Feminism, Multiculturalism, Oppression, and the State*

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Some feminists have recently charged multicultural theorists of ignoring the rights of women in their arguments to secure group rights. Too often, these feminists charge, group rights are used to subordinate women. Group rights may appear fair in the abstract but in fact they often mean giving rights to the particular leaders of these groups; when these leaders are men with a traditional view of the world, as they often are, then it is hardly surprising, though certainly disturbing, that group rights are often used to oppress women.

The most persuasive part of the feminist argument is against what Ayelet Shachar calls 'strong multiculturalism,' but what I will call group autonomy; this form of multiculturalism gives groups power over its members through "strong formal and legal recognition."[1] This multiculturalism concentrates on justice between groups, ignoring justice within groups. Nothing is done when the group uses its rights to oppress women, even though, according to Martha Nussbaum, in the case of religion, "we should not accept the idea that denying any fundamental right of any individual is a legitimate prerogative of a religious group."[2] Since some groups discriminate against women, group autonomy often undermines women's rights and equality.

Though the liberal state usually ought to support autonomy and equality, there are times when it should refrain from doing so. The

* Thanks to Suzanne Dovi, Avigail Eisenberg, Nancy Heltzel, Niraja Jayal, Gurpreet Mahajan, Margaret Moore, Gary Shiffman, Mark van Roojen, Melissa Williams, two anonymous referees, and the editors of this journal for helpful comments and suggestions on earlier drafts of this article.

1. Ayelet Shachar, "Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation," *Journal of Political Philosophy* 6 (1998): 285–305, p. 287.

2. Martha C. Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press, 1999), p. 107.

Ethics 112 (October 2001): 84–113
 0014-1704/2002/11201-0002$02.00

feminist objection to group autonomy is flawed by its refusal to distinguish between oppressed and nonoppressed groups. It's one thing to note the power that Israeli Jewish religious leaders have over matters of marriage and divorce for Jews and argue that the state should decrease the power of Jewish religious leaders. But the state is not an abstract, benign actor, and it is quite another matter for the state to intervene in the Muslim community, when this means that a mostly Jewish legislature would change Muslim family law. The feminist critique assumes a normal model of liberal citizenship: the citizen votes and has certain other rights, and the state then has full authority over the citizen. This model, however, is blind to the possibility of a state marking out and oppressing a particular group. When this happens, the assumption of an unmediated relationship between state and citizen that is normally made needs to be questioned. I will argue that the justice of ensuring individual rights and equality for all must be balanced against the injustice of a state imposing reform upon a group it oppresses.

While group autonomy may give a group direct power over its members by regulating matters such as marriage and divorce, no such power is given to groups under what Shachar calls 'weak multiculturalism' and what I will term 'integrative multiculturalism.'[3] Integrative multiculturalism aims to grant some rights to groups but these rights do not give the group direct power over its members. Instead, groups may be given extra representation in political bodies, their members granted exemptions from certain laws, or be eligible for affirmative action, for example. The aim of many of these policies is to further integrate the group into the body politic; when a group has autonomy, on the other hand, the members of the group act according to different laws, at least in some spheres. Feminist criticisms of integrative multiculturalism argue that this multiculturalism too often allows immigrant families to discriminate against their daughters.

I do not think this is the case, and in the first part of this article I show that few theories of multiculturalism grant special rights to immigrants to discriminate. I also argue that the liberal democratic context in which integrative multiculturalism is usually set has considerable liberalizing effects on immigrant groups, frequently upholding individual autonomy and discouraging inequality. I then turn to the feminist criticism of group autonomy, where I argue that the dictates of justice pull in two different directions when it comes to trying to protect the individual rights of group members. Justice often means protecting individual rights and ensuring gender equality. But justice should also mean that the oppressor state allow the oppressed group to maintain

3. Shachar devotes little space to integrative multiculturalism, and most of my comments on this aspect of multiculturalism are directed toward Susan Moller Okin.

or change its long-standing rules concerning its own internal affairs as the group sees fit. I will argue that avoiding the injustice of imposing reform on oppressed groups is often more important than avoiding the injustice of discrimination against women. I will also argue that ignoring the injustice of imposing reform often has harmful consequences for the people the state is supposedly trying to help. I fill in this argument in the third section by looking mostly at Muslims in India, but also at Native Americans and Israeli Muslims, groups that all have laws that discriminate against women. I defend the right of these communities to retain these laws if they wish under most circumstances. In Section IV I discuss the limits of group autonomy. I also show that, in the case of Native Americans, a thin but important level of autonomy is upheld for women since they can leave their communities. In the fifth section I argue that in the case of Indian and Israeli Muslims the state can and should encourage a collective autonomy and try to generally empower all women in their society. This is clearly not as good as directly upholding individual autonomy, but it is the best that can be achieved under conditions of group oppression; it also may lead to more gender equality and individual autonomy, though this is not inevitable. I conclude by arguing that the ultimate goal should be to allow people to fashion their identity as they wish.

My discussion of group autonomy centers around oppressed cultural groups (whom I often refer to simply as oppressed groups). While the term multiculturalism is sometimes used to describe a wide variety of groups, I follow the authors I discuss below and concentrate on ethnic, religious, or national communities: intergenerational communities with a collective history and common cultural practices. What counts as an oppressed group is harder to define, but I will outline some of the key aspects of oppression. A group is oppressed when individual rights—the rights to security, assembly, speech, association, and religion—of group members are violated; when their economic opportunities are severely diminished; or when they face considerable discrimination by public and economic institutions. This discrimination may, but does not have to, directly impinge on the group's ability to carry out its cultural traditions. Moreover, this discrimination is not random but is experienced because of one's group membership, with little reason to think that this discrimination will end without state intervention. Membership in these groups is usually not considered voluntary or mutable, and negative meanings are often ascribed to the group by the larger society.[4] Sometimes group members are formally guaranteed rights, but a long

4. My definition of oppression has been influenced by Melissa Williams's *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton, N.J.: Princeton University Press, 1998), pp. 15–16.

history of oppression, combined with a weak enforcement of formal guarantees, translates into the continuation of oppression. The state is not always the formal agent of oppression, but its unwillingness or inability to stop some of its citizens from oppressing others on a systematic basis can make it a witting or unwitting partner to oppression.

I. LIBERAL CULTURE AND THE PRIVATE SPHERE

Susan Moller Okin argues that group rights often protect discriminatory practices and she takes Will Kymlicka to task for not recognizing this problem. Okin doesn't convincingly show, however, that Kymlicka's argument for group rights protects discrimination. Okin provides several examples of illiberal and inegalitarian group practices, but her main examples come from American immigrant or religious groups, the sorts of groups that are *not* given group autonomy by Kymlicka. Indeed, these groups are generally granted only a few integrative rights by Kymlicka and most other theorists. Kymlicka argues that only national minorities, or what he also calls societal cultures, are to be granted group rights strong enough to protect themselves from outsiders. These are historically settled groups, with a distinct culture or language and certain kinds of social, economic, and political institutions. Kymlicka's initial formulation of his argument did apply to many groups, but this is clearly no longer the case.[5] Immigrants and religious groups now receive what Kymlicka calls polyethnic rights. These are rights to wear one's traditional dress in public, a claim for public funding for public festivals, or the like. Kymlicka, however, expects immigrants to integrate into their new country and obey all of its standard laws. He expects their children to attend common schools and to have their civil and political rights protected.[6]

Kymlicka reserves the stronger integrative multicultural rights, such as extra political representation, only for special cases. While Okin argues that "it is by no means clear, from a feminist point of view, that minority rights are part of the solution; they may exacerbate the prob-

5. Compare generally Will Kymlicka's argument in pt. 2 of *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989) to his *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

6. Kymlicka, *Multicultural Citizenship*, pp. 30–31, 177–81. Okin argues that Kymlicka doesn't give cultural rights to groups that are illiberal, but this is a misinterpretation of Kymlicka's argument. Kymlicka argues that national minorities *ought* to be internally liberal, but he is unwilling to impose liberalism on national minorities. He has no such compunction, however, in insisting that polyethnic groups not be given the ability to deny individual rights to their members. Kymlicka argues that any liberal theory of minority rights must also safeguard individual rights, but in practice he is not willing to interfere in national minorities. Susan Moller Okin, "Feminism and Multiculturalism: Some Tensions," *Ethics* 108 (1998): 661–84, pp. 678–79; Kymlicka, *Multicultural Citizenship*, p. 164.

