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978-0-521-87487-8 - Justice, Gender, and the Politics of Multiculturalism

Sarah Song

Excerpt

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## 1 Introduction

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A Muslim girl seeks exemption from her school's dress code policy so she can wear a headscarf in accordance with her religious convictions. Newly arrived immigrants invoke the use of cultural evidence in defense against criminal charges. Over one hundred years after the Church of Jesus Christ of Latter-day Saints renounced polygamy, Mormon fundamentalists continue to practice it and argue for its decriminalization. Aboriginal groups insist on the right of self-government, including the right to determine their own membership rules. These claims are not simply demands for the enforcement of anti-discrimination law; they are also demands for positive accommodation of particular beliefs and identities. In practice, democratic governments in the West already grant a variety of accommodations to religious and cultural minorities, including exemptions to generally applicable law, support for the pursuit of cultural practices, and limited self-government rights.

By the term "accommodation" I mean to include measures involving both redistribution and recognition. In some cases, minority groups seek remedies for material disadvantages they suffer on the basis of their minority status. Such remedies include compensation for past discrimination, ensuring equal access to educational and employment opportunities, or economic restructuring of some sort. But many claims of minority cultural groups are not reducible to economic claims. Behind these claims is the view that material goods are not sufficient to ensure people's well-being; another crucial condition is the possession of self-respect, and this is tied to the respect others express or withhold. In addition to material claims, then, cultural minorities demand measures aimed at countering social and political marginalization and disrespect, including revaluing disrespected identities and transforming dominant patterns of communication and representation, or in the case of aboriginal groups, granting collective self-government rights. Political theorists have used the term "recognition" to capture these sorts of claims.<sup>1</sup> The demand for

<sup>1</sup> Taylor 1994; Galeotti 2002; Fraser and Honneth 2003.

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recognition is for others to respect what James Tully has called people's longing for self-rule, "to rule themselves in accord with their customs and ways."<sup>2</sup>

Group claims for recognition and positive valorization are not a new political phenomenon nor are they specific to ethnic or religious minority groups. Feminists have long struggled not only for economic measures that abolish the gender division of labor, but also for measures that replace institutionalized androcentric values privileging attributes historically associated with masculinity with values expressing equal respect for women. Like gender claims, the claims of ethnic and national minority groups are matters of both redistribution and recognition. On the one hand, ethnic and national minority groups can be economically defined: they tend to experience higher rates of unemployment and poverty and are overrepresented in poorly paid menial work. Ethnic and national minority groups can also be defined in terms of a status hierarchy that values some groups as more worthy of social respect than others. Patterns of cultural valuation privilege attributes associated with "whiteness" or European identities while those coded as black, brown, or yellow experience cultural devaluation and social and political marginalization.

Virtually all axes of subordination (e.g. race, gender, class, ethnicity, sexuality) implicate both maldistribution and misrecognition in forms where each of those injustices has some independent weight, whatever their ultimate source. To be sure, some axes, such as class, tilt heavily toward the distribution end of the spectrum while others, such as sexuality, tilt toward the recognition end. Nancy Fraser has suggested that in contrast to class and sexuality, race and gender cluster closer to the center and are matters of both recognition and redistribution to a similar degree.<sup>3</sup> I think ethnicity is like race and gender in this regard. Of course the extent to which the injustices ethnic and national minorities experience stem from economic disadvantage or status subordination must be determined empirically in each case. Insofar as ethnicity and nationality implicate both maldistribution and misrecognition, the appropriate response will require both material and symbolic remedies.

### The problem of internal minorities

Different types of groups have made different sorts of accommodation demands, and in response, states have in practice granted a great many of them. Catching up to the practice of accommodation, political theorists

<sup>2</sup> Tully 1995: 4–5.    <sup>3</sup> Fraser and Honneth 2003: 25.

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have offered different principled arguments for accommodations for minority cultural groups. Many liberal defenders of multiculturalism have focused on inequalities *between* cultural groups, arguing that treating cultural minorities as equals requires special protections to secure liberties and opportunities that members of the majority culture already enjoy. Yet, as critics of multiculturalism have stressed, accommodation of minority group traditions can exacerbate inequalities *within* minority groups. Some ways of protecting minority groups from oppression by the majority make it more likely that these groups will be able to undermine the basic liberties and opportunities of vulnerable members. Indeed, representatives of minority groups may exaggerate the degree of consensus and solidarity within their groups to present a united front to the wider society and strengthen their case for accommodation. This tension has been characterized as the problem of “internal minorities” or “minorities within minorities.”<sup>4</sup> The term “minority” here refers not to a group’s numerical strength in the population but to groups that are marginalized or disadvantaged in some way. Vulnerable subgroups within minority groups include religious dissenters, sexual minorities, women, and children. Focused on the effects of group accommodations on women within minority groups, feminist theorists, including Susan Moller Okin and Ayelet Shachar, have characterized the problem of internal minorities as “multiculturalism v. feminism” or “multicultural accommodation v. women’s rights.”<sup>5</sup>

It is important to point out that this dilemma arises most clearly in liberal democratic societies committed to the value of equality. The basic dilemma emerges from conflicting demands that arise in the pursuit of equality for all. A core commitment of liberal democracies is that citizens treat one another as equals. On the one hand, as I’ll argue, treating members of minority groups with equal respect requires special accommodations under certain circumstances. On the other hand, such accommodations cannot be permitted to violate the basic rights and liberties of individual members of minority groups. This dilemma raises questions that every multicultural liberal democracy must face. Why should special accommodations to members of minority groups be granted, if at all? What are the limits of accommodation? How might tensions between the pursuit of justice for cultural minorities and the pursuit of gender justice be addressed? These are the questions I explore in this book, focusing on a range of specific cases in which women are made more vulnerable through multicultural accommodation. To pursue these questions, we

<sup>4</sup> Green 1995; Eisenberg and Spinner-Halev 2005.

<sup>5</sup> Okin 1998 and 1999; Shachar 2002.

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must explore philosophical arguments for multiculturalism, as well as look closely at the actual practice and politics of multiculturalism.

### Reframing the debate

Before addressing these questions, it is crucial to examine how the dilemmas of multiculturalism have been framed. The interpretive framework underlying many analyses of multiculturalism provides an insufficient understanding of what is at stake in many contemporary cases. The normative solutions offered by political theorists fall short more because they have too narrowly defined the problem than because of the shortcomings of their normative theories. The problem of internal minorities has largely been understood as a problem with deeply illiberal and undemocratic minority cultures. For instance, recent formulations of the problem as “multiculturalism v. feminism,” “group rights v. women’s rights,” or “culture v. gender” suggest that minority cultures are the source of minority women’s subordination. These accounts of the problems of multiculturalism rely on a conception of cultures as well-integrated, clearly bounded, and self-generated entities. For instance, feminist critics of multiculturalism seem largely to accept the prominent multiculturalist view of cultures as largely unified and distinct wholes, even while recognizing gender as a cross-cutting social cleavage. In her critique of multiculturalism, Susan Okin suggests an account of cultures as monolithically patriarchal with minority cultures being generally more patriarchal than surrounding Western cultures.<sup>6</sup> Such an account overlooks the polyvocal nature of all cultures and the ways in which gender practices in both minority and majority cultures have evolved through cross-cultural interactions. This oversight prevents Okin’s approach from recognizing the ways in which the majority culture is not always less but rather differently patriarchal than minority cultures.

While she is much more sympathetic to cultural accommodations than Okin, Ayelet Shachar also adopts a conception of culture that is similarly monolithic. She equates “identity groups” with “nomoi communities,” defining both as “religiously defined groups of people” who “share a comprehensive and distinguishable worldview that extends to creating a law for the community,” as well as a “distinct culture.”<sup>7</sup> Shachar does not provide a normative defense of religious and cultural accommodations; we are left to infer a defense from her definition of cultures as “nomoi communities”: that religious and cultural communities provide

<sup>6</sup> Okin 1999: 12–13, 17.    <sup>7</sup> Shachar 2001: 2, n. 5.

