Beyond Culture Versus Women's Rights and How to Fight Imperial Sexism Instead

Chapter 6

Fighting Imperial Sexism

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Chapter Abstract. For more than thirty years, politicians, pundits, and scholars have asked: what should liberal states do when culture clashes with women's rights? Alternatively, this book asks: what happens when we question this clash? How does our understanding of these controversies shift and what new solutions emerge? To answer these questions, I compare three cases: the French "burka ban" adjudicated at the European Court of Human Rights, the legalization of polygyny in South Africa, and the elimination of the marrying out rule for Indigenous women in Canada. This paper is the concluding chapter to the book. While the previous chapter detailed the imperial approach taken by liberal states and conservative colonized leaders, this chapter explains the intersectional approach taken by non-governmental organizations and colonized women. It explains how to reject the claim that culture and women's rights clash and imperial moralism, and provides insights on how to build bridges between the colonized and the colonizer, center the lived experience of colonized women, and attack imperial sexism.

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Chapter 6

Fighting Imperial Sexism

6.1 Culture and Women's Rights

Over the past thirty years, controversies about what to do when culture clashes with women's rights have become increasingly common. Liberal states have endorsed both the right to culture and women's rights, miority cultural groups within liberal states wrested greater legal and social recognition to practice their way of life, and many of the world's women won greater legal equality. In response, politicians, pundits, and scholars have debated what liberal states should do about the cultural practices of minority groups, such as female genital cutting. Cultural relativists have argued that governments should use the group's own yardstick to assess these practices while universalists have insisted that many minority group cultural practices violate women's rights and should be banned. Liberal multiculturalists have produced a third option; they urge liberal states to develop just negotiating procedures to navigate between both sets of rights.

This book rejects all three positions. Instead, I question the assumption that culture clashes with women's rights. By comparing three different cases—the adjudication of the French full-face veil ban at the European Court of Human Rights in 2014, the legalization of polygyny under Nelson Mandela's government in 1998, and the termination of the marrying out rule for Indigenous women in Canada in 1985—the previous chapters have demonstrated that clashes between culture and women's rights are never inevitable. The common denominator in these three very different cases was not how to resolve a clash between culture and women's rights.

Instead, the common denominator was *whether* culture clashed with women's rights. While many government officials and conservative colonized leaders insisted rights clashed, the judges at the European Court of Human Rights, international and non-governmental organizations (I/NGOs) and colonized women did not. This suggests that assuming culture and women's rights clash is a partisan stance- and one aligned with political elites against the judges, I/NGOs, and colonized women.

Instead of asking what to do about contested cultural practices—Should the full-face veil be banned? Should polygyny be legalized? Should a compromise for the marrying out rule be pursued?—this book asks a different set of questions. What happens when we question this clash? How does our understanding of these controversies shift and what new solutions emerge? To answer the first question, I analyzed what people said during three dissimilar policy debates. In all three cases, I found that contending parties not only made arguments but also told stories. By stories I mean that all their arguments contained conventional story elements, such as villains, victims, and heroes. Studying these story elements helped me to identify the relation among rights that each storyteller constructed, relations that ranged from a clash to indivisible, to no relation at all.

In all three cases, the story government officials told carried the day. Their stories forged a clash between culture and women's rights. In the previous chapters, I explained how and why this happened. For instance, I discussed how the symbolic environment where these controversies occurred favored government officials and marginalized colonized women who constructed alternative relations among rights. Recall that in Canada, Indigenous women traveled to the Centre Bloc—a set of buildings located on stolen Indigenous land that convey British imperial grandeur—to tell their story to a parliamentary committee comprised almost entirely of

white men. The Tobique Women's Political Action Group not only testified in English, the language of the colonizer, they also testified in legal jargon, the language of government officials. The Tobique Women's testimony made it clear that they believed Indigenous and women's rights were indivisible and that Indigenous women were entitled to both. Yet their story went unheard. Instead, even sympathetic MPs renarrated this story, insisting that by demanding equality, the Tobique women clashed with chiefs who demanded Indigenous rights.

The stories government officials told also gained traction by being steeped in imperial moralism. As I discussed in the previous chapter, these stories—which relied on imperial myths, tropes, and binaries—gained narrative drive even as the claims underpinning them defied the reality on the ground. At the European Court of Human Rights, for example, the French government assailed Muslim men for imposing fundamentalist Islam on Muslim Frenchwomen by forcing them to wear the full-face veil. This accusation was legible given the pervasiveness of imperial myths like the White Man's Burden and tired tropes about colonized men who oppress helpless colonized women. Yet the overwhelming majority of Muslim Frenchmen supported the 2010 law banning the covering of the face in public. The French government's story not only trafficked in imperial stereotypes, it also essentialized both French culture and Islam to better emphasize differences between them. Moreover, the French government's story appealed to abstract principles about rights and cultural differences. Finally, government officials attacked *either* the sexism of colonized men or the racism of the colonizer, rather than how these two systems of oppression interacted in the lives of colonized women to produce imperial sexism.

The results of the three rights controversies in this book were sobering. None of the policies that government officials passed had the effects that politicians, pundits, and scholars endorse. The decision of the Court to uphold the full-face veil ban and the decision of the

Canadian government to eliminate the marrying out rule did not "save" colonized women as many universalists might expect; nor did the decision of South African government officials to legalize polygyny and recognize African customary marriage protect African culture as advocates of cultural rights might hope. Instead, all three policies harmed the women these rights controversies were about and buttressed state power over the colonized. Recall that the Court's decision was associated with increasing assaults on Muslim European women and increased Islamophobia. In South Africa, the legalization of polygyny breathed new life into a dying practice repudiated by African women while also affirming the right of the post-apartheid state to reform African customary law as it saw fit. In Canada, Bill C-31 introduced a new form of sex discrimination that heightened conflict within Indigenous communities even as it validated the necessity of settler colonial rule over hopelessly divided Indigenous peoples.

Given these negative outcomes, colonized women took matters into their own hands. Many protested by going to court. In South Africa, women and children in polygynous marriages sued one another upon the death of a male spouse, prompting the Constitutional Court to declare the recognition of African customary marriages unconstitutional. An ensuing amendment to the law has not resolved inheritance disputes or the debate over polygyny. Indeed, some officials swiftly followed the amendment with a proposal to legalize polyandry, meaning the right of a woman to more than one husband.[1]

Clearly, pundits, politicians, and scholars have misunderstood the policy problem that contested cultural practices raise. Liberal states do not face an inevitable clash between culture and women's rights. Instead, the policy problem is much graver and broader: how can we

[1] Pumza Fihlani, "Outcry over South Africa's Multiple Husbands Proposal," BBC News, Johannesburg, June 27, 2021. https://www.bbc.com/news/world-africa-57548646

counter liberal democratic politicians and conservative colonized leaders who govern through cultural, religious, and women's rights to sow social division, punish colonized women, and intensify state rule over the colonized? This chapter tackles this question by discussing an alternative to the imperial approach.

By attending not only to what government officials and conservative colonized leaders said but also to what the judges, I/NGOs and colonized women said, this book reveals an alternative approach that has long existed. In this chapter, I draw on these stories to detail the intersectional approach to contested cultural practices. Advocates of this approach reject the claim that culture and women's rights clash and avoid imperial moralism. Instead, advocates assail racism and sexism, build bridges between the colonized and the colonizer, and center the lived experience of colonized women. They also attack imperial sexism, meaning the racialized sexism that stems from colonialism and that both liberal states and colonized communities perpetuate.[2] In addition to explaining how the judges, I/NGOs, and colonized women pursued an intersectional approach this chapter also presents this approach as an analytical framework that can be applied to a wide variety of cases. I demonstrate how this framework can be used by applying it to a case study beyond the three featured in this book: the practice of female genital cutting in India by the Bohra. This application illustrates how politicians, pundits, and scholars can avoid a clash between culture and women's rights and fight imperial sexism instead.

