Weaponizing Rights: The Politics of Debating Culture and Women's Rights

Chapter 5

Racialized Sexism and the Right to Culture and Women's Rights

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Abstract. Politicians, pundits, and scholars have long debated what to do when the right to culture and women's rights clash. Yet the previous three chapters have demonstrated a clash between these two sets of rights is never unavoidable. Instead, many relations—from a clash to indivisibility to no relation at all—are always possible. This chapter compares the dissimilar cases in this book to develop a theory about the politics of debating the right to culture and women's rights. This theory explains why these alternative relations are rarely visible. I argue a political mode of thinking with racialized sexism at its core underpins these policy debates. In addition to presenting a theory about how these policy debates work and the work that they do, I therefore offer guidelines for reorienting and altering this mode of thinking.

5.1 Racialized Sexism

In March 2021 the *New York Times* featured a story about the rise of child marriages in Nepal and around the world, explaining why the COVID-19 coronavirus was undermining "years of hard-earned progress toward keeping young women in school." As local economies faltered under pandemic restrictions, girls exchanged burdensome educational expenses for marriage. As the article points out, early marriage is associated with an end to schooling and future employment opportunities, early pregnancy, complications during pregnancy, untimely death, and infant mortality. The article also cited Nepalese culture for contributing to the prevalence of chile marriages. One mother explained, "marrying daughters in their young age has made me happier. It's our practice." According to the reporter, parents believe that "if the families didn't arrange for their daughters to marry young, the daughters would do it anyway, without their permission, and dishonor the family."[1]

Emphasizing how cultural norms harm women is ubiquitous. The phrase "harmful traditional practices," or HTP's as practitioners and scholars commonly refer to them, reflect the longstanding assumption that culture explains violations of women's rights. HTP's include honor-based violence, female genital mutilation or cutting, forced marriage, female infanticide, and dowry. Following this way of thinking, culture and women's rights inevitably clash.

As the preceding chapters show, however, this mode of thinking is mistaken. Chapter 2 assessed the 2010 French law forbidding the covering of the face in public as adjudicated at the prestigious European Court of Human Rights in 2014. The Court, famous for its willingness to stand up against states violating individual human rights, upheld the ban. Chapter 3 tackled

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[1] All quotes are from Bhadra Sharma and Jeffrey Gettleman, "In Nepal and Across the World, Child Marriage is Rising," *New York Times*, March 8, 2021. Stories like this one routinely appear in many media outlets. In the *New York Times* they are amplified by Nicholas Kristoff's editorials and his co-authored book with Sheryl WuDunn, which offers neoliberal solutions to cultural harms.

customary marriage reform in the new, non-racial and non-sexist South Africa. In 1998 the country advanced the rights of women in customary marriages on many fronts, yet legalized polygyny. Chapter 4 analyzed the Canadian marrying out rule, which stripped Indigenous women (but not Indigenous men) of their Indian status and right to live in their communities if they married someone outside the group. This rule had long been defended by many Indigenous leaders who claimed it protected their communities from white men. The Canadian government, a global leader on both Indigenous and women's rights, eventually reinstated the Indian status of many women, but its 1985 reform legislation did not eliminate sexism.

Each of these policy debates occurred in a liberal democratic site and involved a practice associated with a marginalized group. In most ways, however, the cases are distinct. Each debate occurred in a different decade and on a different continent, involved different governing institutions and actors, and grappled with different policy issues. Given these and many other variations across the cases, commonalities among them likely point to characteristics of policy debates about the right to culture and women's rights in liberal democratic sites.

A central finding across these three dissimilar cases is that a clash between the right to culture and women's rights was not inevitable. Instead, many relations between the right to culture and women's rights existed within each case at the same time. Those relations ranged from a clash to indivisible to no relation at all. Each of these rights relations were embedded in the stories policy actors told. I refer to stories because the arguments in these debates contained the structural elements of stories, such as villains, victims, and heroes. Excavating these story elements enabled me to identify the rights relations competing policy actors constructed through their stories.

Some storytellers, stories, and rights relations are more familiar than others. As detailed in Chapter 2, the French government told a nationalist story claiming the full-face veil clashed with women's rights. This story is much more familiar than the social justice story told by S.A.S, the anonymous applicant to the European Court of Human Rights who challenged the 2010 French ban. In Chapter 2, I argued the government's story dominated public debate because the French state is powerful and operated in a symbolic environment that lent credence to the story it told.[2] The government also used a series of rhetorical techniques, namely pitting the right to culture against women's rights by insisting upon a clash between them, essentializing French identity, and co-opting the right to culture for the nation, to displace the harms S.A.S. experienced because of the ban.

Under these circumstances, S.A.S. had difficulty being heard. She was not powerful and the symbolic environment favored white, European, Christian identities and claims. Moreover, she did not argue a clash existed between the right to culture and women's rights. Instead, she insisted they were indivisible. S.A.S. explained in her witness statement, "I strongly believe that—as a French citizen, a Muslim *and* a woman—I have a fundamental right to choose the clothes I wear. That much is integral to the ideals of human dignity and freedom of choice."[3] For S.A.S., being a Muslim French woman meant she was entitled to the right to culture and women's rights where were tightly entwined given her multifaceted identity. The French government, however, had trouble comprehending her claims. It argued that if S.A.S. chose to wear the full-face veil she was claiming the right to discriminate against herself. All of the judges at the ECHR rejected this argument. This example, however, illustrates how the

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[2] As discussed in Chapter 1, the symbolic environment refers to more than context. It is akin to an ecology that includes, for example, institutional norms, the history of a place, and inanimate objects such as the full-face veil. As in any ecology, everything in it is related and co-constitutive.
[3] Witness Statement of the Applicant, Annex 1 to Final Observations, §16.

conventional mode of thinking about the right to culture and women's rights can prevent people from seeing how and why these two sets of rights need not clash and can even be tightly intertwined or completely unrelated.

Something similar happens when we read stories like the *New York Times* article about child marriage. This story implicitly asserts many countries around the world have cultures that clash with women's rights.[4] When practitioners and scholars refer to THP's, they make this claim explicitly. This mode of thinking usually blames non-liberal cultural practices that ignore women's rights for the problem. The mode of thinking underpinning stories like the one in the *New York Times* and the label THP's, however, is narrowly partisan and imperialist. Partisan because it acknowledges only one side of a debate that has several sides. Narrow because it blinds us to the many relations—from a clash to indivisibility to no relation at all—that are always possible on issues involving the right to culture and women's rights. Imperialist because attributing patriarchy to the culture of non-liberals is rooted in the civilizing mission of white colonialisms, which imposed racialized and sexist policies on local populations and promoted racialized and sexist attitudes. These policies and attitudes also harmed subaltern women as they experienced both racism and sexism as mutually reinforcing. I refer to the policies, attitudes, and harms that affect subaltern women as racialized sexism. Racialized sexism is common to nearly every liberal state and site. Given this prevalence, I argue that instead of grappling with an inevitable clash between the right to culture and women's rights scholars need to instead confront racialized sexism.

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[4] Many of the comments in response to this article reflect this mode of thinking, including comments by practitioners. Commentators discuss solutions about what they view as the gendered problems of non-liberal peoples.

This is a tall order. As discussed in Chapter 1, politicians, pundits, and scholars have all contributed to the presumption that a clash between these two sets of rights is sometimes unavoidable. Scholars have not only debated issues such as child marriage for decades, they also have devised processes for negotiating between these two sets of rights when a clash exists. If a clash between the right to culture and women's rights is not unavoidable, however, scholars do not need to devise such processes. Instead, we need to identify and analyze the different rights relations competing policy actors construct, explain why these multiple rights relations have been overlooked, and develop novel ways of thinking to target racialized sexism rather than aiming to resolve clashes that are not inevitable.

This chapter aims to advance all three goals by developing a theory about the politics of debating the right to culture and women's rights that includes guidelines for altering the conventional way of thinking about these two sets of rights. My theory centers racialized sexism rather than a clash between the right to culture and women's rights. The guidelines I offer direct attention toward stories that center the former problem rather than the latter, introducing different rights relations and priorities than clash-centered stories. Scholars can use this theory and my guidelines to excavate rights relations in policy debates involving the right to culture and women's rights and to think in new ways about these rights. In the next chapter, I explain how anyone can draw upon this theory and set of guidelines to challenge conventional ways of thinking and be more attentive to racialized sexism.

5.2 Commonalities Across the Stories

To develop a theory about the politics of debating the right to culture and women's rights, I begin by drawing out several sets of similarities across my cases. I turn first to a comparison of story types (Table 5.1). Six different stories appear across the three cases: Nationalist, Post-

colonialist, Collectivist, Liberal Individualist, Liberal Progressive, and Social Justice. Although

some of these stories did not appear in every case many did. In all three cases, subaltern women

told social justice stories. Although this is not a story common to liberal states per se, it is not

surprising that it was present in all three cases. All three created some opportunity for subaltern

women to submit their views on the issue. A first pattern across the cases, therefore, is that

subaltern women tell social justice stories.

Stories unique to only one case are highly likely to exist in other liberal democratic sites.

For example, the nationalist story told by the French government was present in this one case

only, yet it probably is common in other European countries with strong radical right parties.

Similarly, the post-colonial story told by the South African Legal Commission (SALC) likely

occurs in other post-colonial liberal democracies, such as India.[5]

Table 5.1 Stories and Storytellers by Liberal Democratic Site

CASE / STORY	ECHR	South Africa	Canada
Nationalist	French government		
Post-colonialist		South African Legal Commission (SALC)	
Collectivist		Traditional Leaders	Conservative Chiefs
Liberal Individualist	Judges		Canadian government (Progressive Conservative Party)
Liberal Progressive	International Non-governmental Organizations (INGOs)	Gender Research Project (GRP)	Liberal Party
Social Justice	S.A.S.	Rural Women's Movement (RWM)	Indigenous (Tobique) Women

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[5] As detailed in Chapter 3, the SALC is a government body tasked with drafting initial legislation which it then submits to parliament.

Sometimes a story that appeared in two cases was missing in a third. The reasons are straightforward. For example, it was highly unlikely that a collectivist story about a people's right to self-determination would be told in France because Muslim French do not seek political autonomy. This story, however, was present in South Africa and Canada where ethnic and Indigenous groups were seeking self-determination. Their political goals were partly a product of British colonialism, which imposed indirect rule on these groups and reinforced differences among them and between the colonized and settler population. Or consider the story the Court and the Canadian government told. Their liberal individualist stories ignored the significance of group membership. Understandably, this story was missing in South Africa as apartheid had just ended. In 1998, few if any South Africans were likely to claim being a member of a racial group was unimportant. A missing story, therefore, does not reflect the singularity of that story type. Stories common in one liberal site are likely to appear in another, even if some stories are specific to particular types of liberal democratic sites.

The six story types thus suggest a second pattern: people in liberal democratic sites tell a limited number of stories about the right to culture and women's rights. Additional types of stories surely exist but they are likely to be small in number. For instance, in 1987 Canadian Prime Minister Stephen Harper's government told a neoliberal story about the marrying out rule that it used to justify the government's underfunding of the 1985 reform bill. I do not, however, anticipate more than a handful of additional story types such as this one. This is because most of the stories identified in this book repeat across the cases, signaling they are not specific to place or similar factors. Also, these stories are rooted in political ideologies familiar to liberal democratic sites, of which there is a limited number.

To be sure, these political ideologies are broad, meaning each story type can contain a range of subtypes within it. As I noted in Chapter 2, for example, several subtypes were evident in the liberal progressive stories told by the International Non-governmental Organizations (INGOs) in *S.A.S. v. France*. Similarly, several subtypes were evident among French nationalists. The *range of story types*, however, is likely to be narrow.

A third pattern is that story types tap into political ideologies common in liberal democracies. Indeed, I used familiar political ideologies to label each story. This points to a key attribute of the stories told, namely that they originated with people's political commitments and ways of seeing the world. This signals stories about issues such as full-face veils, polygyny, and the marrying out rule do not emerge tabula rasa. Instead, they are informed by storytellers' pre-existing values, identities, and policy preferences. This brings to the fore a fourth pattern. The relationship between the types of stories told and the ideas and preferences of storytellers is interactive. Values, interests, and identities inform the stories people tell; similarly, these stories inform the values, interests, and identities people hold.

Storytelling, however, points more toward a reinforcement of a storyteller's worldview than a transformative one. This is because the people in my three cases who told each story were highly predictable. For example, we would not expect Indigenous leaders in Canada to tell a liberal individualist story that ignores group membership. Nor would we expect feminists in South Africa to tell a liberal individualist story given the significance of race in the country. A liberal individualist story was irrelevant to the worldview of these storytellers because it was unlikely to advance their values, interests, and identities.

As the groups of people who tell each story type are predictable, stories are more likely to condition rather than alter values, interests, and identities. By this I mean that stories may prompt

storytellers to emphasize different facets of their commitments or to arrange these facets in novel combinations. But stories emerge from existing values, interests, and identities. They will rarely transform them all at once. This is because stories must be legible to their audience. Stories interact with political ideologies and policy preferences, but they tend to reinforce rather than transform an existing worldview, fifth pattern. Ideologies and preferences are primary.

As detailed in the preceding chapters, each of the stories in this book contained a specific relation between the right to culture and women's rights. Sometimes, as with the INGOs at the ECHR, speakers explicitly stated this relation. More often, however, they implied it. Excavating the rights relation in the latter situations required excavating the stories in each argument because stories convey meaning. They signal who is to blame, who requires protection, where, when, and why.[6] This enables scholars to identify the rights relation at the heart of each story. Alternatively, understanding the rights relation can illuminate the story elements the story invokes. Knowing the French government believed the full-face veil clashed with women's rights, for example, prompts the obvious question of why. The answer reveals who the French government believed was doing what to generate this clash and what harm that clash caused to whom. In other words, it points toward the villain and victim. This suggests a sixth pattern: story elements and rights relations are co-constitutive.

The storytellers in my three cases constructed six relations between the right to culture and women's rights: a clash, nested, no relation, distinct but potentially compatible, intersecting, and indivisible. Comparing these relations by the stories told brings to light several additional patterns (Table 5.2). In all three cases, state actors told stories with a clash at their core. This does not mean states only construct clash relations, however. In both South Africa and Canada,

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[6] For a general overview of stories and story elements in policy debates see Chapter 1.

state actors constructed several relations between the right to culture and women's rights, not only a clash. As noted above, in 1987 the Canadian government told a neoliberal story. In this story the government avoided constructing any relation between the right to culture and women's rights.

In contrast, in South Africa the SALC constructed a clash between polygyny and women's rights but did not construct a clash between many other customary marriage rites (such as property rights and divorce) and women's rights. For these issues the SALC claimed customary practices had evolved and were now aligned with women's rights. According to the stories told about these issues, the problem was the apartheid regime had not kept up customary law up to date with what was happening on the ground. This reasoning was politically useful. It enabled the SALC to blame the apartheid regime for existing shortcomings in women's rights and affirm African culture.

The Canadian and South African cases thus offer two more lessons. First, the types of stories policy actors tell can change and the rights relation can change with it. Second, storytellers can weave multi-faceted tales with different rights relations under the cover of one story type. They can forge more than one relation for different rites associated with a single policy issue.

The complex story told by the SALC about customary marriage conveys two additional patterns. First, storytellers are highly creative. This is not surprising as they must respond to the pressures and demands of the groups they represent in contexts with multiple constraints. This suggests many kinds of rights relations are possible. Given the pressures on storytellers to be creative, I am unlikely to have identified the full universe of rights relations in this book. However, because I studied three dissimilar cases, the range of relations the book excavates are

broad: from a clash to indivisibility to no relation at all. It is likely other possible relations fit within this range. Thus, another pattern to draw from this set of comparisons is that the book maps the relational terrain between the right to culture and women's rights but does not detail all of its contours. Rights relations are protean.

Rights relations are not associated with story type (Table 5.2). The judges at the ECHR, for instance, told a liberal individualist story and rejected any relation between the right to culture and women's rights. In contrast, the Canadian government's Progressive Conservative Party told a liberal individualist story and constructed a clash between these two sets of rights. Identifying a story type, therefore, does not determine the relation between the right to culture and women's rights. Instead, the story *elements* are critical.

Table 5.2 Rights Relations by Liberal Democratic Site

CASE STORY	ECHR	South Africa	Canada
Nationalist	Clash (French government)		
Post-colonialist		Clash (SALC)	
Collectivist		Clash & Nested (Traditional Leaders)	Nested (Conservative chiefs)
Liberal Individualist	No relation (Judges)		Clash (Canadian government: Progressive Conservative Party)
Liberal Progressive	Intersecting (INGOs)	Intersecting (GRP)	Distinct but potentially compatible (Liberal Party)
Social Justice	Indivisible (S.A.S.)	No relation (RWM)	Indivisible (Tobique women)

Focusing on the story elements across the cases reveals two more patterns. First, storytellers are their own heroes. This is notable because in many stories subaltern women

figured as victims and many storytellers denied these women's political agency or discounted it.[7] Why would the broader public accept a characterization of subaltern women as lacking in political agency? As I have detailed in the previous three chapters and discuss further below, racialized sexism is pervasive in nearly all democratic sites. As I am using it here, racialized sexism refers to a set of attitudes held by dominant groups about subaltern women, such as Muslim French, Indigenous, and Black rural women in African customary marriages. These attitudes include beliefs that subaltern women are socially, economically, and politically backward. Following this logic, because these women have limited capacity and political agency they are vulnerable and require the benevolent protection of the liberal state. The pervasiveness of these attitudes facilitates acceptance of these women's vilification or passivity.

Notably, subaltern women who forged indivisible relations between the right to culture and women's rights also built bridges between the liberal state and the marginalized group. S.A.S. and Indigenous women in Canada made arguments that brought people together despite their differences. Recall S.A.S.'s witness statement in the introduction to this chapter. As a Muslim French woman, she claimed rights to which all French citizens are entitled and justified her claims by referring to shared values among all citizens. This is yet another pattern. When subaltern women forge indivisible relations between the right to culture and women's rights they highlight how groups can live together among their differences. Although this is a popular liberal aspiration, these women's stories were largely absent from public debate, another pattern I discuss in more detail below.

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[7] The exceptions were liberal progressive stories told by civil society actors and subaltern women themselves. Liberal progressive politicians in Canada congratulated Indigenous women for their work in putting the reform of the marrying out rule onto the political agenda. They did not, however, acknowledge that these women might have sufficient political agency in their own communities to defend their rights. Thus policymakers viewed Indigenous women's procedural recommendations for deciding membership rules in their communities with skepticism.

I turn now to a shared feature across the cases that challenges the conventional mode of thinking underpinning these debates. In my three cases, almost all the policy actors who endorsed the right to culture also formally endorsed women's rights. Certainly S.A.S., who claimed the right to her culture and rights as a woman, endorsed both sets of rights. In Canada, the most conservative chiefs argued equality between women and men could only be achieved through Indigenous self-determination. They insisted the problem was the settler colonial state that obstructed women's rights. Most traditional leaders in South Africa argued women's rights had been realized in their communities. With the exception of the traditional leaders of the Eastern Cape, these men did not label women's rights "Western" or "foreign." Instead, they endorsed equality between women and men. This signals the legitimacy of women's rights in these three dissimilar sites.

Of course, the collectivist endorsements of the chiefs and traditional leaders were suspect on many grounds. In Canada, conservative chiefs did not provide any evidence that self-determination would end sexism in Indigenous communities. Instead, their words conveyed patriarchal attitudes. Similarly, in South Africa, traditional leaders praised an equality that indicated complementarity rather than equality between the sexes. Nonetheless, collectivist leaders' endorsements of women's rights provided state actors with rhetorical leverage to move beyond a clash relation. They declined this opportunity.

Instead, state actors in France (and to some extent in Canada) used the men of the subaltern group as a foil for the clash they constructed, blaming these men for intransigence on women's rights.[8] This is yet another pattern and is significant for at least two reasons. First, blaming subaltern men deflects attention away from liberal intransigence on women's rights.

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[8] In South Africa the marginalized group targeted for reform was affiliated with Black mainstream society. Rather than targeting these men the SALC targeted the apartheid regime.

Second, it calls up familiar colonial binaries such as civilized/uncivilized and modern/traditional. These binaries not only obscure mainstream sexism, they also reinforce racialized sexism. The latter occurs because these binaries suggest subaltern leaders are patriarchal and subaltern women are victims in need of saving. Gayatri Chakravorty Spivak's famous phrase characterizing the civilizing mission as "white men saving brown women from brown men" is instructive here.[9] Spivak succinctly captures the gendered nature of white savior syndrome, which blames "brown men," victimizes "brown women," and transforms colonialism into a heroic project.

These patterns point to a problem not only with the state actors who triggered these binaries by constructing a clash relation between the right to culture and women's rights, but to the prevailing mode of thinking underpinning those stories. By this I do not mean that what state actors thought about culture and women's rights was the problem.[10] Instead, I am pointing to how the conventional mode of thinking about the right to culture and women's rights provides a structure for these policy debates and lends credibility to stories with a clash at their center that the storytellers do not earn.

Clash stories contain a logic that taps into preexisting beliefs such as white savior syndrome. This logic naturalizes practices such as the full-face veil, polygyny, or the marrying out rule as a specific kind of policy problem. That is, when a clash appears the policy problem is presumed to include not only the right to culture and women's rights but two opposing groups, such as traditional leaders and liberal feminists, advocating one set of rights against the other. These assumptions map onto familiar colonial binaries, such as modern/traditional. These

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[9] Spivak 1988, 92.

[10] What they thought as opposed to what they said is beyond the scope of this book. I recognize that what a policy actor thinks and what they say can diverge as policy actors are incentivized to adapt what both in response to various political pressures.

binaries provide a structure for clash stories by providing ready-made victims, villains, and heroes that raise the cultural backwardness of "the natives" as the policy problem liberal states must address. These binaries also enhance the credibility of clash stories by confirming what people expect to hear, making them appear logical even in the face of contravening evidence.

Contemporary tropes add another layer to this process, strengthening clash stories. Consider the following tropes. Colonialism is now over. Liberal states should no longer impose their values on Others. Instead, liberal states should promote toleration and pluralism and recognize the right to culture. However, sometimes a cultural practice of the Other becomes a policy problem because it clashes with women's rights. In these cases, liberal states should assess the claims of cultural leaders and feminists by assuming the role of a neutral rights arbiter and make a policy decision.

None of these colonial binaries or contemporary tropes are true. The uncivilized were the colonizers, not the colonized. During colonialism "white men" rejected women's rights at home and disparaged the freedoms of "brown women" in the colonies, subordinating them to "brown men" and the colonial state. Or, as some scholars of Indigeneity and Islam noted in the previous chapters assert, women had more freedom prior to colonialism; hence the modern is traditional. Further, contrary to contemporary tropes, colonialism is alive and well in Canada and many other liberal states, including the United States. And some "white men" still reject women's rights at home even as many "brown men" formally affirm women's equality. "Brown women" like S.A.S. clearly are not victims who require saving but instead are fully capable of exercising political agency and insist the liberal state is oppressing them. States such as France claim to promote toleration but ban what they should tolerate. Post-colonial states such as South Africa claim to promote multiculturalism but legalize what they should ban. Issues such as the full-face

veil, polygyny, or the marrying out rule do not become policy problems because culture and women's rights clash. Instead, in my three case state actors constructed a clash between these two sets of rights while other policy actors constructed alternative relations. State policies did not solve an objectively existing policy—a clash between the right to culture and women's rights—but like all state policies, solved the problem state actors identified.[11]

Finally, liberal states are not neutral arbiters carefully weighing the evidence presented by two opposing groups. Instead, they are one among a set of competing policy actors. All of these policy actors tell stories rooted in ideological commitments and policy goals that others in the debate not only do not share but challenge (Table 5.1). This includes liberal states. These patterns confirm a longstanding critique of liberalism, namely that the impartiality of the liberal state is a mirage. State actors often conceal this partiality by constructing a clash between two sets of rights and blame patriarchal men in the subaltern group. They then cite two groups who they insist back opposing sets of rights.

Sometimes state partiality is difficult to conceal. This was the case for the French government. Muslim French leaders and the rector of Al Azhar University in Cairo publicly supported the 2010 French law against concealing the face in public. Without these men as a foil to rail against, the government required an alternative villain. It made two moves. First, the French government made the sweeping claim that Muslim men forced women to wear the full-face veil, referring to any man, such as husbands, fathers, and brothers. Second, it justified the ban on grounds that were antecedent to liberalism. By this I mean the government claimed the full-face veil threatened the republic. This latter move elided the state's partisan stance *with* rather than against liberal democracy, providing it with a façade that negated its need for

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[11] For more on the constructed nature of policy problems see Chapter 1.

neutrality. No French citizen could rightly insist the government remain neutral in a battle for the soul of the republic. By raising the stakes against the full-face veil, however, the French government fueled radical right extremism, which actually did endanger the republic it claimed to protect by subverting longstanding French Enlightenment principles, such as pluralism and toleration.

This discussion has provided an overview of the conventional mode of thinking about the right to culture and women's rights. It also has exposed several of the limits of this thinking by identifying patterns common to all three dissimilar cases in this book. I turn next to comparing across the dominant stories in my three cases, all of which were told by state actors.

5.3 Dominant Stories

In all three liberal democratic sites, the stories state actors told dominated public debate and were associated with negative consequences for subaltern women. This is a significant pattern and provides a motivation for altering our conventional mode of thinking about these policy issues. Before turning to this pattern, however, I first explain how these policy debates moved on to the political agenda.

In all three cases, politicians were reluctant to engage these policy issues. Partisan politics pushed the issue to the fore in France and South Africa. In France, Muslim French women presumed their right to culture and equality by wearing religious dress. The radical right's growing influence and antipathy for Islam turned these claims into a series of crises that drove mainstream politicians to condemn the clothing, convene a commission to address the issue, and to issue the ban.

In South Africa, the apartheid state had been considering reforms to customary marriage during the 1980s but the transition to democracy overtook these efforts. After Nelson Mandela's

government came to power, the Rural Women's Movement (RWM)—with the support of feminist organizations and feminist politicians in parliament—pressured the new government to act. It did nothing. Ultimately, apartheid judges intent on defending *white* minority rights by handing down decisions that upheld minority rights spurred government action. The decisions entrenched African customary law over equality for African women and smacked of apartheid.

In Canada, Indigenous women repeatedly took the government to court, demanding the right to Indian status regardless of who they married. Sandra Lovelace took her grievances to the United Nations Human Rights Committee, and the Committee declared the Canadian government had violated her right to culture. This international embarrassing decision, coupled with a pending Charter of Rights and Freedoms guaranteeing sex equality for all Canadian women, triggered hasty parliamentary action. The new Charter threatened to nullify the Indian Act as the marrying out rule was a form of blatant sexism. Politicians thus uniformly agreed reform was necessary to maintain colonial rule.

This pattern of reluctance among state actors suggests they were not vindictive agents intent on telling stories that punished subaltern women. Arguments about bad actors cannot explain the role of liberal states in these debates. Alternatively, I have suggested political ideology and policy preferences inform what policy actors say and do. State actors shape their stories to advance these objectives and maintain political support. When their stories center a clash, state actors evoke narrowly partisan ways of thinking rooted in an imperial legacy that gives their stories structure and popular appeal.

Once the policy issues in my three cases were on the political agenda state actors dominated the policy debate, yet another pattern. Comparing the story elements in these dominant stories indicates state actors share little about who they identified as villains (Table

5.3). While the French government pointed to women who wore full-face veils and imagined

men who forced them to wear these garments, the Canadian government did not point to

patriarchal chiefs as villains (although they did implicitly criticize chiefs for being patriarchal)

nor subaltern women. Instead, much as in South Africa, the leading villain in the Canadian

government's story was their historical predecessor, meaning previous regimes that did not share

the current government's human rights commitments. This points to an additional pattern:

villains were those who did not value human rights, whether men from the subaltern group or

antecedent regimes. We should thus expect liberal states to claim the moral high ground when

debating the right to culture and women's rights. They are likely to assert that in contrast to

someone else (patriarchal Muslim men, white colonialists) they are rights defenders.

Table 5.3 Comparing Story Elements by Liberal Democratic Site

CASE STORY ELEMENT	ECHR	South Africa	Canada
Villain	People who cover their faces and those who make them do it	White rule	19th century colonialism
Victim	French nation	African culture	Indigenous women who married out
Hero	French government	South African government	Canadian government
Rights Relation	Clash	Clash	Clash
Conflict motivating the story	Rights clash	Rights clash	Rights clash
Solution	Ban covering the face in public	Legalize polygyny	Reform the marrying out rule
Moral	The government defends French values	The government advances cultural equality	The government advances collective rights & women's rights

Who villains victimized also varies across my cases. In France the victim was the nation, in South Africa it was African culture, and in Canada it was Indigenous women who lost their official Indian status when they married out of the community. Instead of pointing to a shared pattern, this array of victims points to the creativity of storytellers. In Canada, most agreed the victims in the policy debate included Indigenous women. But politicians from opposition parties argued these women's descendants, who also had been denied Indian status, were victims too. The government rejected these claims and narrowly defined victimhood. What appears to be state acknowledgement of Indigenous women's rights was in fact an exclusionary maneuver. This illustrates how storytellers can refine the concept of victimhood to suit their political purposes and maximize the appeal of their stories.

According to the French and South African governments, the victim was not a person or group of people but things: republican ideals and African culture.[12] This is odd, as human rights are for people, not things. As I discussed in Chapters 2 and 3, state actors in these two cases used a series of rhetorical tools to make their case for the nation and African culture as victims.

Common to both was the tactic of essentialism. Consider South Africa. African customary marriage is not African, if by African we mean a set of homogenous and identifiable practices handed down from the pre-colonial era. Instead, African customary marriage rites vary widely across and within groups and comprise rituals associated with a number of religious and ethnic groups, including Christianity and civil law marriage contracts. Claiming African culture was a victim of white rule ignored this multiplicity and appealed to an idealized notion of

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[12] Recall the right to culture is for individuals seeking to manifest their identity or marginalized groups, such as Muslim French and Indigenous peoples in Canada, but not for, say, Islam or Indigenous identity.

African culture as a stable, contained object.[13] This claim nonetheless had traction in 1998 when sweeping policy changes targeting and dismantling apartheid was the order of the day.

The apartheid regime had claimed racial separatism was necessary to protect cultural differences among the races, but in reality it had promoted whites and European cultural practices while viciously discriminating against Blacks and reifying African cultural practices. It is thus understandable why post-apartheid policy actors would approach African culture as a distinct set of practices to be protected and promoted. Essentialism was the dominant mode of thinking in this symbolic environment.

Approaching an essentialized African culture as a victim of apartheid, the SALC reasoned this culture was entitled to equality. But equality is a *human* right for persons, not things. Members of a group (such as the French people) or those who engage in cultural practices (such as Black Africans living under customary law) are entitled to the right to culture. These persons, rather than an essentialized national identity or African culture, can claim their rights. Both the French government and the SALC elided these distinctions by drawing further on the symbolic environment, as I explain below, to claim French national identity and African culture were rights holders.

Several guidelines about how to assess claims in policy debates flow from this analysis. First, attending to who or what the victim is in a policy story is critical thanks to the impressive creativity of storytellers. In stories with a clash at their center the victims are always, at a minimum, subaltern women. The reason is obvious: these women are entitled to both sets of

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[13] I refer specifically to white rule and white colonialism as whiteness in these symbolic environments imbues those who travel under this sign with the power to name groups and people, to decide what is and is not legitimate, to assign values and resources to certain groups and not others, to proclaim a principle without facing the immediate consequences, and to not have to document these consequences or take them seriously as white people will not be affected. To be white in these sites is thus to experience life uninterrupted. (My thanks to Erica Townsend-Bell, "Author Meets Critics, Feminist Trouble: Intersectional Politics in Post-Secular Times by Elénore Lépinard," Western Political Science Association, April 2, 2021, for this formulation).

rights. If the two sets of rights clash, their rights will be curtailed.[14] If a clash story does not identify them as the victims this should be a red flag. Second, contrary to the strategy of the Canadian government, victims should be capaciously rather than narrowly defined to ensure everyone has access to their rights. Third, victims in these policy debates should be a person or people who are members of a group, not things such as essentialized national identities or cultures.

Victims also are important because they justify state action. Stories require heroes to defend victims against villains. In each of my three cases, state actors claimed the hero's role. All agreed they must act and did so. This suggests another pattern: the stories state actors tell authorize state power. Exercising state power on behalf of victims presumably means targeting the villain, such as Muslim French men, white rule, and nineteenth century colonialism. But as I discuss in the next section, these men and systems of rule were not the targets of state action. This is an additional pattern: when states act to protect subaltern women their actions are unlikely to target the villains their stories identify.

As Table 5.3 makes clear, the moral each government's story invoked underscored state commitments to human rights. In France, these rights were liberty, equality and fraternity; in South Africa, equality; in Canada, the right to self-determination and gender equality. By invoking these rights, government's imbued state actions with an aura of virtuousness, legitimizing their actions. This virtuousness reverberated in the symbolic environments in which

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[14] This obvious point is difficult to grasp absent the theory of intersectionality, which centers racing-gendering and subaltern women, as discussed in Chapter 1. Although many policy actors in this book understood that the women whose lives they debated were situated at the crossroads of race and gender, this rarely translated into an acknowledgement that these women needed both sets of rights. This is not surprising as the latter rarely mapped onto their policy values, identities, and interests.

they told their stories, indicating these environments are a crucial resource for state actors, yet another pattern.

The symbolic environments in my three cases did more than provide resources for state actors. A comparison across them can also help scholars reorient our thinking about the right to culture and women's rights (Table 5.4). All three environments shared a history of white, Christian colonial rule, as do nearly all liberal democratic sites. This ensured racism was central to these policy debates, even when policy actors did not acknowledge it. What everyone acknowledged and embraced were pluralism and toleration. This is a function of my research design. I chose three sites that were best-case scenarios for debating the right to culture and women's rights. Elsewhere, this emphasis on pluralism and toleration is likely to be less emphatic.

Table 5.4 Symbolic Environment by Liberal Democratic Site

CASE / TRAIT	ECHR	South Africa	Canada
History	White, Christian, colonial rule	White, Christian, colonial rule	White, Christian, colonial rule
Values	Pluralism, toleration, neutral state	Pluralism, toleration, neutral state	Pluralism, toleration, neutral state
Power Relations	Favored state, subaltern women most disadvantaged. This was unacknowledged.	Favored state, subaltern women most disadvantaged. This was unacknowledged.	Favored state, subaltern women most disadvantaged. This was unacknowledged.

Despite the best-case scenario status of my three cases, power relations in all three sites were asymmetric. This is unsurprising but significant. State actors wielded far more power than any other actor; subaltern women were by far the most disadvantaged. As discussed in the preceding chapters, the public rarely heard the stories subaltern women told. Procedures and

rhetoric in these debates muffled their stories, signaling a pattern of "exclusionary inclusion."[15] This form of inclusion, which appears to provide access, voice, and the capacity for contestation, thwarts subaltern women's ability to successfully advance their interests. For example, S.A.S. feared retribution for bringing her case to the ECHR, which is located in France. To maintain her anonymity she requested the right to wear the full-face veil at the hearing. The judges refused. As a result, S.A.S. did not attend. One of her attorneys read a portion of her witness statement at the hearing, evoking both her absence and silencing by the Court.

In South Africa, the SALC invited any individual or group to comment on reforms to customary marriage. The Rural Women's Movement, the largest democratically accountable representative of rural women in South Africa at the time, responded but the SALC rejected their longstanding demand to end polygyny. The SALC explained most respondents believed it should not be banned. This additive approach to responses was odd as there was no systematic process for inviting or receiving responses. Nor was there a requirement for the SALC to adapt the recommendation of the majority of responses, particularly when those recommendations were not in alignment with the women who would be most directly affected by the legislation.

In Canada, parliament invited many Indigenous women's organizations to testify about the marrying out rule. In response, the Tobique Women's Political Action Group produced a professional submission that contained the legal language necessary for amendments to the draft bill. Politicians not only rejected the Tobique women's amendments, they also renarrated these women's story. The government effectively told a different tale, replacing the indivisible relation the Tobique women had forged with a clash relation. These examples illustrate how

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[15] Behl 2019, 4.

administrative decisions and rhetoric can achieve what formal procedures disavow. The overall pattern is one of exclusionary inclusion for subaltern women.[16]

This suggests policy debates addressing issues central to the lives of subaltern women require extraordinary measures to ensure their stories carry weight with state actors and the broader public. To illustrate this point, consider one small measure that would contribute toward but not create a level playing field. States might subsidize and provide media time for subaltern women greater than state actors, time that would ensure these women could tell their stories in their own words. More rather than equal time because the symbolic environment heavily favors state actors, lending their words more weight, credibility, and resonance. State actors that tell stories with a clash are also favored as this rhetorical terrain dovetails with conventional thinking about the right to culture and women's rights. Although it is unlikely that liberal states would adopt policy reforms such as this one, its unlikelihood reflects the depth of disadvantage subaltern women face in these policy debates.

Despite this obvious power imbalance, no policy actor in any of my three cases discussed its effects on the debate or suggested ways to address it, hewing closely to institutional norms of appropriateness, another pattern. This is a serious limitation of these best-case scenario liberal democratic sites, as this silence further enabled state actors to dominate public debate. Indeed, state actors' stories inflamed divisions among groups and weaponized the right to culture and women's rights against subaltern women, the very people these rights should protect. I turn now to these negative effects.

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[16] This is not to imply that subaltern women had no influence in these policy debates, but that any gains made were hard won as the deck was stacked against them. As I discussed in Chapter 3, many Indigenous women worked tirelessly to advance their interests and eventually received Indian status. In South Africa, the RWM influenced the SALC on several key issues related to customary marriage reform, including property rights.

5.4 Weaponizing Rights

As detailed in each case study, the actions governments took to resolve the clash between the right to culture and women's rights did not punish the villains in their stories but subaltern women. Police officers implementing the 2010 French law banning the concealment of the face in public targeted Muslim women who wore the full-face veil. The legalization of polygyny in South Africa revived a dying practice rural women uniformly denounced. The government's implementation of the reformed marrying out rule in Canada proceeded in a biased fashion, insulting and excluding Indigenous women while fomenting Indigenous hostility toward reinstated women. In practice, the stories state actors told did not protect subaltern women but produced the appearance of protection while intensifying discriminatory state intervention. Outcomes like these suggest state actors not only governed through the right to culture and women's rights, but that they weaponized these rights against subaltern women.

Such negative consequences are not inherent to these policy debates. Consider South Africa again. When the SALC constructed agreements between African customary practice and women's rights, they targeted customary law for reform. As discussed in Chapter 3, these changes improved the lives of women in customary marriages on many fronts, including the division of property upon divorce. This suggests that when state actors avoid a clash approach to rights relations, subaltern women can benefit from state action. Further, even when governments construct a clash relation, some benefits may ensue. In Canada, where the government limited reinstatement, implementation was punitive, and under-funded reform fueled Indigenous resentments toward reinstated women, many women nevertheless did gain reinstatement. This suggests that even when state actors construct a clash relation, not all the effects of their actions

will be harmful. However, this does not negate the accompanying punishment subaltern women incur.

In all three cases the stories state actors told heightened divisions among groups. This was a second negative outcome. The judges at the European Court of Human Rights scolded the French government for a policy debate that fueled Islamophobia and was at odds with the pluralism and toleration of the European community. The SALC insisted white European rule preserved patriarchy in African culture, drawing upon and entrenching racial divisions while empowering prominent African men to take multiple wives. This not only violated the interests of African women, it also deepened cultural distinctions between Whites and Africans that did not exist in actual customary marriage practice. Finally, Members of Parliament in Canada argued not only that the Indigenous way of life was foreign to liberal Canadians but that deeply divided Indigenous peoples required the assistance of the liberal state to negotiate among themselves. State actor stories that center a clash relation thus not only are likely to produce policies that harm subaltern women, they also are likely to intensify racism that harms the entire subaltern group. Yet the stories state actors told denied these implications. Indeed, they justified their actions on the grounds that they were human rights defenders.

How was such a claim credible? In each case, state actors deployed a series of rhetorical techniques aided by the symbolic environment to propel their claims beyond any doubt. One of these techniques was the clash relation itself, which introduced a compelling normative dilemma into the policy debate and ensured the debates occurred on a polarized discursive terrain. It directed attention toward these two sets of rights as abstract liberal ideals and away from the actual lived experiences of subaltern women at the hands of the liberal state.

A second technique was essentialism. By reducing the identity of millions of diverse and unequal people to a single identity or practice (polygyny) state actors negated the need to justify these identities or practices, or to dwell on how these claims were justiciable (or not) for subaltern women. All three state actors approached culture as a thing they could define, assess, and contain. The French government did this to separate the full-face veil from the Muslim faith, pointing to Muslim leaders who argued Islam did not require women to wear this clothing. The SALC explicitly stated that culture was flexible, fluid, and dynamic, yet it also insisted polygyny was the sine qua non of African customary marriage because European colonialists had rejected customary marriage on these grounds. Canadian politicians repeatedly stated their culture was individualist and that Indigenous culture was collectivist and that the two were irreconcilable. These sweeping claims denied settler colonial campaigns, both past and ongoing, that attacked and undermined Indigenous ways of life to force assimilation. Essentialism thus enabled state actors to transform the evolving, everyday life practices of millions of people into objects that they manipulated to suit their stories.

As discussed in the preceding chapters, state actors in each case also used a unique rhetorical device to advance the logic of their stories. At the European Court of Human Rights, the French government implicitly co-opted the right to culture for the nation. In the symbolic environment of greater Europe, states routinely defend essentialized national identities. This made the French government's implicit claim to the right to culture for the nation legible and acceptable. The South African government used the technique of personification to frame African culture as a person entitled to the constitutional right to equality. As South Africans had been living for centuries under white rule justified on the grounds that racialized groups were distinct cultures, the SALC assertion resonated. It was akin to demands for racial equality.

Finally, Canadian politicians listened to but renarrated the stories Indigenous leaders and women told. They claimed the collectivist orientation of the chiefs clashed with Indigenous women's prioritization of the individual right to equality. Both characterizations were reductionist, missing how the chiefs formally recognized equality and how Indigenous women explicitly embraced Indigenous culture, which motivated their demand to be reinstated. In sum, the rhetorical strategies state actors deployed enhanced the appeal of their own stories by making logical what was illogical. The conventional mode of thinking about the right to culture and women's rights sewed these rhetorical techniques into tightly woven tales.

The effect was to displace the harms subaltern women experienced and to obscure the racialized sexist processes that secure subaltern women's domination, oppression, and exploitation. These processes have been at work for centuries in all three cases. As readers may recall, during the colonial era the French regarded Algerians as uncivilized natives, treated them as second-class citizens, and targeted Algerian women for unveiling campaigns. After World War II, the French government welcomed male laborers to the metropole. When these migrants became nationals and their families joined them, a new generation of Muslim French women began veiling to express their identity in public. The French government then banned Muslim women's dress to save Muslim women from Muslim men, even as Muslim leaders supported the bans.

In South Africa, race defined every aspect of people's lives. White regimes forced Blacks onto "homelands" and dictated not only where they could live but where they could legally work. These policies tore Black families apart. White regimes incentivized Black men's urban migration in large numbers. Black women remaining in rural areas fought to maintain their households against the onslaught of white appropriation and community practices that favored

senior men. Black men living in cities for long periods of time often married an urban wife under civil law and also married a rural woman under customary marriage to secure a home to return to when paid labor ended. Apartheid thus produced geographic polygyny. Moreover, all white governments only recognized civil law marriages, producing legal discrimination of women in customary marriages. With the dawn of the new South Africa, Mandela's government recognized customary marriage but also legalized polygyny.

In Canada, the settler colonial state forced Indigenous peoples onto reservations and created inducements for them to relinquish their Indian status, such as access to the right to vote and higher education. This was a gendered policy as Indigenous women who married non-Indigenous men automatically lost their status and right to remain in the community. Indigenous men who married out did not. Indigenous leaders defended the marrying out rule as a long-standing cultural practice that secured group integrity against the threat of white men. But by the time the Canadian government reformed the marrying out rule, few Indigenous leaders maintained this claim. Instead, they insisted only Indigenous communities—and not the Canadian government—had the right to determine group membership. Chiefs formally endorsed women's equality. The state nonetheless reformed the law, opening reinstatement to many women while also maintaining a sexist retainer to limit the number of people entitled to official Indian states and thus state benefits.

Although subaltern men were complicit with patriarchy in all three cases, state actors abetted this sexism and racialized it. Yet the French government claimed to be a longtime champion of women's rights and accused Muslim men of being sexist. The post-apartheid state recognized the racialized sexism of white rule, but by claiming African culture was synonymous with polygyny it legalized geographic polygyny, protecting a product of white rule. The

Canadian government insisted the racialized sexism of the colonial state was an artefact of the past even as it reformed rather than eliminated the marrying out rule. In all three cases, state actors told stories that centered a clash relation between the right to culture and women's rights, obscuring these racialized sexist processes.

Strikingly, the South African policy debate is not exempt from the general outlines of this pattern. If the South African government could obscure racialized sexism in a symbolic environment drenched in racism and at a moment when it was acutely attentive to sexism, then racialized sexism is likely to be obscured in other liberal sites as well. My cases thus suggest that when liberal states claim to be addressing a clash between the right to culture and women's rights they instead entrench racialized sexism. Certainly they do not build bridges across groups or advance the interests of subaltern women.

The negative consequences that followed in my three cases prompt several guidelines for reorienting our thinking about the right to culture and women's rights. First, it would be both naïve and unjust to suggest liberal states refrain from addressing issues such as polygyny and the marrying out rule. Naïve because liberal states respond to political pressures and unjust because sometimes the political pressure originates with subaltern women. Second, the crux of the problem stems from state actors constructing a clash relation rather than their engagement in these debates. How they construct the relation between these two sets of rights and, more specifically, how they deploy the clash relation is critical.

I suggest two questions would be helpful to assess clash relations in state actor stories. First, are proponents of a clash relation setting up a zero-sum game between these two sets of rights? If the answer to this question is yes, this suggests the policy solution will not benefit subaltern women. Second, does the clash relation deflect attention away from the racialized

sexist harms permeating subaltern women's lives or point toward it? If the answer to this second question is deflection, it is likely state actors are moving against rather than on behalf of these women.[17]

Third, a clash frame was just one among several rhetorical techniques state actors used to advance policy agendas that punished subaltern women. Common to them all was essentialism. Treating either the nation or culture as homogenous and outside of time would thus be another sign the storyteller is seeking to justify sacrifices from subaltern women and entrench their marginalization rather than redress it. Claims that things have rights rather than persons would also be such a sign. Further, as storytellers are creative, they can invent a variety of rhetorical techniques to advance their cause—such as personification or renarration—making it impossible to draw up a definitive list. However, analyzing how storytellers tell their stories can excavate the novel techniques they use. Finally, given the creativity of storytellers, it is incumbent on scholars to attend to the stories subaltern women tell in their own words.

These guidelines can help us read the signs that stories in these policy debates are headed in the wrong direction. I now assess a set of more promising stories to further develop the patterns across my cases and to generate guidelines that can do more than reorient our thinking; they can alter it.

5.5 Non-Dominant Stories

Beyond state actors, many other policy actors took part in the policy debates in this book. These actors included the judges and INGOs at the Court, traditional leaders and feminist lawyers in South Africa, chiefs in Canada, and subaltern women. In this section, I turn to these

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[17] Notice these questions do not direct scholars toward the substantive merits of state arguments, but toward how the argument works.

non-dominant actors and their stories. Most of the stories they told did not construct a clash between the right to culture and women's rights. Among them, two did not center the effects of racialized sexism on subaltern women. Liberal individualist stories did not as this political philosophy addresses atomized individuals rather than individuals as members of groups. As a result, it generally ignores systemic racism, systemic sexism, and racialized sexism.

In contrast, collectivist stories bring systemic racism to the fore. For example, Indigenous chiefs accused the Canadian settler state of unrelentingly attacking Indigenous peoples in their quest to either assimilate them into mainstream society as second-class citizens or to eliminate them. However, collectivist storytellers in my two cases neglected sexism within the collective and racialized sexism, meaning their stories did not center subaltern women. As a result, I do not focus on their stories either. Instead, I begin with the liberal progressive stories told at the ECHR and in South Africa. I then turn to the social justice stories told by subaltern women.[18]

The two liberal progressive stories told by non-dominant actors shared several commonalities, including a focus on subaltern women as victims, multiple rights, an intersecting relation between the right to culture and women's rights, and a concern with resolving the policy problem by attending to the interests of subaltern women (Table 5.5). These women were the focal point of their stories. Further, liberal progressives constructed intersecting relations between the right to culture and women's rights. As a result, these stories centered the effects of racialized sexism on subaltern women.

Table 5.5 Liberal Progressive Stories at the ECHR and in South Africa

CASE STORY	ECHR	South Africa

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[18] The storytellers across the cases are not parallel. Given the significant differences among them, this is not surprising. For a discussion of why I focused on particular storytellers in each case, see the methods appendix at the end of the book.

ELEMENT		
Speaker	INGOs	GRP
Villain	French government	White rule
Victim	Muslim women who wear the full-face veil	Women & children in customary marriages
Hero	INGOs	GRP
Rights Relation	Intersecting	Intersecting
Conflict motivating the story	French government is violating multiple rights of Muslim women who wear the full-face veil	Customary marriage violates multiple rights of women in these marriages
Solution	Overturn the ban	Do not legalize or ban: provide legal protection for women in existing polygynous marriages; don't recognize these marriages in the future
Moral	INGOs are the watchdogs of human rights around the world	The GRP is committed to advancing the rights of all women in South Africa

Social justice stories were distinct from liberal progressive stories and told by subaltern women. In these stories, the victim category expanded beyond the women themselves. This is because subaltern women's lived experience ensures they are keenly aware of others who are also harmed (Table 5.6). Social justice stories constructed either an indivisible relation between the right to culture and women's rights or no relation at all. The Tobique women insisted the Canadian government could advance both Indigenous political autonomy and Indigenous women's rights simultaneously by doing more to ensure their right to culture.

Table 5.6 Social Justice Stories in the Three Cases

CASE / STORY ELEMENT	ECHR	South Africa	Canada
Speaker	S.A.S.	RWM	Indigenous (Tobique) Women
Villain	French government	Customary law	Canada and conservative chiefs
Victim	Muslim French women and Muslim French women who wear the full-face veil	African women & children in customary marriages	Everyone who lost status and Indigenous communities
Hero	S.A.S.	RWM	Indigenous women
Rights Relation	Indivisible	No relation	Indivisible
Conflict motivating the story	Ban violates many rights of women who wear the full-face veil and Muslim French women	Polygyny discriminates against African women and children	The marrying out rule discriminates against Indigenous women and their descendants and divides Indigenous communities
Solution	Overturn the ban	Abolish polygyny	End the marrying out rule, reinstate everyone's status, turn membership decisions over to the community, not chiefs
Moral	Women wearing face veils are human rights champions and can save the republic from itself	Rural women will fight for their equality	Indigenous women will fight for their equality and for their communities

The RWM in South Africa did not construct a relation between the right to culture and women's rights. This did not mean they rejected indivisibility, however. Rural women in South Africa overwhelmingly endorsed both African culture and women's rights. The RWM simply did not regard banning polygyny as a threat to their culture. Instead, they viewed it as a discriminatory practice akin to many others that oppressed them. Because they did not

essentialize African culture by conflating polygyny with customary marriage, they valued their culture and women's rights simultaneously and rejected polygyny.[19] This reinforces an earlier guideline, warning us against the dangers of essentialism.

These patterns also point to several guidelines on how to alter conventional thinking. First, these policy debates are not about a clash between two sets of rights but about subaltern women who are entitled to the full range of human rights, including the right to culture *and* women's rights. Second, this would be obvious if the stories these women told were more prominent in the public sphere because subaltern women are unlikely to forge clash relations between these two sets of rights. To be sure, some liberal progressive stories can help to broadcast the concerns of these women. However, they cannot replace subaltern women's voices as the two sets of stories are distinct. With these patterns and guidelines in mind, I now turn to my theory.

5.6 A Theory about the Politics of Debating the Right to Culture and Women's Rights

The conventional mode of thinking about the right to culture and women's rights assumes that a clash between the two is inevitable. Throughout this chapter I have argued that this thinking is at the root of the problems identified in this book. This conventional thinking underpins the legibility and credibility of stories told by state actors in my three cases. It also makes the rights relations forged by subaltern women difficult to grasp. Because subaltern women and other policy actors in these debates forged different relations between these two sets of rights, the conventional way of thinking is narrowly partisan and imperialist.

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[19] The Tobique women initially held a similar position, rejecting white assumptions that the marrying out rule was a cultural issue, as chiefs claimed. One Indigenous advisor to the group summarily dismissed this assumption by arguing, "It's a justice issue. What's it got to do with culture?" (Silman 1987, 191).

This mode of thinking gains further traction through the rhetorical functions of a clash relation. A clash between the right to culture and women's rights inserts a compelling normative dilemma into the policy discussion, obscuring the racialized sexism subaltern women experience. This displacement succeeds because people in liberal sites often hold unacknowledged racialized sexist attitudes rooted in colonial era binaries and contemporary tropes. These attitudes frame subaltern women as victims in need of saving or as untrustworthy political agents. These attitudes not only inform this conventional mode of thinking, they also make it credible by confirming what many people think they already know about liberal and non-liberal groups. In short, the conventional mode of thinking obfuscates racialized sexism even as it relies upon it.

Attending to this conventional mode of thinking and drawing on the patterns I have identified in this chapter, I now detail my theory. I begin with stories. Policy debates about the right to culture and women's rights contain the structural elements of stories. These story elements are significant not only because they lend arguments legibility and appeal, but because they are entwined with relation-making. Where do these stories about the right to culture and women's rights come from? They are rooted in the political ideology and policy preferences of storytellers. As these political ideologies and policy preferences shift, so do the stories.[20] To be sure, stories can inform ideologies and preferences—and sometimes the policy preferences of other storytellers, as they do not tell these stories in a vacuum. This means stories are co-constituted and can change. Nonetheless, ideologies and preferences generally prevail. Despite their dynamism, story *types* are limited in range because political ideologies are relatively limited in number.

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[20] As detailed earlier, storytellers also can forge different rights relations for the different facets of one policy issue (e.g., divorce, bridewealth, property rights, and polygyny in customary marriage) depending on their political ideologies and policy incentives.

Like all stories in these policy debates, the stories state actors tell are rooted in political ideology and policy preferences, signaling liberal state neutrality and impartiality are illusions. All stories, moreover, construct a relation between the right to culture and women's rights. Political ideology and policy preferences, however, do not determine these relations. Instead, rights relations are in a co-constitutive relationship with the substantive content of story elements. This content varies by context and the creativity of the storyteller. Indeed, storyteller creativity is considerable in regard to rights relations, although not unlimited. The range of rights relations extends from a clash to indivisibility to no relation at all.

Storytellers also exhibit creativity when identifying victims and villains. The obvious victims in a story with a clash relation at its core are subaltern women. These women will not be able to fully access either their right to culture or women's rights if the story constructs a clash between them. Yet the conventional way of thinking about a clash relation does not center these women's lack of access to both sets of rights but instead treats them as victims of their culture or in cahoots with patriarchal subaltern leaders. State actors telling a clash story who center subaltern women narrowly frame victimhood, limiting access to rights. In an interesting deviation from this conventional approach, some state actors will not identify subaltern women or even people as victims. Instead, they use rhetorical tools such as essentialism to claim things (a national identity, a culture) are victims. They then deploy clever rhetorical techniques to claim these things have rights.

Storytellers constructing a clash relation between these two sets of rights castigate the villains of their stories for being deviants on human rights. However, when state actors tell a story with a clash relation their ensuing policies do not target these villains. Instead, they punish subaltern women. When state actors do not tell stories with a clash relation this does not happen.

Instead the villain is punished. Hence the rights relation is the critical element in the stories state actors tell. In contrast to this creativity with victims and villains, storytellers predictably claim to be their own heroes regardless of the type of story they tell or the rights relation they forge.

The conflicts driving the stories in these policy debates vary considerably. Yet in stories with a clash at their core this clash is a central, although not necessarily the sole conflict (see Chapter 2). In stories with rights relations that do not clash, the conflict motivating the story unfolds through the substantive content of the story elements which are rooted in the storytellers political ideology and policy preferences.

Each of these stories has a moral, or broader meaning that can be learned from what the storyteller has said. And in each story, the moral centers the heroic storyteller and their dedication to one or more human rights.

When considering all of these stories and their patterns, it is critical to recall that they are told in symbolic environments with asymmetrical power relations favoring state actors that severely disadvantage subaltern women. This environment not only shapes the final outcome of the debate but every aspect of it, including who speaks when about what and how, what is understood to have been said, and what flows from that understanding. Yet policy actors do not debate or challenge the inequitable aspects of their symbolic environment. On the contrary, they pretend these inequalities do not exist. Symbolic environments are thus crucial resources for dominant state actors and discriminate against subaltern women.

The discrimination subaltern women experience is rooted in white colonialism, which pervades nearly all liberal democratic sites and underpins the conventional approach to the right to culture and women's rights. White colonialism imposed policies and generated attitudes and harms that severely constrained the lives of subaltern women in the past and still do today.

Contemporary tropes facilitate the perpetuation of these policies, attitudes, and harms, which I refer to as racialized sexism. One indicator of racialized sexism is the exclusionary inclusion subaltern women face in these policy debates. Although liberal democratic institutions formally include them, state actors use a variety of means to discount and repackage what these women say, directing attention away from racialized sexism and toward state actors' preferred agenda. Two common rhetorical tools for doing this are the clash relation itself, which directs attention to these two sets of rights, and essentialism.

Clash stories told by state actors are racialized. When state actors construct a clash, they may blame subaltern men for the sexism they identify and argue the liberal state must address it. Yet few liberal states endorse feminism and most subaltern men formally endorse equality. Given that the gap between what liberal states do and what subaltern men say about women's rights is not a vast chasm, blaming subaltern men and relying upon liberal states to advance women's rights is odd. If before reading this book, this did not seem odd, it is another indication how the conventional way of thinking about the right to culture and women's rights works, making what is incredible, credible.

Indeed, when state actors tell clash stories, they do not advance subaltern women's rights but harm these women. The clash stories they tell inflame divisions among groups and authorize state power that weaponizes the right to culture and women's rights against subaltern women. Yet state actors are not malevolent agents intent on discriminating against subaltern women. Instead, they are reluctant policy actors who come to these policy debates as the result of partisan politics or changes in the rules of the game. Although hardly surprising given the marginalized position of subaltern women who would otherwise be unlikely to garner state attention, the latter confirms liberal states are not intent on saving these women as the conventional approach to the

right to culture and women's rights assumes. If they were, subaltern women would not be on the policy fringe.

Their fringe status means that subaltern women's stories are difficult to access. It thus is important to note the patterns of their stories. Subaltern women often forge indivisible relations between the right to culture and women's rights, center the effects of racialized sexism, herald their own political agency, and build bridges between the dominant and subaltern group. As this suggests, one of the most challenging tasks in writing this book was finding the stories subaltern women told in their own words at the time they told them. In contrast, state actors' stories were not only readily accessible but endlessly and carefully retold by media and scholars.

I conclude this section by describing the cycle of which all of these stories are a part. This cycle begins with subaltern women's litigation or exercise of rights guaranteed to other citizens in the polity. A scandal then erupts, prompting government action, such as a commission, the drafting of legislation, or committee hearings. This is a critical moment, as liberal democratic sites often formally include subaltern women in these processes. Competing policy actors tell stories about the scandal in formal institutional venues, such as a court or parliament. However, these venues are highly inequitable and in multiple ways, meaning the inclusion of subaltern women tends toward exclusionary inclusion. The story state actors tell dominates these policy debates. State stories that feature a clash naturalize racialized sexism and exacerbate divisions among groups. They also inform public policy. As a result, legislation does not address the root of the problem but instead weaponizes the right to culture and womens' rights against subaltern women. This ensures a renewal of the cycle, because subaltern women are not passive victims but political agents who will continue to claim their rights. The motor underpinning this cycle is the pervasive mode of thinking that presumes the right to culture and women's rights clash.

My theory provides a clear picture of how policy debates about the right to culture and women's rights work and the work that they do. This theory indicates conventional thinking about these two sets of rights is wrong. How can we end this thinking? I conclude by building on the guidelines detailed earlier to answer this question.

5.7 Conclusion

This chapter is a culmination of three chapters which examined three dissimilar policy debates involving the right to culture and women's rights. These three policy debates have little in common beyond being in democratic sites and being likely to be best-case scenarios for these debates. Despite their differences, I have identified a series of commonalities in this chapter. The most likely source is the nature of policy debates about the right to culture and women's rights. With this in mind, I have compared across the cases to draw out similarities and think carefully about exceptions. My analysis produced nearly forty observations. In this process I also have highlighted guidelines or lessons that can reorient and even alter our assumptions about policy issues such as polygyny.

The conventional approach to issues like those analyzed in this book assumes a clash between the right to culture and women's rights is inevitable and that liberal states should address it. The evidence in this book proves this thinking wrong. Multiple relations between the right to culture and women's rights are always possible. This means scholars need not focus on how to resolve clashes between these two sets of rights but can turn their attention to uncovering alternative relations. One way to do so would be to leverage the theory in this chapter and apply it to policy debates about the right to culture and women's rights. Where the evidence confirms

multiple relations are indeed possible, that would challenge conventional assumptions and contribute to reorienting scholarly thinking.

In the next chapter, I address how each one of us might challenge conventional thinking. In this chapter, however, I have discussed how scholars who have been studying these debates for decades might do this in their research. I recap those guidelines here. First, I recommend we begin with the stories competing policy actors tell rather than evaluating the normative merits of their arguments. These stories contain meaning and convey an appeal that dry reasoning lacks. Second, when assessing the merits of these stories, it is important to determine whether anyone in these debates constructs a clash relation. If they do so, this should set off alarm bells. A clash relation invites two questions: are proponents of a clash setting up a zero-sum game between these two sets of rights? Does the clash relation they construct deflect attention away from the racialized sexism permeating subaltern women's lives or does it point toward it?

This leads to a third guideline. Rather than focusing on how to resolve this clash, scholars can direct their attention to subaltern women. As subaltern women consistently point to how racialized sexism harms them, scholars might analyze racialized sexism in all its forms, legacies, present permutations, and how it is projected into the future.

Fourth, it would behoove scholars to pay careful attention to who the victim is in the stories policy actors tell. At a minimum, in stories centering a clash the victim must include subaltern women. Preferably, storytellers will define victims more generously, meaning that they will include anyone who might fall into this category. This is essential to expand access to human rights. Fifth, scholars should carefully consider whether stories extend human rights to persons or things. If the latter, this signals potential essentialization that diverts attention from racialized sexism and the interests of subaltern women.

Scholars are also able to speak critically about the asymmetric power dynamics in liberal sites that policy actors competing in this environment ignore in their quest to advance their policy goals. Disciplined by the rules of the game, less powerful actors require evidence and recommendations for change that scholars can bring. This would help subaltern women speak truth to power by exposing how these inequalities perpetuate exclusionary inclusion. It could also inform reforms addressing these inequalities. Finally, and most revolutionary for existing scholarship on debates about the right to culture and women's rights, scholars can listen to the stories subaltern women tell in their own words. This is crucial given that their stories can be removed from a case file, buried in inaccessible archives, and renarrated.

I turn next to what we all might do to reorient and even alter our own thinking about issues such as the marrying out rule that appear to confirm that a clash between culture and women's rights is inevitable. I also discuss whether the insights derived from my three cases apply beyond liberal sites to places such as Nepal, where child marriage is not a practice limited to a marginalized group.

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