

FREEDOM TO PRIORITIZE: A SOLUTION TO THE CONFLICTS OF IDENTITY?

by

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ABSTRACT

Are feminism and multiculturalism inherently irreconcilable? Over the past few years many scholars have focused on and attempted to offer remedies to the apparent tension within liberal societies in regards to upholding both the principles of sexual equality and cultural protection. The question addressed in this paper is whether there is any way to guarantee gender equality without infringing upon the rights of different cultures, destroying the deeply-valued and entrenched notions of multiculturalism and ethnic diversity, and engaging in what would be termed as neo-colonialism and imperial universalism? Drawing on the scholarly works including those by Okin, Benhabib, Eisenberg, Song, Shachar, and Phillips, I argue for a new model – placed within a larger discourse of deliberative democracy- based on the acknowledgement of the plurality of identities of single individuals within groups and facilitating the potential of prioritization of identities by individuals within groups as a possible solution to the problems that arise not out of feminism or multiculturalism nor in their apparent incompatibility with each other, but by a clash of these identities and the exclusion of women from the discourse which would have otherwise highlighted the plurality of identities.

TABLE OF CONTENTS

Abstract	ii
Table of Contents	iii
Introduction	1
Okin and Her Critics	3
Critique of the Critics.....	8
Prioritization of Identities and Deliberative Democracy	19
Autonomy in the Face of Diversity.....	28
Rights and Political Equality	29
Right to Exit.....	31
A Nuanced Legal Approach	31
Conclusion	32
Bibliography	34

Freedom to prioritize: A solution to the conflicts of Identity?

Introduction:

Are feminism and multiculturalism inherently irreconcilable? Over the past few years many scholars have focused on and attempted to offer remedies to the apparent tension within liberal societies in regards to upholding both the principles of sexual equality and cultural protection. This scholarship has been in response to the fact that in recent years many cultures have sought group rights invoking the value of multiculturalism within many liberal, pluralistic societies. The problem, as Okin (1999) frames it, is that many cultures (particularly minority ones) are inherently patriarchal and those asking for group rights, are often though not always, more patriarchal than the dominant 'western' liberal culture. In submitting to these demands for group rights, many Liberal societies are creating a double standard in regards to gender equality so that in very simplistic terms, women from different cultures are and appear to be less protected from implicit and explicit sex discrimination and abuse than "western" women. This phenomenon is also seen in courts which have started to allow for claims of culture to stand as a defence leading to the phenomenon referred to "my culture made me do it" by Bonnie Honig (1999).

The question, thus, becomes is there any way to guarantee gender equality without infringing upon the rights of different cultures, destroying the deeply-valued and entrenched

notions of multiculturalism and ethnic diversity, and engaging in what would be termed as neo-colonialism and imperial universalism?¹

In this paper, I attempt to answer this question. I will begin, much like others, by reiterating the famous argument made by Susan Moller Okin and after addressing the shortcomings of her work, I will briefly examine the literature since (and partly in response to) Okin. In doing so, I will highlight different issues, facts, and continuous problems such as the rather frequent problem of framework, the uncritical use of the term culture, the inescapable fact of pluralism even in the absence of any culture or religion², the importance of acknowledging the various other factors (other than culture or religion) that affect women's lives, the various ways cultures affect and influence each other and their members, and the inevitable plurality of identities of single individuals within groups to establish the main problem locus which is located neither in multicultural or feminist debates, nor in their apparent incompatibility with each other but in the exclusion of women from the discourse shaping and framing such debates.

By addressing this problem specifically, I argue that it is the realization of a plurality of identities- left unvoiced by women specifically and unaddressed by the various discourses, scholarships and debates- that needs to be at the center of any discussion and any solution. Each individual is the product of many, varying and ever changing, views, experiences, cultural and religious practices. Individuals, as a result, have many diverse identities. A

¹ It should be emphasized at the outset of this essay that terms such as feminism, multiculturalism, sexual equality, and cultural protection are all contested and require much further critical analysis that time and space allows for the purposes of this essay. Some of these contestations and clarifications will be addressed throughout the essay as many of them are relevant and integral to the argument presented in this paper.

² I firmly object to the idea that there can ever be an acultural position. What I mean by "in the absence of any culture" is to simply refer to the fact of pluralism even before the debates on multiculturalism shed light on the particular pluralism that rises out of cultures.

person can be, at the same time, a woman, a lesbian, an African, an American, middle-classed, physically disabled, and a single mother. However, at times, one “identifies” with one identity more than others. This serves as a clear example of the exercise of agency and reflexive decision-making. It is this potential – potential for prioritization of one identity over another- which needs to be permitted and strengthened. In the process of prioritization of identities, the model of deliberative democracy appears to be best suited to deal with possible problems arising from diversity. Prerequisites, methods, and outcomes of deliberative processes all correspond to the development and aims of this prioritization.

The deliberative democratic model will be supplemented with an emphasis on a new and more nuanced definition of autonomy taking into account the importance of norms and lifestyles on the development of identities and their subsequent effect on the choices made and practices carried out. The value and significance of “voice” will be accentuated in order to enable autonomous prioritization of identities and complemented by options for real and meaningful exit to ensure actual freedom to prioritize one identity over another if doing so would require relinquishing one to prioritize the other.

Okin and Her Critics:

To begin any discussion of multiculturalism and feminism, it is necessary to first address the issue within the original framework offered by Susan Okin. Scholars writing after her have all, in one way or another responded to her arguments. Okin frames what she sees as the problem in the most concrete and simple way: If we ask the cultures to assimilate to our liberal standards, which at least in theory uphold the values of sexual equality, we appear to

be oppressive. If we try and accommodate the cultures in a pluralistic manner, we have to allow for the often sexist practices of these cultures; in simpler terms: assimilation is oppressive and accommodation, sexist (1999, 9).

Okin's problem is two-fold: cultural accommodation and cultural defences. First, she expresses concerns over the recent demands for group rights and cultural accommodation. According to Okin, most cultures are patriarchal (1999, 12) and by accommodating them, we are in fact accommodating patriarchy. Okin's next concern pertains to cultural defences that are increasingly being invoked in US criminal cases which usually lead to "culturally-based assessments of *mens rea*" and hence to "dropped or reduced" charges and sentences³ (1999, 18).