6.2 The Intersectional Approach of the Judges in *S.A.S. v France*

[2] As I discussed in the previous chapter, the colonized also are entangled in imperial moralism. To be sure, they do not perpetuate the conventional form, which is marked by myths such as the White Man's Burden. Instead, conservative colonized leaders fragment imperial moralism and wield these fragments by using, for example, the racism of the colonizer to justify internal sexism.

Many different groups beyond government officials and conservative colonized leaders participated in the three rights controversies in this book. In the controversy over the French 2010 law banning the covering of the face in public, adjudicated by the European Court of Human Rights in 2014, these groups included S.A.S. (the anonymous applicant to the Court and a French citizen who wore the full-face veil) and her legal team, the INGOs that submitted amicus briefs to the Court, and the judges. All three groups steered clear of a clash between culture and women's rights and avoided imperial moralism. Moreover, all three centered the lived experience of colonized women and attacked imperial sexism. However, the judges failed to build bridges between the colonized and the colonizer; instead, they underscored differences between them. In this section I discuss the Court, which did not fully succeed in following an intersectional approach. Nevertheless, the judges offer important insights on how such an approach can be advanced.

To be sure, the judges steered clear of pitting cultural, religious, and women's rights against one another (Table 6.1). As I discussed in Chapter 2, they told a liberal individualist story that sought to balance a clash between the rights of the individual against the responsibility of a state to maintain the conditions necessary for democracy. In this story, the judges rejected any notion that culture and women's rights clashed. As the judges wrote in their decision, "the Court takes the view…that a State Party cannot invoke gender equality in order to ban a practice that is defended by women."[3] The judges also summarily dismissed the French assertion that S.A.S. was a victim of false conscious who must be forced to be free. Instead, they took S.A.S. at her word: that she wore the full-face veil of her own volition to become closer to God. The judges reasoned that as S.A.S. chose to wear the full-face veil this clothing did not violate her rights as a

[3] ECHR 2014, §118.

woman (protected by Articles 1, 14, and Protocol 12 of the European Convention on Human Rights). Hence, the judges ruled that women's rights were not relevant to the case.

Instead of focusing on a clash between culture and women's rights, the Court concluded that Articles 8 and 9 of the Convention—which protect the right to respect for private life (including respect for an individual's culture) and religious freedom—were central to the case and were aligned.[4] The judges avoided a clash between culture and women's rights by making two moves. First, they set women's rights to one side on the grounds that these rights were outside the purview of the case and second, they focused on the rights to respect for culture and to religious freedom.

Table 6.1 The Judges' Intersectional Approach in *S.A.S. v France*

INTERSECTIONAL ATTRIBUTE	**JUDGES**
Relations among rights	Argued that women's rights were not relevant to the case and that cultural and religious rights were aligned
Avoided imperial moralism	Insisted S.A.S. has agency Argued full-face veil does not violate women's rights Accused the French government of contributing to Islamophobia
Bridged differences between colonized and colonizer	Did not bridge differences; instead, underscored differences
Centered lived experience of colonized women	Detailed how the ban harmed Muslim Frenchwomen
Attacked imperial sexism	Assailed Islamophobia against women who wore the full-face veil

[4] As the Court explained, the ban potentially constituted an "interference with the exercise of the right to respect for private life" and "the freedom to manifest one's religion or beliefs." It chose to focus on the latter and did not explain why (ECHR 2014, §107, 108, 109).

By acknowledging S.A.S.'s agency in choosing to wear the full-face veil, the judges repudiated conventional imperial myths of white rescue and well-worn tropes of oppressive Muslim men and victimized Muslim women. S.A.S. could not be saved from a choice that Muslim men had not forced her to make; hence S.A.S. was not a victim of patriarchal men or her religion or culture. Indeed, the Court noted that it was aware "that the clothing in question is perceived as strange by many of those who observe it. It would point out, however, that it is the expression of a cultural identity which contributes to the pluralism that is inherent in democracy."[5] The Court thus underscored the right of all French citizens to respect for their culture regardless of whether the majority approved of this "cultural identity" or not.

Further, the judges chided the French government for fueling racist attitudes against Muslim French. For example, they pointed out that "the Court is very concerned…that certain Islamophobic remarks marked the debate which preceded the adoption of the [French 2010] Law."[6] They added, "the Court reiterates that remarks which constitute a general, vehement attack on a religious or ethnic group are incompatible with the values of tolerance, social peace and non-discrimination which underlie the Convention and do not fall within the right to freedom of expression that it protects."[7] In passages like these, the judges rejected conventional imperial approaches to culture and women's rights which attack the sexism of the colonized but ignore the racism of the colonizer. Instead, they scolded the French government for contributing to racism and undermining the principles that inform the European Convention of Human Rights.

The Court also centered the lived experience of S.A.S. and others like her, taking pains to explain how the ban harmed Muslim Frenchwomen. The judges stressed that the 2010 law

[5] ECHR 2014, §120.
[6] ECHR 2014, §149.
[7] ECHR 2014, §149.

severely curtailed the rights of S.A.S. and pointed out that for women like her "the ban may have the effect of isolating them and restricting their autonomy, as well as impairing the exercise of their freedom to manifest their beliefs and their right to respect for their private life…the women concerned may perceive the ban as a threat to their identity."[8] By observing that the ban led women like S.A.S. to fear leaving their homes given the potential for serious reprisals, the Court turned the tables on conventional imperial moralism. In their account, it was the French government rather than Islam that was harming S.A.S. In sum, by acknowledging the costs the ban imposed on Muslim Frenchwomen the judges rebuked the French government for fueling racism and refused its invitation to rule the full-face veil was inherently sexist.

Nonetheless, as I detailed in Chapter 2, the judges upheld the 2010 ban on covering the face in public. Explaining their decision, the judges emphasized differences between Muslim French and mainstream French. This was not because the judges fell into the trap of cultural essentialism. They did not argue that the two were permanently at odds given divergent values, one of which was that the French nation required individuals to bare their faces while Islam insisted women must cover theirs. Instead, the Court agreed with the government that the French nation required individuals to bare their faces to facilitate the conditions necessary for a democratic society. Accepting the French government's contention that the full-face veil violated foundational "ground rules of social communication" that ensure "interaction between individuals…essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society,"[9] the judges ruled that the full-face veil was "incompatible" with French fraternity and harmony.[10] Ruefully acknowledging

[8] ECHR 2014, §146.
[9] ECHR 2014, §153.
[10] ECHR 2014, §153.

that the ban violated S.A.S.'s rights to cultural respect and religious freedom, the judges ruled in favor of "democratic society." This reasoning contributed to the Islamophobia it accused the French government of fomenting by underscoring the "incompatibility" of the full-face veil with French democracy. The Court's decision thus thwarted the promise of its arguments throughout most of its decision. Nonetheless, the judgement provides a useful illustration of how to avoid a clash between culture and women's rights and imperial moralism, how to center the lived experience of colonized women, and how to attack imperial sexism.