lem," there is no problem (or solution) here, since immigrants and religious groups are given few if any rights by nearly all cultural rights theorists.[7] Kymlicka is willing to grant public subsidies to some immigrant groups or to exempt group members from certain generally applicable laws, which Okin notes in passing. But these exemptions cannot circumscribe anyone's civil or political rights (Kymlicka has in mind matters like exempting Sikhs from motorcycle helmet laws), and public money for ethnic festivals hardly constitutes support for a group's discriminatory practices.[8] Indeed, at one point in her essay, Okin notes that immigrants receive few group rights under Kymlicka's arguments. She then adds, "They are, however, cultural groups that constitute nonimmigrant ethnic or religious minorities in some other parts of the world."[9]

Okin appears to be worried that these illiberal traditions from elsewhere will settle in the United States. Even if Kymlicka does not grant much in the way of group rights to immigrants, he does allow inequality to be taught and practiced in the home. Okin points out that the "subordination of women is often less formal and public than it is informal

7. Okin, "Feminism and Multiculturalism," p. 680. Among other theorists, Iris Young and Bhikhu Parekh do argue for rights of immigrants, though Okin mentions neither of them: Iris Marion Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 1990); and Bhikhu Parekh, "Cultural Diversity and Liberal Democracy," in *Defining and Measuring Democracy*, ed. David Beetham (Thousand Oaks, Calif.: Sage, 1994). For arguments for group rights that either do not include immigrants or expect them to largely integrate, see Joseph H. Carens, *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford: Oxford University Press, 2000); Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1995); Charles Taylor, "Multiculturalism and the 'Politics of Recognition,'" in *Multiculturalism and the "Politics of Recognition,"* ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1992); and Williams.

8. While Kymlicka offers legal mechanisms to protect the group autonomy of national minorities, and strong integrative rights to oppressed groups, another one of Okin's targets, Chandran Kukathas, refrains from offering these groups any form of rights. Kukathas is *against* giving group rights to immigrants or to *any* group in the article cited by Okin. Okin recognizes this, of course, but his place as a multicultural defender is a bit curious. Okin aims in her work to criticize the "prominent defenders of multicultural group rights," but two of her three targets give very little in the way of rights to the kinds of groups she discusses. The title of one of Kukathas's articles is telling: "Liberalism and Multiculturalism: The Politics of Indifference," *Political Theory* 26 (1998): 686–99. The article Okin cites is Chandran Kukathas, "Are There Any Cultural Rights?" *Political Theory* 20 (1992): 105–39. Oddly, Okin does not discuss the one article where Kukathas does give groups some autonomy; see his "Cultural Toleration," in *Ethnicity and Group Rights*, ed. Will Kymlicka and Ian Shapiro (New York: New York University Press, 1996), pp. 69–104. Okin's criticisms are more on target in her discussion of Avishai Margalit and Moshe Halbertal, which I briefly discuss below.

9. Okin, "Feminism and Multiculturalism," p. 680.

and private."[10] If women are taught subordination at schools and at home, if they receive a limited education, if they are given few opportunities to explore the world outside the patriarchal world in which they live, Okin claims that the formal protection of their rights will do them little good.

Okin frames this private discrimination as a problem for cultural rights theorists, but this is not a problem particular to multiculturalism. Multicultural theorists do not simply allow immigrant groups to discriminate against their daughters. Rather, with a standard liberal view of the private sphere, Kymlicka and others allow *all* families, immigrant and nonimmigrant alike, to do the same. Okin's worry about private discrimination isn't something particular to minority groups. While Okin is concerned about minority rights being used to discriminate against girls and women, her main argument against Kymlicka has little to do with minority rights but is better seen as a problem in liberal theory generally.[11] Still, discrimination within immigrant families might be a particularly acute problem. Okin concentrates on immigrants and cites Laurie Olsen's findings that young immigrant women in a California high school were caught between two cultures, between the culture of their parents and that of the United States. The burden of cultural expectations fell on these young women, not on their brothers. Their parents restrict their lives in many ways so they won't stray too far from their culture, often insist upon arranged marriages for them, and place significant domestic responsibilities upon them.

This often pushes tragic choices upon these young women: many want to respect their parents, but they also want more freedom. They also sometimes risk being sent back to their country of origin if they do not show enough respect for their parents. The choices in front of these young women are difficult. Okin might say that given the centuries of patriarchy behind these practices, we have a particular worry about these young immigrant women. But what is amazing is that after only a few years of being in the United States, these women question centuries of traditional domestic patterns. While many of these young immigrant women will be caught in lives that they will not like, few will force their daughters to follow in their footsteps. In a part of the study of these young women immigrants that Okin does not quote, Olsen states, "Almost across the board, these young immigrant women's reflections on raising their own children led them to say that when they are parents they will be more lenient and less demanding of their daughters, less fearful of American ways, and allow their children to do things in a far

10. Ibid., p. 679.

11. Okin has noted the problems that discrimination within the family poses for liberal theory in her earlier work; see her *Justice, Gender and the Family* (New York: Basic, 1989).

more American and independent way."[12] Instead of seeing these young immigrant women as exposing a problem in liberal theory or practice, one can understand their experience and views as testimony to the tremendous power of liberal public culture. If generations of patriarchy can be overturned within one generation of living within America's shores, then liberalism is not defeated but is victorious.

One could say that this view still sacrifices a generation of women, that these young immigrant women are still in the hands of patriarchal families. It's hard to see, though, how generations of patriarchy could be overturned immediately, a point that even Okin agrees with. Right before Okin provides examples of the tragic situation that many young immigrant women are in, she says these women might be better off if the culture they were born into was either "gradually to become extinct" or would change to reinforce the equality of women.[13] In the United States at least, this is *exactly what happens* in most immigrant communities. The empirical evidence on this matter is unambiguous: 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.[14] When these young immigrant women say they want their daughters to be independent, there is every reason to think that they will be successful in doing so. The distinctiveness of many of these communities fades, though it does not completely disappear, as they become more integrated into the American mainstream culture. Since Okin's proposed solution is already what occurs, it's not clear that the problem she ascribes to integrative multiculturalism actually exists.

If we are to be concerned about gender discrimination within particular groups, then we should set our eyes on long-standing religious groups, not immigrants. Groups such as Protestant Fundamentalists have schools and preschools, camps, social activities, and churches that allow them to partly shield their families from the mainstream society, allowing them to engage in considerable gender discrimination. Immigrants, on the other hand, have comparatively few institutions to shield themselves from the liberalizing effects of the larger society. It is conservative religions, who have an institutional framework that protects them from the larger society, that pose a threat to the autonomy of their daughters

12. Laurie Olsen, *Made in America: Immigrant Students in Our Public Schools* (New York: New Press, 1997), p. 129.

13. Okin, "Feminism and Multiculturalism," p. 680.

14. Richard D. Alba, *Italian Americans: Into the Twilight of Ethnicity* (Englewood Cliffs, N.J.: Prentice-Hall, 1985), and *Ethnic Identity: The Transformation of White America* (New Haven, Conn.: Yale University Press, 1990); Stanley Lieberson and Mary C. Waters, *From Many Strands: Ethnic and Racial Groups in Contemporary America* (New York: Russell Sage Foundation, 1988); Mary C. Waters, *Ethnic Options: Choosing Identities in America* (Berkeley: University of California Press, 1990).

much more than immigrants, who are often influenced by the liberal community around them.[15]

While Okin's argument against group rights fails, her remarks about self-respect are telling and point to an important flaw in some arguments for cultural rights—though not the one she criticizes. Kymlicka argues that self-respect is a key liberal value, and membership in a secure cultural structure is important to our self-respect. If our culture is not secure, if we cannot pursue opportunities within our culture, then we are adrift in this world. What happens, Okin asks, if a culture demeans women? "At least as important to the development of self-respect and self-esteem of one's culture is *one's place within that culture.*"[16]

One problem with this argument is that Okin's criticisms of Kymlicka's self-respect argument take place in the context of her discussion of immigrants. In this discussion, she says that the problems with the self-respect argument show that "establishing group rights to enable some minority cultures to preserve themselves may not necessarily be in the best interest of the girls and women of the culture."[17] Kymlicka does not invoke self-respect when he argues for polyethnic rights for immigrants. Rather, Kymlicka invokes the self-respect argument for national minorities or nations generally, as do the many liberal nationalists that Kymlicka cites.[18] The liberal nationalist argument contends that since people's self-respect is tied to their nation, certain protections should be given to nations. This argument does not extend to immigrants, who are expected to integrate into their new nation.