Taking the side of "women", Okin argues that for most it would be better if the culture became extinct and thus its members became integrated into the less patriarchal dominant culture or if it reformed itself and became less patriarchal (23). Okin's argument is based on her assumption that culture has more of an effect on women and children (13) and that although Western cultures are not free from forms of patriarchy, they are in general ahead of other cultures when it comes to gender equality (16). Following this reasoning, Okin condemns most cultures and almost all religions as aiming to allow the control of women by men (13).

³ Okin's examples of cultural defences have been widely publicized and referred to by almost all the scholars mentioned in this essay and thus a reiteration of them in the essay was deemed unhelpful and repetitive. These, most famously, include "marriage by capture" among Hmong men; wife-murder in the case of a Chinese immigrant, murder-suicide in the case of a Japanese woman (Okin, 1999, 18) which have all lead to reduced charges and in some ways acquittal.

Many objections to Okin have been made by scholars attempting to illustrate their own take on the “tension” between multiculturalism and feminism. Summarized, these objections point to Okin’s “over-simplified conception of culture and religion”, her portrayal of women as unavoidably controlled and “co-opted” by their culture and even “brainwashed” by it, and despite her attempts, the rhetoric of ‘us versus them’ that runs through her work (Shachar, 2007, 119).

In her over-simplified conception of culture and religion, although argued in a passionate manner, Okin fails to see or to seek the other side of the story. Taking one of her more radical cases as the example, Okin argues heatedly against clitoridectomy and uses it as an illustration of how some practices are explicitly carried out with the aim of controlling women- in this case securing a girl’s virginity by curbing her “sexual appetite” and thus making her more “marriageable” (Okin, 1999, 14, 15). While this practice is explicitly performed in order to control women, what Okin does not address is what happens to the girl who is not deemed marriageable in that context; how her life choices would even be more limited and constrained if the practice was not carried out. Far from advocating for such a practice, I find fault with Okin’s account of cultural practices and her assumption that without such practices, women would be freer from patriarchy and more able to act as agents.

Her portrayal of women as brainwashed can be seen in the way Okin adopts an essentialist language in talking about women and minority cultures. In advocating for women’s autonomy within these cultures and insisting on allowing for women to act as agents and make choices as they please (especially 1999, 14), Okin contradicts herself. This

is especially interesting since in her discussion of the various constraints on women's choices within patriarchal cultures, she notes not only that men are agents of oppression but so are the "older women" by being complicit (22). Hence, she recognizes the pluralism within the subject of women in the cultural groups she studies, but she attributes the role of these older women, not to an instance of agency, but to complicity with patriarchal values.

Seeing culture as voluntary as opposed to inevitable, Okin assumes an "acultural" position and fails to examine the nature of each of the "contested"⁴ practices and the context under which they are carried out. Without contextualization and proper understanding of the practices, Okin quickly categorizes all these practices as equally patriarchal and condemns them all as such. This leads her to mistakenly "[imply] that the slope from veiling to murder is slippery" (Honig, 1999, 35). This is caused, partly, by Okin's haste to label these practices patriarchal and point out the common thread of male domination and female submission in each practice; so much so that practices such as wearing head-scarves, marriage by capture, clitoridectomy, and wife-murder after infidelity lose their context and their gravity and appear as yet another alien, patriarchal practice. Example of clitoridectomy, categorized by Okin as such, is of some help. By failing to see the possibility of clitoridectomy as a rite of passage or as a part of one's ethnic identity, Okin falls short of critically examining the practice in at least three ways.

First, Okin's use of the term clitoridectomy to refer to all the different forms of circumcision is problematic. Many practices do not engage in complete clitoridectomy and

⁴ These practices are referred to by Okin and other writers and include veiling, polygamy, marriage by capture, wife-murder after infidelity, and clitoridectomy among other practices.

some practices, such as infibulation, “[go] well beyond” what is commonly viewed as clitoridectomy (or female circumcision) (Oba, 2008, 3). This haste to categorize clitoridectomy as yet another patriarchal practices shows Okin’s unwillingness to critically engage in and understand the practice and her willingness to condemn the practices she does not understand fully (Oba, 2008, 4)⁵.

Moreover, by condemning the practice altogether and portraying the extinction of cultures and religions (and the practices based on them) as appealing, Okin shows a preference for “an external [imposition]” such as banning the practice altogether as opposed to “[encouraging] [an] internal critique to change the practice” (Oba, 2008, 1) and ignores the transformations within the practice. Ellen Gruenbaum, in her examination of clitoridectomy in Africa notes the rise of “alternative rites” (490), an example of which is the practice of “circumcision through words” (491). In this case, the culture, itself, has not become extinct nor has it transformed; circumcision is still considered an important rite of passage, but the practice has been modified by the consent of the members of the “cultural” group themselves.

Finally, by focusing exclusively on the practices by cultural and religious minorities, Okin fails to recognize, analyze, and (subsequently) condemn the similar patriarchal practices in the West. While acknowledging the presence of patriarchy in the West, Okin concentrates on “cultural” practices of non-Western minorities. In doing so, Okin condemns practices such as clitoridectomy and sees the solution in either a ban on the practice or the extinction of the culture altogether. However, she fails to simultaneously address the many

⁵ It should be noted that Oba is, in fact, criticizing the West as whole over the use of the term ‘mutilation’ as opposed to ‘cutting’.

Western practices that are in theory and practice similar to the practice of clitoridectomy such as “designer Laser Vaginoplasty (DLV), Laser reduction labioplasty, Laser perineoplasty, Augmentation labioplasty, Vulvar lipoplasty, Laser Vaginal Rejuvenation (LVR) and Hymenoplasty (reconstruction of the hymen)” (Oba, 2008, 28-29).