6.3 The Intersectional Approach of the INGOs in *S.A.S. v France*

INGOs at the European Court of Human Rights and the Gender Research Project, a feminist non-governmental organization in South Africa, avoided the pitfall that befell the Court; they did not emphasize divisions between the colonized and the colonizer but instead sought to bridge these divisions. Indeed, their stories offer fully developed accounts of the intersectional approach (Table 6.2). As discussed in Chapter 2, Amnesty International and ARTICLE 19 constructed an additive relation among multiple rights, including cultural, religious, and women's rights.[11] Both INGOs agreed that the 2010 French ban attacked many rights guaranteed S.A.S. by the European Convention of Human Rights, most prominently the right to freedom of expression, to religion, to cultural identity, and women's rights. As ARTICLE 19 explained, "these prohibitions [on the full-face veil] may in themselves lead to multiple and intersectional discrimination against Muslim women on the basis of their sex, religion, and often also because they constitute part of an ethnic or racial minority."[12] In making this argument, the two INGOs

[11] ARTICLE 19 takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees individual freedom of expression.
[12] ARTICLE 19, §22.

explained how S.A.S.'s identity as a veiled Muslim Frenchwoman ensured these many rights converged in her daily life. Bans like the 2010 law thus involved sexist, religious, racial, and ethnic bias, compounding her experience of discrimination.[13]

Table 6.2 INGOs Intersectional Approach in *S.A.S. v France*

INTERSECTIONAL ATTRIBUTE	INGO
Rights relation	Treated multiple rights—including cultural and women's rights—as additive
Avoided imperial moralism	Recognized S.A.S. as an individual entitled to universal rights Recognized the agency of S.A.S. Accused the French government of racism and sexism
Bridged differences	Insisted that all people, regardless of whether they are Muslim Europeans or mainstream Europeans, are entitled to the human rights guaranteed by European institutions and the international community
Centered lived experience of colonized women	Discussed stereotypes, harassment, and attacks that harmed Muslim European women who wear the full-face veil Quoted a Swiss Muslim woman who attested to the above harms
Attacked imperial sexism	Warned against stereotypes and Islamophobia toward Muslim women Argued Muslim women should shape government policy that is about them

Just as INGOs at the ECHR forged an additive relation among rights they also avoided the myths, binaries, and tropes at the heart of imperial moralism. Instead of purporting to rescue

[13] As I discussed in Chapter 2, these INGOs did not fully grasp intersectionality theory. Although they refer to intersectionality and appeal to multiple sets of rights, they approached these rights as separate and distinct, hence the rights relation they forged was additive rather than intersectional.

S.A.S., Amnesty International explicitly pointed to S.A.S.'s ability to make her "own decisions" about what to believe and how to believe it, and hence what to wear.[14] Indeed, the INGO warned the judges against indulging in the "stereotype" that Muslim women lack "autonomy" lest they fall into "the guise of protection" instead of securing the rights to which Muslim women are entitled.[15] Neither INGO sought to save S.A.S. Instead, they defended her individual right to independence against an over-reaching state.

Further, according to both INGOs, the problem in the case of *S.A.S. v France* was not a sexist religion or patriarchal men but the French ban. ARTICLE 19 accused governments like France of indulging in Islamophobia, which had the potential to fuel violence. The INGO quoted the European Union, warning, "violations of freedom of religion or belief may exacerbate intolerance and often constitute early indicators of potential violence and conflicts."[16] The provocateur in this account is not S.A.S., Muslim men, or Islam but the French state. The liberal progressive stories these two INGOs told thus steered clear of imperial myths about the white man's burden and familiar tropes about helpless women suffering from cultural practices imposed by sexist men. Indeed, the INGO's stories upended imperial moralism, by attacking multiple biases enfolded into the 2010 law and implicated the French state.

Both Amnesty International and ARTICLE 19 also avoided pitting European culture against Islam. Instead, they took a loftier point of view. Both asserted that human rights are universal rights to which all individuals—regardless of cultural identity, religious belief, or sex—are entitled. Both repeatedly referred to international treaties and treaty bodies to buttress their points. For example, ARTICLE 19 intoned, "The right to freedom of expression protects

[14] Amnesty International 2013, §32.
[15] Amnesty International 2013, §36.
[16] ARTICLE 19 2013, §25.

religious and cultural expression and has been widely recognized by international and regional human rights bodies as encompassing the choice of one's clothing or the wearing of religious symbols."[17] Both INGOs refused to indulge in binary thinking about cultural difference that would insist Muslims were entitled to cultural rights and French citizens were entitled to individual rights. Instead, it argued that Muslim women like S.A.S. were entitled to both *and more*. By asserting S.A.S. was an individual with universal rights, rights that the French government and European supranational institutions had long endorsed the two INGOs bridged differences not only between Muslim Frenchwomen and the French government but also between Muslim European women and mainstream Europeans.

Further, the two INGOs rooted their discussion of the ban in the everyday lives of ordinary Muslim European women. ARTICLE 19 pointed out that bans like the 2010 law "may be counterproductive. They may lead to confinement of women in the home, exclusion and marginalization of women from public life, and legitimize discrimination, physical violence and verbal attacks against Muslim women."[18] Both INGOs itemized numerous costs imposed on Muslim European women who wore religious dress. Indeed, Amnesty International went to great lengths to point out how European stereotypes about Muslim European women were harmful. It also quoted an anonymous Muslim Swiss woman who had shared incidents of harassment with the INGO: "people called me names in the street or made unpleasant remarks. Recently I have been insulted in the street…another man started shouting at me saying that I had to remove the sheet I was wearing on my head."[19] The inclusion of this woman's story in her own words is an

[17] ARTICLE 19 2013, §5.
[18] ARTICLE 19 2013, §24.
[19] Amnesty International 2012, §40.

important illustration of how an intersectional approach to culture and women's rights opens a space for colonized women's stories to be included and heard.

In response to experiences such as hers, Amnesty International advised that "states should adopt an approach to concerns about women's equality in minority religions and cultures that is based on the views and preferences of the women themselves and their experience of discrimination."[20] Indeed, Amnesty went so far as to recommend that policy making in France be guided by "the preferences of the women themselves and their experience of discrimination either by those who claim to be in their community, or those from other parts of society."[21] Beyond asserting a decision-making role for Muslim Frenchwomen in French public policy, Amnesty also implied—by pointing to "those from other parts of society"—that the discrimination Muslim Frenchwomen experienced was not only from their own community but also from mainstream liberal society.[22]

In sum, both INGOs provide a road map of how to take an intersectional approach. They forged relations of agreement among rights, avoided imperial moralism, bridged differences between individuals seeking their rights and European states by appealing to universal values, and centered the experiences of colonized women to attack imperial racism.

6.4 The Intersectional Approach of the Gender Research Project in South Africa

The Gender Research Project (GRP) also pursued an intersectional approach. This tiny feminist organization comprised of highly-skilled lawyers forged a hybrid relation between

[20] Amnesty International 2012, §42.
[21] Amnesty International 2012, §9.
[22] That Amnesty specified individuals or groups as perpetrators of discrimination meant that they ignored systemic systems of oppression such as institutions like the French educational system or structures like the global neoliberal labor market.

culture and women's rights. Although the GRP acknowledged that a clash between culture and women's rights appeared unavoidable, they sidestepped this clash by distinguishing between African customary law and African customary practice. The GRP argued that customary marriage law—which had been invented by white colonists and favored chiefs—was now supported by sexist African Traditional Leaders. At the same time, the GRP consistently underscored that cutomary laws deviated from how Africans actually engaged in cohabitation.[23] The GRP thus did not attack African culture but instead the legal remnants of white rule and its sexist supporters.

