

## Political Morality and Culture: What Difference Do Differences Make?

[Review Essay: Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), xxi + 312 pp.; and Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), xiv + 193 pp.]

### Introduction

Can a conception of political morality—specifically, a conception of justice—be said to be valid across cultures? Few contemporary philosophers explicitly claim that their account of political morality enjoys legitimacy in all societies. The universalizability of a particular conception of justice is, however, typically assumed, without adequate justification or argumentation. By contrast, social and cultural anthropologists have more readily explored the challenges that cultural diversity poses for any understanding of moral behavior and systems of ethics. Anthropologists' charge that morality is culturally bounded or coded<sup>1</sup> is a claim few philosophers have been eager to face head-on, despite the obvious normative significance of cultural differences for ethics. Notwithstanding the lack of systematic attention to issues of culture, the relationship of morality to social and cultural diversity has been a subject of intermittent interest and controversy for moral and political philosophers since the eighteenth century, when philosophical musings and travel writings by Europeans about the mores and customs of foreigners first emerged.

Analytic philosophers reluctant to engage questions of culture generally reject the suggestion that a *descriptive* account of *actual* moral differences among social groups ought to have any bearing at all on a *normative* account of morality, including a conception of justice. But this may be changing. John Rawls's shift from a strictly moral (and hypo-

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<sup>1</sup>Some leading texts by anthropologists that assert the cultural embeddedness of social and moral norms include Melville Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* (New York: Random House, 1972), and Renato Rosaldo, *Culture and Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1989/1993).

thetical) justification of justice as fairness in *A Theory of Justice*<sup>2</sup> to a justificatory framework that appeals to the fit or resonance of principles of political liberalism with the actual beliefs and intuitions of citizens in liberal democratic societies, for instance, marked a significant departure from this view. With his *Political Liberalism*,<sup>3</sup> Rawls cleared a space for political philosophers in the Anglo-American analytic tradition to count practical social and political conditions, including circumstances of cultural diversity, as important to both the conceptualization and application of a conception of justice. To the extent that deep differences among social and cultural norms are understood to raise questions about the universal applicability and moral legitimacy of ethical principles, however, we should perhaps not be surprised that more systematic moral thinkers remain reluctant to engage with these challenges. Kant and neo-Kantians in particular are vulnerable to the charge that an ethical-political conception founded on the ideal of moral autonomy, the inviolability of human dignity, and the test of moral universalizability is both too strenuous and too culturally bounded to hold much significance for a wide range of societies, especially non-liberal, non-European ones.

For those contemporary political philosophers who, like (recent) Rawls, link the legitimacy of political principles of justice to their wide (actual) acceptability by—and applicability to—a plurality of citizens, the increasing social and cultural diversity of liberal democratic societies presents obvious challenges. If the resonance of moral ideals and rules with diverse persons is held to be of real, justificatory significance, then the question of whether or not particular moral principles hold universal validity cannot be answered strictly in normative terms. That is, it also has an empirical aspect. Whether equal moral worth and equal human dignity are truly universal principles, for example, is not a question that can be answered in isolation from reflection on deeply held values and beliefs in diverse, often non-liberal, cultures, many of which exist within the borders of liberal states. Such a suggestion of course opens up the possibility that certain moral systems will be revealed to simply formalize culturally bounded or specific rules and concepts, but it need not lead to this conclusion.

### **Culture's Challenge to Moral Universalism**

As political claims for recognition and accommodation by cultural minorities in numerous liberal democracies have steadily increased, moral and political philosophers have come to focus greater attention on the

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<sup>2</sup>John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

<sup>3</sup>John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

significance of cultural differences for a conception of political morality. In recent years, a range of diverse thinkers have explored aspects of the broad question of political morality's scope and limits in light of cultural pluralism.<sup>4</sup> Two metaethical questions emerge as paramount in the discussions of the relationship of morality to culture by these and other writers: Should the normative coherence and success of a conception of political morality—particularly a conception of justice—depend upon its acceptability to moral agents from diverse cultural communities, and to its “fit” with circumstances of deep cultural pluralism? And does a social context of cultural diversity make the very articulation of a universal moral system less plausible, conceptually or practically?

Philosopher Martha Nussbaum, in two recent books that address the theme of gender justice, seeks to offer answers to these and other questions. The position she develops, known as the human capabilities approach, claims to combine a sensitivity to social and cultural pluralism with a moral conception of human needs and human flourishing boasting universal applicability. In both *Sex and Social Justice*<sup>5</sup> and *Women and Human Development*, Nussbaum steadfastly rejects suggestions that circumstances of cultural diversity make the search for a common view of the requirements of human well-being and social justice in any way less viable. As Nussbaum writes in *Women and Human Development*, “legitimate concerns for diversity, pluralism, and personal freedom are not incompatible with the recognition of universal norms; indeed, universal norms are required if we are to protect diversity, pluralism, and freedom, treating each human being as an agent and an end” (6). Nussbaum is certainly not alone in her view. There is no shortage of contemporary

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<sup>4</sup>Some examples include David Archard (ed.), *Philosophy and Pluralism* (Cambridge: Cambridge University Press, 1996); Monique Deveaux, *Cultural Pluralism and Dilemmas of Justice* (Ithaca, N.Y.: Cornell University Press, 2000); Samuel Fleischacker, *The Ethics of Culture* (Ithaca, N.Y.: Cornell University Press, 1994); Thomas Hill, Jr., *Respect, Pluralism, and Justice* (Oxford: Oxford University Press, 2000); Anthony Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca, N.Y.: Cornell University Press, 2001); Onora O'Neill, *The Bounds of Justice* (Cambridge: Cambridge University Press, 2000); Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge, Mass.: Harvard University Press, 2000); Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989); Amartya Sen, *Development as Freedom* (New York: Knopf, 1999); Charles Taylor et al., *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994); Jim Tully (ed.) with Daniel Weinstock, *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question* (Cambridge: Cambridge University Press, 1994); and James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).

<sup>5</sup>Martha Nussbaum, *Sex and Social Justice* (Cambridge, Mass.: Harvard University Press, 1999).

political philosophers seeking to rescue liberal universalism and broadly neo-Kantian justice from attack by a range of critics, from post-colonial and post-modern thinkers to skeptical pragmatists. Among the defenders, political liberals (which Nussbaum counts herself among) are persuasive proponents of the need to reject criticisms of individual rights frameworks as well as to resist the introduction of culturally differentiated collective rights for cultural minority groups. We ought instead, political liberals argue, to fashion universal principles of justice that enjoy wide legitimacy in culturally plural liberal societies.

Brian Barry's recent polemic on the perils of policies of multiculturalism from the point of view of political liberalism is perhaps the most forceful example of this view. In *Culture and Equality*,<sup>6</sup> Barry makes a passionate plea for the enduring value of liberal principles and individual rights over what he sees as misguided and dangerous moves towards a framework of multiculturalism in liberal democracies. Rather than capitulating to the demands of multiculturalists and cultural interest groups, Barry suggests that we need to hold fast to a liberal conception of justice and address persistent group inequalities through broader policies of social and economic redistribution.

Similarly, prominent liberal political theorist Susan Moller Okin, in an essay entitled "Is Multiculturalism Bad for Women?," defends a liberal egalitarian framework of justice over proposals to pluralize—and so, in her view, dilute and weaken—liberal values.<sup>7</sup> The resulting dichotomy that Okin's article trades in—in which demands for cultural recognition, especially by non-liberal groups, are pitted against the re-affirmation of liberal universalist values—raises yet another critical dilemma for political philosophers. This dilemma is best articulated in terms of the following questions: Where the practices and norms of traditional, non-liberal minorities (often religious groups) conflict sharply with principles and arrangements in a given liberal democratic state, what accommodation, if any, are such minorities entitled to? And what state interference, if any, is warranted in order to protect vulnerable group members from discrimination and injustice at the hands of more powerful members of the group?

The first question is of course a version of the classic liberal paradox or dilemma of toleration, namely, are the intolerant to be tolerated? A common response by contemporary liberals is simply to say that such illiberal minorities might be owed minimal tolerance but not any sub-

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<sup>6</sup>Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, Mass.: Harvard University Press, 2001).

<sup>7</sup>In Susan Moller Okin and respondents, *Is Multiculturalism Bad for Women?*, ed. J. Cohen, M. Howard, and M.C. Nussbaum (Princeton: Princeton University Press, 1999), pp. 7-24. Also see her reply to critics in the same volume.

stantive form of recognition or accommodation.<sup>8</sup> The second question poses the problem of internal discrimination *within* minority groups, a scenario that may arise when non-liberal groups are granted limited autonomy over their communities' practices and social arrangements. In response to this concern, liberals tend to argue that so long as the right of exit—so central to liberal political theory—is guaranteed, then there exists a bulwark against the abuse and oppression of vulnerable group members.