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comprehensive worldviews is sufficient reason for institutional measures aimed at protecting them. But members of the same ethnic, racial, tribal, or national groups, all of which are included in her definition of “identity groups,” do not necessarily share a comprehensive worldview. Shachar’s definition makes the mistake of conflating culture and religion and of assuming the coherence and comprehensiveness of both sorts of communities. While religious groups and aboriginal groups with shared life forms may constitute “*nomoi communities*,” many cultural communities do not. In contrast to Okin and Shachar and prominent defenders of multiculturalism, I adopt a view of cultures that is more attentive to the *politics* of cultural construction and contestation and develop an egalitarian approach that makes deliberation central to addressing gendered dilemmas of culture.<sup>8</sup>

A constructivist conception of culture, I argue, better captures the complex sources of the problem of internal minorities. As I discuss in chapter 2, on a constructivist account cultures are the product of not only internal contestation but also complex historical processes of interaction with other cultures such that the modern condition might more appropriately be characterized as intercultural rather than multicultural. Once we recognize that cultures are interactive and interdependent, we must also recognize that the starting point for intercultural dialogue over contested cultural practices is a terrain of already overlapping intercultural relations and practices. This allows us to be attentive to interconnections between majority and minority groups that have shaped cultural conflicts. Sometimes the experience of crossing cultures has fueled movements toward greater equality, but in other cases, intercultural interactions have reinforced unequal and oppressive norms and practices across cultures. Viewing cultures as well-integrated, bounded entities has led many observers to overlook how gender statuses are shaped by intercultural interactions, which in turn has lent support to a false dichotomy between egalitarian majority cultures and oppressive minority cultures. Although the United States, like other Western democracies, publicly supports gender equality in many respects, struggles to transform social norms and practices to make such equality a reality are incomplete and ongoing. Far from being neutral, mainstream norms – in some cases, patriarchal mainstream norms – have shaped both the practices at the heart of cultural conflicts and the normative frameworks within which claims for accommodation are evaluated.

<sup>8</sup> I will examine Okin’s and Shachar’s approaches to resolving the problem of internal minorities in greater depth in later chapters. See chs. 3, 4, and 6 for discussion of Okin and ch. 6 for discussion of Shachar.

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Attention to intercultural interactions is crucial to addressing the problem of internal minorities for at least three reasons. The first has to do with the majority culture's influence on the gender norms of minority cultures. In some cases, the dominant culture's own patriarchal norms have offered support for patriarchal practices in minority cultures – what I call the *congruence effect*. In the past, the state directly imposed mainstream gender biases onto minority communities, as in the 1887 Dawes Act, which subverted Native American women's roles in agricultural work by making Native American men heads of households, landowners, and farmers.<sup>9</sup> More common today are the indirect ways in which mainstream norms support gender hierarchies within minority communities, as we'll see in examining the case of the “cultural defense” in American criminal law and the membership rules of the Santa Clara Pueblo. In these cases, it is the congruence of patriarchal norms, rather than respect for difference, that has informed state accommodation of minority practices. Some defenders of multiculturalism have suggested that when it comes to immigrants, as opposed to cultural groups that enjoy self-government rights or legal jurisdiction over certain social arenas, there really is no problem of internal minorities since immigrants are expected to integrate into the dominant culture and such integration entails the adoption of egalitarian values.<sup>10</sup> But this position overstates the gender egalitarianism of the dominant culture, as well as the extent to which immigrants embrace egalitarian values. We need to be careful not to equate the actual process of Americanization with ineluctable progress toward gender equality. Instead, we should ask to what values and norms immigrants are actually integrating. In some cases, patriarchal practices in minority cultures may find support from mainstream norms such that the process of assimilation involves an affirmation of patriarchal traditions within minority cultures.

A second reason for being attentive to majority–minority interactions in evaluating cultural claims has to do with the minority culture's influence on the gender norms of the majority culture. There are serious consequences for America as a whole in tolerating policies that permit gender subordination within minority cultures. Given that the struggle for gender equality within the majority culture is incomplete, tolerating patriarchal norms and practices within minority cultural communities may allow such norms to boomerang back and threaten struggles toward

<sup>9</sup> Cott 2000: 123.

<sup>10</sup> See, e.g., Jeff Spinner-Halev's claim that “most immigrant communities become more Americanized, take on more egalitarian values, and support autonomy for both their sons and daughters after one or two generations” (2001: 90).

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gender equality within the wider society. Call this the *boomerang effect*. As we'll see in examining the "cultural defense," permitting reduced punishment for immigrant defendants who commit crimes against women may threaten advances toward gender equality within the wider society by establishing precedents that mainstream defendants can invoke.

