Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation

Article *in* Journal of Political Philosophy · December 2002

DOI: 10.1111/1467-9760.00056

CITATIONS
25

READS
361

1 author:

Ayelet Shachar
University of Toronto
61 PUBLICATIONS **1,589** CITATIONS

SEE PROFILE

The Journal of Political Philosophy: Volume 6, Number 3, 1998, pp. 285–305

Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation*

AYELET SHACHAR
Legal Ethics, Yale Law School

In 1941, Julia Martinez, a full-blooded member of the Santa Clara Pueblo tribe and a citizen of the United States who resided on the Santa Clara Reservation in Northern New Mexico, married a non-tribal husband and gave birth to a daughter named Audrey. Audrey was brought up on the Pueblo, spoke the Tewa language, participated in its life, and was culturally, for all practical purposes, a Santa Claran Indian. However, according to Pueblo personal status law, she was not an Indian by "blood." Membership in the tribe was granted either to children whose parents were both Pueblo members or to children of *male* members who married outside the tribe; membership, however, was denied to children of *female* members who married outside the tribe. After unsuccessful efforts to persuade the tribe to change its gender-discriminatory membership rule, Julia and Audrey Martinez filed a lawsuit in a federal court, seeking declaratory and injunctive relief which would enable Audrey and similarly situated children to acquire tribal membership. In 1978, the equal protection claim raised by Martinez was rejected by the US Supreme Court on the basis of a "non-intervention" rationale.[1] Thus, while the *Martinez* case strengthened the autonomy of the Pueblo vis-à-vis the state,[2] it also, like many other instances of multicultural accommodation, perpetuated the systematic intra-group maltreatment of a particular category of insider (in this case, women who married non-tribal husbands and the children born of those unions) *in accordance with their group's accommodated traditions*.

The *Martinez* case and other legal cases from countries such as Israel and India, which have already implemented accommodationist policies in the family

*As ever, I am indebted to Ran Hirschl for his keen critiques. His comprehensive involvement and enthusiasm made the writing of this article possible. I would also like to thank Bruce Ackerman, Jack Balkin, Joe Carens, Jay Katz, Chandran Kukathas, Will Kymlicka, Reva Siegel, Joseph Weiler, Rachael Wilson and the anonymous readers for helpful comments. Special thanks to Bob Goodin for his invaluable advice and suggestions. I gratefully acknowledge the support of the W.M. Keck Foundation and the Yale Law School.

[1]Santa Clara Pueblo v. Martinez, 436 US 49 at 52, 54, 62–5 (1978) [hereinafter the *Martinez* case]. For a thorough exploration of the *Martinez* case, see Resnik (1989).

[2]My usage of the term "state" here and throughout the article is interchangeable with the term "central government."

law arena, challenge the presumption that group-differentiated rights, which aim to eradicate inequality between identity groups and the larger society, are "primarily a matter of external protections."[3] An examination of practical legal experiences from these countries shows that the external aspects of multicultural accommodationist policies cannot be considered without regard to the policies' internal impacts.[4]

"Accommodation," in the multicultural context, refers to a wide range of state attempts to facilitate identity groups' practices and norms, for example, by exempting group members from certain laws, or by awarding identity groups some degree of self-governance.[5] Multicultural accommodation, in its various legal manifestations, generally aims to ensure that identity groups have the option to maintain what Robert Cover calls their *nomos*: the normative universe in which law and cultural narrative are inseparably related.[6] Multicultural accommodation presents a problem, however, when pro-identity group policies improve the status of identity groups but worsen the status of less powerful group members.[7]

Schematically, six prototypical legal conflicts can arise under a multicultural legal system: individual vs. individual; individual vs. state; identity group vs. identity group; identity group vs. state (the most-often discussed legal conflict under multiculturalism); nonmember (or outsider) vs. identity group (as, for

[3]See Kymlicka 1996, p. 160.

[4]See e.g. the case of Mohd. Ahmed Khan v. Shah Bano Begum and others, AIR 1985 S.C. 945. Shah Bano, a seventy-three-year-old Moslem woman, was thrown out of her husband's house (after forty-three years of marriage); she was later unilaterally divorced by her husband in accordance with Moslem personal status law (by a *talaq* divorce). She then turned to a state court in order to obtain alimony payments from her former husband, although by Moslem personal law she had no right to alimony payments beyond the *iddat* period (the first three months after the dissolution of marriage). The case reached the Indian Supreme Court, which upheld Shah Bano's claim and imposed maintenance payments upon her husband. Because the *Shah Bano* case was politically debated as an "external protections" confrontation between majority and minority interests, the Supreme Court's decision created a furore so great that in 1986 the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act (No. 25 of 1986). This Act withdrew Muslim women's right to appeal for maintenance under state law; hence imposing a strict "non-intervention" policy on Moslem-Indian marriage and divorce affairs. For further discussion, see Diwan and Diwan (1994) and Mahmood (1986). Similarly, in Israel, respect for the different religious communities' personal status laws is inscribed in state law, hence emphasizing the external protections on family law even at the cost of legitimizing internal restrictions, such as the "anchoring" of a wife by her husband in accordance with Halakhic law (Shiloh 1970).

[5]The move toward the legal recognition of identity groups as entities deserving special or "differentiated" rights is thoroughly discussed in Kymlicka (1995); see also Spinner (1994),Taylor (1994, pp. 25–73) and Young (1990).

[6]Cover 1983.

[7]I use the term "identity groups" to refer to religious, ethnic and tribal groups which are recognizable as groups by virtue of their *nomos*. Although what constitutes an identity group is a controversial question, we will propose for the purposes of this discussion that such groups are marked by a unique history, a distinct "text" of shared legal and social traditions, collective memories, or an experience of maltreatment by mainstream society. I focus my analysis on identity groups that raise claims for recognition and enforcement of their traditions in certain legal arenas, such as family law. See Levy 1997, pp. 36–40.

example, in affirmative action cases[8]); and individual member (or insider) vs. identity group. My analysis focuses on the final category of legal conflict: that which occurs between a group member and her own identity group. That is, I address the intra-group maltreatment of certain less powerful group members, in this case, women, as *sanctioned* by group practices, which takes place against the background of multicultural accommodation policies that delegate legal powers from the state to identity groups. More specifically, my discussion interrogates the injurious effects of accommodated family law policies on the female members of identity groups. Ultimately, the paper outlines several viable legal paradigms which could gird a reshaped, less problematic multicultural model.

