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The Need for Liberal Democracy to Protect Women Against Discriminatory Group Rights

ABSTRACT - This paper explores the limits of state intervention in regulating cultural practices that harm women and girls. Accentuating gender equality, the paper focuses on gender discrimination, denial of meaningful education, and forced or arranged marriages. Such practices—exemplified by child marriage and educational deprivation—constitute serious violations of basic human rights as articulated in the UDHR, ICCPR, ICESCR, and subsequent conventions protecting women and children. Through an examination of discriminatory Pueblo tribal norms and the U.S. Supreme Court case *Santa Clara v. Martinez*, as well as the forced marriage patterns among Jewish-Yemenite immigrants to Israel in the 1950s, the paper assesses when a liberal state is justified in overriding cultural autonomy. Drawing on Rawls’s conception of justice, it argues that cultural practices that undermine women’s equal dignity and opportunities cannot be shielded by claims of cultural or religious protection and warrant state action to safeguard vulnerable individuals.

KEYWORDS - culture - education - equality - forced marriages - gender discrimination - Pueblo tribes - religion - women’s rights

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Discriminatory Group Rights****

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1. *Introduction*

Consider the following: A certain religious community within liberal democracy discriminates against women. When women complain, justification is produced that “this is how we conduct things here for hundreds of years. Rights of the group supersede your individual rights”. Should the liberal state intervene and come to the aid of the discriminated women? Or should it perceive this as a “private matter” to be left for the group to sort and resolve?

This paper endorses the concept of gender equality as it has developed through the ages from classical liberalism until today. It examines the limits of legitimate state intervention in regulating cultural practices that cause serious harm to women and girls. It focuses on gender discrimination manifested in the denial of community rights, in forced or arranged marriages, and in denying meaningful education, particularly when imposed on minors. By “meaningful education” I mean education that equips individuals with the skills and capacities necessary for meaningful participation in, and voluntary integration into, the wider society, should they choose to do so.

Practices such as child marriage and systematic educational deprivation constitute grave violations of autonomy and basic welfare. They entrench dependency, foreclose future life options, and expose those affected to enduring physical, psychological, and social harm. These are not merely

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** This paper draws upon Raphael Cohen-Almagor, *Just, Reasonable Multiculturalism: Liberalism, Culture and Coercion* (New York and Cambridge, Cambridge University Press, 2021) and on his lectures delivered at Catanzaro Law School on 18 December 2025 and Palermo Law School on 22 December 2025. I am grateful for the audiences at the two lectures for their constructive suggestions and remarks.

contested cultural norms but clear cases of rights violations that warrant state scrutiny and, where necessary, intervention.

The international human rights framework provides a robust normative and legal basis for limiting cultural defences in such cases. The preamble to the Universal Declaration of Human Rights¹ warns that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.” This concern is given legal force through binding instruments such as the International Covenant on Civil and Political Rights² and the International Covenant on Economic, Social and Cultural Rights³, which articulate core protections for equality, personal liberty, and access to education. Article 26 of the ICCPR affirms that all persons are equal before the law and entitled to equal protection without discrimination on grounds including sex, religion, or social origin.

Additional conventions reinforce these commitments. The Convention on the Elimination of All Forms of Discrimination against Women⁴ directly addresses gender-based inequality and harmful practices affecting women and girls. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief⁵ affirms freedom of belief while establishing limits where religious practices infringe fundamental rights. The Convention on the Rights of the Child⁶ further underscores the child’s right to education, protection from exploitation, and freedom from practices detrimental to development.

Against this normative backdrop, the paper examines two illustrative cases: the discriminatory membership rules of Pueblo tribes as addressed in *Santa Clara v. Martinez*, and the forced and arranged marriages of Jewish Yemenite girls following their immigration to Israel in the 1950s. In both contexts, cultural norms operated through internal restrictions and external

¹ *Universal Declaration of Human Rights*, 1948, <https://www.un.org/en/universal-declaration-human-rights>.

² *International Covenant of Civil and Political Rights*, 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³ *International Covenant of Economic, Social and Cultural Rights*, 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁴ *Convention on the Elimination of All Forms of Discrimination against Women*, 1979, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

⁵ *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*, 1981, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

⁶ *Convention on the Rights of the Child*, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

protections that insulated group practices from scrutiny while systematically undermining women's basic rights. In the name of culture or religion, women were denied education, autonomy, and equal standing, thereby constraining their capacity to develop as self-governing agents.

The central question is whether, and under what conditions, a liberal state is justified in overriding cultural autonomy when intra-group practices inflict serious harm on vulnerable members of that same minority culture. Drawing on John Rawls's (1971, 1993)⁷ conception of justice as providing a normative standard for assessing the basic structure of society, the paper argues that practices that deny women equal dignity and fair access to opportunities cannot be shielded by appeals to cultural or religious protection. Following Susan Moller Okin, while being aware of her criticisms of multiculturalism⁸, I maintain that cultural arrangements incompatible with women's equal moral standing violate core principles of justice and therefore warrant state intervention.

Taken together, the analysis delineates a principled boundary: cultural diversity merits respect, but it does not extend to practices that cause serious harm, deny basic capabilities, or irreversibly constrain the life prospects of women and children. This reasoning is part of the Just, Reasonable Multiculturalism Theory⁹ that aims to reconcile between liberalism and multiculturalism. It constructs a potential Golden Mean between liberalism and multiculturalism, arguing that they can be accommodated provided that appropriate boundaries are introduced.

Reasonable multiculturalism is proposed as a framework that balances respect for cultural diversity with the need to protect the values of liberal democracy. It emphasizes the importance of reasonableness in policy-making and societal attitudes, suggesting that a commitment to

⁷ J. RAWLS, *A Theory of Justice*. Oxford, Oxford University Press, 1971, and ID., *Political Liberalism*. New York: Columbia University Press, 1993.

⁸ S.M. OKIN, *Feminism, Women's Human Rights, and Cultural Differences*, in *Hypatia*, 13/1998, pp. 32-52; EAD., *Feminism and Multiculturalism: Some Tensions*, in *Ethics*, 108/1998, pp. 661-684; EAD., *Is Multiculturalism Bad for Women?*, in Susan Moller Okin, Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (eds.), *Is Multiculturalism Bad for Women?*, Princeton University Press, pp. 9-24; EAD., *Mistresses of their Own Destiny: Group Rights, Gender, and Realistic Rights of Exit*, in *Ethics*, 112/2002, pp. 205-230.

⁹ R. COHEN-ALMAGOR, *Just, Reasonable Multiculturalism: Liberalism, Culture and Coercion*, New York and Cambridge, Cambridge University Press, 2021.

dialogue, mutual respect, and the search for fair compromises can facilitate the peaceful coexistence of diverse cultures within a democratic society¹⁰.

The theory focuses on the relationships between individual rights and group rights within the framework of democracy. The theory does not intend to be universalistic. It restricts itself to societies that uphold the principles of not harming others, and respect for others, the rule of law and the protection of basic human rights.

Inter alia, the theory asks the following questions: What should people do if group rights in a democracy come into conflict with individual rights? What are the limits of state interference in group cultural affairs? What are the yardsticks for drawing the scope of interference?¹¹

1. Equality

Gender equality occupies a central place in liberal political theory, grounded in the core liberal commitments to individual freedom, moral equality, and equal respect. From its early formulations to its contemporary articulations, liberalism has increasingly recognized that denying women equal rights and opportunities is incompatible with its own normative foundations.