Critique of the Critics:

Criticisms of Okin have been voiced but almost every scholar tackling the apparent tensions between multiculturalism and feminism; the debate has slightly changed mainly out of a realization of the fluidity and the ever-changing nature of cultures and religions⁶. However, despite the many modifications to Okin’s original argument, the framework of positing feminism and multiculturalism against each other and attempting to find a solution to the tension between these two camps has remained, for the most part, unchanged. Solutions offered have for the most part placed the discussion of “identities” in the periphery. Hence, while the debate has progressed from the one offered by Okin, it has retained many of the same shortcomings.

The main problem that has plagued much of the scholarly debates on multiculturalism and feminism has been one of framework. While many authors have expressed the need to “reframe cultural conflicts” (Deveaux, 2007, 90), and a move from “liberal” solutions, the main structure of the debate has not drastically changed or challenged. Multiculturalism- and accommodation of various cultures and religions- and sexual equality have both been presented as separate goods towards which liberal societies strive. Having framed it as two

⁶ I have included religions as there have been reform movements in almost every religion.

separate good requiring distinct policy positions and outcomes has led some to begin to point to tensions in achieving both these goods.

‘How can we allow for Hijab to be permitted in public spaces when we know to be a sign of oppression and a barrier to women’s equality?’ ‘How can the practice of clitoridectomy not be banned and condemned when its main purpose is to curb women’s sexual appetite and thus secure her virginity (Okin, 1999, 14, 15)?’ How can we uphold values of multiculturalism when doing so would undermine women’s struggles for equality? And how can we remain truly multicultural if practices are to be judged through an “acultural” lens and allowed or disallowed based on those judgments?

Such questions and frameworks, while able to shed light on the shortcomings of general theories, have been less than helpful in addressing the problems. Okin’s comprehensive liberalism is an example of a flawed approach and resolution. Others have attempted other political and legal solutions which fail to address the core of the problem and hence fall short of real solution. Political liberalism⁷ and the focus on political autonomy of individuals fail, too, to take into account individuals’ identities and non-liberal understandings of the ‘self’. As a result, it neglects the fact that women exercise agency in private spheres and outside the realm of the political to consent, contest, uphold or reform practices all the time. Thus a focus on “political autonomy” would not only miss those instances of agency, but also, disregard the cases where women’s agency and autonomy could be jeopardized or constrained in non-political spheres. Emphasized differently and more clearly, a focus on political public autonomy would not really see practices such as

⁷ An example of political liberalism can be seen in the work of Martha Nussbaum, *A Plea for Difficulty in Is Multiculturalism Bad for Women* (1999).

prohibiting the education of girls or free choice of life partners as “contradicting political liberalism” (Benhabib, 2000, 110).

Similarly, legal solutions which adhere to the same flawed framework end up ignoring the importance of identities in the tensions arising from diversity and fall short developing any real solution. An example of this is the “substantial burden test” (Nussbaum, 1999) which is offered as a solution to the possible tensions between religious practices and women’s freedom. “Substantial burden” test would operate by asking the question: whether the “proposed law really [imposes] a ‘substantial burden’ on people’s free exercise of religion” (112). Another example is the “equality tribunals” which would be set up for individuals to raise claims of discrimination- having been denied some benefit or having been imposed on a cost- and seek retribution as such (Chambers, 2008, 264).

The problem is that the basic assumption of the “special burden test” or “equality tribunals” is that it is possible to ask a “special burden” question or to set up questions within equality tribunals in an acultural framework. The inevitability of culture makes such a framework impossible. Even if such a test was implemented, the results might not lead to sexual and cultural justice for two main reasons: one, our framework could be biased and unaware of the cultural or religious importance of the practice in question (like that of Okin) and lead to cultural injustice or two, our framework might be patriarchal and willing resonate with and uphold (and even adopt) the patriarchal claims of cultures and religious (Volpp 2001, Song 2005, Phillips 2007). Attempts by other legal theorists, such as Eisenberg, to find legal solutions to the tensions arising from diversity also fall short of real success. Eisenberg,

however, is able to at least challenge the framework even though her suggestions for a resolution remain unhelpful.

First, Eisenberg highlights the problematic aspects of framing the debate as one between two different sets of rigidly conceptualized rights. The rigid framing and conceptualization is problematic as it presents rights and upholds them as “inalienable, basic, and unalterable” (Eisenberg, 2005, 251)⁸. Both sides use the same discourse of rights. Moreover, such a rigid conceptualization of rights leads to a misunderstanding about the role of courts. Since rights are inalienable and unalterable, courts, in making decision in cases where both claims of women and culture are present, appear to be “choosing between two sets of incommensurable values” (2005, 254).

Second, Eisenberg is extremely helpful in emphasizing another important shortcoming of the previous debates: identity wariness. Identity wariness is, according to Eisenberg, “common to most approaches to resolving disputes involving minorities” (2006, 213). The problem lies in the fact that identity itself is never the subject of the debates aimed at determining a solution to problems of minorities.

Eisenberg bases her solution on a three-fold resolution paradigm: the adoption of the “difference approach” (2005), and the exercise of both the “jeopardy test” and the “significant danger test” (2005, 2006). The “difference approach” assumed by the courts

⁸ It is perhaps interesting to note that such a criticism at a Rights discourse conceptualizing them as inalienable and unalterable was made by Edmund Burke in *The Reflection on the Revolution in France*. Burke, too, found this conceptualization as problematic since he argued that against those “rights of men”, “there [could] be no prescription; against [them] no agreement [was] binding; [they] [admitted] no temperament, and no compromise: anything withheld from their full demand is so much of fraud and injustice” (Burke, Edmund. Reflections on the Revolution in France. Ed. L. G. Mitchell. New York: Oxford UP, 1999).

“incorporate[s] sensitivity towards perspectives that derive from membership in or association with different cultural and religious communities” (2005, 250). This approach ” recognizes the important of “social institutions” on the “health of an individual’s identity” through their treatment of differences (257) and in doing so is able to take into account “the political and legal burdens imposed on and benefits enjoyed” by people with certain “identity-related characteristics” (258).

