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Human Dignity and the Limits of Toleration

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The modern liberal project is divided against itself on crucial questions about the proper limits of cultural and religious tolerance. The depth of this division was on display in a 1997 *Boston Review* series on the tension between multiculturalism and women’s rights. Feminist philosopher Susan Moller Okin, author of the lead essay, argued that the liberal imperative of gender equality is irreconcilable with a broad toleration for patriarchal cultural and religious groups. In their replies, Okin’s critics accused her of cultural parochialism and religious prejudice. The purpose of this essay is to use Ronald Dworkin’s account of human dignity to evaluate these arguments. In the first section I discuss the origins and implications of Dworkin’s principles of dignity, the justifications for group rights, and Okin’s critique. I find that Okin is right on the crucial issue — that feminism and multiculturalism are indeed in tension in a liberal society. In the second section I introduce four principles that should be considered in determining the level of toleration afforded to patriarchal groups — the character of the group, the voluntariness of its practices, the nature of the group rights being requested, and the importance of civil liberties — that complicate Okin’s thesis and impose crucial limitations on the reach of her demands.

Section I: Dworkin, Okin and Group Rights

*Dworkin and dignity*

Dworkin’s first principle of dignity holds that all human beings have “intrinsic value.” He arrives at this principle through a simple set of logical propositions, which he defends at length: First, most people think that it is intrinsically important that they live a good life, and second, no one has a compelling reason to think that it is any less important that other people live a good life. Therefore, each human life is intrinsically and equally valuable. A corollary to this is the
principle of “personal responsibility,” which holds that each person has a special responsibility for finding meaning in his or her life, free from outside coercion. It follows from these two dimensions of dignity that government must treat all its citizens with equal concern and allow them to exercise control over the direction of their lives.¹

Dworkin thus successfully and compellingly restates the premise at the heart of liberalism: that all human beings are free and equal. But these principles have been derived in some form or another through many different approaches, from John Locke’s natural rights theory, to John Stuart Mill’s utilitarianism, to Robert Nozick’s concept of self-ownership. Dworkin’s original contribution is to derive the principles of human dignity from ethical ideas about the importance of living a meaningful life. As will become clear in the remainder of the essay, this particular derivation of the ideas of equality and autonomy color their application to the problem of multiculturalism.

Group rights

The word “multiculturalism” is sometimes used to mean a general respect for cultural diversity, but in the context of Okin’s argument it refers to something more specific: Group-differentiated rights, or rights granted to people on account of their membership in a cultural or religious group. In her essay, Okin refers to three types of group-differentiated rights: First, exemptions from generally applicable laws or policies, (such as the right for Muslim girls to wear headscarves at school despite a rule against head covering); second, special representation rights, (such as reserving seats in a legislative body for members of an ethnic group); and third, self-government rights, (such as those granted to American Indians living on reservations in the

United States).\(^2\)

Dworkin’s principles of dignity could be construed to permit the establishment of group rights. According to Dworkin, the personal responsibility to live well cannot be realized in the absence of “a particular religious, ethnic, or even familial tradition that sets a pattern of life.”\(^3\) For the government to restrict or prohibit the exercise of a particular culture could potentially deprive its members of the personal responsibility to freely choose the type of life that is best for them. Group rights might also be established to protect the principle of intrinsic equality if they are required to keep members of minority religious and cultural groups on equal footing with the majority — i.e., Quebec’s adoption of French to accommodate French-speaking Canadians.

Note that multiculturalists have defended group rights using a wide range of justifications different from the one described above. For example, some argue that a more plural society is inherently more desirable because culture has an intrinsic value worth preserving.\(^4\) Communitarian philosophers like Charles Taylor, and “postcolonial” theorists like Biku Parekh, have also advanced unique defenses of group rights. But Dworkin’s account of dignity is agnostic on these arguments.\(^5\) The principles of intrinsic equality and personal responsibility only permit a liberal justification for group rights; that is, a conception of group rights based on promoting individual autonomy, equality and self-respect, like that put forward by Will Kymlicka. But the liberal-egalitarian philosophical underpinnings of group rights become weaker when applied to internally oppressive groups, as Okin argued in her essay.

\(^3\) Dworkin, 18.
\(^4\) Cohen, 7.
Okin’s critique

The thrust of Okin’s argument is simple. She defines feminism as the belief “that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equal with men, and the opportunity to live as fulfilling and as freely chosen lives as men can.”6 This principle is violated, she says, by granting group rights to cultures which “have as one of their principle aims the control of women by men.” She identifies several such cultures, singling out for extra discussion the three major monotheistic religions, especially in “their more Orthodox or fundamentalist versions.”7

Most of the examples Okin puts forward in her essay are outlandish and violent, like “forced marriage to one’s rapist by capture” and culturally sanctioned murder, practices that are not tolerated in Western liberal societies.8 Under any plausible interpretation of Dworkin’s principles of dignity, the state must ensure that all its citizens — regardless of gender or cultural affiliation — are given basic protections, like the right to an education and physical integrity. But Okin’s ample use of extreme examples is rather misleading as a rhetorical tactic, because it obscures the fact that the stated focus of her concern is groups that are not explicitly or violently patriarchal. She is skeptical of granting multicultural rights even to groups which “subtly” perpetuate gender inequality through their traditions and practices in the “private sphere,” an area traditionally largely outside the scope of interference of the liberal state. It is less clear the extent to which the principles of dignity require a curtailment of multicultural rights for groups of this nature — or at least, that the groups’ anti-egalitarian tendencies outweigh their role in providing self-respect for their members.

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7 Ibid.
One the one hand, as Okin suggests, the state has no *prima facie* obligation to extend group rights. It should only do so if it determines that group rights are necessary expand the autonomy of individuals and minimize disadvantage they face on account of their cultural or religious identity. So if the extension of such rights enables a group to oppress its members — however subtly — this might obviate the reason for extending group rights in the first place. But there are tradeoffs. It could be that even if a fundamentalist religious group reduces women’s autonomy and equality internally, group members (including women) still benefit enormously from extra protections. Dworkin’s principles of dignity can thus cut both ways, and are therefore not a useful tool for resolving this problem in the abstract. The remainder of this paper will outline and discuss certain (interrelated) considerations that can help determine whether or not group rights should be granted in accordance with the principles of dignity.

**Section II: Considerations for granting group rights**

*Consideration A: How oppressive is the group?*

It is safe to say that Dworkin’s account of dignity is broadly consistent with the most limited interpretation of Okin’s thesis: that “the degree to which each culture is patriarchal, and its willingness to become less so” should be “factors in considering whether to grant it group rights.” 9 Contrary to relativists like Sander Gilman10 — who suggest that all cultures and moral systems are of equal value, and therefore should all be afforded equal respect, with few or any limitations — the principles of dignity are predicated on the fact that “there is objective truth to be had in the realms of ethics and morality.” 11 Certain levels of oppression are beyond the pale.

That said, the principle of personal responsibility insists that people can realize success in their lives in a variety of different ways. In some instances, like her sweeping indictment of

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9 Okin
11 Dworkin, 46
veiling, Okin does not leave enough room for alternative visions of human flourishing. As Aziza al-Hibri has asked, “Why is it oppressive to wear a headscarf but liberating to wear a miniskirt?”

Some Muslim feminists see veiling as empowering. So while Okin is right that the level of discrimination women face in a particular culture should be taken into account in considering its eligibility for special protections, “the question of what constitutes gender (in)equality must be kept disturbingly open to perpetual re-interrogation.”

Consideration B: How voluntary are the activities in question?

In determining the level of toleration and protection that should be afforded to a cultural group, the state should also consider the degree of “voluntariness” of the group’s cultural practices. The right of all (adult, rational) human beings to be able to consent validly is implicit in Dworkin’s conception of human dignity. As Justin Cox has argued, the state should provide maximal protection for voluntary cultural practices that are conducted by adults in the context of personal choice, and less protection to practices that are imposed on children, or that are conducted in the context of strong social pressures and a lack of viable alternatives.

For example, an adult Muslim woman’s decision to don a headscarf in Paris should be presumed to be more voluntary than a ritual performed on a child on an American Indian reservation.

Dworkin’s ideal of personal responsibility can best be realized in the context of cultural competition, similar to J.S. Mill’s notion of a “marketplace of ideas.” Various cultural practices and value sets should compete freely against one another for popular support, and those without merit will presumably be marginalized. Just as Mill said censorship is likely to corrupt the

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13 Honig
15 Ibid, 18-19
quest for truth, top-down regulation of voluntary cultural practices is likely to corrupt peoples’ ability to find value and meaning in their lives. So while Okin is right that some cultural practices are the product of coercion, and most involve at least some level of social pressure, the degree of voluntariness should be central to determining how much respect such practices are afforded.

Consideration C: What is the nature of the group right?

Another relevant consideration that Okin does not adequately consider in her essay is the nature of the multicultural right being considered. I submit that two dimensions of the right are relevant: First, is the group right actually related to the group’s oppression of women? Second, how expansive is the group right?

Group rights that have a direct relationship to the oppression of women should be subject to greater scrutiny. One example is the right to polygamy — sought at various times by Mormons in the United States and African immigrants in Europe — which is often central to sustaining the subordination of women. But some group rights have no obvious connection to the status of women within a group: For example, Sikh men in Australia have been granted an exemption from the generally applicable bicycle helmet law, which would interfere with their ability to wear turbans. Orthodox Sikh culture has been described as patriarchal in some ways, but the group-differentiated right just mentioned has no obvious connection to Sikhism’s internal patriarchal practices.16

It is more offensive to the principles of dignity for the government to grant a group right, such as polygamy, that directly sustains an oppressive practice. This arguably makes the state complicit in the oppression, and thus in violation of Dworkin’s demand that governments treat

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their citizens with “equal concern.” On the other hand, the denial of a group right unrelated to the status of women (such as the Sikh example discussed above) would undermine the self-respect and autonomy of Sikh men, while doing nothing to enhance the dignity of Sikh women. Now, Okin and her allies might argue that if orthodox Sikh culture is patriarchal, it is not worth preserving at all. But seeking the extinction of the entire culture seems like an ineffective (not to mention illiberal) strategy for improving the status of its vulnerable members.

The “magnitude” of the group right being considered is also relevant. As Will Kymlicka has observed, group rights can fall into three categories, ranging from modest exemptions from generally applicable laws and policies, to the more dramatic rights to self-governance or special legislative representation.\(^{17}\) I propose that the state should in general be more reluctant to extend the latter two rights to patriarchal groups than the former. For example, suppose that a particular Native American tribe subordinates women in its religious rituals, and is requesting (a) the right for tribal self-government on a reservation and (b) the right to be exempt from prosecution for sacramental Peyote usage. The state might be justified in denying the group’s request for self-government while granting its right to be exempt from generally applicable drug laws.

There are two reasons for this. First, because a right to self-government would insulate the tribe from the rest of society and make it more likely that it would continue their patriarchal traditions indefinitely. Second, Dworkin’s equal concern principle suggests that governments should generally treat citizens the same (unless differential treatment is necessary to correct pre-existing inequalities). An expansive group-differentiated right is more likely to violate the principle of equal concern than a narrow one.

\(\text{Consideration D: To what extent would denying group rights infringe on religious liberty?}\)

\(^{17}\) Cohen, 5.
Finally, and perhaps most importantly, Okin’s demands must be circumscribed to ensure that they do not interfere with freedom of speech, conscience or the exercise of religion.

Dworkin’s account of dignity demands robust protections for these liberties. The line between religious groups’ patriarchal practices and their most deeply held convictions is not watertight. In some cases, Okin’s insistence that group rights not be extended to patriarchal groups would unduly interfere with the fundamental liberties embedded in Dworkin’s personal responsibility principle.

First consider Dworkin’s understanding of these liberties, which he weaves together and defends with particular force in the following passage:

“Speaking out for what one believes — bearing witness and testimony—is … an essential part of believing; it is part of the total phenomenon of the condition. Identifying oneself to others as a person of particular beliefs or faiths is part of creating one’s identity, part of the process of self-creation that is at the center of our personal responsibility.”

The principles of dignity demand that these rights extend so far as to allow people to “challenge even the most fundamental assumptions in a democratic society,” including the principle of human equality. Dworkin is thus intensely skeptical of state-imposed regulations on the exercise of religion, noting that a state may not “make the peaceful practice of even fundamentalist religion illegal” without violating the dignity of its citizens. He also defends the “free exercise” of religion — not just “freedom of worship” or “freedom of belief.” This is a relevant choice of words because it suggests that religious faith involves a range of practices the state has an obligation to affirmatively protect, beyond simple freedom of association or thought. In her critique of group rights, Okin does not adequately consider these concerns.

Consider the case of Orthodox Jews, who subtly perpetuate gender inequality through their

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18 Dworkin, 158
19 Ibid, 33
traditions in the private sphere: For example, women are excluded from certain religious rituals, may not become rabbis, and the coming of age ceremony (Bar Mitzvah) is reserved for young men only. And yet, our society currently grants group rights to Orthodox Jews: Students, for example, can request to take the SAT exam on Sundays rather than Saturdays. It would be unjust for educational institutions to force Orthodox students to choose between upholding a sacred and innocuous tenet of their faith — resting on the Sabbath — and taking the SAT exam, which is required for college admission.

Okin suggests that denying group-differentiated rights to religious and cultural groups is an act of neutrality; an indication that the state neither endorses nor rejects the groups practices. But failure to provide exemptions from generally applicable policies of the kind discussed above seems more like coercion than neutrality. The state would in a sense be controlling the way Jews practice religion, and violating the expansive conception of religious liberty that is sacrosanct under Dworkin’s framework. Certainly, religious freedom must be restricted in some cases, as this paper has discussed. But it is safe to say that Dworkin’s notion of personal responsibility demands greater protection for basic liberties than Okin seems to allow.

Conclusions

The philosopher Steven Lukes has said, “there is no multiculturalism tout court; there are only specific, context dependent problematiques; the search for a universal formula, a final judgment, is misguided from the start.” Lukes is right that the issue is not black and white. Therefore, the appropriate level of toleration for cultural and religious groups in light of Dworkin’s account of dignity should be determined along a continuum. On one extreme are

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cultures that are heavily patriarchal, whose practices were largely involuntary, seeking expansive group-differentiated rights that are directly related to the oppression of women within the group. On the other extreme are modestly patriarchal religious groups seeking limited exemptions from generally applicable laws in order to freely (and harmlessly) exercise their faith. These principles will not yield a clear answer in every circumstance, but they provide an important corrective to Okin’s inappropriately narrow vision of cultural tolerance.

Works Cited & Consulted:


