Group Rights vs. Individual Rights?: Navigating the tension in Western Liberal States

Based on the article by Lyra Porros Garzon, Women in Action, No.3 2005, p.7-13
Nation Building

- Implies a “melting pot” or “national integration”
- Various ethnic, religious and cultural groups expected to give up parts of their collective identity to adopt the values of the dominant or majority groups
- Dominant groups wields political powers and define the national culture in terms of their own cultural identities; expect all other groups to conform to the model
A Group

- Survival the most fundamental right
- Can assert claims and prevent the destruction of cultural, linguistic and religious identity only if permitted to persist
- Destroyed if the State disperses or prevent expression of its identity
Minority

- “A group which is smaller in number than the rest of the population of a State, whose members, although nationals of that state, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.” Art 2, Vienna Commission
Minority

“A group, numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population, and show, only if implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or languages.” Francesco Capotorti, Special Rapporteur of the UN Subcommission on the Prevention of Discrimination and Protection of minorities
Minority Rights

- An aspect of group rights, i.e., “collective rights”
- Subject to certain limitations at the discretion of the State, such as for the protection for public order
- Strict criteria required in impose limitations on religious and cultural freedoms
Minority Rights

- The terms “public safety, order and morals” immensely elastic and used as a pretext for arbitrarily favouring majority rights
- Consistent with individual rights but also promote these
- Respect for them can enlarge the freedom of individuals, because freedom is intimately linked with and dependent on culture by providing access to a plethora of “meaningful options” – the individual must have the freedom of entry and exit to his or her culture or religion without any interference from the State
Cultural Rights

• Closely associated to other individual rights and fundamental freedoms (expression, religion and belief, association and education)
• Asserted by UNESCO which proclaimed a “right to cultural identity”
• Interpreted as “the right to one’s own culture,” not only to the “general” culture; general culture and one’s own culture are not necessarily the same thing
• Vital as a “context of choice”
Collective rights of a minority

- Implies a rejection of universality in order to recognize the specificities of different social groups usually that of the dominant group
- Conflicts with the normative identity of the majority
- Because of its deviation from the normative, considered repressive by some and viewed as legitimizing hierarchies, inequality and absence of freedom
Human beings

- Are equal and have same rights
- Have the possibility to follow their own “plan of life” – to define one’s own ends and develop different directions and be free to question
- Right to innovate and challenge is a significant part of the individual cultural rights
Dilemma between group rights and individual rights

- Not a binary situation but instead possess commonalities
- Role of an individual in reproducing and developing his or her own culture important when the individual finds existing tradition unacceptable for insufficient, either by comparing with other cultural practices or significant changes are needed in the existing cultural traditions because of new conditions
Discrimination against Women

- Both minority men and women experience discrimination, but women suffer multiple discriminations.
- Based on two or more grounds – targeted because they are women and of their identification with the minority group.
Discrimination against Women

- Emanates from outside the group (who see them in terms of ethnicity, national religion, etc.) and from within the group (from men who view women as inferior and subordinate).
- Marginalizes women by locking them into specific social roles and failing to recognize their wish to improve their rights and defend their culture.
- Multiple discriminations intersect and reinforce one another with cumulative adverse consequence.
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- State parties condemn discrimination against women and undertake to eliminate it by all appropriate means
- Does not differentiate between women in different situations
- No separate reference to discrimination incurred by a minority distinct from those faced by all women
- By treating all women as a homogenous category, factors such as sexual orientation, economic status, race, religion, culture and ethnicity are ignored
Minority women’s dress codes

• Guatemalan indigenous women wearing traditional dress as part of their spiritual practices as well as an assertion of their social and ethnic identity experience discrimination and rejection from the majority (and predominantly white) population.

• A major source of discourse in the West – contestations over women’s individual autonomy and control of minority groups through “their” women, and claims by the government that it is saving or protecting women from their own community – *“white men saving brown women from brown men”*
Minority women’s dress codes

• In the post-9/11 environment, a claim is made that banning minority women’s distinctive clothing is a means of emancipation and protection of women’s inherent indignity and fundamental freedom.

• This protectionist and conservative assertion by the State reinforces the stereotypes of oppressed Muslim women and solidifies pejorative stereotypes of overbearing and oppressive Muslim men.

• By portraying Muslim women as lacking agency and control over their own lives, the context behind the headscarves has been ignored.
**Hijab or other various forms of “veiling”**

- Encompass multiple meanings depending on cultural, religious and historical contexts
- Although interpreted as being oppressive and symbolic of women’s subjugation in Islam, no universal opinion on the function and meaning
- In France among the Maghrebin immigrant women, some see the veil in dual lenses
- Others view it as “barriers to assimilation” or as “vehicles of integration into dominant society”; for others represents honour and also prove empowering
Hijab or other various forms of “veiling”

- Still for some, a way to reclaim ethnic identity or as a means to negotiate between the community of their parents and the society there they are immersed in
- In Iran, veiling symbolizes rejection of the Shah and Western Imperialism
- A strong, loud and provocative expression of individual religious choice within the context of a group
- A wish for public recognition of their collective identity instead of being “shamed” and stigmatized
- An assertion of the equality of respect
Muslims in the West

- Considered "as belonging to one homogenous category and not as people who may, like the majority, have different idea about dress and in the manifestation of their identity, the issue of culture is further displaced, resulting in colonial assumptions about cultural differences between the West and "the rest"
Culture Practices

• Not static
• Rooted in history and capable of reproducing and developing over time
• Need to unpack it "to determine who is claiming it and on whose behalf, and to ensure the participation of monitory women, free from the restraints of men, from either their own or the majority community"
Culture Practices

- Article 17 of the African Protocol on Women’s Rights stipulates the participation of women in the determination of cultural practices
- Should not be accepted or rejected in a wholesale manner – individual practices should be assessed for their impact on human rights
Minority rights should be protected

Survival and further development of the religious, cultural and social identity of minorities, enrich the society as a whole