In their application to actual cases involving disputes of identity, the jeopardy and significant danger test would be able to recognize the benefits and undo the burdens. The significant danger test, as presented by Eisenberg, would seek to see whether the permission of a certain practice would “[pose] any significant dangers to individuals” (2006, 224). The jeopardy test would ask whether the prohibition of a certain practice would jeopardize the identity of the group members (225) by asking question such as: does the law/ or decision by court damage an identity-related interest?; can a law/ or decision help benefit an identity-related interest? ; What is the role of the ‘contested’ practice in identity-related interest?; and how central/integral or obscure/uncommon is the practice to the identity of its members? (260-261).

While Eisenberg’s attempts at restructuring the problem and theoretical concentration on identity are extremely valuable to my own project, I would argue that Eisenberg’s project is also incomplete and insensitive to the nature of cultures. First, Eisenberg assumes that it is possible to create a framework that would be able to examine the claims of culture in “a public and fair manner” (2005, 250). She disregards the ability of unequal power relations to

both undermine the members of culture to which the ‘contested practice’ belongs in presenting their claims in a convincing manner and within the culture itself, preventing the less powerful and less visible members in contributing to the articulation of these claims. Moreover, her legal framework is insensitive to the changing nature of cultures and the practices encompassed within the cultural (and even religious) groups.

Eisenberg’s jeopardy and significant danger tests both rely on a set of questions which would reveal practices which pose such a risk of harm and damage to the “individual well-being” that cannot be protected and practices that are so “questionable” that cannot be defended even by the group members (270). This framework takes little notice of the various ways a practice can be carried out by group members- the example of clitoridectomy presented previously applies here- and, moreover, the fact that in the same way that different outcomes affect identities in different ways (a point acknowledged by Eisenberg, 2005, 250), different cultural practices affect some members more than others and in different ways.

Regardless of the efforts of the scholars, including Eisenberg, the problem of framework remains unsolved and the solutions – epistemological, political, or legal- , while innovative, have been more or less unable to understand and solve the problem.

The problem, as Eisenberg tries to show, is not a tension between feminism and multiculturalism; the tension is between the “subjects of their focus”. “Feminism has focused for the most part on white, middle-class women”, their struggles and their values and goals - something which is evident in the work of Okin-. Multiculturalism, too, has had a rather

narrow point of focus: “race and ethnicity” and those scholars who seek to address the seeming conflict between the two also tend to reduce pluralism to ‘ethnicity’ which leads them to frame the argument in ways that limit the debate as discussed above. Instead of seeing feminism as seeking to advance the status of women, it can be thought of as attempting to battle injustice and bring about social justice. Similarly, multiculturalism does not seek to protect cultures and religions per se, but endeavors to balance out injustices inflicted by the dominant culture by trying to accommodate religions and culture; it too seeks social justice (Silverstein, 2006, 21/22). Social justice for a woman from a cultural minority requires both the efforts of feminism and multiculturalism; her choices should not be determined by her culture; neither should her choices (however influenced by culture) be taken away in the name of feminism.

Recognizing the possibility of looking at multiculturalism and feminism not as challenging discourses, but as having a similar aim of social justice, a shift is necessitated in the framework of the debate; positing feminism and multiculturalism as general theories against each other needs to be complemented by a more nuanced understanding of the supposed aims of each: cultural protection and sexual equality. Social justice as the aim challenges cultural protection and sexual equality as the aims of multiculturalism and feminism. In fact, in re-framing the framework one needs to also challenge the use of ‘culture’ in an “uncritical manner”. Culture, used only in an “ethno-national” sense is limited in addressing injustice (either to the culture or as a result of it) and offering remedies (Silverstein 2006, Arneil et al. 2006).

Not only has much of scholarship on this issue been unable to offer solutions to the supposed issues and tensions but it has also created “serious problems in the search for sexual and cultural justice” by easily accepting “a kind of acultural universal liberalism” (Arneil et al., 2006, 2). Examination, analysis, and prescription without contextualization and recognition of cultural similarities and differences have lead many theorists (such as Okin) to identify the wrong problem and come up with problematic remedies. The attempt by many scholars to shift the focus to justice (Silverstein, 2006) , and even to replace gender and sex equality with sexual justice and cultural protection with cultural justice (Arneil et al., 2006, 50) pays homage to their desire to contextualize, follow a pragmatic approach, and to identify the real and overlapping sources of gender and culture oppression.

While for the purposes of this essay, I would have to restrict the use of the term culture to refer to ethno-national groups, an insight offered in the works of such scholars as Silverstein and emphasized by Arneil, Deveaux, Dhamoon, and Eisenberg (Arneil et al) is extremely relevant and important: sexual justice (encompassing notions of equality, integrity, and fairness) differs from culture to culture. Examination, judgment, and direction offered from the outside and through a universal lens cannot take scholarship much further than Okin has; it is only through understanding and contextualization (not necessary cultural relativism); through participation and deliberation that we can recognize the problem and identify the ways in which subtle forms of agency are exercised by group members in effort to transform their own cultural practices according to their own definition of sexual and cultural justice.

This process requires, as Eisenberg emphasizes in her work, a concentration on identities. A new framework, even one that does not position feminism and multiculturalism against each other, would be unhelpful unless it accepted the importance of identities and recognized choices as manifestations of those identities. An example of such an unconstructive new framework can be seen in the work of Monique Deveaux who adopts a model of deliberative democracy in dealing with the tensions arising from diversity. While my own project of prioritization of identities would be developed within a discourse of deliberative democracy as well, Deveaux's approach is quite different and in my opinion, problematic and non beneficial in dealing with such tensions.

In her adoption of a deliberative democratic model, Deveaux is keen to avoid the usual criticisms made against models of public deliberation- the most serious of which notes the exclusivity and prejudiced nature of the public spheres when certain standards of deliberation (rationality and reasonableness) are enforced. Thus, she distinguishes her model from those offered by other deliberative democrats. Deveaux argues that her model of deliberative democracy recognizes that deliberation can happen at different levels and thus is not limited to public and political deliberation. By increasing and deepening the "scope of deliberation" (95), Deveaux's model recognizes the important of informal, and often internal, deliberation in her attempt to both identify and emphasize subtle forms of agency and based on her assumption that most conflicts of culture are actual intracultural rather than intercultural (2003, 781). Based on this assumption, Deveaux distinguishes her model in yet another way: instead of focusing on identities in the political and public deliberations, she demands a concentration on "strategic needs and interests" (2007, 96 and 2003).