John Stuart Mill took a decisive step in placing gender equality at the center of liberal theory. In *The Subjection of Women* (1869)¹², Mill argued that the legal and social subordination of women was not only unjust but also irrational and socially harmful. For Mill, denying women equal rights violated the liberal principle of liberty articulated in *On Liberty* (1859)¹³, which holds that individuals should be free to pursue their own conception of the good so long as they do not harm others. Mill emphasized that women's apparent "nature" was socially constructed through coercive institutions such as marriage and law, rather than the product of free choice. Equality, he argued, was both a matter of justice and a prerequisite for

¹⁰ R. COHEN-ALMAGOR, *Just, Reasonable Multiculturalism Theory: A Liberal Perspective in Politics and Rights Review*, 2024, <https://politicsrights.com/just-reasonable-multiculturalism-theory/>.

¹¹ R. COHEN-ALMAGOR, *Just, Reasonable Multiculturalism Theory*, Mitja Sardoc (ed.), in *Encyclopedia of Diversity*, Dordrecht, 2025.

¹² J.S. MILL, *The Subjection of Women* [1869], in *Three Essays*, Oxford University Press, 1975, pp. 427-548.

¹³ J. S. MILL, *Dissertations and Discussions*, London, Longmans, Green, Reader and Dyer, vol. III, 1859.

human progress, since society could not flourish while systematically suppressing half of its talent and intelligence¹⁴.

*The Subjection of Women*¹⁵ was a radical and deeply unsettling work for its time, advancing the claim that justice requires “perfect equality” between the sexes. Mill’s position was exceptional in a nineteenth-century context shaped by entrenched patriarchy. His commitment to women’s equality was reflected not only in his writing but also in his public life: as a Member of Parliament, he presented a petition for women’s suffrage signed by nearly 1,500 women, sought to amend the Reform Bill of 1867 by replacing “man” with “person,” and devoted significant resources to advancing women’s education¹⁶. These actions underscore that *The Subjection of Women* was not merely theoretical, but part of a broader liberal project aimed at institutional reform.

At the core of Mill’s argument lies a rejection of the assumption that male dominance is natural or inevitable. Mill contended that the subordination of women originated, like slavery and conquest, in the brute fact of physical power rather than in moral justification or rational design¹⁷. While modern societies had abandoned force as a legitimate basis for political authority in virtually every other domain, the subjection of women persisted as a striking anomaly – “a solitary breach” in the fundamental principles governing modern social institutions¹⁸. For Mill, this inconsistency exposed the injustice of gender hierarchy within ostensibly liberal societies.

Mill further challenged claims that women’s subordination reflected biological necessity or voluntary choice. Long-standing social practices, he argued, easily come to be perceived as “natural” simply because no alternatives are visible. Apparent consent by women was especially suspect, given that it could reflect internalized oppression rather than genuine preference. Men, whose access to women’s inner lives was severely limited, were therefore in no position to assert confidently what women truly wanted. Only under conditions of genuine freedom—what Mill described as a “free market” for women’s talents and labor—could women’s choices be taken as reliable indicators of their interests¹⁹.

¹⁴ J.S. MILL, *The Subjection of Women*, above nt. 12.

¹⁵ *IVI*.

¹⁶ D. Boucher - P. Kelly (eds.), *Political Thinkers: From Socrates to the Present*, New York, Oxford University Press, 2003.

¹⁷ J.S. MILL, *The Subjection of Women*, above nt. 14.

¹⁸ *IVI*.

¹⁹ *IVI*.

Mill concluded that gender equality was not only a demand of justice but also a source of broad social benefit. Women's property rights should be independent of marital status, their access to education unrestricted, and their participation in political life fully recognized. Excluding women from public office or suffrage on the basis of sex alone lacked any rational foundation. Far from threatening social order, equality would enhance moral sensitivity, practical reasoning, and collective welfare. In Mill's liberal framework, the emancipation of women was inseparable from the progress of liberty itself²⁰.

In the French Revolution, the Revolution promoted the idea of gender equality. Various legislative acts accorded women unprecedented rights to equal inheritance and divorce²¹. Women featured prominently in revolutionary protests. Olympe de Gouges published *The Declaration of the Rights of Woman*²², aimed to supplement the *Declaration of the Rights of Man*, in which she spoke of granting women the same rights as men, criticized the revolutionaries for having forgotten women, and denounced the customary treatment of women as objects.²³

Later liberal theorists further deepened the connection between gender equality and justice. John Rawls's *A Theory of Justice*²⁴ is formally gender neutral. Its core principles – the equal basic liberties and fair equality of opportunity – cannot be satisfied in societies that tolerate gender hierarchy. Rawls's insistence that social and economic inequalities must be arranged to the greatest benefit of the least advantaged has been interpreted as requiring the dismantling of institutional structures that systematically disadvantage women²⁵. Equality is a foundational value in Ronald Dworkin's political philosophy and serves as the normative core around which his theory of rights, justice, and legitimate government is constructed. Unlike conceptions of equality that focus merely on equal outcomes or formal equality before the law, Dworkin advances a demanding moral ideal: equality of concern and respect. For Dworkin, a

²⁰ IVI.

²¹ E. CHABAL, *France*, Cambridge, Polity, 2020; R. COHEN-ALMAGOR, *The Republic, Secularism and Security: France versus the Burqa and the Niqab*, Cham, 2022.

²² O. DE GOUGES, *The Declaration of the Rights of Woman*, in *Liberty, Equality, Fraternity: Exploring the French Revolution, 1791*, <https://revolution.chnm.org/d/293>.

²³ However, in 1793, Olympe de Gouges was sent to the guillotine for publishing this book. She was condemned as a counterrevolutionary and denounced as an "unnatural" woman.

²⁴ J. RAWLS, *A Theory of Justice*, Oxford, Oxford University Press, 1971.

²⁵ IVI; J. RAWLS, *Political Liberalism*. New York, Columbia University Press, 1993.

political community is legitimate only if it treats all its members as equals in this deeper, moral sense²⁶.

Dworkin's account begins with the claim that individuals possess rights that function as "trumps" against collective goals. These rights derive from the requirement that government must show equal concern for the fate of every person subject to its authority. Equality, on this view, is prior to utility, social welfare, or majority preference. A political decision that benefits society as a whole but treats some individuals as less worthy of concern is unjust, even if it maximizes aggregate welfare²⁷. Equality also plays a decisive role in Dworkin's account of rights related to gender, disability, and minority status. Laws that discriminate on the basis of sex, race, or sexual orientation are objectionable not merely because they cause harm, but because they express unequal respect and deny the equal moral standing of those affected. For Dworkin, equality requires that political institutions be neutral with respect to competing conceptions of the good life, while remaining robustly committed to protecting the conditions under which individuals can pursue their own life plans²⁸.

Finally, equality underpins Dworkin's conception of democracy. Legitimate democracy is not exhausted by majority rule; it requires institutions that ensure all citizens are treated as political equals. Constitutional rights, judicial review, and protections for minorities are not deviations from democracy but expressions of its egalitarian foundation²⁹. Thus, gender equality is a constitutive element of legitimacy. Without equal access to education, political participation, bodily autonomy, and economic opportunity, women cannot exercise meaningful self-authorship. As liberal theorists emphasize, autonomy requires not only formal rights but also the social conditions that make those rights effective³⁰. A liberal society that tolerates systematic gender subordination betrays its own principles of

²⁶ R. DWORKIN, *Taking Rights Seriously*, Cambridge, Harvard University Press, 1977; ID., *A Matter of Principle*, Cambridge, Harvard University Press, 1981.

²⁷ ID., *Taking Rights Seriously*, above nt. 26.

²⁸ ID., *Justice for Hedgehogs*. Cambridge, Belknap Press, 2013.

²⁹ ID., *Freedom's Law: The Moral Reading of the American Constitution*. Cambridge, Harvard University Press, 1997.

³⁰ IVI; W. KYMLICKA, *Multicultural Citizenship: A liberal theory of minority*. Oxford, Oxford University Press, 2000; W. KYMLICKA and R. COHEN-ALMAGOR, *Ethnocultural Minorities in Liberal Democracies*, in Maria Baghramian and Attracta Ingram (eds.), *Pluralism: the philosophy and politics of diversity*. London, Routledge, 2000, pp. 228-250.

freedom, equality, and respect for people. Gender equality is a moral and political imperative at the heart of liberalism.

2. *Gender Discrimination – The Case of the Pueblo Indian Communities*

Current estimates by the United Nations system indicate that there are approximately 476 million Indigenous peoples worldwide, representing about 6.2 per cent of the global population. These populations comprise more than 5,000 distinct Indigenous groups living across roughly 90 countries. The most comprehensive recent assessment, produced by the International Labour Organization (ILO) in collaboration with UN agencies, shows that the majority of Indigenous peoples reside in Asia and the Pacific (around 70 per cent), followed by Africa (approximately 16 per cent) and Latin America and the Caribbean (around 11 per cent), with smaller proportions in North America and Europe and Central Asia. Variations in estimates reflect differences in national census practices, legal recognition, and the principle of self-identification, which underpins international definitions of Indigenous peoples³¹. Most communities have endured profound suffering as a result of colonial domination, including dispossession of land, destruction of livelihoods, and subjugation through force. Colonial powers routinely ignored indigenous claims to territory and natural resources, leaving many communities economically marginalized and politically vulnerable.

During the twentieth century, many Western states came to acknowledge the injustice inflicted on indigenous peoples and sought, however imperfectly, to reverse earlier policies of repression. Rather than suppressing indigenous cultures, liberal democracies increasingly recognized their cultural value and introduced measures designed to protect collective rights and self-government. In the United States, for example, several Pueblo communities enjoy extensive autonomy over internal affairs. Yet this accommodation has also enabled practices that restrict individual rights within these communities, including limitations on freedom of conscience and the enforcement of sexually discriminatory membership rules.

Comparable tensions arise among certain immigrant and religious minorities that invoke multiculturalism to justify patriarchal norms. In

³¹ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO), *Indigenous Peoples*, Rome, 2025, <https://www.fao.org/indigenous-peoples/who-we-are/en>.

some cases, communities seek to prevent children, particularly girls, from receiving meaningful education in order to reduce the likelihood of exit; in others, compulsory arranged marriages are upheld. These practices raise acute questions about the permissible limits of cultural autonomy when vulnerable members are harmed.

The Pueblo peoples, descendants of the prehistoric Ancestral Pueblo (Anasazi) culture, have lived in the American Southwest for more than six centuries, establishing settlements along the Rio Grande in New Mexico and in northern Arizona (Britannica n/d). Like many traditional societies, some Pueblo communities maintain internal norms that discriminate against women and those who leave the tribe. Inequalities arise in access to housing, and children of women who marry outside the tribe may be denied tribal membership. Such practices prompt a central question: should the federal government intervene in Pueblo affairs to protect the rights of women and children, or should tribal self-government prevail?

This tension was formally addressed in 1968 with the passage of the Indian Civil Rights Act³², which affirmed tribal sovereignty and self-government while subjecting tribes to constitutional standards broadly analogous to the Bill of Rights. The legislation was met with strong opposition from indigenous groups, who viewed it as an unjustified federal intrusion into their internal affairs³³. From their perspective, the assumption that all governing authorities within the United States should be bound by a single constitutional framework, interpreted by federal courts, failed to recognize their distinct historical and political status. Indigenous peoples, after all, predate the establishment of the United States and were dispossessed by the very power now claiming regulatory authority.

Since the nineteenth century, U.S. courts have recognized Indian tribes as distinct political societies – “domestic dependent nations” – possessing inherent powers of self-government while remaining in a relationship of dependency akin to that of a ward to a guardian³⁴. Many tribal leaders have therefore argued that exemption from the Bill of Rights is necessary to preserve communal cohesion and political autonomy. Their resistance

³² *Indian Civil Rights Act of 1968*, 25 U.S.C. §§ 1301-1304 (ICRA), <https://www.courts.ca.gov/documents/Indian-Civil-Rights-Act-of-1968.pdf>.

³³ C. CHRISTOFFERSON, *Tribal Courts' Failure to Protect Native American Women: A reevaluation of the Indian Civil Rights Act*, in *Yale Law J.* 101/1991, pp. 169-185; D. SCHNEIDERMAN, *Human Rights, Fundamental Differences? Multiple Charters in a New Partnership*, in Guy Laforest and Roger Gibbins (eds.), *Beyond the Impasse: Toward Reconciliation*, Montreal, Institute for Research in Public Policy, 1998, pp.147-185.

³⁴ R.A. BROWN, *The Indian Problem and the Law*, in *Yale Law J.*, 39/1930, pp. 307-331.

reflects not only a desire for self-determination but also a deep mistrust of federal institutions, rooted in historical experiences of land seizure and judicial neglect. Pueblo communities, in particular, seek to retain primary responsibility for their communal affairs, even as this claim continues to collide with liberal commitments to individual rights.³⁵

Spinner-Halev³⁶ (2001) asserted that avoiding the injustice of imposing reform on an oppressed group is often more important than avoiding the injustice of gender discrimination. The American Supreme Court legitimised the acts of colonisation and conquest, which dispossessed the Pueblo of their property and power. The Pueblo have never had any representation on the Supreme Court. Thus, the American federal constitution and courts do not enjoy obvious legitimacy in the eyes of an involuntarily-incorporated national minority. Why should the Pueblo agree to have their internal decisions reviewed by a body, which is, in effect, the courts of their conquerors?

The Pueblo maintains their own constitution and courts, which constrain the arbitrary use of political power. Although their constitutional order is not liberal, it nonetheless constitutes a genuine form of constitutional government. As Walker³⁷ observes, liberalism and constitutionalism should not be conflated; non-liberal constitutionalism can still impose meaningful limits on authority, uphold basic principles of natural justice, and secure legitimacy in the eyes of its members.

³⁵ The basic attitude of the American Supreme Court towards Indian sovereignty was determined by Chief Justice John Marshall's judgement in *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823). In this judgement, Marshall said that 'Conquest gives title which the courts of the conqueror cannot deny', the validity of which 'has never been questioned by our courts' (pp. 587-588). Marshall's approach continues to determine the Court's approach to Indian rights, not just in the United States, but also in other settler societies, such as Canada and Australia. On this, see D.E. WILKINS, *Johnson v. M'Intosh Revisited: Through the Eyes of Mitchel v. United States*, in *American Indian L. Rev.* 19/1994, pp. 161-168; R.J. WILLIAMS, *Sovereignty, Racism, Human Rights: Indian Self-Determination and the Postmodern World Legal System*, in *Review of Constitutional Studies* 2/1995, pp. 146-202; C. WILKINSON, *Blood Struggle: The Rise of Modern Indian Nations*, Boston, W. W. Norton, 2006; R. TSOSIE, *Reconceptualizing Tribal Rights: Can self-determination be actualized within the U.S. constitutional structure?*, in *Lewis & Clark L. Rev.* 15/2011, pp. 923-950.

³⁶ J. SPINNER-HALEV, *Feminism, Multiculturalism, Oppression, and the State*, in *Ethics*, 112/2001, pp. 84-113.

³⁷ G. WALKER, *The Idea of Non-liberal Constitutionalism*, in Ian Shapiro and Will Kymlicka (eds.), *Ethnicity and Group Rights*. New York, NYU Press, 2000, pp. 154-184.