Building on this logic, the GRP entwined African customary practice with women's rights by focusing on what Africans do and the rites they prefer when getting married. As the GRP pointed out, "in practice, Africans in South Africa move between marital laws in order to achieve a sense of cultural connection (by complying with customary requirements and expectations of marriage) and legitimacy and to obtain access to financial and proprietary benefits available under civil law."[24] Here, the GRP described a merging of Africans' attachments to their tradition with equal access to spousal inheritance and other "benefits" granted by civil law marriage. From this angle, the NGO did not need to construct a connection between customary marriage practices and women's equality; instead, it simply reported it. Building on its research into customary marriage practices, the GRP argued that "the lived experiences of married Africans in the country should be used" to guide legislative reform.[25]

Table 6.3 The GRP's Intersectional Approach

INTERSECTIONAL ATTRIBUTE	**GRP**

[23] GRP 1998, §1.1.6-1.2.
[24] GRP 1998, §2.1.3.
[25] GRP 1998, §2.4.2.

Rights relation	Distinguished between customary marriage law and customary marriage practice Reported Africans preferred hybrid marriage practices that joined customary marriage traditions with women's rights Endorsed a hybrid relation between culture and women's rights
Avoided imperial moralism	Explained how apartheid had incentivized geographic polygyny Sought to alter apartheid legacy rather than attack African culture or African men Recognized African women's political agency
Bridged differences	Endorsed a single, unitary marriage law for all South Africans
Centered lived experience of colonized women	Discussed how women in polygynous marriages lacked legal equality and how these marriages led to competition among households for material goods and injustice for women and their children
Attacked imperial sexism	Assailed white rule and its racialized-sexist legacies of geographic polygyny and customary marriage law

In addition to endorsing a hybrid relation between customary practice and women's rights, the GRP also rejected imperial moralism. Certainly, it rejected recent versions of the white man's burden adopted by what Serene Khader refers to as missionary feminism.[26] The GRP did not seek to seek to bear the white feminist burden of rescuing African women from backward cultural traditions imposed by sexist African men. On the contrary, instead of detailing the sexism of Traditional Leaders, the GRP provided a historical overview of how white rule had transformed polygyny.[27] The NGO explained that by controlling the movement of Africans into

[26] Khader 2019, 3.
[27] As detailed in Chapter 3, the SALC is a group of scholars, lawyers and judges appointed by the government tasked with drafting legislation.

white-dominated cities, the apartheid economy had incentivized African men to marry one woman living in an urban area under civil law and another woman from a rural area under customary law.[28] The problem, according to the GRP, was not African customary marriage practices but how white supremacy and capitalism interacted with African marriage traditions to spawn a form of geographic polygyny that oppressed rural African women.

Given that apartheid was now over, the GRP sought to disincentivize African men from having more than one wife. The NGO did not attack African culture or African men but the economic and legal incentives that underpinned geographic polygyny. For example, it recommended that African men be required to provide alimony, child support, and property equally to all their wives and children. The GRP reasoned that this would "enable women, whose only access to financial support has been through marriage, to support their families while removing the economic advantage which flows to men from having multiple wives."[29] The purpose was to discourage African men from taking another wife and to provide African women with the economic support they had been denied under white rule.

Similarly, the NGO did not depict African women as helpless victims but instead as cultural innovators, creating new forms of cohabitation to secure their interests, and as activists organizing to advance their rights by hosting workshops, doing research on customary marriage practices, and taking a stand against polygyny.[30] The GRP also avoided cultural essentialism. Instead of framing European culture as individualist and African culture as collectivist, the GRP

[28] As Chapter 3 explains, during apartheid, African men from rural areas spent much of their working lives in white cities. These men sought domestic partnerships with urban women because apartheid policies forbid their rural family from joining them. At the same time, these African men remained dependent on their rural family's support when they became sick and elderly. This meant many African men maintained their customary marriages and rural homestead even as they married urban women. Yet the state did not recognize customary marriages, only civil ones. As a result, the law favored urban women in civil marriages and denied legal rights to rural women in customary marriages.
[29] GRP 1998, §6.1.4.
[30] GRP 1998, §4.3.2; 4.3.4; 6.1.1.

noted that it was apartheid and white rule that had created distinct marriage laws. "Our position is that one unitary marriage law would achieve the objective of unifying the South African society which was historically divided by apartheid policies of divide and rule."[31] According to the GRP, insisting on separate African and European marriage practices by recognizing two distinct sets of laws would not only be impossible given hybrid customary marriage practices, it would also be undesirable because it would perpetuate the divisive tactics of white rule that Mandela's government had pledged to end. By endorsing hybrid marriage practices and a single, unitary marriage law, the GRP joined African cultural marriage practice with European marriage practices, bridging racial divisions while also rejecting polygyny. The GRP thus avoided an endemic feature of the imperial approach, which assails either racism *or* sexism but not both.

Underpinning all these arguments was the GRP's commitment to "improving the position of women and children."[32] In addition to underscoring this point, the GRP repeatedly reminded government officials that African women had denounced polygyny in no uncertain terms. For instance, the GRP referenced the Rural Women's Movement when it declared: "we adopt the RWM slogan of 'one man one woman for the future."[33] The reasons for this position were clear. According to the GRP:

> women and men are not equal within polygynous unions. The right to consent of the first wife is in fact a right to be informed that the husband intends to take an additional wife. Refusal of consent may result in divorce and consequent loss of custody and access to family property…[often] men misrepresent their marital status to the women they purport to marry."[34]

[31] GRP 1998, §1.1.4.
[32] GRP 1998, §2.1.4.
[33] GRP 1998, §6.6.1.
[34] GRP 1996, §21.2.

Drawing on their research in rural communities, the GRP explained how customary marriage law functioned in contemporary South Africa to disadvantage women. That disadvantage not only occurred with the formation of polygynous unions but throughout the lifetime of these unions. For example, the GRP reported that women in polygynous marriages described "constant conflict between houses over resources with which to feed, clothe and educate their children…women find it [polygyny] cruel and do not wish to see their children in it."[35] The problem was not an abstract notion of African collectivism that clashed with the individual right to equality but many injustices women and their children experienced on a daily basis as they competed with one another to survive.

The GRP told a story rooted in what African women said about polygyny. That reality was permeated by the legacies of white settler colonialism that had refused to legally recognize African customary marriage and apartheid rule that had fostered geographic polygyny and entrenched the marginalization of rural African women. By addressing these injustices, the GRP attacked imperial sexism. In contrast to the approach taken by post-apartheid government officials and conservative Traditional Leaders, the GRP pursued an intersectional approach to culture and women's rights.

6.5 The Intersectional Approaches of Colonized Women

Colonized women's social justice stories offer further insights on how to adopt an intersectional approach. In all three of my cases, colonized women rejected the idea that their culture clashed with women's rights. Instead, they either forged an indivisible relation among several sets of rights or addressed only women's rights (Table 6.4). As discussed in Chapter 2,

[35] GRP 1996, §21.3.

S.A.S. and her legal team did not separate cultural, religious, and women's rights but instead treated them as interconnected. This is evident in the Witness Statement S.A.S. provided the Court, in which she repeatedly linked her identity as a French citizen to her identity as a Muslim, to her identity as a woman. For example, S.A.S. explained that "I strongly believe that—as a French citizen, a Muslim *and* a woman—I have a fundamental right to choose the clothes I wear."[36] Unpacking each one of these identities and separating the rights that flowed from them would have been preferred by the Court, given that the European Convention on Human Rights itemizes each set of rights separately. The Court relies on this itemization to reason its way through cases, tackling first one right, then the next. However, this separatist approach to rights was not how the applicant thought about or experienced the ban.