I. THE PERILS OF ACCOMMODATION

From a legal perspective, multicultural accommodation policies which delegate powers from the state to identity groups raise complex questions about the appropriate relationships between "inside" courts and "outside" authorities, particularly with regard to the protection of group members' basic individual rights in intra-group spheres. I refer to this set of concerns as the *trichotomy* question: that is, can the multicultural state allocate jurisdiction to identity groups in certain fields of law while simultaneously protecting group members' individual rights as citizens?[9]

Advocates of accommodation policies offer two answers to the trichotomy question, representing what I call a "strong version" and a "weak version" of the multicultural model. The strong version argues that identity groups should be given a strong formal and legal recognition and be permitted to govern their members "in accord with their customs and views."[10] The weak version also justifies granting self-governance rights to identity groups, however these "differentiated rights" are viewed as supplementing, not replacing, the universal rights assigned to all citizens by virtue of their membership in the state.

The strong multicultural model is based on the notion that the constitution (and the individual rights it protects) are, as James Tully puts it, "an imperial yoke, galling the necks of the culturally diverse citizenry."[11] Under the strong model, the state should free identity groups from the injustice of an alien form of rule by two means: first, by creating islands of self-governance for identity

[8]In such cases, an outsider challenges the criteria which define an identity group or the legitimacy of distributing benefits to group members based on those criteria for membership. See e.g. Regents of the University of California v. Bakke, 438 US 265 (1978).

[9] I address the tension between multiculturalism and citizenship in greater detail in Shachar 1998. At minimum, the state is required to provide its citizens with equal protection of their bodily integrity and life. Indeed, one of the only uncontested objectives of political order is the *protection of its citizens*. Interpretations vary as to the scope of this protection, however. See e.g. Nedelsky 1996.

[10]Tully 1995b, p. 4; 1995a, p. 114.

[11]Tully 1995b, p. 5.

groups; and second, by officially including the "different" voices of identity groups within the constitutional framework and within public discourse.[12]

The strong model, however, focuses almost exclusively on the problem of inter-group injustice. Hence, in its crusade to integrate identity groups into the public sphere in a fair and equal manner, respecting their differences, the strong multicultural model fails to effectively address the phenomenon of intra-group oppression.[13] This makes the strong multicultural citizenship model troubling from the standpoint of the trichotomy question, precisely because it obscures the power relations *within* identity groups while highlighting the conflicts that exist *among* identity groups or *between* identity groups and the state. A weak version of the multicultural citizenship model, on the other hand, more effectively addresses the question of intra-group effects of multicultural accommodation: it acknowledges the potential tension between recognizing different cultures and protecting the rights of group members as citizens.[14]

Although proponents of the weak multicultural model argue about the normative justifications for adopting accommodation policies (these justifications vary from "autonomy-based/valorization of choice" arguments to "tolerance/respect for diversity" reasoning), they agree that a morally adequate treatment of identity groups must seek ways to provide accommodation *without* abandoning the protection of individual rights. Will Kymlicka, a prominent representative of the weak version, expresses this goal in the following way: "A comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership, and certain group-differentiated rights or 'special status' for minority cultures."[15] Moreover, Kymlicka argues that the real test of the multicultural model of citizenship lies in its ability to "explain how minority rights coexist with human rights, and how minority rights are limited by principles of individual liberty, democracy, and social justice."[16]

The strong multicultural model fails Kymlicka's test because it emphasizes only the rights of identity groups. In contrast, the weak version aims to mediate among the components of the trichotomy, and therefore offers a more compelling

[12]See e.g. Young 1989, p. 259.

[13]Chandran Kukathas (1992, p. 127; 1997), for example, supports a policy of "non-intervention" in the affairs of identity groups (so long as individuals have a right of exit), even if the consequences of this accommodationist policy may mean that some groups adopt practices which are harmful to a certain category of insider, e.g. women.

[14]See e.g. Galston 1995.

[15]Kymlicka 1995 p. 6. Note that Kymlicka's (1995, pp. 26–33) multicultural model takes as its paradigmatic case the experience of countries like Canada, Australia and the United States, which typically have to deal with claims raised either by "newcomers" or by indigenous peoples. In other parts of the world, however, particularly in deeply divided societies, the motivation for adopting accommodationist policies is neither compensatory, as it is with indigenous peoples, nor inclusionary, as it is with immigrants' customs. Rather, in deeply divided societies such as Israel and India, the more common motivation for granting nomoi groups a limited sphere of autonomy in matters crucial for their self-definition is that of maintaining the social and political peace, preserving a *modus vivendi* of mutual existence in a shared political community.

[16]Kymlicka 1995, p. 6.

multicultural model. As I show in the next sections, however, the weak multicultural model contradicts its own central tenet—that "minority rights are limited by principles of individual liberty, democracy, and social justice"—because there are circumstances under which it upholds multicultural accommodation even in cases where "external protections" are used to justify "internal restrictions."[17]

Family law is an ideal arena in which to test my hypothesis that multicultural accommodation is never solely a matter of dispute between the group and the state. Clearly, when the state awards self-governance power over members' marriage and divorce affairs to identity groups, it enhances their autonomy. At the same time, this delegation of legal authority also exposes insiders who belong to traditionally subordinated classes, such as women, minorities within the group, and children, to what I call *the paradox of multicultural vulnerability*. These group members may accrue some benefit from the transfer of legal powers from the state to their identity groups, but as individuals with "other" identities they bear disproportionate costs for their group's *nomos*. Moreover, unlike other situations in which self-governance powers are awarded to identity groups, violations of individual rights in the family law arena are systematic rather than accidental, and thus legal arrangements that aim to relieve inter-group inequalities will almost certainly have detrimental *intra*-group effects on a specific category of insider, namely women.

To illustrate this last point, consider the following two situations in which the multicultural state might grant identity groups self-governance powers over certain legal arenas. In situation A, the state grants an identity group full discretion over matters of resource developments in the community, as part of its multicultural accommodationist policy.[18] Such an allocation of powers from the state to the group strengthens the group's autonomy vis-à-vis the state, because decisions regarding resource development will be made by the majority in the group in accordance with its own decision-making mechanisms. If the state transfers exclusive powers to the group, however, there is the possibility that some individual members of the group will be worse off, in comparison with their situation under state law. Assume that an Indian tribe has been awarded full discretion over matters of resource development, and its members have decided to open a gambling facility on the territory under the tribe's jurisdiction. Also assume that a similar decision could not have been made under state law because state law prohibits gambling activities.

The tribe's decision could succeed or fail to develop the tribe's resources. The justifications for adopting the decision, however, are not dictated by the group's

[17]Kymlicka (1996), however, recognizes the potential tension between inter-group accommodation (or "external protections"), and intra-group violations of insiders' basic rights by their own group (or "internal restrictions"). Yet, as above mentioned, Kymlicka views group differentiated rights as "primarily a matter of external protections."

[18]This is one of the examples given by Kymlicka (1995, p. 30), who discusses powers which are being gradually transferred by the United States and Canada to North American tribal/band councils.

authoritative texts or traditions. In other words, providing gambling opportunities to the tribe and its visitors is not an identity-preserving imperative dictated by the group's authorities or inside courts in the name of preserving the tribe's *nomos*.