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Kymlicka and Cohen-Almagor³⁸ contend that the liberal state should refrain from intervening in indigenous affairs, prioritizing claims to self-government over concerns about gender inequality. Kymlicka³⁹ consistently argues that liberal justice requires extending group rights and special protections to cultural minorities, particularly disadvantaged national groups and some immigrant communities.

Upon further reflection, I now argue that when cultural practices entrench gender injustice, state intervention is warranted. This becomes clear when examining a landmark case concerning federal authority over Indian tribes.

3. *Denying Basic rights to women - Santa Clara v. Martinez*

In *Santa Clara v. Martinez* 436 U.S. 49 (1978), the U.S. Supreme Court confronted the tension between tribal sovereignty and gender equality. Julia Martinez, a member of the Santa Clara Pueblo, together with her daughter Audrey Martinez, challenged a tribal membership ordinance that denied membership to the children of female members who married outside the tribe, while imposing no comparable restriction on male members. The plaintiffs sought declaratory and injunctive relief, arguing that the ordinance constituted sex discrimination in violation of the Indian Civil Rights Act of 1968, which provides that no Indian tribe exercising powers of self-government shall “deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law” (ICRA, 25 U.S.C. §§ 1301–1304).⁴⁰

The consequences of exclusion were substantial. Although the Martinez children were raised on the reservation and continued to reside there as adults, their non-membership deprived them of core civic and property rights. They were ineligible to vote in tribal elections or to hold secular tribal office, lacked secure rights of residence in the event of their mother’s death, and were barred from inheriting her home or her

³⁸ W. KYMLICKA, R. COHEN-ALMAGOR, *Ethnocultural Minorities in Liberal Democracies*, above nt. 30.

³⁹ W. KYMLICKA, *Liberalism, Community, and Culture*, Oxford, Clarendon Press, 1989; ID., *Do We Need a Liberal Theory of Minority Rights? Reply to Carens, Young, Parekh and Forst*, in *Constellations*, 4/1997, pp. 72-87; ID., *Multicultural Citizenship: A liberal theory of minority*, above nt. 30, pp. 35-48.

⁴⁰ <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/a2-the-indian-civil-rights-act-of-1968-as-amended-25-usc-1301-1304.pdf>

possessory interests in communal land. Through its membership rules, the Pueblo effectively erected external protections designed to preserve exclusive control over land and political authority⁴¹.

Prior to litigation, Julia Martinez sought to change the discriminatory rule through engagement with tribal elders, but these efforts proved unsuccessful. She then turned to the federal courts as a last resort. The district court certified Martinez as the representative of a class consisting of all Santa Clara Pueblo women who had married non-members, and certified Audrey Martinez as the representative of a class comprising all children born to such unions.

The case thus squarely presented the question whether, and to what extent, federal courts may enforce individual rights against a sovereign tribal authority when those rights are violated by internally generated norms. While the ordinance clearly differentiated on the basis of sex, its defenders framed it as an expression of collective self-determination, aimed at preserving the integrity, land base, and continuity of the Pueblo community. The Court's resolution of this conflict would come to define the balance between individual equality claims and tribal autonomy under the ICRA.⁴²

The Santa Clara Pueblo argued that the 1968 ICRA did not authorize civil actions in federal court for relief against a tribe or its officials. The Supreme Court, *per* Justice Thurgood Marshall who delivered the opinion of the Court, in which Justices Burger, Brennan, Stewart, Powell, Stevens and Rehnquist joined (Justice Blackman took no part in the consideration or decision of the case) agreed, guaranteeing strong tribal autonomy except when Congress provided for federal judicial review. Marshall J. conceded that Indian tribes have been recognized as possessing common law immunity from suit traditionally enjoyed by sovereign powers⁴³. The Pueblo successfully campaigned for external protections for devolution of powers to enable them to make decisions regarding their community. The Court emphasized that the role of courts in adjusting relations between and among tribes and their members is restrained. The tribes are better suited to understand their own culture.⁴⁴

⁴¹ W. KYMLICKA., *Multicultural Citizenship: A liberal theory of minority*, above nt. 39.

⁴² *Santa Clara Pueblo v. Martinez* 436 US 49, 1978, p. 53; N. Jessup Newton, *Federal Power over Indians: Its sources, scope and limitations*, in *University of Pennsylvania L. Rev.* 132/1984, pp. 195-288.

⁴³ *Santa Clara Pueblo v. Martinez* 436 US 49, 1978, p. 58.

⁴⁴ IVI, p. 72. For further discussion, see R. Francine, Skenandore, 2002. *Revisiting Santa Clara Pueblo v Martinez: Feminist Perspectives on Tribal Sovereignty*, in *Wisconsin Women's Law*

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Justice White dissented. He argued that the Court's majority decision substantially undermined the central purpose of the Indian Civil Rights Act, namely, to protect "individual Indians from arbitrary and unjust actions of tribal governments"⁴⁵. While acknowledging the distinctive status of Indian tribes in American law, White J. rejected the view that tribal sovereignty rendered them immune from federal scrutiny⁴⁶. In his view, the Pueblo's membership ordinance was manifestly unjust, and the ICRA itself constituted a deliberate congressional intrusion into tribal affairs. For that reason, federal courts retained jurisdiction to examine the merits of the respondents' equality claims⁴⁷.

I align with White J.'s position. From a liberal perspective, the Pueblo's non-liberal constitutional order is unjust insofar as it systematically denies women equal standing and protection⁴⁸. The Court's ruling left Native American women with formally recognized rights but without any effective remedy. Pueblo courts were permitted to enforce membership rules that discriminated on the basis of gender—and, in practice, also against Christians—thereby insulating internal injustice from external review.

At the same time, direct judicial imposition of liberal principles on self-governing national minorities raises serious concerns. Such intervention risks undermining the legitimacy of indigenous institutions, denigrating internally accepted systems of governance, and reviving perceptions of paternalistic or colonial domination. A defensible solution must therefore balance respect for collective self-rule with the protection of individual rights, especially those of women and children. Reasonableness, understood as equitable mutual respect for one's own rights and those of others, provides a normative benchmark for such balance⁴⁹. In the Pueblo case, this condition is plainly unmet.

Several factors strengthen the case for state intervention: the severity of the rights violations, the absence of effective internal dispute-resolution mechanisms, and the practical impossibility of exit without severe social

Journal, 17/2002, pp. 347-370; G. VALENCIA-WEBER, *Santa Clara Pueblo V. Martinez: Twenty-Five Years of Disparate Cultural Visions an Essay Introducing the Case for Re-Argument Before the American Indian Nations Supreme Court*, in *Kansas J. of Law & Pubic Policy* 14/2004, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2265961.

⁴⁵ *Santa Clara Pueblo v. Martinez* 436 US 49, 1978, p. 73.

⁴⁶ *IVI*, p. 75.

⁴⁷ *IVI*, p. 83.

⁴⁸ R. COHEN-ALMAGOR, *Just, Reasonable Multiculturalism: Liberalism, Culture and Coercion*, above nt. 9.

⁴⁹ A. GEWIRTH, *The Rationality of Reasonableness*, in *Synthese*, 57/1983, pp. 225-247.

and material penalties. Where individuals cannot challenge discriminatory norms from within or leave without forfeiting basic goods, deference to cultural autonomy ceases to be morally defensible.

Although imposing liberal norms on self-governing minorities is fraught with difficulty, it is untenable to accept the Pueblo's claim that gender discrimination is necessary for cultural survival. After *Martinez*, women denied tribal membership also lost access to essential benefits, including federal payments, education, and health care. In a particularly stark instance, Julia Martinez's daughter was denied medical treatment and later died from complications related to her illness⁵⁰. Appeals to culture cannot justify the systematic deprivation of such basic goods.

In the name of respect for tribal sovereignty, the Court narrowly interpreted the ICRA and found no urgency to intervene in Pueblo affairs. It emphasized the "unique political, cultural, and economic needs of tribal governments"⁵¹ and accepted Congress's decision not to extend the full scope of the Bill of Rights to tribes. In doing so, however, the Court failed to adequately reckon with the lived reality of Martinez and similarly situated women.

Balancing tribal autonomy against gender equality, my conclusion decisively favors the latter. A liberal state has a duty to protect the basic rights of vulnerable individuals and must not leave women at the mercy of discriminatory practices shielded by cultural justification. Gender equality and mutual respect are foundational liberal values, and group-based chauvinism that entrenches harm cannot claim normative legitimacy.

Principally, as Brian Barry noted⁵², the Pueblo cannot run a sub-state that is religiously exclusive, certainly not in a liberal society. If the Pueblo want to retain their special political status, they should be required to observe the constraints on the use of political power that are imposed by liberal justice. They should accept that exercising political power cannot legitimately be used to foster religious and gender discrimination. This is in line with The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), which holds (Article 16) that men and women have the same right to enter into marriage, and that both spouses enjoy the same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. The Preamble of the

⁵⁰ C. CHRISTOFFERSON, *Tribal Courts' Failure to Protect Native American Women: A reevaluation of the Indian Civil Rights Act*, above nt. 33, p. 169.

⁵¹ *Santa Clara Pueblo v. Martinez* 436 US 49, 1978, p. 62.

⁵² B. BARRY, *Culture and Equality*, Cambridge, Mass, Harvard University Press, 2001, p. 89.

same Convention holds that the full and complete development of a country, the welfare of the world and the cause of peace require the “maximum participation of women on equal terms with men in all fields”.

Gender discrimination violates the requirement of not harming others and that of *mutual* respect for others as enunciated in liberal democracy⁵³.

Liberal democracy presupposes that individuals can form and revise their conception of the good. Accordingly, the authority of religious communities must not impede members’ ability to exercise that capacity. While culture and tradition matter, they must be balanced against individual freedom, including freedom from religion and culture⁵⁴. Citizens should be able to choose and change their way of life without coercion. Communities should respond to dissent through deliberation, compromise, and recognition—not punishment, exclusion, or the withholding of communal resources. A community that relies on deterrence, denies avenues for dialogue, and refuses compromise is incompatible with liberal democratic norms.

Deliberation is the most defensible liberal mechanism for resolving such conflicts. In deliberative democracy, individuals with diverse interests exchange reasons, weigh competing considerations, and seek mutually acceptable solutions. Communication becomes the means for building bridges and negotiating principled compromise. Democratic legitimacy rests on people’s capacity to engage in authentic collective deliberation about their shared life.

As Habermas⁵⁵ notes, the success of deliberative democracy depends on institutionalizing procedures that enable open, accountable discourse and on the interaction between deliberation and informed public opinion⁵⁶. Deliberation also illuminates how cultures continually create and renegotiate the boundaries between “us” and “them”⁵⁷

⁵³ R. COHEN-ALMAGOR, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel*, Gainesville, The University Press of Florida, 1994.

⁵⁴ R. COHEN-ALMAGOR, *Why Separate State and Religion?*, in *Israel Studies*, 27/2022, pp. 76-91.

⁵⁵ J. HABERMAS, *Between Facts and Norms*, Cambridge, Polity, 1996.

⁵⁶ ID., *Jürgen, Moral Consciousness and Communicative Action*, Cambridge, MIT Press, 1990; A. BÄCHTIGER, J. DRYZEK, J. MANSBRIDGE, M.E. WARREN, *The Oxford Handbook of Deliberative Democracy*. Oxford, Oxford University Press, 2018; J. DRYZEK, *Deliberative Democracy and Beyond*, Oxford, Oxford University Press, 2002; ID., *Foundations and Frontiers of Deliberative Governance*, New York, Oxford University Press, 2012.

⁵⁷ S. BENHABIB, *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton; Princeton University Press, 2002.

Promoting human rights – especially for vulnerable population – should therefore be pursued through non-coercive incentives that encourage liberal reforms. By demonstrating the value of fair resource distribution, mutual respect, and reasonable accommodation, communities can preserve tradition while affirming the inherent dignity of all their members, regardless of gender.

It is also noted that Article 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief holds: “No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.”⁵⁸ Interestingly, when the United Nations adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 13, 2007, the United States, Canada, Australia and New Zealand voted against.

The Declaration that is very relevant to the four opposing countries establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. It recognizes and reaffirms that “indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples” (UNDRIP 2007). Using the term “indigenous individuals” rather than indigenous groups aims to establish just, reasonable multiculturalism. Only in 2016, Canada officially adopted the Declaration (CBC 2016). Canada was the last of the four countries to reverse its position.⁵⁹

⁵⁸ *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 1981.

⁵⁹ The Australian Government announced its support for the *United Nations Declaration* in 2009, <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/un-declaration-rights>. The New Zealand government officially endorsed the *United Nations Declaration* in April 2010, and the US government endorsed it in 2011, U.S. DEPT OF STATE (2011). For further discussion, see R. TSOSIE, *Reconceptualizing Tribal Rights: Can self-determination be actualized within the U.S. constitutional structure?*, above nt. 35, pp. 923-950; A. Eisenberg, *Reasoning about the Identity of Aboriginal People*, in Stephen Tierney (ed.), *Accommodating Cultural Diversity*, Aldershot, Ashgate, 2007, pp. 79-97.

4. *Arranged and forced Marriages for Girls*

Marriage has occupied a central and evolving place in Western philosophy, serving as a focal institution through which morality, social order, gender relations, and the relationship between private life and public authority were examined. From antiquity to contemporary political philosophy, marriage has been understood not only as a personal arrangement but as a normative institution with profound ethical and political significance.

Marriage occupied a central place in John Stuart Mill's critique. He traced its historical roots to bondage and involuntary servitude, noting that even benevolent husbands operated within a legal framework that permitted domination. Mill rejected the idea that authority within marriage was either necessary or desirable. Instead, he envisioned marriage as a voluntary association between equals, governed by consent and a flexible division of roles. Such relationships, he argued, could exemplify the liberal ideal of reciprocal respect and shared self-development, rather than hierarchy and submission⁶⁰.

We need to distinguish between arranged marriage in which families take a leading role, but the parties have the free will and choice to accept or decline the arrangement, and forced marriage where one or both people do not (or in cases of people with learning disabilities cannot) consent to the marriage and where pressure or abuse is used. While the latter is coercive the former is not. While forced marriages should be denounced as unjust, arranged marriages can be accepted. In England and Wales, arranged marriage is permitted while force marriage is illegal. Forced marriage includes taking someone overseas to force her to marry (whether or not the forced marriage takes place) or marrying someone who lacks the mental

⁶⁰ J.S. MILL, *The Subjection of Women* [1869], above nt. 12.

capacity to consent to the marriage.⁶¹ It is estimated that 10% of the arranged marriages are forced⁶².

Arranged marriages involving girls below the age of sixteen or eighteen and significantly older adults may constitute grave harm. Such unions are inherently unequal and are likely to entail subordination, discrimination, coercion, and abuse. In practice, these marriages overwhelmingly involve adult men and underage girls; there is no corresponding cultural pattern of adult women marrying young boys. Within such arrangements, young girls face profound obstacles to developing relationships grounded in equality, mutual respect, and self-determination.

From a liberal standpoint, these inegalitarian marriages are unreasonable. They severely impair children's and adolescents' capacity to access and sustain basic human goods and relationships over the course of their lives. Their futures are constrained by binding commitments imposed by families without meaningful consent. The central normative question, therefore, is whether—and to what extent—the state may legitimately intervene to prohibit such practices.

Consider the following case: Yihya, aged forty-two, and Nafshi, aged fifteen, a married Yemenite couple, immigrate to a liberal democratic society. They have lived together for six years. Should the receiving state recognize

⁶¹ Forced marriage, <https://www.gov.uk/stop-forced-marriage>. In the United Kingdom, the Forced Marriage Unit (FMU) is a joint Foreign and Commonwealth Office and Home Office unit which leads on government policy, outreach and casework. Its jurisdiction includes the UK where support is provided to any individual and overseas where consular assistance is given to British nationals. The FMU operates a helpline to provide advice and support to forced marriage victims as well as to professionals. The assistance includes safety advice and helping 'reluctant sponsors.' In extreme circumstances the FMU assists with rescues of victims held against their will. See "Forced marriage," <https://www.gov.uk/guidance/forced-marriage>; K. RELE, *Forced marriage*, in *International Psychiatry*, 4/2007, pp. 98–100; B.A. TOY-CRONIN, *What Is Forced Marriage – Towards a Definition of Forced Marriage as a Crime against Humanity* in *Columbia Journal of Gender and Law*, 19/2010, pp. 549-590, available at <https://doi.org/10.7916/cjgl.v19i2.2592>; A.K. Gill, S. Anitha (eds.) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective*, London Zed Books, 2012.

⁶² M. DEVEAUX, *Gender and Justice in Multicultural Liberal States*, Oxford, Oxford University Press, 2009. p. 164. In the United Kingdom, the Forced Marriage Unit (FMU) is a joint Foreign and Commonwealth Office and Home Office unit which leads on government policy, outreach and casework. Its jurisdiction includes the UK where support is provided to any individual and overseas where consular assistance is given to British nationals. The FMU operates a helpline to provide advice and support to forced marriage victims as well as to professionals. The assistance includes safety advice and helping 'reluctant sponsors'. In extreme circumstances the FMU assists with rescues of victims held against their will.

their marriage? The dilemma becomes even more acute if the couple have children.

This is a hard case. Any defensible response must incorporate both principled and consequentialist considerations. Among the relevant factors are the depth and historical persistence of the cultural practice; whether adherence to the norm is coercively enforced; and whether children and families possess a protected right of exit should they reject the practice. Equally important is a careful assessment of the child's rights, the potential harms of forced separation, and the broader consequences of state intervention for the child and the family as a whole.

In traditional Yemenite Jewish communities, the bride was usually quite young. The groom, on the other hand, tended to be older, sometime much older, especially if he needed to finish a trade apprenticeship or save up a dowry. These age patterns were shaped by a mix of religious law (which permits marriage after puberty), economic considerations, and the social structure of the community. Thus, underage girls were often betrothed in order to ensure them a good match, or, if they were orphans, to save them from forced conversion to Islam⁶³. A liberal state should not respond reflexively, but neither should it defer uncritically in the name of cultural sensitivity. Rather, it should engage in principled deliberation aimed at reaching a just and reasonable resolution—one that accords due weight to the protection of vulnerable minors while remaining attentive to the human costs of intervention. To elucidate these considerations, I turn next to the conduct of the Israeli establishment toward Jewish-Yemenite immigrants in the 1950s.

For these immigrants, who were Jewish observant, arrival in Israel presented a cherished opportunity to practice religion even more strongly in the sanctity of the Holy Land. They did not wish to break with tradition, their old customs or cultural heritage. They wished to maintain their traditional way of life, folkways, and norms. They expected that the place of men and women, their status and honor will be as they were in Yemen. At that time, testimonials were brought before the two Chief Rabbis of Israel, Rabbi Herzog and Rabbi Uziel, that young women were encouraged to leave their older husbands. This action was made upon the assumption that teenage

⁶³ A. GAIMANI, *Marriage and Divorce Customs in Yemen and Eretz Israel in Nashim: A Journal of Jewish Women's Studies and Gender Issues*, 11/2006, pp. 43-83.

girls were forced to marry older people in Yemen.⁶⁴ In 1950, the Marriage Age Law 5710-1950 was passed, setting the minimum age at 17.⁶⁵ The motivation behind these interventions was largely well-intentioned. Israeli decision-makers sought to “rescue” women from what they perceived as a confined and oppressive situation. Yet in practice, intervention often proceeded without any meaningful effort to ascertain whether the girls themselves wished to remain with their husbands. Social workers and advisers assumed authority over intimate marital matters while neglecting relevant contextual factors beyond the woman’s age. Age alone was treated as a sufficient trigger for state intervention, including efforts to dissolve marriages, regardless of the individuals’ expressed preferences or lived realities. This approach reflected the prevailing paternalistic attitude of the period toward immigrants from Asia and Africa, marked by ethnocentrism and a presumption of cultural superiority⁶⁶. The absorbing elite believed that the interests of both the individuals and the nation justified a paternalistic approach: that it was their role to “show the light” to Yemenite immigrants, who would eventually come to appreciate such intervention. This expectation proved unfounded. Many immigrants experienced these measures as arrogant intrusions into their communal life, marked by ethnocentrism and a profound misunderstanding of their social norms.

While the establishment’s motives were often sincere, its methods were frequently crude and dismissive, insufficiently attentive to the dignity and sensibilities of those affected. As a result, state intervention likely produced harm as often as benefit. Rather than fostering dialogue with community leaders, clarifying shared objectives, and pursuing accommodations that would primarily advance the interests of women, the state acted heavy-handedly—imposing directives instead of deliberating, and relying on coercive authority rather than negotiated compromise.

⁶⁴ Archives of the State of Israel, G5543/3631, file 607 (II). See also G5543/3631, file 607 (III) and BAT-ZION ERAQI KLORMAN, *Traditional Society in Transition: The Yemeni Jewish Experience*, Leiden, Brill, 2014.

⁶⁵ In 2013, the minimum age for marriage was raised to 18.

⁶⁶ See R. COHEN-ALMAGOR, *Cultural Pluralism and the Israeli Nation-Building Ideology*, in *International J. of Middle East Studies*, 27/1995, pp. 461-484; BAT SHEVA MARGALIT-STERN, *Model Friendship*, in *Kathedra*, 118/2006, pp. 115-144; A. MENELSON-MAOZ, *Multiculturalism in Israel*, West Lafayette, Purdue University Press, 2014; S.J. FRANTZMAN, *The tragedy and shame of 1950s Israel’s treatment of Yemenite children*, in *The Jerusalem Post*, 2016, <https://www.jpost.com/Opinion/The-tragedy-and-shame-of-1950s-Israelis-treatment-of-Yemenite-children-476888>; Y. ALTMAN, *Where did the assets of Yemenite immigrants disappear*, in *Israel Hayom*, 2018.

Coercion negates the conditions under which autonomy can be exercised. When individuals are coerced, their voluntariness is compromised: they are prevented from freely reflecting on their values, preferences, and available courses of action. Instead, their range of options is artificially constrained to those imposed by the coercer, leaving compliance as the only realistic alternative. Such constraints undermine self-rule by severing the link between reflective choice and action. Autonomy depends on the capacity for voluntary deliberation and unforced decision-making; accordingly, a person is autonomous only insofar as she is free from coercion, and her autonomy diminishes in direct proportion to the degree of coercion she faces⁶⁷.

Women, both young and adult, should unquestionably have had meaningful opportunities to opt out of unwanted marriages and to seek divorce. Yet such protections are insufficient if women's voices are ignored. Their perspectives should have been actively solicited and accorded genuine weight in shaping policy and practice.

Another pertinent issue was polygamy. In the Yemenite culture, polygamy was accepted and the State of Israel could not have it. Freedom of choice is important provided it is not discriminatory. It is just to prohibit polygamy because it discriminates against women.⁶⁸ But if both men and women would be free to marry as many partners as they wish, meaning that both polygyny and polyandry were to be allowed in a certain community, then we may honour freedom of choice. Marriage between two individuals is normative, and norms may change. Indeed, norms have been changing. In this age of time, marriage between people of the same gender is becoming more acceptable. This idea was perceived as an aberration in

⁶⁷ R. COHEN-ALMAGOR, *Coercion*, in *Open Journal of Philosophy*, 11/2021, pp. 386-409, <https://www.scirp.org/journal/paperinformation.aspx?paperid=111463>.

⁶⁸ Polygamy has been documented in 80% of societies across the globe often to the detriment of women. In times of war, when many men are away and possibly not return home, some women would rather share a man than have no man. See D. HASSOUNEH-PHILLIPS, *Polygamy and Wife Abuse: A Qualitative Study of Muslim Women in America*, in *Health Care for Women International* 22/2001; pp. 735-748; S. ELBEDOUR, A.J. ONWUEGBUZIE, C. CARDIDINE, and HASAN ABU-SAAD, *The Effect of Polygamous Marital Structure on Behavioral, Emotional, and Academic Adjustment in Children: A Comprehensive Review of the Literature*, in *Clinical Child and Family Psychology Review*, 5/2002; pp. 255-271; HOUSE OF COMMONS, *Polygam*, London, 20 November 2018; M.S. PEARSALL, *Polygamy: A Very Short Introduction*, Oxford University Press, 2022; Z.B. NAQVI, *Polygamy, Policy and Postcolonialism in English Marriage Law: A Critical Feminist Analysis*, Bristol, Bristol University Press, 2023.

previous centuries⁶⁹. Today, most countries that permit polygamy are countries with a Muslim majority or with a sizeable Muslim minority. Polygamy is common in much of Africa and the Middle East, and is also seen in parts of Southeast Asia⁷⁰. In India, Malaysia, the Philippines, and Singapore, polygamous marriages are permitted only within Muslim communities. Australia formally prohibits polygamous marriage, yet polygamous relationships persist in practice among certain Indigenous Australian communities. In Indonesia, polygamy is lawful in specific regions, including Bali, Papua, and West Papua. Balinese Hinduism permits polygamy, a practice that has long been embedded in the social traditions of both Balinese and Papuan societies (common in much of Africa and the Middle East, and is also seen in parts of Southeast Asia⁷¹).

The same rights and liberties that are accorded to men should be accorded to women. The liberal principles of respect for others and not harming others should be applied equally. As education is a major mechanism for self-development and empowerment, it should be open to all without discrimination. The following discussion focuses on chauvinistic attempts to deny women education.

5. *Denying education to women*

Education is essential to human flourishing, moral development, and the stability of political communities. It is a prerequisite for autonomy, citizenship, and justice. Education cultivates virtue and reason. It enables people to develop their autonomy and facilitate the uncovering of “the truth”, objective and subjective. It is only through rigorous moral and intellectual education could individuals develop the capacities required for justice, both in themselves and in society. John Stuart Mill argued that education is necessary for the exercise of liberty and meaningful participation in democratic life. An uneducated population, he warned,

⁶⁹ B. NOBLE, *First five countries to recognise gay marriage*, in *newsmax*. 2015, <http://www.newsmax.com/FastFeatures/same-sex-marriage-legalized-countries/2015/06/15/id/650672/>.

⁷⁰ World Population Review, *Countries Where Polygamy Is Legal*, 2025, <https://worldpopulationreview.com/country-rankings/countries-where-polygamy-is-legal>.

⁷¹ Above nt. 70; N. BURTON, *The Pros and Cons of Polygamy*, in *Psychology Today*, 2018, <https://www.psychologytoday.com/gb/blog/hide-and-see/201801/the-pros-and-cons-polygamy>.

cannot be genuinely free, since ignorance leaves individuals vulnerable to domination and manipulation. Education meant for Mill⁷² the cultivation of the intellect, of moral powers, and of aesthetic. Education is not to *teach*, “but to fit the mind for learning from its own consciousness and observation”. The reasoning is: A good government cultivates moral education; moral education makes human beings moral, thinking people who do not merely act as machines and, in the long run, makes people to claim control over their own actions and inspires them to intensely seek the truth⁷³ argued that human nature is not a machine to be built after a model, and set to do exactly the work proscribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing. Across Western philosophy, education is emphasised as a moral, political, and social necessity. It cultivates reason, enables autonomy, underpins democratic citizenship, and promotes equality of opportunity. Societies that neglect education undermine not only individual flourishing but the very conditions of freedom and justice upon which Western political thought is built. Education is essential for according to equal rights to man and women; it is beneficial to the child and also to society because it teaches the child social norms which are useful to all⁷⁴.

What degree of autonomy should communities enjoy in shaping their educational systems, and what obligations does the state bear in guaranteeing citizens an acceptable standard of education? These questions lie at the heart of the tension between cultural self-determination and the liberal state’s duty to protect equal opportunity.

In Israel, where secular Jews constitute the majority, women—while still disadvantaged in the labour market—are not denied access to education. On the contrary, women comprise more than half of all students in higher education⁷⁵. Among young adults aged 25–34, 58% of women hold

⁷² J.S. MILL, *On Genius*, in John M. Robson and Jack Stillinger (eds.), *The Collected Works of John Stuart Mill, Volume I - Autobiography and Literary Essays*, Toronto, University of Toronto Press, London, Routledge and Kegan Paul, 1981.

⁷³ J.S. MILL, *Civilization*, in *Dissertations and Discussions*, New York, Haskell House Publishers, Vol. I., 1973; R. COHEN-ALMAGOR, *Between Autonomy and State Regulation: J.S. Mill’s Elastic Paternalism*, in *Philosophy*, 87/2012; pp. 557-582; J. S. MILL, *Dissertations and Discussions*, above nt. 13.

⁷⁴ R. COHEN-ALMAGOR, *Just, Reasonable Multiculturalism: Reply to Levey, Newman and Cohen*, special Symposium on *Just, Reasonable Multiculturalism: Liberalism, Culture and Coercion*, *Philosophia*, 50/2022, pp. 2369-2382.

⁷⁵ Report of The Committee for the Advancement and Representation of Women in Institutions of High Education, *Women in Higher Education Institutions in Israel*, Jerusalem, 2015; Council for Higher Education, *Women in Academia*, 2021,

a college degree, compared with 38% of men⁷⁶. These figures reflect substantial progress in educational access, even as broader gender inequalities persist.

The situation differs markedly within the ultra-Orthodox (haredi) community. In 2018–2019, the haredi population numbered just over one million, yet only about 8,400 haredi women were enrolled in Israeli institutions of higher education⁷⁷. Haredi women typically marry at a young age and have large families. Although educational attainment among them has improved in recent years – largely due to economic necessity, as many husbands devote themselves to full-time yeshiva religious studies and families average seven children—their educational opportunities remain significantly constrained compared with those available to secular women.

Within the ultra-Orthodox social order, women are expected to prioritize family obligations and to perform these roles “optimally.” Employment is often pursued within the community rather than in the broader secular labour market⁷⁸. The ideal of being the “Queen of the House” occupies a central place in haredi education and socialization. As a result, women are required to navigate multiple and competing demands: caring for husbands and children, managing the household, and simultaneously serving as the primary breadwinners for large families.

These patterns are reflected in Israel’s broader gender equality outcomes. The Global Gender Gap Report, published by the World Economic Forum, ranks countries according to women’s participation in the workforce, access to education and health, and representation in political life. In 2020, Israel ranked 64th out of 153 countries⁷⁹. This relatively low ranking is attributable to women’s underrepresentation in politics, limited presence in senior public service positions, persistent wage gaps, and

<https://che.org.il/en/%D7%A0%D7%A9%D7%99%D7%9D%D7%91%D7%90%D7%A7%D7%93%D7%9E%D7%99%D7%94/>.

⁷⁶ G. GERTEL, *Women are more educated than men, but earn less than them*, in *Sicha Mekomit*, 2019, <https://www.mekomit.co.il/שחצי-מהיש-יותר-הבעיה-הבועה-מרוויחים-יותר-הבעיה-שהצי-מהיש/>.

⁷⁷ G. MALACH, L. KAHANER, *Yearbook of Haredi Society in Israel 2018*, Jerusalem, The Israel Democracy Institute, 2018; D. Zaken, *Thanks to women: the standard of living of ultra-Orthodox society is steadily rising*, in *Globes*, 2019.

⁷⁸ M. ASAF and M. ABRAMOVSKY, *Integration of Family and work among Ultra-Orthodox Women*, Jerusalem, Ministry of Economy, 2015.

⁷⁹ *Global Gender Gap Report 2020*, World Economic Forum, http://www3.weforum.org/docs/WEF_GGGR_2020.pdf

comparatively low labour-force participation⁸⁰. While Israel's record is troubling, it is not exceptional: discrimination against women remains a widespread and entrenched feature of many societies.

The 2025 global gender gap shows a very slow change in closing the gap. With the gap improving by 0.4 percentage points since 2024, at the current pace world economies will require 123 years to achieve full gender parity. Indeed, the 2025 Global Gender Gap Index also shows that no country has yet reached complete parity. Iceland is the global leader, holding the top position for the sixteenth consecutive year and standing as the only economy to have closed more than 90% of its gender gap since 2022⁸¹.

6. Conclusion

Reasonable multiculturalism entails both inclusion and exclusion. It protects freedom of religion while equally safeguarding freedom from religion; it enables individuals to sustain their chosen ways of life while ensuring meaningful exit rights and the genuine capacity to adopt alternative life plans⁸². Such a framework cannot be indifferent to inequality. Egalitarian policies are indispensable, and a fair balance must be struck between group claims and individual rights, with priority given to the protection of basic human interests.

Courts should therefore refrain from endorsing the claims of illiberal groups under the banner of religious freedom. An unqualified commitment to state neutrality risks colliding with core liberal principles—most notably gender equality and individual freedom. Where tolerance of group autonomy results in intolerance toward internal dissenters, particularly women, neutrality becomes complicity. Liberal tolerance is grounded in the protection of individuals rather than groups⁸³ and as such it cannot

⁸⁰ A. UNI, *Israel slips 18 places in Gender Gap Index*, in *Globes*, 2019.

⁸¹ World Economic Forum. 2025. *Global Gender Gap Report 2025*, <https://www.weforum.org/publications/global-gender-gap-report-2025/digest/>.

⁸² R. COHEN-ALMAGOR, *Just, Reasonable Multiculturalism: Liberalism, Culture and Coercion*, above nt. 9.

⁸³ R. COHEN-ALMAGOR, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel*. Gainesville, The University Press of Florida, 1994; ID, *The Scope of Tolerance: Studies on the Costs of Free Expression and Freedom of the Press*, London and New York, Routledge, 2006.

legitimize internal restrictions that curtail freedom of conscience or institutionalize gender discrimination.

In situations of normative conflict, a plurality of interests must be carefully weighed with a view to reaching reasonable compromises⁸⁴. Yet not all compromises are morally acceptable. Arrangements that benefit one group at the expense of the vulnerable—especially where harm is systematic and enduring—trigger a duty of protection. Basic human and civil rights must be secured equally for all genders, including individuals with transient gender identities (transgender persons). No gender may be accorded superior moral or legal standing. Human rights, whether civil or social, are fundamentally directed toward sustaining human dignity and obligate the state to correct discrimination in both its individual and collective forms⁸⁵.

Israel exemplifies these tensions acutely. As an economically advanced democracy committed to preserving a distinctive Jewish identity within a heterogeneous society, Israel has struggled to reconcile religious authority with gender equality. Its institutional preference for Jewish orthodoxy has hindered the adoption of national standards that fully align domestic law with international human rights norms. The enduring challenge for Israeli democracy is to secure basic rights for all citizens without exception⁸⁶. Progress in women's status is contingent on the growth of egalitarian consciousness capable of countering the coercive power of orthodoxy, alongside sustained socioeconomic development⁸⁷.

A central claim of this paper is that the liberal state bears a positive obligation to intervene on behalf of women denied access to education. When men exploit religious or cultural authority to exclude women from education simply because they can, state inaction is indefensible. Equal educational opportunity is foundational to self-development, autonomy,

⁸⁴ R. COHEN-ALMAGOR, *On Compromise and Coercion*, in *Ratio Juris*, 19/2006, pp. 434-455.

⁸⁵ C. SHALEV, *Health Rights*, in *Israeli Democracy at the Crossroads*. London, Routledge, 2005, pp. 65-77; A. Eisenberg and Jeff Spinner-Halev (eds.), *Minorities within Minorities: Equality, Diversity and Rights*, Cambridge, Cambridge University Press, 2009.

⁸⁶ R. COHEN-ALMAGOR and U. MAROSHEK-KLARMAN, *Gender Discrimination in Israel*, in Aneta Tyc, Zbigniew Góral, and Jo Carby-Hall (eds.), *Discrimination and Employment Law: International Legal Perspectives*, London, Routledge, 2023, pp. 248-276.

⁸⁷ ISRAEL MINISTRY OF FOREIGN AFFAIRS, *Ensuring equal rights for women in Israel*, 2013, <https://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Ensuring-equal-rights-for-women-in-Israel.aspx>; R. HALPERIN-KADDARI and Y. YADGAR, *Between Universal Feminism and Particular Nationalism: Politics, Religion and Gender (In)equality in Israel*, in *Third World Quarterly*, 31/2010, pp. 905-920; R. HALPERIN-KADDARI, *Women in Israel: A State of Their Own*, Philadelphia, University of Pennsylvania Press, 2004.

and access to meaningful and fulfilling social roles. These opportunities must be open to all, not reserved only for men. Cultural claims cannot function as shields for coercion or discrimination. The same reasoning applies, with even greater force, to the denial of education to children⁸⁸.

More broadly, the principles of respect for others and non-harm impose a clear duty on the state to intervene when fundamental rights are violated⁸⁹. Women possess an intrinsic moral worth that demands recognition. Understood as a liability, dignity obliges the state to guarantee equal treatment from birth⁹⁰. Women have the same right as men to develop as autonomous agents and to pursue lives of their own choosing. Dignity requires that persons be respected as persons. While genuine concern cannot be demanded, respect is a moral minimum owed to all.

⁸⁸ R. COHEN-ALMAGOR, *Can Group Rights Justify the Denial of Education to Children? The Amish in the United States as a case study*, in *Revista Direitos Sociais e Políticas Públicas*, 9/2021.

⁸⁹ R. COHEN-ALMAGOR, *Speech, Media, and Ethics: The Limits of Free Expression*, Houndmills and New York, Palgrave-Macmillan, 2005.

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