A third reason to be attentive to majority–minority interactions is to discern the *diversionary effects* of the majority's condemnation of minority practices. Even where accommodation is denied, by focusing on the patriarchal practices of minority cultures, the majority can divert attention from its own gender hierarchies. In the past, European governments justified intervention into "other" (usually non-European and non-white) cultures in the name of liberating women from the oppression of "other" men. But often the result was not only the oppression of other cultures by Western powers but also the failure to challenge the subordination of women in both Western and non-Western contexts. Such intervention, fueled by a discourse of binary oppositions between an enlightened West and a traditional barbaric rest, reinforced gender inequality in colonial contexts by subverting women's historical sources of power. It also helped deflect criticism away from gender inequality in Western societies by emphasizing gender oppression in non-Western societies. Similarly, the US government justified interventions into Native American and Mormon communities out of a concern for women within these communities. Yet, American reformers and government officials opposed the ideas of feminism when applied to the dominant culture, even while they deployed the language of feminism in the service of its assault on the religions and cultures of "other" men.<sup>11</sup> Such rhetoric not only provided them with a ready justification for intervention into minority communities, but also helped divert attention from gender inequality within the majority culture by focusing on the gender relations of minority communities. Scrutinizing the majority culture's motivations behind its responses to minority cultural claims can help guard against political actions that reinforce not only gender inequality but also inequality across

<sup>11</sup> Claiming that "other" men oppress their women to justify intervention into "other" cultures is, of course, not unique to the United States. Numerous scholars have documented how representations of the oppression of non-Western women by non-Western men were used to justify British and French imperialism. For example, in examining the conduct and rhetoric of the British colonial establishment toward Islamic societies, Leila Ahmed (1992) demonstrates how British officials appropriated the language of feminism in the service of colonialism. The result was the fusion of the issues of women's oppression and the cultures of "other" men such that improving the status of women was thought to entail abandoning native customs. She also argues that the focus on "other" men helped Western colonial governors combat feminism within their own societies. See also Lazreg 1994 and Narayan 1997.

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cultural and racial lines. A key issue here is how to reframe discourses of gender equality without fueling discourses of cultural and racial superiority.

Broadening our analysis of multicultural politics to include these interactive dynamics has important implications for normative debates on multiculturalism. First, it shifts the focus of debate from asking what cultures *are* to what cultural affiliations *do*. That is, we move away from trying to define and accord value to whole cultures toward evaluating the meaning and impact of particular practices. On this reformulation of the dilemma, “culture” is not the problem; oppressive practices are. Minority women engaged in the cultural conflicts I examine seek *both* equality for cultural minorities *and* equality for women. They don’t seek to do away with cultural accommodations, but rather challenge aspects of cultural traditions that support women’s subordination.<sup>12</sup>

A second implication of adopting this broader interactive view of cultural conflicts is the need to develop context-sensitive and democratic approaches to evaluating the claims of minority cultures. Evaluations of minority claims should be based on examination of particular practices in particular contexts with an eye toward interconnections between majority and minority practices. I argue that such contextual inquiry is best taken up through democratic deliberation. This book examines a range of cases to illustrate how the interactive dynamics discussed above have shaped the practice of multiculturalism. It is crucial to have these dynamics in mind in order to properly identify and address the complex sources of the problem of internal minorities.

### Justice and the claims of culture

While I devote much attention to how cultural accommodations have worked in practice, the approach I take in this book is not merely contextual. Peering at context, no matter how closely, will not provide a normative framework for thinking about and responding to multicultural dilemmas, including the problem of internal minorities. Instead, I take a semicontextual approach. In chapter 3, I offer and defend a conception of justice in relations of culture and identity as a framework for evaluating

<sup>12</sup> Here I follow the lead of many scholars who have stressed the importance of recognizing that minority women are situated at the intersection of multiple social identities such that they are marginalized not just in terms of gender but also race, ethnicity, class, sexual orientation, and other social identities. Such intersectionality gives rise to problems that cannot be addressed by a movement focused solely on any single identity. See hooks 1981; Moraga and Anzaldúa 1981; Jayawardena 1986; Harris 1990; Crenshaw 1991; Mohanty, Russo, and Torres 1991.



