

Chapter 11

Genes and Burkas: Predicaments of Human Rights and Cultural Property

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Introduction

The validation of cultural property as a manifestation of group identity expanded through the 1980s and 1990s, but since then has encountered major challenges. If previously the control of images and cultural property was viewed as empowering, this has begun to change since the mid-1990s. This was largely due to the revolution in communication including the expansion of the internet and the development of the web. The same type of control – which was viewed as empowering marginal groups, anticolonial forces, and weaker states – has come to be viewed also as possible censorship and repression over individual members of the groups. A moral shift and the inclusion of multiple perspectives within all sides in the debate is at the core of these changing standards. Instead of a binary division between the haves and the have-nots, we encounter pluralistic perspectives at every fluid stage from the individual to the global. Not only can the center not hold, neither does the periphery.

The intensity of the growing communication also led to a severe sense of the loss of the local. By that I mean that ideas, images, and representations no longer circulate only in a confined and anticipated space and do not belong to a culture, but rather everything that was once local has also become global. This is the fundamental essence of colonialism and imperialism. Thus, at some level, today's interconnectivity is not a new phenomenon.

The imposition of Western cultural norms was neither exclusively positive (e.g., the British outlawing of the Hindu practice of sati) nor exclusively negative (e.g., the looting of cultural property in the name of science, salvation, preservation, and pure greed as central to the imperial experience). Certainly it was exploitative.

The cultural construct that framed the exchange has been viewed primarily within the perspectives of a postcolonial critique. Intellectually, Macaulay (1835) articulated most clearly the imperialist rationale: “The intrinsic superiority of the Western literature is, indeed, fully admitted.” While Macaulay's views are patently embarrassing in the way they were formulated and for their content, the dilemma remains very much concerning the principles of human rights and of cultural property: is it a responsibility to adhere to traditions and practices even when these are

“inferior” or, in our language, abusive and violent to those subjected to them? Macaulay was concerning with the language to be taught – English or Arabic and Sanskrit. We might be concerned more with equality, freedom, dignity, and health. But the dilemma is analogous: *Who determines the right way and for whom?*

The Disappearance of the Local and Diverse Centers

The contemporary disappearance of the local carries a different flavor than that presented above. It is no longer confined to the globalization of the exoticised orientalized *other*, but instead it is distributed everywhere. Thus, the dispute over images of Islam in Europe has subjected the local European tradition to the global gaze. Attitudes in Europe toward minorities, by European society as well as by the minorities resident there themselves, have reconfigured the sense of a group, community, standards, and rights and placed these into a new context where they circulate among others who may or may not share similar geographical location. Globalized culture is no longer a universality that is the expansion of the center imposing its standards, good or bad, on the rest, but rather a continuous flow between the periphery and the center, or rather between diverse centers.

This form of circulating images and ideas underscores the problem of determining who speaks for the group and of what cultural property consists. The predicament of recognizing the group as the crucial element of the identity of its members has led to a series of questions, the most obvious of which may be: if group identity is primary, who speaks for the group? Generally, the answer to this has been its leaders. More recently, the constituency of the group has become a question as has the relationship of the group to the individual members; the focus is on how constrained ought the individual to be by the tradition of the group as understood by its leaders? How hard is the demarcation of the group, and who decides it? This predicament is shared by indigenous artists, who expose sacred knowledge as part of their creativity, as much as by Muslim women, who may seek more individual freedom and equality. It is shared by poor indigenous looters who sell their recovered treasures in a way outsiders decry as destructive to the archeological sites and that, paradoxically, incarnate their own indigenous tradition. And the predicament is shared by performers of sacred rituals. The tension between group and individual rights has been aggravated the more closely a traditional society has interacted with modernity.

These forms of circulation of identities include both tangible and intangible cultural commodities. In the 1980s and 1990s, restitution of cultural property to indigenous peoples, as well as to colonized peoples – both of whom have long been exploited by the modern state – was one small and significant form of redressing those injustices. Initially, cultural property was limited to material and tangible objects, but the concept has expanded to include intangible culture. In both cases, restitution and control over culture was viewed as empowering (Barkan and Bush 2003). This attitude itself has undergone rapid conceptual change as modern

technology has recast our approach to intangible property, from music and images to software, movies, and transnational pharmaceutical companies.

The control of such intangible property in certain contexts has come to be identified with the limitation of freedom, indeed oppression. Although the distinctions between Intangible/Intellectual Property (IP) and Patent Property (PP) in contrast to indigenous knowledge or sacred religions may seem clear, it is far from it. Indeed, the appropriation of indigenous knowledge by First World corporations in the last generation led to the construction of the analogy by indigenous peoples who saw others enrich themselves while exploiting the group tradition, with little or no benefit for the group. As long as the contestation was between the subaltern group and the corporation, the morality was largely shaped by the disparity of power, and supporters of indigenous rights knew who was wrong. This changed once the members of the group began to assert themselves as individuals and sought different usages for their knowledge, including marketing secret and sacred knowledge as art.

