

Gender and Justice in Multicultural Liberal States

MONIQUE DEVEAUX

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Personal Autonomy and Cultural Tradition: The Arranged Marriage Debate in Britain

This chapter reflects on concerns about the tensions between personal autonomy and cultural traditions, taking as its focus the example of arranged marriage and the debate it has spawned in Britain. My aim is to highlight the difficulties that attend a specifically *liberal* framing of the effect of certain traditional cultural practices on women's lives. As we saw in Chapter 2, this framing foregrounds the ideal of personal autonomy and related concepts of agency and choice. I begin by asking whether autonomy is useful as an ideal and regulative norm for determining the validity and permissibility of controversial cultural traditions, and if so, what kind of conception of autonomy is adequate for this task. I then discuss the U.K. government inquiry into the phenomenon of forced marriages among some British South Asians, paying particular attention to the framing of this issue in terms of autonomy, choice, and consent. The autonomy paradigm, I argue, has had the effect of steering public debate and policy about marriage in problematic directions. Fruitful discussion about both the reality of contested social practices—such as arranged marriage—and their purported validity thus necessitates a critical rethinking of personal autonomy and the closely related concepts of choice and consent.

The common liberal view that states should refrain from interfering with cultural minority practices so long as these do not violate the personal autonomy of group members faces important challenges. By their very nature, social customs may demand submission to the authority and expectations of others; whether individuals' acquiescence to cultural traditions can be understood as reflecting an instance of choice or decision within a person's broader life plan is therefore doubtful at best. Nor is this problem solved simply by claiming that a cultural practice is consistent with a group's exercise of autonomy—that is, the claim that the majority of a group democratically endorses a custom and so meets a broader test of democratic legitimacy. This is because democratic assent or refusal requires, for most liberals, evidence of a minimal level of personal autonomy. Where such autonomy is culturally

impermissible or is expressed in ways that are not easy to recognize, how are the choices of group members to be authenticated? And are many or most so-called ‘traditional’ cultural practices that parents and older generations seek to maintain within liberal societies in some sense problematic, from a liberal standpoint?

LIBERALISM AND AUTONOMY

Perhaps more than any other value, liberal political theory emphasizes the importance of personal autonomy. Liberal thinkers of course differ widely in their understanding of what personal autonomy entails, and what form and degree of it is desirable¹; but no liberal, as we saw in Chapter 2, disavows the value and importance of this ideal. Whether conceived in terms of the centrality of individual choice and legitimating consent—as Locke and later, political liberals, stress—or in terms of concrete capacities and opportunities for autonomy, as John Stuart Mill and some perfectionist liberals, such as Joseph Raz and Martha Nussbaum, emphasize²—liberals concur that a life without autonomy is not really much of a life at all. Not surprisingly, then, liberal thinkers share an intuitive distrust of social institutions and cultural practices or arrangements that apparently undercut personal autonomy either by restricting individuals’ ambit of choice or, more insidiously, socializing them so as to make the formation (much less realization) of independent choices nearly impossible. Mill’s well-known critique, in *On Liberty*, of the stultifying effects of social and religious mores and customs on free thought and individuality set the tone for later liberals’ warnings of the dangers that restrictive cultural conventions might pose for individual autonomy.³

More recently, liberal proponents of multiculturalism have defended special group rights for cultural minorities by appealing to the importance of a secure culture for community members’ autonomy. These same writers appeal to autonomy in order to indicate which practices and arrangements the liberal state (generally) ought not to support or protect; Will Kymlicka,

¹ See Gerald Dworkin’s *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), in which he identifies a range of different understandings of both personal autonomy and moral autonomy, many of which conflict.

² John Stuart Mill, *On Liberty* (Indianapolis, IN and Cambridge: Hackett Publishing Co., 1978); Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), and *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: Clarendon Press, 1994); Nussbaum, *Women and Human Development*.

³ Mill, *On Liberty*, esp. Ch. 3.

for example, invokes autonomy in expressing misgivings about demands for greater accommodation by British Muslims, including state-supported religious schooling:

[T]here is a conflict here that must be faced, and which has implications for many aspects of society. Either we accept the ideal of autonomy as a fundamental human interest which the state should protect, or we don't. If we do, we will be led in the direction of a society which requires a broad liberal education for children and which accords priority to civil liberties. If we don't we will be led in the direction of a millet-like society which restricts the education and civil liberties of individuals in order to discourage the confusion and discontentment which comes from questioning religious practices.⁴

Note that the autonomy appealed to here is taken as straightforward and transparent, rather than multifaceted and contested. Similarly, Nussbaum, despite her endorsement of political liberalism, appeals to a thicker, liberal Aristotelian, conception of autonomy—one emphasizing capabilities for choices—in arguing that a range of practices harmful to women's agency ought to be prohibited. As we saw in Chapter 3, she has also criticized traditional forms of marriage that she argues remove core capabilities or capacities for fully human functioning, and suggests that these ought not to be supported.⁵

The importance of personal autonomy in liberal thought and practice helps explain why some contemporary liberals, such as Barry and Kukathas, are unsympathetic to demands for greater accommodation of cultural minorities: they fear that some groups will seek to restrict the freedom of their own members in illiberal ways, using cultural and religious traditions. These concerns have led to the suggestion that practices which severely constrain the choices of individuals through heavy-handed role socialization and restriction ought to be strongly discouraged or even prohibited.⁶ But beyond this minimalist concern to protect individuals from outright violation of their civil liberties, many liberal thinkers, as noted in Chapter 2, also try to ascertain the validity of cultural practices by asking whether they restrict the capacity of individuals to develop and pursue a life of their own choosing. This appeal to a thicker or more substantive ideal of autonomy as *independence* in order to assess controversial practices is highly problematic in plural liberal democracies, I argue. An uncritical insistence on the absolute value of lives characterized by greater autonomy and self-direction can lead to a distorted and partial understanding of cultural customs that are the subject of political contestation, and so also ill-conceived policies for social reform and regulation.

⁴ Will Kymlicka, 'Reply to Modood', *Analyse & Kritik*, 15 (1993), 92–6, p. 95.

⁵ Nussbaum, *Women and Human Development*, pp. 94 and 230.

⁶ See for example Barry *Culture and Equality*; Okin, 'Is Multiculturalism Bad for Women?'; and Nussbaum, *Sex and Social Justice*.

For liberals who eschew Kant's understanding of autonomy as a strictly *moral* capacity—according to which autonomous agents act in accordance with self-willed, universal moral laws—autonomy has come to refer to an ideal of a self-directed life. Individuals who can conceive of, and successfully identify, life goals and ambitions, usually in the form of a life plan, have gone some distance in demonstrating the capacity for autonomy, according to this view. Typically, a coherent life plan is thought to comprise goals that in turn reflect complex, higher-order (and rational) preferences. Some carry this requirement even further, as does Harry Frankfurt, and argue that autonomy requires second-order *volitions*, which enable agents to choose between conflicting desires (including higher-order desires).⁷ On this view, the autonomous person is one who has freedom of the will—an agent who 'is free to will what he wants to will, or to have the will he wants'.⁸ Accordingly, people who simply adhere to social pressures and family expectations irrespective of their own desires, preferences, and ideals are necessarily lacking in autonomy in important ways. Truly autonomous persons are individuals who stand apart from their peers in some sense: certainly Mill thought that individuality, nonconformity, and even eccentricity were the best markers of autonomy. Following in this vein, S.I. Benn suggests in his influential sketch of an autonomous person, 'Among the products of his creativeness therefore, is his own personality, something uniquely his own, what he has made from raw materials or notions, beliefs, principles and ideals supplied by his plural tradition. Unlike the heteronomous person, he is not merely an instantiation of a cultural mould or form.'⁹ (The irony of this account is not lost on Benn, who recognized that the very idea of 'living by one's "law"' presupposes a particular tradition, a notion that is distinctively rationalist and liberal in character.)

Throughout the 1980s and 1990s, communitarian thinkers like Charles Taylor and Michael Sandel roundly criticized this particular liberal conception of the autonomous person as much too individualistic and 'atomistic'. Likewise, feminist writers such as Annette Baier and Carol Gilligan rejected the liberal individual as a misconceived construct, a psychologically truncated agent with no significant attachments and relationships. In light of these criticisms, some liberal thinkers have distanced themselves from the idealized, substantive vision of autonomy. While not eschewing the importance of

⁷ Harry Frankfurt, 'Freedom of the Will and the Concept of a Person', in *The Inner Citadel: Essays on Individual Autonomy*, ed. John Christman (Oxford and New York: Oxford University Press, 1989), pp. 67–9.

⁸ *Ibid.*, p. 70.

⁹ S. I. Benn, 'Individuality, Autonomy, and Community', in *Community as a Social Ideal*, ed. Eugene Kamenka (London: Edward Arnold, 1982), p. 50.

autonomy in some form, they ask how, as Jennifer Nedelsky writes, we might 'combine the claim of the constitutiveness of social relations with the value of self-determination'.¹⁰ For these liberals, the ideal of autonomy is perfectly compatible with the recognition that human beings are also socially embedded, and that our social context places certain constraints on agents' independence. Joel Feinberg describes this liberal rethinking of autonomy thusly: 'The ideal of the autonomous person is that of an authentic individual whose self-determination is as complete as is consistent with the requirement that he is, of course, a member of a community.'¹¹

This more moderate conception of autonomy which rejects maximum freedom as a perfectionist ideal, and instead emphasizes the social context in which individual agency is exercised, does not necessarily lead to a more sympathetic view of minority cultural practices and customs, however. Indeed, greater recognition of the socially constitutive nature of individuals has led some liberal philosophers to appreciate better the full force of early socialization, and accordingly, to propose limitations on it. Much discussion of the internalized obstacles to personal autonomy has followed from concerns about socialization. Robert Young, for example, reminds us that people who are free of external constraints may still fail to live autonomously if they are merely following strict social mores.¹² Schooling that encourages conventional feminine roles and behavior, on this view, 'interferes' with girls' autonomy and even their 'right of self-determination'.¹³ Sometimes the effects of socialization on autonomy are not immediately apparent in that they do not involve direct indoctrination of children into traditional roles. The effects, however, may be no less far-reaching: Catriona Mackenzie, for example, writes of the ways in which 'a restricted or oppressive cultural imaginary may limit an agent's capacities for imaginative projection, and in so doing impair her capacities for self-definition, self-transformation, and autonomy.'¹⁴

One response to concerns about the negative impact of socialization on personal autonomy has been to argue that autonomy is not incompatible with

¹⁰ Jennifer Nedelsky, 'Reconceiving Autonomy: Sources, Thoughts and Possibilities', in *Law and the Community: The End of Individualism?*, eds. Leslie Green and Allan Hutchinson (Toronto: Carswell, 1989), p. 221.

¹¹ Joel Feinberg, 'Autonomy', in *The Inner Citadel: Essays on Individual Autonomy*, ed. J. Christman (Oxford: Oxford University Press, 1989), p. 45.

¹² Robert Young, *Personal Autonomy: Beyond Negative and Positive Liberty* (New York: St. Martin's Press, 1986), p. 49.

¹³ Sharon Bishop Hill, 'Self-Determination and Autonomy', in *Today's Moral Problems*, ed. Richard Wasserstrom (New York: Macmillan, 1979), pp. 129–30.

¹⁴ Catriona Mackenzie, 'Imagining Oneself Otherwise', in *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*, eds. Catriona Mackenzie and Natalie Stoljar (Oxford: Oxford University Press, 2000), p. 143.

strong forms of socialization, but that agents need to acquire considerable reflexivity and self-definition in the face of such socialization in order to achieve minimal autonomy. Indeed, some philosophers have suggested that socialization could be specifically directed toward instilling such habits of reflection and self-criticism. Robert Young, for instance, endorses an ideal of ‘persons developing their autonomy by way of gaining insight into how they came by their motivations (chiefly first-order desires and values) and then going on to make a conscious commitment to them or to a deliberate rejection of them.’¹⁵ On his view, autonomy is a form of individual self-determination or sovereignty that is intrinsically valuable. Ironically, he believes that such autonomy may occasionally require strong forms of paternalism in order to guard against direct and imminent harm—including cases where a person ostensibly consents to being seriously harmed.¹⁶ To be autonomous, according to this conception, is thus to be self-directed in one’s life choices. This in turn requires freedom (as far as possible) from both external and internal obstacles and the development of capacities for critical reflection and decision-making: ‘an autonomous life is one that is directed in accordance with an individual’s own conception of what he (or she) wants to do in and with that life. Such an account requires us to think of autonomy as involving more than just the absence of constraints.’¹⁷

This understanding of autonomy, which we might call the self-determination view, is rejected as overly demanding by critics who doubt that we can ever have as much critical distance from our attitudes and desires as this model seems to require.¹⁸ The assumption that we must overcome the effects of socialization in order to function as autonomous persons is, critics say, both a false requirement and hopelessly unrealistic.¹⁹ In its place, some propose a more moderate conception of critical reflexivity as simply self-definition. Emphasizing both capacities and opportunities for self-definition, the philosopher Diana Meyers argues that ‘the core of the concept of personal autonomy is the concept of an individual living in harmony with his or her “authentic self”’, which in turn requires self-discovery, self-definition, and what she calls ‘responsibility to self.’²⁰ The crafting of one’s life plan in accordance with one’s reflective desires thus lies at the core of this conception of autonomy: ‘[p]rogrammatically autonomous people have autonomous life

¹⁵ Robert Young, ‘Autonomy and Socialization’, *Mind*, 89 (1980), 565–76, p. 576.

¹⁶ Robert Young, *Personal Autonomy: Beyond Negative and Positive Liberty*, pp. 74, 78, and 87.

¹⁷ *Ibid.*, p. 49.

¹⁸ See for example Diana Meyers’ critique of Robert Young’s account of autonomy in Meyers, *Self, Society, and Personal Choice* (New York: Columbia University Press, 1989), pp. 29–30.

¹⁹ *Ibid.*, pp. 40–1.

²⁰ *Ibid.*, pp. 43, 49–50, 91, and 132.

plans. A life plan is a comprehensive projection of intent, a conception of what a person wants to do in life.²¹

Meyers' account of autonomy, which we can call the 'self-definition' view, thus sees autonomy as a procedural capacity or competency (or set of competencies) that in turn enables individuals to lead authentic lives, one in keeping with their considered beliefs and preferences. This view of autonomy might be compatible with at least some traditional cultural practices, provided these are real choices that reflect an individual's sense of self. But upon closer inspection, it appears to preclude strong forms of socialization, such as those found in many traditional cultural and religious communities. While this conception rightly rejects the possibility of complete transcendence over socialization, the notion of self-definition at its core is closely bound up with an ideal of a self-directed life that is thoroughly liberal. Meyers readily agrees that 'personal integration and life-plan innovation' are central to this view of autonomy, although she does not concede the normative content of this ideal of flourishing.²² On her account, traditional sex-role socialization is anathema to personal autonomy: '[u]nconscious assimilation of cultural practices' also makes it difficult for people to develop their own life plans and identify their own motives and desires.²³ It follows from this that restrictive social and cultural roles are just as problematic for this more moderate view of autonomy (i.e., of the autonomous person embedded within a community) as they are for the substantive 'free will' conception of autonomy.

In my view, neither the idealized, strong conception of autonomy as independence nor the more moderate views of autonomy as either, self-determination or self-definition and choice in the absence of external and internal obstacles, seem adequate to the task of illuminating what is at stake in social and cultural practices that are both traditional and critically contested. An idealized conception of autonomy as independence would probably lead us to reject practices such as arranged marriage, unless there was clear evidence of this custom accorded with the betrothed's reflective, higher-order preferences. But even the seemingly moderate account of autonomy as self-definition may preclude the possibility that affirming and 'choosing' traditional roles could count as autonomous agency. More generally, the lack of different options and lifestyles in traditional communities would surely preclude the description of certain choices as autonomous,

²¹ Ibid., p. 49. ²² Ibid., pp. 61 and 41.

²³ Ibid., p. 207 and 181. See also Meyers, 'The Rush to Motherhood—Pronatalist Discourse and Women's Autonomy', *Signs*, 26/3 (2001), 735–73, in which she argues that traditional feminine socialization hinders women's capacities for autonomous decision-making with respect to whether to have children.

causing us to disregard decisions taken by individuals in socially confining settings.

The oversimple characterization of such traditional practices as arranged marriage as incompatible with liberal autonomy is thus not the exclusive purview of deeply normative accounts of autonomy, such as the substantive account of autonomy as independence; it is equally the consequence of more moderate, procedural accounts of autonomy. This point is perhaps best illustrated by Nussbaum's capability theory, which, as we saw in Chapter 3, points to restrictive social circumstances and the idea of adaptive preferences to explain why some of women's choices should be criticized and set aside.²⁴ Like Nussbaum's approach, the liberal conceptions of autonomy examined above consider both capacities for independent choice and the availability of diverse life options as a prerequisite for authentic decision-making and agency. While a thin version of the former condition may be compatible with traditional cultural arrangements, the latter is substantive in ways unacknowledged by liberals. Nor is it clear why the lack of available options and choice per se should be a definitive indicator of the presence or absence of autonomy for women.²⁵ While expanding women's social choices and options is no doubt beneficial, we need to see that in their everyday lives, women already do negotiate decisions even within constrictive social contexts.

Both the idealized conception of autonomy as free will and the more moderate conceptions of autonomy as requiring self-determination or capacities for self-definition and authenticity in the context of a socialized existence obscure the context of important decisions that people may make. Autonomous lives, on these liberal accounts, are ones in which the choices of individuals are clearly demarcated from their background context of social and cultural norms. This framing is particularly problematic when it comes to grappling with aspects of so-called traditional cultures, in which customs may represent more complex social dynamics between community and family pressures and individual reflection. Customs that have come under the scrutiny of the liberal state may equally represent religious self-assertion, or express rejection of perceived Western values and the exclusionary (or racist) policies of the host society. For example, the Muslim 'headscarf affair' involved this kind of resistance on the part of many Muslim girls and women in France,

²⁴ Nussbaum, *Women and Human Development*, p. 115, and Ch. 2 generally for her discussion of the problem of adaptive preferences.

²⁵ Uma Narayan, 'Minds of their Own: Choices, Autonomy, Cultural Practices, and Other Women', in *A Mind of One's Own: Feminist Essays on Reason and Objectivity*, eds. Louise Antony and Charlotte Witt (Boulder, CO: Westview Press, 2002 [2001]), p. 429.

Germany, and other European states.²⁶ The many factors that may contribute to the endorsement of a custom by a member of an ethnic or religious minority, and the different aspects of that ‘choice’—which may or may not entail much in the way of visible reflexivity—are not well captured by the liberal autonomy conceptions discussed above. And in overlooking the complexity of individuals’ own relationships to tradition, it would appear that the liberal autonomy framework would dispose the liberal state toward regulating or even censoring too wide a range of social customs that arguably should be accommodated.

ARRANGED MARRIAGE IN LIBERAL DEMOCRACIES

The custom of arranged marriage helps to highlight these questions regarding cultural tradition and autonomy, and also illustrates the limitations of the conceptions of autonomy discussed in the last section. A range of liberal and liberal feminist kinds of objections have been raised in connection with the custom, generally highlighting concerns about pressures that are put on girls and women to conform to traditional sex roles and arrangements, and the constriction of their freedom to choose when and whom to marry. Some worry that the framework of arranged marriage has intrinsically coercive features that are obfuscated by overly reverent and romanticized views of tradition. Okin, for instance, writes that

Some generally recognized human rights abuses have specifically gender-related forms that were not typically recognized as human rights abuses. Frequently, these abuses are perpetrated by more powerful family members against less powerful ones. For example, slavery is generally recognized as a fundamental violation of human rights. But parents giving their daughter in marriage in exchange for money or even selling her to a pimp has not typically been seen as an instance of slavery. If a husband pays a bride price for his wife or marries her without her adult consent; if he confines her to their home, forbids her to work for pay, or appropriates her wages; if he beats her for disobedience or mishap; these manifestations of slavery would not be recognized as violations of human rights in many parts of the world. In some parts, indeed, most of these acts would be regarded as quite within the limits of normal, culturally appropriate behavior in parents or husbands.²⁷

²⁶ See for example arguments by Katherine Ewing, ‘Legislating Religious Freedom: Muslim Challenges to the Relationship between “Church” and “State” in Germany and France’, *Daedalus*, 129/4 (2000), 31–54, and Galeotti, ‘Citizenship and Equality’.

²⁷ Okin, ‘Feminism, Women’s Human Rights, and Cultural Differences’, p. 35.

Although I return to these concerns soon, I propose to discuss arranged marriage in political context rather than *tout court*. To do so, I focus below on the responses to this custom in contemporary Britain, where a public debate about arranged marriage was recently initiated by a Home Office inquiry into forced marriage. I pay particular attention to the assumptions about autonomy that informed the public framing of the issue of arranged marriage, and the policy questions and initiatives that emerged from the debate.

In Britain, with a large Hindu and Sikh population and an estimated 1 million Muslims (the majority of whom are South Asians), an estimated 10,000 arranged marriages take place each year. Arranged marriage is also, of course, the norm in many other countries, including some, such as India, which are constitutional democracies. In Europe, arranged marriage remains common in Muslim and Hindu communities; as there are over 23 million Muslims in Europe today, at least 6.8 million of whom reside in the European Union, the number of families and individuals involved is not insignificant.²⁸ While the vast majority of arranged marriages are understood to be broadly consensual, by some British estimates as many as 10 percent of these unions may be forced. Only a fraction of these come under the scrutiny of state agencies: annually in Britain, police and officials are asked to intervene in between 30 and 100 cases of girls who have been abducted (and sometimes drugged beforehand) by family members and forcibly sent back to India, Pakistan, or Bangladesh (where girls are permitted to marry from the age of 14 or 15) to be married.²⁹

As in all other liberal democracies, arranged marriage is currently permitted in Britain. However, it is illegal to force a person into marriage; moreover, as Kukathas explains:

Under section 12 of the Matrimonial Causes Act 1973 a marriage can be annulled if it took place under 'duress', and the case of *Hirani v. Hirani* in 1982 established that the threat of social ostracism could place the individual under duress to a sufficient degree to determine that the marriage was not entered into voluntarily.³⁰

Increasing reports of forced marriages, and the belief that a context of manipulation and coercion often surrounds the practice, have prompted outcries against the practice in Britain. A *London Standard* journalist demanded that the government should introduce legislation to ban customary marriages, following the death of a young Pakistani British woman: 'In every arranged marriage there is an element of compulsion that

²⁸ Ceri Peach and Günther Glebe, 'Muslim Minorities in Western Europe', in *Ethnic and Racial Studies*, 18/1 (1995), 26–45.

²⁹ 'Arranged Marriages Under the Spotlight', *Press Association Newsfile*, June 29, 2000.

³⁰ Kukathas, *The Liberal Archipelago*, p. 144.

should be wholly unacceptable in a civilized society, and young Rukhsana was its martyr ...'.³¹ The case concerned a 19-year-old British Pakistani woman, Rukhsana Naz, who in 1998 was murdered by her mother and brother, who were subsequently tried and sentenced to life imprisonment in Nottingham Crown Court. Rukhsana had become pregnant by her boyfriend despite a forced marriage to an older Pakistani man at the age of 15, and for this she was killed. This case was the most extreme (and most high profile) example of a number of incidents that focused public attention on the custom of arranged marriage.³² The British Home Office subsequently established a special Forced Marriages Working Group in 1999 to investigate the prevalence of specifically forced (as opposed to merely arranged) marriages and possible legal responses to this phenomenon.³³ The Group was composed of prominent Britons of South Asian descent, most notably the co-chairs of the task force, Lord Ahmed of Rotherham and Baroness Udin of Bethnal Green.³⁴ Released on June 29, 2000, the final Report, *A Choice By Right*, estimates that about 1,000 forced marriages occur annually in Britain (or approximately 10% of the annual total).³⁵ The final report contains a number of recommendations for how government, police, and communities might better respond to the problem of arranged marriages, including increased social services and protection to help victims of forced marriage, and better training for service workers who may deal with cases of arranged marriage. It stresses the importance of community involvement in responses to forced marriages—particularly the need to include community-based organizations, especially women's groups—and urges better cooperation among the different agencies involved in dealing with the problem, such as child protection and domestic violence agencies. Finally, it recommends greater support and funding for safe housing and access to legal services for victims, and attention to the immigration laws that sometimes compound the vulnerability of women.³⁶

³¹ Brian Sewell, cited in Rachel Donnelly, 'Arranged Marriages Not Cultural Heritage but "Man-Made Law"', *The Irish Times*, June 3, 1999, p. 13.

³² *Ibid.*

³³ *The Daily Mail*, June 30, 2000, p. 27. Similarly, a report by the Council of British Pakistanis (Scotland chapter) estimates that 'around 10% of spouses aged between 16 and 25 are forced into marriages setup between immigrants from Pakistan and Pakistanis from Scotland without their consent', *The Herald* (Glasgow), July 7, 1999.

³⁴ The representative from the Southhall Black Sisters association resigned from the committee looking into arranged marriages in the British South Asian community on the grounds that some of the proposals it advanced would further disempower women in abusive families, but her concerns were registered in the process.

³⁵ *A Choice By Right: Report of the Working Group on Forced Marriages* (London: Home Office, U.K. Government, 2000) and *Forced Marriage Progress Report* (London: Home Office, U.K. Government, 2001).

³⁶ *A Choice By Right*, pp. 22–5.

Following the release of an initial report on the phenomenon of forced marriages, the British Home Office task force decided to consult widely with South Asian community groups in order to gain a better sense of practices surrounding arranged marriage and the incidence and particular manifestation of forced marriages. This was part of a broader attempt to try to mediate between demands for cultural protections by South Asians who endorse the practice of customary marriages and concerns raised by state authorities and community groups in Britain. These consultations exposed community-wide criticisms of the use of force and intimidation in arranging customary marriages, and prompted calls for greater support services to protect vulnerable girls and women. At the same time, however, the consultations revealed wide support for the custom of arranged marriages and a sense of outrage that this custom should be confused or conflated with its forced variant. Traditionalists among the South Asian population in Britain have resented what they perceive as government and police interference with a central cultural practice in their communities. Significantly, even those segments of the South Asian community concerned about instances of coercion in marriage—women's and community groups as well as the Muslim Parliament of Great Britain—were, with few exceptions, intent on defending the custom of arranged marriage.

This response is consistent with a more general defense of arranged marriage as reflecting Asian cultural attitudes toward the critical importance and value of family; marriage is clearly a central part of this more traditional vision of family relationships, and the custom of arranged matches reinforces this institution. Although more Asian immigrant youth express an interest in the love-match ideal of relationships, in the limited studies that are available, it appears that many remain committed to the broader values that underpin the custom of arranged marriage.³⁷ And as some of its defenders maintain, the current form of arranged marriage in many places is closer to Western-style dating introduction services than it is to its historical predecessors.³⁸

While the Working Group focused its attention on forced marriages—which it defined as ‘a marriage conducted without the *full consent* of both parties and where *duress is a factor*’³⁹—it is nonetheless important to note the

³⁷ See for example Nazli Kibria, ‘The Construction of “Asian American”: Reflections on Inter-marriage and Ethnic Identity Among Second-Generation Chinese and Korean Americans,’ *Ethnic and Racial Studies*, 20/3 (1997), 523–44.

³⁸ South Asian newspapers at home and abroad commonly feature classified ads for arranged marriages, for example, prompting frequent analogies with Western-style ad dating. See for example Srikant Ramaswami, ‘Marriages in Little India: Arranged Marriages, Union of Families,’ *Little India*, 5/7 (1995), 1–10.

³⁹ *Forced Marriage Progress Report—Update on the Joint Action Plan and Package of Care*, November 6, 2001.

broad characterization of arranged marriage that surfaced in the final report. The sharp contrast between arranged and forced marriages drawn by the task force focused on the absence—in forced marriage—of the consent of one or both parties to a marriage, and/or the presence of duress:

A clear distinction must be maintained between forced and arranged marriages. That distinction lies in the right to choose. The tradition of arranged marriage should be respected and valued.⁴⁰

and

Arranged marriages are a successful and traditional method of parents taking a leading role in the future of their children. We do not wish to interfere with this role. However, a clear distinction exists between what constitutes an arranged marriage and what constitutes a forced marriage. In an arranged marriage, the consent of both parties is sought and given. In a forced marriage consent is not given.⁴¹

The emphatic distinction made between arranged and forced marriage was in part an attempt to reassure South Asian Britons that the former custom was not under attack, and so to secure the cooperation of community leaders.⁴² Yet in insisting that arranged marriage and forced marriage shared nothing in common, a more nuanced analysis of the multifaceted forms of coercion that *may* operate in the custom of arranged marriage was simply not possible. And as Phillips and Dustin note, the government's framing of the issue of arranged marriage (through the Working Group) was in fact out of step with the ways that British courts have increasingly considered the social and psychological (rather than purely physical) circumstances of duress: 'The deference towards arranged marriage . . . is not in itself problematic. But when public authorities make the arranged/forced distinction so central to their initiatives, they have proved less sensitive than the courts to the complexities surrounding consent.'⁴³ Curiously, however, while leaving arranged marriage practically untouched, the Report acknowledges *forced* marriage may take many different forms: 'there is a spectrum of behaviours behind the term forced marriage, ranging from emotional pressure, exerted by close family members and the extended family, to the more extreme cases, which can involve threatening

⁴⁰ *A Choice by Right*, Summary of the report of the working group on forced marriage 2001, p. 3.

⁴¹ *Forced Marriage—The Overseas Dimension*, Report of the Foreign and Commonwealth Office (U.K. Government, 2000).

⁴² Anne Phillips and Moira Dustin, *U.K. Initiatives on Forced Marriage: Regulation, Dialogue and Exit*, Policy research paper, Nuffield Foundation (2003), pp. 10–11.

⁴³ *Ibid.*, p. 16.

behaviour, abduction, imprisonment, physical violence, rape and in some cases murder'.⁴⁴

A similar contrast was drawn by South Asian community groups involved in the consultation process. For example, the London-based Muslim Women's Helpline, a service organization dedicated to helping Muslim women in crisis, sharply distinguished between the custom of 'introduction' that characterizes arranged marriage and the coercion that marks forced marriage; they also emphasize that all adults have the right of choice under Islam, and should not be forced into any unions.⁴⁵ On one hand, it seems likely that women's service groups were keen to reinforce the notion that individual consent is what legitimates arranged marriage, and by doing so underscore the point that girls and women should not be forced to marry against their will. But more traditional lobby groups, such as the Muslim Parliament of Britain, also had good cause to emphasize the differences between arranged and forced marriage so as to reassure the task force and the British public that customary or arranged marriage falls well within the bounds of practices consistent with liberal democratic norms. The Rushdie Affair of 1989 had made plain the dearth of deliberative forums in British civil society in which Muslim groups could convey their dissent or argue for changes to existing laws, and relations with the state remained strained. This experience had left many British South Asians feeling mistrustful of government and the public at large, in the wake of the backlash against their communities.⁴⁶

The oversharpest contrast between arranged and forced marriage in Britain led to the recasting of arranged marriage as essentially a fully consensual form of marriage that differs only from mainstream 'love match' marriages in the role played by the family or community members in introducing prospective partners. One consequence of this characterization of arranged marriage was, as Phillips and Dustin note, 'to divert attention from more routinised and hidden forms of parental control that do not involve the dramas of imprisonment or abduction'.⁴⁷ And yet it seems undeniable that short of what would constitute forced marriage, less severe forms of pressure on young adults, particularly girls and young women, may also be present. While the Home Office report indeed discusses pressures that do not amount to coercion, it relies excessively on the act of consent as the single feature that distinguishes an arranged marriage from a union that is forced. This emphasis on consent

⁴⁴ *A Choice By Right*, p. 11.

⁴⁵ Interview with Najma Ibrahim, Muslim Women's Helpline, London, June 12, 2001.

⁴⁶ Adrian Favell, 'Multicultural Race Relations in Britain', in *Challenge to the Nation State: Immigration in Western Europe and the United States*, ed. Christian Joppke (Oxford: Oxford University Press, 1998), pp. 326–8.

⁴⁷ Phillips and Dustin, *U.K. Initiatives on Forced Marriage*, p. 16.

without a view to the circumstances (such as pressures and fear of reprisals on the part of families), helped ensure that a range of important but difficult questions about the practice went entirely ignored by the task force's work: Does the consent of both marriage parties suffice to assuage concerns about the autonomy of those being pressured to marry? Is it possible, as Narayan argues, for women to accept and in some sense 'choose' traditional arrangements in circumstances of tremendous pressure? And is it desirable or indeed possible to try to 'authenticate' the choices of girls and women in traditional cultural communities within liberal democratic states?

Construing arranged marriage in this way, however, it is possible that the task force may have hampered efforts to help girls and women in circumstances not as acute as those meriting the description of forced marriage. Indeed, looking only at clear cases of coerced marriage meant that the Working Group decided to focus on forced marriages involving overseas partners, rather than looking at the practices around traditional marriage more generally. This focus reflects the belief that forced marriages of Britons more often involve partners brought in from overseas (most often Pakistan, Bangladesh, and India) or a British national being sent overseas to marry, often using duplicitous and coercive means (stories of drugging teenage girls to ensure their compliance on flights to the Indian subcontinent were not uncommon). But as Phillips and Dustin have argued, the 'concentration on marriages involving overseas spouses feeds the view that all marriages arranged with overseas partners are suspect, and that all is well in the arrangement of marriages within the U.K'.⁴⁸

While not warranting the regulation or policing of domestic arranged marriages, the findings of the Working Group and the testimonies of service groups working with women (and sometimes young men) in South Asian communities suggest that a broader and more candid discussion about this practice was needed. Decisions about whom children should marry are often hierarchical and may be filled with enormous pressure and manipulation; young men and women who are initially very reluctant to accept an arranged marriage may capitulate in defeat rather than lose the love and support of their families.⁴⁹ Invoking the simplistic dichotomy of arranged versus forced marriage, with the apparent act of consent distinguishing the former from the latter, these contextual features are left undiscussed. If a young woman agrees to a marriage partner chosen by her parents because she

⁴⁸ Ibid., p. 11.

⁴⁹ For one account of the difficulty of knowing when to intervene in such cases of extreme family pressure, as told from the perspective of a social worker, see Madeleine Fullerton, 'A Sikh Girl's Bridal Path', *New Society*, 64 (June 16, 1983), 428–9.

fears they will otherwise denounce or even disown her, does this count as consent? Or might such capitulation simply reflect—as Narayan’s analysis suggests—the pragmatic compromises that women make in recognition of their desire to achieve certain ends or mixed bundles of goods, such as the support and acceptance of one’s family? As these suggestions show, the British debate also had the effect of conflating the sheer variety of practices and values encompassed by the custom: some forms of arranged marriage are characterized merely by indirect family introductions, but many are not.

To explore the individual and social contexts in which cultural practices like arranged marriage take place, we will need to move beyond a simplistic understanding of consent as the single legitimating factor in marriage. In particular, there are good reasons not to exaggerate the extent to which arranged marriage manifests the free choices of fully autonomous agents, for at least two main reasons. First, by doing so we fail to ask about the circumstances surrounding arranged marriage, and particularly the conditions that may need to be present in order for agents to make real choices; as Anne Phillips argues, ‘choice depends on substantive conditions. These include, at a minimum, having the political and civil freedoms that enable one to voice an objection, and the educational and employment opportunities that make exit a genuine choice.’⁵⁰ Second, to portray arranged marriage as a freely chosen arrangement agents make under the guidance of their parents may lead us to overlook more subtle forms of agency. In particular, it may cause us to ignore or even deny the possibility of agency for those living in constrictive or traditional environments. As Narayan writes:

The idea that women’s values, attitudes, and choices can be impoverished and distorted by patriarchy should not be used so heavy-handedly as to *completely efface* the value and significance of these choices *from the point of view of the women who make them*. Despite undeniable distortions, these are in fact the values, attitudes, and choices that define for these women the lives they currently have and value, and the selves they currently are and in many ways want to remain.⁵¹

To understand why such grudging but ultimately willing acceptance of an arranged marriage might *not* constitute a violation of personal autonomy, we must first understand the value and practical benefits of this custom for different community members. Here the liberal autonomy framing of the issue in Britain is revealed as inadequate, for arranged marriage is not so much an arrangement that otherwise autonomous individuals opt into—or

⁵⁰ Anne Phillips, ‘Multiculturalism, Universalism, and the Claims of Democracy’, p. 136.

⁵¹ Narayan, ‘Minds of Their Own’, pp. 422–3.

choose from among many options—so much as it is a framework for achieving other things of value, namely marriage, children, tradition, and family and social acceptance. Those best placed to address the issues raised by the social context of arranged marriage include, of course, community members themselves. But the Home Office inquiry, while encouraging discussion about the circumstances surrounding forced marriage, did not encourage this broader conversation. Indeed, arguably the Working Group did not want to engage cultural and religious differences at a very deep level, preferring instead to treat forced marriage as a criminal aberration that no group endorses. While this may have allayed concerns that arranged marriage might become the target of suspicion or regulation, it did little to engender the kind of confidence that more open community consultations on the issue would require.

In this way, arranged marriage was effectively normalized by the task force's discourse: by construing arranged marriage as a fully consensual arrangement undertaken by autonomous persons, the Working Group demanded that arranged marriage be understood as equivalent to Western models of marriage. In her examination of a legal case about arranged marriage brought to the European Court of Human Rights in 1985 (*Abdulaziz, Cabales and Balkandali v. United Kingdom*), Angie Means shows how the law functions to normalize customs like marriage by stipulating particular evidentiary norms and requirements when marriage is contested. In the case Means explores, the plaintiffs, all women, claimed that British immigration law was discriminatory in its interpretation of marriage and family, which they said made it difficult for them to bring their husbands (some of whom were married under traditional arrangements) to Britain. The women lost their case, with the effect that 'judges have been inclined to exclude spouses in cases of arranged marriage... [and] persons are generally excluded because they cannot offer convincing evidence that an arranged marriage is a real marriage'.⁵²

Mere recognition of the validity of arranged unions, as in the case of the Working Group's report, does not necessarily challenge this normalization of marriage. If the litmus test for a custom's legitimacy is the extent to which the practice can be rendered compatible with prevailing public values (like consent), it will almost inevitably be presented and defended publicly in a normalized, liberal form.⁵³ Norms and values which are important to cultural

⁵² Angelia Means, 'Intercultural Law: Justifying Rights to Others', unpublished manuscript (2002).

⁵³ Parekh defends arranged marriage as compatible with what he calls core, operative public values, but concludes that polygamy, female circumcision of children, and sati are not consistent with liberal democratic values and commitments. See *Rethinking Multiculturalism*, pp. 272 and 274–92.

group members, and the contested understandings of the social practices that these are bound up with, simply drop out of the public debate. And yet cultural differences in conceptions of self versus community and in attitudes toward important life choices are relevant to discussions of arranged marriage in ways not captured by the liberal framework. Defenders of arranged marriage frequently invoke a different psychological ideal in their communities, one that is more 'relational' and 'less individualistic' than dominant Western ideals of individual autonomy and individuation. Sawitri Saharso cites studies that indicate that notions of 'self' and the autonomy of self are peripheral to South Asians as compared with the central importance of family units and extended families.⁵⁴ A deeply intersubjective ethic of subjectivity is, on this view, inextricably linked with close-knit family structures and extended family clan systems, which stress interdependence and responsibility over independence.⁵⁵ A number of social, cultural, and psychological factors may therefore contribute to the desirability and acceptance of customary marriages in South Asian immigrant communities.⁵⁶

The ideal of interdependence is not necessarily an unqualified good, of course. It may, for instance, make it difficult for British South Asian girls and women in particular to *refuse* certain arrangements or to explore nontraditional choices: as Saharso writes, they 'may find themselves hampered in their *psychological ability* to act autonomously'.⁵⁷ This concern has led some writers to argue that even on the thicker, more constitutive account of community, it is important to emphasize and support the basic autonomy of individuals, for 'to consider which particular attachments we should reshape, which to reject, which to choose, and which to promote, we need autonomy'.⁵⁸ However, if we employ a broader and thinner conception of autonomy, rather than a substantive conception of autonomy emphasizing self-direction and choice, we are more apt to capture important aspects of women's responses to cultural practices and arrangements. For instance, as Saharso notes, low 'interpersonal

⁵⁴ Saharso, 'Female Autonomy and Cultural Imperative', pp. 233 and 236–7.

⁵⁵ For an analysis of the importance of the ethic of responsibility in traditional and fundamentalist Muslim communities and its relationship to traditional family roles and arrangements, see Janet Afary, 'The War Against Feminism in the Name of the Almighty: Making Sense of Gender and Muslim Fundamentalism', *New Left Review*, 224 (1997), 89–110.

⁵⁶ A recent study of sixty young Asian Americans in Los Angeles and Boston showed that there is a strong preference on the part of young, second generation Chinese Americans and Korean Americans for marrying within their ethnic group or, failing that, other Asian Americans groups. Kibria, 'The Construction of "Asian American"', 523–44.

⁵⁷ Saharso, 'Female Autonomy and Cultural Imperative', p. 228.

⁵⁸ Linda Barclay, 'Autonomy and the Social Self', in *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*, ed. Catriona Mackenzie and Natalie Stoljar (Oxford: Oxford University Press, 2000), p. 68.

autonomy' (or independence) may coexist with high 'intrapyschic autonomy,' or internal emotional strength and self-esteem.⁵⁹ Moreover, women make choices even from within highly restrictive, traditional environments, as Narayan argues. These less apparent aspects of women's agency are significant sources for helping to evaluate the validity of arranged marriage in liberal democracies such as Britain. Indeed, as I argue in the next section, these dimensions of self-hood and agency are particularly important to efforts by girls and women to revise and reinvent aspects of their own cultural traditions in ways that empower them.

FROM AUTONOMY TO AGENCY

As this brief exploration of arranged marriage suggests, there are good reasons to shift from asking whether contested cultural practices undermine or support personal autonomy, to asking about the range of actual and possible individual and social responses to specific customs and arrangements. A more adequate account of agency would acknowledge ever subtler expressions of reflexivity and action, such as subverting a cultural tradition from the inside. At the core of this broader understanding of agency that I propose to sketch here lies a procedural account of autonomy which emphasizes *degrees* of reflection about one's values and attachments, but does not insist that central aspects of one's identity must be submitted to significant critical scrutiny. This thinner, less idealized view of autonomy does not prescribe formal self-reflection about life choices but rather understands agency more broadly as any activity or expression that signals a response to a prevailing social norm, custom, role, or arrangement. Specifically, it attempts to draw attention to the myriad ways in which women in traditional cultures challenge, revise, and reaffirm aspects of cultural practices and arrangements, and argues that in so doing, they are exercising a form of procedural autonomy. Later I argue that these activities of resistance and affirmation speak to the validity and democratic legitimacy of contested cultural practices, such as arranged marriage.

Why should an account of procedural autonomy, however thinly conceptualized, be used to evaluate controversial social customs in liberal states?

⁵⁹ Saharso, 'Female Autonomy and Cultural Imperative', p. 235, and also Saharso, 'Is Freedom of the Will but a Western Illusion? Individual Autonomy, Gender and Multicultural Judgement', in *Sexual Justice/Cultural Justice*, eds. Barbara Arneil, Monique Deveaux, Rita Dhamoon, and Avigail Eisenberg (Routledge, forthcoming 2006).

First, without minimal procedural autonomy, cultural group members can be forced to participate in social arrangements through coercive means, without recourse to basic rights protections. In this respect, a conception of agency built upon a minimalist account of procedural autonomy shares with liberals an insistence on the importance of group 'exit rights'. Second, procedural autonomy is important to assessments about the validity of controversial social practices because it shapes individual agency in both private and public life. In their everyday lives, women must be able to resist and reshape roles and expectations that are oppressive to them without fear of repercussions such as physical threats and harm. Formal respect for the procedural autonomy of women in traditional communities would mandate certain protections against such harm, and support services funded by the liberal state whose aim would be to empower vulnerable women. If they are to resist, revise, and reform aspects of their cultural traditions, women's procedural autonomy therefore must be respected and protected; even rhetorical political support for this principle is a start. And finally, formal support of their procedural autonomy can help enable women to participate in the various forums of political deliberation in which their community's contested practices and arrangements are discussed.

The philosopher Marilyn Friedman has also recently defended a procedural, content-neutral view of autonomy that she claims is compatible with the choices and lifestyles of women in more traditional communities.⁶⁰ On her view, 'autonomy competency is the effective capacity, or set of capacities, to act under some significant range of circumstances in ways that reflect and issue from deeper concerns that one has considered and reaffirmed'.⁶¹ As with Meyers' moderate liberal conception of autonomy discussed earlier, what is necessary on Friedman's view is a minimal degree of self-reflexivity. This reflexivity does not so much signal a necessary distance from one's traditions, on her view, so much as it requires that one be capable of considering and affirming attachments and projects that one finds valuable: 'Autonomous choices and behavior must also be self-reflective... they must reflect, or mirror, the wants, desires, cares, concerns, values, and commitments that someone reaffirms when attending to them.'⁶² Importantly, however, unlike Meyers, Friedman intends for her conception of autonomy to include decisions and practices undertaken in fairly restrictive environments—ones in which independence is not especially valued or supported:

⁶⁰ Marilyn Friedman, *Autonomy, Gender, and Politics* (Oxford: Oxford University Press, 2003), p. 21.

⁶¹ *Ibid.*, p. 13. ⁶² *Ibid.*, p. 6.

Even if women affirm and choose according to norms of femininity in accord with which they were socialized, and even if these norms divert women from valuing and pursuing autonomy, women could still be content-neutrally autonomous so long as their choices in general accorded with and issued from their deeper wants and commitments. Even if a woman's deeper concerns include subservient roles and relationships and she lacks a commitment to her own autonomy as a value . . . women could still be content-neutrally autonomous in pursuing the deep, traditional concerns other than the autonomy they happen to have.⁶³

One intended effect of Friedman's view is that autonomy should become more 'widely applicable' in the sense that 'more people can qualify as autonomous.'⁶⁴ Despite the seeming flexibility and expansiveness of Friedman's procedural conception of autonomy, however, she introduces conditions that might circumscribe, rather than expand, the scope of legitimate traditional cultural practices. In particular, Friedman insists that consent should be the litmus test for the defense of cultural minority practices in both minority and majority cultures.⁶⁵ She rightly points out that both liberal societies and minority cultures within these societies tend equally to appeal to consent to establish the legitimacy of a practice, and suggests that this could be a point of convergence. But for Friedman, mere consent is not enough, for it is only meaningful against the background of extensive autonomy-enhancing conditions. In addition to transparent consent, Friedman stipulates two further conditions required for women's procedural autonomy:

First, women's choices would have to be made under conditions that promoted the general reliability of their choices. This would require that women be able to choose among a significant and morally acceptable array of alternatives and that they be able to make their choices relatively free of coercion, manipulation, and deception.

and

Second, women must have been able to develop, earlier in life, the capacities needed to reflect on their situations and make decisions about them.⁶⁶

While the conditions Friedman proposes for evaluating the authenticity of women's choices do not seem especially strenuous, they take her further in the direction of a substantive, comprehensive conception of autonomy than she perhaps recognizes. This will effectively limit the range of practices that liberal states can permit, for as Friedman argues, 'if positive evidence reveals cultural conditions that impede the development of autonomy competencies in women or that prevent its exercise, then the consent of women living under those conditions does not justify the rights-violation

⁶³ *Ibid.*, p. 24.

⁶⁴ *Ibid.*, p. 23.

⁶⁵ *Ibid.*, p. 187.

⁶⁶ *Ibid.*, p. 188.

practices'.⁶⁷ The first of the two above conditions stipulated by Friedman appears to deny that women could value or affirm traditional roles and arrangements where the only real option is group exit; while this may be true for some women, it is surely not so for all women in minority cultural communities, particularly new immigrants. The second condition, while a laudable goal, is potentially demanding enough that it would require that liberal states eliminate certain forms of education, such as religious schooling that reinforces traditional sexual roles. Just how Friedman intends for this second condition to be applied in practice is not clear, but I argue that it could well lead liberal states to unjustly prohibit a wide range of educational and cultural practices.

Uma Narayan has also suggested that a number of cultural practices that do not warrant state intervention (in the form of prohibition) would probably fail Friedman's autonomy test, primarily because her conception of autonomy prohibits evidence of coercion and manipulation.⁶⁸ Although Narayan's claim that individual agency is compatible with even significant forms of coercion seems doubtful, her broader point that autonomy may be exercised within the context of very strong social constraints and pressures is insightful and instructive. Using the phrase 'bargaining with patriarchy' to describe the various ways in which women negotiate customs from within seemingly oppressive constraints, Narayan contends that 'there is active agency involved in women's compliance with patriarchal structures, even when the stakes involved in noncompliance and the pressures that enjoin compliance are very high'.⁶⁹ The example of arranged marriage belies the liberal feminist claim that women cannot exercise autonomy in 'oppressive cultural contexts', according to Narayan. Educated, upper-class Indian women often make pragmatic choices in favor of arranged marriage despite their own misgivings about aspects of the custom; they do so, Narayan argues, amidst tremendous family pressures, but do so in accordance with what they themselves value, fully aware of the trade-offs and implications of their choices.⁷⁰

Although Friedman's thin account of procedural autonomy is helpful in certain respects, then, it neglects the forms of agency that are possible even within socially and culturally restrictive settings. It assumes—in a way that Nussbaum and O'Neill's perspectives do—that the availability of many different options (in a recognizably liberal sense) is necessary to authenticate the decisions of agents. One of the difficulties with this view, as Avigail Eisenberg

⁶⁷ *Ibid.*, p. 192.

⁶⁸ Narayan, 'Minds of Their Own', p. 428.

⁶⁹ *Ibid.*, pp. 421 and 422.

⁷⁰ *Ibid.*, p. 424.

has argued, is that it tends to quickly frame a conflict between liberal rights and liberty and cultural communities' ostensibly incommensurable values and practices, and so to produce 'irreconcilable choices'.⁷¹ Indeed, it would seem that this framing could have the effect of precipitating a reactionary defense of traditions in many communities—or a 'defensively self-protective' response, as Yasmin Alibhai-Brown has argued.⁷² In part this is because this approach places the onus on minority cultural communities to show that their customs or arrangements do not violate these norms. Instead of using autonomy, and specifically, consent in this way, I suggest that we direct our attention to both the actual and possible expressions of agency in connection with cultural practices that have been drawn into question either by the liberal state or by some group members themselves. What is the range of actual and possible responses to the practice of, for example, arranged marriage, among South Asian Britons? What are some of the views that women in particular have voiced in response to the custom—concerns that they might have raised? And what social changes and supports might make it possible for girls and women who may not want an arranged marriage to express this desire without incurring serious 'psychosocial costs of exit'?⁷³

To speak of agents' abilities to reflect upon and respond to social practices, and also their deliberative capacities to evaluate, endorse or accept, and reject customs, clearly entails some account of autonomy. My aim is to shift autonomy to a more ancillary role in debates about contested cultural practices, and to speak instead of 'agency,' which I understand as including a person's subjectivity more generally—including, for example, internal psychological processes, and responses that we would not necessarily characterize as illustrating easily recognizable forms of action and independence. To do so, I propose to endorse a modified version of Friedman's procedural account of autonomy, one amended by Narayan's critical insights. If we follow Friedman's feminist rethinking of this concept and dispense with the idea of personal autonomy as either a substantive, perfectionist ideal, or even as a capacity or competency that is demonstrated through self-directed actions and the formation of independent ideals, an alternative understanding of agency comes into view. This formulation acknowledges that individuals may affirm particular cultural practices (or aspects of practices) that are

⁷¹ Eisenberg's comments are directed at Nussbaum's emphasis on women's autonomy and rights in *Sex and Social Justice*; see Avigail Eisenberg, 'Context, Cultural Difference, Sex and Social Justice', *Canadian Journal of Political Science*, 35/3 (2002), 613–28, p. 622.

⁷² Yasmin Alibhai-Brown, 'After Multiculturalism', *The Political Quarterly*, special issue, 'Citizens: Towards a Citizenship Culture' (2001), 47–56, p. 47.

⁷³ See Oonagh Reitman, 'On Exit', in *Minorities Within Minorities*, eds. Avigail Eisenberg and Jeff Spinner-Halev (Cambridge: Cambridge University Press, 2005).

important to their own sense of themselves as members of families and communities and yet which entail a lack of obvious ‘choice’. What is needed, on this account, for choices to count in some basic sense as *reflective* is the capacity to connect self-reflection with action: as Friedman writes, ‘[t]o realize autonomy, self-reflections must also be partly effective in determining someone’s behavior.’⁷⁴ But for Friedman, autonomy also presupposes a coherent sense of self than is, I argue, strictly necessary: she emphasizes ‘capacities not only for choices and actions that reflect superficial or momentary concerns but actions that bear a deeper connection to a perspective that constitutes her distinctive identity as an enduring self.’⁷⁵ Friedman hastens to add that self-reflective activity need not always be conscious, or even ‘highly deliberate’, and I agree,⁷⁶ but on my view, to count as an expression of agency, actions need only be reflexive to the extent that they reflect or help to secure something that a person has cause to value.

This more minimalist account of autonomy as requiring neither independence from one’s social context nor, necessarily, a strong sense of self-definition within that environment is, I argue, flexible and expansive enough to include a much wider range of cultural practices and responses to those practices. It is moreover broad enough to encompass a range of evaluative activities and forms of expression that, as I shortly argue, speak more directly to the legitimacy or illegitimacy of cultural practices. If, following Narayan, we also reject certain of Friedman’s strong side-constraints on anything that could count as coercion and manipulation, an even wider range of women’s actions and decisions can be seen (and supported) as expressions of agency. Indeed, I would go along with Narayan here, who argues that ‘[c]hoices to engage in a “cultural practice,” where the woman’s values and identity are in part “invested and served by the practice,” even if she does not care for certain aspects of the practice and lacks the power to negotiate modifications, would certainly meet [the] test for procedural autonomy.’⁷⁷

The account of agency sketched here recognizes that people’s relationships to their social and cultural arrangements and practices are complex and not best characterized as matters of either autonomous choice or oppressive constraints. In acknowledging that agency is possible even within highly restrictive social and cultural environments, this view may have distinct advantages in discussions about nonliberal or traditional cultural practices.

⁷⁴ Friedman, *Autonomy, Gender, Politics*, p. 5. ⁷⁵ *Ibid.*, p. 7.

⁷⁶ *Ibid.*, p. 8. Linda Barclay also raises and rejects the suggestion that ‘a procedural notion of autonomy [necessarily] valorizes critical reflection and choice over and above the integrity and longevity of relationships ...’; see her ‘Autonomy and the Social Self’, p. 60.

⁷⁷ Narayan, ‘Minds of Their Own’, pp. 429–30.

Because it shifts our attention away from a substantive understanding of autonomy as the formation of coherent life plans, it directs us instead to look at individuals' own complex and myriad responses to social customs. A view of agency that includes not only choices, but also acceptance of roles and practices that are broadly reflective of what one values, can easily comprise resistance to (and reinvention of) traditional sex roles in traditional cultural communities. From girls' seemingly innocuous but nonetheless subversive modifications of conventional clothing styles in devout religious communities, to significant alterations of customs surrounding marriage, dowry payment, and sexual relations and child-rearing practices in culturally traditional communities—these and other forms of practices become recognized as possible sources of agency. We are prompted to ask not only about the ways in which individuals may resist cultural practices, therefore, but also about the many ways in which vulnerable group members may revise and reinvent certain traditions to empower themselves. Nor is this account of agency purely descriptive; for in attending to individuals' complex responses, it can also suggest creative strategies for reinventing customs. There is also, a normative dimension to such a view of autonomy, in that these responses can come to present a picture of the normative validity—or lack thereof—of particular practices and arrangements.

To this more optimistic picture of women's responses to cultural practices in traditional cultures, I add an important proviso. In addition to broadening our understanding of what counts as autonomy in more traditional cultural communities—and what this in turn reveals about the validity or nonvalidity of social practices—we must also seriously consider the tangible infrastructure that procedural autonomy requires. The idea of a moral minimum, introduced in Chapter 1, is critical here: group members ought not to be forced to comply with cultural practices that they reject; children ought not to be physically harmed in a permanent way; and existing laws prohibiting such force and demonstrable harm ought to be enforced. Criminal laws punishing those who attempt to coerce group members into cultural compliance, for example, forced marriages, are essential as supports for even minimal autonomy.⁷⁸ Protections for girls and women who make difficult choices to reject or to leave abusive marriages and family situations are also essential.⁷⁹

⁷⁸ See also Okin, “‘Mistresses of their Own Destiny’”.

⁷⁹ There is a wealth of literature by South Asian women's organizations proposing particular supports for girls and women in abusive situations; see, for example, 'Growing Up Young, Asian and Female in Britain: A Report on Self-Harm and Suicide', Newham Asian Women's Project and Newham Innercity Multifund, 1998. There is also abundant sociological literature that also offers up policy proposals, such as, e.g., Margaret Abraham, *Speaking the Unspeakable: Marital Violence Against South Asian Immigrants in the United States* (Rutgers, NJ: Rutgers University Press, 2000).

Moreover, as noted earlier, liberal democratic states must ensure real exit options for cultural group members, as well as ensure that those who choose alternatives to traditional lifestyles and arrangements are not physically threatened or harmed, or subjected to psychological abuse (even though the social costs ultimately incurred by these individuals may be great). Liberal democratic states can and must help to supply tangible supports and infrastructure that protect such dissenting individuals (e.g. by providing safe-houses for abused women and runaway teenagers from immigrant communities or funding for local self-help initiatives).⁸⁰ These are background conditions for any future transformation of social practices, however, and do not supplant the work that needs to be done—through community consultations, deliberations, and inter- and intra-cultural dialogue—if customs and arrangements are to be responsive to members' changing lives and needs.

CONCLUSION: AUTONOMY AND DEMOCRATIC PRACTICE

I have argued that the substantive ideal of autonomy as independence and the more moderate views of autonomy as consisting of either self-determination or (less strenuously) self-definition would lead us to reject a number of cultural practices and arrangements prematurely. Traditional sex-role socialization is anathema to autonomy, on these accounts. Even Meyers' programmatic conception of autonomy insists that the 'unconscious assimilation of cultural practices' makes it difficult for people to develop their own life plans or identify their own motives and desires.⁸¹ Restrictive social and cultural roles are therefore just as problematic for the self-definition conception of autonomy as for the substantive free will conception of autonomy as a perfectionist ideal. In their place, I defended a minimalist, procedural understanding of agency that is both substantively thinner than these other accounts and broader in its scope, in terms of what 'counts' as agency. My hope is that this more complex and expansive conception of autonomy, and of the many places and forms in which agency is exercised, may help to direct our attention to the ways in which cultural group members—and women in particular—exercise self-definition and agency in their individual and social responses to social customs.

⁸⁰ For example, Britain is considering legislation that would add to existing sex crimes the crime of aiding abduction to assist a forced marriage; it would be punishable by a long jail term. Increased police monitoring and support for girls and women who refuse marriage matches has also been promised following the recent task force commissioned by the Home Office.

⁸¹ Meyers, *Self, Society, and Personal Choice*, pp. 207 and 181.

When applied to the issue of arranged marriage, a procedural account of autonomy as requiring minimal self-definition and opportunities for refusal easily supports the claim that *forced* marriages violate individuals' autonomy in unacceptable ways. Such force clearly violates the minimal criteria of procedural autonomy, which includes the capacity to refuse unwanted arrangements without fear of harm and repercussions. As Kymlicka writes, a liberal state cannot 'allow the group to restrict the basic civil liberties of its members in the name of the "sacredness" of a particular cultural tradition or practice'.⁸² But as we have seen, beyond the clear cases of forced marriage, the ideal of liberal autonomy is of little use in illuminating the goods at stake in arranged marriage. An idealized conception of autonomy as independence makes it difficult to conceive of (nonforced) arranged marriage as anything but an illiberal practice, for it is a custom that shifts responsibility for (and control over) one of the most central decisions of one's life to others. The thinner account of autonomy that I defend does not idealize autonomy or require independence per se, and as such is, I believe, a better starting point for exploring other, less visible, aspects of women's agency and empowerment in culturally traditional settings.

This more minimal account of procedural autonomy can also help us to explore three important dimensions of women's agency within arranged marriage that have been largely overlooked. The first of these concerns women's power within the family, extended family, and social networks to negotiate certain terms of marriage as well as to convey their expectations and needs. Sometimes this is much in evidence, as in the case of the authority and decision-making capacity of older or 'senior' women in a family. Usha Menon describes this power: 'senior women, secure in their positions within the family, engage with impunity in verbal and nonverbal displays of discontent: complaining loudly, withholding advice, and not cooperating are ways whereby confident and dominant women express their dissatisfaction and displeasure with what is happening within the family'.⁸³ There are of course dangers that accompany such power: it can be manipulative and fail to respect others' choices, and it is characteristically concentrated in the hands of some rather than shared. But it is not mutually exclusive with the exercise of countervailing forms of power by others: even younger women, lacking authority in traditional families, may be able to express their opposition to any number of aspects of their lives through acts of resistance and subversion.⁸⁴

⁸² Kymlicka, 'Do We Need a Liberal Theory of Minority Rights?', p. 83.

⁸³ Menon, 'Does Feminism Have Universal Relevance?', p. 92.

⁸⁴ Moore, *Gender, Law, And Resistance In India*.

A second aspect of agency not recognized by the liberal autonomy framework is the way in which girls and women imagine, articulate, and begin to live out changed or altered forms of cultural practices. This can take the form of dramatic reinvention of, and resistance to particular social customs, such as the rejection of arranged marriage for oneself and the choice of a love match instead, or insistence on completing one's university studies and beginning a career prior to marriage, against family pressures. The role of cultural imagination in changing the lived experience of traditions such as arranged marriage is a critical factor here. Writing on this issue, Catriona Mackenzie has noted that although much attention has been focused on the social structures that impede women's autonomy, little attention has been given to the initial stage of change, in which 'innovative cultural imagery... (can play) ... a liberating role'.⁸⁵ Such cultural imagery may only precipitate subtle kinds of adjustments, but might also lead to resisting or breaking stereotypes through unconventional choices. Such resistance is depicted, for example, by the decision of Jess Bhamra, a young Indian Briton played by Parminder Nagra, to pursue a professional football career in Gurinder Chadha's 2002 film, *Bend it Like Beckham*. It is also evident in one of the main cultural shifts in which British South Asian girls and women have participated, namely the practice of placing one's own ads in Indian immigrant newspapers seeking marriage partners.⁸⁶ This shift arguably changes the nature of arranged marriage for many, for it puts women far more at the center of the process than was previously the case.⁸⁷

A final dimension of women's agency that is not captured by the liberal conceptions of autonomy discussed earlier in this chapter is the political response to forced marriage, both formal and informal, by South Asian women. Following the tragic death of Rukhsana Naz, the Muslim Parliament of Great Britain sponsored a national campaign—Muslims Against Forced Marriages—to alert South Asian communities of the important distinction between forced and arranged marriages, and to stress the need for mutual consent of the marriage partners. Women were an important part of this campaign. Similarly, some of the individuals included in the Home Office's

⁸⁵ Mackenzie, 'Imagining Oneself Otherwise', p. 143.

⁸⁶ Ramdas Menon, 'Arranged Marriages Among South Asian Immigrants', *Sociology and Social Research*, 73/4 (July 1989), 180–1.

⁸⁷ Some have argued that arranged marriages are not so different from dating via the Internet, newspaper ads, and introduction services, and that it is simply a more elaborate version of Western practices in which families make inquiries into the reputation and prospects of their children's prospective marriage partners.

task force represented women's rights groups that have actively opposed coerced marriages, such as the An-Nisa Society, Belgrave Baheno, and Southall Black Sisters. Although these representatives disagreed about the best way to combat the problem of forced marriages—and indeed the representative from Southall Black Sisters resigned in protest on the eve of the release of the Final Report—they were convinced of the political importance of their task. Far from rejecting their political role, the representatives of these women's groups used the Home Office's inquiry as an opportunity to complain that the British government was failing in its duties to cultural and community groups by withdrawing badly needed funding for community-run local services.⁸⁸

Aside from these more manifestly political examples of individual and social responses to the practice of arranged marriage, there are subtler, but not insignificant, cultural shifts taking place in the perception and practices surrounding this custom in the Indian subcontinent and in diasporic communities. Many of these changes are discussed by sociologists and social and cultural anthropologists who address arranged marriage. Fiction writers provide another vista into the myriad ways in which men and women resist and revise the cultural frameworks they have in some sense received. In her collection of short stories entitled *Arranged Marriage*, US-based author Chitra Banerjee Divakaruni portrays Indian heroines as responding in a wide range of ways to the custom of arranged marriage: in 'The Word Love', an Indian student living in Berkeley moves in with her American lover only to have her mother disown her, prompting her to face the incommensurability of her life choices with those of her mother; in 'Affair', Abha resolves to leave a loveless marriage after seeing her friend Meena choose an unconventional love, sending ripples of both scandal and possibility through their close-knit community; and in 'Clothes,' Sumita agrees to an arranged marriage in India and follows her husband to America, where she comes to love him quite against her own expectations.⁸⁹ These and other stories of Indian women revising their own cultural scripts and finding ways to confront social expectations and traditions without losing their own sense of self suggest that agency and self-definition is possible in even the most difficult of circumstances. These accounts furthermore illustrate how women's agency is often directed toward negotiating and transforming social and cultural practices through everyday actions, responses, and choices.

⁸⁸ For example, Najma Ibrahim of the Muslim Women's Helpline, a faith-based group, reports that her group lost two grants from the Home Office around this time.

⁸⁹ Chitra Divakaruni, *Arranged Marriage* (New York: Anchor Books, 1996).

The observation that cultural group members revise and remake their own traditions and customs is of course a general truism among social and cultural anthropologists. Sally Engle Merry articulates this (by now) noncontroversial observation:

Culture is now understood as historically produced rather than static; unbounded rather than bounded and integrated; contested rather than consensual; incorporated within structures of power such as the construction of hegemony; rooted in practices, symbols, habits, patterns of practical mastery and practical rationality within categories of meaning rather than any simple dichotomy between ideas and behaviour; and negotiated and constructed through human action rather than superorganic forces.⁹⁰

Although this more fluid understanding of culture—which credits individuals with the ongoing revision of social practices, cultural meanings, and community arrangements—is not a new insight for anthropologists, it has only recently begun to impact discussions within political theory about controversial cultural practices in liberal democratic states.⁹¹ As Gurpreet Mahajan has argued in the case of India, normative political theorists have construed tensions between liberal norms and cultural traditions as requiring that we opt for one of two possibilities: either the transcendence of community identities and their replacement with secular liberal democratic principles; or else the embrace of traditional cultural structures as a foundation to country-specific forms of democracy.⁹² Ongoing efforts by cultural group members to adapt, resist, and revise aspects of their own social practices and arrangements appear to play no role in either of these two models. Yet these informal democratic activities are critical sources of cultural change; moreover, they can speak to the question of the legitimacy or illegitimacy of controversial cultural practices.

I have argued that cultural practices seemingly at odds with dominant liberal conceptions of autonomy are best approached not by showing that the custom falls short of an ideal of independence, but rather by asking about the shifting cultural contexts in which such practices appear and the resulting individual and social responses. Liberal norms of consent and choice cause both defenders and critics of contested practice to characterize contested customs as overly static: they are seen as either compatible with, or in violation of, core values of liberal society. Rather than seeking to discover whether specific social practices violate (or, contrarily, support) personal autonomy, we should instead ask about individual and social responses to

⁹⁰ Merry, 'Changing Rights, Changing Culture', pp. 41–42.

⁹¹ Also see Scott, 'Culture in Political Theory'.

⁹² Gurpreet Mahajan, *Identities and Rights: Aspects of Liberal Democracy in India* (Oxford and Delhi: Oxford University Press, 1998), pp. 14–15.

contested cultural practices, including the extent to which members can revise and transform customs in accordance with their own needs and values. Agency, construed more broadly than liberal conceptions of personal autonomy, remains important to discussions about the validity of contested cultural practices, but mainly insofar as it illuminates the evaluative and transformative activities of group members vis-à-vis social customs in flux.

Does such a contextualized approach both to autonomy and to questions about the validity of gendered cultural practices merely reflect one of many possible ‘“cultural justifications” for violating women’s human rights’ that some have warned about?⁹³ I think not. The ways in which British South Asian girls and women respond to cultural practices in their communities through acts of revision, reinvention, and resistance is inextricably bound up with the validity of those customs. More generally, how women affected by controversial customs evaluate and propose to reform their own cultural arrangements is critical to a democratic resolution of disputes surrounding these practices.

⁹³ Okin, ‘Feminism, Women’s Human Rights, and Cultural Differences’, p. 45.