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The Cultural Defense in Intimate Violence Against Women: Criticizing Liberalism from a Mixed Approach

Silvana Andrea del Valle Bustos *

ABSTRACT: In the last decades, many Western countries have recognized minority groups' traditions and self-determination as a part of the Human Rights ideal they are committed to enact. For a time in the U.S., the argument that culture should be always respected, on the grounds of the freedom of association and conscience, held sway. As a result, U.S. courts accepted cultural arguments that justified violent conduct against women and family members as a defense even in cases of murder, reframing them as voluntary manslaughter, in light of the perpetrator's culture. Reacting to the excesses of this multicultural approach, liberals proposed to reject any cultural argument that condones women's rights violation. Their reactions echoed Rawls' philosophical position according to what arguments not based in reason or not formulated in reasonable-secular terms should not be accepted in the public discussion. Courts, then, began to reject cultural arguments in murder cases. Consequently, a third argument has become popular, favoring a mixture between multicultural and liberal approaches. The author proposes that this alternative is better. For analyzing it, the paper focuses on the situations of non-physical or less grave physical violence, as well as submission to the group's decisions (such as in clothing and priesthood) and polygamy. She asserts that these borderline cases present a challenge in the balance between the acceptance of multiculturalism and the rejection of violence, and then a better arena where to trace a line. The reasons the author has for supporting the mixed view include a criticism of it, mainly because mixed approaches usually tend to lean more toward liberal positions. First, unmixed approaches do not take care sufficiently of women's interests. In particular, if we accept Rawlsian rules we should also exclude feminist arguments not expressed under secular terms or linear reasoning, contradicting feminists who argue that reason is not the only human decision-making capacity. Second, liberal positions tend to confuse the treatment of equality and life integrity, not taking then sufficiently into account the dynamics of violence and focusing too much on *consent* under liberal terms. That is *linear reasoning*, which provokes a tendency to overestimate culture as exclusionary of *choice*, and not to see that the mainstream society is also cultural. This actually reveals that liberal society has biases against minority groups and a non well-developed engagement with women's rights. Finally, because of psychological aspects of decision-making, Western societies should allow liberal (secular and reason based) and illiberal (religious and non-reason based) arguments to have a conversation. If we do so, both sides will see better what the opposite and their own side really believes, and they may realize that their values might be closer than they think. This will enhance a bigger commitment of all citizens to women's rights, including the right to belong to a minority group and the right to be free from violence.

KEYWORDS: multiculturalism, violence against women, domestic violence, liberalism, feminism, cultural defense, criminal defense, state of mind, culture, minority women.

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Introduction

In 2011 in a Violence Against Women (VAW) seminar for women lawyers in Chile,¹ a panelist told us one of her dilemmas deciding psychological domestic violence cases in a Family Court: can swearwords or offensive language be considered violence in the case of poor women, those “who live in slums or work in fruit markets”? She said that she was unsure if in “those cultures” some words may be more a shown of affection than a kind of maltreatment, and if verbal offenses against “these women” may satisfy domestic violence (DV) requirements in the same way than offenses directed to other women. Should a judge justify violence against women if it corresponds to a cultural practice from a minority group, or should she decide in the same fashion than in any other case?

The same problem has been confronted in a large scale in the past decades in some Western countries, which should decide if “cultural practices” from minority religious, ethnic and socio-economical groups might excuse their members from punishment when they violate women’s rights. In the U.S., two opposite approaches have been reflected in courts. In a first period, the argument that culture should be always respected, on the grounds of the freedom of association and conscience, held sway.² Then courts reframed murder cases as voluntary manslaughters under the argument that some violent reactions against women and family members were part of cultural practices.³ In a second period, reacting to the excesses of this multicultural approach, and echoing John Rawls’ rejection of arguments not formulated in reasonable-secular terms in the public discussion,⁴ liberals proposed the dismissal of any cultural argument that condones women’s rights violations.⁵ Courts, then, began to reject cultural arguments in murder cases.

Most recently, however, some authors have criticized these two plain alternatives for not considering enough the women’s right to belong to a group while claiming for protection of other rights. They propose that “quite serious tensions between [...] multiculturalism and feminism”⁶ may be solved by mixed positions that allow decision makers to accept cultural arguments but under certain limits. Doing so, they assert we could respect not only the rights and voices of the minorities as groups, but also the rights and voices of women, who are “minorities within minorities.”⁷

In this paper I support these mixed solutions, under three basic grounds, which include a criticism of the approach for lending more toward liberal positions. In the first place, if we favor multiculturalism over liberal rights or liberalism over minority cultures, we will not protect women’s interests sufficiently. In this sense, unmixed approaches have at least three glitches. First, they do not really address the conflict between women’s rights and cultural practices.

¹ Second Dialogue of the Chilean Women Lawyers Association “Violence Against Women and the Law”, celebrated in July 7th 2011, Diego Portales University, Santiago, Chile.

² Moller Okin, Susan, *Is Multiculturalism Bad for Women?*, in *IS MULTICULTURALISM BAD FOR WOMEN?: SUSAN MOLLER OKIN WITH RESPONDENTS* 7-24, 9 (Cohen, Howard & Nussbaum eds., 1999).

³ See Alice J. Gallin, *The Cultural Defense: Undermining the Policies Against Domestic Violence*, 35 B.C.L. Rev. 723. See also Okin, *supra*, at 9-10: In the same decades other western countries, like France, implemented permissive policies about polygamy among the increasing immigrant population.

⁴ See John Rawls, *The Idea of Public Reason Revisited*, in *ETHICS OF CITIZENSHIP* 27-58 (Clanton ed., 2009).

⁵ Veit Bader, *Associative democracy and minorities within minorities*, in *MINORITIES WITHIN MINORITIES* 319-339, 319 (Eisenberg & Spinner-Halev eds., 2005).

⁶ Susan Moller Okin, *Multiculturalism and feminism: no simple question, no simple answers*, in *MINORITIES...*, *supra* note 4, at 67 (Eisenberg & Spinner-Halev eds., 2005).

⁷ See Avigail Eisenberg and Jeff Spinner-Halev, *Introduction*, in *MINORITIES...*, *supra* note 4, at 1-15.

Second, they do not recognize that violence is a threat that affects minority and majority women. And third, if we apply Rawlsian rules plainly, we may end excluding feminist arguments not expressed under secular terms or linear reasoning –which contradicts feminists who argue that *reason* is no the only human decision-making capacity.⁸ A second reason to endorse a mixed approach is the fact that equality and life integrity are separated rights. When we incline the balance toward liberalism, we may tend to focus too much in equality and define consent under the liberal terms of linear reasoning. This results in a lack of sufficient account of the dynamics of violence between intimate partners, and in a tendency to evaluate culture as exclusionary of choice and mainstream society as non-cultural. These phenomena reveal that liberal society actually has biases against minority groups and a non well-developed engagement with women’s rights. My final argument in favor of a mixed approach is based in the psychology of decision-making. Western societies should allow liberal (secular and reason based) and illiberal (religious and non-reason based) arguments to have a conversation. If they do so, both sides may see better what the opposite and their own side really believes, and they may realize that their values might be closer than they think.

Before describing the structure of this article, let me expound the scope in which I will analyze the dilemma, by defining “cultural defense” for this paper purposes and explaining the type of violence I will discuss here. With “cultural defense” I refer to two kinds of arguments. The first is the criminal strategy of negating the formation of *mens rea* in a DV crime. It works by asserting that the defendant’s cultural background makes him commit a *mistake of fact* or be in an *incomplete state of mental insanity –diminished responsibility*.⁹ The second argument is what has caused the first to come into the judicial arena: toleration in the public discussion of a less strict treatment for minority aggressors in cases of VAW.¹⁰

The focus of the debate that I am referring to in this article will be borderline violence cases such as psychological or less complex physical DV, submission of women’s decisions to the group’s, and polygamy as a potential practice of VAW. I will not refer always and necessarily to specific decisions in these kinds of cases, but my intention is to have them in mind when discussing how much room for toleration we can concede. This consideration, as opposed to considerations about gruesome violence, will allow us to see in more detail where multiculturalism starts to merge into acceptance of violence, and where human rights may become an excuse to discriminate minority groups. I believe we can refine the debate about this limit by focusing in this kind of cases because they present the risk of making public discussion parties confuse violence with consented inequality. Rejection of violence may be more difficult if violent acts seem just discriminatory practices justified by women’s voluntary participation in a private group.¹¹ In fact, even liberal approaches that try to give some recognition to minorities’ values find a “common ground [...] between liberalism and [these] values [...] in the idea of

⁸ See Mary Wollstonecraft, *A Vindication of the Rights of Woman*, in MARY WOLLSTONECRAFT: A VINDICATION OF THE RIGHTS OF MEN AND A VINDICATION OF THE RIGHTS OF WOMAN 65-303 (Tomaselli ed., 2007). See also, MARTHA C. NUSSBAUM, UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTIONS (2001); and Iris M. Young, *Humanism, Gynocentrism, and Feminist Politics*, 8(3) WOMEN’S STUDIES INTERNATIONAL FORUM 173, 181 (1985).

⁹ Gallin, *supra* note 3, at 726-727.

¹⁰ For Chandran Kukathas, for instance, tolerance implies an absolute lack of restriction and state intervention about what communities make to their members, even if their practices harm them. Chandran Kukathas, *Cultural Toleration*, in ETHNICITY AND GROUPS RIGHTS 88, 97 and 98 (Kymlicka & Shapiro eds., 1996), *quoted by* JEFF SPINNER-HALEV, SURVIVING DIVERSITY 81 (2000).

¹¹ “Unfair discrimination may exist in a liberal society” as long it is a “private” matter, not “publicly supported.” SPINNER-HALEV, *supra*, at 182.

political legitimacy as based on *consent*.”¹² Thus, I think we can draw the line by differentiating violence and inequality, and then tolerating consented inequality while being stricter in the analysis of consent in the case of violence.

I do neither intend to make a definitive line nor even to solve every question that will arise in this article. However, I think I can at least conclude that multiculturalism and the rejection of violence, not matter how contradictory they appear to be, are two aims that minority women can expect to be achieved in our society.

This article will start in Part I with a summary of the three main types of approaches toward tensions between minority cultures’ views and the rejection of VAW: pure multicultural approaches, pure liberal approaches, and mixed approaches. In this part, I will also make a brief of the translation of the first two arguments into courts’ decisions.

In part II, I shall explain my first argument in favor of a mixed approach. Unmixed solutions do not defend sufficiently women’s rights. This argument has three components. First, pure liberal and pure multicultural arguments do not address the dilemma between the minority women’s rights of respect for their communities and of protection against violence, blinding the society at large to several issues it still has about violence. Second, culture should not be paramount in this discussion because otherwise we may be neglecting the criminal aim of general deterrence. However, this consideration does not mean we will be rejecting the source of the cultural defense (culture) but its content (violence). Finally, and more important, a view that over relies in *reason* may become a “conversational stopper”¹³ for a full introduction of the feminists’ values of women’s equality to men and rejection of gender based violence.

In part III, I will explain my second argument for a mixed treatment of the culture issue in DV: the different basis of the Western rights of equality and life integrity. Because of this difference, while minorities’ arguments that condone inequality may be tolerated¹⁴ if the victim of inequality *consents* the treatment, those who condone violence are “fallible.”¹⁵ In fact, *consent* in the case of intimate violence against women is affected by the own dynamics of violence. As a consequence, the “right to exit,”¹⁶ cannot be exercised in the same manner in the case of violence than in the case of inequality.

In part IV, I will examine my final argument for encouraging a talk between liberal and illiberal arguments in the case of violence against women. According with some psychological studies, a public discussion that does not negate the value of cultural arguments may enhance a better decision-making process.

In part V, as a corollary of my three arguments, I shall recognize that there are situations where we may perform accommodation –such as the submission to the group’s decision (i.e. clothing and priesthood decisions), and polygamy. Since violence does not result directly from

¹² Okin, *supra* note 6, at 75-76, analyzing Marilyn Friedman’s theory of liberal autonomy in MARILYN FRIEDMAN, *CULTURAL MINORITIES AND WOMEN’S RIGHTS* (2003).

¹³ Richard Rorty sees religion (and also, we can conclude from his formulation, every other comprehensive non-reason-based view) as a stopper for public conversation. See Richard Rorty, *Religion as Conversation-Stopper*, in *ETHICS OF CITIZENSHIP*, *supra* note 4, at 135-142.

¹⁴ Kukathas says toleration is the “central value” of liberalism, for what then society should respect the right to self-government of communities and prohibit state intrusion in people’s determinations. Kukathas, *supra* note 10.

¹⁵ J. Caleb Clanton proposes a Peircean model of public deliberation in which religious citizens may bring into the public square any reason they want to introduce, without Rawlsian limitations but with the condition to accept that “further deliberation may defeat” their arguments. J. Caleb Clanton, *Democratic Deliberation after Religious Gag Rules*, in *ETHICS OF CITIZENSHIP*, *supra* note 4, at 356-392, 371.

¹⁶ SPINNER-HALEV, *supra* note 10, at 57.

these minority practices, cultural arguments may be not as fallible as in the case of psychological or physical violence.

In the Conclusion of this article, I assert that we should allow multicultural arguments to go into the public debate, taking care of the difference between equality and life integrity due to the dynamics of DV. Doing so, we will be not only listening to minorities, but also defining what the majority is really engaged to. In addition, a conversation like this will promote even more engagement of all groups of the society in a fight that was not really granted from the beginning of liberal society, but that was born precisely in a non pure liberal minority's claim: women's right to be free of violence.

I. Three Approaches Toward Cultural Arguments in VAW.

There are three main approaches to the issue of multiculturalism in the discussion of women's rights: multicultural, liberal and mixed approaches. In this part of the article, I will first summarize these approaches. Then, I will mention the translation of the first two approaches into court language.

1. Multicultural, Liberal and Mixed Approaches

The *multicultural approach* accepts cultural arguments that justify women's rights violations in order to protect the right of association and the free exercise of religion.¹⁷ Veit Bader divides advocates of multiculturalism (or "*radical*" *multiculturalism*)¹⁸ in two groups. One type gathers those who ask for a "complete deference to the *nomos* of religious groups, far-reaching autonomy and absence of any state intervention or scrutiny."¹⁹ They assume that all people have the same possibility to exit the group and to know the group's ideals, as well as possibilities outside the group and autonomy to do it.²⁰ The other type includes more fundamentalist "religious leaders and fundamentalist religious politicians" who completely rejects liberal values, including freedom and individualism.²¹

The *liberal approach* toward the issue of violence and multiculturalism was raised as a reaction to abuses caused by radical multiculturalism and as a way to fit the liberal principle of *public reason*.²² This approach rejects the recognition of any sectarian language in the public discussion about VAW. Authors who support "*radical*" *liberal* approaches are afraid that multiculturalism, in its intent "to address one form of inequality, namely cultural inequality," may "undermine prospects of addressing other forms, such as sexual inequality."²³ For them, the

¹⁷ Bader, *supra* note 5.

¹⁸ *Id.*: "[A] radical 'absolutist free exercise,' 'deference' or 'unavoidable cost' approach."

¹⁹ *Id.* Bader names this type of multicultural advocate as "radical libertarian."

²⁰ *Id.*

²¹ *Id.* Bader calls them "Traditionalist or conservative communitarians."

²² "What happens if religious people speak publicly in their own exclusive, sectarian language about public matters? Some worry that doing so will exclude others from public discussions. Sectarian languages should not be used in public since they are only spoken by a segment of the population. What is needed, some liberals argue, is a *public language* that is *accessible to all*, one that is based on *reason* instead of narrow sectarian languages." SPINNER-HALEV, *supra* note 10, at 142. *Emphasis added.*

²³ Eisenberg and Spinner-Halev, *supra* note 7, at 8.

solution for the problem of violence and inequality is found only in the social contract.²⁴ In this group we can find since democrats to republicans, including feminists, who assert that diversity may cause to leave the weaker people within minority groups under the hands of their leaders.²⁵

In front of these two radical approaches, a third view intended to reconcile multiculturalism and the rejection of violence: the *mixed approach*. This approach comes from the recognition of the right to belong to groups as a part of the liberal values of autonomy and liberty, even if these groups restrict their members' autonomy and liberty. Jeff Spinner-Halev says that these views rely on the human *decision* to participate in groups, which is a part of our self-definition as human beings.²⁶ Two authors who propose mixed approaches are Susan Moller Okin and Veit Bader. Summarizing their suggestions, we may have an idea about what a mixture position offers to confront the collision between liberal rights and multiculturalism.

Okin experienced an evolution in her thoughts about multiculturalism. In 1999, she seemed to propose a pure liberal approach in her article *Is Multiculturalism Bad for Women?*²⁷ However, after several papers discussed the topic using her article as a starting point,²⁸ she restated her arguments. In *Multiculturalism and feminism: no simple questions, no simple answers*²⁹ she asserted that she never intended to make a complete discarding of cultural positions, but questioning them.³⁰ Okin analyzes two different proposals to make her mixed conclusion. The first proposal is the Marilyn Friedman's "autonomy-based approach," which justifies any practice against women's rights as long as women agree with such a practice. The model also suggests that any practice that involves children should be prohibited since they do not have capacity of *choice*.³¹ In the second place, Okin studies the democratic Monique Deveaux's "deliberative approach," which favors protection of Bill of Rights, and the deliberation of society with minority groups under "criteria of non-domination."³² Okin rejects both approaches since the first over emphasizes the liberal character of autonomy over the democratic principle of deliberation,³³ and the second underestimates the ideas of "sub-groups [within] the cultural groups."³⁴

Finally, she seems to arrive to a twofold proposal.³⁵ First, society may allow the temporal democratic participation in the public debate of minority groups' ideals ("over liberalism") only if they are or have been victims of "colonial powers or of the larger society," rejecting the justification of larger groups for unequal practices.³⁶ And second, society must seek for the minorities within minorities' opinion in the issue. This seeking should include women's presence

²⁴ Bader, *supra* note 5, at 320, citing BRIAN BARRY, CULTURE & EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM (2001).

²⁵ *Id.*, quoting Nussbaum, Martha, *Religion and Women's Rights*, in RELIGION AND CONTEMPORARY LIBERALISM 98 (Weithman ed. 1997).

²⁶ See SPINNER-HALEV, *supra* note 11, at 30 and 57-67.

²⁷ Okin, *supra* note 2.

²⁸ Interpreting Okin's article as a rejection of any cultural argument, see AYELET SHACHAR, MULTICULTURAL JURISDICTIONS: CULTURAL DIFFERENCES AND WOMEN'S RIGHTS 65-67 (2001).

²⁹ Okin, *supra* note 6.

³⁰ *Id.*, at 69-75.

³¹ *Id.* at 75-79.

³² *Id.* at 79-85.

³³ *Id.* at 79.

³⁴ *Id.* at 85.

³⁵ Okin shows inclinations toward a more democratic (participation of cultural groups in a temporal fashion) than a more liberal (emphasis in autonomy only) approach, specially to avoid the permanent damages that liberal imposition may provoke in minorities as opposed to the less detrimental effects of a temporal inclusion of cultural arguments. However, in her 2005 article she never, again, made a clear proposal to the dilemma she recognized.

in deliberation in Congress. In any case, she remains skeptical about how a “white, male and old” Congress may interact with these minorities within minorities, as well as about the legitimacy of minority leaders that “are usually not elected at all.”³⁷

Veit Bader presents another mixed approach. In his “Associative Democracy (AD) approach,” Bader gathers various mixed approaches and argues that we should “guarantee basic needs and rights, increase real exit options, and try to strengthen the voice of insider minorities by means which do not override associational autonomy.”³⁸ He acknowledges that there is not an absolute solution to the dilemma. Nevertheless, he thinks that in cases where “exit is impossible or extremely costly” the only way to “seek [for] the liberalization and democratization [of] illiberal and anti-democratic groups” is giving more voice to the “vulnerable minorities.”³⁹

2. Cultural Defense in the Courtroom

Courts in the U.S. have reflected the discussion around multiculturalism in the past decades. Courts have gathered both the multicultural and the liberal approach, and do not seem to be clear about solutions to mix them. Here I will summarize some cases from 1980s and 1990s, which visibly used the multicultural approach in cases of family violence. Then, I will mention cases from 2000s that have implemented the liberal approach in DV and in immigration. Finally, some more recent cases have shown certain recognition to cultural factors. To conclude this part of the article, I will explain how cases like these may affect the borderline type of cases I am referring to.

During 1980s and 1990s courts enacted a multicultural approach, recognizing that the state of mind required in a criminal act may be influenced by the accused’s cultural background, justifying a more lenient treatment to minority people. In cases involving grave violence against women, courts admitted defendants’ arguments that a specific culture may shape their state of mind, preventing them from seeing their conduct as a crime. In 1985, for instance, the Superior Court of California, County of Fresno, decided *People v. Moua*.⁴⁰ In this case a Laotian man, recognizing that rape is a crime, excused himself from accountability in the grounds that in his culture the marriage ritual included a fake kidnapping and a simulated rape of the bride. His defense argued that since he thought the victim agreed with his acts, and despite of her resistance, he was not in the *state of mind* required from a rapist. The court accepted this argument, saying his culture prevented him to be aware of all of the facts that transformed his actions into the crime of rape. Specifically, according to the court, he did not see his victim was actually denying him consent for a sexual act.⁴¹ Some years later, the Californian Court of Appeals for the Fourth District decided *People v. Wu*,⁴² in which a Chinese woman alleged she killed her son because she was out of her mind or in a “*heat of passion*” when he told her that her husband was involved in romantic relationship with another woman. The court in this case decided that her “*cultural background*” should be considered the instructions to the jury, since a “*heat of passion*” can be caused by her cultural intention to protect herself (who tried to commit

³⁶ “There is no more reason why liberal states should tolerate such discrimination in groups that benefit in any way from public support than they tolerate racial discrimination from such groups.” Okin, *supra* note 6, at 87.

³⁷ *Id.* at 88 and 89.

³⁸ Bader, *supra* note 5, at 336.

³⁹ *Id.*

⁴⁰ *People v. Moua*, No. 315972-0 (Cal. Super. Ct. Fresno County Feb. 7, 1985).

⁴¹ Gallin, *supra* note 3, at 728-729.

⁴² *People v. Wu*, 286 Cal. Rptr. 868 (Cal.App. 4 Dist., 1991).

suicide) and her son from the future consequences of their family situation. These facts, according to the court, eliminated the elements of “premeditation” or “deliberation” and of “due reflection” from her mind.⁴³ Then, the court reframed the accused’s actions as a voluntary manslaughter.⁴⁴ Three years before that, the Supreme Court of the State of New York, New York County, decided *People v. Chen*.⁴⁵ In *Chen*, a Chinese immigrant killed his wife because she told him she was engaged in an extramarital affair. The court accepted his arguments that he was in a state of mind that prevented him to think about what he was doing because of his cultural background, and because he did not have a community that may stop him from his attack. The court in this case also opted to frame the facts as a voluntary manslaughter.⁴⁶

Courts reached opposite outcomes in 2000s, using a more liberal paradigm. In 2002 the Californian Court of Appeals for the Second District, decided *People v. Benitez*.⁴⁷ In this case, a Mexican immigrant who killed his common law wife alleged that his actions were caused by “a jealous rage that must be gauged by his personal history and background,” as well as his lack of “assimilat[ion] or socializ[ation] into American culture.”⁴⁸ Because of this, he asked that his actions should be considered committed in “*the heat of passion*.”⁴⁹ The court, nevertheless, concluded that “the separate ‘reasonable person’ standard for immigrants advocated by appellant simply *does not exist*[...] A personalized standard of reasonableness in this regard would effectively swallow the rule.”⁵⁰ In 2008, the U.S. Court of Appeals, Fifth Circuit, decided in *United States v. Gomez-Herrera*.⁵¹ In this case the court rejected the arguments of the defendant of substantive unreasonable sentencing for his illegal reentry to the U.S. The defendant alleged that a sentence of 51 months of imprisonment was unreasonable because “his motivation for reentry was to see his ailing father before he died[, and that] he lived in the United States from the age of three months until he was deported at the age of 51, [for what] Mexico [was] an alien country and culture [to him,] who was “cultural[ly] assimilate[ted]” as an American citizen.⁵² The court reasoned that his “cultural assimilation” and his other arguments did not justify a finding of a “non-Guidelines sentence” and that “his sentence [was] entitled to a presumption of reasonableness.”⁵³

In 2010 the Supreme Court of New Jersey, Appellate Division, decided on *J.B. v. D.B.* In this case, the defendant appealed on a final restraining order for simple DV assault alleging that the trial court was biased against him since it considered victim’s cultural reasons for not reporting before –“reasons of culture and family privacy.”⁵⁴ According to the appellate court if the trial court “chose to believe plaintiff on this issue is not evidence that the court was biased or that it decided the case based on *improper* cultural considerations.”⁵⁵ This means that there are

⁴³ *Id.*, at 883, *emphasis added*.

⁴⁴ *Id.*, at 884-886.

⁴⁵ *People v. Chen*, No. 87-7774 (Sup. Ct. N.Y. County Dec. 2, 1988).

⁴⁶ Gallin, *supra* note 3, at 729-731.

⁴⁷ *People v. Benitez*, *Not Reported* in Cal.Rptr.2d, 2002 WL 3100937, Cal.App. 2 Dist., 2002.

⁴⁸ *Id.*, at 1.

⁴⁹ *Id.*, *emphasis added*.

⁵⁰ *Id.*, at 4, *citing*. Cf. *People v. Romero* (1999) 69 Cal.App.4th 846, 848, 854, 81 Cal.Rptr.2d 823 (“rejecting application of a ‘reasonable street fighter standard’ to defendant in murder prosecution claiming self-defense). *Emphasis added*.

⁵¹ *United States v. Gomez-Herrera*, 523 F.3d 554 (2008).

⁵² *Id.*, at 565.

⁵³ *Id.*, at 565-566.

⁵⁴ *J.B. v. D.B.*, *Not Reported* in A.2d (2010), 2010 WL 3257863 at 6.

⁵⁵ *Id.* *Emphasis added*.

proper cultural reasons that can be heard. In the 2012 non-IPV case *The People v. Jaime Vasquez et al.*, the Court of Appeal, Second District, California, considered that cultural factors can be a shown of violence.⁵⁶ The court found that precisely the defendant's participation in a gang provided him enough knowledge about the gang's violent habits, and then "constitute[s] substantial circumstantial evidence of appellants' knowledge of [the] criminal gang activity."⁵⁷ Even if in this case "culture" was neither targeted nor considered to be a factor of mitigation or aggravation, the court did mention expressly that the defendant participated in a "culture of gang," and described the group as one with specific cultural practices, even identifying as one of those practices a non-violent one (i.e. tattooing), which is practiced also by non-gang minorities.⁵⁸ In other words, culture may mean violence and, rather than mitigating, be the actual source of criminal reproach. Even if the first case is a civil DV case, and the second is not a DV, IPV, or a VAW case at all, they could be considered a window to mixed approaches. Interestingly, both cases accept culture *against* the defendant.

All of these cases are different to cases of non-physical violence. Nevertheless, they may have an impact in the discussion, legislation and decisions about it. This impact may be found at least in three forms.

In the first place, victims and aggressors react to what they see in the media even if the publicized cases do not have the same characteristics of their problems. For example, after the 1980s and 1990s cases, courts experienced a considerable increase of cultural allegations by male batterers.⁵⁹ Even though the allegations were not accepted in the majority of the cases, this increase never concluded in a proper delimitation by courts of "what sorts of cultural practices [...] should provide a defense."⁶⁰ In addition, the cases exposed women from minority communities to be seen as part of primitive groups, and depicted their cultures as if they were tolerant to violence, something about which many of them disagreed.⁶¹ Moreover, and worse, in the aftermath of the cases, cities such as New York experienced an increase of violence against Asian women and a reduction of report.⁶² The fear among Asian women to report and the normalization of abuse were so high that the *Chen* case was called the declaration of an "open season on women."⁶³

Secondly, the recognition and creation of tools to end violence work in an *in crescendo* dynamic. Tendencies of punishment for abuses that are recognized early tend to be legally replicated in less serious related crimes and misdemeanors, as the ones that are the scope of this article. In the first step of this dynamic, the more cruel crimes are recognized to be worthy of

⁵⁶ *The People v. Jaime Vasquez et al.*, *Not Reported* in Cal.Rptr.3d, 2012 WL 848236 (Cal.App. 2 Dist.)

⁵⁷ The case refers to a specific crime in which gang-participation raises the punishment: a "first-degree murder [...] for the benefit of, at the direction of, or in association with a criminal street gang." *Id.*

⁵⁸ *Id.*

⁵⁹ Valerie L. Sacks, *An Indefensible Defense: on The Misuse of Culture in Criminal Law*, 13 ARIZ. J. INT'L & COMP. L. 523, 523.

⁶⁰ *Id.*, at 538.

⁶¹ "Many Chinese immigrant[...] and Chinese American[...] women] protested [Chen's] portrayal of China[...] 'Our culture does not give a man permission to kill his wife regardless of what the situation was at home[...]' A man who accuses his wife of adultery 'goes to the courts' but 'has no right to kill his wife. It is absolutely not part of Chinese culture.'" *Id.*, at 549, quoting Marianne Yen, *Refusal to Jail Immigrant Who Killed Wife Stirs Outrage; Judge Ordered Probation for Chinese Man, Citing His 'Cultural Background'*, WASH. POST, Apr. 10, 1989, at A3, and quoting Alexis Jetter, *Fear Is Legacy of Wife Killing in Chinatown; Battered Asians Shocked by Husband's Probation*, NEWSDAY, Nov. 26, 1989, at 4.

⁶² Gallin, *supra* note 3, at 735-736.

⁶³ Sacks, *supra* note 57, at 541, quoting Rorie Sherman, 'Cultural Defenses' Draw Fire; Double Standard?, NAT'L L. J., Apr. 17, 1989, at 37.

societal and legal punishment, but not the less evident violence. Then, citizens' conscience and legislation grow to include not only physical but also other types of violence and patterns of conduct; not only direct attacks against women but also other related crimes and misdemeanors; and, in the case of IPV, not only violence perpetrated by husbands but also by partners and boyfriends. An example of this evolution is the history of the Violence Against Women Act, enacted in 1994.⁶⁴ A similar evolution may be found in international and compared legislation.⁶⁵

The last effect of gruesome violence cases decisions over the borderline cases referred in this article is that judges and legislators may either analogize the cultural defenses on them. For instance a judge like the one in the example with which I began this essay, following higher courts' decisions in more gruesome cases, may endorse a complete cultural toleration. Then, she may accept that certain words or economic arrangements do not impose a threat over minority victims because their cultures as a whole do not see judge these actions to be violence. Another example may be found in the economic security funds available for victims in the U.S.⁶⁶ If toleration is paramount, these funds can be considered as if they were the implementation of the "exit right," similar to the one Jeff Spinner-Halev proposes as a condition for toleration of inequalities against women in insular communities. There are some differences, of course, between them and the state funds introduced by the VAWA, in particular because Spinner-Halev's proposal is an obligation of private supplies limited to very insular communities.⁶⁷ However, the analogy may be made since both kinds of funds intend to help women to leave a group when she decides to do so. I will deep forward a little more in this issue.

⁶⁴ That act for the first time "envisioned a nation with an engaged criminal justice system and coordinated community responses" to violence against women, including among other tools a "[f]ederal prosecution of interstate domestic violence and sexual assault crimes" and "[f]ederal guarantees of interstate enforcement of protection orders." In its reauthorization of 2000, the Act improved by, for instance, "[i]dentifying the additional related crimes of dating violence and stalking" and more protections for "immigrants experiencing domestic violence, dating violence, sexual assault or stalking, [through] establishing U- and T-visas and by focusing on trafficking of persons." THE NATIONAL TASK FORCE TO END SEXUAL AND DOMESTIC VIOLENCE AGAINST WOMEN, THE VIOLENCE AGAINST WOMEN ACT: 10 YEARS OF PROGRESS AND MOVING FORWARD (2004), available at <http://www.ncadv.org/files/OverviewFormatted1.pdf>. Moreover, in 2005, the reauthorization of the Act included among their goals the creation of campaigns to build "the capacity and develop leadership of racial, ethnic populations, or immigrant community members to address domestic violence, dating violence, sexual assault, and stalking. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 SEC 12 (d) p. 32. Finally, in 2010 the Congress passed a legislation that went beyond, including the goal of "prevent[ing] and respond[ing] to violence against women and girls internationally International Violence Against Women Act of 2010 (I-VAWA), S. 2982 and H.R. 4594, SEC 101(c)(1)(D).

⁶⁵ Just to give an example, my own country, Chile, passed in 1991 an Intra Familial Violence Act which recognized for the first time the problem (even though until now the gender component is not included in the law despite all of the efforts of many organizations). Its reforms considered the inclusion of partners, ex partners and parents of children in common with the victim as first-degree authors of murder. The last reform, called Femicide Act, did not introduce a bigger punishment for those who women's murderers, but allowed to separate cases of parricide where the victim is a woman from the general intra familial homicides for statistics purposes. Besides, it includes a new justification cause for battered women who kill their abusers: the state of necessity. See generally, María Elena Santibáñez Torres and Tatiana Vargas Pinto, *Reflexiones en Torno a las Modificaciones para Sancionar el Femicidio y Otras Reformas Relacionadas (Ley No. 20480)*[Reflections on the Modifications for Sanctioning Femicide and Other Related Reforms (Act nNo. 20480)], 38 Rev. Chil. Derecho [online] 191 (2011), available in Spanish in http://www.scielo.cl/scielo.php?script=sci_pdf&pid=S0718-34372011000100013&lng=es&nrm=iso&tlng=es.

⁶⁶ See VAWA 2005, *supra* note 64, SEC 702.

⁶⁷ SPINNER-HALEV, *supra* note 10, at 77-78.

II. Unmixed Approaches Do Not Protect Women's Interests

My first argument in favor of a mixed approach is that by radical multiculturalism and radical liberalism, Western society does not protect sufficiently women's interests. Both approaches neglect a pro-women agenda, particularly the liberal one –which nowadays represent majorities' power over minorities.⁶⁸ I divide this argument in three parts. First, multicultural and liberal approaches do not really address the dilemma between the minority women's right to belong and decide according with their communities' beliefs and their right to be protected against violence. Second, a total deference for culture impedes general deterrence. Finally, a total deference for reason neither assures a full introduction of feminists' interests in women's equality to men and rejection of gender based violence.

1. Unmixed Approaches Do Not Address the Dilemma Between Multiculturalism and the Rejection of Violence Against Women

Pure liberal and pure multicultural approaches present several problems, all of them related with the lack of dealing with the tension between state's interest in women's rights and the respect for minorities' rights. In fact, Veit Bader and Martha C. Nussbaum have pointed out that both approaches negate the dilemma by simply rejecting the other side's position.⁶⁹ Doing so, they avoid the necessity to "balance conflicting claims."⁷⁰ This problem leads damage women's view in the discussion by making at least two mistakes. First, unmixed solutions forget that belonging to groups is also a women's right. As Bader has said, they leave vulnerable people in front of a "tragic choice" between "culture" and "rights,"⁷¹ as if identifying with a culture would neither be a right nor anyone belongs to a culture. In fact, these approaches present this "tragic choice" only for women who belong to minority groups, while they do not ask majority women to make such a selection. Another mistake that unmixed approaches make is not giving due attention to the inequalities and violence among both minority and liberal or secular majority groups. In fact, unmixed views not only underestimate minority women's abilities to introduce new ideals in their *nomos*,⁷² but also overestimate feminists' position within society at large –in which feminist *nomos* do not have yet a complete adherence. In this sense, both approaches make feminists to lose the opportunity of making "alliances with feminist forces within each [minority] tradition."⁷³

⁶⁸ For Linda Thompson, a feminist research should be focus more in agenda than in methodologies, since both quantitative and qualitative analyses may be equally sexist. A feminist agenda should focus in a political inquiry more than in a scientific one, which the aims of revealing oppression and protecting and empowering women against it. Linda Thompson, *Feminist Methodology for Family Studies*, 54 JOURNAL OF MARRIAGE AND FAMILY 3, 7 (February 1992). Making a parallel, a philosophical feminist discussion should have the same aim, without discarding that any position could be sexist or represent oppression against women. In this article, I state my reasons for favoring a mixed argument, pointing out that scientific-reason-based liberal arguments can be as sexist as heuristic-non-logical illiberal arguments, which at the same time may protect and empower women as well as liberal positions.

⁶⁹ Martha C. Nussbaum, *Religion and Women's Equality: the Case of India*, in OBLIGATIONS OF CITIZENSHIP AND DEMANDS OF FAITH 321, 339-340 (Nancy L. Rosenblum ed., 2000).

⁷⁰ Bader, *supra* note 5, at 320.

⁷¹ Bader, *supra* note 5, at 320.

⁷² The "normative universe" in which we inhabit. Robert Cover, *Nomos and Narrative*, in NARRATIVE, VIOLENCE, AND THE LAW 95 (Minow, Ryan & Sarat eds., 1995).

⁷³ Nussbaum, *supra* note 69, at 341 and 343.

These claims can be illustrated by three facts. Firstly, the very reason for what feminists introduced the idea of listening to diverse cultural claims was not for listening elites among minorities, but minority women's voices.⁷⁴ However, from the first decades of recognition of DV as a public and broad problem for liberal society until nowadays, some authors have recognized that the main prosecution targets in DV have been minority men.⁷⁵ They also have acknowledged that it eventually has affected minority women because their interests (family, community, etc.) have not been heard enough in the state response.⁷⁶ Moreover, even today, after decades of efforts to eliminate biases in DV prosecution, not to blame victims, and not to require them to be the first source of prosecution (evidence based prosecution efforts), minority women still are less successful in their DV claims than white women, while at the same time minority men are still over represented in DV criminalization.⁷⁷ Secondly, in a point only apparently contradictory with the first example, when the cultural defenses were broadly accepted in 1980s and 1990s, Battered Woman's Syndrome was plainly not accepted as a part of self-defense for majority and minority women in general, even though it was related as much as cultural defense to the defendant's background.⁷⁸ And thirdly, even in times when judges have not accepted "cultural defenses" they still consider the content of this type of defenses to be a valid argument for mitigation. For instance, in 2001 the United States Court of Appeals, Second Circuit, decided *United States v. Velasquez*.⁷⁹ The case was not an IPV case, but discussed how just words could provoke enough the defendant accused of second-degree murder to consider him committing the less-punished crime of involuntary manslaughter. The court says that "the classic example" of "words [that] can engender *heat of passion* only [by imparting] information of a highly provocative nature" is where "one spouse inform[s] the other spouse of [a] former's infidelity, which provokes the recipient of the information to kill the adulterer."⁸⁰ Maybe what is seen as

⁷⁴ About the rise of cultural feminism and its aims, see ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967-1975*, 243-245 (6th Ed., 2003).

⁷⁵ See generally Angela Davis, *The Color of Violence Against Women*, 3(3) *COLORLINES* 4 (Fall 2000).

⁷⁶ See generally Silvana Del Valle Bustos, *State Intrusion at Home: A Privacy or Gender Problem? An Analysis of At Home in The Law*, 3 *REVISTA CHILENA DE DERECHO DE FAMILIA [CHILEAN FAMILY LAW REVIEW]* 15-70 (2011).

⁷⁷ ERICA L. SMITH, MATTHEW R. DUROSE, AND PATRICK A. LANGAN, U.S. DEPARTMENT OF JUSTICE, *STATE COURT PROCESSING OF DOMESTIC VIOLENCE CASES 5-6* (2008), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=419>. See also ERIC CHAMBERS & MARK KRISPIN, MISSOURI STATE HIGHWAY PATROL, *DOMESTIC VIOLENCE OFFENDERS IN MISSOURI: A STUDY ON RECIDIVISM* (2011), 6, 13, 15, 18-21, available at <http://www.msdp.dps.missouri.gov/MSHPWeb/SAC/pdf/DomesticViolenceFinalReport.pdf>, asserting that white males commit more DV crimes for what they are more arrested and incarcerated, but recognizing that whites are still less charged than black and other minority offenders, and that even proportionally conviction is almost the same, black offenders still significantly less benefited by probation.

⁷⁸ Gallin, *supra* note 3, at 738. See also, Bridget B. Romero, Jennifer Collins, Carrie Johnson, Jennifer Merrigan, Lynne Perkins, Judith Szynter and Lisa Dale May, *The Missouri Battered Women's Clemency Coalition: a Collaborative Effort in Justice for Eleven Missouri Women*, 23 *ST. LOUIS U. PUB. L. REV.* 193, 216, *Quoting State v. Williams*, 787 S.W.2d 308 (Mo. Ct. App. 1990), and Mo. Rev. Stat. § 563.033 (2000): "In 1987, under the Ashcroft administration, the Missouri legislature enacted a statute, later codified as Mo. Rev. Stat. 563.033, (the 'BWS statute'), which provides a defense for battered women who kill their abusers. 'Evidence that the actor was suffering from the battered spouse syndrome shall be admissible upon the issue of whether the actor acted in self-defense.' Prior to the passage of the BWS statute, most battered women who killed their spouses had no self-defense claim because the law allowed the use of deadly force in the name of self-defense only where an immediate threat of serious bodily injury or death existed, and the defendant acted reasonably and without any premeditation in response to that threat."

⁷⁹ *United States v. Velazquez*, 246 F.3d 204 (2d Cir. 2001).

⁸⁰ *Id.*, at 213

“cultural” reactions of specific groups is actually an attitude that comes from and is still validated in all cultures.

2. General Deterrence: Violence is a threat against minority *and* majority women

Since VAW in general and DV in particular has been recognized as a public problem, all their criminal, civil and family law treatments share the aim of deterrence. Specific and general deterrence should be one of the principles of a normative action toward the issue, since the effects of a legal treatment affect not only women who belong to certain minority but also those who belong to other minorities and to majority groups. However, in doing this we should take care of reproaching the cultural defense for its content (violence) and not for its source (culture). If we do not do so, we will confront two problems that eventually will jeopardize our fight to prevent gendered violence.

On the one hand, we may assume that minority cultures *always* exercise violence against women, which may provoke discrimination against minority defendants. This assumption will also affect minority victims, whose decision to belong to a certain group will be easily disdained,⁸¹ endangering also their own access to cultural defense –as Asian women organizations pointed out when withdraw their support to the National Organization of Women’s complaint against the *Chen* case judge.⁸² On the other hand, we may assume that *choice* is a problem that only women within those groups confront when they suffer violence.

As Leti Volpp says, what liberal feminism forgets when it rejects culture as an excuse for violence is the fact that liberal society also acts as a result of culture,⁸³ under the presumption that “minority cultures are more patriarchal than Western liberal cultures.”⁸⁴ Besides, liberal society generally fails to look at the behavior of white persons as cultural, assuming that “*people of color* [are] motivated by *culture* and *white persons* [are] motivated by *choice*.”⁸⁵ The rate of intimate homicide of women in Western cultures is high enough to see that patriarchy is not only a problem of Third world countries,⁸⁶ and the amount of white victims is also high enough to realize that minority women are not the only victims of patriarchy.⁸⁷

In brief, we should reject cultural views that condone VAW for protecting the goals of Public Law (Criminal goals) that have been functional to the protection of women.⁸⁸ But if we do so only for where they come from, by just presuming that minority groups treat women less

⁸¹ See Asian women’s testimonies in the aftermath of *Chen*, *supra* note 61.

⁸² Tamar Tomer-Fishman, “*Cultural Defense*,” “*Cultural Offense*,” or *No Culture at All?: an Empirical Examination of Israeli Judicial Decisions in Cultural Conflict Criminal Cases and of The Factors Affecting Them*, 100 (2) THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 475, 480 (2010), *citing* Paul J. Magnarella, *Justice in a Culturally Pluralistic Society: The Cultural Defense on Trial*, 19 J. ETHNIC STUD. 65, 74 (1991), and Leti Volpp, *(Mis)Identifying Culture: Asian Women and the “Cultural Defense”*, 17 HARV. WOMEN’S L.J. 57, 77 (1994).

⁸³ “Culture is invoked to explain forms of violence against Third World or immigrant women while culture is not similarly invoked to explain forms of violence that affect mainstream Western women.” Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1187.

⁸⁴ *Id.*, at 1185.

⁸⁵ *Id.*, at 1189-1190. *Emphasis added*.

⁸⁶ For instance, in the U.S. from 1976 to 2005 there were 64,529 intimate homicides, where a 64.8% of victims were female. BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE U.S., *available at* <http://bjs.ojp.usdoj.gov/content/homicide/intimates.cfm>.

⁸⁷ In 2005 in the U.S., intimate partners homicide victims were divided by race and gender as follow: 183 white males, 789 white females, 138 black males, 335 black females, 7 other race males, and 44 other race females. *Id.*, at “Chart D details,” *available at* http://bjs.ojp.usdoj.gov/content/homicide/d_intgender.cfm.

equality and more violently than majority groups, we can neglect one of the biggest achievements of the anti DV movement: the recognition that *choice* in victims may be affected not only by a particular *culture*, but by interactions that until now are part of *all cultures*.

3. Pure Liberalism and Secularism Can Exclude Feminist Arguments and Goals from the Discussion.

The last part of my first claim is that by plainly refusing illiberal arguments in the public discussion about VAW we may end rejecting feminist arguments expressed in a non-linear reasoning fashion. In this point it is important to mention that the religious composition of ethnic or cultural groups' ideals is a key part of their attitudes.⁸⁹ The liberal rejection of cultural and religious arguments, then, it is always somehow related with a rejection of non-secular arguments, those views not based in a secular logic and linear reasoning. This situation conspires against feminists who argue that not only reason is what leads our decision-making.

There are at least two problems with a naïve endorsement of Rawls' proposal of transforming into political reasonable arguments understandable for all citizens those arguments based in religious or metaphysical "comprehensive doctrines,"⁹⁰ beyond the euphemism of understanding ethnicity without a religious component. First, it obligates opponents to use arguments that do not express their real motivations. And second, it impedes to see that reasonable arguments are not always reasonable as the non-reasonable ones are not always unreasonable.

About the first problem, as Steven D. Smith indicates, the Rawlsian exercise distorts the public discussion instead of enhancing it, since fake arguments do not have the same quality of real arguments.⁹¹ In addition, as Jeffrey Stout says, when the secular society obligates citizens to hide their actual motivations for engaging or supporting some conducts, it rules out the possibility of participation in the public debate to people that simply become "speechless when pressed for linear reasons."⁹² This seems more a discrimination against people who think circularly not based in their lack of linear reasoning but actually in the fact that their ideas are not

⁸⁸ Precisely, feminists who value minority culture consideration in the public discussion have cared more about the way in which standardized Western secular reasoning has aggravated the violent problem to minority women than how it has affected minorities' rights as groups (association). See generally RICHARD FELSON AND PAUL-PHILIPPE PARÉ, THE REPORTING OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT BY NONSTRANGERS TO THE POLICE (NCJRS, 2005), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/209039.pdf>; and Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in SISTER OUTSIDER, THE CROSSING PRESS FEMINIST SERIES (1984).

⁸⁹ Features that form a "a collective belief in kinship" and a "reinforce[d] and perpetuate[d] subjective feeling of belonging" in an ethnic groups, are "language, religion, race, cultural traits, and a sense of a shared history, as well as powerful symbols associated with the [...] group." Erik H. Cohen, *Components and Symbols of Ethnic Identity: a Case Study in Informal Education and Identity Formation in Diaspora*, 53 (1) APPLIED PSYCHOLOGY: AN INTERNATIONAL REVIEW 87, 88 (2004). These groups include religion as a fundamental part of their formal and informal educational effort, creating symbols and social action with the aim to maintain their heritage. *Id.*, at 91 and 101.

⁹⁰ See in general Rawls, *supra* note 4.

⁹¹ "The secular vocabulary is too truncated to express the full range of our values, intuitions, and commitments, or convictions[...] If our deepest convictions rely on [notions] about a purposive cosmos, or a teleological nature stocked with Aristotelian "final causes," or a providential design [...], and if these convictions lose their sense and substance when divorced from such notions, then perhaps we have little choice except to *smuggle* such notions into the conversation –to introduce them incognito under some sort of secular disguise." STEVEN D. SMITH, THE DISENCHANTMENT OF SECULAR DISCOURSE 24 and 26 (2010).

⁹² Jeffrey Stout, *Religious Reasons in Political Argument*, in THE ETHICS..., *supra* note 4, 261-292, 290.

“held in common” with the secular society.⁹³ The same can be said about any idea, religious or not, discarded for not belonging to linear reasoning or to “practical reasoning” as liberalism asks.⁹⁴

A second problem, related with this discrimination based in a simple lack of agreement between ideals,⁹⁵ is the presence of a double bias in large groups about the dominated groups’ argumentation. On the one hand, liberal society tends to identify any characteristic of minority groups to be rejected as religious based, seeing religions as always patriarchal.⁹⁶ And on the other hand, liberal theorists tend to negate any base in religious values for their own ideals⁹⁷ and underestimate their own patriarchal attitudes. This underestimation goes far to the point of assuming they not only do not react from religious beliefs but also, as Volpp criticizes, they do not make decisions based in cultural perspectives.⁹⁸ Further, liberals tend to make a division between what comes from *choice* and what comes from *culture*, assigning to themselves (white Western thinkers) the former and to “*the others*” (colored non-Western unreflective contenders) the less valued response of a motivation different than *choice*.⁹⁹ In this attitude, liberals forget that *choice* (selecting between two options) and *consent* (agreeing with an action) are led by more elements than *reason*. Looking for rational explanations for every single act, liberals forget that in their own culture, fundamental conducts have been justified by love, passion, and even hate.

The two problems I mentioned have caused that the *male* capacity of *reason* has been promoted to be the only or at least the main quality of human beings’ dignity, and then as the base of human equality, neglecting in this equation *emotions* and other values historically assigned to *females*. And that, eventually, attempts against the feminist pretensions of equality and the end of gendered violence.

Feminists as early as in the 1790s have advised us that being reasonable is not the only characteristic that makes us equal human beings. Mary Wollstonecraft, for example, asked for recognition of women as “reasonable creatures” as a minimum, due the stress that a sexist society put in our “fascinating graces” to hide the fact it disregarded women as in a “state of

⁹³ *Id.*

⁹⁴ According to Maria Alejandra Carrasco, Adam Smith proposed a “system of practical reasoning” for political discussion, where the participants are “impartial spectators”. Moreover, even though Smith mentions sentiments, his theory does not include them, because his view of them is marked by his idea of holder of sentiments as impartial or objective. See in general Maria Alejandra Carrasco, *Adam Smith's Reconstruction of Practical Reason*, (58)(1) THE REVIEW OF METAPHYSICS 81-116 (Sep., 2004).

⁹⁵ “The liberal state [...] is supposed neutral[...] among competing conceptions of the good; but in practice, and more and more in theory, the liberal state is just as insistent as any other that everybody should believe the same basic things... as long as they are liberal things.” Stephen L. Carter, *liberal Hegemony and Religious Resistance: An Essay on Legal Theory*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 25-53, 34 (McConnell, Cochran & Carmella eds., 2001).

⁹⁶ See for instance, Michael W. McConnell, *Old liberalism, New liberalism, and People of Faith*, in CHRISTIAN PERSPECTIVES..., *supra* note at 5-24, 5: “Religion is alleged [by liberals] to be authoritarian, divisive, irrational, and exclusionary.” See also, Okin, *supra* note 6, at 14: “Although the powerful drive to control women –and to blame and punish them for men’s difficulty in controlling their own sexual impulses– has been softened considerably in the more progressive, reformed versions of Judaism, Christianity, and Islam, it remains strong in their more orthodox or fundamentalist versions. Moreover, it is by no means confined to Western or monotheistic cultures.”

⁹⁷ “In many circles, religion is seen as an illiberal phenomenon in our public life –a challenge to the rational and tolerant ethos of modern liberalism. Liberal democracy, it is said, is predicated on “reason,” which is said to be antithetical to faith.” McConnell, *supra*.

⁹⁸ She focuses only in culture, not necessarily in its religious component. See generally Volpp, *supra* note 85.

⁹⁹ *Id.* at 1190-1195.

perpetual childhood.”¹⁰⁰ She affirmed that what deprived women and poor people from being considered as part of that reasonableness that dominates the world¹⁰¹ and “guides passions,”¹⁰² is the lack of access to instruction.¹⁰³ Moreover, she emphasized again and again in her writings that what makes a woman to deserve equality is her “virtue,”¹⁰⁴ and included rationality as part of the human affections.¹⁰⁵ Further, like other early feminists, Wollstonecraft rejected the domination of mainstream religions not because of their existence but because their elites were not practicing faithful and virtuously their teachings, affirming emphatically that women’s dignity and equality and our destiny not to be submitted to men come from the fact of being part of a race created by God.¹⁰⁶ If we reject cultural and religious arguments, we may be rejecting with them those feminine arguments and characteristics that even humanist feminist like Wollstonecraft and Nussbaum,¹⁰⁷ and gynocentric feminists, have emphasized to be worthy: motherhood and other women’s roles supposedly not identical to men’s roles, which can be the base of resistant to domination and the base of *human dignity*,¹⁰⁸ and then *equality*. This risk is increased by the fact that “female values”¹⁰⁹ are more notorious in minority, and even majoritarian, cultural and religious groups than in the pretended only liberal and secular society. In a Rawlsian world, Audre Lorde’s argument that the expression “It feels right to me” implies “the first and most powerful guiding light toward any understanding,” along with the recognition that “the erotic is the nurturer or nursemaid of all our deepest knowledge,”¹¹⁰ should be immediately rejected. Is this the world where feminists, from liberal to gynocentric, want to argue against gendered violence?

With respect to violence against women, when courts plainly decide not to hear minority cultural arguments that justifies violence, they at the same time are rejecting the idea of hearing minority women, or women in general.¹¹¹ In fact, as I mentioned before, in a Western society like the American, while minority men seem to be more targeted by DV prosecution, minority

¹⁰⁰ “My own sex, I hope, will excuse me, if I treat them like rational creatures, instead of flattering their *fascinating* graces, and viewing them as if they were in a state of perpetual childhood, unable to stand alone.” Wollstonecraft, *supra* note 8, at 76.

¹⁰¹ Mary Wollstonecraft, *A Vindication of the Rights of Men*, in MARY WOLLSTONECRAFT... *supra* note 8, at 1-64, 41.

¹⁰² *Id.* at 31.

¹⁰³ *Id.* at 15.

¹⁰⁴ *Id.* at 48 and 61. *See also* Wollstonecraft, *supra* note 8, at 84.

¹⁰⁵ *Id.*, at 103.

¹⁰⁶ Wollstonecraft, *supra* note 101, at 144.

¹⁰⁷ *See supra* note 8.

¹⁰⁸ For example, several mothers’ groups worked from their images as nurturers and providers of love to fight against dictatorships in Latin America during 1970s and 1980s, even when the patriarchal military governments enhanced maternal roles in a dominating gendered family structure as part of their repressive plans. NIA PARSON, *GENDERED SUFFERING AND SOCIAL TRANSFORMATIONS: DOMESTIC VIOLENCE, DICTATORSHIP AND DEMOCRACY IN CHILE* 78 (Ph.D. Dissertation, Rutgers University, 2005), *quoting* X. Bunster, *The Emergence of a Mapuche Leader: Chile*, in *SEX AND CLASS IN LATIN AMERICA* 300 (Nash & Safa eds., 1976).

¹⁰⁹ Female values “proclaimed [by] cultural feminist,” for instance, “either with openly biologicistic arguments, as in Jane Alpert’s influential article, ‘Mother Right,’ or with behaviorist window dressing,” are “none other than the traditional feminine virtues. [That is being] loving, nurturing, in tune with nature, intuitive and spiritual.” Ellen Willis, *Radical Feminism and Feminist Radicalism*, 9/10 *SOCIAL TEXT* 91, 112 (Spring - Summer, 1984).

¹¹⁰ Audre Lorde, *Uses of the Erotic: the Erotic as Power*, in *SISTERS OUTSIDER: ESSAYS AND SPEECHES* 53-59, 56.

¹¹¹ If we define minority as a group without power in society.

women are less successful in their access to justice.¹¹² Besides, minority women also suffer from excesses in prosecution policies, including a lack of protection in mandatory arrest (leading to dual arrest of women who suffer language and racial barriers), a lack of understanding of immigration status, a lack of consideration of the fact situations that make minority women to be more dependant to men such as the higher unemployment rate for minority communities,¹¹³ and a lack of conversation about how minority women perceive the judicial response in relationship with their status as a minority.¹¹⁴ These cultural barriers come from a rejection of seeing “the other’s” differences as meaningful in the fight against violence, and may cause that minority women stop to search for help in the majority society, which increases rather than decreases the presence of violence in those communities.

Thus, in brief, the rejection of minority arguments, which are greatly related with religion and other illiberal sources of thinking, may cause that society rejects not only non-secular but also any illiberal argument related with *emotions* or other values usually assigned to women or not recognized by those who see in reason the attribute to grant human dignity. This may cause a misshaping in the argumentation of human dignity, and equality, by over relying in reasoning as the source of them, and disregarding characteristics that feminists historically have highlighted like positive in women. Besides, the rejection of emotions may discourage minority women to trust in the Justice system, and then discourage violence report. Consequently, a pure liberal and secular argumentation is opposed to feminism goals in the fight against violence.

II. Cultural Arguments May Be Found Fallible: a Distinction Between Human Life and its Integrity and Equality

When culture affects equality, mainstream society can accommodate its rules if people treated unequally *accept voluntarily* that treatment (*consent*). This can be translated into the exercise of the “right to exit,” according to which “members of groups where autonomy is not prized, have the right to exit [incorporating themselves] to a society that encourages autonomy.”¹¹⁵ In the case of violence, however, a plain accommodation is impossible because even if we tolerate minority arguments against equality, there is another more important society value at risk: citizens’ life integrity. This value modifies the exit right as it is known in the case of equality, mainly because the dynamics of violence do not allow women who suffer it to make decisions in the same manner than those who only are affected by inequality. In this part of this article we may trace a distinction between equality and life integrity by making a brief of the legislative treatment that Western countries have about these rights, which indicates a clear separation between them. Then, I will analyze how a scrutiny into the right to exit may lead to confusions if we do not separate equality and life integrity in the issue of VAW.

¹¹² See *supra* note 77. Also see Silvana Del Valle, Biases in Domestic Violence Criminal Decision Making: Are System Actors Lenient in Domestic Violence Cases?, CORNELL LAW SCHOOL INTER-UNIVERSITY GRADUATE STUDENT CONFERENCE, working paper 51 (2011), available at http://scholarship.law.cornell.edu/lps_clacp/51

¹¹³ Michelle Decasas, *Protecting Hispanic Women: the Inadequacy of Domestic Violence Policy*, 24 CHICANO-LATINO L. REV. 56 (2003).

¹¹⁴ See for instance, Stacey A. Guthartz, *Domestic Violence and the Jewish Community*, 11 MICH. J. OF GENDER & L. 27 (2004).

¹¹⁵ SPINNER-HALEV, *supra* note 10, at 57.

1. A Differentiated Legislative Treatment of Equality and Life Integrity

Life and its integrity are among the most important liberal values, and are separated from equality. This differentiated conceptualization, recognized by the law and the literature, shows that ensuring equality is not exactly the same than protecting life and its integrity.

In the Universal Declaration of Human Rights,¹¹⁶ for instance, after a general announcement that “all human beings are born free and equal in dignity and rights” (Art. 1), and that “everyone is entitled to all the rights and freedoms set forth in this Declaration” (Art. 2), the first enlisted right is “the right to life, liberty, and the security of the person” (Art. 3). In this document, equality is paramount, but it is for those who are *born*. In other words, who are *alive* are *then* equal and protected to continue being alive, free and *in security*. Moreover, in the U.S., life has been recognized to be a fundamental right that people cannot lose without a due process.¹¹⁷ Moreover, in the Declaration of Independence, the Founding Fathers¹¹⁸ declared that “all men are *created equal*, that they are endowed by their Creator with certain unalienable Rights, that among these are *Life, Liberty and the pursuit of Happiness*.”¹¹⁹ As we see, and without making any comment about the illiberal reasoning that this Declaration makes about the source of Human Rights, all human beings are *considered equal* and have the paramount rights of *life*, liberty and pursuit of happiness, all of which are *separated* rights. Similar separation, and a position of privilege of *life and human dignity*, is present in different liberal constitutions. For example, the German Constitution says that “Human dignity shall be inviolable” (Art. 1.1) and that “every person shall have the right to life and physical integrity” (Art. 2.2).¹²⁰ The Spanish Constitution establishes that the use of sovereignty should aim to “[p]romote the progress of culture and the economy to ensure a dignified *quality of life* for all” (Preamble); that “[e]veryone has the right to *life and to physical and moral integrity*; and that under no circumstances people may be subjected to torture or to inhuman or degrading punishment or treatment.” (Art. 15) This is a right completely separated from the rights of freedom and equality (Art. 9.2).¹²¹ In the Federal Constitution of the Swiss Confederation, the “Right to life and to personal freedom” (Art. 10) are separated from the right to “Equality before the law” (Art. 8).¹²² The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹²³ is clear in addressing inequality without any direct connection with violence. This Convention does not mention the word violence in any article. It obligates parties to guarantee equal conditions in the access to institutional structures and rights. Thus, even though these obligations may have a positive impact in what concerns violence, the U.N. document never confuses inequality with violence. Further, the Inter-American Convention on The Prevention, Punishment, and Eradication of Violence Against Women “Convention of Belem Do Para”¹²⁴ recognizes separately among women’s rights and freedoms the “right to have her life respected” (Art. 4.a),

¹¹⁶ Universal Declaration of Human Rights (1948).

¹¹⁷ See Fifth and Fourteenth Amendments.

¹¹⁸ And beyond debates about abortion, euthanasia, war and the death penalty –which are not the scope of this essay.

¹¹⁹ Declaration of Independence (1776). *Emphasis added*.

¹²⁰ A MAGYAR KOZTARSASAG ALKOTMANYA.

¹²¹ C.E.

¹²² BV, CST, COST, FED.

¹²³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Dec. 18, 1979, 1249 U.N.T.S. 13.

¹²⁴ Inter-American Convention on The Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para.” June 9, 1994, G.A. OAS, Inter-American Comm’n of Women, 24th Sess.

the “right to have her physical, mental and moral integrity respected” (Art. 4.b), and the “right to equal protection before the law and of the law” (Art. 4.f).

A view that life and its integrity are among the main human rights is separated from equality is also endorsed by some liberal literature. For example, among the firsts capabilities that Nussbaum proposes are Life, Bodily Health and Integrity, Bodily Integrity, and Sense-Imagination-Thought.¹²⁵ She defines capabilities as activities “so central [to] human beings” that “they seem definitive of a life that is truly human.”¹²⁶ Interestingly she does not list Equality among these capabilities.¹²⁷ Her opinion coincides with the sociologist Robert Dubin’s statement that “the social world of the person, however complex, can be ordered through the operation of *central life interests, to maintain self-integrity* even while behaving in contradictory ways.”¹²⁸ For him, this is the main needed “feature of the viable social bonds” which “link[s] individuals and society.”¹²⁹

In brief, the liberal legal thought has conceived equality and life (and its integrity) separately. Further, our society has comprehended life and its integrity as an antecedent of equality. These ideas can be concluded from the formulation of the right to equality as one conceded to who is born, and from the listing in legal documents and philosophical and sociological writings of life and life integrity in a primary place before equality. Thus, a differentiated treatment of cultural arguments in the case of inequality and violence is justified under the Western legal paradigm.

In fact, legal definitions of VAW and DV in particular take these considerations into account, assisting us in the appropriate deliberation about cultural arguments. For instance, the “Convention Belem Do Para” defines VAW as any “physical, sexual and psychological violence,” including family, domestic, community and state violence, and exemplifies it by listing a series of crimes that include *force* in their common definition such as “rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment” (Art. 2).¹³⁰ In the U.S., the federal law does not define VAW or DV directly, leaving definition to states, but does make references to the same type of crime mentioned in the Convention Belem Do Para.¹³¹

¹²⁵ NUSSBAUM, MARTHA C., SEX AND SOCIAL JUSTICE 41: “1. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely or before one’s life is so reduced as to be not worth living. 2. *Bodily health and integrity*. Being able to have good health, including reproductive health; being adequately nourished; being able to have adequate shelter. 3. *Bodily integrity*. Being able to move freely from place to place; being able to be secure against violent assault, including sexual assault, marital rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction. 4. *Senses, imagination, thought*. Being able to use the senses; being able to imagine, to think, and to reason –and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training; being able to use imagination and thought in connection with experiencing and producing expressive works and events of one’s own choice (religious, literary, musical, etc.); being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise; being able to have pleasurable experiences and to avoid nonbeneficial pain.”

¹²⁶ *Id.*, at 39.

¹²⁷ *See Id.*, at 41-42.

¹²⁸ Robert Dubin, *Central Life Interests: Self-Integrity in a Complex World*, 22(4) THE PACIFIC SOCIOLOGICAL REVIEW (Oct., 1979) 405-426, 405.

¹²⁹ *Id.* at 423.

¹³⁰ *Supra* note 124.

¹³¹ *See* VAWA 2005, *supra* note 64, Sec. 3. Universal Definitions and Grant Provisions. For an example of state legislation, *see* Mo. Rev. Stat. § 455.010 (2011): “As used in this chapter, unless the context clearly indicates otherwise, the following terms shall mean: (1) “Abuse” includes but is not limited to the occurrence of any of the

Thus, after considering these elements, an appropriate deliberation about cultural arguments is one that accepts them when they do not justify *unconsented harm to life integrity* (physical and psychological health). In the rest of these article, I will discuss how we should evaluate consent and harm, always under the consideration that life and its integrity is a separated right from equality, and posed a privileged place among liberal rights.

2. The Right to Exit Confusion

A common problem caused by the extreme focus of liberal arguments in equality is to see violence as a matter of *choice* in the same manner than inequality can be. In fact, that vision of *choice* and *consent* is so strong in the liberal society that even mixed approaches in the topic of multiculturalism and the rejection of violence make this mistake. This problem leads us to inappropriate applications of the right to exit in violence cases, as I will immediately explain.

A. Even mixed approaches may confuse the distinction: Being Too Focused in Equality Neglects the Violence Dynamics and at the Same Time Women's Decision-Making Abilities.

Mixed approaches have two basic problems in what concerns the dynamics of violence. When they focus in inequality as if it was the only violation of women's rights, or the sole source of violence, mixed views at the same time neglect the dynamics of violence and underestimate the possibility of *decision* by women who suffer violence. These two contradictory problems can be appreciated in the analysis of some assumptions that mixed approaches make.

For instance, Okin's approach does not concede almost any possibility of agency to women who participate in religious groups. Okin says that "Catholic women's *apparent consent* to such unequal treatment [that prevents them to be elected as priests] does not justify the endorsement of it by the liberal state."¹³² There is also a lack of validation for women's agency in the following supposedly mixed Nussbaum's idea: "One might ask exactly how does that contribute to make [culture] worth preserving?[...] There would appear, indeed, to be something condescending in preserving for contemplation a way of life that causes real pain."¹³³ She talks of condescendence to *culture*, but she is actually condescending women by judging them as if the were unable to change their own cultures.

Another example in Okin's approach is her assumption that election is the only valid way to have legitimate representation.¹³⁴ She disregards the fact that even in a strong democracy like the American those who are elected usually belong to a class that can afford a political competition,¹³⁵ without to mention the fact that people's information may be easily subject to

following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner." The list includes assault, battery, coercion, harassment, sexual assault, and unlawful imprisonment.

¹³² Okin, *supra* note 6, at 87. *Emphasis added.*

¹³³ NUSSBAUM, *supra* note 125, at 37.

¹³⁴ I ask myself in the case of small groups if when traditions are recognized to be fair by the majority of the members, is it not another way to validate their will, without a formal election? Is it practical for them to make elections or voting?

¹³⁵ Not just economically, but in terms of access to political strategies, and academic and political information sources.

manipulation in a society with the higher inequalities and poorest education system of the OECD countries.¹³⁶

How much of these assumptions are due to what Leti Volpp called the “binary logic” of liberalism, a logic that sets multiculturalism against feminism?¹³⁷ I think a lot, since liberal linear reasoning, and its Rawlsian rejection of non-secular arguments not understood by the majority of population, easily erases the grays pigments between any two given arguments. The two assumptions I pointed out are only examples of how mixed approaches that tend to include more liberal than illiberal voices neglect two key aspects of violence: its dynamics, and the necessity and possibility of victims empowerment to prevent it.

About the lack of care to violence dynamics, we can say that liberal-leaning mixed approaches do not fully include the idea that violence against women is a question of Power and Control present in *all cultures*. They do not mention that those who hold power may perform “soft” violent conducts that increase in level over the time. This dynamic is described in the “power and control wheel” theory of DV: the wheel of abusive power goes over coercion and threats, intimidation, emotional abuse, isolation, denying and blaming, use of children, use of male privileges, and economic abuse.¹³⁸ These conducts eventually form a pattern of control that ends in *coercion* over women’s decisions.¹³⁹ In fact, DV acts may stop there or end in a “regime of intimidation and control,”¹⁴⁰ which causes a progressive and cyclical state in the maltreated person, part or not of a minority group, that isolates her and makes her to be afraid enough to perform “self-censorship,” and of course not to seek for help.¹⁴¹

Even if we do not believe that the Battered Women Syndrome is an element of all DV cases, the broad acceptance of the dynamics of power presented in the Duluth’s “power and control wheel” among the anti-DV community, including the nationwide application of Batterer Intervention Programs based in the model, is a good reason to at least suspect that women who suffer DV may be affected in their decision making. In fact, we might more than suspect that women’s decision-making is affected by the dynamics of violence when we see that criticism against Duluth model are more focused in the therapy process, and in the reasons that cause the power-control dynamics (psychological or cultural-gendered), than in the fact that the dynamics *does happen*. However, if an approach toward multiculturalism simply poses culture in opposition to reason, and choice as it was an alien to culture and only present in reason, how mixed the approach is will not matter. In fact, it always will tend to give more advantage to liberal than illiberal positions. It will, in the case of DV in particular and VAW in general, always assume, as liberal approaches do, that majority women do not act culturally oriented. Beyond, it may then assume that majority women do not suffer from any constraint in their decision-making when they confront threats to their rights.

Finally, along with the underestimation of power issues in the case of violence, authors who propose mixed approaches may make the mistake of advocating for a vertical empowerment

¹³⁶ See in general, OECD, DIVIDED WE STAND: WHY INEQUALITY KEEPS RISING 47-82 (2011). See also OECD, SOCIETY AT A GLANCE 2011 - OECD SOCIAL INDICATORS (2011), available at www.oecd.org/els/social/indicators/SAG, locating Chile in the first and the U.S. in the fourth position of the worst income distribution among OECD countries.

¹³⁷ Volpp, *supra* note 83, at 1211.

¹³⁸ Domestic Abuse Intervention Project (Duluth), Minnesota, *Power and Control and Equality Wheels*, in CLARE DALTON AND ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 67 (2001).

¹³⁹ DALTON AND SCHNEIDER, *supra*, at 57.

¹⁴⁰ Duluth, *supra* note 138, at 66.

¹⁴¹ Karla Fischer, Neil Vidmar and Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 146 SMU L. REV. 2117, 2129.

of women –probably because they just oppose culture and reason, as Volpp suggests about liberal approaches. This kind of empowerment does not promote sufficiently the agency that minority women already have, which allows them to make “emancipatory change on their own behalf.”¹⁴² I believe only an empowerment that arises from the own women’s capacity can be effective in a long term. At least it seems to be one of the aims of VAWA 2005 and I-VAWA 2010, reflected in the provision of economic support to “*enhance or ensure* the safety and economic security” of women and children victims of violence.¹⁴³ However, a horizontal empowerment depends on how agencies in charge of the funds see the capacity of minority women to be *independently* safe and secure. In other words, how they solve the dilemma between respect for culture (and cultural based decisions) and the rejection of violence. In how they see reason-based or non-reason based decisions as worthy of being called *choice* or *consent*.

Thus, if we incorporate these two considerations, dynamics of violence and women’s agency, in the public discussion, we may address appropriately cultural defenses. As I said before, they should be fallible when condone unconsented harm to the physical or psychological health (life integrity). However, if we take into account the dynamics of violence and the necessity of women’s agency, the evaluation of *consent* and *harm* should be one that considers the *problems in decision-making* that abused women suffer and at the same time *their own capacity to define what harms them and to defend themselves*. If we do so, we can better protect women from violence, respecting at the same time their rights to belong to a community and practice its beliefs. Rights that the Convention Belem Do Para and authors like Nussbaum consider fundamental.¹⁴⁴

B. The Right to Exit Inequality Should Not be Applied in the Same Way in the Case of Violence

Relying on exclusively in *reason*, as liberalism tends to do, confuses the discussion about women’s rights as being solved only under *reasoning*, that is under *choice* or *consent* in a liberal conception. This provokes to treat every women’s rights violation as a problem to be solved by consent and choice, expressed in liberal or rational terms, applying a solution that was designed to end only the equality problem: the “right to exit.” If we study the elements of the “exit right” we will see that there are at least two reasons for not applying it in the case of violence, even in its more soft form, in the same manner than in the case of inequality.

When Spinner-Halev describes the “exit right” he recognizes that liberal society celebrates “autonomy” and “liberty”, and that choices are part of them.¹⁴⁵ Then, he says that even if “autonomy is a matter of degree,”¹⁴⁶ when a person renounces equality for belonging to a group, he or she makes it in two ways: “subordination” and “voluntary separation.”¹⁴⁷ While this author promotes the *choice of being restricted* as a way to obtain more autonomy (since every piece of autonomy we achieve in life comes from certain restrictions we endure), he thinks that minimal conditions are needed to ensure that a person is really *choosing* to be restricted.¹⁴⁸ Then,

¹⁴² Volp, *supra* note 83, at 1211.

¹⁴³ See for example VAWA 2005, *supra* note 64, Subtitle L.

¹⁴⁴ Convention Belem Do Para, *supra* note 124: “The right to associate freely” (Art. 4.h); and “[t]he right of freedom to profess her religion and beliefs within the law” (Art. 4.i). NUSSBAUM, *supra* note 114, at 41: “7. Affiliation.”

¹⁴⁵ SPINNER-HALEV, *supra* note 10, at 51 and 47.

¹⁴⁶ *Id.*, at 47.

¹⁴⁷ *Id.*, at 46.

¹⁴⁸ *Id.*, at 57.

he proposes that minimal conditions to ensure people's *choice* to live in a restrictive community are those that allow individuals "to exit" the community: the economical ability to be independent from community,¹⁴⁹ a minimal education, a minimal range of options, and not be *harmed or forced*.¹⁵⁰ As we see, in the right to exit, *violence nullifies the option*.

This nullification of option by harm and force give us two reasons for not applying the "exit right" in the same fashion in the case of violence, even when it only implies low degree physical and physiological violence. In the first place, according to Spinner-Halev the "right to exit" should be guided by the "principle of nonintervention" once the group met some basic conditions.¹⁵¹ This is an issue that impedes protection against violence. First, this lack of state intervention leaves the definition of harm and coercion precisely to those who are applying the harm and coercion. Moreover, even if we rely only on what women say, we will be neglecting the fact that *silence* about violence is a problem not only for minority women but also for all women when they experience IPV. Women "generally [...] do not report their initial intimate partner victimization, but typically suffer multiple assaults or related victimizations before they contact authorities or apply for protective orders."¹⁵² In the second place, if we apply the condition of economic support plainly as Spinner-Halev proposes, we may make assumptions that will affect women's possibility to exit. Spinner-Halev, in order not to over interfere in minority groups' freedom of association and religion, proposes this condition only for very insular groups since other groups' members have more contact with sources that allow them to have the enough economic empowerment once they decide to leave the group.¹⁵³ This idea can make us to assume that women of not insular minority groups do not need so urgently this kind of economic supports. In the case of violence, however, there are factors that even in the case of women who belong to rich and/or less insular communities can make them less able to empower themselves economically. In other words, a woman who has been hurt in her integrity is less able to overcome financial dependency than a woman who has been damaged in her right to equality.¹⁵⁴

¹⁴⁹ *Id.*, at 60.

¹⁵⁰ *Id.*, at 71.

¹⁵¹ *Id.*, at 71.

¹⁵² ANDREW R. KLEIN, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS, AND JUDGES, U.S. Department of Justice, Office of Justice Programs, Washington, DC, 2009, p. 6, available at <http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence/practical-implications-research/welcome.htm>, citing the following studies: Finn, M., B. Blackwell, L. Stalans, S. Studdard, and L. Dugan, "Dual Arrest Decisions in Domestic Violence Cases: The Influence of Departmental Policies," *Crime and Delinquency* 50(4) (October 2004): 565-589, NCJ 207463, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=207463>; Harrell, A., and B. Smith, "Effects of Restraining Orders on Domestic Violence Victims," *In Do Arrest and Restraining Orders Work?*, Ed. E. Buzawa and C. Buzawa, Thousand Oaks, CA: Sage, 1996: 214-243; and Keilitz, S., P. Hannaford, and H. Efke, "Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence," Final report for National Institute of Justice, grant number 93-IJ-CX-0035, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1997, NCJ 172223, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=172223>.

¹⁵³ SPINNER-HALEV, *supra* note 10, at 78: "I doubt that exit funds are needed for those religious conservatives who are not as insular as the [Canadian religious group named] Hutterites, [or the American] Amish, or Hasidic Jews."

¹⁵⁴ The World Bank explains that being either cause or consequence, domestic violence victims have lower economic and social statuses. WORLD BANK, WORLD DEVELOPMENT REPORT 2012 84 (2013). See also, DALTON AND SCHNEIDER, *supra* note 139, at 840, quoting the trial transcripts of Dr. Leonore Walker's testimony in *Curtis v. Firth*, 123 Idaho 598, 850 P.2d 749 (1993): "[victims of violence are in] emotional distress [qualified as] 'outrageous' [and it includes] nine different psychological abusive [conducts.... One of them is] the denial of powers [by telling women things like] that they don't cook right, that they don't clean right, hat they don't take care of the children properly, that they're not very good at what they're supposed to do. They don't do sex

Other approaches (in the multicultural, liberal and mixed paradigms) have variations of the right to exit, from posing the right of the group to exist over the members' right to leave the group, to some than encourage people to leave the group.¹⁵⁵ Nevertheless, and summarizing, when mixed approaches, like the proposed by Vader or Okin, rely too much on the liberal capacity of choice, they may neglect what happens in a violent situation. That can occur even if they look for women's opinions, because that inquiry must be made not only in general but also in any particular violent situation, and not only for minority women but also for all women. After all, inequality is not the same than violence.

III. The Psychology of Decision-Making

A third justification for a mixed approach is the fact that from a psychological perspective, a public conversation that encourages a respect for the motivation of all disputants allows them to move toward mutual understanding instead of getting them stuck in their positions. Conversations of this category may enhance a better adherence to the rejection of violence by allowing the parties to realize that minority communities are more engaged to this principle than we think, and that they have evolved and will keep evolving over the issue.

Dan M. Kahan and Donald Braman' studies in the psychology of decision-making have shown that in general all citizens make opinions and decisions about public policy using "cultural commitments," kind of "heuristics [...] in the rational processing of information."¹⁵⁶ Moreover, these authors' *cultural cognition theory* indicates that "*cultural values* [...] play a large role" in the "process of deciding which activities, courses of action, and states of affairs promote [our] interest."¹⁵⁷ In this heuristic seeking of what is better for our interest, we rely on experts or individuals that share our own orientation,¹⁵⁸ guiding our decisions.¹⁵⁹ These studies not only show that all individuals make decisions relying in cultural values, but also make two other conclusions that are key to accept cultural arguments in the public discussion.

First, relying in cultural leaders does not implicate that people adhere blindly to their opinions but only that we use them as an orientation to make our own decisions.¹⁶⁰ And second, when information is presented in "forms that affirm rather than denigrate their values," people open their minds and are less "likely to resist factual information" presented by others.¹⁶¹ The reason for this phenomenon is the fact that people cognitively access to their culture earlier than to the factual arguments presented in policy disputes¹⁶² brought to the public square.

Doing the contrary, for example "heighten[ing] the general sense of status," only "reinforce[s] the disposition of citizens to form beliefs about those cases that support their

right, whatever it is, [etc.]"

¹⁵⁵ For more details, see generally SPINNER-HALEV, *supra* note 10, 57-85 (Chapter 3: "Autonomy and the Religious Life").

¹⁵⁶ Dan M. Kahan and Donald Braman, *Cultural Cognition and Public Policy*, 24 YALE L. & POL'Y REV 149, 151 (2006).

¹⁵⁷ *Id.*, at 154.

¹⁵⁸ *Id.*, at 155-156.

¹⁵⁹ *Id.*, at 162.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*, at 166.

¹⁶² *Id.*, at 169.

partisan [or cultural] worldviews.”¹⁶³ These authors propose that if all parties in a discussion acknowledge the other party is in “good faith,” their anxiety and opposition against the other party’s opinion may change for more openness, and they even may recognize that their “beliefs *aren’t* in fact essential to the identity of persons of their cultural or ideological persuasion.”¹⁶⁴

There have been examples of this kind of dialogue in the Western world. Here I will mention three. First, in the debate about abortion reform in France some decades ago, liberal pro-choice groups rejected the requirements of “distress” certifications or counseling before to access abortion as religious pro-life groups claimed.¹⁶⁵ Since in the discussion both sides recognized that their motivations were, respectively, to ensure “the autonomy of women” and to “reduce the abortion rate,” the two reforms allowed an “unreviewable certification of personal ‘distress’” and counseling and a reinforced social support for single mothers.¹⁶⁶ This solution, in fact, reduced the abortion rates and gave women more options in their abortion decisions,¹⁶⁷ satisfying in certain degree both sides. Another example happened in Seattle, where a group of physicians avoided a complete genital mutilation of some Somali girls. The physicians discussed with their parents the possibility of making a “small cut” in the clitoris as an “alternative to traditional circumcision.”¹⁶⁸ The alternative was accepted because it met “the cultural and religious demands of the Somali community” and the Seattle community, as well as the girls’ parents’ aim of “protect[ing these] young Somali girls from physically impairing harm.”¹⁶⁹ The conversation prevented that parents performed a typical circumcision in hidden conditions without questioning themselves about which part of the ceremony was inherent to their beliefs. A final example happened in the context of the marriage reform in South Africa, which intended to eliminate some customary Law discriminations against women such as denial of inheritance and destitution of women after divorce or widowhood.¹⁷⁰ In 1998, the South African Law Commission, as a part of the Harmonization of the Common Law and the Indigenous Law project, hosted a series of hearings where different groups of the African community discussed the “advantages and disadvantages” of the existent traditions.¹⁷¹ In the dialogues, the parties realized that even some traditions that seemed offensive to women’s interest had a degree of empowerment for women, that women’s position in society evolved, and that chiefs were idealizing some rituals.¹⁷² At the end, South Africa began a series of progressive reforms, which started with giving jurisdiction over all family legal conflicts to civil courts, taken them away from local chiefs.¹⁷³ The reform also made some concessions to the capacity of chiefs for

¹⁶³ Dan M. Kahant and Donald Braman, *The Self-Defensive Cognition of Self-Defense*, 45 AM. CRIM. L. REV. 1, 74.

¹⁶⁴ *Id.*, at 75.

¹⁶⁵ Kahant and Braman, *Cultural Cognition...*, *supra* 156, at 168, citing MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW 15 (1987).

¹⁶⁶ *Id.*, at 168-169, citing GLENDON, *supra*, at 15-21; and citing RONALD DWORKIN, LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM 63-64 (1993).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*, at 166.

¹⁶⁹ SARAH SONG, JUSTICE, GENDER, AND THE POLITICS OF MULTICULTURALISM 167 (2007).

¹⁷⁰ Monique Deveaux, *A deliberative approach to conflicts of culture*, in MINORITIES..., *supra* note 6, at 340-362, 356.

¹⁷¹ *Id.*, at 357.

¹⁷² For instance, the tradition of *lobolo*, which implicates a payment for the bride, had changed in the last decades, allowing women to participate in the negotiations. *Id.*

¹⁷³ *Id.*, at 358.

mediation and to the existence of polygyny,¹⁷⁴ under the principle that “practical interests,” a more realistic protection to disadvantaged groups, should be the focus of the public policies.¹⁷⁵

These examples encourage a conversation that respects cultural cognition to reach better solutions for conflicts between culture and rights. A conversation like this incentivizes a better adherence of the whole society toward rights, by stimulating awareness about two facts that unmixed approaches do not allow to see. First, the majority may realize that many of the minority values are nearer to the liberal principle of protection of life and its integrity than what they assume. And second, society at large can see that most of these cultures have evolved to positions of a higher compromise with the rejection of violence. For instance, with this type of conversations, some liberal authors could see that contrary to their idea that Catholic Church encourages women who suffer IPV to stay with their husbands, there are many Catholic organizations that support DV shelters and that such a stimulation is not present in their discourse.¹⁷⁶ They also could see that evolution is possible even for “cultures” qualified, as Okin did in 1999 about Peruvian Law, as permissive to “barbaric law[s].”¹⁷⁷ In fact, when Okin evaluated the Peruvian statute that justified rape if the offender offered marriage to the victim, she did not consider neither American closeness to Peruvian Law nor Peruvian evolving capacity. She did not mention that American law only eliminated the “marital immunity” in sexual offenses in the 1970s,¹⁷⁸ and that even nowadays the “ideology of ongoing consent” jeopardizes accountability of rapists in the U.S.¹⁷⁹ But worse, she did not even check what happened with Peruvian legislation since her visit, and did not notice that Peru actually reformed this law *two years before* she made her comment.¹⁸⁰

Summarizing, if we allow participation of cultural arguments in the debate about violence, recognizing good faith in the other side, we can make decisions with real knowledge of its commitments and evolution. Further, some cultures may realize that their practices that harm women are more a political statement to affirm their difference with the large society than a real

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*, at 355 and 357.

¹⁷⁶ Moreover, the Pope Jean Paul II declared that “the Gospel is a consistent protest against whatever offends the dignity of women.” POPE JOHN PAUL II, ON THE DIGNITY AND VOCATION OF WOMEN (MULIERIS DIGNITATEM), No. 15, *quoted* by THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, WHEN I CALL FOR HELP: A PASTORAL RESPONSE TO DOMESTIC VIOLENCE AGAINST WOMEN 6 (2002), available in http://www.crisisconnectioninc.org/pdf/Secretariat_of_Laity.pdf and <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/domestic-violence/when-i-call-for-help.cfm>. In addition, the United States Conference of Catholic Bishops has said that “Jesus himself always respected the human dignity of women” for what they state that “no person is expected to stay in an abusive marriage,” and that “an annulment, which determines that the marriage bond is not valid, can frequently open the door to healing.” THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Id.* This Conference adheres to general recommendations about leaving unsafe relationships, asking to the parishioners the protection of the relationship only “if possible.” *Id.*, at 7-8. This is not extremely different from liberal organizations’ idea about leaving: a woman’s decision. See generally, Jinseok Kim and Karen A. Gray, *Leave or Stay? Battered Women’s Decision After Intimate Partner Violence*, 10(23) JOURNAL OF INTERPERSONAL VIOLENCE 1465-1482 (Oct. 2008).

¹⁷⁷ Okin, *supra* note 2, at 15.

¹⁷⁸ See generally Michelle J. Anderson, Marital Immunity, *Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 4 HASTINGS L.J. 1465.

¹⁷⁹ *Id.*, at 1544.

¹⁸⁰ Ley 26770 [Act 26770] Reforma el Código Penal para Considerar que la Acción Penal en los Delitos Contra la Libertad Sexual no se Extingue por Matrimonio (1997) [Reform to the Penal Code to Eliminate the Extinction of the Penal Prosecution by Marriage in Crimes Against Sexual Freedom].

tradition or a meaningful act of self-definition. And beyond, liberals may recognize that our society is less engaged to equality and rejection of violence than they believe.¹⁸¹

IV. Submission to Group's decision and Polygamy: A Space for Accommodation

Finally, once we have distinguished what violence is, seen why unmixed approaches do not protect women's interest, recognized that there is confusion in the liberal discourse between violence and inequality, and settled the grounds for including minority voices in the public discussion, it is time to check if toleration is possible in cases of submission to the group's decisions and polygamy. I think we can make room for accommodation as long as the practices do not involve involuntary harm or coercion. In fact, if we give women the possibility to decide by themselves, as a group within a group, what violence means for them, we may be ensuring not only agency but also protecting them from some potential harms that inequity practices may cause.

If women *decide to submit themselves* to restrictions drawn by the group, such as clothing or lack of participation in priesthood, they are actually exercising *autonomy*. In fact, if a person decides to live under *faith* instead of *reason*, that does not mean she is not longer making *decisions*. On the contrary, like Spinner-Halev has said, they may be just imposing themselves some restrictions to shape their autonomy, which is something that all people do.¹⁸² Moreover, "autonomy is only possible within some constraints,"¹⁸³ and options are not a natural creation but a cultural construction.¹⁸⁴ Thus, *choice*, the ability to select between certain options, is always given by culture –minority or majoritarian, but culture. And if a woman chooses to submit herself to an unequal situation, such as covering with clothes more than a man or renouncing to be a spiritual leader just because she is a woman, the sufficient normative protection to her interests may be given by the right to exit. Otherwise, the law would be underestimating her capacity and unprotecting her "right to associate freely," and her "freedom to profess her religion and beliefs."¹⁸⁵

In this sense, positions that simply assume that culture wipes decision away do not recognize that minority women in most of IPV cases may only want to leave the *abusive situation* but *not the entire group* where the situation happens. Those positions forget that belonging to a group is also a right. They also forget the fact that majority women's main goal when they seek intervention in their IPV situations is just stopping violence, and not always and not necessarily leaving the abuser. Furthermore, majority women certainly would not want to leave the whole mainstream society because they suffer violence. No one would ask abused women to leave their families, neighborhoods, or other groups they belong to just because they live in violence. In fact, in most of the cases law mandates these women to keep contact with their abusers to grant visitation rights for their kids.

About polygamy, it is important to make two considerations that allow a dialogue on accommodation. First, the criminalization of polygamy did not intend to protect women from

¹⁸¹ Asking for this kind of acknowledgment, *see generally*, Volpp, *supra* note 83, at 1217-1218.

¹⁸² SPINNER-HALEV, *supra* note 11, at 30 and 57-67.

¹⁸³ *Id.*, at 58, *citing* JOSEPH RAZ, THE MORALITY OF FREEDOM 155 (1986).

¹⁸⁴ SPINNER-HALEV, *supra* note 10, at 60.

¹⁸⁵ *See supra* note 144.

violence but from inequality. And second, if our interest is reducing VAW, the punishment of polygamy may result precisely in the contrary.

First of all, polygamy¹⁸⁶ did not become a crime to avoid VAW, as the dyadic marriage has been never criminalized –with the exception of some feminists’ claims– for necessarily causing DV.¹⁸⁷ In fact, the main discussion about polygamy has been always focused in the legitimacy of its multiplicity, where recent arguments, named “the gays analogies” by Adrienne Davis, have been just a “distraction.”¹⁸⁸ These analogies, summarized by her, are the claim to accept polygamy to give *equality* to “different life styles” and to reject it for not allowing a “slippery slope” toward gay marriage.¹⁸⁹ No one of these argumentations recalls directly to the possibility of VAW. Moreover, the main concern for people who reject polygamy from a liberal or secular viewpoint is about the possibilities of women to *bargain disparities*,¹⁹⁰ which is a claim for *equality*, not against violence per se.

Then, it seems like the *possibility* of violence is only an accessory argument for those who oppose to polygamy. This fact connects with the second consideration we should make about this practice: if we regulate it without a criminal sanction, we may allow women who live in polygamy, and who are afraid to report violence, to do so. Sarah Song, for example, says that in the current prohibition circumstances, women may be afraid to ask for child support because if they do so, they may achieve instead sending the fathers of their kids to prison, leaving them without that support.¹⁹¹ Women who are victims of non-physical violence or low degree physical violence may stop themselves to report if they want only a restriction order and not prison for their partners, or if they afraid to lose economic support. In fact, the aim of the accommodations performed by South Africa in the 1990s was preventing situations like these. In there, the law tolerated polygyny marriage, but established the husband’s obligation to arrange written contracts with his wives in order to protect them economically and to assure equitable assets distribution in the case of death or divorce.¹⁹²

In summary, submission to the group’s decisions and polygamy are topics were openness to discussion might not only address a problem of *equality* but also help women who indirectly suffer violence to seek for protection.

V. Conclusions

After exploring how the liberal society has dealt with the subject of multiculturalism and the rejection of VAW, we may conclude that we cannot confront the issue through unmixed approaches such as the totally liberal or multicultural ones. They are not appropriate paradigms to solve the problem since they do not protect women’s interests sufficiently, they confuse

¹⁸⁶ “Polygamy, or group or plural marriage, is the gender-neutral term for marriages with multiple spouses, regardless of the gender combination. In seventy-eight percent of cultures, plural marriage is practiced as polygyny [...] where a single husband married to multiple wives [...] The converse, polyandry, or one wife with multiple husbands, is far less common.” Adrienne D. Davis, *Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality*, 110 COLUM. L. REV. 1955, 1966.

¹⁸⁷ *Id.*, at 2036-2037.

¹⁸⁸ *Id.*, at 1963.

¹⁸⁹ *Id.*, at 1957 and 1963.

¹⁹⁰ *Id.*, at 1962.

¹⁹¹ SONG, *supra* note 169, at 162.

¹⁹² Deveaux, *supra* 170, at 358.

equality and life integrity, and they do not consider the psychology of decision-making. We may also conclude that when mixed approaches lose their balance, they can also have these three flaws.

Thus, a better way to defend all women's rights is allowing cultural arguments to be part of the public discussion about violence, with two considerations. First, the main reasons to perform conversation is allowing minority women to express their ideas and feelings, and to find more engagement for the rejection of violence from all citizens. And second, once cultural arguments are heard and cultural representatives (leaders and minorities within minorities) reconsider if violent practices are really part of what they defend, their arguments can be rejected as fallible ones if they condone unconsented harm.

About the first consideration, I assert in this essay that society needs to know its real engagement to end violence. There are several facts that show us that this engagement is recent and not completely developed. In addition, a conversation like this may promote attitudes that will enhance the fight against violence. First, in this conversation minorities may reconsider if certain practices are central or not to their identity. Second, the majority will understand better that minority cultures may have more common values with the liberal society than we usually think, and that minorities have evolved while living and coping with "modern societies."¹⁹³ Finally, we will achieve more engagement of all groups of the society with the end of VAW.

About the second consideration, if cultural representatives decide they are actually defending violent actions, we should reject their arguments as defeated. We should do so because our society protects life and its integrity in a different way to equality. Then, while women can submit themselves to unequal situations by *consent*, a situation analyzed with a minimal State intervention by the liberal state, in circumstances of violence, the analysis of consent requires further inquires and support. In fact, in most of the cases victims, even in the large society, who consent (or seem to be consenting) to stay with the abuser, are accepting to be with him but are *not necessarily consenting to be abused*.¹⁹⁴ An inquiry as complex as this requires more State participation, something that seems uncomfortable to liberalism. However, this is totally necessary if we really think violence is a public issue, and if we really want to consider women's interests in the topic.¹⁹⁵ Otherwise, the Chilean judge of my example will never have a team of specialists or the appropriate court time to know if "bad words" really affects the physique (and then life integrity) of poor women, those who come from a reality completely different than hers.

The problem with proposals that treat in the same manner the violation of equality and life and its integrity, is the fact that they over rely on the "right to exit" as a proxy of consent. In the case of violence, even psychological or lower physical violence, I assert this solution is more complex. Decisions like submitting choices to the group or living in polygamy, directly related with inequality, do not have the same entity than a decision to live under violence, which precisely undermines decision in a stronger manner. By allowing the proxy, contradictorily, these approaches forget to consider women's capacity to make decisions. This happens probably because liberal views in general discriminate against minority cultures and minority women, by discarding choice as a part of culture and assuming it is only present in reason, seeing minority women as incapable of rejecting violence and practicing agency.

¹⁹³ Bader, *supra* note 5, at 339.

¹⁹⁴ See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

¹⁹⁵ My idea of state participation does not mean state imposition over people's decisions and interests, but protection and consideration of people choices and consent.

Thus, we should reject violence without the mask of discrimination against minority groups, allowing minority cultures and minority members of these groups raise their voices in the public arena. This discussion must consider the dynamics of violence and the women's right to make decisions, including the decision to be free of violence and still belongs to a minority group. If we do so, I think we will engage all citizens more deeply in the rejection of violence against women.