The UN, Minority Rights and Gender Equality:
Setting Limits to Collective Claims

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1. Introduction

Defining the limits of minority rights poses a significant challenge to human rights norms. At the heart of current debates on multicultural citizenship is a concern to recognise the distinct cultural identities of minority communities through legal mechanisms that allow for group-differentiated citizenship. Such differentiation, however, may bring with it the possibility of increasing segregation, the potential not for solidarity or cohesion but rather for fragmentation and conflict. This so-called 'balkanisation' effect can have particularly damaging consequences for women within minority communities, cut off from supports and networks within majority or minority communities. In recent years, the politicisation of multicultural politics and the increasing moral panic surrounding identity politics have fuelled public concerns that group-differentiated citizenship, given legal effect through protections of minority rights, threatens the bonds of community necessary for social cohesion. In turn, cultural symbols or signifiers of group difference, such as distinct dress codes or separate systems of religious based personal law, have become markers both of difference and resistance.

Within multicultural states the conflicting claims that arise between the pursuit of gender equality and the protection of collective claims raise particularly intractable questions.¹ Multicultural disputes frequently touch on the roles and

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status ascribed to women and children. Feminism has struggled with the politics of multiculturalism, concerned, on the one hand, to recognise the significance of religious, cultural and other differences and, on the other hand, reluctant to yield to claims that seek to privatise the pursuit of gender equality. The “rifts of intercultural difference” are most keenly felt along the boundaries demarcating the public from the private sphere. These boundaries, of course, are deeply gendered. In recent years, liberal feminism has tended to dismiss multicultural politics as “bad for women” or as an “excuse for bad behaviour”. Dismissing multiculturalism as an oppositional force, however, denies the possibility of arriving at just multicultural arrangements—arrangements that both define the limits of reasonable pluralism and recognise the significance of religious and cultural differences. Such potential can be seen, at an institutional level, in the strategies adopted by UN bodies such as the Committee on the Elimination of Discrimination Against Women (CEDAW Committee). The CEDAW Committee, the Human Rights Committee (HRC) and other bodies have attempted to define what might be a just multicultural arrangement. This has required limits being placed on the claims of collectivities, including minority groups. Such limits have led to criticism that the UN system is unduly individualistic in its protection of minority rights. Article 27 of the International Convention on Civil and Political Rights (ICCPR) protects the rights of “persons belonging to” minority groups. This individualistic approach is tempered by the Human Rights Committee’s concern to also recognise the collective element of minority rights. From a feminist perspective, collective claims have often been the “ties that bind”. As such, limits to minority rights, set with reference to individual rights claims, are essential to emancipatory politics. Minority rights are not, of course, necessarily in conflict with feminism, or more broadly with gender equality. Where conflicts arise, however, it is important to know where international human rights standards draw the line. As Benhabib points out, “[m]oral autonomy and cultural pluralism need not always conflict, but when they do it is important to know where one stands”.

At a normative level, the insights of discourse ethics theorists offer the potential to devise strategies that respond both to the concerns of difference feminisms

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