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cultural claims and addressing cultural conflicts. This framework is not offered as a comprehensive or definitive account, but rather as part of the ongoing conversation about how to understand and respond to the challenges raised by cultural diversity. Its aim is to demarcate the range of morally permissible institutions and practices with respect to the claims of culture in liberal democratic societies. At the same time, my approach recognizes that particular solutions and arrangements must be decided through deliberation by affected parties in particular contexts. I explore the implications of my normative arguments in the context of particular cases in Part II.

A key problem that emerges from the case studies is that majority cultures in liberal democratic societies often fall short of the egalitarian ideals they publicly espouse. As we'll see, what often drives the politics of cultural accommodation and conflict has not been concerns about justice, but the political dynamics of congruence, imposition, and diversion I discussed above. This is precisely why it is important to have some normative ideals in mind in approaching the case studies, to provide a basis for critique. Liberal democracies need guiding norms for intercultural dialogue, and the justice arguments developed in chapter 3 are intended to provide a normative framework from which to evaluate not only minority practices at the center of cultural conflicts but also majority responses to them.

The normative approach I develop, what I call *rights-respecting accommodationism*, is committed to both the pursuit of justice for cultural minorities and the pursuit of justice for women. I argue that justice requires special accommodations for cultural minorities under certain circumstances. My case for accommodation is grounded in a core value of liberal democracy, the idea that citizens should treat one another with equal respect. Citizens express mutual respect for one another not simply by accepting a set of basic rights and opportunities that apply equally to all. Under certain circumstances, uniform treatment must give way to differential treatment. I examine three circumstances that are especially relevant to multicultural societies, asking whether each supports a case for cultural accommodation: present discrimination, historical injustice, and state establishment of culture. What form accommodation will take and whether they should ultimately be granted will depend on context, and this is why I elaborate my approach in the context of specific cases. But in all cases, the egalitarian basis of my case for accommodation suggests the limits of accommodation: the protection of the basic rights of individual members of minority groups.

I contend that a rights-respecting accommodationist approach best expresses the idea of equal respect for persons under conditions of

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cultural diversity. It is offered as a middle way between the contention by some liberal theorists that multiculturalism is inconsistent with individual freedom and equality, on the one hand, and multiculturalist calls for cultural preservation, on the other. Some prominent liberal theorists maintain that justice should be culture-blind; what justice requires is a common set of rights and opportunities for all individuals, regardless of religious or ethnic affiliation. Brian Barry's critique of multiculturalism and defense of a "unitary republican model" of citizenship is one prominent and lively example, and I examine his arguments closely in chapter 3. In contrast to this culture-blind approach, the egalitarian approach I defend is open to differential treatment under certain circumstances.

Yet, my egalitarian argument does not go as far as many multiculturalists do. Many multiculturalists argue that any law or policy that disparately impacts minority cultural groups supports a claim for accommodation on the grounds that cultural membership is a basic good to which all citizens are entitled. The claim here is that since the state unavoidably privileges members of the dominant culture while burdening cultural minorities' access to their own culture, it must somehow make it up to citizens who are native speakers of minority languages and bearers of minority cultural identities.<sup>13</sup> While I share multiculturalists' concern about differential impact, I do not think this fact alone is sufficient to support a claim for accommodation. Many multiculturalists seem to assume that all burdens on cultural attachments are always too severe to be borne by individuals. Yet, as I discuss in chapter 2, there is reasonable disagreement about the meaning and value of cultural membership. Rather than assuming that cultural membership is a basic good, we must ask about the kinds of interests that are at stake in claims for accommodation in order to assess whether differential impact of law and policy does indeed constitute unfairness.

My aim in making these arguments from justice is to provide a justification for cultural accommodation and a framework for addressing the problem of internal minorities while leaving the choice of specific policies and resolutions to be decided through democratic deliberation. A deliberative approach to particular cultural dilemmas has several advantages over approaches that give little or no role to the participation of those affected by the dilemmas in question. It comes closer to treating members of minority groups as equals by giving them a voice in the governance of cultural conflicts. It is also more attentive to the particularities of context than non-deliberative approaches. By drawing on the voices of affected

<sup>13</sup> See, e.g., Kymlicka 1995: 111; Carens 2000: 77–78. I examine this argument in ch. 3.