Still, one could wonder whether the self-respect argument should even be invoked in the case of nations, and here Okin's criticisms are helpful. Okin is surely right to point out that a patriarchal culture that teaches the importance of women's subordination to men and restricts the lives of its female members is hardly doing much to develop their self-respect. Okin suggests that the self-respect argument may mean requiring "that males and females be treated equally within the sphere of family life," but a better interpretation of her criticism of the self-respect argument is to note its ambiguous and contradictory consequences.[19] If self-respect is to be extended beyond national minorities,

15. I discuss religious conservatives and liberal democracy in my *Surviving Diversity: Religion and Democratic Citizenship* (Baltimore: Johns Hopkins University Press, 2000).

16. Okin, "Feminism and Multiculturalism," p. 680; Okin's emphasis.

17. Ibid., p. 683.

18. Kymlicka, *Multicultural Citizenship,* pp. 89–90. Kymlicka cites Yael Tamir, *Liberal Nationalism* (Princeton, N.J.: Princeton University Press, 1993); Taylor; and Avishai Margalit and Joseph Raz, "National Self-Determination," *Journal of Philosophy* 87 (1990): 439–61.

19. Okin, "Feminism and Multiculturalism," p. 679. I criticize the self-respect argument in more detail in my "The Universal Pretensions of Cultural Rights Arguments," *Critical Review of International Social and Political Philosophy* 4 (2001), in press.

there is no reason to stop this extension with women. Kymlicka never says why the self-respect of national minority members matters more than other groups. Why should the self-respect of the Québécois matter more than Indian Muslims or black Americans? Racial attitudes may affect the self-respect of black people; attitudes toward overweight people often undermine their self-respect;[20] attitudes toward working class people may affect their self-respect. While the structure of some families may demean girls and women, some families also undermine the self-respect of boys. Many white people in South Carolina think that their self-respect is tied to the confederate flag flying over the state capitol building; many black Americans find the flag demeaning. The possible examples here are many, since the social bases for self-respect are myriad.

The flaws of the self-respect argument show that self-respect should be at best a secondary value in liberalism, not a primary one. It is hard to see how the liberal state can take upon itself the role of guardian for self-respect, since there are so many, and sometimes contradictory, ways to try to ensure self-respect. This doesn't mean that schools or other state institutions should ignore self-respect, but Okin's argument does show that political theories based primarily on self-respect are suspect.

II. OPPRESSION, MULTICULTURALISM, AND THE STATE

While we can expect immigrants to take on liberal values relatively quickly, this isn't necessarily the case when group autonomy is granted. The feminist critique is surely right that group autonomy can harm women. Following Shachar and Nussbaum, I will look at examples where group autonomy is already granted and I will only briefly suggest the implications my argument has for other kinds of cases. Shachar and Nussbaum are mostly concerned when family law is controlled by a particular group. In these cases women's autonomy and equality are clearly undermined. Women cannot always choose to get a divorce (though men can) and they are typically granted little money if a divorce occurs, regardless of the instigator. Inheritance laws often favor sons, meaning they have more options with their life since they have more money than their sisters. Family law also undermines the autonomy of both men and women when it forces them both to marry under religious auspices.

The problem with this feminist critique is that it is too state centered: it assumes the state should always protect individual rights (though feminists disagree on the scope of women's rights that should

20. Jennifer Crocker, "Social Stigma and Self-Esteem: Situational Construction of Self-Worth," *Journal of Experimental Social Psychology* 35 (1999): 89–107.

be protected), regardless of context. While individual rights should ideally always be protected, arguments about diversity and multiculturalism ought to be sensitive to the different communities and contexts in which they apply. An important problem with the feminist critique of multiculturalism is that it fails to distinguish between oppressed and nonoppressed groups. A philosophical argument about the importance of rights protection too easily skips a crucial question: who enforces these rights?

The seamless movement between oppressed and nonoppressed groups is best seen in Shachar's work.[21] Shachar argues that religious authorities have too much authority over Jewish marriage in Israel. She is right to point out that many Jewish women are trapped in marriages from which they want to escape. But this is not a paradigmatic case. The case of Israeli Jews is Shachar's most prominent example in her work, but she pushes her argument to all groups that control and interpret family law in a patriarchal fashion. Her criticisms of the power that Indian and Israeli Muslims and Native Americans have over family law and her suggestions for reform do not differ at all from her analysis of Jewish family law in Israel. Shachar's argument is too ahistorical and takes little account of the history of these groups and the state in question. The Israeli government's treatment of and relationship with its Jewish citizens may be comparatively benign, but there is no reason to think that this is generally true of the relationship between states and groups. Shachar assumes a state that is liberal, sovereign, and benevolent, but this is only sometimes true.

Nussbaum understands that oppressed groups are not keen to work with newly reformed states to reform themselves. She says that "tribal peoples are few, uninfluential, and bitterly opposed to cooperation with the former oppressor." But she is unimpressed by this bitter opposition. It is hard to understand, Nussbaum says, "how the sad history of a group can provide a philosophical justification for the gross denial of individual rights and liberties to the members of the group."[22] This argument, though, misses the point: understanding that the state cannot simply

21. Shachar, "Group Identity and Women's Rights in Family Law," "The Paradox of Multicultural Vulnerability: Identity Groups, the State and Individual Rights," in *Multicultural Questions*, ed. Christian Joppke and Steven Lukes (Oxford: Oxford University Press, 1999), pp. 87–111, and "On Citizenship and Multicultural Vulnerability," *Political Theory* 28 (2000): 64–89. Avishai Margalit and Moshe Halbertal also make this mistake. They want to grant group autonomy to all cultural groups, oppressed or not. Their main example, Israeli Ultra-Orthodox Jews, are not an oppressed group but use the group autonomy they have to oppress women—and, as Okin points out, often men too; see their "Liberalism and the Right to Culture," *Social Research* 61 (1994): 491–510. Okin's insightful criticisms of their argument can be found in "Feminism and Multiculturalism," pp. 670–74.

22. Nussbaum, *Sex and Social Justice*, p. 109.

impose reforms on groups does not provide a philosophical justification for denying individual rights. It is instead an argument for an understanding that the history of states and political institutions matters when we want to implement protection for rights. The bitter opposition of tribal groups to cooperating with the former oppressor when it comes to reform is understandable and justified.

There are two reasons, one about justice and one about consequences, that explain why liberal states should be reluctant to impose protection for individual rights or gender equality on oppressed groups that have autonomy. First, while protecting individual rights is a matter of justice, so too is the manner in which oppressed groups are treated. States do not always act in just ways. Sometimes they act cruelly and when this cruelty is severe and aimed at a particular group, the group in question is surely right to question any kind of justice coming from the state. We cannot always, like John Rawls invites us to do, go behind the veil of ignorance to decide whose rights should be protected and to what extent. As useful and important as the original position is, when discussing oppressed groups and their internal minorities, we must take into account their history of oppression and their current relationship to the larger state. Ideal theory doesn't give us a full map here. Instead, we must enter the world of states with often oppressive pasts, and sometimes with an oppressive present.

Newly formed good intentions are not enough to cast aside deep seated oppression. It is clearly unfair for a state to announce one day that it will no longer oppress a particular group that has been under its thumb for decades or centuries and announce that from now on it will take on the role of reformer; it is unfair for a state that has historically treated a group unjustly to announce that it will now act in the best interests of the group's members and protect them from injustice by overriding the group's historic rules. Why, the group can rightly ask, should we believe that the state will now act with our interests in mind when for years it has done the opposite? This will be the case even if the oppressed group is included in democratic proceedings. Minority groups, particularly if they are small, can be easily outvoted. If the entire political community votes on matters that mostly affect the group in question, the minority group will almost surely still see the dominant state's views forced upon it, even if the group's members get to go to the polls as well.

While the kind of change the state imposes may have changed from bad to good, the method of imposition—a change forced upon the group by an alien state—remains the same. To say that today we are now confident that the United States will treat indigenous peoples with the respect they deserve, or that Israel will now treat Muslims within its borders equal to Jewish Israelis is to ignore how the state actually acts,

and it ignores how the state looks from the vantage point of the oppressed. Or consider an analogy with Tibet: Chinese rule over the Tibetans is widely seen as illegitimate, not because Tibetan culture is a bastion of egalitarian liberals—it's more like a patriarchal feudal culture—but because of the way the Tibetans have been treated by the Chinese.

