses every part of human life, with the human need to create meaning bringing religion into the bedroom, the kitchen, and the womb: into, in fact, that domestic realm which the West has falsely demarcated as outside the reach of the public life of the state. It can form understanding nearly as completely as national or ethnic identity, and it is for this reason that religious collectives must be taken seriously as potential rights-bearers. Religion is also, however, a cultural force that plays a key role in creating the conditions under which sex discrimination and gender violence become normalized. When, for example, a child soldier in the Congo comes to assume that he is entitled to the use of female bodies, claiming that, "If we see girls, it's [his] right…[to] violate them," it would be foolish to dismiss his absorption of cultural norms defining women as purely sexualized and domesticated creatures that are reinforced at the weekly pulpit as unrelated to his development of such a seemingly extreme attitude (Kristof and WuDunn 2010, 86). Religion can be fundamental in defining social roles, particularly in drilling "stoic docility- in particular, acceptance of any decree from a man…into girls in much of the world from the time they are babies," and in normalizing the disappearance of as many as 107 million women worldwide relative to natural discrepancies in gendered life expectancies (Kristof and WuDunn 2010 47, xv). And so it seems that some restrictions must be placed on such an inherently powerful force, a force powerful enough to demand mention in the same breath as national and ethnic groups.

The case for associating religious groups with national and ethnic groups as potential bearers of group rights, but also as potential objects of external restriction and intervention, then, emerges quite

powerfully. In addition to the above considerations, however, there is also a historical case for doing so. After decades of telling indigenous peoples that they do not possess the same right to autonomous self-governance that churches do (in part, it seems, because settlers had the civilizing influence of churches and indigenous peoples merely got to them later), it would seem hypocritical to continue to hold religious organizations and subcultures to a different standard than national or ethnic groups. Religious liberty has not always applied to every religion, and to act as if it recently became absolute in the name of cultural sensitivity, or for the sake of reparative justice in the wake of colonial restrictions of group freedom, merely shifts the dialogue regarding group rights away from where it properly belongs: on the potential of such rights to empower individuals to self-actualize under fair empirical conditions approaching inter-group parity in objective measures of human development and regardless of whether self-actualization occurs within the context of a particular group. I will therefore proceed to treat religious groups no differently than national or ethnic groups, given not only the immediately preceding considerations but also the previously established manner in which it is often difficult to disentangle religion from such group membership in the developing world. This discussion properly becomes, then, a consideration of group rights as such, with occasional inquires as to whether there may exist certain, highly specific incidences in which religious groups should receive collective protections over and above any protections that may be determined to be desirable for the sake of the preservation and liberty of other cultural groups.

The question therefore starts to primarily concern the lens through which cultural outsiders representing states and organizations involved in development efforts should approach the question of interference in group autonomy. Will Kymlicka argues that any potential restrictions should not undermine the idea of collective rights altogether, instead drawing a distinction between two kinds of group rights by insisting that cultural groups should be granted “external protections,” but not the authority to impose “internal restrictions on their members” (1999, 31). By the former, he means the ability to make “claims against the larger society in order to reduce its vulnerability to the economic or political power of the larger society,” and by the latter the capability “to restrict the ability of individuals

within the group (particularly women) to question, revise, or abandon traditional cultural roles and practices" (Kymlicka 1999, 31). I will hold, however, with some scholars, in asserting that this delineation is insufficient for the protection of the one group he identifies as the especial object of potential intragroup subjugation: women. I will establish the practical difficulty and historically informed unlikelihood of enforcing such a distinction, calling instead for more broadly understood and normatively justifiable grounds on which states, IGOs, and NGOs might hold cultural groups accountable to respect the autonomy and material integrity of their members.

Group Rights and the Hidden Subjugation of Women

The simple fact is that "far fewer minority cultures than Kymlicka seems to think will be able to claim group rights under his liberal justification," given that, "discrimination against and control of the freedom of females are practiced, to a greater or lesser extent, by virtually all cultures, past and present, but especially by religious ones and those that look to the past" (Moller Okin 1999, 21). If a group aggressively claims collective rights against external intervention, it is highly likely to be doing so because it wants to exercise a greater control over the private sphere to which women and girls have historically been relegated. In fact, most of the actual legal cases that have emerged about group rights have "stemmed from women's or girls' claims that their individual rights were being truncated or violated by the practices of their own cultural groups" (Moller Okin 1999, 17). Given the fixation of cultural groups on personal law- even on the part of indigenous peoples for whom law is simply a complex part of the rhythms of communal life- it is unsurprising that such demands concentrate on the lives of females.[1] "Thus many culturally based customs aim to control women and render them, especially and reproductively, servile to men's desires and interests. Sometimes, moreover, 'culture' or 'traditions' are so closely linked with the control of women that they are virtually equated…Thus, the servitude of

[1] For Patrick Glenn's insightful examination of the personalist and holistic nature of many indigenous legal traditions, see "A Chthonic Legal Tradition: To Recycle the World," in *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed. (Oxford: Oxford University Press, 2015), 60-97.

women is presented as virtually synonymous with 'our traditions' " (Moller Okin 1999, 16). It does not matter for the purposes of this discussion how this comes to be. Some apologists for the subjugation of women in indigenous societies or in cultural groups generally have cited historical developments such as the manner in which the close association of tribal blood ties with political alliances rendered "any question regarding the paternity of children…an existential threat to the social and political order" as an excuse for the subsequent control of mothers, but such claims today sound more like the evasive exemptions from moral accountability that they truly are (Fish 2011, 175).

How exactly then, do gendered violence and limitation come to exercise so pervasive a global influence that they demand an especial reevaluation of collective rights? The evidence suggests that they function in two general ways: in limiting women's life choices and in the commission of clearly criminal violations of normal law that have proven beyond the reach of the public sphere, hidden as they are in the realm of the domestic. In the first regard, many of women's choices regarding how they modify their bodies, spend their time as adults, and pursue a certain level of education or certain kinds of vocational opportunities are constrained by the culture-world in which they operate: child or arranged marriage, genital cutting, the donning of traditional dress, relegation to the home, and polygamy are some examples. In one such case, "French African immigrant women," for whom life outside of polygamous familial situations is not a sustainable economic option, "deny that they like polygamy and say that not only are they given 'no choice' in the matter, but [that] their female forebears in Africa did not like it either" (Moller Okin 1999, 15). Dowry harassment, ending as it often does in murder, blurs the line between the restriction of life plans and normal criminality, but domestic violence, marital rape, forced marriage in the aftermath of rape, wife murder, and marriage by capture, which go unabated in many cultural groups, certainly do not.

How are such violations of material integrity permitted to persist? This phenomenon owes much, as Arati Rao asserts, to "the division of society into public and private spheres" (2001, 507).

> Since the two spheres are distinctly gendered, and unequally weighted by definition, it is difficult to conceptualize violations of women's rights in the private sphere in a way that is coherent as well as consistent with the language used to describe violations in the public sphere…The twin

> human rights assumptions of separate social spheres, and of the normatively privileged status of the family, rely on a mistaken notion of power as identifiable, quantifiable, and predominantly employed by the State…[W]omen-specific abuses may [therefore] never be completely redressed unless and until the private realm is recognized as a legitimate area of human rights concern at the highest level, and is problematized as the crucial site of the struggle for women's rights. (Rao 2001, 507)

Rao's point about the normatively protected status of the traditional family is especially important, since the personal law that is so often the primary domain of cultural groups has- largely without substantial challenge due to the threat of members' anomic banishment to the chaotic realm of outsider status- conceived of women's bodies as subject to the sexual and disciplinary desires of fathers and father figures. This norm, by which female identity dissolves into the identity of her husband in the martial bond, has even become so deeply ingrained that, "legal personhood is not universally guaranteed to a wife; in many societies, she is subsumed under the husband's legal persona" (Rao 2001, 510). Nor is Western liberalism exempt from this trend of actively expelling women from the protection of the public sphere, for the very foundation of its individualistic institutions and general culture lies in the conception of the human person embedded in a social contract tradition that insufficiently accounts for the needs and even the personhood of women. That tradition's "denatured, deconstructed, dehistoricized, disembodied, disembedded, individual self" has become the bearer of individual rights, particularly rights tailored to active participation in public life, but he (and it is indeed a "he," for the rights-bearer is always spoken of as "man" generally or using masculine pronouns), in assuming these rights, excludes the "she" who lives and dies outside of the political sphere of dynamic public agency (Rao 2001, 517). Disappearing into the family- protected as it is even by the human rights instruments and standards that are supposed to function as her protection of last resort against subjugation and material violation- she finds that institution, defined as "natural" and "fundamental" when femininity itself is not, being used as a weapon to confine and limit her. Rape and domestic violence thus become internal, private affairs of male honor undisturbed by the political structures in which women generally do not participate. When a father sells his daughter to one of his friends for a handsome dowry, it is a family matter, and her rape is given a veneer of legality, challenges to which will difficult to lodge using a distinction between internal restrictions and

external protections. When the voice of the private sphere in the public realm is overwhelmingly male, such traditions will always be presented as fully consensual engagements, as will practices like genital cutting, regardless of circumstance. Other practices, like dowry harassment and violence in the home, are either completely hidden, and thus not subject to external intervention at all, or protected just enough by the ruse of internal cultural integrity that they, in themselves, fail to meet commonly employed and overly generous standards for intervention. Attempts to distinguish between internal restrictions and external protections therefore emerge as almost useless, not just because the distinction is practically difficult to enforce, but because such efforts are bound to prove self-contradictory. The right to freedom from external intrusions that threaten the cultural integrity or existence of a group almost always entails the concurrent defense of the internal restrictions that constitute in large part what it means to even function as a member of the group, and so it is often impossible to interfere with individual rights violations without trampling upon a concept of membership in a shared world formed and maintained by sex discrimination.

Nor should one naively assume that the global trends discussed above and the difficulties they present are limited to one or a few subgroups. Islam is frequently offered as an example of an especially discriminatory religious tradition, the various religious subgroups of which persecute and brutalize women to a greater degree than almost any one else. While Steven Fish's revelation of the drastic extent to which sex inequality pervades the Muslim world's life expectancies, pay ratios, and parliamentary gender distributions may be shocking, however, very few of the non-Muslim states to which they are compared demonstrate anything approaching gender parity in these fields. It is easy to condemn Muslims for the fact that shorter life expectancies are highly correlated with increases in Muslim representation among a given population, but doing so overlooks the fact that this is only especially alarming relative to Christian countries whose healthy life expectancies themselves demonstrate radical and often unacceptable intra-set variation (Fish 2011, 198). The sentiment that men should have better access to jobs than women when employment is hard to find is quite popular among non-Muslims, as is the idea that higher education is more important for males, and focusing on the highly discriminatory and even

structurally violent conditions frequently found in one faith overlooks the almost universal culpability of most states and cultures in shortening women's lives and locking them out of opportunity (Fish 2011, 189, 182). Although Fish found that Islam is indeed quite strongly associated with shorter female lifespans, lower literacy rates, and more "traditional" conceptions of gender across the board[2], these observations constitute only one example of how discriminatory processes hidden to the public world and accessible only to those most intimately involved in the lives of women permeate most religions and cultures (2011, 195, 181).

In addition to the problems raised in regard to political thought regarding public subjectivity and the troubling manner in which individual rights violations take place in the hidden domestic realm, it would be foolish to expect in practice that male-dominated states will actively seek to uphold the barrier between internal restrictions and external protections, tending to opt as history has shown they will in favor of non-intervention. Human rights theory and practice, after hundreds of years of explicit development and thousands of years of indirect development in the form of the laws of war, have never protected women as women. By this, I mean that, as Catherine MacKinnon has rightly identified, "What is done to women is either too specific to women to be seen as human [in the sense of being universally relevant to human rights theory and practice] or too generic to human beings to be seen as specific to women" (2001, 528). The fact that it took decades for deliberate, systematic mass rape, long dismissed as a matter of mere domestic criminal justice or the inevitable excess of war, to be recognized as a act of genocide when thousands of women could easily have said so (and in fact did) tragically reinforces this point; it was the mayor of a Rwandan village who was first convicted of genocidal rape, rather than the thousands of genocidal rapists before him who escaped accountability for the particularity of their human rights violations merely because they targeted women (United States Holocaust Museum 2015). Nor was rape included in- and it has never been added to- the definition of genocide included in the Convention on the Prevention and Punishment of the Crime of Genocide (United Nations 1948, Article II). These

[2] His use of the word "traditional" is in fact typical of that permissive attitude which allows for the perpetual normalization of the oppressive gender norms typically and especially represented in the private realm controlled by religion and culture.

omissions present the tragic reality that religious liberty and other cultural rights might be used as the same categorical protection against domestic intervention that state sovereignty has against international intervention in the violation of women. Special legislation targeting internal restrictions and protecting the rights of women within religious or other cultural groups to pursue their own life plans and to exercise control over their own bodies is unlikely to prove successful if even the worst violations of material integrity, which "flagrantly violate provision after provision of international law" go uninterrupted and intellectually divorced from structural violence (MacKinnon 2001, 537). It is indeed time for the world to stop acting as if Serbians raping under the orders of their commanders and Muslim families selling their daughters under the orders of their cleric merely represent the disordered decisions of individuals divorced from the world their group has constructed for them.

Just as rape is too often distinguished from war crimes generally as a matter of excess or individual criminality, intragroup sex discrimination and the restriction of female autonomy are too often dismissed as matters in which the state has no jurisdiction, so long as the group does not fragrantly violate the tenets of ordinary law in a way that is visible within the broader public sphere. This is sometimes explicitly justified by what Cass Sunstein dubs the "asymmetry thesis," a principle established in American case law in the late twentieth century and that seems to represent, to some degree, an international norm: this concept holds that "it is unproblematic to apply ordinary civil and criminal law to religious institutions, but problematic to apply the law forbidding sex discrimination to these institutions" (1999, 86). Yet, as was discussed earlier, how are states to identify even violations of ordinary law within the domestic sphere in which oppression is often hidden and normalized? To draw upon the example of the place of rape in human rights law, demonstrating that groups have anything to do with norms of sexual repression and violence is not only practically difficult, but is far from a policy priority on the part of male-dominated governments: "women are typically raped not by governments but by what are called individual men. The government just does nothing about it. This may be tantamount to being raped by the state, but it is legally seen as 'private,' therefore as not a human rights violation" (MacKinnon 2001, 538). If a cultural group encourages the norms under which everyday oppression thrives, then how can there be

any discussion of granting religious and other groups any degree of meaningful autonomy? The answer might be surprising, since the scope of acceptable intervention and the restriction of collective rights claims shall be shown to be fairly narrow, but just broad enough to allow for the flourishing of all group members.

When is Intervention Acceptable?

In my delineation of appropriate grounds for intervention in the affairs of cultural groups, I will first differ from Will Kymlicka in one deeply important respect. In attempting to maintain the primacy of peaceful diplomacy and persuasion, Kymlicka makes a concession that is sure to be practically ruinous for the women of the world. He claims that negotiations with cultural groups on the part of the state and NGOs "may well exempt the…minority from protective political devices like judicial review and the Bill of Rights. This means that the majority will sometimes be unable to prevent the violation of individual rights within the minority community. Liberals have to learn to live with this, just as they must live with illiberal laws in other countries," resorting to persuasion and dialogue alone as people are destroyed, violated, and imprisoned (2001, 457). His primary concern in establishing this boundary is that those minority groups long oppressed under colonial rule might be subject to laws that they had no say in making and that are enforced by a judiciary among which they are not represented. Yet, the same experience of being subjected to laws that one had no say in making, with those laws being enforced by an authority within which one's people are not represented, has been the experience of millions of women within the same cultural groups whose elites are asking for collective protection. Further, what Kymlicka tries to pass off as especially narrow grounds for actual intervention are more inviting to it than he might believe. He admits that, "In cases of gross and systematic violation of human rights, such as genocide, torture, or mass expulsions, there are grounds for intervening in the internal affairs" of a cultural group (2001, 459). Yet, much of what happens to women in the private sphere constitutes an objective reality of torture, meeting the UN's definition of the term in the Convention Against Torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for…any reason based on discrimination of any kind" (1987, Part I, Article 1). Confinement to an arranged marriage, for

example, could therefore be understood a form of torture, as could genital cutting without the complete consent of an adult participant capable of giving it. Religious, ethnic, and national groups that project the norms of female subservience, docility, and confinement to the home- which construct the world in which deviations from this way of knowing introduce social chaos and individual anomy- are, then, even under the most permissible terms of intervention, subject to sanction for their promotion of torture. States ruled by men, meeting and acting as men, attempted to define torture in a strictly political way, but failed, the cruelty of their institutions itself paving the way for intervention.

Given the enormous potential for the internal abuse-primarily against women- of collective rights on the part of cultural groups, then, I would posit that NGOs, IGOs, states, and local government authorities should be granted the capacity to dismiss cultural defenses of the violation of the material integrity of women, to educate women on the consequences of practices like genital cutting and the avoidance of family planning, and even to use a combination of material incentives and coercion to induce cooperation with policies protecting women's ability bodily integrity and their ability to freely choose their plans of life. I hold with Cass Sunstein that the asymmetry thesis introduced earlier- the claim that most normal laws should apply to cultural groups, but not sex discrimination law- is unsatisfactory. Sex discrimination in seemingly less serious cases not only creates the conceptual world in which violations of normal laws- hidden as they are from the public sphere by the illusion of the private realm- flourish and are normalized, absorbed into communal life as easily as shared religious beliefs, and it also limits the life choices of women on morally arbitrary grounds. Rather than working from such an ineffective standard, then, actors should employ the following device: they should interfere in the affairs of cultural groups when there exists a "compelling" or "overriding" interest in doing so (Sunstein 1999, 92). Cass Sunstein, the originator of these general standards, does not clearly define them, so I will attempt to do so in greater detail, presenting development actors with a more concrete definition constituting a sort of set of ethical guidelines.

I would propose, in addition to the generous baseline earlier established on the part of Kymlicka for intervention in the most serious cases of mass human rights abuses, the following qualifications for

coercive intervention. The ability to answer any of the following questions regarding the relevant cultural group in the negative would constitute a compelling enough interest to act as if the group did not possess the right to autonomy regarding continued action in the objectionable regard. Violations would merit further study, and if an initial finding is validated, working with local partners using contextually informed programs like the Tostan model of eliminating genital cutting[3] would precede the incentivization of change and, finally, coercion.

- Do all members have the right of exit? Is it ever actually exercised?
- Are there major discrepancies in regard to literacy, income, education, or life expectancy among the subgroups, such as genders, that constitute the cultural group? Does a subgroup within the culture differ in substantial, negative respect to these measures from its peers outside the culture?
- Are there practices within the group violating the bodily integrity of group members that are independently shown to cause health problems later on in life? Are such practices, if ever undergone, approached freely and after a functional waiting period? Are these things ever practiced on children?
- Are there practical, functionally available alternatives to membership in a traditional family available to all group members for the sake of economic and personal stability? Are alternative lifestyles that do not violate the health or bodily integrity of others pursued without serious social or material penalty?
- Do women report domestic violence and marital rape at a rate that approaches parity with non-members of the group within the state in which the group operates? Are women who report gendered violence punished?

[3] With only one Westerner on staff, Tostan sends one local trainer into villages to offer programming regarding topics like microcredit, problem-solving, and health and hygiene, with the latter subject matter touching nonjudgmentally and purely informatively on the consequences of genital cutting. Engaging local women in changing local norms collectively, often through the means of group proclamations demonstrating a shared commitment to avoid cutting their daughters, has helped 2,600 villages to end the practice (Kristof and WuDunn 2009, 226-227).

These goals, which may be understood to be fluid, and which certainly are not complete or perfect, would be functionally difficult to implement, but the especial plight of women worldwide renders them an objective toward which striving is worthwhile. Further, their application might be more limited and far more intuitive than one might first guess. Not only are these merely a few suggestions to clarify a more desirable standard than the asymmetry thesis, and not only do they merely suggest the need for further study as a first actionable step following initial observations, but most traditions and practices will never justify acting as if cultural groups did not possess rights to non-intervention and autonomy. It is difficult to imagine, for example, that the inability of women to attain to certain clerical or leadership positions within a religious group would justify intervention, although the promotion of such progress would certainly do much to undermine the conditions under which women are relegated to the domain in which the abuse of liberty is most likely to occur. If women are able to self-actualize under conditions in which wearing the hijab is the norm, and so long as they seem to be able to choose not to without the threat of internal coercion, there is no compelling interest in even questioning the practice. Separate spaces for prayer, the participation of consenting and informed adults in genital cutting, and the free choice of a large group of men or women to spend time caring for children at home will only justify externally imposed consequences after further study and if they are strongly coercive or pervasively and directly enforce coercive gender roles.

One might object that punishing cultural groups for sex discrimination seems to smack of cultural imperialism. The export of a hedonistic, egoistic Western culture in which the market structures social life and the individual reigns supreme against claims of tradition and community is identified as problematic by Stephen Marglin, whose conception of development seems to rightly stretch beyond the material life of human beings. Yet, regardless of their shortcomings, the fact remains that “women in more liberal cultures are…legally guaranteed many of the same freedoms and opportunities as men. In addition, most families in such cultures, with the exception of some religious fundamentalists, do not communicate to their daughters that they are of less value than boys, that their lives are to be confined to domesticity and service to men and children, and that their sexuality is of value only in marriage, in the

service of men, and for reproductive ends" (Moller Okin 1999, 17). Against such a powerful benefit, for which most of the women of the world would likely clamor and for which they would content themselves with sorting out the cultural baggage later, there is raised the claim that, along with its advantages, liberalism will dissolve community. Marglin notes that, "Outside the modern West, culture is sustained through community, the set of connections that bind people to one another economically, socially, politically, and spiritually. Traditional communities are not simply about shared spaces, but about shared participation and experience in producing and exchanging goods and services, in governing, entertaining and mourning, and in the physical, moral, and spiritual life of the community" (2003, 70). But what if one cannot leave the community? It may, to an extent, be good that the West has "undermined other ways of seeing, understanding, and being," because the restriction of exit and options is part and intrinsic parcel of the world in which they operate (Marglin 2003, 70). As Rao notes, "Men [often] force community upon women," so the "women's rights that we should support are an expression of the social practice of allowing women to resist forced community" (2001, 509).

This is not to mock or undermine the value of all communally oriented cultures. One can certainly self-actualize under conditions of limited individual freedom or in which the well-being of the group demonstrates a dominant primacy over the well-being of the individual, but perceived subjective well-being, as I have argued before, must be conditioned and qualified by objective criteria that ensure as close to parity as is possible when it comes to relative material well-being among groups. Only when a baseline of material integrity and decisional autonomy is secured and those structural inequalities that might be reflected in imbalances in life expectancy, literacy, social service availability, and infant mortality mitigated can individuals consider themselves more free than they otherwise would have been to pursue those plans of life which would have made them happiest. Groups can reveal unknown or unexpected personal goods demanding sacrifice and an affective experience of knowledge and belonging that outsiders may not understand, but it is not patronizing or a short-sighted imposition of Western ideals to assert that it is better to live in a world where the cost of pursuing such goods is not one's individual freedom or bodily integrity. The beauty of personal sacrifice lies in the freedom with which it is

undertaken: the boy who undergoes a ritual fast, the mother who undergoes female genital modification for the sake of establishing a focus on her children, and the courageous woman who wears the hijab among her French peers are heroic precisely because of their conscious, although certainly affectively and collectively conditioned, decision to do those things. If these goods must be sacrificed for the sake of the child whose illness would make that fast fatal, the young girl held under the knife, and the Muslim woman confined to the home because of her desire for assimilation- for the sake, in other words, of those who could never have freely chosen them- then those with the power to challenge and even to undermine a world constructed by those with an express interest in enforcing these goods ought not be afraid to do so. Indeed, "People's 'preferences'- itself an ambiguous term- need not be respected if they are adapted to unjust background conditions; in that circumstance, it is not even clear whether the relevant practices are practically 'theirs' " (Sunstein 1999, 88). If an Egyptian girl has "no economically viable alternative to marriage," but finds that genital cutting "makes her more marriageable," how free is her choice to go under the knife (Moller Okin 1999, 15)? She deserves at least the opportunity to freely direct her own decision, and given that cultural defenses frequently undermine "women and children's rights to equal protection of the laws," they should not be less protected, regardless of the normative claims of others, because of something as arbitrary as their nativity (Moller Okin 1999, 20).

For the sake of their defense, coercive social engineering may become, in some cases, a moral obligation. Yet, the cases where cultural outsiders have to deny opportunities to, or engage in other punitive action against, cultural groups, are likely to constitute at most a substantial subset of the cases meriting further study beyond initial observations. Over time, the introduction to alternative ways of being tends to form and inform the cultural and self-consciousness of the oppressed who have always, in a way, known a set of inarticulable preferences in favor of challenging the norms and practices which limit their life plans. Persuading men that alterations to cultural practice are in the best interests of themselves and their communities will have to be part of this process, and the primary function of this argument in fact emerges as a justification of intervention in those cases in which a generous benefit of the doubt in regard to the men who must be treated as moral agents capable of charity and empathy fails.

Men are capable of grasping the potential of the women they love and live with, and to assert otherwise is to posit the foundation of a true cultural paternalism very far beyond the measures suggested here.

Yet, the fact that development actors need to stop behaving as if entitlements to cultural group preservation and autonomy are absolute, as if they were natural or inherent, is one of the pressing moral imperatives of the twenty-first century. The practical consequences of an absolute sensitivity that trumps the especial suffering and limitation of women across cultural contexts are dangerous, often fatal, and if cultural groups prove absolutely impliable over time, choosing extinction in accord with the loss of certain cultural practices, over adaptation, then their disappearance will probably benefit their members more than their existence. When it comes to the fact that sex discrimination and gendered violence are serious business, and that no appeal to group rights can ever justify the concrete reality of the demonstrable oppression too often hidden behind the curtain of the private sphere, "Addressing the matter is often painful. Investigating it openly is a not a way to win plaudits for political sensitivity, especially in the academy. It is a fact. To ignore or gloss over it and others like it, or to engage in methodological tricks in order to obscure such facts, does not defend the honor of a religious [or cultural] tradition. The opposite is true" (Fish 2011, 215).

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