Akin to S.A.S., the Tobique Women's Political Action Group constructed an indivisible relation among the individual right to culture, the Indigenous community's right to culture and self-determination, and their individual right to equality. Recall that Indigenous women seeking reinstatement of their Indian status reasoned that as Indigenous men who married non-Indigenous women did not lose their Indian status, neither should Indigenous women who married non-Indigenous men.. In 1985 the Tobique Women's Political Action Group argued that the government's proposal to eliminate the marrying out rule was inadequate on the grounds that it did not sufficiently address their individual right to culture, Indigenous people's collective right to culture and self-determination, and the right of Indigenous women to equality. As the Tobique Women's Group noted, "the sex-based discrimination of the present Indian Act must be abolished completely. If they are not totally eliminated, their magnitude will be amplified over time and by circumstance to cause further harm not only to the women given the opportunity for

[36] Witness Statement n.d., §16.

reinstatement and their children but also to the Indian culture and the individual native societies to which they belong."[37] From the point of view of the Tobique Women, Indigenous women were not demanding the individual right to equality but several rights including this one that could not be separated from one another. Only together could these rights allow them to return to their natal homes so that they might rejoin their communities and together heal their cultural wounds and pursue autonomy from the Canadian state. The Tobique Women's social justice story makes it hard to imagine how these rights could be but indivisible.

Finally, the grassroots Rural Women's Movement in South Africa did not attack African culture when they demanded an end to polygyny. Far from it. As I discussed in Chapter 3, their story conveyed deeply held assumptions rooted in African customary practice, values, and norms. At the same time, the RWM explicitly and repeatedly asserted that rural women had the right to equality, noting, for example, "that women are entitled to equal rights," that "consent of both parties was essential to marriage," that "property should be shared equally. The mother and father should have equal responsibilities and rights," that "women …[should] be able to inherit land" that "clear rules regulating traditional leadership should be written. Such rules should be gender neutral… [and that] women would like to rule in their own name."[38] The RWM made this demand for an obvious reason: apartheid was over. Given that Mandela's government had promised to create a new South Africa that was both "non-racial and non-sexist," the RWM's appeals to equality cannot be attributed to the foreign influence of missionary feminists.[39] Instead, the RWM had every reason to believe that the "long walk to freedom" ensured that they too would benefit from the promise of equality for all South Africans.

[37] SCIAND 1985, Issue No. 16, 36.
[38] RWM 1996, §6, 11, 20, and 22.
[39] The phrase non-racial and non-sexist was commonly used by the incoming government during the transition to democracy to herald the post-apartheid era.

Table 6.4 Colonized Women's Intersectional Approaches

Colonized Women / INTERSECTIONAL ATTRIBUTE	S.A.S.	Rural Women's Movement	Tobique Women's Political Action Group
Rights relation	Insisted cultural, religious, and women's rights were indivisible	Claimed their right to equality as African women	Insisted cultural and women's rights were indivisible
Avoided imperial moralism	Made political demands of the state Sought to end the 2010 ban in the name of tolerance and pluralism	Made political demands of the state Sought to end polygyny and secure legal recognition of African customary marriage	Made political demands of the state Sought to end their forced assimilation, heal their communities, and advance Indigenous self-determination
Bridged differences	Appealed to shared Enlightenment values	Appealed to equality as promised with the end of apartheid	Appealed to international human rights standards shared by the liberal state and Indigenous peoples
Centered the lived experience of colonized women	Discussed how the ban led to threats and fear of physical harassment for herself and Muslim Frenchwomen	Discussed how polygyny led to competition for material sources among African women and their children	Discussed how the marrying out rule stripped them of their cultural identity and broke apart their families and community
Attacked imperial sexism	Attacked the ban for denying her identity as a citizen, Muslim, and woman	Attacked the inequality of polygynous unions and demanded the state recognize customary marriage	Attacked the marrying out rule for violating the rights of Indigenous women, their children, their culture, and their communities; attacked the sexism of conservative chiefs

Colonized women's stories also steered clear of imperial moralism. Naturally, few colonized women were likely to fall into the trap of conventional imperial moralism by framing themselves as vulnerable victims in need of saving by white men or missionary feminists. However, as I discussed in Chapter 5, two versions of imperial moralism exist: a conventional version associated with the colonizer and a fragmented version associated with the colonized. Fragmented imperial moralism neither repeats nor simply reverses the conventional version. Instead, it reverses it and breaks it apart.[40] Proponents of fragmented imperial moralism invert the White Man's Burden and missionary feminism by rejecting the claim that white men and missionary feminists need to save colonized women. Instead, they argue that foreigners are racists attacking the culture of the colonized. Thus, it is the colonized who must rescue their culture from imperialists. In this version, cultural essentialism remains a central theme. But it is the collectivist, colonized culture that is valued against the individualism of the colonizer. Notably, sexism drops out of this version and is replaced with racism.

Although some colonized women fragment imperial moralism, as I discuss below in my analysis of female genital cutting in India, the colonized women in my three cases did not. On the contrary, they avoided imperial myths, tropes, and binaries altogether. They also built bridges across differences between the colonized and the colonizer. In all three cases, no colonized woman appealed to the White Man's Burden or missionary feminists to come to their aid. They did, however, call upon the liberal state to act, but by demanding that the state *change its own oppressive laws*. Colonized women called upon government officials to end the 2010 ban covering the face in public, to recognize African customary marriage while making polygyny illegal, and to eliminate the marrying out rule and reinstate their Indian status. In short, they did

[40] Chatterjee, 1993.

not demand to be saved but instead acted on their own behalf to demand a change in state policies.

Further, colonized women did not essentialize cultural differences. Avoiding this binary, S.A.S. and her legal team appealed to universal human rights and Enlightenment values of tolerance and pluralism. The goal was not to assert the collective and spiritual nature of Islam against French individualism but to urge France and the European Court of Human Rights to make good on their promises by securing for S.A.S. the rights guaranteed all European citizens. Indeed, S.A.S. made it clear that she shared and relied on these guarantees. As she wrote in her witness statement, "I am a French citizen. I strive daily, in my own personal ways, to uphold the values of the Republic of which I am acutely aware. As a French citizen, I happily interact and engage with other individuals from very diverse backgrounds of class, race, gender, faith and sexual orientation."[41] As a Muslim French citizen who wore the full-face veil, S.A.S. did not cut herself off from others who were not like her; she did not indulge in *communalisme,* the French fear of minority separatism. Instead, S.A.S. began her statement by underscoring that she cherished her French citizenship and practiced the values of tolerance and pluralism. By reflecting to the Court its own values and underscoring her commitment to them, S.A.S. built bridges between Muslim Frenchwomen like herself, France, and the broader European community.

Consider as well the Rural Women's Movement in South Africa. When the grassroots organization requested that the post-colonial state recognize customary marriage, it explained this should be achieved by creating "one marriage law for all South Africans" with "a single set of consequences."[42] It sought to end polygyny and blend the best of all South African marriage

[41] Witness Statement of the Applicant, n.d., Annex 1 to Final Observations, §1(hereafter, Witness Statement).
[42] RWM 1996, §3.

practices into one legal framework. Unlike conservative Traditional Leaders, the RWM did not pit European civil marriage against African customary marriage; nor did it reject the former while revaluing the latter. Instead, the RWM validated rural African women's right to equality by rejecting polygyny *and* by insisting upon the legal recognition of African customary marriage.

As the RWM explained, its affiliates sought "recognition of customary marriage as a valid form of marriage but wanted to see a single set of consequences applied to all civil and customary marriages…The majority of the RWM felt that polygyny should be abolished for a number or reasons…[including that it] violated the equality clause in the New Constitution since it is only practised by men."[43] The RWM claimed equality for African women. In doing so, it did not reject African culture. Instead, the RWM felt that customary marriage did not require polygyny; indeed, they knew African customary marriage could exist without it. The RWM thus burst any illusion that African culture was bounded and internally homogeneous by disagreeing with those who claimed polygyny was the defining characteristic of African customary marriage.

The RWM also burst the illusion that customary marriage was distinct from European culture and hence must be made equal with it. Instead, the RWM sought to affirm African women's reliance on *both* African and European marriage practices; their goal was to ensure those practices benefitted rather than punished African families. As the RWM reported, they were "particularly concerned that women be entitled to equal rights to property upon divorce or death…and that the marriage be capable of proof through the granting of a marriage certificate."[44] "Equal rights to property" and a "marriage certificate" were civil law marriage practices that were not part of African customary marriage. By explaining what rural African women wanted, the RWM reflected the reality on the ground. In doing so, the organization also

[43] RWM 1996, §6, §7, §8.
[44] RWM 1996, §6.

built bridges across the cultural and racialized chasm of difference that South African government officials and conservative Traditional Leaders refused to consider crossing.

Like S.A.S. and the RWM, the Tobique Women's Group also steered clear of cultural essentialism and emphasized agreement rather than cultural differences. The Tobique Women's Group did not follow the path of the conservative chiefs and government officials who insisted Indigenous peoples were collectivist and Canadians were individualist and never the twain shall meet. Instead, as I argued in Chapter 4, the Tobique Women's Group explained that they had a set of shared commitments:

> Evidence suggests that the government and the Indian people are committed to eliminating discrimination and other violations of human rights whenever it affects or has affected in a detrimental fashion the quality of treatment before the law which is guaranteed to every person or group of persons by the Canadian Constitution and the international human rights obligations undertaken by Canada.[45]

Unlike the conservative chiefs, the Tobique Women's Group did not accuse the liberal state of imposing individualist values on their communities but instead pointed out that Indigenous peoples and the liberal state both were invested in human rights. This was as true for the conservative chiefs, who repeatedly appealed to international human rights standards, as it was for the Tobique Women's Group. As Caroline Ennis, a member of the Tobique Women's Group pointed out, "we are bound by the same kinds of international agreements as Canada."[46] The Tobique Women's Group thus established a ground floor of values shared by all parties from which to build legislative reform. They also started that process, proposing that the government

[45] SCIAND 1985, Issue No. 16, 37.
[46] SCIAND 1985, Issue No. 16, 52.

fulfill its international obligations to cultural and women's rights by reinstating Indian status to women and their children. This would permit the Tobique Women to return home. By facilitating this return, the settler state would acknowledge the harm it had done to Indigenous women, their culture, and their communities.

Next, the Tobique Women's Group proposed that the government advance the right of Indigenous peoples to self-determination by permitting these communities to determine Indian status. Indigenous peoples would exercise this right by establishing a tribunal that included those who were reinstated; this tribunal would be accountable to international human rights standards. As Shirley Bear, another member of the Tobique Women's Group explained, "there is the possibility of harassment in the communities where they [Indigenous women] will be reinstated. We felt that if there were some input from those women in determining the guidelines it would be more fair." The Tobique Women's Group offered a way forward by proposing an inclusive, Indigenous process for determining Indian status that would be bound by international human rights standards that conservative chiefs held dear. The Tobique Women's Group thus provided a solution to the presumed clash between culture and women's rights by building a bridge between Indigenous communities and all Canadians that was composed of a shared commitment to human rights.

In addition to avoiding a fragmented version of imperial colonialism, colonized women who participated in these rights controversies also centered their lived experience. All also offered an expansive view of the harms done and groups affected by state policies. At the Court, S.A.S. provided a witness statement about the harassment she experienced on the streets and how fears of this harassment curtailed her daily life. She noted that "members of the public now openly abuse and attack me whenever I drive wearing my veil. Pedestrians and other drivers

routinely now spit on my car and shout sexual obscenities and religious bigotry."[47] Explaining the widespread effects of this abuse, S.A.S. noted, "There is a very real fear amongst veiled Muslim women that by wearing the veil they place themselves at risk of State sanctioned vigilantism."[48] This is why S.A.S. chose to remain anonymous. She explained in her statement that, "it is essential to preserve my anonymity…If my identity/identifying information…is disclosed, I fear I will be in very grave threat of violent attacks by extremist groups. Without anonymity, myself and many innocents around me will become vulnerable to harm."[49] To buttress her claims of abuse, S.A.S. provided the Court with news reports about harassment and attacks against Muslim Frenchwomen who wore the full-face veil.

S.A.S.'s legal team also drew on her experiences to explain how the ban had negative consequences not only for Muslim Frenchwomen but for French women more broadly. As I pointed out in Chapter 2, the legal team opened its written arguments by assailing the ban, arguing, "It infringes the human rights of women to dress in a particular way in public; it infringes their freedom of religion or belief, in particular the right to manifest their religion through how they dress in public, [and] it infringes their freedom of expression in the way they dress in public."[50] Each of these points speaks to rights many French women undoubtedly hold dear: the right to choose what to wear, the right to freedom of religion, and the right to freedom of expression through their sartorial choices. S.A.S.'s legal team thus pointed out that the ban not only infringed the rights of a tiny minority of Muslim Frenchwomen but carried sexist overtones that threatened the freedom of all French women. By focusing on the lived experience of Muslim

[47] Witness Statement n.d., §26.
[48] Witness Statement n.d., §27.
[49] Witness statement n.d., §7.
[50] De Mello, Muman, and Vakulenko 2012, §1.

Frenchwomen, both S.A.S. and her legal team conveyed the myriad ways in which the ban undermined the rights the French government claimed the ban upheld.

Likewise, the Rural Women's Movement in South Africa rooted their policy recommendations in lived experience. Indeed, they argued that this was precisely why they were well-suited to be providing government officials with policy recommendations. The RWM explained that they "felt their participation would be particularly useful because they are able to provide the perspective of women who have contracted customary law marriages, and particularly of those whose husbands subsequently entered into civil and customary marriages with other women."[51] The Rural Women's Movement wasted no time in conveying this experience, which was marked by frustration with many inequities:

> Members stressed that a man cannot genuinely share his love between two women. They also noted that polygyny harms children in that houses compete for resources and are not accorded similar treatment because of favouritism by the husband. They felt that men who married more than one woman failed to support them adequately. The meeting agreed that polygyny breeds witchcraft.[52]

This list raises several negative consequences African rural women and their children experienced in polygynous marriages. It also points to how the RWM expanded the call for justice beyond Rural African women to include their children. The policy problem, according to the RWM, was not about culture versus women's rights but about how to end injustice for African families.

[51] RWM 1996, §2.
[52] RWM 1996, §8.

The Tobique Women's Group also centered their lived experience; indeed, not only their own but also that of their children and their communities. These women pointed out that if the sex discrimination in the Indian Act were not completely eliminated the Act would:

> cause further harm not only to the women…and their children but also to the Indian culture and the individual native societies to which they belong. The source of this harm is the uncertainty created by the unequal status which the sons and daughters of some Indians will bear. The threat it causes to family unity will prevent some Indian women from returning to the sanctuary of their ethnic background, even when circumstance and the need to live within the embrace of their culture, family and friends provides them with no acceptable option. Further, it contains the potential to destroy lives and families and to divide communities whenever the status…of the children of Indian women who have returned to their people is brought into question.[53]

Because the government's proposed legislation did not eliminate all the sex discrimination in the Indian Act, the Tobique Women's Group worried that the harms associated with this discrimination—which they, their children, their families, and their communities had experienced in the past—would continue, threatening their future. The Tobique Women's Group thus conveyed to Canadian politicians in no uncertain terms how the failure to eliminate the sex discrimination in the Indian Act extended far beyond them and harmed all Indigenous peoples.