However, Deveaux's project also comes with a serious flaw. Deveaux, like many other "pragmatic" deliberative democrats assumes that it is easier to have a discussion about people's "needs and interests" as opposed to their identities; she thinks it possible to separate one's "needs and interests" from one's "identities"⁹. Deveaux appears to forget that "needs" are structured and constructed by people's life experiences, their position within society, and their self-image- in other words their value systems and identities. In relation to this, Deveaux's insistence that many problems are intracultural (and over actual needs and interests) also fail to give due consideration and emphasis to the way the dominant culture or discourse affects, if not shapes, the identities of those within minorities; in which case, Deveaux seems to downplay the effects of power relations in relation to the majority-minority relations, while overemphasizing the power relations within cultures themselves¹⁰.

Moreover, what Deveaux disregards and what is at the center of my own argument is the recognition of the inevitability of the plurality, multiplicity of values and unavoidability of culture¹¹. Even with no reference to values proposed and upheld by specific cultures and

⁹ I am using identities instead of identity because I hope to have shown that each person has a multiplicity of interwoven, sometimes balanced, often clashing identities. "Identity" has in its conception the idea that people are able to recognize and articulate their singular "identity" easily.

¹⁰ Deveaux have been criticized for this shortcoming by other scholars. See Song, 2007.

¹¹ In addition to overlooking the plurality of values and identities and assuming a problematic acultural position in debates on multiculturalism and feminism, the rigid conceptualization of feminism and multiculturalism as two opposite goods has led to a failure to notice the many other factors- other than culture and religion- that affect women's lives. Some of these factors affecting women's lives are economic status, sexual orientation, education, and patriarchy within and outside the minority group. One promising potential solution is the deliberative democratic model which takes these factors into account and accentuates that these factors in addition to culture and religion contribute to the development of women's identities and cultivates a framework that allows women to acknowledge these factors and decide autonomously which identity they identify with more at a specific time and with regards to a specific issue or practice.

religions, it is impossible to overlook this multiplicity of values. Conflict of values over abortion, euthanasia (Alvarez, 2009, 134), legalization of marijuana, proper way of regulating healthcare, and etc... serve as examples to this multiplicity of values. Taking into account the diversity of cultures and religions – lifestyles and practices- this range of values and the identities that adhere to them becomes more accentuated. Without acknowledging this diversity and accepting the various ways identities and lifestyles are influenced and shaped by their values, we are left with the assumption that “non-western people are [...] governed by cultural dictates, whereas the capacity to reason [...] [characterizes] the West” (Volpp, 2001, 1191).

This assumption leads to an erroneous path that presupposes that culture is optional rather than inevitable (Mookherjee, 2008, 189) as whiteness is characterized as acultural. An example of this presumption can be seen in the way violence against women is often characterized in the discourses. When violence happens in the West, it is characterized as the act of a “few deviants”; when the violence happens within minority groups, it is regarded as part of the cultural, racialized norms (Volpp, 2001, 1186-7).

Moreover, not only do we see violence as cultural and racialized and belonging to the *other*, we also fail to recognize the ways in which the majority culture’s framework allows for the claims of the minorities to be heard and accepted in the so-called cultural defences. For example, the similarities between the Hmong practice of wife-capture and the rape laws or between the Chinese wife-murder after infidelity and the laws around the claim of provocation (Song, 2005, 479-482) show that in order for the cases to resonate and to be

deemed reasonable, it is the majority culture's patriarchal norms that accept the same from the minority cultures.

The assumption about the possibility of adopting an acultural stance or "vantage point" (Mookherjee, 2008, 154) and ignoring the majority cultures own patriarchal practices and processes have led the debate on multiculturalism and feminism to offer solutions- such as those discussed in this paper- that are far from able to effect any meaningful change or offer any consequential solution.

Prioritization of Identities and Deliberative Democracy:

Recognizing the continuous problem in the framework of the debates over the last decade, adopting a more critical understanding of culture, acknowledging the plurality of values, appreciating the inevitability of culture, identifying the many other factors influencing women's daily lives, and valuing women's own account of their cultures and religions and their practices have all served as steps in adopting a new framework, based on a deliberative approach. This framework is founded up a rather common sense realization of the multiplicity of identities and recognition that choices are in fact expressions or demonstrations of a process of prioritization of identities. Having accentuated the main problem as a lack of voice of women in framing group rights or cultural reasonableness in court proceedings, my emphasis on voice, participation, and deliberation should be regarded as a solution to the difficulties arising from diversity.

Individual identities are products of numerous factors; one's sex, sexual orientation, race and ethnicity, economic status, level of education, culture, and religion all contribute to

the creation of an individual's identities. Due to the numerousness of the factors affecting individuals, it is of little surprise that individuals have a multiplicity of identities so that a person can identify herself as a woman, straight, Middle Eastern, Iranian, middle-class, a university student, and Muslim at the same time.

However, the salience of each of these identities in affecting the individuals' day-to-day choices and decisions varies. Whilst the plurality of identities remains true, at a specific time and faced with specific choices and decisions, individuals associate with one identity more than the other. Thus, choices must be seen as manifestations of these various identities; or better said, they must be seen as a result of a process of prioritization that a single individual goes through while making a particular decision.

For example, an African-American woman might feel closer to her identity as a woman when dealing with patriarchy. She might, at a different time, identify more with her identity as a minority black individual when dealing with either structural or overt racism. This prioritization of one identity over another becomes manifested in the choices made by individuals. For instance, a woman might choose not to wear the Hijab by prioritizing her identity as a citizen of a liberal country such as France and later decide to wear it as an act of defiance against discriminatory practices and policies directed at Muslim citizens. In the latter case, this woman would be prioritizing her identity as a person belonging to the Islamic faith over her identity as a citizen of this liberal country and the image of "women" prescribed to her by the dominant culture.