The constraining of speech in the name of IP is most widely evident on the worldwide web in the attitude of the rich and strong corporation (by analogy, the group) against the “peer production open source” individual whose freedom is constrained. The distinctions are significant: indigenous groups have been victimized and exploited, while Hollywood copyright holders or the Pharmaceutical patent holders are exploiters who rake in excessive profits. Despite such clear distinctions, both claims to ownership of IP present a group versus individual rights argument. The challenge is over the rules of the limitation of use, ultimately a zero sum game. The rationale of privileging the group/corporation over individual users, members of the group, or the public in general, of limiting the access of outsiders to the intangible cultural property of the group is this: if others have access to it, the owner loses. In this there are certain similarities between a traditional group and multinational corporations. The exploitation stems not from the owner having less of what was had before, but, rather, because if the nonowner enjoys the fruits of that good, the owner is injured. In other words, the wider the knowledge is spread, the more it loses value. Notwithstanding whether empirical evidence would substantiate this notion, this is the accepted norm regarding IP. These predicaments, in particular *vis-à-vis* individual and group rights as well as the type of rights (civil vs. cultural, but also economic and social rights) have placed cultural property in its myriad ways at the top of the international agenda.

How Can Human Rights Contribute to Understanding of These Predicaments?

The international law recognizes barely any group rights aside from sovereignty. Article 1 of the International Covenant on Economic, Social, and Cultural Rights (1966) stipulates regarding group rights that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status

and freely pursue their economic, social and cultural development” (International Covenant 1966).

All other instances of “culture” mentioned in the Covenant refer to individual participation and enjoyment of cultural rights. But the Covenant is unclear: Who owns the right for cultural property: the group or the individual? Which groups are included and what are the relations between the group and the individual?

Article 1 recognizes a group right as part of self-determination. This would be read to recognize a nexus between group cultural rights and self-determination. That is, these rights are associated with sovereignty, or at least with a legitimate claim for sovereignty. Would that mean that a minority group within a sovereign nation does not have the right for cultural self-determination? Yet we may think that this is the very arena where a group might need a particular recognition of its independent cultural right – that is, when its claims of sovereignty are denied. The clearest example might be an indigenous group that may not have a claim to sovereignty, but would have a claim to cultural autonomy.

Furthermore, entitlement to cultural self-determination, to cultural patrimony, and particularity might, in principle, collide with universal principles of human rights that are, in practice, the very representation of diversity – for many “universal” rights have meaning mostly as they are applied within local variation. This is not limited to non-Western indigenous particularism. For example, freedom of speech is understood locally in numerous divergent ways. In several European countries, it does not include the right to deny the Holocaust. Defamation is construed very differently by the legal system in different countries. These are local varieties of an established universal freedom. An increasing number of people appear to find this controversial, though they are far from the majority.

The conflict between self-determination of a society, norms of freedom, individual agency, equality, and nondiscrimination, among other rights, is played in the public sphere continuously. Relative local variations involving more severe practices are subject to widespread critique. The human body – particularly the female body – is one site where local practices collide with global norms. Violence against women, which in the West has been the subject of extensive criticism and activism for 15 and more years, has focused primary attention on the way sexual abuse is inflicted on women. It might be appropriate to inquire why there is such an intense focus by many parties on female sexuality and female-directed violence as a manifestation of lack of freedom and equality, and not on other forms of discrimination – but that is still another question. Here it suffices to note that the conflict has become a focal point between societies and within societies.

Human rights are considered to be natural-born rights of every human being. These universal rights are supposedly not a privilege: they are not “earned” and do not carry obligations. Although the declaration of “human” attached to rights is frequent, we know these rights are almost always limited to particular groups, and are mostly citizen rights. Humans who are not citizens do not enjoy such rights because they cannot claim these from any government. When an individual does not even have the ability to demand rights from a government, even an abusive

government, it means one is barely human. This was the topic of Hannah Arendt's famous chapter on "the Decline of the Nation-State and the End of the Rights of Man" in *The Origins of Totalitarianism* (Arendt 1951). Indeed refugees are humans with few rights, and they can hardly claim those from any specific country. So although we know these exceptions of rightless people include many millions, let us focus on the individual citizen who can claim his/her universal rights and "fundamental freedoms" vis-à-vis his/her government.

How Do These Rights Intersect with Cultural Rights?

The position of the United Nations is that with good will and flexibility it is possible to respect and protect cultural diversity and integrity. The international focus is on establishing "minimum standards" of human rights that incorporate cultural rights. That means that at least within a certain construction there can be "maximum room for cultural variation without diluting or compromising the minimum standards of human rights established by law" (Ayton-Shenker 1995). Indeed, converging "cultural values" around universal human rights and emphasizing "core values" (such as the value of life, social order, and protection from arbitrary rule) would be the UN perspective on the symbiosis between diversity and universality. Whether this is indeed diversity, or merely domestication of differences, is another matter.¹ This perspective can be realistic only as long as there is no controversy. It is one thing to consider "national and regional particularities and various historical, cultural and religious backgrounds" (Ayton-Shenker 1995). It is quite another to focus on the conflict between those and universal rights. The conflict arises when one's culture infringes on someone else's

¹ "Human rights facilitate respect for and protection of cultural diversity and integrity, through the establishment of cultural rights embodied in instruments of human rights law. These include: the International Bill of Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Principles of International Cultural Cooperation; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Right to Development; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples." "Human rights which relate to cultural diversity and integrity encompass a wide range of protections, including: the right to cultural participation; the right to enjoy the arts; conservation, development, and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious, or linguistic minorities; freedom of assembly and association; the right to education; freedom of thought, conscience, or religion; freedom of opinion and expression; and the principle of nondiscrimination." Diana Ayton-Shenker, "United Nations, Background Note, The Challenge of Human Rights and Cultural Diversity," <http://www.un.org/rights/dpi1627e.htm>

human rights. Since supposedly human rights are “indivisible,” this conflict should not in principle arise. But obviously this is not the case.

While the international community is averse to rank human rights violations, it is clear that violations of political and civil rights receive priority. Indeed, the very use of the rights language for economic, social, and cultural claims is contested. Therefore, the rhetoric of cultural rights to justify actions that are understood by others as “torture, murder, genocide, discrimination on grounds of sex, race, language or religion,” (Ayton-Shenker 1995) or other fundamental freedoms are particularly frowned upon. In the clash between two rights, cultural traditions of abuse and discrimination do not enjoy parity with other political and civil rights. The very construction of coexistence of tolerance and cultural pluralism is already a partisan view of both culture and universality. A different way to look at human rights is to regard rights as divisible, that is to rank rights as more or less important, and possibly to see cultural rights at best as secondary from a global perspective and subject to the minimum fulfillment of other rights such as security and political freedom. The specific negotiation over the tension between conflicting rights has to be done locally but it must be done with the recognition that a universal minimum applies. I will explore the dilemma as it is manifested vis-à-vis the bioprospecting of indigenous genes and the status of many women in Muslim communities in Europe. (One may feel the urge to state the obvious: not all Muslim women are subject to fundamental oppression and there are numerous liberal voices among male and female Muslims, etc. Or one may feel that such over-explanation may actually raise the specter of the implicit homogenizing gaze at Muslim communities as exclusively fundamentalist. I take the latter view.)

Bioprospecting

The opposition among indigenous peoples to bioprospecting is well known. Several Indian nations have passed antibioprospecting laws. For example, the Confederated Salish and Kootenai tribes adopted a resolution in 1998 that severely restricted genetic research on their Montana reservation. That resolution declared “Scientific research and genetic exploitation of indigenous peoples represents the greatest threat to American Indians since the European colonization of the Americas.” This is a very strong statement. One could hardly imagine a more critical situation. Indeed, since the colonization is at times characterized as genocide, one might anticipate that opposition stems from a fear that bioprospecting may lead to destruction of indigenous life and possibly actual killing. This clearly raises the bar. But what does it exactly mean?

Over the last 15 years, the collection of genetic data globally, by public and private institutions, has increased. The research raised many concerns, not least because it was understood against the background of the eugenic movement and racism. There are many complicated and good reasons to suspect these efforts,

especially historical precedents. But given the justified suspicion, how does the current research measure up?

One principled objection concerns the ethics of conducting human research and the matter of informed consent. A second concerns who benefits and profits from the research. The latter is most glaring and is possibly a matter of material interests, not morality. Those who secure patents over genetic data seek profits from all types of derivative work done with these data – pharmaceutical as well as research. In contrast, the “true owners,” those whose genetic material provides the data, most often receive no or only minimal compensation. This is true of indigenous and nonindigenous subjects alike.

Indigenous peoples are particularly valuable for this research. The vast majority of the world’s remaining biodiversity can be found in “indigenous territories” and indigenous peoples are believed to be distinct populations that can facilitate better genetic study. Therefore, the scientific demand is high. A vast number of patents for human DNA have been issued in the last generation and hundreds of corporations are taking part. A large part of the activity occurs in the US and by multinationals. There is little surprise that indigenous people see the demand for their territories and genes as a new gold rush and activists see it primarily as a scientific curiosity and fear appropriation of both land and human genetic material.

Throughout the world, there is a fundamental distrust between the public and companies that harvest knowledge for profit. This is further aggravated in the case of indigenous peoples by the long history of racism and exploitation. There is a lack of clear standards and a history of bioprospecting without prior approval or a full understanding of what is at work, and even changing the purpose in midstream. Gene hunters are viewed as the new colonialists. Given the lamentable history of exploitation of native peoples, any other attitude toward them would be naïve.

A related issue that is creeping into the open is that the next mega-prospecting could yield billions of dollars that in some sense are perceived to “belong” to indigenous peoples who will not see any of the profits. Private companies harvest botanical and human material on reservations without disclosing their true and full goals; they enrich themselves without sharing the bounty with the poor indigenous owners. A long history of colonization has created particular, justified sensitivity among indigenous peoples to issues of honesty, respect, and consent, and these feelings intensify when research subjects are duped with or without consent. Indian communities rarely benefit from genetic studies.

When for example, the Havasupai Tribe consented to collaborate in research in the early 1990s, they believed they had agreed to a specific line of research. Thirteen years later, they filed a lawsuit in 2004 against Arizona State University for taking and misusing their genetic samples. The details of the case are crucial, and I do not believe it has reached legal resolution, but the indigenous perspective was that they were cheated and their samples were used for research to which they did not consent. The research included inquiry into schizophrenia, inbreeding, and migration theories. This is the conventional wisdom among activists about the relation between indigenous peoples and the scientific establishment.

The Geographic Project

In 2005, the National Geographic Society with IBM began a five-year Geographic Project, aimed to collect and analyze DNA blood samples from over 100,000 indigenous people. There are various ways of examining the project, but let me focus on the self-presentation of the project. While it highlights that it is “the world’s largest study of its kind in the field of anthropological genetics” much of the language aims at deflecting criticism. It emphasizes its focus on ethics and privacy and states:

There is no medical research of any kind in the Geographic Project. Also, we will not patent any genetic data resulting from the project. All the information belongs to the global community and will be released into the public domain . . . the Geographic Project research centers will release the resulting genetic data (on an anonymous and aggregate basis) into the public domain to promote further research. The genetic data will be treated as discoveries, rather than inventions, and will not be patented. (The Geographic Project)

This declaration constructs or at least implies that medical research is suspect, an enterprise that aims at pure profit; thus, the project distances itself from it, emphasizing that no medical or any bioprospecting will take place. Yet, in other contexts, these are two activities that are highly valued.

“Openness,” “lack of patents,” “global community,” and “public domain” are all catch phrases that are used in the statement to reassure the audience. The dichotomy between universalism and particular interests is clearly presented, and universalism is the validated approach.

Ours is a true collaboration between indigenous populations and scientists. Helping communicate their stories and promoting preservation of their languages and cultures is integral. Before any field work begins, we have been and will continue to seek advice and counsel from leaders and members of indigenous communities about their voluntary participation in the project. (The Geographic Project)

Localism is used as a double-edged sword: as a category, “indigenous” places thousands of native peoples with their own traditions into one group that adheres to a minimalist common denominator, the essence of each being localism. Thus, nobody can speak for the indigenous peoples, and ergo, the project can get the support of those who participate, but no activists can object to it in the name of all indigenous peoples. This interpretation of the relation of the “local” to the “global” is not necessarily universally accepted. Indeed, the project attempts to address these conflicts head on, including a presentation of alternative world views and the mutual benefits to be gained by following the guidelines of one of the most prominent Aborigine activists, Professor Mick Dodson. He cannot provide a general authority, since all authority is local, but Dodson clearly has as strong a claim as any indigenous voice (Dodson and Williamson 1999; *The Ethical Framework*).

The trope of the sinister scientist is meant to be dispelled by these assurances, though there is little inherent correlation between a genetic database aimed at a DNA map of global migrations and one designed to reveal cultures and traditions. These promises attempt to convey respect to the communities, but many indigenous people see that these are untrustworthy words, more manipulative than transparent.

The Genographic Project statement addresses the question of benefits:

Who will benefit from the GLF?

Funded by net proceeds from the sale of the Genographic Project Public Participation Kits, it is our hope that the Genographic Legacy Fund will establish a positive and ongoing legacy for the Genographic Project that will benefit indigenous and traditional peoples – those participating in the project as well as others. The GLF will not only recognize the importance of these communities, but aims to empower them as well. (The Legacy Fund)

The sum of the “net proceeds” is not clear. Furthermore, there are no resources explicitly invested in indigenous peoples. Instead, there is a promise to “raise awareness of the pressures indigenous groups face and to try to empower these groups.” These catch phrases are particularly suspect in light of the fact that the Advisory Board consists of “respected leaders in various scientific and other fields” and more recently added an indigenous representative. There have been so many misrepresentations in the past that to attribute an altruistic purpose to the project is impossible, or at least naïve. But let us suspend incredulity and assume that this is the case and that the project successfully addresses all the conventional ethical concerns that are being raised: informed consent, privacy, and even nonprofit status with proceeds reinvested in indigenous communities. What then would be the ethical status of the project?

This brings us to the principle opposition between cultural properties: open knowledge and research versus an indigenous desire to safeguard the sacred. These indigenous claims in the name of tradition cannot be overcome within tradition’s own rationale.

Indigenous Responses

It is difficult to gauge indigenous response. On the one side are the representatives of indigenous people, either in international forums or in cyberspace, who advocate traditional and oppositional views to the “Western” view. Many operate within the Western tradition, and are at once both indigenous and Western citizens, but they present the traditional perspective as they see it. One representative group in cyber space is the Indigenous Peoples Council on Biocolonialism (IPCB). The IPCB is an Indigenous organization that addresses issues of biopiracy and formed itself in 1993 in opposition to the Human Genome Diversity Project (HGDP). IPCB advocates noncollaboration with the Genographic Project, although it claims not to “tell” indigenous peoples what to do.

On the other hand are the anonymous individuals and groups who presumably participate in the project and collaborate with various other bioprospecting, whose opinions we do not readily know. The diversity among indigenous peoples suggests that there cannot be a party line. This brings us to the question of who represents the “indigenous,” as well as the tension in the representation between the group and the individual.

One dilemma between the collective versus the individual is whether the choice has to be made at the group level, as the indigenous tradition instructs, or by

individuals, according to their own private inclination. How is “respect for collective review and decision making” integrated with “upholding the traditional model of individual rights” (Harry 2001)?

The indigenous opposition contrasts “mainstream ethical protocols,” which focus on “individual consent” with the reality that “in many indigenous societies, people may not be free to sell their knowledge because either the knowledge cannot be sold according to the group’s ethical principles or permission of a larger group is required first” (Indigenous People 2000).

Sacredness

How does one incorporate or reconcile a traditional perspective and indigenous world view with Western science? Consider the following statement by the IPCB (IPCB):

Many indigenous peoples regard their bodies, hair, and blood as sacred elements, and consider scientific research on these materials a violation of their cultural and ethical mandates. Immortalization, cloning, or the introduction of genetic materials taken from a human being into another living being is also counter to many indigenous peoples’ cultural and ethical principles.

The objection to having one’s family human remains displayed or stored in a museum as material for biological anthropological research, when first articulated by indigenous activists, was largely dismissed by the scientific community because such treatment was deemed essential for the progress of science. Indigenous bodies were viewed as scientific material while white bodies were treated as sacred. We view this today as racism, but in its day it was a convention hardly worth noticing. In the last two decades, the indigenous demands for equality in the treatment of their bodies and remains has been more clearly understood by the wider society, and indeed the process initiated by the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 has attempted to attend to many of the indigenous concerns. Exceptional cases clearly remain, such as the dispute over the Kennewick skeleton. Yet the older practices have vanished from many museums, and human remains are treated with much more respect to traditional and religious beliefs, Western and indigenous. However, there is the legacy of a history of the conflict between the scientific establishment – including the legacy of racist dehumanization of indigenous peoples – and the traditional that frames, for certain activists, all science concerning indigenous life. These activists oppose such science as a violation of the natural world:

Genetics, as a discipline, has little regard for the life forms it manipulates. Their interventions – inserting foreign genetic material into an organism, adding or deleting genes – can permanently alter life forms that have evolved naturally over thousands of years.

This contrasts sharply with an indigenous worldview. For us, all life is sacred-it is a gift from the Creator. As indigenous peoples, we carry the responsibility of insuring a healthy future for our children and unborn generations yet to come. (IPCB)

The fast pace of scientific innovations concerning manipulations of the human body and health destabilizes many belief and ethical systems. The debates over stem cells or contraception/abortion divide American society in a way that is played out in unexpected ways globally. At the heart of these debates is the question of sacredness, but the essence of sacredness is articulated in various ways. The issues of prolonging versus terminating life, life worth living, how death is determined, and who determines death are the basic questions that modern life imposes on older belief systems, and indigenous peoples are not spared. Despite enormous variability, a basic tenet among indigenous peoples is that all life is sacred. Those who oppose genetic research argue that any intervention with the body, presumably to remove part of it, even a blood sample, can restrict one's ability to pass into the next stage of life. This clearly calls on complex interpretation of "removal" among other issues. Bleeding as such would not entail "removing," so while the blood or other DNA samples are tangible, its collection does not hinder life in a tangible or conventional way. The meaning of the "removal" becomes an interpretive matter that somehow is related to the essence of life or is made into an essential part of life by the use made of it in the scientific realm. The significance is gained by incorporating the knowledge from one system of culture – science – in its negation. The potential conflict is principled and practical, and certainly not insignificant.

One result of the Genographic Project will be the mapping of human migration. This is very likely to conflict with the creation narrative of various indigenous groups. How would such knowledge impact indigenous groups? This would likely be one more manifestation of the polarization of world views and historical narratives between tradition and science, but it is clearly entirely new. After all, creation and evolution give sufficient ground for disagreements. However, the specific act of attributing to a specific group an origin, which contradicts its own narratives, is hardly trivial for those indigenous peoples who object to it. For example, the question of migration goes to the heart of native American beliefs in their local origin. In the lawsuit mentioned earlier by the Havasupai Indians, one concern is that their blood samples were used in migration research. This was particularly offensive because their religion and culture attribute their origins to Red Butte in the Grand Canyon. Contrary scientific conclusions would most likely confront these beliefs. The case is too complex to pursue in detail here. The issue at stake is the control of cultural narrative, particularly when that narrative is at the heart of a religious belief system. One can respect the Native American tribe's wish to preserve its belief system. But how then does one deal with the similar demand from fundamentalist Christian groups to teach their children their nonscientific version of creation and Intelligent Design?

This goes to the heart of the Genographic Project. A map of the migratory history of humankind through DNA is in direct opposition to indigenous creation stories and languages that describe genealogy and ancestors. Therefore, it is not surprising that this research is viewed as desecration. The dispute about the Ancient One found at Kennewick, Washington, was multilayered, and the opposition was over the violation of sacredness, and the taking of DNA samples. The court decided in favor of allowing research, which violated the principle of the indigenous position.

Lack of clarity also means that different tropes compete. Indigenous culture is envisioned in a spectrum from strong to weak. There is the “vanishing cultures” trope that sees the salvaging of the genetic data as a means to preserve the diversity of humanity. The vanishing trope has been traditionally associated with racist notions of inferiority, linked to scientific racism and eugenics but not exclusively so. Indeed, some of the indigenous narratives often integrate significant parts from anthropological research. Furthermore, the fact that the vanishing trope was part of a notion of progress that dismissed “primitive” cultures does not negate the fact that indigenous cultures do disappear at a fast pace and that the number of languages is diminishing rapidly. Conversely, one aspect of the opposition to the Genographic Project is a self-validating objection among certain indigenous activists who view surviving in the face of colonialism a testament to their superiority. This, the argument goes, means that there are “some strong genes” in the indigenous pool, which is “something that scientists in industry are interested in.” Survival becomes evidence of valuable cultural property that is embedded in the genes, and should not be appropriated by others.

In addition to concerns regarding the sacred, the new scientific research might be used to challenge aboriginal rights to territory, resources, and self-determination. Because of this, intangible cultural property has potential for tangible consequences. Whether this fear is real or not, the rationale of justifying indigenous claims – whether on the basis of first occupation or penultimate occupation – is up for discussion.

The Dilemma of Multiculturalism and Islamic Women in Europe

In a recent essay, the Dutch scholar Ian Buruma (2006) describes how leaders, often self-appointed, of ethnic and religious communities appropriate the right to speak in the name of the group and to control what is said about the group by others. Buruma sees the censorship and intimidation that comes with limiting speech as a crime. Indeed, he says, “leaders of minorities are a bit like bosses of criminal gangs” and ventures that second-generation minorities would rather be part of the nation than be represented by the ethnic leaders. “We should treat individual Muslims, Christians, Jews, Sikhs, and the rest with courtesy and respect, but what they think or believe must not be exempt from criticism, or even from ridicule.” He says this is why the British proposal to criminalize criticism of religion as a hate crime is well intentioned but wrongheaded. He prefers the melting pot model, the official French approach that earlier characterized American culture. But, he concludes that “this has begun to unravel as the worship of ethnicity and the politics of ‘identity’ emphasize and celebrate differences rather than a universal American civic identity” (Buruma 2006).

This, alas, provides an easy culprit and a wrong solution. As the violent Muslim demonstrations in France in the Fall of 2005 showed, and what Americans have known for a long time, ethnic pride is not merely a self-affirming celebration, nor

a manipulation by some self-appointed community leaders; it can also be a response to discrimination. The validity of claims in the name of the community stems from the experience of many in the community who suffer from the melting pot, a social model that maintains the power structure and allows foreigners and immigrants to trickle only very slowly into acceptance.

The idea that multiculturalist community leaders are merely self-promoters is one-sided at best. Yet, the construction of a binary choice – between delegitimizing identity politics and imposing extensive censorship – is false. The dilemma is how to avoid legitimizing racism (anti-Muslim, anti-Semitic, anti-Sikh, etc.) yet not fall prey to the many whom Buruma rightly describes as community-leader thugs; in other words, how to protect the weak without subjecting them and the surrounding community to another form of intimidation.

At the heart of the global cultural existence is the question of the right to offend: when a subjective perspective of one's own culture becomes offensive to surrounding cultures. The permeated border does not have to be physically close, and certainly not overlapping as does the minority space in the larger nation. This dilemma of a group's ownership of its tradition as an uncontested space faces challenges everywhere. For instance, Japan's colonial aggression against Asian countries has become an annual topic of protest in South Korea, China, and domestically in Japan itself, as Japanese Prime Minister Junichiro Koizumi each year insisted on visiting the Yasukuni Shrine where Japanese war criminals are buried among Japan's other war dead. This example shows how one country's culture impinges on the memory and the culture of another's by merely domestically commemorating a subjective perspective of history. This is not a political statement; it is not ostensibly directed in any way at the other countries, but memory is a contested space, and validation of one country's memory can be regarded as an infringement on that of another. The latest contention between Germany and Poland revolves around the memory of the German expellees at the end of World War II. Should Germany, and German expellee organizations, be at liberty to equate their own suffering with that of the Holocaust, or the Polish victims? Does such a comparison violate the memory of the victims of Germany? An exhibit in Berlin in Summer 2006, called "Forced Paths," organized by the League of German Expellees, has bold historical revisionist aims. The controversy results from a growing attention to German suffering during World War II relative to their victims. The exhibition does that by focusing on various expulsions of ethnic Germans from Poland and the Czech Republic in the immediate post-World War II years. The organization represents a one-sided account of wartime suffering (Der Spiegel 2006).

Who Speaks for Muslim Tradition?

An analogous type of conflict was at the root of the Danish cartoons published in September 2005 that caricatured Muhammad. They were taken as an offense by some Danish Muslims. A few months later, the dispute spilled into the Middle

East and other Muslim societies, leading to demonstrations, boycotts, violence, and an international crisis over respect, blasphemy, freedom, as well as the correct interpretation of the offense within the Muslim world. Was it the freedom of speech or the Muslim tradition that was being violated? Was the violent response warranted? As the antagonism toward the West within Muslim societies has increased over the last decade (especially but not exclusively toward the US) and fear of Muslim terrorism has become a news staple, discussions of cultural practices within Islamic societies have become even more controversial and subject to political manipulations. Huntington's (1996) theory of the "clash of civilizations" has provoked an explicit political and intellectual controversy, exploited in different directions. These controversies should not, however, silence the discussion of cultural practices within Islamic societies, but rather make these more central. Azar Nafisi (2003), in *Reading Lolita in Tehran: A Memoir in Books*, presents a strong liberal Muslim perspective on the internal struggle in Iran. It is clear that this is most important an internal matter for Islamic societies, though here I discuss briefly Islamic communities as minorities within the west. Indeed, in the middle of World War II, on the eve of the birth of the modern human rights movement, President Franklin D. Roosevelt responded to Harry Hopkins's skepticism about the willingness of the American public to embrace freedom for all in the world, saying "the world is getting so small that even the people in Java are getting to be our neighbors now" (quoted in Borgwardt 2005: 21). In the global society, maintaining borders between cultural norms becomes less and less feasible.

Recognizing the diminishing space of the local community, in particular, to engage in a behavior deemed offensive to others – whether the actors belong to the same group or are outsiders – is a major question in global discussion today. It involves, for instance, the place of women in Islam. How can this topic be responsibly discussed? Given the political stakes, it is more likely than not to offend some. Therefore, whatever the reader may think of the following discussion, I hope the recognition that such a conversation has to take place, can be recognized.

The topic can be approached from several perspectives. The Islamic world suffers from repeated violence, external and internal. Beyond and related to the political violence, there is an internal contest within Islam over the soul of its culture, of the struggle among fundamentalist Islamists, religious moderates, and secular yet self-identified Muslims for cultural tradition and freedom. In some African nations (Sudan and Nigeria, to give but two examples), there are individuals and communities who fall victim to the clash between Islam and Christianity. Numerous fatwas are issued by religious authorities, and although relatively few come to the attention of the West, the number of fatwas listed on the web gives an indication of it as a growing issue. The fatwa as a cultural practice is an attempt by a decentralized religion to determine the behavior of its believers, wherever they may be (dispersed as they are among numerous nations on all five continents). It also tries to determine the behavior of non-Muslims. The ease with which fatwas are issued and the obscurity of most is a real example of the infinite expansion and the double edge of claiming tradition as a group right to control behavior and ideas.

Among the numerous ways to illustrate the political dilemmas in the West in discussing these issues, we could refer to the fortune of Ayaan Hirsi Ali, the Somali-born refugee who became a Dutch politician and achieved international fame as a symbol of the contentious struggle over modernization among Muslims in Europe. Hirsi Ali challenges notions of cultural authenticity and of the legitimacy of traditional Islamism, as well as the understanding of political right and left and ethical right and wrong.

Hirsi Ali experienced the oppression of Muslim women firsthand in Somalia. When her father attempted to force her into an arranged marriage, she fled to Holland in 1992 where she later renounced Islam. In 2006, she was stripped of her Dutch citizenship for about a month after her admission that she had provided false information on her refugee application because, as she explained, she was fleeing violence and had to hide her identity. As a filmmaker she partnered with Theo van Gogh in the 2004 film *Submission* and was forced to go into hiding in November of that year after his murder by an offended Islamic fundamentalist in Amsterdam. The attacker left a death threat against Hirsi Ali stuck to his corpse with a knife. Because of this and other threats against her by radical Islamists, she has been frequently under protection by the Dutch government.

Several quotes from Hirsi Ali will suffice to demonstrate her political position regarding Islam:

Not a day passes, in Europe and elsewhere, when radical imams aren't preaching hatred in their mosques. They call Jews and Christians inferior, and we say they're just exercising their freedom of speech. When will the Europeans realize that the Islamists don't allow their critics the same right? . . . the same thing happening that has happened in the Netherlands, where writers, journalists and artists have felt intimidated ever since the van Gogh murder. Everyone is afraid to criticize Islam. Significantly, *Submission* still isn't being shown in theaters. (Hirsi Ali)

Her criticism is aimed at the Dutch left, which makes the political alignment so unsettling.

Muslim women at home are kept locked up, are raped and are married off against their will – and that in a country in which our far too passive intellectuals are so proud of their freedom! (Hirsi Ali)

One of Ali's criticisms is that The Netherlands directs money to Islamic organizations that violate human rights and oppress women. Instead she wants social services and economic assistance to be directed toward women and organizations that care for the welfare of the weaker members of this minority – children and women – not to the traditional Muslim powers who advocate and practice oppression of women.

As a victim of forced marriage and a refugee, Hirsi Ali has the legitimacy acquired by identity and cultural experience that is celebrated by human rights defenders. Yet, she is not alone as a member of a group (any group) speaking against what is conventionally considered the group's tradition. In exploring the relation between cultural property – the question of who owns the culture – and

human rights, Hirsi Ali provides a striking example of the impossibility of privileging the group over the individual in today's society.

It could be argued that positioning Hirsi Ali on one side and Islam on the other oversimplifies the issue. This is certainly true, but it allows the central issue to emerge more sharply. The question of the place of women in Islamic society, both in Islamic countries and in the West where Islam is a minority religion, raises a host of issues that includes gender, nationalism, globalism, localism, and universalism. Many of these exist in opposite relation, yet none of the dichotomies are clean cut. Despite this, politics often demands a choice between two diametrical positions. Subtleties hardly find room in heated debates. Is politics of this type not part of the cultural property debate? I think it is. The French dispute over wearing the veil in schools, for instance, is very different from the Turkish debate about the veil, and in both societies there are feminists who support wearing the veil as a statement of opposition to the State that forbids it, as a visible resistance to state hegemony, and as a form of cultural independence.

My argument is not that there is a correct way to interpret the actions for all those involved, or that I have a general solution. Far from it. In fact, my argument is that with the disaggregation of traditional societies and with the disappearance of the local, the notion of an intangible or even tangible cultural property comes up against multiple forces, internal and global, that challenge the group's right to make pronouncements about that cultural property. On the other hand, to shift the legitimacy to the individuals at the expense of the group altogether would not only entail a loss, it would also presumably fail. We are all part of groups, and our identity might be as members of several groups; we would be very poor humans if we lost these affiliations.

Conclusion

We all live within "society," itself composed of multiple and imbricated groups within which our identities are formed and reside. In Germany, Japan, historically Islamic nations, and indigenous and minority communities, people everywhere hold to cultural and political beliefs that they see essential to their own identity and culture, yet that are at the same time offensive, at time violently so, to others, both members of the groups themselves, and outsiders. These beliefs are subject to controversies, and in places to political violence. The trespassing – internally or globally – cannot presumably be avoided. Human rights scholars are yet to formulate a theory of "group rights" in between the individual and the sovereign. Minorities' rights have been a cause for conflict for a very long time. If ever we thought that we can at least privilege group cultural rights as an autonomous space, clearly, we no longer have that privilege.

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