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## **Multiculturalism and feminism**

### *Incompatibility, compatibility, or synonymity?*

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### **INTRODUCTION**

A critical set of questions currently being asked in debates about public administration in culturally diverse society concerns the relationship between feminism and multiculturalism. I shall not take space here to elaborate the definition of the two forms of politics whose intersection is at issue in the debate, for this will be provided as the argument unfolds, the issue of definition remaining very much in contention throughout. For now, consider the questions which drive this debate: can contemporary western society engage in policies of toleration and accommodation in respect of diversity within society, while at the same time pursuing its commitment to reducing differentials of power between men and women? 'Is multiculturalism bad for women' (Okin, 1999a)? Or 'is feminism bad for multiculturalism' (Kukathas, 2001)? Or can, as some claim, the two sets of policies be pursued together (e.g. Kymlicka, 1999a and 1999b and Shachar 2001)?

The focus of this commentary is on establishing which principles of justice ought to govern state policy in respect of minority patriarchy – are these principles to be regarded as being dictated by feminism or multiculturalism or a combination of both? As a working definition, the term 'minority patriarchy' denotes the collective category of individual or tangible practices producing patriarchal forms of regulation which arise out of a minority's distinct set of norms or codes, submission to which is considered defining in some significant way of group membership or as a marker of identity. To facilitate discussion, I use one particular context, that of minority regulation of divorce, and ask how state policy ought to be

formulated in respect to it. How should contemporary western multicultural states respond, for instance, to recent calls for greater accommodation of rules governing divorce dictated in *sharia* (Islamic law) or *halacha* (Jewish law) in light of the potential penalties women may suffer in abusive deployment of these rules? In general discussion, the definition aims to centre the argument at the most concrete level of analysis, focusing on tangible practices of patriarchy, eschewing until the end the more systemic or intangible aspects of patriarchy, which are addressed separately.

This is only a working definition, made for pragmatic reasons defended in the ensuing argument (and it is somewhat controversial). It is meant to avoid engaging with cultures as a whole, under a totalizing effect which risks ascribing them as entirely patriarchal, when in fact the reality is much more complicated and nuanced. As I hope will become apparent, this definition enables one to more accurately pinpoint where attention should rest in trying to configure multiculturalism and feminism and, through this, to establish how the state is to structure its responses to the social problems addressed in the debates considered here. With its focus on policy in respect of minority patriarchy, this commentary ends up being largely critical of the literature it considers, arguing that, for differing reasons, the approaches adopted in this literature, when applied to the problem of minority patriarchy (as defined), would be unlikely optimally to resolve it.

My critique is not to be read in absolute terms, as an outright negation of these approaches but, rather, as an observation of enduring risk posed to women when the different ethical considerations arising in this context are not sufficiently carefully organized, as I contend would be the case were the policy-making process to adopt approaches rejected in what follows. My aim is to suggest a way of sorting through these often apparently conflicting considerations, which more clearly identifies where emphasis should be placed so as to avoid unjust regulatory outcomes, especially as far as women are concerned. My focus here is on answering questions of orientation, asking how to approach the problem of patriarchy arising in the minority context and, through this, how to configure multiculturalism and feminism, and less with the nuts and bolts of how this approach is to be translated into practice.

The multiculturalism/feminism debate started in earnest with the defence of multiculturalism and asked whether policies thereby endorsed were compatible with feminism. The social problems associated with patriarchy only entered, at least initially, as second-order considerations, primarily as potential obstacles to the defence of multiculturalism. If, however, one starts by considering problems associated with patriarchy arising in the minority context, one begins to see a different dialogical trajectory in the literature – one debating the salience of cultural (and other) difference in the formulation of feminist policy, pitting not multiculturalists against feminists, but

feminists against each other. I shall refer to this other debate as the 'feminist difference debate.'

My argument here, on one level, is very simple: it consists of arguing for more overlap between these two debates, and specifically that the multiculturalism/feminism debate would be well served by taking on board some of the arguments aired in the feminist difference debate. My contention is that the more this is done, the more compelling the argument. This suggests need for a perspectival shift, supplementing one suggested in feminist debates on difference for that which has the defence of multiculturalism as its starting point.

This argument is made most directly in consideration of the work of Susan Moller Okin, who is a central contributor to both these debates. My argument can be viewed as continuing the repartee commenced in the earlier feminist difference debate, developing the critique levelled there against what one might term Okin's universalist perspectives in the formulation of feminist policy, and applying it both in answer to her contributions to the multiculturalism/feminism debate and also to some of the positions in that later debate of which she herself is critical, which defend multiculturalism in a way she views to be at variance with feminism.

In what follows, I cannot be comprehensive in my review of the literature debating multiculturalism and feminism – instead, the argument will centre on a selection of contributions to the debate which advance some of the principal ways of relating multiculturalism and feminism; the selection being to highlight approaches thus far prominently staked, and then engaging in more detail with those selected so as to tease out some of the difficulties they present.

The approaches can loosely be ordered, with a first organizing sweep, into two categories: one which holds that multiculturalism and feminism are, or can be made to be, broadly compatible; and the other expounding the opposite proposition, namely that a choice has to be made between them since they are incompatible.

One choice is to prefer feminism – captured above with the suggestion that 'multiculturalism [is] bad for women' (Okin, 1999a). The other choice is to prefer multiculturalism, viewing 'feminism [to be] bad' in the configuration (Kukathas, 2001). Each of these choices is rejected in the first part of the commentary, adopting the same argument in respect of both, which may seem surprising given that they are made from opposite ends of the incompatibility-spectrum.

The second part of the commentary examines approaches which view multiculturalism and feminism as broadly compatible, seeking to create a balance between them. While in sympathy with these positions, my argument concludes in explicitly feminist terms on the ground that trying

to hold a balance between multiculturalism and feminism is too dangerous for women in the case of policy in respect of minority patriarchy.

The third part of the commentary begins to sketch an alternative approach in which multiculturalism and feminism are understood as synonymous: while emphasizing that feminist principles must take priority when policy concerns minority patriarchy, that should not lead to a negation of multiculturalism, for it has already been reflected in many of the positions staked in the feminist difference debate. New definitions are accordingly needed for multiculturalism and feminism when addressing minority patriarchy, to replace those definitions which make sense of the relationship between them in terms of choice versus balance. The third part also specifically discusses the more systemic aspects excluded from the working definition of minority patriarchy used up to that point and considers the parameters of the synonymy thesis advanced here. It is ventured only as regards minority patriarchy as defined above. In respect of matters excluded from that definition, the essence of the balancing approach is found to be more compelling, at least in the first instance, and as regards the broad questions of orientation set for this paper.

## **INCOMPATIBILITY: CHOOSING BETWEEN MULTICULTURALISM AND FEMINISM**

### ***Choosing feminism***

Although I attribute the first choice, of electing feminism to the exclusion of multiculturalism, to Okin on the basis that the proposition that ‘multiculturalism [is] bad for women’ (Okin, 1999a) is derived from the title of an influential commentary published by her, the argument supporting this attribution is far from neat. Not only has Okin since explained that the title was not of her own choosing (Okin, 2005: 71–2), it is, furthermore, stated by her as a question and she later confirms that she does not ‘answer [it] with a simple and unqualified “yes”’ (Okin, 2005: 71). To get to this ‘yes’, the argument which follows meanders through various broken-up stages, and cannot be simply put. I end up upholding that the proposition does indeed capture the essence of Okin’s approach, her more recent clarifications and caveats notwithstanding.

Okin’s argument is directed at showing how multiculturalism is actually antithetical to feminism, suggesting that it would serve to protect and uphold patriarchal systems of regulation and socialization, a project which she views as running counter to that of feminism. Logically, then, one would expect Okin to reject multiculturalism; yet she does not do so (Okin, 1998: 664 and Okin, 1999b: 131), positing instead that multiculturalism could be

justified by sufficiently weighty factors which are to be counterbalanced against minority patriarchy – for example, a minority group’s need for language protection and remedies against discrimination based on group membership (Okin, 1999a: 23). Otherwise put, multiculturalism can trump feminism if the balance tips in its favour, even if, Okin says, ‘it would take significant factors weighing in the other direction to counterbalance evidence that a culture severely constrains women’s choices or otherwise undermines their well-being’ (Okin, 1999a: 23).