The tribe's decision to open a gambling facility will no doubt have both an economic and a social impact on tribe members. Although a successful casino would accrue financial benefits for tribe members, certain insiders (compulsive gamblers, for example) might be better off if the gambling facility is not opened. Thus majority policy decisions can potentially injure certain group members. However, the infringements upon certain group members are in such cases accidental rather than encoded within a group's sanctioned traditions which systematically impose violations of individual rights upon a certain category of insider, as in the following situation B.

In situation B, a group is awarded exclusive jurisdiction over matters that are important for its self-definition, such as family law. Such accommodation not only grants the group more autonomy vis-à-vis the state, but also awards it substantive legal powers with which to define its own membership boundaries (for example, to decide who by marriage or by birth is eligible for group membership), and to shape legal relations between spouses in intra-group spheres. In other words, what is granted in situation B is not a policy issue which is to be determined by the group's decision-making mechanism, such as whether or not to open a gambling facility. Instead, a well defined "text" of social and legal norms and practices (that is, parts of the group's self-determined essential traditions) is given authoritative status.[19] Thereafter, group members are bound by the state to have their personal affairs adjudicated by inside courts which apply the group's essential traditions, even if, as individuals, they would have preferred to have such matters adjudicated by outside courts which apply state laws. In situation B, self-governance powers, combined with a state "non-interventionist" policy, might expose certain insiders (women undergoing divorce proceedings, for example) to intra-group violations of their individual rights because such violations are enshrined in the group's essential traditions.[20]

While the intra-group effects in situation A might be waived because they impose "random" costs upon certain insiders (for example, the compulsive gamblers), the intra-group effects in situation B are quite different in nature. When restrictions upon a certain category of insider are *built into* an identity

[19]Religiously-defined identity groups generally have a recognized textual corpus (e.g. holy scripts and their authoritative interpretations), which encode their marriage and divorce laws, while ethnic and tribal groups might only have unwritten customary rules by which they regulate their members' behavior. My reference to "text" in this context, however, also relates to customary family law rules.

[20]What constitutes an identity group's "essential tradition" is never fully fixed or immune from change. However, at any given period a group's textual interpreters have emphasized specific norms and practices as having a dominant (or in my terminology, "essential") status. Thus "essential traditions," in religious groups, for example, usually consist of a recognized corpus, which is in turn subject to reinterpretation by the group's recognized religious leaders or inside courts.

group's family law practices, as in situation B, the multicultural state permits the de facto imposition of these internal restrictions. Thus, in situation B, the "external" and "internal" aspects of multicultural accommodation are mistakenly considered separate: in other words, the *disproportionate injury* imposed on certain group insiders is *directly related* to the ways in which the *state accommodates their identity groups*. In such instances, the state's multicultural policies conflate the language of "respect to groups" with a license to subordinate specific group members.

The tension between "external" and "internal" impacts of multicultural family law arrangements is evident in the practical legal experience of countries like Israel and India, which have already adopted accommodation policies with reference to the personal status affairs of their citizens. All Israeli citizens, for example, must have their marriage and divorce disputes resolved by religious courts of their respective communities.[21] The Israeli religious courts, which have been awarded different degrees of exclusive jurisdiction over matters of family law, are in principle immune from state intervention,[22] even if they uphold group traditions which expose certain insiders, particularly women undergoing divorce proceedings, to maltreatment.[23]

Under Halakhic law, for example, the giving and accepting of the *get* (divorce decree) is a private act between the spouses, which takes place under the supervision of a rabbinical court. Unless both spouses agree to the divorce, the ultimate power to decide whether or not to dissolve the marriage remains in the husband's hands: until he declares that he is willing to grant his wife the *get*, there is no way in which she may be released from the marriage bonds.[24] Because such maltreatment of women is sanctioned by (state-authorized) rabbinical courts, Israel's multicultural accommodation policy does more than recognize the autonomy of religious courts in the family law arena. In effect, it also grants these "inside" courts a *carte blanche* license to subordinate certain group members. Not only Jewish women, but also Moslem, Christian and Druze women are potentially subject to intra-group controls by their own group's traditions under the auspices of Israel's accommodationist family law policy.[25]

[21]In Israel, when both spouses belong to the same religious community, they must, by state law, pursue matters of marriage and divorce in a religious "inside" court. Thus, no "unified" (civil) law applies to all Israeli citizens in matters of personal status. Instead, each community's religious court applies its personal law (i.e., the group's "essential traditions"). Therefore, "[i]n matters affecting their families, Israelis *must* function as Jews, Muslims, Druzes, etc." Edelman (1994, p. 121, emphasis added); see also, Shiloh (1970).

[22]See Basic Law: Judicature, Laws of the State of Israel, 38, 101–6, articles 15 (c)-(d)(3)-(4); Women's Equal Rights Law, 1951, Laws of the State of Isarel 5, 171–2, article 5.

[23]For further discussion, see Raday (1992).

[24]Rabbinical courts in Israel have not yet found a solution to this problem of intra-group oppression. For a clear summary of Halakhic divorce law, see Bayer (1968); see also Bleich (1981).

[25]Moslem *Sahri'a* courts, for example, have exclusive jurisdiction over *all* matters of personal status of Moslem Israeli citizens. This wide jurisdiction, of course, brings up a host of other problems that cannot be addressed here. For a concise account of Moslem personal status laws, see al-Hibri (1992); for further analysis of the status of women under Islamic family law, see Hijab (1988, pp. 9–37) and Nasir (1994).

II. FAMILY LAW, COLLECTIVE IDENTITY AND THE MALTREATMENT OF WOMEN

Family law fulfills important social and legal functions in nomoi groups: on the one hand, family law is a crucial venue for preserving collective identities and, on the other, a means by which power inequalities between men and women are maintained within the group. In order to understand the centrality of family law to preserving a group's membership boundaries, we need briefly to examine the two basic means through which collective identities are maintained. The two means, which are often intertwined, are generally categorized as: "the racial, ethnic, biological and territorial, on the one hand, and the ideological, cultural and spiritual on the other."[26] Anne McClintock stresses the former, emphasizing that collective identities "are frequently figured through the iconography of familial or domestic space."[27] She also observes that even the term nation derives from *natio*: "to be born,"[28] and that communities are also symbolically figured as *domestic genealogies*.[29] Benedict Anderson also suggests that communities are best viewed as akin to families or religious orders.[30] Such communities are understood by their members as having "finite, if elastic, boundaries."[31] Defined in this fashion, group membership derives its meaning from a system of "differences," which must be demarcated by membership boundaries.[32]

Nomoi groups demarcate their boundaries by engaging in sorting processes which define who is inside and who is outside the group. Nomoi groups, however, unlike nation-states, lack the institutional authority to formally determine who belongs to the political community (for example, they lack the sovereignty which would permit them to define citizenship or legal residency). Moreover, groups struggling to preserve their differences within a nation-state—that is, under a common citizenship status—lack the institutional means to oblige members to claim membership. Nomoi groups cannot issue formal documents of membership or force members to contribute taxes to the collective. Instead, they attempt to maintain their membership boundaries by employing biological-descent and cultural-affiliation criteria. Some groups, for example, define themselves primarily in cultural or linguistic terms. These groups are less exclusive than those which define themselves solely in terms of biological descent. These more exclusive nomoi groups often use *family law* as a central tenet in the