Finally, colonized women in my three cases attacked imperial sexism, in contrast to government officials and conservative colonized leaders who attacked *either* racism or sexism.

[53] SCIAND 1985, Issue No. 16, 37.

As S.A.S. pointed out in her witness statement to the Court, "denial by the State of my liberty to choose my own clothing…is fundamentally preventing me from realising my personal identity and ideals as a French citizen, a Muslim and a woman."[54] She added that "the State has targeted and discriminated against me and others like me who share my three-fold personal characteristics of citizenship, faith and gender."[55] As S.A.S. clearly understood her identity to be multiple rather than singular, she could not ignore either racism or sexism. Instead, she confronted both and detailed how they interacted with her identity as a loyal French citizen.

Taking a somewhat different route, the RWM repeatedly emphasized rural African women's individual right to equality, which was now theirs thanks to the end of apartheid. For example, the RWM referred to the new constitution's equality clause as one justification for why polygyny should end.[56] Even as the RWM attacked the inequality endemic in polygynous marriages—many of which occurred in response to the economic policies of the apartheid state—they also supported the legal recognition of African customary marriage. The white colonial state had never recognized the latter on the grounds that polygny was "repugnant."[57] By attacking polygyny and demanding recognition of African customary law, the RWM fought imperial sexism.

Similarly, the Tobique Women's Group attacked the imperial sexism of the Canadian government, which had imposed the marrying out rule at great cost to Indigenous women and their children and to Indigenous culture and communities. They also assailed the imperial sexism of chiefs who had adopted the sexism of the colonizer (as I explained in Chapter 4) and refused

[54] Witness Statement n.d., §5.
[55] Witness Statement n.d., §6.
[56] RWM 1996, §8.
[57] The law referred to European repugnancy of African practices that therefore could not be permitted, which is referred to as "the repugnancy clause."

Indigenous women their right to return home. One of the Tobique women made this plain when responding to a question from an MP, she noted that the chiefs "do not want us to be reinstated automatically. They want to be able to make that decision, but that gives them leeway to continue to discriminate against us. Maybe that is what they want at this point. They want that right to discriminate against us."[58] The Tobique Women's Group thus mounted a two-pronged attack, targeting both the racialized sexism of the settler colonial state and the sexism of the conservative chiefs that flowed from decades of patriarchal settler colonial rule.

In all three social justice stories, colonized women defied assertions that culture clashes with women's rights. By taking an intersectional approach, they forged relations of agreement among rights, avoided imperial moralism, built bridges across difference, centered their lived experiences, and attacked imperial sexism. In all the stories in this chapter, the storytellers refused to turn the lives of colonized women into a vehicle for someone else's political agenda. Instead, they centered the women involved in these contested cultural practices. Although each story succeeded to different degrees in advancing an intersectional approach, together they definitively demonstrate that a viable alternative to the imperial approach exists.

6.7 Theorizing the Intersectional Approach

This chapter has illustrated how many parties to the three different cases in this book avoided the imperial approach and took an intersectional approach instead. In this section I build on their examples to present an analytical framework for applying the intersectional approach beyond these three cases. Before detailing that framework, I note several useful first steps.

[58] Ms. Gaffney, SCIAND 1985, Issue No. 16, 57. Unfortunately, Parliament's official meeting minutes for SCIAND do not report the first names of the women testifying on behalf of the Tobique Women's Political Action Group. I have been unable to learn Ms. Gaffney's first name.

Instead of seeking a universal answer to the question: what should be done when culture clashes with women's rights? we need to focus on a specific case. The question of what to do about this clash defies the logic underpinning the intersectional approach, which, for example, is rooted in the lived experience of a specific group of women. This question also prompts a focus on the merits of various solutions. This is a dead end as it will never point us toward the intersectional approach. Instead, I recommend that we begin with a specific case and focus not on the solutions contending parties offer but on the stories people tell. Attending to these stories is useful for several reasons. First, these stories not only convey an appeal that dry reasoning lacks; they also convey meaning that points to the relation among rights that storytellers construct. Second, identifying these different relations can help shift our thinking away from the assumption that a clash between culture and women rights is inevitable. These relations make us aware of which rights are at play in the case and the various ways in which contending parties understand them to be related.

Once it becomes clear that more than one rights relation is possible in a specific case, we can identify the stories that bring cultural, religious, and women's rights into agreement or do not pit them against one another. In my three cases, I found that I/NGOs and colonized women were the most likely groups to advance agreement. However, this does not mean that these groups always construct agreements among rights or that government officials and conservative colonized leaders never do. Indeed, as I explained in Chapter 3, government officials in South Africa put customary practice and women's rights into agreement on many issues related to African customary marriage (such as property inheritance) but declined to put these rights into agreement when it came to polygyny. This means that the key to identifying an intersectional approach is not to align with a particular group (e.g., colonized women, government officials)

but instead to analyze the stories that groups tell or might have told, because marginalization and silencing are common.[59]

As this book has discussed, the structural elements of these stories (such as victim, villain, and hero) point toward the rights relation storytellers forge. For example, knowing that the French government identified both Muslim Frenchwomen and French culture as the victim of villainous Muslim men intent on imposing patriarchy and refusing the tolerance, diversity, and pluralism of the Republic makes it clear that the government was constructing a clash relation between the full-face veil and women's rights. In contrast, as this chapter and Chapter 2 detailed, S.A.S. identified the French state as the villain and accused it of passing a law that denied her many rights, including cultural, religious, and women's rights. S.A.S. thus constructed an indivisible relation among rights.

Once it is clear that a form of agreement among rights is on offer, as in the story S.A.S. told, we can then analyze the story to assess whether it fulfills the other attributes of the intersectional approach. Recall that the judges at the European Court of Human Rights did not succeed in one crucial attribute: bridging differences among groups. In addition to rejecting a clash relation among rights, an intersectional approach also avoids imperial moralism, whether the conventional or fragmented version. The latter is most likely to be associated with colonial and post-colonial storytellers. Both involve imperial myths, tropes, and binaries and both fall into the trap of cultural essentialism.

[59] This marginalization and silencing extend far beyond the inequalities of power among contending parties to the case. For example, when the judges granted S.A.S. anonymity, the Court removed her witness statement from the official Court file. One of the submissions by the Rural Women's Movement has been lost in time because the GRP, which assisted them with their submissions, lost their funding and their impressive archive was dismantled and stuffed into a closet.

Those who take an intersectional approach avoid these pitfalls using a variety of tactics relevant to the specific case. In *S.A.S. v France,* for example, the government characterized Muslim Frenchwomen as victims who required saving; the judges, INGOs, and S.A.S. countered this claim by insisting upon her agency. Another tactic evidenced by those who occupied the position of colonizers was to not only point to the sexism in the law but also its racism. The judges, INGOs, and the Gender Research Project in South Africa all made it clear that they were not only concerned with sexism but also with racism.

In South Africa, rural African women—much like S.A.S.— were political agents. However, in this post-colonial context no one in South Africa claimed that these women lacked agency. Instead, government officials and conservative Traditional Leaders argued that African culture needed protection. The Gender Research Project and the RWM countered this claim by explaining how apartheid had fueled polygyny and by endorsing not only an end to polygyny but also the recognition of customary marriage. They embraced African culture and women's rights.