This makes it look as though Okin adopts a balancing approach to the configuration of multiculturalism and feminism, rather than a choice approach. Yet it is different to the balancing approaches considered in the second part of this commentary, in that the upshot, in Okin’s case, seems ultimately to force a choice between multiculturalism and feminism when, as we shall see, the approaches considered below want to combine the two without need for choice. As I explain in the ensuing text, the image of balance envisaged by Okin only really makes sense in respect of the initial stages of policy-making, to inform the choice between multiculturalism and feminism which is to be made in each case; whereas, in the balancing approaches of the second part of the commentary, it is meant to be held more generally, without need for choice.

Although I later go on to argue that the balancing approach of the second part of the commentary runs the risk that a choice would, in practice, be made (albeit inadvertently), here I argue that if Okin views multiculturalism and feminism as incompatible, and I think she is only right in doing so on the terms in which she defines them, then she ought as a feminist to reject multiculturalism. I want to focus on Okin’s definitions of each of multiculturalism and feminism, and through this discussion to articulate the definitional shift suggested in this commentary, the transition of the headings in the first part gradually marking the stages in the argument defended here that multiculturalism and feminism can, and moreover ought to, be regarded as overlapping in regard to minority patriarchy and, in those areas of overlap, are therefore synonymous.

### ***Defining multiculturalism***

Okin seems to equate multiculturalism with the preservation of the patriarchal status quo, since she places it, in the following passage, in opposition to feminist cultural reform when presenting the courses of action available to a multicultural state faced with policy or regulatory decisions touching upon cultural diversity:

it is by no means clear, from a feminist point of view, that minority rights are part of the solution [as is claimed by some multiculturalists]; they may exacerbate the problem. In the case of a more patriarchal minority culture in the context of a less patriarchal majority culture . . . [women] may be much

better off . . . if the culture into which they were born were . . . either gradually to become extinct (as its members became integrated into the surrounding culture) or, preferably, to be encouraged and supported to substantially alter itself so as to reinforce the equality, rather than the inequality, of women. (Okin, 1998: 680 (original emphasis omitted))

Okin outlines three options in this passage: first, multiculturalism (in her terminology ‘minority rights’ (cf. Raz, 1999 noting that her concern is actually broader)); second, assimilation; and third, feminist cultural reform. Okin’s preference is for reform, then assimilation, then multiculturalism. Yet, as I have said, she is prepared to countenance situations, where the counterbalancing factors are of the right magnitude, in which this order is to be reversed and multiculturalism is to be preferred over the other two options.

The problem here is that Okin appears to endorse the preservation of the patriarchal status quo over feminist cultural reform when the counterbalancing factors she lists could just as well be served by the reform option. That is, there is no reason (except in the most egregious situations of diversity-sourced conflict) to draw a distinction between multiculturalism and reform here – the two can collapse into one, with a more feminist understanding of multiculturalism emerging which moves away from preserving the patriarchal status quo (cf. Kymlicka 1989: 166–7 (distinguishing between cultures as dynamic systems which change over time and cultures as described at a given moment in time)). On this view, there is no need for the continued support which Okin unconvincingly shows for multiculturalism (as defined by her), and her concession that multiculturalism can trump feminism is indefensible in feminist terms.

This only quibbles with Okin’s definition of multiculturalism, but what of her understanding of feminism? I shall argue in the next section that the limitations of Okin’s definition of multiculturalism intermesh with those of her definition of feminism – her apparent oversight of a more feminist understanding of multiculturalism can be explained in terms of her negation of a more multicultural understanding of feminism, especially in her contributions to the feminist difference debate.

### ***Defining feminism***

Okin gives the impression that she imagines that general feminist theories of justice, which she has so helped define (e.g. in Okin, 1979 and especially 1989), are sufficient in respect of all patriarchy – minority or otherwise. The chief obstacle to the elimination of patriarchy in the minority context, on this view, is the currency of multicultural politics which threaten to impede the translation of feminist theory into practice within the minority context. This explains the focus of her writing on multiculturalism, being an almost entirely critical enterprise, with its argument centred on showing problems

with defences of multiculturalism. This suggests that there is no need for policy specifically targeting minority patriarchy but that, instead, it can somehow be subsumed under feminist policy conceived from a more general or universal perspective.

This impression is fortified by the propositions Okin advances more directly in her contributions to the feminist difference debate, in which she reacts against calls for account to be taken of difference between women, and of the varieties of situations and contexts in which patriarchy arises. Okin rehearses concern that the formulation of feminist policy might be hindered in result, apparently fearing that heeding such calls might risk a slide towards relativism and a less than optimal resolution of the problems it is meant to address (e.g. Okin, 1995a). She prefers to defend the thesis in that literature ‘that the problems of other women are “similar to ours but more so”’ (Okin, 1994: 8), the answer presumably being, to apply this formulation to the minority context,<sup>1</sup> to redouble efforts to enforce generally applicable laws in respect of minorities, and not to heed calls made in favour of divergences from those laws under guise of multiculturalism.

Okin seems to set up the following two options for the state to adopt in respect of minority patriarchy:

1. it could conduct policies of multiculturalism in respect of minority patriarchy which would necessarily, according to Okin’s definition, preserve or continue patriarchal forms of regulation; or
2. generally applicable state law (embodying the feminist principles which Okin and others have helped articulate) could be applied by the state in respect of minority patriarchy.

I leave open the question of whether application of general law would be the product of gradual assimilation, whereby the regulatory practices of minorities themselves cease (the assimilation option in the above-quoted triumvirate). Or, alternatively, that generally applicable law would be enforced so as to prevent the practices from having patriarchal regulatory effects (cf. Chambers, 2002 making an argument along these lines) – perhaps this second possibility is a version of Okin’s reform option, but it is difficult to be precise given how she has unfortunately not expanded upon how her preferred reform option is to be executed, short of consulting women (further discussed below).

In the third part, I will suggest, when returning to the working definition of minority patriarchy used here to look at the more systemic aspects it excluded, that the first option is incoherent in Okin’s terms and does not follow logically from her argument; and I have also ventured above that the argument is indefensible in feminist terms. This leaves the second option, that of relying on a generally applicable law. I argue below, in the next stage of the redefinition of feminism ventured in this commentary, that one



cannot rely on such laws to find remedies for minority patriarchy. In fact, that argument is directed at both versions of the incompatibility thesis, and it takes a pause in the next section to give an account of the opposite choice approach, that of prioritizing multiculturalism over feminism with which it is deemed incompatible.

### ***Choosing multiculturalism***

Echoing Okin's language, Chandran Kukathas argues that it is 'feminism [which is] bad for multiculturalism' (2001) and he is taken to represent the opposite choice approach – in place of Okin's choice of feminism, Kukathas influentially chooses multiculturalism. Just as Okin chooses a particular type of feminism, so too is Kukathas's multiculturalism of a specific kind – a libertarian or *laissez-faire* type of multiculturalism, in which minority cultures, however patriarchal, ought basically to be left alone. The state should strive for neutrality between competing conceptions of the good, including as to the regulation of gender; it should adopt a position of tolerance in respect of cultural diversity and difference.

This is not the multiculturalism against which Okin is primarily reacting in the work considered thus far – she and Kukathas can be seen as allied in countering the arguments of those advocating (as we see in the second part of this commentary) the accommodation, rather than the mere toleration, of difference. Kukathas and Okin are at one in thinking that state support for minority cultures is potentially harmful to women. In Kukathas's version of the argument, 'groups which act illiberally are,' he says, 'not entitled to any special protections so that they might continue to live by illiberal values' (Kukathas, 2001: 92).

On his view, women would 'receive some protection' because they would not be 'required to accept a particular way of life' (Kukathas, 1992: 125–6). Furthermore, they must have the option to leave, to exercise rights of exit in favour of the regulatory framework provided by generally applicable law. As citizens of the state (Kukathas, 1991: 22), members of minority communities would have access to state laws in combating patriarchy suffered under operation of minority norms (Kukathas, 1992: 133); and, crucially, the option of direct regulation by the state (i.e. exit) without having to submit to (patriarchal) minority regulation.

### ***Limitations of the choice approach***

Although arguing from opposite ends of the choice-spectrum, Kukathas and Okin both seem to rely on generally applicable law in assuaging concerns regarding patriarchy. In their different ways, both advance remedies for minority patriarchy by way of the universal application of the law in all contexts, including in the minority context. As we have just seen, Kukathas

performs this reliance explicitly; and I have suggested that Okin does so indirectly – at least, this is what helps best make sense of her approach, in spite of undeveloped textual references to the contrary (discussed below) which are hard to square with the general thrust of her argument.

My reservations regarding reliance on generally applicable law are directed particularly at Okin in the first instance and are then extended, perversely given his opposing choice, against Kukathas, my discussion dwelling in fact on the differences between them, in a bid more fairly to bring out Okin's position.

### ***Defining multicultural feminism***

One side of the feminist difference debate – the side against which Okin reacts in that debate – calls for a more multicultural understanding of feminism which recognizes that cultural difference may need to be taken into account for feminist reasons. Universalist approaches to the formulation of feminist policy may overlook or leave unchecked, so the argument goes, the distinctive forms of patriarchy arising in the lives of women who are differently situated from the (usually unacknowledged) norm or referent.<sup>2</sup>

This argument is apposite in respect of minority patriarchy. Take the example of divorce regulation in contemporary western society. Women who are members of self-regulating minority communities may face problems in respect of divorce which are particular to their membership in those communities – and this is notably the case in communities subject to *sharia* and *halacha*. These problems arise notwithstanding, and moreover in the context of, the operation of generally applicable laws of the state, themselves increasingly drawn up to achieve more just regulatory outcomes particularly as to the equitable distribution of resources within the family. Inequalities which arise in the operation of minority law on divorce affect the ability of women to terminate their marriages and to bargain about the terms of any eventual divorce on an equal footing with their husbands, thereby undercutting the effectiveness of state law.

This is true regardless of whether particular policies of multiculturalism are in place, whether they be policies of toleration or accommodation (although clearly certain forms of accommodation could affect the gravity of this situation, particularly as regards the more secular members of the community, who might thereby be forced to submit to minority regulation in cases where they might not otherwise have felt bound to do so (cf. Reitman, 2005: 203, arguing that this is likely to be the case under the accommodations proposed by Ayelet Shachar considered in the second part of this commentary). The point to retain is that unless specific measures are taken with regard to female members of minority cultures, generally applicable laws embodying feminist principles are unlikely to remedy these problems.

Universalist approaches appear to overlook the need which the women in question have for special treatment on the basis of their minority group membership, in order to help remedy these problems or prevent them from arising. It is not multiculturalism here which will destroy 'recent advances' made by 'Western majority cultures, largely at the urging of feminists' (Okin, 1999a: 19). To the contrary, if one understands multiculturalism to follow from an observation that universal rights may not be sufficient to protect the values these rights enshrine (as multiculturalists of the accommodative hue (to be considered in the second part of this commentary) would argue), then multiculturalism may be needed so that women in these communities can benefit from the values of feminism which drive the advances Okin has in mind. (And I ought to emphasize, while the values of feminism may also be embodied in generally applicable law, and this helps ground state action here, this law ought by no means to be considered the sole repository or source of those values, as attested to by an increasingly impressive body of feminist scholarship which draws its source in, and is argued in the terms of, *halacha* and/or *sharia*).

### **Defining feminist multiculturalism/multicultural feminism**

The same line of argument can be raised in answer to Kukathas's diametrically opposed choice of multiculturalism over feminism, for he too, as we have seen, relies on generally applicable laws to protect women. Just as such reliance was found to be inadequate in Okin's case, the same is true as regards Kukathas. The difference between them can be characterized as a disagreement over how widely and comprehensively these generally applicable laws should be drawn up, with Kukathas supporting a libertarian approach and Okin, a comprehensive approach incorporating the values of feminism. Because of this, the challenge is less troubling for Kukathas, since he does not stake a commitment to realizing the values of feminism, such that my argument that they would be unlikely to be so realized under his framework is less of a challenge given the parameters he sets.<sup>3</sup>

One can simply note that Kukathas's deflection of feminist concern seems too coincidental, prevaricating at times on the question of the place of feminism in generally applicable law. While Kukathas holds to the universal application of the law to all citizens, whatever their cultural membership, he does not rule out the possibility, at least not in the context of his earlier writing on multiculturalism,<sup>4</sup> that these laws might reflect principles a feminist would want in place in order to protect women against patriarchy (cf. Barry, 2001 also arguing for the application of generally applicable laws, although in antagonism to Kukathas's version of the argument, while also accepting (p. 162) the need for specific remedies for minority patriarchy in some cases).

Focusing on the difference between Okin and Kukathas here, one can perhaps learn more about Okin's preference for the reform option in the triumvirate quoted above. I have suggested that by her silence on this issue, she overlooks the feminist potential of multiculturalism. Remembering that Okin and Kukathas both end up relying on generally applicable law in spite of staking opposite positions on the choice-spectrum, in focusing on where Okin wants to depart from Kukathas, I look to see whether my reading of Okin's silence needs adjustment.

While Okin's early writings on multiculturalism did not target Kukathas's favoured multiculturalism, focusing instead on the alternative, more accommodative kind, she has since taken aim at his version as well (Okin, 2002). Subsequently acknowledging that she 'agree[s] to a surprising extent' with Kukathas (Okin, 2005: 85, fn. 8), his position has nevertheless caused her to argue that 'the wider society [ought to] address the discrimination [female members of patriarchal minorities] suffer from, *just as* it would for its other citizens' (Okin, 2002: 227 emphasis added for reasons given below).

This invites a degree of hesitation in my earlier reading of Okin since, on one level, she could be taken here to support a more multicultural understanding of feminism than was imputed to her above by worrying that it is not sufficient simply to offer women the option of direct regulation by state institutions governed by the more universalist feminist principles she advances. One can draw particular significance from the fact that Okin should have considered the need for dedicated state action in respect of minority patriarchy, apparently not content merely to rely, as Kukathas does, on women's access to generally applicable law.

Perhaps, on this view, the female member-consultation she counsels can be taken to have a wider purpose than I have suggested elsewhere (Reitman, 2000: 302–3), portraying it merely as a mechanism for discovering the full extent of the incompatibility between multiculturalism and feminism which might otherwise be hidden from view in the deliberative process. Perhaps consultation is meant to generate remedies for minority patriarchy specifically, appearing thereby to recognize that they might not be provided solely through generally applicable law. Perhaps this, then, can be taken as the manner by which Okin intended her preferred reform option to be realized, such that her silence on the issue ought not to be so determinant to my critique.

This alternative reading of Okin is somewhat supported by minor passages in her contributions to the feminist difference debate, in which she has, most notably, been drawn to concede that 'many of women's concerns and needs vary from one social and cultural context to another and that the best ways of resisting oppression are also likely to be context specific' (Okin, 1995b: 515).

Ultimately, however, although Okin expresses preference for the reform

option, she says too little about how it is to be implemented by the state. While consultation with women is undeniably necessary, it is not sufficient, and Okin's more recent struggles to reconcile liberalism with democracy in this context (Okin, 2005) give a clue as to the difficulties involved, without, unfortunately, progressing much beyond the resolution she offered in her initial writings on the subject.

Returning to Okin's position vis-à-vis Kukathas, one can recast Okin's concern as attaching not to the principle of exit itself, and the application of generally applicable law it yields, but to the difficulties involved in exercising rights of exit; making them, *on their own*, an unreliable mechanism for assuring protection against abuses arising in the operation of minority regulation (an argument with which I am sympathetic (Reitman, 2005)). Remembering that the difference between Okin and Kukathas can essentially be reduced to a dispute about how comprehensively to draw up generally applicable laws, Okin's answer here might simply be to supplement their common approach with more comprehensive mechanisms to ensure that rights of exit can actually be exercised. (I have suggested elsewhere (Reitman, 2005) that measures to make exit more realizable are better understood as arguments in favour of a more comprehensive set of universal laws than as guarantees attaching to rights of exit per se.) When Okin notes her agreement with Kukathas, she proceeds to highlight that their agreement concerns 'the practical application of [their] respective theories' (Okin, 2005: 85, fn. 8). This suggests that the end result each wants to achieve is broadly similar, namely the application of generally applicable law. On this view, the 'just as' of the wording written in answer to Kukathas harks back to the 'similar . . . but more so' of her earlier contributions to the feminist difference debate, thereby supporting my original reading of Okin.

## **COMPATIBILITY: BALANCING MULTICULTURALISM AND FEMINISM**

Okin has been criticized for being too sweeping in her account of minority cultures (e.g. Nussbaum 1999; al-Hibri 1999; An-Na'im 1999) and many of these critics highlight the existence of alternative accounts of many of the cultural phenomena which drive Okin's critique of multiculturalism. While few of these critics would dispute Okin's warnings as to the dangers of multicultural policy which is insufficiently attentive to patriarchy, they ask for a more balanced picture.

I now consider approaches which capture this notion of balance and give it an executive role in the principles they advance, by which to pursue in tandem the twin values of multiculturalism and feminism. Although this approach is more promising, I argue it too fails, on the terms suggested, to

advance an adequate framework for policy-making in respect of minority patriarchy – here, the balance is likely to continue to tip more heavily on the side of multiculturalism in practice and the disproportionate burdens borne by women, noted all round in the debate, might simply remain unchecked or, worse, they might become heavier still.

### ***Ways of balancing multiculturalism and feminism***

The principal interlocutor both of Okin and Kukathas in these arguments is Will Kymlicka, who adopts the third of the approaches identified at the outset, with his vision of ‘multiculturalism and feminism as allies engaged in related struggles . . . [with] a common interest’ (1999b: 34; cf. Shachar, 2001: 23, fn. 25), such that there is no need for the kind of choice for which Kukathas and Okin argue.

Kymlicka defends a more accommodative form of multiculturalism than Kukathas, ‘argu[ing] that liberals . . . should endorse certain group-differentiated rights for [cultural] minorities. But this endorsement is always a conditional and qualified one. The demands of some groups exceed what liberalism can accept’ (1995: 152), he says. To establish the limits of acceptability here, Kymlicka draws a distinction between ‘good’ and ‘bad’ multiculturalism (1996: 22).

Good multiculturalism answers a minority’s ‘claim against the larger society’ which is ‘intended to protect the group from the impact of external decisions’ (Kymlicka, 1995: 35). These, he terms ‘external protections’ and they ‘involve inter-group relations [by which] the [cultural] group . . . seek[s] to protect its distinct existence and identity by limiting the impact of the decisions of the larger society’ (1995: 36).

Bad multiculturalism, on the other hand, aims to facilitate what are termed ‘internal restrictions’ – that is, ‘claim[s] of a group against its own members’ which are ‘intended to protect the group from the destabilizing impact of internal dissent’ (1995: 35). ‘Internal restrictions involve intra-group relations’ in which the cultural minority ‘seek[s] the use of state power to restrict the liberty of its own members in the name of group solidarity[.]. . . rais[ing] the danger of individual oppression’ (1995: 36), such as that implicated by patriarchy.

Kymlicka ‘argue[s] that liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices’ (1995: 37).

Okin’s critique of Kymlicka does not fully grapple with his external protection/internal restriction distinction, which is frustrating given how central it is to his deflection of feminist concerns (cf. Reitman, 2000: 301), and he continues to appeal to this distinction in his responses both to Okin and to others raising similar objections (Kymlicka, 1999a, 1999b). He makes

two concessions in these replies, but they ultimately serve to bolster his original distinction. First, he suggests the ‘need [for] a more subtle account of internal restrictions which helps . . . identify limitations on the freedom of women within [minority] groups’ (1999b: 32). The other concession hints at the need for better institutional design, recasting ‘the goal . . . [as being] (a) to ensure that groups have the external protections they need, while (b) creating the institutional safeguards which prevent groups from imposing internal restrictions’ (1999a: 127, fn. 7).

Although Kymlicka has not yet directly taken up the challenge of coming up with this more subtle account of internal restrictions and of the institutional safeguards needed to ward them off, the work of another theorist, Ayelet Shachar, can be viewed as an attempt to do so.

Shachar characterizes the subject-matter of social regulation as ‘social arenas’ which are ‘internally divisible into submatters – multiple, separable, yet complementary, legal concerns’ (Shachar, 2000c: 418). The family, for instance, whose regulation is the focus of much of the multiculturalism/feminism debate, can be divided into ‘two submatters: . . . a demarcating function [which] . . . regulates . . . status [and a distributive function which regulates] . . . the economic . . . consequences of . . . status’ (2000c: 419).

Even though Shachar was initially critical of Kymlicka’s distinction (Shachar, 1999: 103, fn. 23), her multiculturalism is now billed as ‘utilizing external protections to reduce internal restrictions’ (Shachar, 2001: 117). To do so, she proposes external protection in the form of ‘devolution of authority to the community’ so as ‘to reduce subordinating internal restrictions’ (Shachar, 2000c: 407). For now, glossing over the technicality of how it is to be achieved, Shachar’s calculus could be summarized as follows: if groups acquire external protection on the terms she advances, they would be given incentive and better conditions by which to reduce instances of internal restriction.<sup>5</sup>

In this vein, Shachar would grant minorities jurisdiction or regulatory power over the demarcating function of family regulation (Shachar, 2000b: 203) – echoing Kymlicka’s language, she says that this function of family law is ‘more outwardly looking or externally focused’ and is concerned with the group’s relationship ‘*vis-à-vis* the larger society’ (Shachar, 2001: 50). On the other hand, Shachar would require the state to retain jurisdiction over family law’s distributive function, which she correctly identifies as the primary engine of patriarchal regulation in this context – this function of family law is said, again mirroring Kymlicka’s distinction, to deal with matters which are ‘more interpersonal or inwardly directed’ (Shachar, 2001: 50, cf. 2000b: 203).

### ***Limitations of the balancing approach***

In this section I shall argue that balancing frameworks risk simply reproducing unresolved conflicts between the different ethical considerations arising here (cf. Benhabib, 2002: 128 noting that Shachar's proposals 'may not be resolving the paradox of multicultural vulnerability but simply permitting its recirculation'). My focus continues to be on the more explicitly feminist of the representative theorists considered in this commentary:<sup>6</sup> just as, in the preceding section, my critique of Kukathas was tangential and even parenthetical to my critique of Okin, so too in this section, my critique of Kymlicka relies upon more in-depth engagement with Shachar's arguments – with her modifications of his arguments, her proposals offer a good testing-ground for assessing whether his defence of multiculturalism can survive feminist scrutiny.

One should not, however, underestimate the difference between Kymlicka and Shachar here – differences which can be characterized in two ways: on the one hand, Shachar can be taken to have improved Kymlicka's arguments when viewed from a feminist perspective, especially in the emphasis she places on feminist concerns, and the way she manipulates Kymlicka's external protection/internal restriction distinction to reflect this order of concern. On the other hand, however, paradoxically, Shachar's proposals are also potentially more costly for women than are Kymlicka's, at least in regard to minorities who are to receive less extensive forms of accommodation under the multiculturalism he defends.<sup>7</sup>

As we shall see, Kymlicka's way of handling the challenge of minority patriarchy is to try to minimize or avoid it in the operation of his theory of multicultural justice – to have multiculturalism be about the pursuit of intercultural justice while avoiding, as far as possible, aggravation of other forms of oppression. While this is obviously preferable to the alternative, namely multiculturalism which disregards gender-based and other forms of oppression, this formula merely requires that multiculturalism should not impede feminism. Yet the argument made in the first part of the commentary on the basis of a more multicultural understanding of feminism holds that multiculturalism may be needed for feminist reasons.

Kymlicka states his project to be an observation of policies which have functioned successfully in practice and to work back from there to suggest how 'this general view of the landscape' can be theorized (1995: 1–2). He has, I think, come up with a compelling account which has been defining of the terms in which multiculturalism is discussed today. Yet he overlooks a significant form of multicultural accommodation and his account is therefore incomplete.<sup>8</sup>

In this piece, I want to suggest another defence of multiculturalism which is raised from a feminist perspective. While this is meant to replace existing



accounts in regard to policy-making which directly targets minority patriarchy, it also serves to deflect the sort of challenge on which the exchange between Okin and Kymlicka turns, thereby enabling the basic defence of multiculturalism to survive in a whole host of other domains of policy, provided such policy is made and implemented on terms which seek to minimize the more systemic forms of patriarchy (i.e. that which was excluded from the working definition, about which more is said in the third part of this commentary).

At first sight, Shachar's modified version of Kymlicka's distinction between external protection and internal restriction could be taken better to capture the idea that multiculturalism may be needed for feminist reasons. She wants to 'utiliz[e] external protections to reduce internal restrictions' (Shachar, 2001: 117; cf. 2000c: 407) when Kymlicka simply wants to avoid internal restrictions, with provision of external protection being his driving concern and primary focus.

Expanding the argument made in the first part of the commentary regarding minority divorce regulation: here, justified claims for accommodation might be advanced to help a minority community's own regulatory institutions achieve more effective and just regulatory outcomes. From a feminist perspective, these claims are most compelling or best founded in cases where the problems women face stem primarily from abuse by their husbands of underlying patriarchal strains within minority law. Forms of accommodation may be needed in order to make up for the institutional powerlessness of the community's regulatory bodies, particularly as regards enforcement, thereby harnessing the power of the state's enforcement mechanisms so as to afford the system of minority regulation greater coercive force in policing instances in which husbands seek to abuse minority regulation (cf. Reitman, 2005: 207).

The persuasiveness of these arguments depends on a rather benign view of the regulatory institutions which are to be empowered by way of multicultural accommodation, and here I think all feminists would have cause to worry – whether they adopt a universalist or more multicultural perspective – for there are instances in which the source of the difficulties encountered by women is not simply the abusive deployment of minority rules by their husbands but is more systemic in nature, attaching to the way minority laws are interpreted and applied.

While my focus here is on instances in which the system breaks down, one should not forget that this is a partial picture and that there are no doubt many courageous arbiters of these laws who are committed to ensuring their just application, as far as they can within the law, such that the argument as to their empowerment through multiculturalism becomes more persuasive from a feminist perspective. But it is noteworthy that many of those most closely involved with the operation of the minority laws in question are deeply pessimistic on this issue.<sup>9</sup>

In the space available here, I can merely note that while the argument in favour of external protection to reduce internal restriction may be compelling in principle, this endorsement comes with a number of conditions to reflect a more realistic understanding of the advantages and disadvantages involved in multicultural accommodation. My point here is simply to highlight that Shachar's approach does not sufficiently assure that these conditions are met (although she too has argued that they are necessary).

To the contrary, by embracing Kymlicka's external protection/internal restriction formula and, more generally, his balancing approach to the configuration of multiculturalism and feminism, Shachar actually serves to highlight its shortcomings as a mechanism for distinguishing between multiculturalism which is defensible from a feminist perspective, indeed that which is necessary from this perspective; and that which is not.

Under Shachar's model, a lot of external protection ends up being justified, empowering patriarchal regulatory structures for doubtful gain as I shall argue in this part of the commentary, and notably without guaranteeing that accommodation would be set in place for the sorts of reasons advanced from the multicultural feminist perspective sketched in the first part of this commentary.<sup>10</sup> For example, in relation to minority divorce (the example she herself uses), Shachar envisages that the cultural minority would, in the first instance, automatically acquire exclusive and compulsory authority over the determination of marital status; whereas the state would retain jurisdiction over matters ancillary to divorce, thereby enabling its more equitable financial distribution rules to apply automatically upon separation (Shachar, 2001: Chapter 6). Indeed, Shachar argues for more accommodation than Kymlicka in some cases and the example used here is one of them (Kymlicka, 1995: 42 approvingly noting that there 'has been no movement towards giving legal recognition to talaq [Islamic] divorces' – indicating a preference for toleration rather than accommodation in these circumstances).<sup>11</sup>

Shachar's proposals are meant to provide mechanisms by which to give 'vulnerable insiders meaningful access to effective legal remedies' (Shachar, 2000c: 420) and 'clearly delineated choice options' (Shachar, 2001: 118), as well as incentives for minority cultures to engage in feminist cultural reform (2001: 121–2). Yet these mechanisms are not up to the task in two regards. One concerns the central place that rights of exit continue to occupy in the framework she proposes. They are meant to protect women by offering them an alternative to community status regulation, should patriarchy persist; and the threat of exit is also meant to give minorities incentive to alter their codes so as to remove its patriarchal elements. As I have argued elsewhere, however, there is little cause for placing reliance upon the transformative and protective properties which advocates of rights of exit claim of them (Reitman, 2005). The second concern, and

the one on which I shall focus here, stems from the fact that, while giving a compelling account of the dangers of multiculturalism when viewed from a feminist perspective, Shachar seems then to underplay these challenges in the proposals she puts forward.

In this regard, she can be taken to have offered little improvement upon Kymlicka, whose multiculturalism is the target in her observation of its dangers, but who can be criticized on similar terms. Kymlicka appears to downplay the desire for internal restrictions when setting out his distinction (1995: 38–42), minimizing claims for internal restrictions on the basis that they ‘are . . . defended . . . as unavoidable by-products of external protections, rather than desirable in and of themselves’ (1995: 44) (although one should note that this account sits somewhat uncomfortably next to what he says in criticism of others (1995: 96)).

Shachar performs a similar move when justifying her proposed repartition of the different regulatory functions of family law. She suggests that the minority ought to have power over status-determination so as not to ‘undermin[e its] controls over the definition of its membership boundaries’ (1998a: 299), which Shachar correctly identifies as being of primordial importance to the community. The distributive function of family law, on the other hand, would apparently be of lesser importance to minority interests, and therefore regulatory authority to perform this function can be allocated exclusively to the state so as to protect women against abusive deployment of minority norms. This function is not, she asserts, ‘unique to group members’ but an aspect of divorce which all divorcing couples must face, regardless of their cultural membership (1998: 300), thereby implying that minorities would relatively easily cede authority in this domain.

There is no dispute with Shachar’s account of minority interest in controlling its boundaries; nor of distributive issues being the primary engine of patriarchy. The problem stems, rather, from how Shachar formulates her response to these phenomena in terms of jurisdiction-splitting. This approach seems too blunt, appearing to underplay important connections which exist between the different functions of family regulation highlighted in the ensuing discussion. These turn on the proposition that the distributive function of family law is one of the principal mechanisms by which group members, both men and women, are, at least in the modern multicultural setting, controlled or policed by minority regulatory bodies – a function which, then, can be regarded as central to minority law enforcement. I want to highlight two problems which stem from this: (1) minorities may not acquire the sense of security Shachar claims, which undercuts a strand of her own calculus of granting external protection for the sake of reducing internal restriction; and, more significantly to the thesis defended here, (2) the enforcement-function of minority distributive regulation is potentially useful in policing the abusive husbands alluded to above. Shachar’s jurisdiction-splitting model, however, paradoxically seems

to frustrate this in the manner in which she suggests regulatory authority to be shared between minority and state:

1. Shachar claims that her proposals will ‘for the first time’ (1998b: 111) make the elimination of minority patriarchy ‘finally [seem] possible’ (2000c: 423). An important element to Shachar’s calculus rests on a reckoning that if minorities acquire external protection on the terms she specifies, with assured authority over regulation of demarcation or status issues, they would thereby gain a sense of security that would contribute to greater acceptance of feminist reform on questions of demarcation. Yet distributive regulation, in which minorities are compulsorily to have no part, is likely to continue to have considerable importance to the minority system, including in reference to its work of boundary-demarcation, some of which, as we see below (at point 2), can help rather than hinder it in more justly marking its borders. Depriving minorities of power over the distributive function makes it doubtful that the group would derive the sense of security under Shachar’s proposals which she claims.<sup>12</sup>

One can get a sense of the importance rabbinical courts attach to their regulatory roles in respect of distributive matters here by observing the fierce jurisdictional contests over ancillary divorce issues which take place between secular and rabbinical courts in Israel.<sup>13</sup> On status issues, rabbinical courts already have mandatory jurisdiction but they vie for jurisdiction on distributive matters. Although the religious court system has maximal security in respect of demarcation as a result of its compulsory and exclusive jurisdiction over status determination – precisely the jurisdictional tranche its minority counterparts would acquire under Shachar’s model – it seeks to assert its power over the distributive aspects of divorce regulation as well, putting pressure on women not to submit the determination of ancillary matters to secular family law courts (e.g. Ragen, 2001).

Although other facets of Shachar’s calculus have been ignored in the foregoing discussion (notably the place of exit rights in her framework), these are unlikely substantially to change the circumstances that produce the phenomenon so palpable in the Israeli jurisdictional contests. While, at a formal level, a minority community’s leadership might well be expected to enter, as intimated by Shachar, into the kind of power-sharing compromise she recommends, this may simply be the product of multicultural politics – a necessary expedience to which the group would accede, at an official level, in order to obtain its ‘slice of the jurisdictional pie’ (Shachar, 2001: 120); that is, so as to acquire what she posits to be, as it were, the ‘carrot’ of compulsory divorce jurisdiction (the threat of

exit being the ‘stick’). There is little guarantee, however, that, at a more informal level, the group would cede control over the distributive function of family law. To the contrary, there is every indication that the women who are currently subject to blackmail in the private or more informal sphere as a result of abusive deployment of minority regulation, would continue to come under pressure to bargain away whatever they have – under Shachar’s model, their state law (distributive) entitlements – in order to avoid having to exit in favour of the state’s (demarcation) regime (cf. Reitman, 2005: 203 making this argument with reference to the exit features of Shachar’s model).

2. I have just argued that Shachar’s framework may fail to prevent unjust distributive regulation, especially when one takes account of informal levels of regulation, which are likely to survive in the shadows of the formal structure she proposes. I argue now that her framework may also serve to frustrate the more just distributive regulation I suggested multicultural accommodation should seek to foster. This is because she seems to want to rule out minority and state cooperation in regulation of *distributive* matters when such cooperation may offer solutions to the problems involved here. This is the case in the Jewish divorce example Shachar uses as the primary illustration of her proposed framework. Shachar seems to have overlooked the fact that such regulatory cooperation is entailed in some of the most promising solutions advanced by way of multicultural accommodation to the problems arising here, especially in the diaspora.<sup>14</sup> In order for these mechanisms to be effective, account must be taken of Jewish law justifications for them, and a great deal of care is required here, as the argument is controversial. Deliberation and cooperation would be required, probably on a case-by-case basis, to ensure that the right sorts of remedies are made available from a Jewish law perspective. While there are potential difficulties with these measures in practice, which have to do with technical rules of Jewish law, such difficulties can, indeed need to, be addressed in the policy-making and implementation process.<sup>15</sup>

Although Shachar is keen to foster deliberation between group and state, the sort of deliberation she counsels is rather different since the distributive function of family law is to be off the agenda from the outset (given that, in Shachar’s Jewish divorce hypothetical, the calculus turns on the state’s acquiring exclusive jurisdiction over this aspect of regulation), and deliberation is to centre, instead, primarily on how each entity’s distinct regulatory powers – the state, its distributive powers and the group, its demarcation powers – are to

be exercised so as to achieve regulation in each particular case; and, especially, on providing a right of exit from the group's regulatory jurisdiction over status-determination, should the problems women face be enduring (Shachar, 2001: Chapter 6, especially at 121–4; cf. Reitman, 2005: 206, fn. 6 on the potential counterproductive effect of centring deliberation on exit rights).

In this light, Shachar's more concrete proposals appear paradoxically (partially) to repeat what I have suggested to be Okin's oversights: like her, Shachar seems to give up too easily on the prospect of finding equitable solutions from within the minority system of regulation. On distributive matters, Shachar opposes accommodation – indeed it is a crucial part of her calculus – allocating this function instead exclusively to the state, in order that generally applicable law should govern in the minority context, an argument which is reminiscent to that described above in reference to Okin's comparable reliance on state law as a solution to minority patriarchy. The practical effectiveness of the Jewish divorce accommodations discussed above, however, are premised on the need for equitable Jewish law distributive determinations to be enforced, a need which is served by enforcing minority determinations through the more coercive apparatus of state law. As Okin overlooked this potential, so too does Shachar – both of them seem too readily to turn to generally applicable law to find solutions, albeit that, in Shachar's case, this is merely to prevent women from having to pay distributive penalties whereas, in Okin's case, reliance on state law seems more generalized.

In closing, I want to suggest that the problem with the balancing approaches considered here is precisely the balance which, in their different ways, both Shachar and Kymlicka want to 'strike . . . between the accommodation of minority group traditions, on the one hand, and the protection of individuals' citizenship rights, on the other' (Shachar, 2001: 1) – both theorists 'striv[ing] for the reduction of injustice *between* groups,' in Shachar's words, while working towards 'the enhancement of justice *within* them' (2001: 4); or, in Kymlicka's words, for '*freedom within* the minority group, and *equality between* the minority and majority groups' (Kymlicka, 1995: 152).

This balancing approach would be likely to continue the phenomenon by which women have to bear disproportionate burdens under multicultural policies, a phenomenon which Shachar herself and other feminist scholars have emphasized in their critiques of multiculturalism. If the balance is held between these twin objectives, instances of minority patriarchy might well continue to be 'the unavoidable by-products' (1995: 44) of measures taken to satisfy the group-focused ethical concerns they identify

on one side of the balance. While these may not be 'desirable in and of themselves' (1995: 44), they may simply be unavoidable.

This sort of wager is not eliminated in the proposals of Kymlicka and Shachar. Although they do not squarely confront it, its presence can be felt in the evasive arguments which each makes in respect of enduring minority patriarchy: Shachar ultimately relies on exit, even though she herself recognizes its limitations in her critique of Kukathas (cf. Reitman, 2005); and Kymlicka performs an anti-interventionist retreat, at least as regards certain minorities, in relation to which his axiomatic external protection/internal restriction distinction is not to be coercively enforced (Kymlicka, 1995: Chapter 8).

Two arguments can be teased out from the foregoing discussion by which to support granting minority groups forms of accommodation in reference to minority patriarchy. One of them, derived from Shachar's contributions to the debate, which, as we have seen, most informs the manner in which jurisdictions are split under her model, is that of boundary-marking. The problem, however, from a feminist perspective, is that cultural boundaries tend to be marked over women's bodies (a phenomenon well noted in multicultural feminist scholarship (e.g. Yuval-Davis, 1980, 1989 and 1997) and by Shachar herself (e.g. 2000a: 76, 2000c: 394)). This comes out starkly in the Jewish divorce example, where community boundaries are marked literally through patriarchal control over the womb, assuring a husband's ownership over his wife's reproductive capacities (e.g. generally Adler, 1998: Chapter 5; Hauptman 1998: Chapter 3, and Wegner, 1988 describing Jewish marriage law on terms of the husband's acquisition of his wife). Control is effected here through penalties which impact on demarcation issues, in that children born to a woman considered married to another are deprived of full membership status in the community (cf. Reitman, 2005: 192). Women pay distributive penalties so as to avoid suffering penalties at the level of community demarcation. Although Shachar's model is meant to encourage reform so as to eliminate these penalties from arising, such reform cannot be expected on the terms she advances and, in its absence, women are likely to continue to pay penalties, whether distributive or otherwise. If, as Shachar intends, the distributive penalties were somehow prevented from arising (both formally and informally, which I argued above to be unlikely), women might continue to pay non-distributive penalties to avoid these demarcation penalties – they might, for instance, have to forego childbearing in their remaining reproductive years, even undergoing unwanted abortions in order to avoid having children not entitled to the full benefit of membership in the community (cf. Radoszkowicz, 2004).

More needs to be done to prevent these injustices. The second argument for granting forms of accommodation in respect of minority patriarchy helps here since it centres on empowering community leaders to achieve more effective and just regulation. Although Shachar proposes her

jurisdiction-splitting model precisely so as to avoid unjust regulatory outcomes, that model is built too much around the first of these arguments, with its emphasis on boundary-demarkation in the manner in which jurisdictions are to be split between minority and state. Her ear bent more to the first argument, she seems to have been deafened to the second since her concrete proposals would be likely to frustrate it precisely where it seems to have most promise. In this light, the balancing approach appears obfuscatory, leading to arguments in favour of external protection which are hard to justify from a feminist perspective; and perhaps even frustrating, as we saw in the Jewish divorce example, other arguments which could be. I suggest below that an explanation can be found for this in the place of more mainstream defences of multiculturalism in the balance here, with one side seemingly weighing down heavier than the other.

### **SYNONYMY: FEMINIST MULTICULTURALISM AND MULTICULTURAL FEMINISM**

I have ventured in this commentary that what is needed is not a choice between multiculturalism and feminism, as posited by the incompatibilists Okin and Kukathas, but a reconceptualization of these two political projects, with the aim of bringing to the fore a more multicultural understanding of feminism which thereby permits the identification of a form of multiculturalism which is more feminist. This is not achieved by seeking to create a balance between the two political projects, as ventured by the compatibilists Kymlicka and Shachar. To the contrary, this balancing approach can obscure feminist reasons for multiculturalism precisely because of the attempt to marry these with more mainstream defences of multiculturalism. As a result of this process of combination, the putative incompatibility between multiculturalism and feminism (raised, for instance, by Okin) seems to resurface (cf Reitman, 2005: 203 contending that Shachar's arguments serve mainstream multicultural objectives more than they do feminist ones), thereby destabilizing the claim underlying this approach that they are in fact, or can be made to be, compatible.

This suggests that one needs to drop the idea of balance here, in order to ensure that the side which loses out in the wager underlying the balancing approach is not obscured from view; so as to allow arguments defending multiculturalism from a feminist perspective to hold sway in the formulation of policy. What is needed to configure multiculturalism and feminism, then, is not choice or balance but, quite simply, new definitions.

In this concluding part, I want to bring to the fore an alternative configuration of multiculturalism and feminism underlying the foregoing argument, which highlights a definitional synonymy between them, as a substitute for



a conception based on notions of compatibility or incompatibility. I want here to defend this notion of synonymy between multiculturalism and feminism and highlight its salience in identifying principles of justice which ought to govern the formulation of policy. The foregoing argument was limited to a specific (and indeed controversial) definition of ‘minority patriarchy’ and I want here also to return to the working definition given, to look at the aspects it excluded – namely, the more systemic aspects of patriarchy – and, through this, to consider the limitations of the synonymy thesis defended in this paper.

My defence is structured in what follows as a response to three sets of objections: two raised from a multicultural perspective, and the third, from a feminist perspective. These objections are made from a more mainstream standpoint than I have been using up to now, in distinction to the kind of perspective which has supported the synonymy thesis. Do they succeed in challenging this thesis?

### ***The objection from multiculturalism I***

One objection to the synonymy thesis is that it appears to imply a lesser commitment to assuring the values which appear on the other side of the balance in the approaches described in the second part of the commentary, thereby suggesting that ‘injustice *between* groups’ might be lost from view in the process of securing the ‘enhancement of justice *within* them’ (Shachar, 2001: 4). At this point, the working definition of minority patriarchy used here helps dispel some of the concern. The working definition was given for pragmatic reasons, a principal one being that it helps to separate out two areas of policy – one, as per the working definition, which directly targets individual or specific practices of patriarchy; and the other, responding to the more systemic aspects excluded from the definition. By defining minority patriarchy solely in reference to practices, and by specifically excluding the more systemic aspects of patriarchy, one also thereby excludes considerable domains of distinctiveness in which the mainstream arguments for multiculturalism are, subject to the comments made in the next section, not disturbed by arguments made thus far.

The objection might, however, continue: what of policy in respect of minority patriarchy? Why should the other side of the balance be taken out of the picture here? My contention is that it *would* enter the picture precisely because of the work of making multiculturalism and feminism synonymous in the redefinitions of each which have been proposed here. The synonymy thesis offered as a tactical way of reversing the wager I argued at the end of second part could be detected in the balancing approaches considered there, in which minority patriarchy was found to be likely to remain the unavoidable by-product of measures taken to foster justice between groups. Under the synonymy thesis, this wager is reversed,

reflecting the fact that those who suffer most under minority patriarchy are, by definition, women.<sup>16</sup>

By highlighting the areas in which multiculturalism and feminism can be regarded as synonymous – namely, in relation to aspects of patriarchy included in the working definition – the synonymity approach helps better to pinpoint where attention should rest in trying to configure multiculturalism and feminism, more accurately generating policy which reflects this disparity of harm. This should serve more precisely to separate good multiculturalism from bad, to borrow Kymlicka's phrasing, than do the balancing approaches he and others have articulated, thereby potentially minimizing gender-based vulnerability considerably. While appreciable amounts of accommodation may well continue to be defensible using the synonymity approach, it more accurately permits the designation of multiculturalism which is indeed good for women, whereas the balancing approach seems to end up defending forms of accommodation which may well continue to be met with claims that multiculturalism is bad for women.

### ***The objection from feminism***

The proposition that mainstream defences of multiculturalism survive feminist scrutiny in a whole host of areas not included in my definition of minority patriarchy might have been disputed by Okin, in relation to whom that definition is most controversial, given her emphasis on the more systemic aspects of minority patriarchy excluded from my working definition. In her arguments against multiculturalism, she worries particularly about 'socialization into inferior roles, resulting in lack of self-esteem or a sense of entitlement' and she expresses concern for 'cultures and religions whose female members are devalued and imbibe their sense of inferiority virtually from birth' (1998: 675).

The move to separate out patriarchal practices from this type of systemic patriarchy in my definition would seem then to miss the point. My contention is that the point would not be missed but simply reflected in the conditions which ought to attach to more mainstream defences of multiculturalism when they apply to areas of cultural distinctiveness not encompassed in the working definition used here, conditions upon which I expand briefly in this section.

The working definition's appeal is that it helps to see a way out of the incoherence noted in the first part of this commentary, regarding Okin's support for multiculturalism. Since patriarchy is, as Okin says, systemic, she ought to have rejected multiculturalism, presumably to allow assimilation to occur. As noted by Janet Halley in her commentary on the Okin/Kymlicka debate (Halley, 1999: 100), there is an 'empirical' disagreement between them here, stemming from Okin's admonition that 'far fewer

cultures than Kymlicka seems to think will be able to claim group rights under his liberal justification' (1999a: 21). That is, multiculturalism would seem difficult to justify on Okin's terms once account is taken of the systemic forms of patriarchy which Kymlicka's 'more subtle account of internal restrictions' (1999b: 32) would have to include. In fact, then, Okin's endorsement of multiculturalism seems merely temporary, surviving only in the initial stages of policy making in which the choice between multiculturalism and feminism is to be effected. Once Okin's version of the balance is applied (during these stages), multiculturalism ought, on Okin's terms, logically to be ruled out, such that few cultures would indeed be able to claim the benefit of multiculturalism. Yet Okin continues to endorse multiculturalism in later writing, stressing that the 'treatment of women within groups should be an important factor, but not the only factor, in negotiation about group rights' (2005: 73).

The distinction upon which my working definition of minority patriarchy is based serves to separate out an area in which multiculturalism can more coherently be endorsed. By accepting the defence of more mainstream defences of multiculturalism, notwithstanding the enduring systemic features of patriarchy which drives this objection, one better grounds what seems to be Okin's intuitive reluctance to reject multiculturalism outright. If Okin does indeed want, as she has later explained, 'to resolve the incompatibility of feminism and multiculturalism so as to minimize the likelihood that societies would be faced with a stark choice between the two' (2005: 71), the working definition, and its separation of two areas of policy making, is offered here as a more coherent framework for doing so, even though, at first sight, it may appear controversial.<sup>17</sup>

I shall not say much on the second area of policy articulated here, since it does not address the aims of this commentary, being to signal problems of orientation in the configuration of multiculturalism and feminism. At this level, in regard to areas other than those directly implicating minority patriarchy (as defined), the idea of balancing multiculturalism with feminism seems, at least in the first instance, to be more defensible: while answering the justice claims of groups here, the state must also take care to address the more systemic aspects of patriarchy which have been excluded from the working definition on which the synonymy thesis has been based, but which may nevertheless endure.

In thinking about how to put this balance into practice, I maintain that the synonymy thesis continues to have salience, indeed more salience than the approaches rejected here. Many of the same reasons that have motivated the argument here, rejecting these approaches in respect of minority patriarchy (as defined), would also seem apposite in respect of policy-making to attend to the more systemic aspects of patriarchy. Okin's proposals boil down to consultation with women and here she forms part of a developing consensus that deliberation is the way forward in trying

to balance multiculturalism and feminism. As I have said, however, deliberation is necessary but not sufficient. Deliberative principles are needed to structure how consultation with women is to proceed and, in regard to policy targeting systemic patriarchy, these can best be generated on the basis of an understanding of synonymy between multiculturalism and feminism. It is worth emphasizing that my endorsement of the balancing approach here is centred on questions of orientation in regard to configuring multiculturalism and feminism, and only at the initial stage, to move beyond the choice which seems to flow from the incompatibility thesis – with regard to the more technical or practical aspects of this approach, however, my comments have been largely critical.

### ***The objection from multiculturalism II***

With all this talk of policy in respect of systemic forms of minority patriarchy, non-interference objectors might balk at the degree of intervention which seems to follow from my proposals here; and no doubt their problems would not end with these policies, but would also attach to those proposed in respect of the more concrete or tangible practices of patriarchy included in my working definition.<sup>18</sup>

Although, as many feminists have shown, non-interventionist arguments are difficult to justify at the level of principled argument (e.g. Olsen, 1993), I continue to reflect these arguments in my own proposals, but more at the practical level, for pragmatic reasons (see Kukathas, 1997b: 420, discussing non-interventionism on these two levels). Many of the arguments advanced to support this objection are compelling, particularly when thinking about the practical or technical questions with which this commentary has not been directly concerned. Here, I can merely note that the synonymy thesis incorporates many (although not all) the arguments driving this non-interventionist objection (c.f. Reitman, 2005: 204–6), and this should be apparent if one considers the nature of the arguments which I have advanced here, particularly where my discussion was most contextual. The forms of multicultural accommodation I defended in respect of minority patriarchy at this more practical level are informed by the principle of respect for jurisdictional-autonomy argued for by many non-interventionists (e.g. Moore, 2005; Kymlicka, 1995: Chapter 8 and 1999a). I endorsed policies which were justified using minority legal arguments – in the example used, minority arguments in favour of more equitable distributive arrangements surrounding divorce.

In formulating responses to claims for multiculturalism in respect of minority patriarchy – for instance, in responding to contemporary calls of greater accommodation in respect of practices regulated by *sharia* or *halacha*, of which the divorce case study used here is an example – the state

should structure its actions on an understanding of synonymy between multiculturalism and feminism, such that policy emanating from this process would be made on the basis of the feminist multicultural principles articulated in the first part of this commentary, themselves learned from the multicultural feminist standpoint staked in the feminist difference debate. While this can be seen as choosing feminism, it is a feminism which is synonymous with multiculturalism in the most worrying quarters (where patriarchy is directly implicated) and can be made to be compatible with it in others (where patriarchy is less directly implicated).

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### **Notes**

- 1 The feminist difference debate centred mostly, especially at the time, on difference among women arising between rather than within nation states, the discussion tending to focus on the international more than the multicultural context, although both forms of difference are the target in much of the debate.
- 2 For an overview of this vast debate, see Freedman 2001: Chapter 5; and for references to authoritative texts, see footnotes in Flax, 1995 (Okin's primary antagonist in that debate).
- 3 I cannot engage with those parameters in the space available here, it being sufficient for present purposes simply to observe that Kukathas's proposals do not advance a convincing solution to minority patriarchy.
- 4 For instance, Kukathas endorses (1992: 133) the use of generally applicable state law governing marriage formation by women suffering in respect of the practice of forced marriage in British Asian communities.
- 5 My critique of Shachar here only addresses part of the detail, notably that which is meant to serve the security-fostering branch of this calculus. One of the principal mechanisms by which Shachar intends to create incentives for reform – rights of exit – finds more detailed criticism in Reitman, 2005, which deems them unreliable, the upshot being that feminist cultural reform cannot be taken as the guaranteed outcome of Shachar's proposed framework.
- 6 It should be noted, however, that Shachar does not make her argument with anything like the same degree of emphasis on feminist arguments as does Okin

(cf. Shachar, 2001: 188 index entry revealing feminism only to receive five mentions explicitly in her book, three of which, in footnotes).

- 7 Cf. n. 11 below.
- 8 For instance, in the text accompanying n. 11 below, he fails to ask whether any accommodation is required to attend to the problems to which *talaq* divorce regulation gives rise.
- 9 For example, Henry, 1999, quotes an influential advocate as suggesting that the 'last thing you are going to get . . . is justice'. Patel, 1991 and Yuval-Davis, 1992 also voice opposition, from a multicultural feminist perspective, to the empowerment of minority institutions by way of multicultural policy, even where accommodation is motivated by concern for women within those communities.
- 10 In the Introduction, I argued that the multiculturalism/feminism debate would be well served by taking on board arguments aired in the feminist difference debate. It should be noted that while Shachar does consider the arguments of some multicultural feminist theories, I argue here that their arguments do not seem well instantiated or put into application in the concrete proposals she puts forward.
- 11 But note that there are cases in which Kymlicka envisages as much if not more accommodation than Shachar. Kymlicka draws a distinction between national minorities and immigrant groups and argues for more extensive self-regulation regimes for the former than the latter category of minority (a category which includes the minorities in question in our divorce example).
- 12 I have noted elsewhere that another facet of Shachar's calculus (exit) can also be expected to be counterproductive to the goal of fostering this sense of security (Reitman, 2005).
- 13 Israel is a surprising example here given my argument elsewhere that aspects of Shachar's model (particularly its reliance on exit) work best in reference to Israel were there is no formal or basic right of exit in respect of divorce (Reitman, 2005: 19, fn. 4).
- 14 See, for example, NY Dom Rel Law 236(B)(5)(h), (6)(d) (McKinney Supp 2003) (US); *Brett v Brett* [1969] 1 All ER 1007 (CA) (Eng); *Re Steinmetz* (1980) 6 Fam LR 554 (Austl); *Gindi v Gindi* NYLJ 31 (Sup Ct 2001) (US) (in which various multicultural states have recognized power to take account of the abuse of Jewish divorce law in establishing how property should be distributed between spouses following state divorce, so as to give women additional levers in bargaining for an equitable regulatory outcome in respect of their Jewish divorce).
- 15 Cf. Reitman 2005: 205–6 (on the difficulties these mechanisms present when implemented without adequate deliberation).
- 16 Had not the terms taken on such sinister connotations, one would be tempted to describe it thus: under the balancing approach, women suffer collateral damage (patriarchy as the 'unavoidable cost' of multiculturalism) but under the synonymy approach, this wager is reversed, and the group acquires collateral benefit (in policy directly targeting minority patriarchy, it would acquire the benefit of any accommodations defended using the synonymy thesis).
- 17 The distinction between systemic and more tangible forms of patriarchy is not without difficulty. It is offered as a tactical distinction which is useful in many,

but no doubt not all, cases (and I take comfort here from the fact that the measures of accommodation included in the counterbalancing factors listed by Okin would be defended under the approach I propose, since they would fall in the second category.)

- 18 Note that the line drawn between accommodative and tolerationist multiculturalism is most challenged in reference to non-interventionist arguments, since they can be found in both camps (compare e.g. Kukathas, 1997a: 89 with Kymlicka, 1995: 167).

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