### Gender Justice and Cultural Rights

Both of these questions and the problems they describe provide the focus for legal theorist Ayelet Shachar's recent book, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Shachar challenges the view that the practices and arrangements of non-liberal minorities within liberal states do not merit respect or protection, as well as the assumption that such accommodation would be politically dangerous. Both the threat of outright prohibition of group practices by the liberal state and the last-ditch solution of exit held out to members of cultural minority groups do little more than present individuals with a tragic and unjust ultimatum: "either your culture or your rights!" (5). Assuming that no such tragic choice between one's culture and one's individual rights is strictly necessary—at least not at a general level—the task then becomes one of reconciling the normative and, most especially, the practical tensions between group cultural practices and arrangements and the norms of the constitutional liberal states in which such groups reside. As Shachar's book demonstrates, this is an enormous task, and one well known among constitutional law specialists in culturally plural liberal states.

Perhaps the greatest point of friction between the norms and customs of distinct cultural communities on the one hand and liberal principles on the other concerns the role and status of women. The principle of sex equality, conceived as a protection of a woman's individual right to equality, may conflict sharply with local cultural practices, many of which require sharp sex role differentiation and questionable treatment of women. This is not a phenomenon unique to cultural minority communities, of course: a central function of all cultures is the shaping of gender roles through cultural expectations and rules governing family and social practices. But the tensions between a social group's arrangements and the norm of sex equality may be particularly acute in the case of traditional cultures. Where cultural communities face unwanted forms of assimilation and so seek to preserve their language, identity, and distinct

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<sup>8</sup>This is the position Charles Larmore defends, for example, in his *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987).

ways of life, the pressures on members of the group to conform to traditional gender roles can also be enormous. Shachar shows that family law, governing matters of marriage, divorce, custody, and inheritance, is most often the site where the customs of religious and cultural minorities clash with the principles of liberal society. In those states where particular ethnic groups are left to administer their own family law (such as India, Israel, and South Africa), the stage is set for conflict with constitutional principles of non-discrimination and sex equality.

The belief that cultures can unjustly prevent women from achieving social, political, and economic equality is a common point of departure point for Nussbaum and Shachar. Both *Women and Human Development* and *Multicultural Jurisdictions* offer welcome and long-overdue discussions of the issue of gender and justice in an era of multiculturalism. Although this problem appears to be a rapidly growing area of research interest for feminist political theorists, surprisingly little of this scholarship has reached publication. To date, there have been only two other such books: the aforementioned volumes by Okin and her respondents (*Is Multiculturalism Bad for Women?*) and Nussbaum (*Sex and Social Justice*), which cover some of the same ground. Rounding this picture out is a small selection of articles on the issue by political theorists.<sup>9</sup> In the two volumes under review, the authors pay particular attention to the tensions that the practices and arrangements of more *traditional* cultures pose for liberal justice and in particular for the prospects of sex equality for women of those cultures.

### **Culture and Sex Oppression: Shachar's Joint Governance Solution**

Shachar's emphasis on the implications for gender equality of policies of multicultural accommodation in liberal democratic states is especially welcome, for it raises a number of important questions that contemporary proponents of cultural pluralism have tended to ignore. Foremost among these are the consequences of collective rights and arrangements for *individual group members*, particularly for vulnerable individuals within cultural communities, such as women. To illustrate some of the unjust effects of culturally specific political arrangements and group rights, Shachar skillfully introduces examples of discriminatory family law

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<sup>9</sup>Some examples include Jeff Spinner-Halev, "Feminism, Multiculturalism, Oppression, and the State," *Ethics* 112 (2001): 84-113; Monique Deveaux, "Conflicting Equalities? Cultural Group Rights and Sex Equality," *Political Studies* 48 (2000): 522-39; and Avigail Eisenberg, "Diversity and Equality: Three Approaches to Cultural and Sexual Difference," *Journal of Political Philosophy*, forthcoming. Material from Shachar's book was previously published as articles in the *Journal of Political Philosophy* and *Political Theory*, and elsewhere.

policies and practices in such culturally plural states as Israel and India. These contextual discussions illustrate why, as Shachar argues, political theorists need to address the three participants involved in legal and political arrangements—the group, the state, and the individual—rather than focusing exclusively on state-group interactions. Shachar aims to highlight the plight of “individuals who are put at risk at the hands of their own culture” (5), women most especially.

As someone who is broadly in favor of greater accommodation for cultural minorities yet who also fully supports gender equality and justice for women, Shachar has her work cut out for her. In laying the groundwork for her argument that cultural rights and gender justice can indeed be combined, Shachar dismisses two common responses to what we might call the “internal discrimination” problem. First, she criticizes proposals for a “re-universalized citizenship,” which simply shores up individual rights at the expense of claims for cultural rights and recognition. This view, which Shachar rightly attributes to Susan Okin, Brian Barry, and Amy Gutmann, presents “the relationship between multiculturalism and feminism ... [as] a zero-sum game” (65). Critically, such an approach overlooks the extent to which cultures can and do change over time, and also tends to treat women as victims of culture, with no agency to resist, modify, or affirm social and cultural practices and arrangements (66-67). Most obviously, however, this view is problematic in that it simply refuses to engage the legitimate justice claims of cultural minorities.

Shachar also reveals the inadequacy of the reverse position, namely, a non-interventionist stance that is resigned to the “unavoidable costs” of cultural autonomy. Note that proponents of this view may or may not support cultural rights *per se*—they may simply be opposed to state intervention in citizens’ private and social arrangements. Shachar is surely right to point out that such a *laissez-faire* attitude towards possible mistreatment of individuals at the hands of their cultures—a view that she attributes primarily to political philosopher Chandran Kukathas—relies on two false assumptions (68-70). First, it presumes that all membership in cultural communities is essentially voluntary, and that therefore members should be expected to shoulder the risks of such membership. And second, it relies on the related belief that members can always “opt out” of their community, thereby making state intervention either redundant or heavy-handed as a response to rights abuses. Surely such a conclusion is problematic in that it leaves vulnerable members of groups—many of whom cannot leave their families or communities, for reasons ranging from economic hardship to fear of physical violence—without recourse to broader state resources. From the standpoint of the justice claims of minorities within minorities, the belief that the “right of exit” from one’s cultural community suffices as protection from egregious abuses may

also undercut dissenters' constitutional claims for reform, for example, to prevent sex and religious discrimination within indigenous groups.

The tendency to place unwarranted faith in the significance and protective effect of the right to exit without fully considering either the difficulty or the cost of exit is evident in a recent article by Jeff Spinner-Halev. Arguing that "avoiding the injustice of imposing reform on oppressed groups is often more important than avoiding the injustice of discrimination against women," Spinner-Halev contends that the possibility of exit that exists for members of minority group members in democratic states affords them "a minimal but important level of autonomy."<sup>10</sup> Given the personal consequences of departure from one's community and the dangers of exit for the most vulnerable members (consider the phenomenon of "honor killings" of women accused of sexual misconduct in some Muslim communities), this seems arguable. The point here is not that members of more traditional, illiberal minority groups in liberal democratic states have no agency whatsoever, but rather that it is important to attend to the actual circumstances and social contexts in which options are presented or denied, chosen or shunned.<sup>11</sup> One of the key strengths of Martha Nussbaum's recent work, as I shall shortly discuss, is that it rejects blanket statements about the presence or absence of autonomy, focusing instead on a more nuanced study of agents' *capabilities* for freedom and "functioning."

As suggested by her focus on the problem of internal discrimination, Shachar's discussion of the "perils of multicultural accommodation" centers on traditional or conservative cultural communities. She pays particular attention to the dangers posed when liberal states permit such communities to hold exclusive authority over matters of family and personal law, domains in which sex discrimination is often felt most keenly. Through an incisive discussion of the discriminatory features of marriage and divorce law in Israel, which come under the jurisdiction of religious authorities, Shachar shows that women can be left uniquely vulnerable by community rights. A more adequate set of legal and political arrangements governing diverse communities requires a more complex conception of governance, in Shachar's view. Such a conception, if realized, could extend limited powers of self-governance to culturally distinct communities at the same time as ensuring protection for vulnerable members of those groups. By contrast, the key flaw of both the "re-universalized citizenship" view and the "unavoidable costs" position is that both are based on an "oversimplified 'either/or'-type understanding

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<sup>10</sup>Spinner-Halev, "Feminism, Multiculturalism," pp. 86 and 106.

<sup>11</sup>For a critique of the liberal conception of the right to exit from a feminist perspective, see Susan Moller Okin, "'Mistresses of Their Own Destiny': Group Rights, Gender, and Realistic Rights of Exit," *Ethics* 112 (2002): 205-30.



of legal authority which is not tailored to respect individuals' manifold identities" (12).

The solution to the problem of internal discrimination that Shachar advances is essentially one of legal power-sharing, or what she calls the "joint governance approach." It is only by "re-examining the question of jurisdiction," Shachar claims, that constitutional democracies can adequately and *justly* accommodate cultural minorities without leaving some members vulnerable and unprotected. Although she discusses several forms of joint governance, the one she singles out as most promising is that of "transformative accommodation," less of a technical description than it is an aspirational one. This approach comes with conditions attached that are designed to prevent egregious abuses of power, such as the "no monopoly rule" and the requirement of "clearly delineated choice options" for group members.<sup>12</sup> More generally, it aims at a transformation of group practices and mores: "Instead of forceful intervention or full immunity, transformative accommodation seeks to create institutional conditions where the group recognizes that its own survival depends on its revoking certain discriminatory practices ..." (125).

The idea that a more complex division of legal authority or jurisdictional powers could prevent a host of abuses and systematic forms of discrimination enabled by state-protected cultural arrangements is certainly plausible. In part this is because Shachar's "joint governance" model relies on a quid-pro-quo bargain: cultural groups may receive the support and concessions they seek from the liberal democratic state provided they agree to reduce or eliminate internally discriminatory practices that cannot justly be defended (7-8). In Shachar's words, the joint governance approach "ties the mechanisms for reducing sanctioned in-group rights violations to the very same accommodation structure that enhances the jurisdictional autonomy of the *nomoi* group in the first place" (8). Her proposal is strikingly similar in this regard to Will Kymlicka's argument in *Multicultural Citizenship* that liberal states ought to encourage forms of accommodation that increase the equality of minority cultural groups vis-à-vis the rest of society (via "external protections") but reject those arrangements whose purpose or effect is to maintain or exacerbate discrimination within the group (via "internal restrictions").<sup>13</sup>

Shachar ultimately develops and defends a highly legalistic framework—her joint governance approach—whose value rests precariously

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<sup>12</sup>See chapter 6 generally, esp. pp. 117-18 and p. 127.

<sup>13</sup>Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), esp. chapters 3 and 5. Despite the seeming complementarity of Shachar's view, she criticizes Kymlicka's distinction between "external and internal aspects of accommodation" for "failing to provide a workable solution in practice for certain real-life situations involving accommodated groups" (18).

on the task of securing the right balance of power between the state, cultural groups, and individuals. Ironically, however, questions of power are largely overlooked by her approach. Shachar's suggestion that structures of joint governance would force both state and groups alike to "abandon their perfectionist and maximalist jurisdictional aspirations, which are so often the source of conflict" (143) is savvy, if optimistic. However, she says little about what might transpire when both the state and a cultural group seek jurisdictional authority over the same institutions or practices. Instead, Shachar proposes that "contested social arenas are internally divisible into 'sub-matters,'" which suggests a neat demarcation of micro-areas of jurisdiction. As she writes, "In cases where both the state and group have a legitimate claim to authority, the specific allocation of power between them depends on the justifications that each provide for its preferred position in governing a specific sub-matter" (128). Surely, however, the precise outcome will depend less on considerations of justice than it will on the relative power of the agents involved? Some wishful thinking and naïve rationalism are evident in Shachar's approach, though both are admittedly hard to avoid (as anyone brave enough to venture solutions to problems of justice and pluralism will surely acknowledge). The problem here is that Shachar seems to expect that the problem of contested domains can be resolved through Kantian-style rational dialogue, without explaining why, or exploring issues of force and capitulation, compliance and non-compliance.

Related to this reluctance to engage issues of power and compliance head-on, Shachar's joint governance approach also sidesteps important normative questions about the justice or injustice of particular practices and arrangements. Granted, such a task is treacherous at the best of times, for it is not clear how, as a pluralist liberal democrat, one can ask about the permissibility of practices in the abstract without re-inscribing pernicious power relations reminiscent of colonial relations. Nevertheless, some of these questions must be asked: Should arranged marriage, including more forceful variants, be permitted in liberal democratic polities? Ought polygamy to be permitted? Should religious schooling that separates girls out and limits their education to preparation for more conventional, restricted roles be allowed? Despite her clear criticisms of family law policies that enable systematic discrimination against women, Shachar all but avoids these hard cases. Instead, she hopes and expects that over time, the arrangements forged by joint governance will transform community practices and expectations. As noted, the quid-pro-quo bargain that underlies the joint governance approach aspires to "transformative accommodation," in that it is "designed to encourage group authorities themselves to reduce discriminatory internal restrictions" (14). But again, such an explanation partly sidesteps the key normative

questions at stake, and gives us little sense of what to do in the hard cases.

Shachar's highly legalistic, prudential approach is in many ways admirable, and displays a healthy skepticism about the propensity of philosophers and political theorists to resolve cultural and political disputes at an ethical or metaethical level. However, some guidance on the normative front is surely necessary, for even in the disputes over jurisdictional authority that Shachar fully expects will arise, citizens need some way of determining just what counts as a *good justification* for choosing whether a group or a state apparatus should control particular institutions or practices.

### Universalism Revisited: Nussbaum's Capabilities Approach

In this regard, Martha Nussbaum's work offers a much farther-reaching and unabashedly normative response to the question, "What social conditions, arrangements, and practices foster gender justice, and which do not?" On Nussbaum's view, social justice requires that our basic human capabilities be fostered and supported. This implicates not only the state, but also structures in civil society, including the family. Practically speaking, Nussbaum's approach requires that all citizens have real access to the resources they need to develop and sustain their basic human capabilities. What is important here is the "idea of a threshold level of each capability, beneath which it is held that truly human functioning is not available to citizens" (5). To this end, she provides a list of core capabilities that contribute significantly to one's capacity to lead a life of well-being. Among these capabilities are those of life; bodily health; bodily integrity; capabilities relating to the senses, imagination, thought, and to emotions and emotional attachments; and capabilities for practical reason, social affiliation, and political engagement. These capabilities in turn require a range of concrete social circumstances and opportunities for their development: for instance, the capability for affiliation is dependent on "having the social bases of self-respect and non-humiliation"; the capability for practical reason implies the need for "protection for the liberty of conscience," and so on (78-80).

Nussbaum stresses that the list of capabilities is "a partial and not a comprehensive conception of the good" (96). It is also "emphatically, a list of separate components," such that a "larger amount" of one good cannot be expected to replace another good (81). The list of capabilities becomes politically meaningful when joined with a social and political commitment to the "principle of each person's capability," by which every individual person's capabilities are to be counted seriously. And indeed, Nussbaum conceives of the capabilities approach as a way to inform and redirect government policy around the world. She writes that

“the approach is recommended as a good idea to politicians in India or any other nation who want to make it the basis of national or local policy,” and that “the primary role for the capabilities account remains that of providing political principles that can underlie national constitutions” (104-5).

For Nussbaum’s claim to the universal applicability of the capabilities approach to hold any water, it must of course show that it is at least potentially compatible with diverse ways of life—that it does not simply reinscribe culturally specific, Western understandings of flourishing and well-being. It is not surprising, then, that this is one of the first claims Nussbaum makes in support of her theory. The capability approach, she argues, “yields a form of universalism that is sensitive to pluralism and cultural difference” (8). It is useful to unpack this claim here. The basis of Nussbaum’s assertion seems to be that the list of capabilities she provides does not in any way constitute a comprehensive conception of the good. Even leaving aside the question of the thick Aristotelianism evident in the list of goods and capabilities, it is noteworthy that she fully expects that the capabilities approach can and should be used to make “comparisons of life equality.” Yet as Nussbaum herself rightly notes, we need a normative conception in order to make such comparisons worthwhile. Circumstances of social diversity surely complicate the task of delineating a culturally neutral conception of the good life. Is such a conception even possible?

One way around this problem is to emphasize, as Nussbaum does, that people can use the basic capabilities to choose very different kinds of lives. Here Nussbaum’s distinction between human capabilities and the *actual functionings* of persons becomes important. Whereas a list of actual *functionings* would be too prescriptive, a list of capabilities is not, Nussbaum argues; this is because capabilities are simply a measure of someone’s capacity to live a life of choice and well-being, however defined. Another answer that Nussbaum gives to the criticisms she anticipates concerning the cultural thickness of the human capabilities model is that a person can choose to ignore a good of the list of central human capabilities, or choose a non-list good, without necessarily risking a substandard life (95). But these qualifications of course only take us so far.

The normative thickness of Nussbaum’s conception of the good comes into sharp relief when she discusses roles and arrangements that bind women in many traditional societies, which are largely incompatible with her list of capabilities. She is admirably upfront about the extent to which capabilities theory and the conception of respect for persons as ends in themselves will require that people “take a stand against some very common ways of treating women—as child-like, as incompetent in matters of property and contract, as mere adjuncts of a family line, as

reproducers and care givers rather than as having their own lives to live” (58). But what of the cases where women seem to embrace these subordinate roles? Here Nussbaum raises, as she must, the possibility that some women, especially those in traditional societies, might not choose or want certain of the basic capabilities enumerated in the list—namely, those that conflict with their customary roles. An interesting but ultimately unsatisfying discussion of the problem of adaptive preferences ensues (in chapter 2), wherein Nussbaum contends that the apparent preferences of women in restrictive cultures are in any case mostly adaptive, and so can change. This discussion calls to mind classical Marxist arguments about the malleability of the working classes’ consciousness and allegiances, which were said to closely reflect and also to *change along with* prevailing social and economic conditions.<sup>14</sup>

The adaptive preferences rationale does provide Nussbaum with a conceptual wedge with which to argue that women’s choices can and likely will change once they have the full range of capabilities and attendant opportunities. This is presumably what leads her to insist that in facing the prospect of women who reject one or more of the basic capabilities or who agree to a practice or custom that permanently jeopardizes a list good, a stringent test must be applied: “What we would need to show is that women who have experienced the full range of the central capabilities choose, with full information and without intimidation ... to deny these capabilities, politically, to all women” (153). This test, seemingly inspired by Kant’s maxim of moral universalizability, would no doubt lead to the prohibition of a wide range of traditional roles and practices in which women find themselves. The implications of such a test on traditional ways of life, and the possibility that such a rule might be perceived by communities as unjust interference, however, is not a matter that Nussbaum much dwells on.

How does Nussbaum manage to paint herself into this corner? Integral to her list are those capabilities that one needs in order to make uncoerced choices about one’s life. These capabilities in turn require the support of political rights and liberties, which reflect a political demand for a certain basic treatment vis-à-vis important capabilities. Rights (or the demand for them) reinforce “the basic role of the spheres of ability” and emphasize “people’s choice and autonomy” (98-101). The emphasis on choice and autonomy, and the reinforcing role of political rights, suggests that nothing short of a fully liberal egalitarian framework for the sexes can supply the requirements of social justice. One of the first examples of a practice that fails the capabilities test is that of restrictive, traditional marriage: insofar as such marriages remove or make impossi-

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<sup>14</sup>Thanks to Roger Gottlieb for this insight.

ble the development of important capabilities, Nussbaum argues that they ought not to be tolerated (94).

Nussbaum's particular conception of the good life is a curious combination of Aristotelian idealism, political liberalism, and Kantian ethics (she emphasizes that treating "each person as an end" becomes a "principle of each person's capability"). It is not an unattractive vision. Common to all three ideals, of course, is the pivotal value of autonomy. Nor is there much to quibble with here: Nussbaum is surely right that people generally prefer more choice and control over the circumstances of their lives than not. The conversations with poor Indian women that Nussbaum invokes to illustrate the role of capabilities in well-being, in which they almost uniformly praise the positive effects of greater choice in their lives, certainly resonate as true. However, the difficulty of Nussbaum's conception is that it doesn't merely assert that choice is an important good; rather, it claims that choice—and the capabilities and opportunities that support choice—is an ultimate good. This claim, if it can be defended at all, will require extensive normative justification, particularly if it is to apply to diverse social groups. But no such justification is forthcoming. Instead, more claims are piled on top of this one. If choice and the capabilities that support it are critical components of a good life, then our social and political arrangements must, as a matter of justice, reflect this. For Nussbaum, this rule holds even if someone seems to collude in their own subordination: in the case of a person who seems to choose to "sign away a major capability in a permanent way," often state intervention is warranted in order "to protect the capability" (93-94).

The determinate nature of Nussbaum's conception of the good life, despite her protests to the contrary, is thus further reinforced by her insistence that one cannot rationally choose to (permanently) give up an important capability. If highly traditional, restrictive marriages—particularly arranged marriages—warrant intervention in the form of social policy, one can imagine a long list of other practices and arrangements that are simply intolerable from the standpoint of core capabilities. An adult African woman who elects to undergo female circumcision after the birth of her children—a real-life example that Bhikhu Parekh has discussed—is thus incomprehensible and insupportable, since to do so is to permanently give up capability central to human flourishing (the capacity for sexual pleasure). Presumably, to elect to become the second or third wife of Muslim man is also to risk compromising one's core capabilities for choice and autonomy, since polygamous marriages frequently render women financially vulnerable and weaken their individual decision-making power.

As it turns out, then, certain choices are simply not choices at all in Nussbaum's capability scheme. Women cannot freely choose to partici-

pate in practices or arrangements that will jeopardize their well-being (and if they do, the state ought to step in to prevent them). On Nussbaum's rationalist view, women will seek to secure their own basic physical and material well-being, and that of their children, before they venture out to seek a wider range of goods or to develop other capabilities. But what of choices that do not fall into line, such as a life of religious devotion, which may include deliberate sacrifice of several of the capabilities Nussbaum cites, and even suffering? A faint echo of the Marxist, materialist conception of self-interest can be heard here, together with a hint of the possibility of false consciousness (wherein women fail to recognize their own rational self-interest).

Given Nussbaum's claim that the capabilities approach is widely, indeed universally, applicable across culturally plural societies, the normative thickness of her list is potentially problematic. If Nussbaum were to offer better justification for her substantive conception of the good life as reflected by the list of capabilities, we could at least grapple with that. Not only is such an argument not forthcoming, however, but the conception of flourishing Nussbaum sets out depends upon a normative *ordering* of choices that she does not acknowledge. Women will (or ought to) first choose to develop and maintain capabilities that enhance their ability to make choices and lead reasonably self-directed lives, according to the theory. They will (or ought to) choose to secure basic capabilities and the circumstances that support these (nutrition, shelter) before they pursue other capabilities and goods (religious fulfillment, say). It is merely assumed that women will make rational choices in the order suggested by the degree of critical importance of the capability in question, as elaborated by Nussbaum. We do not have to look very far to see that this ordering of preferences and choices is simply not to be counted on.

### **How Should Cultural Group Norms and Liberal Principles Be Reconciled?**

While compelling and well intentioned, both Nussbaum's Aristotelian capabilities approach and Shachar's joint governance proposal may strike readers as overly optimistic, and possibly counterfactual. This isn't to say that democratic approaches to resolving tensions between cultural practices and the goal of justice for women are necessarily naïve or impractical. It is to say, however, that neither approach offered in these books holds out an adequate answer to the *practical* dilemmas at hand. Shachar may come closer in that she begins to explore the merits of a more dialogue-based approach to resolving normative and legal tensions between traditional cultural communities and liberal principles. Moreover, her approach takes seriously, as it must, the identity claims and self-

government aspirations (especially in the case of Aboriginal peoples) of the cultures in question. However, to date, no feminist discussions of the issue of “culture versus sex equality” has argued in a systematic way for a dialogical approach sensitive to the claims of cultural groups. Indeed, in response to conflicts between (minority) cultural norms and practices and sex equality, both Nussbaum and Susan Okin argue for the application of principles of justice that do not take much account of the values and normative commitments of members of traditional cultures: Nussbaum argues for an essentially Aristotelian response to gender injustice, and Okin merely re-asserts the primacy of liberal individual rights.<sup>15</sup> Shachar, though more open to discursive or deliberative solutions, retreats to a legalistic remedy for conflicts of culture, leaving unresolved the profound normative questions that are certain to arise.

Despite, or perhaps because of, Shachar’s and Nussbaum’s engaging discussion of the problem of gender and justice in plural societies, we are left with the same broad questions that surely motivated their studies in the first place: What happens when cultural and ethical norms and frameworks collide in democratic societies? Should liberal norms and principles prevail when traditional cultures clash with liberal ones? If so, what normative justification can be offered for this move? If not, what persuasive justifications can we offer for permitting traditional values and arrangements to prevail, unchallenged, in certain communities? These questions inevitably invite us to weigh the merits of both moral universalism and cultural relativism as possible approaches to dilemmas of difference. Yet respect for cultural group differences need not entail a stance of extreme cultural or moral relativism, the sort that would permit grave mistreatment of persons, all in the name of culture; indeed, such a position is surely indefensible in liberal democratic societies. Nor is it clear, however, that the way to reconciling the sometimes competing claims for cultural group recognition and gender equality lies in shoring up a framework of individual rights that may be increasingly at odds with citizens’ deeply held beliefs and norms in culturally plural liberal democratic societies. Perhaps we would do better instead to develop practices of judgment and decision-making that are sensitive to the competing normative claims of different cultural communities, and to adopt truly pluralistic political norms—provided that some can be discovered.

**Monique Deveaux**

Department of Political Science

Williams College

Monique.Deveaux@williams.edu

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<sup>15</sup>Here I refer to the Nussbaum volume under discussion, and to Okin’s “Is Multiculturalism Bad for Women?”



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