In Canada, the Tobique Women's Political Action Group asserted their agency by helping to put the marrying out rule on the political agenda; MPs acknowledged and praised the group for this work. The central claim in the stories Canadian government officials told, however, was less about rescuing Indigenous women from sexist Indigenous men than the chasm they identified between individualist and collectivist cultures. Indeed, both government officials and conservative chiefs mapped cultural rights onto Indigenous peoples and individual rights onto mainstream Canadians. The Tobique Women's Group made a critical intervention by indicating how and why this mapping was wrong. In claiming both sets of rights they spelled out how sex discrimination not only harmed Indigenous women who married out, but also their children, culture, and communities.

Indeed, colonized women in all three of my cases were exemplars of how to build bridges across difference. Undoubtedly, this bridge building stemmed from how they centered their own lived experience to explain the ripple effects of harm that went far beyond them. This meant they attacked not only racism or sexism, but their interactive effects. By attacking imperial sexism, they pointed to the ways in which the liberal state harmed many and why this harm must end.

My analysis brings to the fore a relevant set of tactics for moving away from the imperial approach and toward an intersectional one. The colonized should be careful to recognize colonized women's political agency and to attack racism as well as sexism. Critics of the imperial approach should consider historicizing the contested practice and bring to the fore how it has been shaped by the colonizer. They also should avoid affirming cultural binaries and instead upend them by focusing on those who transgress these binaries and centering both colonized women's lived experience and all others who are harmed. These tactics, however, are not enough. A robust intersectional approach also bridges differences among the colonized and colonizers by emphasizing common values.

Mounting an intersectional approach to contested cultural practices is not an easy task because this approach is rarely heard and often marginalized. I excavated the intersectional approach through systematic and rigorous analysis of nearly a dozen stories in three very different cases based on several years of fieldwork and archival research. Given how unfamiliar this approach is, it is not surprising that many people sometimes believe culture and women's rights must clash. The intersectional framework I detail here, however, provides us with a useful tool for being attentive to stories that are rarely heard. When those stories are deeply marginalized or silenced, this framework can be used to fill in the silences, so that we might advance an intersectional approach even when one is not evident. It is to this task that I now turn.

6.6 Female Genital Cutting and the Bohra in India

UNDER CONSTRUCTION

6.7 Taking an Intersectional Approach

This book does not provide an answer to the question: what should liberal states do when the culture of minority groups clashes with women's rights? Instead, it analyzes the stories that competing groups told during three dissimilar rights controversies involving several sets of rights, including cultural, religious, and women's rights. I find that a clash between culture and women's rights is never inevitable. The reasons are simple. In my three dissimilar cases I found many people argued that cultural, religious, and women's rights were not at odds but were aligned. Asking what liberal states should do when the right to culture and women's rights clash is therefore not an impartial query but a partisan stance. The question favors those who contend rights clash and obscures the arguments of those who do not. This chapter focused on the latter, bringing to the fore how the judges at the European Court of Human Rights, I/NGOs, and colonized women either forged relations of agreement among rights or did not forge any relation at all. The judges and the Rural Women's Movement in South Africa focused either on religious and cultural rights or women's rights; everyone else created relations of agreement. When we ask what to do when culture clashes with women's rights, however, we push these stories to the margins as if they did not exist.

The results of this marginalization are not merely academic. I am not arguing that we need a complete account of what happened and therefore need to listen to everyone's story. While a more complete account is no doubt important for the historical record, this is not the

concern motivating this book. Instead, I am concerned about the consequences of the imperial approach, whose proponents insist culture clashes with women's rights. This approach draws on imperial myths, tropes, and binaries, and appeals to abstract human rights principles or notions of culture to either attack sexism or racism but not both. As the previous chapters demonstrated, this imperial approach is associated with negative outcomes. Indeed, in all three of my cases government officials and conservative colonized leaders took an imperial approach. The stories they told entrenched divisions among the colonized and the colonizer. The policies that flowed from these stories harmed colonized women and buttressed state power over colonized groups. Thus, asking what to do when culture clashes with women's rights obscures an important question, the one underpinning these controversies: how can we resist political elites who govern through rights to sow social division and pass policies that punish colonized women while intensifying state rule over the colonized? This is the animating question of this concluding chapter.

Certainly, it would be both naïve and unjust to demand that anyone who takes an imperial approach be sidelined during these rights controversies or to argue that liberal states should take pains to avoid addressing contested cultural practices. Naïve because political elites cannot ignore evolving interpretations of human rights, their own political beliefs, or refuse to respond to the pressures of partisan politics and institutional incentives. Unjust because colonized women often pressure government officials to change state policies that oppress them. Further, the crux of the problem is not the participation of any particular group in the policy making process but the imperial approach that they advance.

Given the negative outcomes associated with this approach, what guidelines has this chapter offered for resistance? I believe that I have offered much more than a playbook for

resistance; I have detailed an alternative approach. The intersectional approach is defined by several key attributes. Its proponents forge agreement or no relation at all among rights. They also avoid the myths, tropes, and binaries of imperial moralism. Beyond steering clear of these pitfalls, advocates of the intersectional approach bridge differences between the colonized and the colonizer by underscoring shared values. They also center the lived experience of colonized women. Hence, they are attuned to how racism and sexism interact and attack imperial sexism.

In my three cases, the judges, many I/NGOs, and colonized women rejected the assertion that culture clashed with women's rights and took an intersectional approach. Recall, for example, that INGOs submitting amicus briefs to the Court argued that cultural, religious, and women's rights "intersected" in the lives of European Muslim women who wore the full-face veil. Moreover, instead of leveraging imperial moralism, these groups highlighted the agency of colonized women, pointed to how contested cultural practices were products of cultural difference *and* colonial rule, and sought to overturn liberal state laws that were sexist *and* racist. As the Gender Research Project explained, polygyny was not an essential characteristic of African customary marriage but a product of African customary marriage, apartheid, and capitalism. For this NGO and others like them, contested cultural practices were not handed down from the ages but cultural amalgamations of the here and now. This orientation toward history and culture highlighted the ways in which the colonized and the colonizer were mutually imbricated in a complex web. As a result, most of the groups featured in this chapter bridged differences between the colonized and the colonizer. Those that did this most successfully emphasized values contending groups shared. The Tobique Women's Political Action Group in Canada, for instance, argued that the government and Indigenous peoples both valued cultural and women's rights and that this was a firm foundation for legislative reform.

Further, the appeals of INGOs and colonized women were not rooted in abstract appeals to rights or an essentialized notion of culture but in the lived experience of colonized women. S.A.S., for instance, described how the ban affected Muslim Frenchwomen who wore the full-face veil, making them fearful of violent reprisals. Rural African women denounced the many inequities of polygyny that harmed African families. The Tobique Women's Political Action Group conveyed their longing to return to their natal communities, the deep pain separation from their culture had caused them, and how the marrying out rule had torn their communities asunder. These stories brought to the fore how the racism and sexism flowing from the legacy of colonial rule intersected in these women's lives to oppress them. In contrast to government officials and conservative colonized leaders who attacked either racism or sexism, those who took an intersectional approach attacked imperial sexism. They railed against the 2010 ban as a violation of the rights of S.A.S. as a French citizen, Muslim, and women; they decried the injustice of polygyny even as they demanded legal recognition of African customary marriage, and they made it clear that the marrying out rule violated not only the rights of Indigenous women to equality, but the rights of their children to equality, of their right to culture, and their community's collective right to culture.

This book makes clear that the problem facing liberal states is not a clash between culture and women's rights. We do not need to decide whether it is better to promote cultural and religious rights or women's rights or to devise procedural rules for navigating between clashing rights. Instead, we need to challenge liberal democratic politicians, conservative colonized leaders, and anyone else who takes an imperial approach when debating contested cultural practices like the full-face veil, polygyny, and the marrying out rule. We need to move beyond

culture versus women's rights, turn toward the intersectional approach, and fight imperial sexism.

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