[26]Ben Israel 1992, p. 393.
[27]McClintock 1993, pp. 62–3.
[28]Note that the analogy I propose here between identity groups and nations is limited to the "mechanisms" of biological and cultural reproduction. As I explained earlier, I focus here on the situation of identity groups which exist within the framework of a larger political entity (the state). I will not examine the claims of groups seeking national independence/sovereignty, or secession from the larger body politic. Rather, the identity groups which I analyze seek accommodation for their differences within the boundaries of a state which is composed of a diverse citizenry.
[29]McClintock 1993.
[30]Anderson 1991.
[31]Anderson 1991, p. 7.
[32]This demarcation of differences *among* groups does not imply, however, that actual inequality and exploitation do not prevail *within* groups, as Anderson himself observes.

construction of their membership boundaries, and in asserting and preserving their differences.[33]

The emphasis in more exclusive nomoi groups on marriage and membership by birth,[34] which I call family law's "demarcating function," provides a strong impetus for the group to develop various, often detrimental, social and legal mechanisms for controlling the personal status, sexuality and reproductive activity of women—for women have a central and potentially powerful role in procreating the collective. Intra-group policing of women,[35] if encoded in the group's essential traditions, is achieved partially via the implementation of personal status laws which clearly define how, when and with whom women can give birth to children so as to ensure that those children become legitimate members of the community.[36] Thus, precisely because of women's important role in reproducing a group's membership boundaries, they are subject to strict legal regulation, particularly at the junctures of marriage and divorce.

More exclusive religious groups often highlight women's responsibilities as the reproducers of legitimate children in accordance with the group's personal status laws and as primary socializers of the young.[37] This understanding of women's contribution to the collective, developed, glorified and maintained by the group's authorities, is borne out, for example, by Orthodox Jewish perceptions of the family.[38] The recognition that women contribute to the group as bearers of the collective might, in theory, grant women a powerful position within their group; in practice, however, in Orthodox Jewish groups, as in many other religious communities, this conceptual deification of the female role of wife–mother–homemaker has done exactly the opposite.

Under Halakhic law, for example, a husband's refusal to grant his wife a divorce decree (or *get*) results not only in the wife's inability to remarry but also in severe restrictions on her sexuality and procreative activity. For example, if she were to have a sexual relationship with another man she would be considered a *moredet* (rebellious wife) and, as such, may lose her rights to child custody and

[33]Accordingly, family law loses its distinct role in setting the legal terms for defining membership if the group permits anyone interested in joining the group to become a full member.

[34]Obviously there are other ways of establishing membership in nomoi groups (e.g., by religious conversion). However, most nomoi groups (and nations) acquire members first and foremost by birth. For a position which advocates a transition from a model of citizenship as birthright into a model of political membership by consent, see Schuck and Smith (1985).

[35]Men, too, are controlled by such laws, but not in a similar, discriminatory and subordinating, fashion.

[36]Legitimacy, in this context, refers not to the traditional common-law definition (i.e. a child born in a legal marriage), but to granting membership by birth only to a child born in accordance with the group's specific personal status laws and lineage rules. For these purposes, legal marriage is often a necessary but not sufficient condition. See e.g. the case of *Santa Clara Pueblo v. Martinez*.

[37]See e.g. Anthias and Yuval-Davis 1989. Note, however, that Anthias's and Yuval-Davis's analysis of women's unique position does not aim to essentialize their role as reproducers of collective identities (that is, primarily as mothers). Anthias and Yuval-Davis therefore differ from cultural feminists who on the normative level glorify mothering as the epitome of an ethics of care. Compare with West (1988).

[38]See e.g. Berman (1973) and Meiselman (1978).

spousal alimony; moreover, if she were to have a child by another man while still considered legally married to her imprisoning husband, that child would be considered a *mamzer* and would be doomed to exile from the Jewish community for ten generations while bearing the shameful status of a bastard.[39]

Marriage and divorce laws not only determine personal status, however. They also define the rights and duties of spouses during a marriage and, in the event of divorce, determine the economic and parental consequences of this change in personal status. In this sense, a group's governing essential traditions shape the "distribution" of resources and obligations between ex-husband and ex-wife, and play a crucial role in maintaining power inequalities between men and women within the community.

Given the *distributing and demarcating* functions of family law, nomoi groups predictably express a strong interest in having *exclusive* control over their members' marriage and divorce affairs. In moving toward a multicultural citizenship model, family law has therefore become a contested field in which the state and nomoi groups vie for control. That nomoi groups should struggle for autonomy in the family law arena is not surprising. Yet, as I have noted, family law policies in more exclusive nomoi groups have a particular, often detrimental, effect on women, who stand at the fulcrum of legal rules and policies encoded in their groups' essential traditions.[40] Precisely because family law partakes in shaping internal restrictions within a given group, the multicultural state cannot treat the delegation of legal powers in the family law arena solely as a matter of external protections. Rather, the multicultural state must recognize the tensions inherent in any accommodationist policy in the family law arena.

Moreover, as matters of family law are rarely, if ever, open to public deliberations, self-governance powers are transferred from the state to the group's members only in theory. In practice, accommodation in the family law arena gives full discretion to a group's acknowledged spokespersons—most often male members who are involved in some form of politics, law or religion—to implement "inside" laws over group members.[41] Such accommodation can create a *disincentive* for the group's elite to relieve internal restrictions against women,

[39]The threat of exclusion from the Jewish community in the case of the *agunah*'s illegitimate children is not merely theoretical. In fact, rabbinical courts in Israel maintain "blacklists" of persons who are barred from marriage to Jews (*psuley hitun*), among them the *mamzerim*.

[40]Clearly, however, not all women within a given identity group encounter intra-group injuries, even if they are subject to the same family law code. This is partly because women in religious or ethnic communities, as elsewhere, differ along lines such as social status, wealth or age.

[41]Note, however, that the self-governance powers granted to religious courts in Israel and in India over members' family law affairs are not as expansive as those granted to Indian tribes in the United States.

for example, by reworking family law practices in a less discriminatory way *within* the group.[42]

We should note, however, that even when the multicultural state changes the "background rules" affecting the status of nomoi groups by granting religious "inside" courts jurisdiction over their members in matters of family law, nomoi groups, and especially their leaders, are never fully independent of "outside" authorities. Significantly, the ultimate power to define the criteria by which groups are recognized, accommodated and awarded some degree of self-governance powers remains in the hands of the state.

For example, even under the Ottoman *millet* system, which nowadays is presented in the multicultural literature as a model of religious pluralism and tolerance,[43] the Ottoman authorities did not award *millet* leaders *carte blanche* jurisdiction over all internal legal matters. Rather, the extent of the self-governing power of each religious community (or *millet*) was specifically indicated in the different Imperial charters issued by Ottoman authorities (in our modern terminology, the state) to the official leaders of each *millet* from time to time.[44] These leaders were required to be subjects of the Ottoman empire; moreover, their status as leaders of particular *millets* had to be approved by "outside" authorities. Approved *millet* system leaders "were to govern, make laws for, judge, tax and punish the rayahs of their religion." Moreover, they were "responsible with their heads for the maintenance of order within their communities."[45] In return, these leaders had the authority to govern their religious communities via inside courts, in accordance with the laws of those communities.[46]

The Ottoman state, however, reserved for itself the power either to refuse to recognize the whole body of rules comprised in a *millet*'s system of personal law, or to recognize only the rules relating to certain limited matters (for example, marriage).[47] Moreover, the power of execution of religious courts' decisions was left in the hands of the Ottoman authorities, so that the application of the "inside" courts' decisions was never fully separate from the state. Thus the Ottoman state never relinquished its dominant position in relation to the *millets*,

[42]One example of an *internal* reinterpretation of existing essential traditions is offered by Moslem women's groups which suggest the inclusion of specific stipulations in the Islamic marriage contract. Such stipulations safeguard the legal rights of the signatories and can serve as a legal tool to preclude the abuse of women. For example, stipulations can specify that a wife cannot be removed from an agreed upon locality, that she has a right to divorce if her husband takes another wife, or that she may work outside the home. Such stipulations are legally binding (by Islamic law and by state law) if signed by the spouses and registered *before* the officiating person signs the marriage certificate. For further details, see Alkateeb (1996).

[43]See e.g. Sigler 1983.

[44]Vitta 1970, p. 173.

[45]Goadby 1926, p. 102.

[46]The scope of jurisdiction awarded by the Ottomans to "inside" courts normally included "jurisdiction over the clergy, and jurisdiction in matters of family law (marriage, divorce, alimony, etc.), wills, and inheritance over the laity" (Goadby 1926, p. 102).

[47]Vitta 1970, p. 192.

even when it granted the *millets* certain powers of self-governance. Likewise, if the contemporary multicultural state hopes to provide relief to citizens whose rights are violated by their groups' traditions, then theorists and legislators must recognize that the state should not fully relinquish its power over identity groups. Rather, the real challenge lies in envisioning a new, reshaped multicultural model which allocates legal authority to both the state and identity groups.

III. TOWARD A RESHAPED MULTICULTURAL MODEL

A reshaped multicultural model geared toward resolving, or at least mitigating, the injurious intra-group effects of "external protections" must begin with an *intersectionist* understanding of the position of identity group members in the multicultural state. The intersectionist view takes into account the conception of personal identity as fragmented, discursive, positional, and imbued with multiple ascriptions.[48] As Pierre Birnbaum observes, in contemporary multicultural theory "individuals . . . are [mistakenly] understood as the bearers of a single oppressive and quasi-essentialist idealized cultural identity from which no escape is possible. Such an immutable collective identity is not compatible with the expression of other identities (sexual, religious, etc.) in which some might wish to recognize themselves at certain moments of their existence."[49] The intersectionist view of identity, on the other hand, would acknowledge the *multidimensionality* of insiders' experiences and would capture the potential double or triple disadvantages that certain group members are exposed to given their *simultaneous belongings*.[50]

Moreover, an intersectionist view would recognize that group members are *always* caught at the intersection of multiple affiliations.[51] They are group members (perhaps holding more than one affiliation) and, at the same time, citizens of the state.

A reshaped multicultural model should therefore reject the "either/or" understanding of identity and the oversimplified perception of allocation of legal authority it entails, that is, either *all* powers are granted to the state or to the group. The more complex question, of course, is how to allocate legal authority over these individuals with multiple affiliations, in ways which "accommodate" their *simultaneous belongings* and provide adequate safeguards for attending to the interests of less powerful group members. In the following pages I utilize the example of family law to illustrate the contours of an "intersectionist" approach to multicultural accommodation—one which aims to respect the the centrality of

[48]See e.g. Alcoff 1988.

[49]Birnbaum 1996, p. 41.

[50]Unfortunately, most proponents of group-differentiated rights fail to notice the vulnerability of women to intra-group maltreatment because they view them simply as *group members*.

[51]By thinking about the internal restrictions caused by accommodation, and by adding gender as a relevant category of analysis, we can begin to recognize the 'intersecting' disadvantages that erode the citizenship status of female group members. See e.g. Crenshaw 1989.

family law in preserving collective identities yet which does not grant nomoi groups a *carte blanche* power to systematically subordinate a specific category of insiders, namely women.

An intersectionist approach will present an alternative to two existing paradigms: the model of hierarchical imposition and the model of fragmentation.[52] The model of hierarchical imposition entails the enforcement of various state laws upon all citizens, demanding conformity with dominant norms and failing to respect group-based traditions. The model of fragmentation, on the other hand, gives *carte blanche* legal authority to nomoi groups to pursue their own traditions, even at the cost of legitimizing systematic intra-group oppression. Neither of these paradigms succeeds in recognizing nomoi groups' essential traditions without compromising group members' state-guaranteed individual rights. Both paradigms are the result of a dichotomous understanding of legal authority: under both these models, *either* the state *or* the group would exclusively govern insiders' legal affairs. As I have shown, however, even when the state formally refrains from intervening in a group's essential traditions, it in fact partakes in solidifying the power-relations encoded in these traditions. In other words, by accommodating inter-group differences, the multicultural state inevitably finds itself shaping, at least in part, intra-group relations.

A reshaped multicultural model must therefore rest on the acknowledgment that interaction between the "external" and "internal" effects of accommodation is inevitable. In contrast to approaches driven by the hierarchical imposition and fragmentation models, an intersectionist approach would seek to design legal policies for multicultural accommodation which do not deny the potentially negative implications of delegating legal power to nomoi groups. That is, an intersectionist multicultural accommodation policy would permit identity groups a maximum degree of autonomy while still protecting insiders who are put at risk by their own groups' accommodated traditions. A crucial question remains, however: how should the interests of identity groups, individuals and the state be balanced in practice? What would an intersectionist multicultural accommodationist policy actually look like?

A. Horizontal Priority Models

A first possibility is to divide legal authority along the lines of what I call "horizontal priority." Under this approach, legal controls over group members' activities are devised in accordance with different layers of authority, one on top of the other, which means that identity groups are granted primary and original jurisdiction over certain legal arenas while still remaining subject to some form of residuary or appellate jurisdiction by state courts. Under the horizontal priority approach, the main question to be resolved is how to allow identity groups, as

[52]See Cover and Aleinikoff 1977, pp. 1046–52.

smaller governmental units, to determine matters affecting their collective identity, and still to preserve the power of the state to impose compliance with basic constitutional principles, for example, citizens' rights to bodily integrity, autonomy, and self-determination. Various models might fulfill this requirement.

The first possibility is what I call "regulated accommodation." Under this option, the state would allow identity groups self-governance powers in certain legal arenas but it would also provide *direct legal access* to state courts for occasion when the group systematically injures the state-guaranteed rights of a particular category of insider. Contemporary invocations of the usage of international law in domestic affairs, for example, would approximate this model, particularly with regard to the expansion of individuals' standing vis-à-vis their own states in international courts.[53]

This model has major drawbacks, however. For example, the burden of initiating the legal process against an identity group falls on the weaker party (the insider who claims her state-guaranteed rights were violated). Hence the insider is potentially exposed to severe pressures to withdraw the legal claim in order to protect the group. Similar pressures are imposed on abused children or spouses who dare turn to the legal system and seek retribution against their alleged perpetrators. This tension could, to some degree, be mitigated by granting *amici curiae* standing to administrative bodies or non-governmental organizations, which might aid the injured insider. From an identity group's perspective, however, this model is problematic because it leaves underdetermined the scope of *in potentia* state intervention. Given that any sanctioned group tradition which contradicts state laws could, in theory, be overturned or circumscribed by individual group members who seek remedy against the group, the regulated accommodation model could extensively limit the autonomy of identity groups.

Another possibility is a model of "conditional accommodation." Here the state would grant *exclusive* jurisdiction to a nomoi group over certain legal arenas *without* providing direct venues in which insiders could challenge their group's practices in state courts. Yet the allocation of legal authority, under this model, would be *conditional*; the group, and particularly its inside courts, as state-authorized institutions with public powers (for example, to solemnize marriages and divorces), would have to comply with certain due process and equal treatment requirements. This model therefore leaves it to the group to "sort out" its own discriminatory practices. However, the group (or, rather, its public officials) would have to at least comply with the state's licensing terms or it would face the prospect of losing its legal authority entirely.

[53]The analogy of international intervention in domestic affairs, however, raises grave concerns that violations of women's rights, e.g. rape or spousal beating and killing, would not be considered violations of human rights that merit outside intervention in intra-group spheres. Are violations against women, for example, included in Kymlicka's (1995, p. 169) definition of situations that merit outside intervention, "such as slavery or genocide or mass torture and expulsions"? For a critique of the lack of protection of women's rights in international law, see MacKinnon (1994).

From the legal perspective, this model is problematic because it does not provide legal certainty since the identity group's jurisdiction is always conditional. Moreover, it does not allow group members to *directly* impact the state's policy with regard to their own identity group. In this sense, this model reflects a semi-corporatist stance, in which "business" is assumed to take place only between state officials and the groups' leaders. If, however, an identity group is governed by an elite which holds that any "submission" to change is a threat to their group's *nomos*, then the conditional accommodation model becomes useless. In such a case, this model would only aggravate the tensions already at play within a given community: for example, it could force women to demonstrate their group loyalty by giving up their quest to alter a gender-discriminatory reading of their group's family law traditions, and it could create greater resistance to whatever is perceived as reflecting "outside" norms (for example, gender equality). In short, if a conditional accommodation solution is seen by group leaders as an instance of intolerable (indirect) intervention in their group's practices, it will, probably, fail to provide a solution to the problem of sanctioned intra-group maltreatment.

B. The Vertical Priority Model

An altogether different and better way to divide legal authority in the family law arena, which I call the intersectionist "joint-governance" approach, allocates legal powers based on a subject-matter jurisdiction, or along lines of vertical priority. In other words, instead of operating on the basis of a layered division of authority between a group's essential traditions and the state's laws, as the above models suggest, the joint-governance approach assumes that *mixed standards* would simultaneously govern group members' legal affairs.

As I have shown, identity groups are inevitably dependent upon the state for their legal recognition and accommodation. Moreover, given that most fields of human activity in the modern state are already governed by a complex and often overlapping mosaic of various legal regulations deriving from more than one source, it is both unrealistic and undesirable to assume that the recognition of identity groups' essential traditions can reverse this trend. If anything, multicultural accommodation would add to this plurality of legal sources. The main idea behind an intersectionist joint-governance approach to accommodation, then, is to permit input from two legal systems—a group's essential traditions and the state's laws—to resolve a single dispute, for example, a divorce proceeding. In the family law arena, this translates into seeking legal arrangements which provide greater possibilities for women to define their personal status and to shape the economic and parental consequences of divorce, without undermining their group's controls over the definition of its membership boundaries.

As I explained earlier, family law serves at least two important functions: it *demarcates* membership boundaries by defining who is an insider by virtue of marriage and birth in accordance with the group's specific personal status laws and lineage rules, and it *distributes* rights, duties, and ultimately power, between men and women within the community.

Unfortunately, most existing accommodationist policies overlook the fact that family law has two functions, rather than only one. An intersectionist joint-governance approach, on the other hand, utilizes this distinction by providing nomoi groups' greater autonomy over their membership boundaries while, at the same time, providing female group members with greater bargaining powers in the event of divorce.

More specifically, an intersectionist joint-governance approach to family law would by and large grant nomoi groups jurisdiction over marital status definitions because such decisions determine, among other things, who can become a group member through marriage, and under which conditions divorced group members can marry within the faith and have children who will be considered full and legitimate members of the community. Thus self-governance over marital status decisions is important if more exclusive nomoi groups are to maintain their membership boundaries. A delegation of legal power from the state to nomoi groups over family law's *demarcating* function would therefore permit more exclusive groups to preserve a crucial aspect of their *nomos*.[54]

A similar justification for accommodation, however, does not stand with regard to nomoi groups' control over family law's *distributing* function. Disputes between divorcing spouses over issues of alimony, property division or child support are not concerns unique to group members. All state citizens potentially face similar disputes when dissolving a marriage. Granting recognition to identity groups' essential traditions which systematically disadvantage divorcing women would provide husbands within accommodated groups with sanctioned extortive powers to settle (status-related) property disputes in ways which disenfranchise women from state-guaranteed protections.[55] These protections were in the first place designed to help the formerly economically dependent spouse avoid destitution when the marriage came to an end.[56] Given the fact that in many religiously-defined nomoi groups women are already in a disadvantaged position vis-a-vis their husbands due to their group's (gender-discriminatory) marital status definitions, it would be absurd to further disadvantage them by taking

[54]Cleveland (1925, p. 1095) writes, "From the time of clan and kin communities to the twentieth century status is the true expression of the fact that there are different ideas about fundamental relations . . . Status is still a serene monument to the originality of [different] political communities." Note, however, that Cleveland's definition of status is wider than the definition I suggest, which relates only to marriage and divorce in the context of preserving a group's membership boundaries.

[55]This distinction between marital status and marital property issues is not altogether new. It can be traced to the common-law division of authority between ecclesiastical courts and chancery courts in England. See Vestal and Foster 1956, pp. 23–31.

[56]For further discussion, see e.g. Singer (1992).

away whatever property rights and protections other divorcing women are entitled to—as citizens—in accordance with state laws.

The intersectionist joint-governance approach therefore acknowledges that power relations exist not only *among* groups but also *within* groups, and that the protective shield of state accommodation could potentially be used as a weapon against less powerful insiders. This approach respects the crucial identity-preserving function of family law while intervening to protect group members against certain intra-group violations which are indirectly condoned under the accommodationist pretext of respecting identity groups' essential traditions.

We should note, however, that state laws have themselves historically maintained the power hierarchies between men and women via legal policies that define women's marital status and shape the rights, duties and powers "connected" to marriage and divorce.[57] Only quite recently, largely due to the feminist movement, have explicit gender biases been removed from various state laws regulating the family. However, even if state laws imperfectly address women's interests in the family law arena, women's interests are still generally better protected under a joint-governance approach than under identity groups' essential traditions. A recent Israeli family law case, *Bavli v. Rabbinical High Court*, illustrates this last point.

In 1992, in the *Bavli* case, a Jewish woman turned to the Israeli Supreme Court seeking remedy against a rabbinical court's decision given in connection with a divorce dispute. The decision held that in accordance with Halakhic law the wife was not entitled to any share in the property acquired during the couple's twenty-nine years of marriage, although by state law she was entitled to an equal share of that property.[58] This decision was not unusual; on average, rabbinical courts impose lower alimony payments on husbands and grant women fewer marital property rights than do state courts.[59] To deal with this problem, the Israeli Supreme Court held in *Bavli* that while all religious communities in Israel (that is, Jewish, Moslem, Christian and Druze courts) have jurisdiction over their members' marital *status*, these courts have no similar authority to impose their essential traditions on *property* matters "connected" with a divorce dispute. Instead, these issues must be resolved by the more egalitarian principles entrenched in state laws.[60]

[57]In the tradition of the English common law, a woman, by marrying, immersed her own legal individuality in the person of her husband (Blackstone 1765, vol.1, p. 430). The English common law set the basis for legal practices concerning married women in the new United States. Through the 19th century and into the 20th the legal handicaps imposed on wives by the common law gradually were eliminated; and wives were given an economic and legal individuality in the eyes of the law.

[58]H.C. 1000/92 Bavli v. Rabbinical High Court 48 (2) P.D. 221.

[59]Alimony payments ordered by rabbinical courts are matters "connected" to the divorce suit and are 30% lower on average than alimony payments which are ordered by state laws. See survey no. 115, Israel Social Security Institute, "Women Who Received Alimony Payments via the Social Security Institute," pp. 2, 16, 19 (1994, in Hebrew).

[60]The *Bavli* decision, however, leaves room for each community's religious courts to reach these distributive decisions based on a reinterpretation of their own essential traditions.

The *Bavli* decision has set an important legal precedent in that it has allowed women to overcome some of the gender biases encoded in their identity groups' family law traditions, while still preserving nomoi groups' legal authority to demarcate membership boundaries.[61] This decision thus demonstrates, that in countries such as Israel and India, where accommodationist family law arrangements have already been adopted, religious divorce disputes could be resolved more fairly if the extortive powers of the stronger party were limited by the subject-matter allocation of jurisdiction between the state and identity groups.[62]

C. The Martinez Case Revisited

The intersectionist joint-governance approach to multicultural accommodation, which provides less powerful insiders with access to state laws in debates involving the property aspects of status disputes, which motivated the decision in *Bavli*, could also have better resolved the above mentioned *Martinez* case. In the *Martinez* case, Julia Martinez's daughter Audrey was denied the right to "remain on the reservation in the event of [her] mother's death, or to inherit her mother's home or her possessory interests in the communal lands." According to tribal personal status law, children of *male* Pueblos who marry outside the tribe are extended tribal membership, whereas children of *female* Pueblos who marry outside the tribe are excluded from membership. Having been unsuccessful in their efforts to persuade the Pueblo to change its membership rules, Julia Martinez and her daughter filed an equal protection lawsuit against the tribe. The case eventually reached the US Supreme Court, which held that it had no authority to intervene against the tribe's gender-biased membership rules, because judicial review of claims such as those raised by Julia and Audrey Martinez would undermine tribal sovereignty and self-governance. Although the

[61]My intersectionist joint-governance approach refers to a legal scenario in which identity groups have already been granted legal powers over matters of both marriage and divorce. Different legal solutions to the problem of intra-group oppression are required, however, when the state permits identity groups to perform legally binding marriages but reserves for itself the exclusive power to regulate acts of divorce. For further discussion of this last point, see Syrtash (1992).

[62]Not surprisingly, however, *Bavli* and other such cases were severely criticized by the religious communities involved. Authorities from the respective communities argued that state courts were intervening in groups' family law affairs in ways which would eventually have a "homogenizing" effect on their traditions, threatening their survival as distinct cultural entities. This is a legitimate concern which the intersectionist joint-governance approach addresses by respecting the identity-preserving function of family law while providing legal venues to better protect the interests of those insiders who are put at risk by their own groups' family law practices, for example, by granting women more leverage in negotiating the economic and parental consequences of a religious divorce. Even with recourse to state laws, however, women are still vulnerable to group-sanctioned maltreatment. While state regulation of family law can, for example, assist a Jewish *agunah* if her husband uses the *get* as a tool for extortion and blackmail, an intersectionist joint-governance approach less effectively assists an anchored wife whose husband refuses to grant a *get* in order to impose pain or to prevent her from marrying another man. Yet because many *gets* are indeed refused as a bargaining tool, the intersectionist joint-governance approach would effectively resolve many of the *agunah* cases.

Court correctly recognized that the membership rules "were 'no more or less than a mechanism of social . . . self-definition,' and as such were basic to the tribe's survival as a cultural and economic entity,"[63] it erred in leaving Martinez's daughter, Audrey, and similarly situated children who were put at risk by the tribe's accommodated traditions, *without legal remedy*.

An intersectionist joint-governance approach would have resolved the *Martinez* case differently. It would have recognized that the tribe's membership rule had both demarcating *and* distributing effects (for example, tribal status definitions served as a basis for entitlement to land use rights).[64] Given these two functions of Pueblo family law, an intersectionist joint-governance approach would not have interfered with the tribe's control over the *demarcation* of its boundaries, yet it would have provided *distributive* remedies for injuries sanctioned by the tribe's accommodated traditions. More specifically, in respecting the Pueblo's "attempt to secure the survival of a culture for which land is life,"[65] intersectionist distributive remedies, allocated on the basis of subject matter, could not have granted Audrey a possessory right to tribal communal lands if no other "outsiders" were permitted to own a share in such lands. However, other distributive remedies could have been provided for the excluded children. For example, the Pueblo might have been ordered to establish educational or loan funds for Audrey and other such children who would eventually be forced to leave the reservation because the maltreatment of certain women, their mothers, is encoded in the tribe's family law traditions.[66]

IV. CONCLUSION

An intersectionist joint-governance approach to multicultural accommodation in the family law arena thus allocates self-governance powers to identity groups with regard to membership issues, while trying to minimize the discrimination perpetuated by gender biases inscribed in the groups' traditions. Although the model I have begun to sketch here citing the recent Israeli *Bavli* case and an alternative, hypothetical solution to the *Martinez* case is still rough, and not without shortcomings, it takes into account all three elements of the trichotomy, recognizes group members' multiple affiliations and effectively addresses the two functions of family law. Hence, this developing model can begin to resolve, or at least alleviate, the degree of injury which women in particular suffer in the context of their groups' essential traditions. The intersectionist joint-governance solution, while it is far from fully resolving *the paradox of multicultural vulnerability*, at least seeks to overcome the *Catch* 22 situation in which intra-

[63]*Martinez*, at p. 54.
[64]For further details, see Resnik (1989, pp. 719–22).
[65]See MacKinnon 1987, p. 67.
[66]Of course, details need to be specified, for example, as to the degree of de facto tribal membership that would justify distributive remedy to these children.

group oppression is propagated by the very accommodationist policies which seek to mitigate cultural biases in the multicultural state.

REFERENCES

Alcoff, Linda. 1988. Cultural feminism versus post-structuralism: the identity crisis in feminist theory. *Signs*, **13**, 405–36.

al-Hibri, Aziza. 1992. Marriage laws in Muslim countries. *International Review of Comparative Public Policy*, **4**, 227–44.

Anderson, Benedict, 1991. *Imagined Communities*. Rev. edn. London: Verso.

Bayer, Menachem M. 1968. The role of Jewish law in pertaining to the Jewish family. Pp. 1–43 in Jacob Freid, ed., *Jews and Divorce*. New York: Ktav Publishing House.

Ben Israel, Hedva. 1992. Nationalism in historical perspective. *Journal of International Affairs*, **45**, 367–97.

Berman, Saul J. 1973. The status of women in Halakhic Judaism. *Tradition*, **14**, 5–28.

Birnbaum, Pierre. 1996. From multiculturalism to nationalism. *Political Theory*, **24** , 33–45.

Blackstone, William. 1765. *Commentaries on the Laws of England*. Oxford: Clarendon Press.

Bleich, J. David. 1981. Modern-day *agunot*. *Jewish Law Annual*, **4**, 167–87.

Cleveland, Richard F. 1925. Status in common law. *Harvard Law Review*, **38**, 1074–95.

Cover, Robert M. and T. Alexander Aleinikoff. 1977. Dialectical federalism: habeas corpus and the court. *Yale Law Journal*, **86**, 1035–102.

Cover, Robert M. 1983. Forward: *Nomos* and Narrative. *Harvard Law Review*, **97**, 4–68.

Crenshaw, Kimberle. 1989. Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *The University of Chicago Legal Forum*, 1989, 139–67.

Diwan, Paras and Peeyushi Diwan. 1994. *Women and Legal Protection*. New Delhi: Deep & Deep Publications.

Edelman, Martin, 1994. *Courts, Politics, and Culture in Israel*. Charlottesville: University Press of Virginia.

Galston, William A. 1995. Two concepts of liberalism. *Ethics*, **105**, 516–34.

Goadby, Frederic M. 1926. *International and Inter-Religious Private Law in Palestine*. Jerusalem: Hamadpis Press.

Hijab, Nadia. 1988. *Womanpower*. Cambridge: Cambridge University Press.

Kukathas, Chandran. 1992. Are there any cultural rights? *Political Theory*, **20**, 105–39.

Kukathas, Chandran. 1997. Cultural toleration. Pp. 69–104 in Ian Shapiro and Will Kymlicka, eds, *Ethnicity and Group Rights*. New York: New York University Press.

Kymlicka, Will, 1995. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.

Kymlicka, Will. 1996. Three forms of group-differentiated citizenship in Canada. Pp. 153–70 in Seyla Benhabib, ed., *Democracy and Difference*. Princeton, N.J.: Princeton University Press.

Levy, Jacob T. 1997. Classifying cultural rights. Pp. 22–53 in Ian Shapiro and Will Kymlicka, eds, *Ethnicity and Group Rights*. New York: New York University Press.

MacKinnon, Catharine A. 1987. Whose culture? A case note of Martinez v. Santa Clara Pueblo. Pp. 63–9 in MacKinnon, *Feminism Unmodified*. Cambridge, Mass.: Harvard University Press.

MacKinnon, Catharine A. 1994. Rape, genocide, and women's human rights. *Harvard Women's Law Journal*, **17**, 5–16.

Mahmood, Tahir, 1986. *Personal Laws in Crisis*. New Delhi: Metropolitan Book Co.

McClintock, Anne. 1993. Family feuds: gender, nationalism and the family. *Feminist Review*, **44**, 61–78.

Meiselman, Moshe. 1978. *Jewish Woman in Jewish Law*. New York: Yeshiva University Press.

Nasir, James J. 1994. *The Status of Women Under Islamic Law and Under Modern Islamic Legislation*. London: Graham & Trotman.
Nedelsky, Jennifer. 1996. Violence against women: challenges to the liberal state and relational feminism. Pp. 454–97 In Ian Shapiro and Russell Hardin, eds, *Political Order*. New York: New York University Press.
Raday, Frances. 1992. Israel—the incorporation of religious patriarchy in a modern state. *International Review of Comparative Public Policy*, **4**, 209–25.
Resnik, Judith. 1989. Dependent sovereigns: Indian tribes, states, and the federal courts. *University of Chicago Law Review*, **56**, 671–759.
Schuck, Peter H. and Rogers M. Smith. 1985. *Citizenship Without Consent: Illegal Aliens in the American Polity*. New Haven, Conn.: Yale University Press.
Shachar, Ayelet. 1998. The paradox of multicultural vulnerability: identity groups, the state, and individual rights. Forthcoming in Christian Joppke and Steven Lukes, eds, *Multicultural Questions*. Oxford: Oxford University Press.
Shiloh, Isaac S. 1970. Marriage and divorce in Israel. *Israel Law Review*, **5**, 479–98.
Sigler, Jay, 1983. *Minority Rights: A Comparative Analysis*. Westport, Conn.: Greenwood Press.
Singer, Jana A. 1992. The privatization of family law. *Wisconsin Law Review*, 1992, 1443–1567.
Spinner, Jeff. 1994. *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State*. Baltimore, Md.: Johns Hopkins University Press.
Syrtash, John Tibor. 1992. *Religion and Culture in Canadian Family Law*. Toronto: Butterworths.
Taylor, Charles. 1991. