Are Patriarchal Cultures Really A Problem? Rethinking Objections From Cultural Viciousness

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ABSTRACT

It seems undeniable that some cultures encourage individuals to act in ways that harm others, and/or to believe that there is nothing wrong when another acts in a way that harms them. And when this is the case it also seems undeniable that it would be better if the scope for such cultures to guide individuals' decision-making were minimized or even eliminated. From these observations a number of people have inferred that groups which exhibit bad cultures ought not to be permitted to hold or exercise group rights. Susan Okin's liberal feminist critique of multiculturalism is one of the most interesting and persuasive examples of this type of argument. In this paper I take a closer look at Okin's critique and ask whether it actually does give one reason to be skeptical about group rights. I conclude that it does not. For although the worries which animate Okin's critique are good ones to have, it is a mistake to think that they are about *group* rights. Moreover, insofar as Okin's concerns are well motivated they are not actually worries about morally problematic cultures but rather worries about groups' internal political and social structures. These worries should not be equated. Ultimately (I argue) it is not only misleading but counterproductive to focus on the viciousness of a group's *culture* as a potential reason for disqualifying it from holding or exercising rights.

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I. INTRODUCTION

It is undeniable that cultures and cultural membership play an important role in organizing individuals' understanding of what is important about themselves, what is important about others, and whether the life they are living is dignified of them as human beings. It also seems undeniable that some cultures—some sets of ideas and repertoires of behaviour—encourage people to act in ways that harm others and to believe that there is nothing wrong when another acts in a way that harms them. When this is the case, it seems obviously better from a moral point of view that the capacity of such cultures to guide individuals' decision-making be minimized or even eliminated altogether. From these observations a number of people have inferred that rights claims by groups that exhibit a bad culture ought to be subject to a very close scrutiny if they are to be accepted at all.

I call arguments of this type *objections from cultural viciousness.* In this paper I focus on a recent influential example of this type of objection: Susan Okin's liberal feminist criticism of cultural rights for groups.[1] I argue two things. First, although the worries which animate Okin's critique are good ones to have, it is a mistake to think that they are specific to *group* rights claims, or that they raise special problems for a proponent of group rights. Second, insofar as Okin's concerns are well motivated, they are not actually worries about *cultures* but worries about the internal political, economic and social structures of a group. These cannot and should not be equated. I argue that it is not only misleading but counterproductive to focus on the viciousness of a group's *culture* because on closer examination it turns out to be other, non-cultural, aspects of groups (such as decision-making mechanisms, economic organizations, or legal regimes) that animate objections from cultural viciousness such as Okin's.

I have chosen to focus on Susan Okin's arguments in the discussion which follows for several reasons. First, the liberal feminist argument raises some very real and very important worries about the impact that recognizing groups as potential bearers and exercisers of rights can have on two particularly vulnerable segments of these groups' populations: women and young girls. I take responding to these worries to be a condition of adequacy for any attempt to defend specific claims to a group right. Second, the specifics of Okin's discussion provide a clear and persuasive encapsulation of the main arguments animating

1. Susan Okin, *Is Multiculturalism Bad for Women?,* BOSTON REV. XXII (5): 25-28; Susan Okin, *Feminism and Multiculturalism: Some Tensions*, ETHICS 108, 661-84 (July 1998).

objections of this type. As such, Okin's objections to groups which exhibit patriarchal cultures also provide a good example of how inattention to the different ways in which people use terms such as "culture" and to the different ways in which the exercise of a right might be unacceptable can lead to confusion over what, exactly, is at issue in a debate. Third, stories about the uncivilized manner in which cultural others treat "their" women and children can have a certain emotional and rhetorical resonance in the political discourse of Western democracies—all of whom are still struggling with the legacy of imperialism and colonialism in their political and institutional history.[2] It is very important to recognize and defuse this resonance so that discussions of policy questions such as how best to integrate recent immigrants, whether and to what extent aboriginal communities should be self-governing, and whether or how to accommodate communal interests in child-raising and the administering of education can proceed on a basis of respect for all participants and trust in their good faith.

Finally, if Okin's analysis is correct, then the tension that many women report between what feminism asks of them and what their participation in a particular political community permits is irreducible and cannot be sustained. Such an outcome is bad news for feminist theory. First, it only confirms the fears of many socially marginalized women that the feminist project is primarily for and about women who are comfortable in and relative to other women empowered by existing social and political structures. Second, it unites feminists and the patriarchal cultures they criticize in the common endeavour of pressing third world women to take sides and declare one of the oppressions they face to be more fundamental or more wrong than any of the others. This is not a position with which feminists ought to be comfortable.[3] Third,

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2. On this *see* UMA NARAYAN, DISLOCATING CULTURE (1997), especially chapters 2 and 3; Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses* in C. MOHANTY, A RUSSO & L. TORRES, EDS, THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM 50 (1991); Lata Mani, *Contentious traditions: the debate over sati in colonial India*, CULTURAL CRITIQUE 7 (1987); Bell Hooks, *Yearning: race, gender and cultural politics* in BETWEEN THE LINES (1990), especially *Representations* and *Third World Diva Girls*. For general worries about appeals to minimum levels of acceptability in Western and liberal theory see Uday S. Mehta, *Liberal Strategies of Exclusion* in TENSIONS OF EMPIRE: COLONIAL CULTURES IN A BOURGEOIS WORLD 59-86 (1997); and Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth Century International Law*, 40 HARV. INT'L. L.J. 1, 1-80 (1999).

3. On this and the previous point *see* AUDRE LORDE, SISTER, OUTSIDER (1984);

given the legacy of imperialism and colonialism mentioned above, it is not at all clear that forcing women to choose between their community and feminism will work out in favor of the latter. For all of these reasons it would be a good thing both for the women who participate in minority communities and for the feminist project if the tension Okin identifies can be defused.

II. CULTURE AS A REASON FOR REJECTING GROUP RIGHTS: THE OBJECTION FROM CULTURAL VICIOUSNESS

A. The Argument

Objections from cultural viciousness are motivated by the following problem: some groups exhibit cultures and cultural practices which are morally bad in that they either lead people to do morally unacceptable and/or harmful things, or have adverse effects on the character and/or self-perception of the people who participate in them. When a group exhibits such a culture, it seems *prima facie* problematic to recognize it as either the holder or the legitimate exerciser of a right. For such recognition seems, if not actively to endorse these beliefs or practices, to at least endorse their being protected and advanced. However, because the holder or exerciser of the right is a group instead of a single person, protecting and advancing its beliefs and practices may well work to the detriment of individual persons *inside* the group, and this can happen regardless of whether the short-changed individuals themselves accept or are happy with the cultural vices in question. Of course, in cases where an *individual person's* holding or exercising a right operates to the detriment of one or more of her parts (allowing, for example, that a person who is committed to a life of asceticism may exercise her right to bodily integrity in way which is detrimental to her skin), then so long as one can be sure the person is acting on adequate information and is in full possession of her senses, there does not seem to be a moral problem since the sub-parts of persons do not have independent moral status. The sub-parts of groups are themselves moral persons, however. Not only do they have independent moral status: many would argue that they have moral precedence. How then can one justify allowing a group whose culture is bad for its sub-parts to hold and exercise rights that will protect

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Maria Lugones & Elizabeth Spelman, *Have We Got a Theory for You! Feminist Theory, Cultural Imperialism and the Demand for 'The Woman's Voice'*, 6 WOMEN'S STUD. INT'L F. 573-82 (1983) and Patricia Williams, *The Cold Hard Game of Equality Staring* in THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR 222 (1991). Susan Okin, *Feminism and Multiculturalism: Some Tensions*, 108 ETHICS 661-84 (July 1998).

and/or promote that culture? This is the objection from cultural viciousness.

Susan Okin's version of this objection focuses on the close relationship between claims to a group right, culture, and the reinforcement of patriarchy (where this last is understood as support for the subjugation of women by men). According to Okin, when a culture is patriarchal there arises an ineliminable tension between caring about equality between persons, and caring about equality between groups. As a proponent of liberalism, Okin sees the choice as a fairly obvious one: actual people should take precedence over groups.

Okin opens her argument by targeting a view she calls "political multiculturalism." As she describes it, political multiculturalism is the view that,

> groups within cultures distinct from the majority culture are not sufficiently protected by the individual rights of their members, and therefore need special *group* rights, in order to protect their distinct cultures, meaning "ways of life," in such settings.[4]

Group rights of this sort—that is, group rights that appeal to the value of culture or of security in the enjoyment of cultural practices or goods—are supposed to be justified by their importance as a precondition of individual well being. [5] The problem, Okin points out, is that in many cases this important pre-condition of well-being for individuals *generally* is at odds with what is required to secure the well-being of individuals who are *female*: the alteration or even destruction of significant portions of their group's way of life. Thus if one believes (with feminists),

> that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equally with men, and that they should have the opportunity to live as fulfilling and as freely chosen lives as men,[6]

then (Okin argues) one ought to be extremely cautious if not downright skeptical about group rights claims which are in any way likely to protect existing cultures or cultural practices.

This tension between (political) multiculturalism and the aspirations of feminism is not easily resolved by restricting multicultural claims to those argued for on "liberal" grounds, Okin claims, since disregard of women's interests is often inherent in the very description of what it is

4. Okin, *supra* note 3, at 661-62.
5. *Id.* at 663.
6. *Id.* at 661.

that makes a group rights claim appealing. Nor, according to Okin, can the problem be remedied by liberal guarantees of exit rights or of freedom of expression. For many of a culture's harmful effects operate to truncate options or interfere with the development of individuals' preferences prior to her having reached a stage at which leaving the community becomes possible. The protective power of a right of exit will in many cases be too little too late: by the time it kicks in much of the damage to an individual woman's prospects in life will have already been done.In some cases, then, the capacity to recognize and choose between options with which individuals' communities of origin furnish them can itself be a source of disempowerment. Thus, prior to accepting that a culture or a group has a right to protect its practices one must ask, "what is the advantage to persons of having identities such as are imparted by *their* culture, in contrast to an identity that can be acquired in a less encompassing and less restrictive setting?"[7] After all, Okin argues, the value to individuals of having access to a stable cultural or group context lies not simply in the fact that their culture or group structures individuals' capacity to act as agents, but rather in the potential for cultures and groups to structure individuals' agency *in a beneficial way*. In short, cultures must be worthy of individuals' attachment in order to claim protection on grounds of their contribution to individual well-being; contributing to individuals' personhood in just any old way will not do.

Okin focuses on cases in which cultures exhibit patriarchy (or at least, a greater degree of patriarchy than is exhibited by the group which hosts them or otherwise has the capacity to impose adherence to its culture rather than theirs). Clearly, however, objections of a similar form could be (and in fact have been) constructed on the basis of any characteristic of a culture which is widely considered to have harmful effects such as intolerance, or an endorsement of hereditary hierarchy.[8] Thus while Okin herself argues from a feminist perspective, her objection from patriarchy is actually a particular instance of the more general objection from cultural viciousness.

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7. *Id.* at 672.

8. *See for example*, Amy Gutmann, *Communitarian Critics of Liberalism*, 14 PHIL. AND PUB. AFF. 308-22 (1985); William Lund, *Communitarian Politics, the Supreme Court, and Privacy: the Continuing Need for Liberal Boundaries*, 16 SOCIAL THEORY AND PRACT. 191-15 (1990); Chandran Kukathas, *Are There Any Cultural Rights?*, 20 POLITICAL THEORY 105-39 (1992); Russell Hardin, *Special Status for Groups*, 6 THE GOOD SOCIETY 12-19 (1996).

B. A Wrinkle: Egalitarian Arguments for Group Rights

Objections from cultural viciousness like Okin's seem on their face to have a great deal of intuitive force. This force draws from three observations: (a) group rights have the effect of protecting cultures in their current form; (b) many cultures in their current form possess one or more characteristics which are harmful to certain members, and (c) many of these harmful characteristics could be made less so under the influence of a culture which does not posses the vicious characteristic (or at least one which does no possess it in the same degree). When these observations are put together, they seem quite obviously to imply that problematic cultures raise serious problems for group rights claims.

Nonetheless these objections face an important problem: only a very narrow range of arguments for group rights claims invoke the importance of preserving a culture of origin for the sake of members' sense of self; and many current political and philosophical advocates of group rights fall outside that narrow range. In particular, many contemporary defenders of culture and cultural rights appeal not to individual members' sense of self but to the requirements of social and political equality, or (in stronger terms) the equal treatment of members of minorities. For example, Will Kymlicka's arguments regarding minority rights are best understood from within an egalitarian rather than 'sense of self' framework, as are the classic arguments of Owen Fiss and Larry May, and many of the policy-oriented arguments for aboriginal self-government.[9] I call these *egalitarian arguments* for group rights claims.

Such egalitarian arguments usually proceed in two stages. First, the history of a group, the common experiences of its members, and the

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9. *See* WILL KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE chs. 8-10 (1989). WILL KYMLICKA, MULTICULTURAL CITIZENSHIP chs. 6-7 (1995); Will Kymlicka, *Ethnic Associations and Democratic Citizenship* in AMY GUTMANN, ED, FREEDOM OF ASSOCIATION 177-213 (1998); Owne Fiss, *Groups and the Equal Protection Clause*, 5 PHILOSOPHY AND PUBLIC AFFAIRS 2, 107-177 (1976); LARRY MAY, THE MORALITY OF GROUPS, chs. 1 & 3 (1987). S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW (1996). Patricia A. Monture-Okanee, *Reclaiming Justice: Aborginal Women and Justice Initiatives in the 1990s* in ROYAL COMMISSION ON ABORIGINAL PEOPLES, ED, ABORIGIANL PEOPLES AND THE JUSTICE SYSTEM REPORT OF THE NATIONAL ROUND TABLE ON ABORIGINAL JUSTICE ISSUES 105-104 (1993). Mary Ellen Turpel, *On the Question of Adapting the Canadian Criminal Justice System for Aboriginal Peoples: Don't Fence Me In*, THE ROYAL COMMISSION ON ABORIGINAL PEOPLES, ED, ABORIGINAL PEOPLES AND THE JUSTICE SYSTEM REPORT OF THE NATIONAL ROUND TABLE ON ABORIGINAL JUSTICE ISSUES 161-83 (1993).

terms on which the group as a whole has been integrated into a larger political, social, or legal community are argued to be such as to make the relationship between members of the group in question and certain institutions distinctive. Second, these distinctive circumstances are argued to be a source of disempowerment or disadvantage for members of the group in their pursuit or development of important *non-cultural* interests, activities, or capacities, such as their ability to command effective political representation, or to rely on the courts for fair and reliable protection. This disadvantage may arise from something specific to the culture of a group (for example, the culture being orally based) but—and this is important—the disadvantage may have no relation at all to what distinguishes the culture or way of life of the group in question. This disadvantage may arise from a history of colonial relations between two groups, for example, or from something distinctive about the dominant group's culture (such as an obsession with skin color). Similarly, what makes it wrong for members of a group to face barriers in their attempts to pursue or develop the interests, activities, or capacities in question will not necessarily be connected to what is distinctive about the group's culture or way of life.

So the egalitarian argument for recognizing a group right is grounded in the distinctiveness of the circumstances in which members of a group find themselves, rather than in the general importance of group membership for personal well-being. What is unjust about the situation of members of the minority community—and so what recognizing a group right is supposed to remedy—is the fact that members of a minority are treated unequally by social, political, or economic institutions in virtue of their group membership. They may, for example, experience pressure to cut themselves off from their community of origin either physically (by removing themselves from their initial geographic location), symbolically (by adopting modes of self-expression, self-presentation or evaluation which are typical of the dominant community), or emotionally (by limiting or denying their contact with family or friends from that community).

This pressure (which members of the dominant group do not experience and so which may constitute unequal treatment in and of itself) may in turn put members of the minority at a disadvantage when they interact with members of the dominant community, or with important social institutions. For example, individuals who refuse to cut themselves off or for whom the severing of ties is not possible are often penalized by diminished access to economic, political, or social resources in comparison with members of their group who do abandon ties. Also, individuals who do cut themselves off will find themselves deprived of

the many informal forms of support (such as assistance with babysitting, contributions of used furniture, or the knowledge that one can turn to family members of childhood friends for help in case of a setback). In brief, members of the minority community often face a choice which members of the dominant community do not face, and they are likely to find themselves disadvantaged regardless of how they choose.[10]

So the argument here is not (or not only) that persons need their cultures and these will disappear if exposed to the pressures of cosmopolitanism. It is rather that in demanding conformity to dominant practices, key social and political institutions require members of the (minority) group to make a choice (for example, between their community of origin and economic, political, or social opportunities) that members of the dominant group do not have to make. This way of describing the problem which group rights are supposed to remedy sidesteps objections from cultural viciousness in the form set out above by simply denying that protecting claimants' (minority) culture from influence by the dominant culture is an essential feature of what justifies a group right. Instead, the essential feature is argued to be the role the group right plays in protecting individual group members from being punished by certain features of a society's structure or organization because of their membership in a minority group.

C. A More Sophisticated Objection

Egalitarian multiculturalism is still vulnerable to objections from cultural viciousness, but only if these are re-cast in a more sophisticated form. In the case of Okin's objection, for example, the argument must be reconstructed by shifting emphasis away from worries about treating cultures as valuable without regard to their contents, and toward worries about the possible *effects* of protecting individuals from being punished for participating in their cultures of origin. In particular, Okin's argument

10. Understood in this way, the claims of political multiculturalism are very similar in structure to various feminist claims about the structure of family, labor, paid employment, and political representation. *See* A.S. Wharton, *Feminism at Work*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 571, 341 (2000); Onora O'Neill, *Justice, Gender and International Boundaries* in M. NUSSBAUM & A. SEN, EDS, THE QUALITY OF LIFE 303-23 (1993); IRIS YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE ch. 4 (1990); CATHERINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989). See also SUSAN OKIN, JUSTICE, GENDER AND THE FAMILY (1989).

must be re-cast to emphasize the possibility that protecting members of a group from being penalized for their cultural participation can sometimes mean protecting them from being penalized for patterns of behaviour that are harmful or disempowering.[11] If objections from cultural viciousness in their first form can be summarized by the phrase "not all cultures are a source of value", objections from cultural viciousness in this more sophisticated form can be summarized by the phrase "maybe some cultures should be more costly for their participants."

Okin herself does not disentangle these different ways of framing her objection. Once this is done, however, a version of her objection from the cultural vice of patriarchy emerges which uses the very basis from which egalitarian multiculturalism is supposed to draw its force (in injustice of social institutions which disadvantage persons on the basis or ascriptive characteristics) to argue against allowing group rights claims in cases of cultural viciousness. Egalitarianism itself (this version of the objection claims) tells against protecting individuals from censure when the cultures or groups to which they adhere are vicious because not everyone benefits from protecting members from suffering a penalty for their participation. Taking measures to protect those who would keep a culture as it is has the effect of elevating the interests, activities, or capacities of those who would be better served under alternative arrangements. So to allow a group to enforce vicious cultural beliefs or practices is to deny those who suffer disadvantages—vis-à-vis other members and/or vis-à-vis persons who are not members of the group—the same concern for their interests, activities, and capacities that is extended to those of other group members who benefit from current

11. Okin, *supra* note 3, at 664-65 & 680-83. There is also a problem with Okin's choice of examples. In particular, several of her examples turn on treating "clash of culture" strategies for criminal defense as similar to and grounded in the same arguments as claims to cultural rights. This is problematic in at least two ways. First, several critics have pointed out that the claims involved in clash of culture criminal defenses treat individualistic rights—that is, rights which individuals claim as individuals and not in virtue of some claim by a group or some body claiming to represent that group. For this phenomenon to reflect badly on group rights, however, it must be connected with a *group* claim—that is, a claim made by a group on behalf of its members (*see* Katha Pollitt, *Whose Culture?*, 5 BOSTON REV. XXII, at 29; Joseph Raz, *Reform of Destroy*, 5 BOSTON REV. XXII, at 38-39.) Second (and more significantly) the clash of culture defense strategies which she cites are most plausibly interpreted as attempting to exploit trends towards relativizing standards of reasonableness and *mens rea* whose origins and development have nothing to do with arguments for multiculturalism or group rights. For analogous non-multicultural cases see Canadian Supreme Court cases R. v. Hill [1986] 1 S.C.R. 313, in which pubescent homophobia was used as a defense against charges of murder and R. v. Daviault [1994] 3 S.C.R. 63, in which drunkenness was successfully used as a defense against rape charges.

arrangements, and for persons who are not members of the group.

For example, refusing to interfere in the educational arrangements of Amish families beyond the eighth grade might be argued to entrench equal respect for parents' interests in determining the kind of education which is necessary for and most suited to the preparation of their children for adult life. But this entrenchment comes at the price of an inequality which is easily overlooked: an inequality in the attention that is paid to the interests of Amish and non-Amish children in gaining skills or other social capital that reduce their vulnerability to parental pressure later in life. In refusing to interfere with educational arrangements which would otherwise be judged unacceptable (the sophisticated version of Okin's objection argues) agents of the state show a reduced level of concern for the interests of *Amish* children than they show for the interests of children who are not Amish. In short, non-interference maintains equality across Amish and non-Amish in the exercise of parental rights at the price of entrenching inequality in the concern shown for Amish versus non-Amish children.

The sophisticated objection thus not only engages directly with the egalitarian argument on which group rights claims are most often based, it suggests that the egalitarian argument's own commitments ought to dissuade its proponents from endorsing group rights in the majority of cases. Nonetheless, an advocate of group rights is left considerable room to maneuver. For it is not clear what, precisely, one ought to conclude from the observations that group rights may, if upheld under certain circumstances, shield unjust or otherwise unacceptable forms of behaviour from interference. After all, this does not distinguish such rights from their more individualistic siblings. For example, it has long been recognized that the (individualistic) right to private property can, in certain institutional or philosophical forms, be invoked to protect deeply immoral or otherwise harmful behaviours, and many critics of rights as a moral framework, from Jeremy Bentham forward, have argued that this paradoxical protecting of unethical behaviour is a feature of rights generally.[12] So although the (more sophisticated) objection from

12. *See* Jeremy Bentham, *Anarchical Fallacies, being and examination of the Declaration of Rights issued during the French Revolution* in COLLECTED WORKS OF JEREMY BENTHAM; Edmund Burke, *Reflections on the Revolution in France* and Edmund Burke, *First Letter on a Regicide Peace*, in J.G. A. POCOCK, ED. COLLECTED WORKS OF EDMUND BURKE (1987); MICHAEL SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982); BENJAMIN BARBER, STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE (1984); Carlos S. Nino, *The Communitarian Challenge to Liberal Rights*, LAW AND

cultural viciousness does seem to raise a worry about the acceptability of group rights in certain contexts, this worry neither distinguishes *group* rights claims as a distinct category of rights claims, nor establishes such rights claims as particularly worrisome or prone to dismissal *in virtue* of their groupness.

Nor is there anything to indicate, either in the objection itself or the idea of a right's being that of a group rather than of an individual, that proponents of some form of group right cannot resort to the same strategy that is employed by proponents of various individualized rights such as the right to private property. A friend of group rights could, for example, take her cue from the friend of individualized rights and qualify or otherwise limit the scope or circumstances of exercise permitted to claimants of the right in question in such a way as to obviate the possibility of its being invoked to protect unacceptable actions or activities. One way in which the scope or exercise of a group right might be qualified is by imposing restrictions on the types of groups that may be exercisers (one might, for example, argue for a procedure or set of criteria which, when applied to potential claimants of a group right, will disqualify bad cultures (cultures whose proponents would exercise the right in an immoral or unjust way) from recognition.[13] A second way in which the scope or exercise of a group right might be qualified is by imposing restrictions on the type of right which may be awarded. One might, for example argue for some form of distinction between the types of powers or privileges which a group right may confer and then (in some principled way) rule out the possibility of awarding powers or privileges which could be used to harm the interests of a group's own members.

At most, then, the sophisticated objection from cultural viciousness establishes the (fairly modest) claim that candidacy for and exercise of a group right may have to be restricted by consideration of the effects which particular claimants' internal culture may have on the interests of particular members. This qualification of the objection is in itself significant. First, it makes worries about group rights look quite similar to worries about individualistic rights which are familiar. Second, it makes worries about cultural vices such as patriarchy or illiberalism not

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PHILOSOPHY 8, 37-52 (1989).

13. There is, in fact, some reason to think that Okin herself believes that this restriction of claimants, and not an outright rejection of group rights claims, is the lesson to draw from her discussion, although whether she would accept such a response in all cases or in only those involving oppressed groups is left unclear. *See* Okin, *supra* note 3, at 683-84; *See also*, Susan Okin, *Is Multiculturalism Bad for Women?*, 5 BOSTON REV. XXII, at 28.

so much objections to group rights as possible qualifications on potential right-holders. In the remainder of this paper I argue that objections from cultural viciousness should be qualified even beyond this. For, I argue, insofar as the worries they raise are well-motivated they are not in fact worries about cultures at all. Rather, they are worries about internal structures which are not, and should not be treated as, the same thing. To focus on culture is thus to follow a red herring. Once again, Okin's argument can be used to illustrate.

III. Is Culture Really the Problem? Some Reasons for Doubt

If I am right, the worries which Okin raises are neither unique to group rights nor so damaging to them as to suggest the kind of tension between multiculturalism and feminism which her argument first suggests. At most Okin's argument establishes that candidacy for and exercise of a group right may have to be restricted by consideration of the effects which particular claimants' internal culture has on the standing and/or interests of its members. In the remaining sections of this paper I argue that there are reasons to qualify even this modest conclusion, however. For the way objections from cultural viciousness like Okin's portray the relationship between cultures and the various morally unacceptable circumstances (such as "domination by men") to which individual members of a group may be subject is deeply problematic. I argue that the *cultures* that can sensibly be attributed to groups of people (in contrast to such group's internal political, economic, and legal organization or the external social and legal environment in which they operate) cannot easily be shown to impact particular members' life prospects in the manner necessary for an objection from cultural viciousness to go through. I conclude that one ought to be very wary of any objection to a particular group being permitted to hold or exercise a group right that departs from claims about the viciousness of that group's culture. Ultimately, discussions of group rights would do better to leave culture out of it, and to focus on the real concern, which is with potential claimants' internal structures.

In arguing that discussions of group rights ought to leave culture out of it I will not claim that cultures cannot be legitimately described as vicious. Nor do I claim that the inherent moral value of cultural beliefs and practices cannot or should not be evaluated. Rather, I deny that the viciousness or otherwise of a group's culture is a relevant or useful grounds on which to decide whether the people within it and/or their

representatives should be permitted to hold or exercise group rights.

A. A Closer Look at Cultural Viciousness

The success of objections form cultural viciousness turns on the persuasiveness of two claims:

1. Cultures sometimes display vicious characteristics, such as patriarchy;
2. When cultures display vicious characteristics (such as patriarchy), they have a deleterious impact on the abilities of some participants to pursue or protect important interests.

An important (but often unexamined) issue in these objections is thus whether cultures are in fact likely to impact participants' social circumstances in the way these objections suggest. In Okin's argument, for example, an obvious (but often ignored) question is whether one can reasonably attribute the social circumstances that she identifies as patriarchy to the characteristics of a *culture* in such a way that it makes sense to use the degree to which its culture exhibits a vicious characteristic as a reason for disqualifying a group (or its members) from holding or exercising a group right. Is the viciousness of a group's *culture* sensible grounds on which to judge its candidacy for a group right?

To many, the answer to this question seems quite obviously to be "yes": cultures can, in virtue of their exhibiting some vicious characteristic, produce social circumstances that should be avoided and can be at least undermined by undermining the culture. The obviousness of this answer stems from a certain ambiguity regarding what, precisely, it means to say of a *culture* that it displays a *vice* such as patriarchy. For while it is true there is an understanding of "culture" and an understanding of "patriarchal" that allows one to make sense of cultures *being* patriarchal, these are not the understandings of "patriarchal" and "culture" that the claim "when cultures are patriarchal they produce unacceptable social circumstances" requires.

The problem is as follows. In order for a culture's being patriarchal to be a source of unacceptable social effects, one must understand the term "patriarchal" in such a way as to rule out the possibility that cultures in any but a very broad sense can qualify. Yet a very broad understanding of culture turns the complaint which objections from cultural viciousness offer into the relatively uninteresting claim that when groups display features which disqualify them from rights they should be so disqualified. To see this, consider the example of an objection from cultural viciousness

that we have been using, Susan Okin's objection from patriarchy.

For Okin, to say a culture is patriarchal is to say that the people who are members of the group which exhibits it have "elaborate rituals, matrimonial practices, and other cultural practices (as well as systems of property ownership and control of resources) aimed at bringing women's sexuality and reproductive capabilities under the control of men."[14] The degree of patriarchy in a culture is thus a function of the extent to which it "endorses and facilitates the control of men over women,"[15] or has "as one of [its] principal aims the control of women by men."[16] On this understanding, there are actually three distinct ways in which a culture may be patriarchal: in its *motivation*, in its *attitudes*, or in the social circumstances it produces (its social product). When certain characteristics practices or beliefs can be shown to have been instituted or promoted with the intention, or goal, of producing the domination of women by men, a culture is patriarchal in motivation. When characteristic practices or beliefs can be shown to express convictions of the rightness, desirability, or acceptability of subordinating women to men, a culture is patriarchal in its attitudes. And when certain practices or beliefs can be shown to have as a consequence the domination of women by men, a culture is patriarchal in its social product.

Okin does not distinguish these three ways of being patriarchal. Obviously, however, being patriarchal in only one of these ways will not, by itself, ensure that a culture—or any system of sociological, economic, or political organization for that matter—is patriarchal in either of the other senses. For that a measure or custom is *intended* to bring about a certain state of affairs does not necessarily imply that it succeeds in that regard; just as the fact that a measure was not intended or designed to harm women specifically or to subject them to the control of men does not guarantee that a social structure will not be produced which does just that. For example, the provisions in ancient Roman law allowing fathers the right to kill their daughters as a form of punishment ought not (properly speaking) to be understood as patriarchal in either motivation or attitude. Inasmuch as paternal rights to punish children by death extended to sons as much as to daughters, the practice was not properly speaking an example of a measure designed to facilitate the control of *women* by men, so much as it was designed to facilitate the

14. Okin, *supra* note 3, at 669.
15. Okin, *supra* note 13, at 25.
16. Okin, *supra* note 3, at 667.

control of *everybody*- including some men—by (a few) *older men.*

Nonetheless, the actual effect of Roman paternal rights was such that many, if not most, women suffered disproportionately relative to their brothers, for they often found themselves with fewer resources for diminishing the impact of paternal control. The *social product* of provisions extending rights of life and death over children to male heads of household were thus especially disempowering for women, and they made *women in particular* vulnerable to harm and interference with their interests and lives. It is important to recognize, however, that this unequal situation was not produced by the fact that paternal rights reflected patriarchal *motives* or *attitudes*, but rather by the fact that the rights *interacted* with other features of the social and legal context such as patrilocality and sex-based restrictions on the inheritance of family authority.[17]

Of course, that unacceptable social circumstances can be produced in the absence of a practice expressing or reflecting patriarchal motivations and attitudes merely shows that having a culture with patriarchal motivations—that having a culture which *aims at* or *approves* of the subordination of women—is not a necessary condition for a group's institutions or practices to produce unacceptable social circumstances. The key question, however, is whether a group having a culture which is patriarchal only in attitude or motivation (and not in effect) may be sufficient for its practices and institutions to produces unacceptable social circumstances. That, a group's culture need not to be attitudinally or motivationally patriarchal in order to be a source of worry does not diminish the possibility that either or both of these conditions could be a source of worry on its own.

There are good reasons to think that neither attitudinal not motivational patriarchy is sufficient on its own for a set of beliefs or practices to produce circumstances of the sort that objections from cultural viciousness need. For example, laws exist in many U.S. jurisdictions prohibiting sexual relations with and between minors. Such laws are often colloquially understood as criminalizing sexual relations with a person who has not consented because they are incapable, but in fact this is a misinterpretation.

17. Thus, because brides took up residences in the paternal home of the groom they became subject to the authority of father-*in-law* while their married brothers remained subject to authority of fathers. Moreover, the possibility that a son might one day inherit control of the family made sons an attractive object of patronage and protection for non-family members. On this *see* Paul Veyne, *The Roman Empire* in P. VEYNE, ED, A HISTORY OF PRIVATE LIFE, VOLUME I 21–50 (1987); PETER BROWN, THE BODY AND SOCIETY: MEN, WOMEN, AND SEXUAL RENUNCIATION OF EARLY CHRISTIANITY (1988).

The behaviour which the statutes in question criminalize is not performing sexual acts upon a person who has not consented but performing sexual acts with a person who is off-limits *regardless* of her consent.[18] The initial intent of these criminal provisions was to protect and reinforce the rights of male heads of households over the sexuality of unmarried female relatives, especially daughters. This aim (although it has been rephrased as a right of "parents" and supplemented by the concerns for the rights of "society" and the [social] interest of young girls in not becoming pregnant) can still be perceived in the common practice of treating transgressions of the statutes involving young females more seriously than those involving young males, and of exempting an individual from criminal prosecution when the minor is his spouse.[19] Moreover, the wording of the laws themselves often target the sexuality of females rather than males as the primary object of regulation. In the state of Arizona's statute, for example, sexualized contact is defined first and foremost in terms of female anatomy, and the range of contact rules for females is much more wide-ranging than is that ruled out for males.[20] Statutes which criminalize sexual relations with minors are thus quite unambiguously "patriarchal" in both their motivation and attitude: the statutes were initially intended to protect and reinforce the control of an unmarried woman's sexuality by her father or other male guardian, and continue to express the belief that female sexuality requires closer and more extensive regulation than does that of males.

If the presence of patriarchal attitude, motivations, or attitudes and motivations were by themselves sufficient reason for objecting to a set of beliefs or practices as producing unacceptable social circumstances, one would expect the various statutes and jurisprudence which criminalize

18. For example, in Arizona an offender can be charged with both sexual conduct with a minor and sexual assault; the two are considered to be separate offenses, Gary v. Lewis, 881 F.2d 821 (Ariz. 1989). And Although the consent of a minor is not relevant to determining guilt or innocence in such cases, it (consent) can be taken into consideration in sentencing, State v. Bartlett, 506 U.S. 992 (Ariz. 1992); in evaluating the liability of a male minor for child support, Schierbeck v. Minor (Colo. 1961), In Re Paternity of J.L.H., 149 Wis.2d 349 (Wis. 1989), J.S. v. Williams, 208 Ill.App.3d 602 (Ill. 1990), and State ex rel. Hermesmann v. Sayer, 252 Kan. 646 (Kan. 1993); and in assessing whether or not the nearness in age of the parties to a sexual act constitutes a defence ARIZ. CRIM. CODE 13-1407-F.

19. See John Greenbaum, *Holding a Male Statutory Rape Victim Liable for Child Support*, DICKINSON L. REV. 549–56 (1994).

20. ARIZONA CRIMINAL CODE § 13-1404, 1405.

sexual relations with teens to be unequivocally rejected by activists concerned to eliminate disadvantages to female persons. After all, both attitudinal and motivational forms of patriarchy are not only present but (it would seem) reinforced and perpetuated through the statutes in question. Interestingly, however, some of the most vigorous defenders of the statutes and jurisprudence criminalizing teen sex in recent years have come from *feminist* theorists- theorists who are committed to *eradicating* measures which disadvantages and/or subordinate women.[21] In the eyes of these theorists, neither the motivation of these laws nor the attitude toward female sexuality which they express are sufficient to show that the laws are patriarchal in a way which disadvantages women. Instead they argue that against the background of various social and political disadvantages, treating the sexuality of young women as different in kind from that of young boys is the only way to avoid producing a state of affairs which subordinates the needs of young women to those young men.

Moreover, many of the feminist analyses that disagree with this line of argument—that argue that statutes criminalizing sexual activity by minors ought to be rejected as a source of disadvantage for women—tend to point to the disadvantages for women which *that type of governance mechanism* (viz., a governance mechanism which is likely to be highly discretionary in its application, or whose justification includes an appeal to public interest) tends to effect, rather than pointing to the patriarchal attitude or (historical) motivation such statutes express.[22] This seems to indicate that ultimately, it is patriarchy of *social product* rather than patriarchy of attitude or motivation which motivates worries about disadvantage.[23] At the very least, this example demonstrates that

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21. Among the arguments offered for this view are that in the context of the other social, legal and cultural construction and norms applied to teenage girls (most notably the concomitant sexualization and demonization of teenaged girls in popular culture) make it the case that in the absence of a legal framework which makes their attitudes or character irrelevant to legal liability, it is extremely difficult for young women to command respect for or attention to their right to say "no" *See for example* Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 3, 387–432 (1984).

22. *See* for example Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism,* 14 WOMEN'S RTS. L. REV. 2-3, 160 (1982); Susan Andre-Clark, "Whither Statutory Rape Laws?", S. CAL. L. REV. 65, 1933-1992; Elizabeth Hollenberg, *The criminalization of teenage sex: statutory rape and the politics of teenage motehrhood,* 10 STAN. L. & POL'Y REV. 267-86 (1999).

23. This tension between attending to the way policy regimes symbolically construct female experience and attending to the ways in which policy regimes construct women's actual experience mirrors a tension in feminist ethics which Samantha Brennan notes between accommodating women's experience without undermining the normative force of feminist critiques. *See* Samantha Brennan, *Recent Work in Feminist Ethics,* 109

there can be a considerable amount of tension between judgements about a practice's acceptability based on the motivations or attitudes it reflects, and judgments about acceptability based on the social circumstances that a practice produces.

B. A Closer Look at the Objection

But perhaps it is misleading to present attitudes, motivations, and social circumstances as distinct grounds for objecting to a culture or cultural practice. For policy measures or practices which reflect patriarchal (or hierarchical or illiberal) motivations and/or attitudes are not entirely inert with respect to social circumstances. Social circumstances often have a powerful effect on the manner in which attitudes and motives develop. Attitudes and motives can be described as producing certain social circumstances even when those circumstances do not immediately or directly translate into political, economic, or social disadvantage. And persistent disadvantages in political, social, or economic activity or interests can be described as reflecting certain attitudes or motivations even though such an expression was neither intended nor conscious.

A more useful contrast might then be thought to be between objections to a group's holding or exercising rights on the grounds that its culture is *symbolically* vicious (for example, that it produces or reinforces inequalities in the symbolic standing of participants vis-à-vis non-members and/or vis-à-vis one another), and objections to a group's holding or exercising rights on the grounds that its culture is *concretely* or *tangibly* vicious (that it, for example, produces or reinforces inequalities in the resources available to some of a group's members in contrast to those available to other members or to similarly placed persons outside of the group).

Sophisticated objections from cultural viciousness typically fail to differentiate between these two sources of complaint: unacceptable effects on various participants' symbolic treatment, versus unacceptable effects on various participants' concrete treatment or experiences. This tendency is completely understandable. These two types of viciousness often appear hand in hand, and so in many cases distinguishing between these two kinds of viciousness as grounds for judging a practice to be unacceptable would make no difference to one's conclusions. As the case of statutes criminalizing sexual activity by minors has already indicated,

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ETHICS 858-93 (1999).

however, working towards equality of standing may not always contribute to equality in concrete standing. Moreover, failure to distinguish between judgments of unacceptability stemming from these different types of inequality can lead to a mistaken diagnosis regarding what remedies are required in problematic policy regimes, and what is at stake in cases where one must choose between them.

To see this consider one of Okin's own examples of a group rights claim which privileges abstract equality across members of cultural groups as more important than concrete equality in life chances between men and women: the decision of French immigration authorities to permit immigrants from countries in which polygamy is legal to bring more than one spouse into France under that country's reunification of family provisions. Okin's discussion of this example suggests two different grounds for objection to French policy in this area: (a) permitting individuals to bring more than one spouse into France with them has the effect of entrenching and facilitating the subordination of the spouses' interests to that of her husband; and (b) permitting individuals to bring more than one spouse into France with them has the effect of entrenching and facilitating inequality in the legal privileges men and women may claim. If (b) is taken as sufficient grounds for objection whether or not it leads to (a), the objection appeals to the effects of French policy on the abstract or symbolic status of women—on an interest individuals have *qua* woman. If (b) can only be grounds for an objection to French policy because one can expect it to lead to (a), the objection appeals to the policy's effects for particular women in their concrete dealings with others—on an interest individuals have *qua* the persons they are in their day-to-day lives.

As Okin presents it, (a) and (b) pull in the same direction. However, the plausibility of this claim depends heavily on the fact that as it stands, French authorities' acceptance of polygamy is importantly incomplete. As Okin describes it, French policy permits multiple spouses to enter the country as dependent family members, but allows only one spouse to claim the legal and social benefits which legal spouses may normally claim. Thus, although French authorities have been willing to accept polygamous marriages for the purpose of issuing entry visas, they have stopped well short of according such unions full legal status. In these circumstances of incomplete acceptance—more than one spouse is recognized only for purposes of entry—adverse effects on particular women's concrete standing (on their ability to interact with their spouses as equals and to claim the same standard of life as do other women), and adverse effects on the symbolic standing of women-in-the-abstract (on the ability of women qua women to claim the same legal privileges as

may be claimed by men) coincide, and so lead to the same conclusion about whether polygamous marriages should be recognized.

If French authorities were to extend full legal status within France to all spouses within a polygamous household (rather than to just one) the tendency of these considerations to pull in the same direction could no longer be expected to coincide so neatly. This is especially the case if one considers the possibility that refusing entry to second or third spouses might encourage would-be immigrants to abandon all but one spouse, misrepresent the nature of the relationship between themselves and spouses, transfer custody over their children from second or third marriages to the spouse who is permitted entry, etc. In fact, full consideration of the various scenarios under which a women whose husband has more than one wife might be permitted or denied entry makes not only conceivable but quite likely that the policy dictated by concerns of type (b)—concerns for the *symbolic* status of women—will not be the same as the policy dictated by concerns of type (a)—concerns for the interests and equality of actual women.

Now, this is not meant to suggest that considerations of type (b)—considerations of how institutional arrangements affect the symbolic standing of persons—have no place in a theory of what justice requires of institutions. It does, however, suggest that objections from cultural viciousness cannot use the mere *possibility* of conflict between symbolic and concrete equality to dismiss a group rights claim. For that an institutional arrangement which includes group rights might have negative implications for the standing of individuals qua women (or qua homosexuals, commoners, or religious dissidents) is not *in itself* enough to show: (i) that these negative implications will produce unacceptable inequalities in the concrete standing of most female individuals; or (ii) that these negative implications for persons *qua* women (or *qua* other abstract description) will be less acceptable than the negative implications for them *qua* some other description of them under an institutional arrangement that does not include group rights. After all, appealing to the implications that a group right will have for individuals' standing *qua* women—using, in effect, the implications for female persons as a group—can commit the same offense against individuals' concrete equality which gets objections from cultural viciousness going in the first place. Arguing against a group right on the grounds that it will be bad for women can also be susceptible to the charge that it justifies a measure which has negative implications for some women (e.g. women denied entry with their spouse) to interact as equals for the sake of

achieving a result which, although theoretically enjoyed by all women will be of only limited use to many.

So if they are to retain their initial force, objections from cultural viciousness must focus on cultures which produce *concretely* unacceptable social circumstances—social circumstances which are unacceptable because they produce or reinforce inequalities in the concrete standing of participants vis-à-vis one another and/or vis-à-vis non-members. Otherwise, their criticism of group rights claims would seem to rest on a disagreement about the *symbolic* value of establishing (abstract) equality between members of different cultures versus that of establishing (abstract) equality between men and women (or between heterosexuals and homosexuals, rich and poor, etc). Such a criticism would still be one that multicultural or group rights would have to answer, but it would not have anything like the bite which objections from cultural viciousness initially claim, and it would be vulnerable to arguments from concrete equality. For the remainder of the discussion, then, I will focus on the worries that are supposed to arise with cultures which produce concretely unacceptable social arrangements.

C. Culture Broadly vs. Narrowly Understood

Objections from cultural viciousness argue that a group right should not be recognized when it is advanced by or on behalf of collections of persons who exhibit vicious cultures because in these cases it will be impossible in effect to avoid penalizing *some* of the participants in such a culture for belonging to that group. For when the culture is vicious either institutions will maintain, reinforce, or impose a penalty on the internally disadvantaged to avoid imposing external penalties on the internally privileged, or institutions will externally penalize the internally privileged for the sake of those participants who are internally disadvantaged.

The persuasiveness of this argument turns first, on whether the particular vice objected to can in fact be demonstrated to have the effect it is claimed to have; and second, on whether it is possible to protect individuals form being penalized for differences in cultural practices without simultaneously protecting the ethically unacceptable effect. Of particular interest is whether *cultures* can in fact be shown to have an effect on the circumstances in which persons live such that it might make sense to use the characteristics a group's culture exhibits as grounds on which to decide whether those who participate in it may be trusted with the exercise of a group right. If this cannot be shown then the second condition of persuasiveness—the ability to demonstrate that protecting individuals from being penalized for differences in cultural

practices also protects the unwanted effect—will be undermined. For if culture only has the relevant effects in combination with other circumstances and/or social, economic, and political features, then an advocate of group rights claims can cut the link between failing to disqualify groups and being treated unequally in virtue of their culture. Remember: the important question here is not whether one may rightly describe a culture as vicious under some circumstances; it is whether one should base one's decision about whether a group should be allowed to hold or exercise a right on the viciousness (or otherwise) of its culture.

The problem for objections from cultural viciousness in this regard is that a group's culture can only be expected to produce concretely, as opposed to symbolically, unacceptable social circumstances if one understands the term "culture" very broadly. Culture must be defined, for example, as Will Kymlicka does in MULTICULTURAL CITIZENSHIP: as "an inter-generational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language or history"[24], including institutions, economic, and social patterns, systems of land tenure, and so on. This is so because a more narrow understanding of culture—as, for example, shared beliefs, shared values, a shared language, or common behavioural repertoire—cannot secure the necessary causal link between a group's being likely to produce an unacceptable set of social circumstances (such as inequality in the concrete standing of men and women) and its exhibiting certain cultural characteristics (such as an attitudinally patriarchal belief system or a motivationally patriarchal repertoire of behaviours).

To see this, consider the case of cultures which are more patriarchal than the Western liberal society which hosts them. According to Okin, Western liberal societies may be described as less patriarchal than the groups with which she is concerned because: (a) women are "legally guaranteed many of the same freedoms and opportunities as men"; and (b) most families, with the exception of some religious fundamentalists, do not communicate to their daughters that they are of less value than boys, that their lives are to be confined to domesticity and service to men and children, and that the only positive value of their sexuality is that it be confined to marriage, the service of men and reproductive ends.[25]

24. WILL KYMLICKA, MULTICULTURAL CITIZENSHIP 18 (1995).
25. OKIN, *supra* note 1, at 27.

The extent to which women are formally guaranteed equal treatment; and the message which most families communicate to young girls in their daily practices are thus two initial indicators by which one may judge the degree of patriarchy to which a particular set of women are subject. And so, the *absence* of formal guarantees of equality and the *presence* of familial practices which communicate belittling messages will be two things which mark out a group's practices as (unacceptably) patriarchal.

There are, however, several problems with ascribing either of these characteristics to a culture narrowly understood. First, the formal guarantees of equal treatment which any particular group of women may claim is a feature of the *legal system* under which they reside; and this legal system will have been influenced in a variety of ways not only by a variety of cultures, but also by a variety of sociological and historical factors. Thus one cannot necessarily infer from the fact that women within a certain *legal jurisdiction* are denied formal equality that any or all of the cultures narrowly understood which that jurisdiction includes are more patriarchal than the cultures present in jurisdictions which do furnish formal guarantees.

Second, the formal status which a legal system confers can be a very poor indicator of the rights and status that women may *effectively* claim. This is most commonly noted as a discrepancy between a great degree of formal liberty in contrast to an actual experience of great constraint or powerlessness; but, as the earlier example of statutory rape legislation indicates, it can work the other way as well. In this regard it is important to note the important role of non-gender-based political and social structures in dictating not only which of the laws establishing rights to bodily integrity, personal property, and equality before the law are enforced, but whether any of them are enforced with regularity or if they are enforced for whose benefit and to what degree.

In this regard, it is important to recall the difference between membership in a culture and residence within the borders of a state. States and even political sub-divisions of states have identifiable jurisdictions within which legal structures specific to that state are applied. The manner of such laws' application often ends up structuring the expectations and behaviour of a state's residents in specific ways. As a resident of the state of Arizona, for example, I have experienced a significantly lower level of traffic law enforcement than I experienced as a resident of the province of Ontario. As a result, my expectations regarding the distribution of traffic police and their propensity to ticket me for speeding have changed significantly. In effect, I have developed the expectation that whether I adhere to the posted speed limit on city

streets will be left almost entirely to my own discretion—an expectation which, in turn has influenced my attitude toward the legal requirement in this regard. This kind of interaction between expectations of enforcement and attitudes may very well lead to the emergence of a particular kind of culture among those who reside within a jurisdiction. But it may equally well contradict or undermine the culture of those who reside within a jurisdiction.

For these reasons it is very important to distinguish the institutional and legal regimes that govern a group of people (the group's culture broadly understood) from their culture on a more narrow understanding. On the understanding of culture that I have called *broad*, to refer to a person's culture is to pick out the complex of legal, economic and social institutions to which she is accustomed. Thus, for example, one might describe the experience of someone who moves to Arizona from the northeast United States as experiencing "culture shock" as a result of having to adjust to differences in wage scales, the level of public services, population density and legal institutions. As I noted earlier, this is the definition of culture which Will Kymlicka uses in MULTICULTURAL CITIZENSHIP: "an inter-generational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language or history."[26] Broadly understood in this way, one can make perfect sense of Okin including the legal status of women in her description of what is good about Western liberal culture's treatment of women; for the formal guarantees accorded to women are part of the larger complex of social, legal and political institutions to which a person might point when asked to out something distinctive of "Western liberal culture."

In most cases, a cultural minority living within the borders of a Western democracy will not have a distinct legal system whose formal guarantees may be compared against the host state's in order to yield a judgment regarding their relative degree of patriarchy. Presumably, then, the worry of critics such as Okin is that groups whose cultures may be described as patriarchal on grounds *other* than the absence of formal guarantees of equality can be expected to *establish* legal systems which do not contain such guarantees if group rights claims are permitted them. Now some group rights claims do include an entitlement to establish a separate legal system; and in these cases comparisons of the degree of patriarchy to which female members will be subject can be made once

26. KYMLICKA, *supra* note 24, at 18.

the proposed replacement system is in place. Note, however, that to use such comparisons as a basis for deciding whether a group should be disqualified as a group rights claimant one would have to judge not whether the group's culture is currently more patriarchal than that of its host but rather whether, given what one knows about the group's existing practices, attitudes, and *internal politics* one can confidently *predict* a greater degree of patriarchy should its group rights claim be accepted. Of course this only makes sense as a worry about *culture* if the prediction reflects something that is already present, is *not* a set of decision-making procedures, legal processes, or legally binding expectations, and can be expected to carry on to a situation in which the group holds or exercises a group right. The prediction cannot be based on decision-making procedures, legal processes or legally binding expectations because these are what the vicious culture is supposed to *produce* if the group is permitted to hold and/or exercise rights as a group. It must carry over to the situation in which the group holds or exercises rights because the prediction is based on characteristics that the group displays as a whole and not on personal qualities displayed by particular members. The claim, remember, is that a group should not be permitted rights because of something problematic about its *culture*, not because there is something problematic about particular *members* who are likely to be placed in a position of power. This brings one back to culture narrowly understood.

On the understanding of culture that I have called *narrow*, the institutional and legal system to which a person is accustomed is distinct from the beliefs, attitudes, and preferred modes of action that make up her culture. For example, residents of Quebec have the same constitutional right to litigate government action using the Canadian Charter of Rights and Freedoms as do other citizens of Canada, but it has been suggested by many commentators that such resort by individuals is alien to Quebecois culture in a way that is not true for other Canadians.[27] In this claim, culture is clearly being used to pick out something much narrower than the system of social, legal, and political institutions which govern the expectations of the province's residents regarding social and economic mobility and the enforcement of traffic laws. Comparing the degree of friendliness to vices such as patriarchy that can be attributed to cultures on this narrow understanding presents a considerable challenge. But one promising point of departure for such "vice-friendliness" comparisons might be Okin's second criterion of patriarchy: the messages

27. *See e.g.*, David Schneiderman, *Dual(ling) Characters The Harmonics of Rights in Canada and Quebec*, 24 OTTAWA L. REV. 1, 235-64 (1992).

communicated by most families or most persons in their daily practices. On close examination, however, this criterion only illustrates the difficulty of trying to judge the degree to which a culture narrowly understood is likely to produce vicious institutions or even practices.

First, that a particular behaviour or set of behaviours is exhibited by many persons within a society is not by itself evidence of a set of cultural beliefs or practices endorsing that practice. For example, if statistics indicated that a much greater number of persons in Sweden committed suicide every year than did so in Spain, this would not license the inference that Sweden had a more "suicidal" culture. For the higher incidence could be explained by any number of factors having nothing to do with cultural beliefs endorsing or accepting suicide (for example, a more frequent confluence of precipitating factors such as reduced sunlight and isolation, individuals having easier access to methods, or a greater competence with standard instruments for killing oneself). Thus the mere fact that there is a statistically higher occurrence of a behaviour among the members of a group does not, by itself, show that the behaviour follows from or is produced by the tradition, belief system or practices which distinguish that group's culture.

Moreover, which actors' beliefs are even potentially reflective of the culture will depend crucially on what one already takes that culture's characteristic commitments to be. Consider, for example, Okin's decision to exclude fundamental Christians from her description of predominant family practice in Western liberal societies. That decision can only make sense if one has already decided that the core characteristics of Western liberal societies include family practices which are favorable to female equality and that those who do not fit this model (i.e., Christian fundamentalists) are *different*, *deviant*, just plain *mistaken* in what they believe that culture to be. Who one takes as the typical adherent of a culture and what it is about them that leads one to this judgment are thus crucial components in attempts to judge whether problematic behaviour reflects beliefs and priorities specific to an individual or whether it reflects an individual's cultural inheritance.

The worries that these observations ought to raise become especially pressing when one considers that many of the example which Okin and others offer to illustrate the worrisome aspects of culture involve immigrants and immigrant communities.[28] In cases of morally unacceptable behaviour by a person who has hitherto been resident in a non-Western

28. Okin, *supra* note 3, at 680-81.

legal jurisdiction, it is often ambiguous whether the person's actions reflect a belief that their actions were morally acceptable, or a belief that they would not be held legally accountable. Very few people, for example, would suggest that members of Anglo-American culture who forcibly confine illegal immigrants in black market sweatshops are unaware that what they are doing is socially unacceptable. Their actions are more likely to be explained in terms of their belief that the social and legal resources of their victims are such as to ensure that—regardless of the social acceptability—they will not be held legally accountable for actions directed toward illegal immigrants. If this is what is happening in the case of unacceptable actions by an immigrant (a person from another country pursues an activity or action based on the (mistaken) expectation that what is permissible or at least unpunished under the legal regime of their former residence is also permissible under that of their current residence) then whether there is a vicious *culture* at play is not in fact the issue.

In fact many of the activities that Okin and other objectors from cultural viciousness describe are not the exclusive province of persons from non-Western cultures. Men (and women) other than immigrants do terrible things to their children, siblings and spouses. Indeed, one of the things that is striking about one of the cases Okin cites (in which an Iraqi immigrant was arrested after asking police to help him find an underage daughter who had run away after she and her sister were forced to marry older men of his choosing) is the extent to which the legal sanctions which should be brought to bear on the father and two husbands—indeed the very illegality of the marriages—might have been different had the father decided to wait two or three more years before imposing the marriage ceremony.[29] What is distinctive about many cases involving immigrants is thus not that the people involved seem to believe that their behaviour toward their children, siblings or spouses is not wrong; for there are often persons of the dominant culture displaying similar behaviour. Cases involving immigrants are distinctive, rather, because of the apparent acquiescence of co-nationals or fellow community members in unacceptable behaviour, and the individual actors' claims that their actions have followed normal practice for persons of their descent or country of origin. Again, however, it is not at all clear whether this apparent acquiescence reflects other factors. In this regard it is important to note that the fact that someone claims that his actions reflect a set of values or rationality distinctive of persons of their descent

29. In Arizona, for example, the father would have been legally within his rights to consent to a marriage for his daughters when they reached the age of fifteen.

or country of origin does not necessarily mean that such is actually the case. After all, many if not most of the people who have immigrated to the United States from other countries and cultures *do not* engage in the practices Okin and other objectors from cultural viciousness describe. And silent acquiescence by neighbors or relatives in the face of domestic abuse or outright criminality is hardly a culturally specific phenomenon.

This last point brings out a final problem with using culture narrowly understood to disqualify a group (or members of it) from holding or exercising group rights. In many cases the argument that members of a group offer for allowing them to continue a practice is not that it should be allowed because it is important to the group's culture, but that it is *already* allowed *to everyone* by the standards of the *dominant* community. Consider the case of parents who insist that their daughters be permitted to wear headscarves to school. In this case the argument is not (or need not be) that this is a privilege which Muslims as a group should be permitted in virtue of their religious convictions. It is rather that the power to decide what constitutes proper attire for female children is something which *as a matter of fact* lays with the parents rather then the state. The decision to require that their female children cover their heads is thus not an attempt to claim a special right based on adherence to Islam, but a legitimate exercise of a power all parents, including Muslims, *already have.* The claim is that a particular activity or action is in fact a token of some type of activity or action that the legal regime within which a group resides has judged permissible. People from other cultures or backgrounds have simply failed to recognize the action or activity as a permitted token at first sight—probably (if one wished to be charitable) because of unfamiliarity.

Because the claim is not that a collection of persons (or their representatives) should be allowed a group rights claim, but rather that individual persons should not be barred from exercising a power or enjoying a privilege which is available to everyone else, the viciousness or acceptability of claimant's *culture*—and so the argument for disqualification from a *group* right on cultural grounds—does not seem to come into play. So (for example) objections to claims that clitoridectomy is a legitimate exercise of parental authority on the grounds that the culture of parents who wish to practice clitoridectomy is too patriarchal for them to be allowed powers over their children which are forbidden to everyone else miss the point. Instead, the objection should target whether the power to determine a child's future sexual development should lie within the scope of parental authority at all; or whether a parent can be disqualified

form the exercise of parental authority when they are likely to use it to approve clitoridectomy.

This last line of objection does raise questions about cultural differences and the acceptability of certain cultural beliefs. But the issues involved in answering them are familiar ones which always arise when parents are argued to be disqualified from the exercise of custodial authority: competing interpretations of reasonable care. Moreover, questions about the acceptability of a cultural practice now arise in the context of a decision over whether the choice is one that the child ought to be left to make for herself when she reaches the age of majority. It thus becomes possible to distinguish between cultural activities such as undergoing clitoridectomy, which do not seem to be more difficult for a person to undertake later on in life if decisions about it are left to adulthood, and those such as speaking a community's language or learning the techniques of reindeer herding which do seem to require participation early in life if they are to be a real option later on.

V. CONCLUSION

In this paper I have argued that although the worries which animate Okin-type criticisms of group rights when the group in question has a vicious culture are good ones to have, they are not in fact worries about culture; nor are they special or especially pressing worries for *group* rights claims. Rather, those aspects of objections from cultural viciousness like Okin's that are well-motivated are more accurately described as objections from vicious internal structures. Such objections do raise important questions about whether and under what circumstances groups with problematic political and legal institutions ought to be allowed to hold and/or exercise rights. But these are not the same as questions about the acceptability or unacceptability of a group's culture.