While all individuals carry out this practice of prioritization in their decision-making processes independently and without the need of any theoretical framework enabling or analyzing this process, when decisions and choices concern “contested” practices (such as veiling or clitoridectomy) and procedures (such as religious arbitrations), the framework of deliberative democracy is best suited to both facilitate and elucidate this process of creating a hierarchy of identities as it focuses on the actual problem locus which is located in neither multicultural nor feminist debates, nor in their apparent incompatibility but in the exclusion of women from the discourse¹² shaping and framing such debates.

From the outset, it has to be emphasized that the adoption of a more participatory and democratic framework – that of deliberative democracy- by no means translates to an abandonment of rights; as without the freedom of thought, speech, and association and certain other guarantees (offered by a liberal framework), deliberation and any framework based on it would be impossible. Its adoption is based on the simple insight that rights have different meanings, connotations, and priorities for different people (not simply as a result of their membership in a cultural and religious group; but also, more pragmatically, as a result of the different variations in their life experiences) and it is only through discussion and deliberation (talking) that one can gain a better understanding of these differences.

¹² The emphasis on voice and communication has been integral part of political theory. An instance of it can be seen in Kant’s defence of ‘public use of reason’ in *What is Orientation in Thinking?*. In his discussion of the ways in which freedom could be constrained/opposed, Kant makes a claim for the communicability of reason: “how much and how accurately would we think if we did not think, so to speak, in community with others to whom we communicate our thoughts and who communicate their thoughts to us” (Kant, 1991, 247). This is one of the reasons why Kant advocates for the freedom of public use of reason over the private use of reason- we cannot think without communication; without the need to persuade or explain, we would not be able to think about the reasons for our propositions or to articulate our thoughts; without the criticism through communication, we would not be able to formulate our thoughts correctly.

With this in mind, deliberative democracy offers a particularly good framework for dealing with possible tensions arising from diversity in liberal democratic societies. The theoretical prerequisites, methods, and potential outcomes of deliberative democracy all contribute to the enabling of the prioritization of identities for both individuals within the group and the group itself.

First, the prerequisites of inclusivity and unconstrained dialogue (Habermas, 1991, 238) ensure a just process, allowing individuals to autonomously prioritize their identities within groups. Although it is impossible to create the ‘ideal speech situation’¹³ envisioned by Habermas, having some level of inclusivity and unconstrained dialogue as preconditions and setting them as the ideal goals of the model ascertains that the main problem (women’s lack of voice) is taken to account in the foundation of this theoretical framework.

Inclusivity or “universal access” (1991, 238) to the public dialogue is accentuated as an institutional criteria by Habermas and is as particular importance to my own argument as this criteria assures that the voices of the often marginalized are included as part of the debate. However, universal access to the dialogue will come to nothing if it is not accompanied by measures preventing the distortion of communication. Communication can become distorted when unequal power relations act as barriers to free communication¹⁴ (Habermas, 1984, 97, 164). In order to have distortion-free communication (as much as possible), minimum

¹³ The ideal speech situation can be defined as a situation under which “communication is impeded neither by external contingent forces nor, more importantly, by constraints arising from the structure of communication itself” (Habermas, 1984, 97).

¹⁴ For example, distortion of communication can occur in a classroom when a student is worried about the consequences of expressing a certain idea. It can also happen in inter-group dialogues when marginalized members, concerned with reprisals, are unable to freely express their feelings and views.

requirements must be met; requirement securing individual autonomy. These minimum requirements can come in the form of basic rights and liberties of individuals such as freedom of speech, opinion, and engagement in public dialogue. These rights must be secured and guaranteed by the state in order to ensure “openness for competing opinions and a representative diversity of voices” (Habermas, 1998, 368). Such basic rights also contribute to guarantee that ‘all those possibly affected’ by particular laws, policies, and practices are engaged in the communication process.

It is precisely this emphasis on inclusivity and unconstrained dialogue within the deliberative democratic framework that allows individuals to prioritize their identities by simply participating in the dialogue by facilitating the flow of information and by compelling reflection upon identities and practices pertaining to those identities.

Through dialogue access to information is made easier as group members would have to explain the identities and practices corresponding to the membership within a particular cultural or religious group. This access to information increases transparency – by forcing those considering themselves as experts on the cultural or religious group to explain and rationalize practices and procedures to both in-group members and out-group observers- and determine possible hypocrisies¹⁵ within practices. By explicating the reasons behind practices, group members could also decide whether practices could be reformed while retaining the nature and purpose of them (an example would be clitoridectomy and circumcision through words which is discussed in this paper). Moreover, if the dialogue is set up to allow group members to raise questions and investigate the nature of their practices, the influence of other

¹⁵ For example if a practice is commonly accepted as having one goal but through dialogue it is determined that it has other reasons attached to it.

factors – specially the influence of majority culture upon the minority culture or religion in question- would also be recognized and clarified.

It is through deliberation that we might come to recognize “the manner in which gender inequality and claims for ‘authenticity’ intersect under specific geo-political and legal-institutional structures” (Shachar, 2001, 131). An illustration of this point is provided by Sarah Song. Song¹⁶ used the example of the court case *Martinez v. Martinez*¹⁷ (Song, 2005) in which the claim of discrimination was turned down by US courts arguing that they could not interfere with tribal laws. Song notes that while the case is often cited as a clear case of tension between multiculturalism and feminism, what is often ignored is the “role the US government played in the creation of the Santa Clara Pueblo membership rule” which was the subject of the court case. “Pueblo’s gender-biased amendment to membership” was in effect a result of the government pressure on “Pueblo and other tribes to adopt a more restrictive membership status” and “was congruent with majority [white American] culture’s own norms and policies on membership” (Song, 2005, 477).

In addition to highlighting the different factors affecting cultural and religious practices, deliberative democracy also accentuates women’s own analysis of their culture. Deliberative democracy necessitates participants to reflect on their practices and their identities by requiring from the participants to provide reasons for either endorsing or condemning a particular practice or procedure. Through this process of reflection, individuals will be able to solidify their positions and in deciding to whether endorse or condemn a

¹⁶ It is important to note that Sarah Song considers herself a deliberative democrat and recommends deliberative democratic processes to deal with the tensions arising from diversity.

¹⁷. *Martinez v. Martinez* (1988); case number 860159-CA.

practice, they will prioritize their identity. An example of such a case where deliberative democracy could have facilitated a free and autonomous prioritization of identities is the “scarf affair” in France. Seyla Benhabib¹⁸ uses the example of the Muslim “headscarf affair” in France to show how in an occasion the agency of women was disregarded and their voices left unheard by those who saw the whole practice as patriarchal and did not take into account the autonomous choice of the girls to wear the scarves as their desire to protest what could be perceived as an attack on their religion (Benhabib, 2002, 96). In choosing to endorse a practice such as wearing the Hijab, these girls were prioritizing their identities as women belonging to the Islamic faith over the identity prescribed to them by the majority culture.

Second, and in addition to the emphasis on inclusivity and unconstrained dialogue, the innovative methods offered and sanctioned by deliberative democracy are of extreme value in the face of diversity. These include “deliberative polls, deliberative days, citizens’ juries” (Held, 2006, 246) and “consensus conferences” (Squires, 2005, 382). The model of deliberative democracy has another potential, in addition to allowing individuals to prioritize their identities within their groups by speaking for or against particular practices or procedures or by exiting¹⁹ the group altogether, it also offers the groups the opportunity to use the deliberative model in order to advance their goals.

This potential can be realized through the innovative methods offered by deliberative democracy. For example, consensus conferences can be set up as such to allow group

¹⁸ It is important to note that Seyla Benhabib is also a deliberative democrat and recommends deliberative democratic processes to deal with the tensions arising from diversity.

¹⁹ Right to exit will be discussed more thoroughly in the next sections.

members to engage in collective decision-making to achieve a consensus on the hierarchy of the identities for group members. So that members would decide to prioritize their identity as belonging to that particular cultural or religious group in order to achieve political power (power in numbers) and advance certain goals (land rights or rights for religious holidays) or combat certain practices (i.e. the ban on Hijab) and assumptions (wrong assumptions on clitoridectomy or arranged marriages) at particular instances without necessarily presuming any further cohesion of identities²⁰.

As for another example of the usefulness of the methods offered by deliberative democracies, citizens' juries can be used in dealing with legal problems arising from diversity such as cases when cultures and religions are invoked as either the framework-religious arbitrations- or as a defence.

Citizens' juries have been used to deal with both local and national issues²¹ and can be formed to deal with cultural and religious legal issues. They are particularly helpful as they aim "to combine information, time, scrutiny, deliberation, independence, and authority" and "ensure [that] all features are present to a substantial degree" (Coote & Lenaghan, 1997, 8). They are often made up of a number of individuals usually selected randomly (environmental-mainstreaming.org); and can include people from the culture or religion in question. The citizens' jury hears from people within the cultural or religious group as well

²⁰ This is very similar and partly inspired by Gayatri Spivak's argument on strategic essentialism. For more information see Spivak 1990.

²¹ They have been used by different organizations seeking healthcare reform (Held, 2006) or mainstreaming environmental issues (environmental-mainstreaming.org) and can be used in gender mainstreaming (Squires, 2005).

as “expert witnesses” (environmental-mainstreaming.org). Members of groups or organizations with a special interest (i.e. Women’s groups or religious organizations) can also serve to provide information without practicing authority over the process. The process, while independent from outside influence and authority, is still open to outside scrutiny and will be overseen by standard legal mechanism (environmental-mainstreaming.org) to avoid gross miscarriage of justice. Citizens’ juries made up of individuals whose lives are most affected by “questioned” religious and cultural practices or by demands for more group rights and group control allows the most marginalized to be informed and offers them a chance to form the views and voice their ideas. Having expert witnesses made up of women’s groups within and outside the group, religious and cultural organizations, and legal experts avoids the claims of cultural imperialism and contributes to the diversification of the process.

Third, the preconditions set and methods offered by deliberative democracy help “facilitate the capacity to produce recommendations on complex public policy issues” based on and “informed by a variety of experiences and view points” (Squires, 2005, 382). This can be clearly seen in the example of Citizens’ juries; all are included in the process whether as jurors, witnesses, or merely overseeing the process. The process is carried out with as much transparency as possible and is open to scrutiny to ensure the disregard of rank and to enable free and autonomous decision-making as much as possible. The final product; the recommendation or decision that comes out of a particular citizens’ jury, has the benefit of having considered and included the diverse voices of “all those possibly affected”.

Autonomy in the Face of Diversity:

However, while a deliberative model is a step in the right direction in promoting women's voices in public debates, it needs to be supplemented by measures ensuring the autonomy of women participating in debates. Autonomy ensures women's participation and enable them to prioritize their identities²² which would, in return, grant women more autonomy.

Nonetheless, it should be noted that it would inaccurate and erroneous to assume that in this model, autonomy would be defined as independence. Many scholars have been emphasizing the shortcomings of the liberal definition of autonomy as independence. Monique Deveaux's move from liberal autonomy to procedural autonomy is noteworthy and valuable. For Deveaux we need to move away from the liberal notion of autonomy- "autonomy as independence" (Deveaux, 2007, 157) - towards what she calls "procedural autonomy" which concerned not by "autonomy" in its common usage but with the agency of group members and the "degrees of reflection about one's values and attachments" (173). A support for procedural autonomy, according to Deveaux, would redress and remedy the force exercised by some group members to compel others in participating in certain practices. It, also, enables "assessments about the validity" of the controversial practices by focusing on both the public and private life. Finally, procedural autonomy would help "enable women to

²² A simple example of this can be that of hijab. Deliberation would highlight the different meanings of hijab for different women. For one woman, hijab can be her way of signalling her ethnic or national origin (Benhabib, 2002, 95); it can serve as an act of defiance in the face of many discriminatory (and even xenophobic) policies after 9/11 (Bakht, 2007, 134) or it can be seen as a patriarchal practice and a sign of government oppression. Deliberation would also allow women to decide which meaning they will adopt or identify with at a particular moment. It could be that a woman, who would under general circumstances refuse to wear hijab, would do so to protest a policy.

participate in various forums of political deliberation” (174) ensuring that the voice of women is heard and their interests are articulate.

Autonomy required for the prioritization of identities and endorsed and promoted by the deliberative model is a nuanced understanding of autonomy. It takes into account the inevitability of culture and accentuates the social, political, economic, cultural, and religious that shape people and affect their ways and abilities to make decisions. This is based on the idea that if autonomy is ‘rooted in the idea that individuals should be able to pursue their own goals according to their own values, beliefs and desires’, then individual women need to exercise their choices under the existing conditions that shape their ‘values, beliefs and desires’ (Marshall, 2008, 640).

Rights and Political Equality:

Thus, autonomy cannot be discussed or advanced without reference to these existing conditions in the face of diversity. With reference to these conditions, women’s autonomy can be promoted through guaranteeing rights and ensuring relative egalitarianism. Without rights such as the right to freedom of speech, thought, association, religion, and etc..., acting as safeguards to the model, deliberation would be meaningless; and autonomy would be futile and nothing more than a state of mind. Without some level of egalitarianism, rights would be distributed unequally and would be consistent and add to the disparate and unjust power relations. Both these safeguards have been emphasized by deliberative democrats seeing rights and some level of egalitarianism as essential to the model.

Habermas emphasizes the need for basic rights (speech, etc...) to ensure political autonomy (1998, 122) and later adds the need for “the provision of living conditions that are socially, technologically, and ecologically safeguarded” in order to ensure that citizens “have equal opportunities to utilize” their basic rights (123). Deveaux furthers this emphasis in advocating for a principle of “political equality” (Deveaux, 2003, 792) which would ascertain the “presence of real opportunities” for participation preventing “extra-political or endogenous forms of influence, such as power, wealth, and pre-existing social inequalities” (793). The principle of egalitarianism or political equality is particularly important because it takes into effect the other factors that affect women’s lives. Instead of solely focusing on culture as the source of inequalities, it takes into consideration the ways in which culture, economic status, education, and gender interact to increase marginalization and attempts at a solution directed at interaction.

In addition to basic rights and a general principle of egalitarianism, some provisions must be included in the model to ensure its effectiveness and functionality. One of the main stipulations to be included within this model is “voluntary self-ascription” (Benhabib, 2002). Birth does not determine identity; although birth and the circumstances under which a person grows up have tremendous influence in shaping one’s values and identities. With this in mind, individuals should not be barred from prioritizing their identities and while this is harder to achieve within groups²³, “the state should not simply grant the right to define and control membership to group at the expense of the individual” (Benhabib, 2002, 131).

²³ It is much more difficult to ask groups to ease their membership rules to allow individuals to choose to identify with their group identity at one instance and choose to identify with another at a different time. It should be emphasized that the process of deliberation allows women the voice to influence the group procedures and rules and include their preferred identity within the membership rules.

Right to Exit:

Moreover, while achieving the free exercise of voice- “ability to influence those determining the group’s course of action by expressing one’s preferences” (Newman, 2008, 48)- within groups is more preferable²⁴, a guarantee of exit- “ range of ways in which an individual distances himself or herself from a group” (48)- is necessary (Benhabib 2002, Newman 2008). Individuals should have the option to surrender an identity and exit a group. True prioritization of identity might at times lead to one identity to being completely renounced as an act of agency. However, it must be taken into account that just a demand for a freedom of exit is not enough as often the cost of exit, which can be physical or psychological and as a result of isolation or ostracism, is too high for exit to be a real option. In order to “[make] exit real” (Phillips, 2007, 140), states need to ensure a substantial right to freedom of exit by taking up at least part of the cost of exit (140) to assure real exit, real choice, real autonomy, and meaningful prioritization of identities.

A Nuanced Legal Approach:

The decision on whether voice or exit will be the viable option depends solely on the circumstances; it would depend on the “decision-making mechanisms” (Newman, 2008, 51) existent in groups. Hence, any model of deliberation would need to adopt a nuanced approach which would vary its method from group to group and from time to time. Integral to such an approach is upholding a principle of “revisability” (Deveaux, 2003) within the deliberative framework ensuring that “decisions and compromises [...] [could] be revisited at a later point” (2003, 793). This is particularly helpful in deliberative conferences held on the articulation of group rights. Moreover, within a legal framework, the principle of

²⁴ Both Newman (2008) and Shachar (2001) concur this preference.

revisability is important to assure that the decisions of Citizens' juries on cases regarding cultural claims would not turn into rigid precedents. This is necessary since not only do cultures' defences differ from group to group and cannot be made comparable, culture, too, transforms continuously. The fluidity of cultures and religions and the ever-changing nature of their practices make the use of one case as a precedent for another impossible.

Moreover, building on an insight by Ayelet Shachar that "more entry points" and "more diffuse power" would grant individuals more freedom (2001, 15) especially in regards to legal decisions, I would also argue that individuals should have the right to decide whether cases involving cultural/religious defences would be taken up by Citizens' juries or dealt with by the mainstream legal system; this decision would rest with the plaintiff to ensure the individual's choice to prioritize her²⁵ identity and make a legal decision based on it.

Conclusion:

Cultures, religions, identities, choices, practices, and decisions are complex. It is only through deliberation that distinctions and divergences become clear; it is through deliberation that thoughts become solidified; through deliberation women are given a chance to exercise their agency, use their voices, and decide- at a particular time and with a specific practice in question- which identity matters to them more; whether gender, race, religion, culture, economic status, or another factor influences their voice and decision more.

It recognizes and promotes women's choice to uphold a different identity than the one prescribed to them by the majority culture. It respects and concedes women to choose to have,

²⁵ I am using the objective form of "her" since in most cases dealing with cultural and religious claims, the plaintiffs are female.

not less rights but, different ones. It accepts and appreciates their choice to act, not on wrong or harmful values, but according to those values that have shaped them and their identities. It also allows for the converse situation; it allows women to subscribe to the identity stipulated by the majority culture; to uphold and exercise the rights guaranteed by the state; and to adhere to the values that have so clearly influence them and would shape their identities.

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