One consequence of refusing to see the injustice of having the oppressive state undermine group autonomy is to view the relationship between all citizens and the liberal democratic state in the same way: as an unmediated relationship between state and citizen. The citizen has certain rights, including the right to vote, and the state in turn has full authority over the citizen. This normal liberal model, however, did not anticipate the state marking out and oppressing a particular group. When this happens, matters of justice cannot only be a matter of protecting individual rights and ensuring equality; the unmediated relationship between state and citizen needs to be questioned, with the group sometimes deserving to have or to retain some amount of autonomy.

The second reason why the imposition of external reform on oppressed groups is questionable is that any *effective* change will take the state's injustice into account. Attempts to reform (formerly) oppressed groups may very well backfire. If the effort to secure individual rights is done regardless of how the state treats a group, then individual rights may end up less secure. In many contexts when change is imposed by an oppressor, either despondency or violence is the reaction. The members of the oppressed group may feel defeated yet alien in the culture of the oppressors. Feeling out of place, feeling the lingering effects of discrimination, members of groups that are forced to assimilate often live defeated lives. If the response to attempts to protect the rights of a group's members is dejection, high suicide rates, considerable unemployment, low education rates, and so on, then the attempt to protect rights hasn't been very successful. This is of course not a hypothesis: the empirical evidence on attempts to forcibly assimilate groups such as indigenous peoples clearly highlights the harm of forced assimilation. Several liberal states (and nonliberal states) have tried to assimilate indigenous peoples. They have broken up families, stolen children from their parents, forbidden indigenous peoples from using their native languages, changed the property rules of tribes, interfered with tribal governance, and in the United States in the 1950s "terminated" tribes, which meant simply declaring that they no longer exist—the list of what Western governments have done to indigenous peoples goes on and on. The results are clear, well known, and absolutely disastrous.

Sometimes members of an oppressed group fall into despondency; other times the oppression of a group leads to a distinct and tenaciously

held identity. This is not surprising: when people's identity is attacked or demeaned, they often react by clinging to it ever more fiercely. Margaret Moore argues that nationalism is not often about the protection of a culture—the cultural differences between the Serbs, Croats, and Bosnian Muslims are minor; most Protestants and Catholics in Northern Ireland readily admit that they are culturally quite similar—but often about the protection of an identity, which may or may not be attached to a distinct culture. What is true of national cultures is often true of other kinds of cultures as well: when an identity is held onto doggedly, which is often the case with oppressed groups, it is not easily given up. Attempts by the state to change the group will often have worse consequences than leaving the group alone. It's true that sometimes members of oppressed groups try to assimilate into the dominant group to escape discrimination, but at other times members have the exact opposite reaction (sometimes assimilation is very difficult—an Israeli Muslim cannot easily become an Israeli Jew). As Moore notes, "If diversity of identity is not necessarily good in itself, it remains that to force one identity upon all groups would be incontestably evil."[23]

It's hard to blame people for not wanting to turn into their oppressor. This is the case even if their oppressor isn't completely bad. One could respond by saying that insisting that Native Americans, Indian Muslims, and Israeli Muslims respect the rights of their members hardly means that they are turning into their oppressor or that they are being forced to assimilate (and Shachar and Nussbaum are clear that they think gender equity need not mean that these groups also have to assimilate). But this may be how it looks from the point of view of the oppressed. When their community's rules are forcibly changed to look more like the rules of the dominant community, it will often appear to the oppressed community that these changes are one aspect of an assimilation program and will often be interpreted as an affront to their identity. It's no accident that the Hindu nationalists in India are calling for the end of Muslim family law, just as they claim that India contains only one identity, that of Hinduism.

It's possible to accept the consequentionalist reason and reject the justice reason (or the reverse), but it's important to note that while these two reasons are distinct, they are also frequently related. When groups react to state-imposed changes that appear to liberals to be good changes with despondency or violence it is often because the changes appear unjust to the group's members. Native Americans think (rightly so) that it is unjust for the United States to impose even more changes

23. Margaret Moore, "Beyond the Cultural Argument for Liberal Nationalism," *Critical Review of International Social and Political Philosophy* 2 (1999): 26–47, p. 40, and, more generally, her *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001), pp. 56–69.

upon them. It is not always the case that the consequentionalist and justice reasons are related, since groups may wrongly feel aggrieved, making the consequences of imposing reform harmful because of this mistaken perception. Nonetheless, when groups react badly to liberal reforms it is often because the state's oppression of the group calls into question the justice of this imposed reform.

I do not want to suggest that all attempts at integration or assimilation must end badly. Immigrants and other groups with inchoate identities—like many groups in nineteenth-century Europe—can often integrate with relatively few problems. Certain very small groups may also have a hard time holding onto their identity. My argument that forced assimilation usually ends up badly is limited to groups with strong identities (which sometimes develop into opposition to the dominant group), such as the Roma (gypsies), the Irish, most indigenous peoples, Muslims in India and Israel, and others. Of course, it is possible that even some politicized oppressed groups will willingly accept imposed changes. The evidence, however, is that once oppressed groups become politicized, the group will rarely quietly accept imposed changes. Not all identities become politicized, and some identities that are politicized today may not have been in the past. Some Muslims in India, for example, routinely worshiped Hindu gods; sometimes Hindus and Muslims shared places of worship. But with the rise of hostility between the two groups, this cultural sharing has declined.[24]

My argument about the importance of state injustices toward groups restraining the state from protecting the rights and equality of group members suggests that when an oppressed group uses its autonomy in a discriminatory way against women it cannot simply be forced to stop this discrimination. When a group is oppressed but lacks autonomy the particular problem that is at issue here does not exist, and so I will only briefly address this situation. My argument's implication for oppressed groups that lack autonomy is that they should be *provisionally privileged* when it comes to group autonomy of other kinds of group-differentiated rights. This means that oppressed groups have a better case for group-differentiated rights than nonoppressed groups, everything else being equal. This does not specify what kind of rights should be given nor whether the rights they do receive should be in the form of group autonomy or integrative multiculturalism, since this is too context dependent to determine in the abstract. The kinds of autonomy given to a group will often depend on the kind of group in question. How much

24. For accounts of cultural sharing in India, see Susan Bayly, *Saints, Goddesses, and Kings: Muslims and Christians in South Indian Society, 1700–1900* (Cambridge: Cambridge University Press, 1989); and Peter van der Veer, *Religious Nationalism: Hindus and Muslims in India* (Berkeley: University of California Press, 1994), pp. 33–43.

oppression the group has suffered might matter, while territorially concentrated groups can typically receive stronger forms of autonomy than geographically dispersed groups; religious groups can control family law but other kinds of groups may have a harder time doing so. Provisionally privileging oppressed groups does not mean that oppressed groups always deserve the rights they currently have, or even that they deserve any rights, but it does mean that barring cases of serious physical harm in the name of a group's culture, it is important to consider some form of autonomy for the group.[25]

III. MAJORITIES AND MINORITIES

I can best fill in my argument by looking at Muslims in Israel and India, and at Native Americans, all examples raised by Shachar and the latter two by Nussbaum, and all examples of groups that have some rights. In Israel and India much of family or personal law is governed by religious laws, but not all religions are given the same leeway. In both Israel and India the minority religion Islam has been subject to less intervention by the state than have the dominant religions, Hinduism and Judaism.

Israeli Muslims are oppressed in many ways. They are less educated than Israeli Jews, more likely to be unemployed, make less money than Israeli Jews if they do work, and are largely shut out of important positions in the major political parties. This oppression is long standing, with little reason to see it changing soon. Indian Muslims felt like a besieged minority in India at independence, a feeling that continues today. The vast majority of Indians are Hindu (about 83 percent of the population), though a large minority is Muslim (about 11 percent, or over 100 million people). There was considerable religious violence surrounding the partition of India and Pakistan. Unfortunately, com-

25. I discuss the role of oppression in a general framework of group rights in my "Land, Culture and Justice: A Framework for Group Rights and Recognition," *Journal of Political Philosophy* 8 (2000): 319–42. It's worth noting that the specter of oppression is ambiguous in Kymlicka's argument. Kymlicka clearly wants to give power to groups with a weak cultural structure; that one of his main examples in his writings is indigenous peoples reinforces the impression that group oppression is a factor in who gets group rights. However, Kymlicka grants group rights only to national minorities, whether they are oppressed or not. Oppressed groups which are not national minorities (such as Indian and Israeli Muslims) do not receive strong group rights under Kymlicka's argument. This is clearly highlighted in his book on Canada. There Kymlicka argues for minority rights for both indigenous peoples and the Québécois but devotes considerably more time to the latter. Conversely, I argue here that oppressed groups have the strongest case for group rights. Whether they are a national minority or not should be immaterial to the moral case for rights. Being a national minority may help determine what kind of rights a group can have, not whether or not the group deserves rights. Kymlicka's argument on Canada is found in his *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998).

munal violence hasn't ended in India, with the Muslims often coming out of riots much worse than Hindus. Hindu nationalism has been present in India throughout the twentieth century, with their political power increasing in recent years. When a mosque, the Babri Masjid, that Hindu militants declared sat on a site that contained an important Hindu temple was actually torn down by Hindu militants while the Indian police passively watched in 1992, the Muslim community felt even more besieged. That Muslims tend to be poorer and less educated than Hindus adds to the Muslim feeling of being dominated by the Hindus.[26]

Shortly after Indian independence, the state set out to reform Hinduism. An old tradition of dedicating young women (the *devadasi*) to Hindu temples, who danced and sang in the temples and in religious processions, had degenerated, with most of the women serving as prostitutes; the state made it illegal for Hindu temples to have the *devadasi.* The state also regulated the administration of Hindu temples, which were often run by corrupt trustees.[27] Polygamy for Hindus was outlawed. Inheritance rules were changed to lessen the way they favored sons over daughters. The tradition of barring lower-caste members and untouchables from parts of Hindu Temples was also banned.

These are far-reaching changes in traditional Hinduism (though the state's enforcement of these changes is often weak). But the Indian state didn't attempt to undertake any similar reforms in Islam. There were certainly calls to do so, and there is even a nonbinding directive in India's constitution directing the state to establish a uniform civil code and abolish the legal standing of religious personal laws. The classic book on secularism in India confidently predicted in 1963 that in twenty years there would be a uniform civil code.[28] While some people noted the irony of Muslim and Christian legislators voting on the reformation of Hindu law, the Indian Parliament has many more Hindu members than non-Hindu members. If the Indian Parliament was to try to reform Muslim family law, or simply abolish its legal standing, it would be perceived by many Muslims as an intrusion on their community by Hindus.

The celebrated Shah Bano case highlighted the importance of Muslim personal law to Muslim identity in India. Shah Bano claimed she

26. On the differences between Hindu and Muslim education and income levels, see Abusaleh Shariff, "Socio-Economic and Demographic Differentials between Hindus and Muslims in India," *Economic and Political Weekly* 30 (1995): 2947–53.

27. Many rulers and wealthy people in India traditionally built and then endowed temples. Trustees, who often inherited their positions, then used the endowments to run the temples. There is no church hierarchy in Hinduism, and the trustees would often misuse the money earned from the endowments.

28. Donald Eugene Smith, *India as a Secular State* (Princeton, N.J.: Princeton University Press, 1963), pp. 134, 291.

was kicked out of her husband's house and sued him under criminal law for financial support, which mandated financial support for indigent family members. Her husband of forty-four years (who had married another woman some years previously) responded by divorcing her and claimed that under Muslim law he had to give Bano only three months of financial support. The Indian Supreme Court sided with Bano, saying that the criminal code trumps civil law such as Muslim personal law. The court argued that despite the divorce, Bano was still owed maintenance until she remarried, whatever Muslim law might say. The court further declared that the Koran does not put a limit on a period of maintenance for divorced wives, and it concluded with a plea for the state to finally develop a uniform civil code.

The reaction of much of the Muslim community was swift and angry, with large demonstrations all over the country protesting the decision. Given the recent history of riots against Muslims, Hindu demands that the Babri Masjid be converted (or returned, depending on one's point of view) to a Hindu Temple, and the Sikh-Hindu tensions in North India in the mid-1980s, many Muslims viewed the Shah Bano decision as part of a pattern to assimilate Muslims and others within the larger Hindu culture.[29] That the Supreme Court also decided to interpret the Koran in its decision only added to the anger of many Muslims. The Shah Bano decision and the destruction of the Babri Masjid are the "two most important landmarks in the recent history" of Indian Muslims.[30] The importance of these two decisions in furthering Muslim distrust of the Hindu majority can scarcely be exaggerated.

The Muslim community is not monolithic, and while nearly all Muslims condemned the destruction of the Babri Masjid, some Muslims supported the Shah Bano decision, and some Muslim women's organizations voiced their support. The most noise, however, came from opponents of the decisions, who succeeded in persuading the Indian Parliament to pass legislation to reverse the Shah Bano decision and restore the traditional role of Muslim family law.[31] The few Muslim politicians that favored the Shah Bano decision quickly lost power. A critic of the

29. Kativa R. Khory, "The Shah Bano Case: Some Political Implications," in *Religion and Law in Independent India*, ed. Robert D. Baird (New Delhi: Manohar, 1993), pp. 121–38, p. 126; see also Thomas Blom Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* (Princeton, N.J.: Princeton University Press, 1999), pp. 148–53. On Muslim personal law generally, see Tahir Mahmood, *Personal Laws in Crisis* (New Delhi: Metropolitan, 1986).

30. Niraja Gopal Jayal, *Democracy and the State* (New Delhi: Oxford University Press, 1999), p. 103.

31. The new law allows Muslims at the time of marriage to elect to use a secular code to adjudicate disputes between spouses instead of family law, but few Muslim couples choose this option, a point I return to below.

reversal of the Shah Bano decision laments that the "renewed feminist debate on a Uniform Civil Code may also be traced to this case which demonstrated conclusively that claims to gender justice or women's rights had poor prospects when pitted against claims to rights of religious community."[32]

Nussbaum, at first at least, dismisses the importance of Muslim personal law to Muslim identity in the face of oppression. In a moment of hyperbole, she states that the insistence of some Muslims to reverse the Shah Bano decision meant that they "were haggling over how not to be required to pay a destitute woman $18 per month."[33] Nussbaum also suggests that Muslims are politically empowered, noting that Muslim political parties formed an important part of the governing coalition in India after the 1996 election. However, she then backpedals since Muslim political power is now in jeopardy with the rise of the BJP, the Hindu nationalist party. Under these circumstances, Nussbaum concedes in parentheses, "Islamic courts should therefore probably be protected, though also urged to reform."[34] This parenthetical comment is left hanging, but in more recent comments Nussbaum is more understanding of the besieged feeling of the Indian Muslim community. Now she does recognize that the call to change Muslim personal law is threatening, and that external reform should wait until a climate of respect and support for the Muslim community emerges, which she admits may be a long time coming.[35] Still, Nussbaum's comments here are purely pragmatic. She doesn't question the justice when the state interferes with oppressed cultural groups: she is concerned only with the effects of doing so.

The extensive reform of Hindu law has not been replicated in Jewish law in Israel, but the Israeli state has intruded more on Jewish law than on Muslim law. Jewish law is mostly restricted to matters of marriage and divorce, while Muslim law in Israel also covers issues of dowries, some issues concerning second marriage, adoption, and other matters. The Israeli state has occasionally tried to change Islamic law, but with the exception of outlawing polygamy, these interventions have been

32. Jayal, p. 103.

33. Nussbaum, *Sex and Social Justice,* p. 105. This statement is hyperbolic not only because Nussbaum understands that issues of identity, not just money, were at stake in the case, but because $18 a month is quite a sum to some Indians.

34. Ibid., p. 109.

35. Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), chap. 3.

ignored by the Muslim community, even when Muslim religious leaders share the goals of Israeli reforms.[36]

Unsurprisingly, the Muslim community doesn't want a Jewish legislature, much less a Jewish legislature that is seen as an oppressor, reforming its laws. Israeli Muslims would undoubtedly protest vigorously and violently if a Parliament of mostly Jews decided to change or abolish Muslim family law. Since much of the Muslim community's life is controlled by Israeli Jews, they would find abhorrent the idea that Jewish legislators would interfere with one of the few areas that they do control. Who is changing the laws—who controls the state—matters when intervening in a community's long-standing rules.

This explains why Egypt has been able to change Muslim personal law with little protest. Like those in India and Israel, Muslims in Egypt live under personal laws, but these laws have recently been changed to allow for both men and women to leave a marriage if they wish; they also mandate that men give financial support to their ex-wives (and if they cannot or somehow manage to avoid doing so, the state will give divorced women financial support). There was considerable anger in the Egyptian Muslim community about the old discriminatory rules of divorce, and they pressed the mostly Muslim legislature to change these rules. These changes in the laws were made with the assent of some Muslim clergy.[37] There is a large difference, of course, between a mostly Muslim legislature and a mostly Jewish legislature changing Muslim law. Muslims will more readily accept the former changing their personal laws than the latter.

A similar if more stark dynamic occurs with Native Americans. Nussbaum's concerns for individual rights and particularly women's rights lead her to argue that there is no reason to give tribal men power over women "if we concluded [as we have] that women should have guarantees of equal protection in our nation generally."[38] Nussbaum's argument, though, is begging the question, who is included in "our nation"? Many Native Americans don't think of themselves as part of our nation (the United States), and given the historical record it's hard to think of reasons why they or we should think otherwise. Certainly Nussbaum offers none. She simply assumes that all citizens are alike and the state has full authority over them. Okin's concern for discrimination

36. Martin Edelman, *Courts, Politics, and Culture in Israel* (Charlottesville: University Press of Virginia, 1994), p. 80. There are many personal laws in Israel: besides Muslim and Jewish laws, there are personal laws for the Druze (an offshoot of Islam), the Bahai, and ten different Christian communities. For the sake of simplicity, I will only discuss Muslims here.

37. Susan Sachs, "Egypt's Women Win Equal Rights to Divorce," *New York Times*, March 1, 2000.

38. Nussbaum, *Sex and Social Justice*, p. 109.

within indigenous peoples also leads her to assume an unmediated relationship between the American state and Native Americans. She begins one of her essays by noting, "Until the past few decades, minority groups—immigrants as well as indigenous peoples—were typically expected to assimilate into majority cultures."[39] Okin's language here is telling: it suggests that indigenous peoples, like immigrants, are one among many minority groups in the United States. But indigenous peoples are not like immigrants. With their own set of laws, their constitutional status as "dependent nations," their treaties with the United States, and the long history of suffering at the hands of the United States, we ought to recognize that Native Americans justly deserve considerable authority over their own affairs.

Unlike Okin and Nussbaum, Shachar does not assume a completely unmediated relationship between members of groups and the state. She proposes an "intersectionist joint governance model" where the state and the group divide authority over different matters.[40] The clear advantage of this model is that it hopes to allow women to retain their group identity without being oppressed. Shachar discusses the joint governance model in most of her writings on feminism and multiculturalism.[41] One standard liberal response to groups is to insist that people can leave them if they wish, but Shachar treats the exit option with disdain, which she says forces women "into a cruel zero-sum choice: either accept all group practices—including those that violate your state-guaranteed individual rights—or leave."[42] Shachar's efforts to retain group autonomy and give women more rights within their community is important and laudable, but her effort fails.

Shachar notes an instance where the daughter of the Santa Clara Pueblo tribe was denied tribal membership because her father was not a tribal member. In a discriminatory fashion, however, the tribe did accept children of male tribal members who had offspring with non-members. Julia Martinez and her daughter Audrey sued the tribe, but the United States Supreme Court ruled that it did not have jurisdiction

39. Susan Moller Okin, "Is Multiculturalism Bad for Women?" in *Is Multiculturalism Bad for Women?* ed. Matthew Howard, Martha Nussbaum, and Joshua Cohen (Princeton, N.J.: Princeton University Press, 1999), p. 9.

40. Shachar, "Group Identity and Women's Rights in Family Law," pp. 296–303. Shachar discusses the joint governance model in all her writings cited in this article.

41. Ayelet Shachar, "Should Church and State Be Joined at the Altar? Women's Rights and the Multicultural Dilemma," in *Citizenship in Diverse Societies,* ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), pp. 199–223, p. 210, "The Paradox of Multicultural Vulnerability," p. 100, and "Group Identity and Women's Rights," pp. 296–97.

42. Shachar, "The Paradox of Multicultural Vulnerability: Identity Groups, the State and Individual Rights," p. 100.

in the matter, since matters of tribal membership were up to the tribe to decide. While Shachar does not believe the tribe should have been made to accept Audrey as a member, she complains that the Court left Audrey *"without legal remedy."*[43] The Court, Shachar suggests, should have interceded, though it should not have forced the tribe to accept Audrey as a member.

Shachar distinguishes between two family law functions. One demarcates membership by defining who is and is not a member; the other distributes rights and duties among members. Shachar argues that groups should have power over the demarcating function if it wishes by establishing its terms of membership. She argues, though, that parts of the distributive function should be regulated by the state. In the Pueblo case, she contends that the tribe should not be made to accept Audrey Martinez as a member but should give Martinez educational or other kinds of loans. In a case involving a Jewish divorce in Israel, Shachar argues that the rabbinical court should have control over the terms of divorce, but that property matters concerning the divorce are properly a matter of state concern.

Under Shachar's proposal, Audrey's mother in the Martinez case has a choice: she can stay in the community and accept its rules, or leave. Audrey doesn't even have this choice since she simply must leave (or live among the tribe, if it allows, as a nonmember). Audrey may have some more money with which to live her life, but the discriminatory policies of the tribe and the harsh exit option that Shachar decries remain intact. In the Jewish Israeli case, the "cruel" exit option also remains under Shachar's proposal. Jewish women cannot leave the community of religious law; they can only leave Jewish law by converting to Islam or Christianity or by leaving Israel. Shachar's devotion to retaining group rights, even as she wants to change these rights, leads her to want to limit the scope of Jewish law. The Jewish law that remains, though, still has teeth and is interpreted and enforced by certain rabbis. Under Shachar's proposal nothing is done to change rabbinical rulings that make it easier for men than women to initiate divorce. Shachar's attempts to ease discrimination against women are laudable, but her attempt to retain group boundaries has done little to undermine the importance of the exit option. The group laws that Shachar wants to retain still discriminate against women.

Shachar argues that her proposals will allow women to gain more power within their communities because they will have state protection for their property during divorce proceedings.[44] The difficulty with her proposals, however, is that it might also make divorce harder for some

43. Shachar, "Group Identity and Women's Rights," p. 303; Shachar's emphasis.
44. Shachar, "Should Church and State Be Joined at the Altar?" p. 220.

Jewish women: if the financial cost in the case of divorce becomes higher for men, fewer Orthodox Jewish women may be granted a divorce since it is the men who have more power to decide about divorce matters. In either case, Jewish women still have to abide by Jewish law and accept the power that men have over divorce unless they want to take the drastic steps of conversion or exile.

Finally, in some ways Shachar's proposals also retain a state-centered approach: she wants the state to decide upon property matters for Native Americans and others governed by personal law systems. But Native Americans have been trampled upon by other Americans for centuries, often without legal remedy. Any legal remedy they may have had was to appeal to the United States Supreme Court. This Court, the "court of the conquerors," as Kymlicka notes, has "historically legitimated the dispossession of Indian lands and the forcible resettlement of Indian peoples."[45] The moral authority of the United States to tell Native Americans how to run their own affairs is rather weak.

IV. THE LIMITS OF GROUP AUTONOMY

One objection to group autonomy is that groups can use their power to do cruel things to their members. I want to emphasize that in practice this question will rarely come up, but answering it will help determine the limits of group autonomy. I have argued here that the injustice of allowing for individual rights and equality to be undermined must be balanced against the injustice of imposing reform on oppressed groups. When there are gross violations of individual rights, however, the balance turns and state intervention is often called for. My argument here relies on arguments about when humanitarian intervention is called for in international affairs. When a state systematically denies what Henry Shue calls basic rights to its members—the right to physical security and to subsistence—then interference by other states is called for.[46] These basic rights are so fundamental to enjoyment of human life and their routine violation so shocking "to the moral conscience of mankind" that intervention is called for.[47] Sovereignty does not justify the protection of gross violations of human rights; neither does group oppression. No regime or group, oppressed or not, can justify violating the basic rights

45. Will Kymlicka, "An Update from the Multiculturalism Wars: Comments on Shachar and Spinner-Halev," in Joppke and Lukes, eds., pp. 112–29, p. 118. Here oppression is what moves Kymlicka's argument, but this argument cannot support the group autonomy he argues that other national minorities should have.

46. Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 2d ed. (Princeton, N.J.: Princeton University Press, 1996).

47. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1977), p. 107. Walzer defines what is shocking in a way that is more minimal than I do here.

of its members with impunity. (Even when intervention in oppressed groups is warranted, care should be taken to ensure that the intervention doesn't cause more harm than good. There are different kinds of intervention, and political and cultural sensitivities should be considered when deciding the best way to intervene.)

This may appear to be a very low bar—there are plenty of ways rights can be violated even though basic rights are secured. But the analogy between sovereign states and oppressed groups is limited in important ways. In the case of indigenous peoples and other similarly situated groups—territorially concentrated groups that have (or can have) considerable group autonomy—disaffected members can always leave the group. Badly treated women (or men) can leave their tribe. Many indigenous peoples have left their tribes, though not because of ill-treatment by other tribal members. If women were refused education and subjected to humiliation, many would undoubtedly flee. While leaving an oppressive state is often hard, leaving a tribe is comparatively easy: no escape routes need be plotted, no visas are needed, no plane tickets must be purchased, there are no oceans to traverse or mountains to cross. Moreover, knowledge of a less humiliating way of life is easy to obtain. When a small group is surrounded by a much larger one, it is hard not to see how the outsiders live, particularly when one has citizenship in this larger society. If some people are treated very badly and exit is available, then many will surely take this option.[48] People in indigenous tribes who are physically harmed can leave, unlike many people who live under oppressive states. While few indigenous tribes hope to physically harm their members, if they were tempted to do so the threat of exit might very well curtail this temptation.

The right to exit for indigenous peoples also means that they have a minimal but important level of autonomy. Exit means that tribal members will have a range of options for their life choices; they can live in or outside the tribe (or perhaps both). I don't want to minimize the difficulty of exit. Exit from one's tribe is typically costlier than leaving one's religion: one could leave one's religion and often still retain most of the other parts of one's life. Leaving one's tribe, though, may mean leaving most or all of one's way of life, which is clearly rather difficult to do. Still, exit is possible and it is practiced, which means that the challenge to individual autonomy by indigenous people is real but limited.

People in India and Israel can't easily leave the family law system, so the right to exit doesn't soften the blow of authorizing state intervention when basic rights are violated. However, since personal law systems almost always apply to groups that are geographically dispersed,

48. I discuss the right to exit further in my *Surviving Diversity*, chap. 3.

their scope is limited. Israeli and Indian Muslims can't, for example, have jurisdiction over criminal or contract law, since they have no territory to govern. Being dispersed in the state, Indian and Israeli Muslims have freedom of mobility; they can avail themselves of any state institutions, just as others in the state can. Personal laws are limited to matters of property and family. While these laws can and do harm women, the harm is not all encompassing.

V. IDENTITY AND CHANGE

Exit is not an option in personal law systems and autonomy is severely curtailed for Indian and Israeli Muslims. This is a difficult predicament, made harder since direct intervention by the state is unjustified. Some people argue that the best we can hope for in this circumstance is internal reform. Partha Chatterjee notes that the state cannot simply emancipate minority groups. Sometimes we must choose "the harder option, which rests on the belief that if the struggle is for progressive change in social practices sanctioned by religion, then that struggle must be launched and won within the religious communities themselves. There are no historical shortcuts here."[49] Questioning the justice of state-imposed reform means that the only apparent way for the group's rule to change must come through the group's leadership, but we should not expect men steeped in tradition, as in the case of Indian and Israeli Muslim clergy, to make their rules radically more egalitarian without pressure to do so. This apparently leaves us with two unappealing options: state-centered reform, which is morally dubious and of questionable effectiveness, or the state does nothing, leaving family law in the hands of traditional male authorities who will do little to change it.

I agree with much of Chatterjee's argument (though I think oppression not religion is the key variable here), but he doesn't fully recognize the ways in which the state can play a role in this reform. Chatterjee also does not recognize the ways in which the state often blocks reform within oppressed groups. The state is not merely a bystander to groups with some autonomy. It shapes the lives of women and of personal laws whether it wants to or not, and it is not inevitable that it shape these lives and laws in ways that the traditional male elite desires.

The apparent choice between state-imposed external reform and

49. Partha Chatterjee, "Secularism and Tolerance," in *Secularism and Its Critics*, ed. Rajeev Bhargava (New Delhi: Oxford University Press, 1998), pp. 345–79, p. 377. Nussbaum too endorses internal reform, saying an effort should be made to "promote liberal Muslim viewpoints and to encourage internal reform of the system of personal law" (*Women and Human Development*, p. 230). She has little to say, however, about how this encouragement might take place.

doing nothing is a false choice. Unlike Native Americans who determine their own family law and membership rules, personal laws for religious groups are constructed with the help of the state. India's personal laws are interpreted by state courts, who often defer to traditional Islamic interpretations of the relevant law. Israel's personal laws are governed by state-funded religious courts. The Islamic judges, while nominated by an internal process, are officially appointed by the Israeli state. Islamic personal law, though, is not monolithic: there are different branches of Islam, and different schools of interpretation of Islamic law within these branches. When the state sanctions personal laws, it must also sanction a particular interpretation of the law. The state is already involved in the construction and interpretation of personal laws, so it cannot do nothing when it comes to personal laws. As currently constructed, the Israeli and Indian states are constantly involved in the interpretation of Islamic law, since they must continually appoint judges or interpret the law.

The problem with the current state involvement is that it blocks internal reform. Any reform of personal law must currently be state assisted, given the state involvement in personal laws. If a reform movement arose in the Indian Muslim community, the state would have to decide to either recognize this movement's proposals or ignore them. Since state-assisted reform is of morally dubious and of questionable effectiveness, possible reform of personal law is remote, even if a majority of the community in question wishes it. If some members of the community went to the state to demand reform, there would be counter-demands, and questions of who really represents the community would arise. While sometimes the majority voice is clear, trying to sort out who truly represents a community among competing voices amid an informal process for determining representation can be a quagmire. It is hard to see how reform of personal laws for Indian and Israeli Muslims is ever possible under the current situation. What many in the Indian and Israeli Muslim communities do not want is for the state to impose change upon it, which is different from never wanting to change at all. Of course, it may be that these communities prefer not to change their personal laws, but they should make the decision about whether to pursue change or not. It is the community as a whole, however, that ought to make this decision, not a few male religious elites.

I suggest that the state get out of the business of deciding which personal laws should be implemented. It should turn the job of interpretation over to the community itself and insist that these laws be established by democratically accountable representatives, not just the traditional male religious leaders. Some may object that this proposal is a reform of oppressed communities. It is not, however, a reform of the community's laws; nor does it entail the state demanding that the

community change its laws. Rather, this proposal means giving the state even less involvement in the community than it currently does. This proposal means that the state will allow the community to decide upon its personal laws, but the state will not then choose who does the deciding as it currently has. The community itself will decide who establishes its rules.

Feminist arguments assume an unmediated relationship between the state and oppressed cultural groups and argue that the state should dismantle laws of oppressed communities that discriminate against women. My democracy proposal here, however, recognizes the mediated relationship between state and oppressed group; the group ought to have the decisive say in its personal laws. Under this democracy proposal the state recognizes that it inevitably has some role in deciding who in the community will decide upon the community's personal laws, and that it is best for the community as a whole to decide. Handing the fate of personal laws over to the entire community also makes the question of representation much easier to determine when disputes arise within it.

This proposal will sometimes mean a sacrifice in individual autonomy, particularly but not only in women's autonomy. The feminist critique has little traction when it comes to immigrants; it also fails to recognize how the exit option for indigenous peoples supports an important though minimal amount of autonomy. Personal law systems, however, force women (and men) into the clutches of religion, regardless of their wishes. Here is the sharpest dilemma: between individual autonomy and the injustice of the state forcing personal laws to become more liberal or to get rid of their mandatory participation. My democracy proposal increases the collective autonomy of the community, by giving all its members the power to decide upon its personal laws, and this may ease the lack of autonomy. A partial collective autonomy is better than no autonomy, but I don't want to pretend that it is the same as individual autonomy—the two need not and do not always stand in tandem.

More can be done, however, to increase autonomy among women of oppressed groups than to grant the communities collective autonomy when it comes to personal laws. The state should also try to empower *all* women. Empowered women can fight to change personal laws, or, if laws permit, they can opt out of the personal laws.[50] Women can be

50. While Indian Muslim couples can choose to use secular law and not Muslim personal law to arbitrate disputes, the fact that few couples choose this option shows that this narrow formal right to exit is not enough for at least two reasons. First, the secular law option must be chosen at the time of marriage. A spouse may not want to bring up this option for fear it is a sign of mistrust in the marriage. Since she can't change her

empowered if all girls and young women receive an education. Many Indian women, Hindu and Muslim alike, are illiterate. Learning how to read would go a long way toward lessening their dependence on men. Uneducated women are more likely than educated women to have to rely on men for all kinds of things, including determining whom to vote for. Breaking down the barriers that prevent many women, especially poor women, from working is also important to do. Giving these women training in agriculture or business is also crucial to empowering women. Nussbaum has been in the forefront of explaining the importance of empowering women in developing countries, particularly Asia.[51]

India has a relatively new law setting aside a third of all village council seats and village chiefs' positions for women (with a subset of these women's positions set aside from the lowest rungs of the caste system). Traditionally, almost all village council members and chiefs have been men. While it is hard to judge the effectiveness of this new law, and some women council members defer to the male members or their husbands, early reports indicate that many women are in fact exercising power. Many Indian women find this to be an empowering experience as they learn that they can govern as well—or often better—than men. The anecdotal evidence from India suggests that this is happening, at least among Hindu women.[52] If women are empowered, they may seek changes in their community's sexist rules on their own.

These two suggestions, internal democracy and empowering women, do not necessarily lead to the reform of personal laws. They do, however, allow for this possibility, and allow for it in a way that will be seen as legitimate by the majority of the community and without the ill consequences of external reform. The community may decide to retain its current laws; it may decide to change them but keep elements of patriarchy; or it may decide to make its personal laws more egalitarian. Under current practice internal reform is nearly impossible. Under my proposals, however, reform is possible though hardly certain. Religions,

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mind after the wedding, the exit option is still severely curtailed under current Indian law. Second, the personal laws are a symbol of Muslim identity that many Muslims, including nonbelievers, may not want to relinquish. Eschewing Muslim marriage may even be seen as an act of treachery by other Muslims.

51. Martha Chen, "A Matter of Survival: Women's Rights to Employment in India and Bangladesh," in *Women, Culture and Development: A Study of Human Capabilities*, ed. Martha Nussbaum and Jonathan Glover (Oxford: Clarendon, 1995), pp. 37–57. Nussbaum often cites Chen in her own work about women in developing countries.

52. Celia W. Dugger, "In India, Lower Caste Women Turn Village Rule Upside Down," *New York Times*, May 3, 1999; Bidyut Mohanty, "Panchayat Raj Institutions and Women," in *From Independence towards Freedom: Indian Women since 1947*, ed. Bharati Ray and Aparna Basu (New Delhi: Oxford University Press, 1999); Mary Anne Weaver, "Gandhi's Daughters: India's Poorest Women Embark on an Epic Social Experiment," *New Yorker*, January 10, 2000.

it should be noted, change over time. As Nussbaum has argued, religious traditions are often quite varied, and there is no reason to think that the voices of traditional, male religious leaders are the only authentic ones.[53] It should be up to the religious group in question as to whose voices it decides to follow. If the group retains control over how it is reformed, then it will not resent outsiders for imposing reform upon it. The problems that often result when change is forced upon groups—anomie, despair, anger, resentment, violence—won't occur if change comes from within.

If these reforms prove impossible, the state can still try to ensure that divorced women or widows are cared for, either directly or by funding community organizations to do so.[54] While Muslim communities in India do try to support some of the indigent in their communities, the organizations that do so have little money. If they had more money through state support then Shah Bano would have had financial recourse through the Muslim community after her husband divorced her. Supplying more support for widows and divorced women is far from ideal, since it still allows the terms of divorce to be dictated by men, and it allows other sorts of gender discrimination to remain. Nonetheless, in some cases this may be the best that can be hoped for.

VI. WHITHER GROUPS?

Some religious authorities might object to some of the above changes, but they could always endorse a uniform civil code, leaving religious marriages only for those who choose one, which is the route taken in most Western democracies. The purity of the religious doctrine may be more important to religious leaders than to have a personal law that covers many people but is subject to democratic control. Moreover, it's possible that if Indian Muslims could democratically decide to make their family law more egalitarian and if over time they would also feel less threatened by the Hindu majority, then they might eventually decide that a uniform civil code would be acceptable. This is speculation, not a prediction: nothing in my argument insists that such a future must unfold. But my argument is surely compatible with such a scenario; my argument allows for group boundaries to fade or become less important over time, if that is what the groups' members choose.

My argument isn't for multiculturalism, if multiculturalism is meant as a general support of cultures. Rather, my concern here is with the narrower category of oppressed cultural groups. One of my aims here

53. Nussbaum, *Women and Human Development*, chap. 3.

54. Bhikhu Parekh, "The Cultural Particularity of Liberal Democracy," in *Prospects for Democracy: North, South, East, West*, ed. David Held (Cambridge: Polity, 1993), pp. 156–75, p. 171.

is to allow (though not insist upon) reform to take place within oppressed communities in ways that the communities themselves will accept.[55] It is beside the point if this reform will weaken group identity. Ideally, as a matter of justice, most liberals rightly endorse the option of a uniform civil code because it allows for exit from the community. Whether people belong to a particular religious community or not ought to be, under ideal circumstances, up to them. Shachar argues that the problem of a uniform civil code is that it "clearly does not encourage the preservation of nomoi groups through the accommodation of their differences."[56] But why should group identity be preserved if the group's members object? Shachar's emphasis on retaining group identity leads her to protect the boundaries of both oppressed *and* unoppressed groups. Why should Israeli Jews have to abide by Jewish family law if they do not want to do so? Israeli Jews are not oppressed by the state; they are not a minority that is suspicious of the state's motives because of past or current oppression. There is no question here of trying to figure out ways to balance competing claims of justice while lessening oppression within the group. Shachar's concern for group identity blinds to her to the fact that some women (and men) might not want to be forced to belong to a religious group. They may not want weakened rabbinical control over their lives; they may prefer no rabbinical control over their lives. It's telling that many Israeli Jews (but not Muslims) go to Cyprus to get married, since Israel recognizes secular marriages performed outside the country.[57]

Further, if dominant group members such as Indian Hindus and Israeli Jews are given the option of a civil marriage, minority group members may begin to demand the same option. They may argue that any liberties that members of the dominant group have should also be granted to the minority. Shachar's argument that state-sanctioned group rules are needed to maintain group identity is also overstated. Religious groups in the West have survived the loss of their state support. To be sure, many of these religious groups are smaller than what they once

55. My discussion here centers on groups with personal law systems.

56. Shachar, "Should Church and State Be Joined at the Altar?" p. 210. Nussbaum endorses a uniform civil code and argues that group membership should be voluntary in *Sex and Social Justice*, pp. 99–100. While Okin does not argue against voluntary membership in religious groups, her views of religion are less generous than Nussbaum's views. See Okin, "Feminism and Multiculturalism," pp. 668–69, and "Is Multiculturalism Bad for Women?" pp. 121–23.

57. The Cyprus option is not an ideal solution, since it is advantageous to those with the resources to travel overseas and makes it much harder to have family and friends at one's wedding. It can also make divorce difficult, since there is no civil divorce in Israel. Asher Cohen and Bernard Susser, *Israel and the Politics of Jewish Identity: The Secular-Religious Impasse* (Baltimore: Johns Hopkins University Press, 2000), pp. 116–21.

were, but becoming smaller is different than disappearing. If Hinduism in India and Judaism in Israel lost state support their influence might diminish, but Hinduism and Judaism would not vanish.

If state support for dominant groups faded, however, people's autonomy might very well increase. When the state grants groups the right to govern family law, the state helps religious groups coerce people into a religious marriage they may not want; and women may be forced to stay in marriages they want to end. This coercion clearly violates individual autonomy. Moreover, if a person must belong to one and only one religion, her ability to marry outside her faith without converting is lost; she cannot easily refashion a new religion or start a new branch of an old one. Yet if this person belongs to an oppressed group, the oppression will also restrict her attempts to fashion herself as she wishes. She may resent the attempts of the state that oppresses her to try to set her free. Unfortunately protecting rights is not always the simple matter of getting the state to do so. Oppressed people will rarely look upon their oppressor as their liberator. They must have a say in their own liberation.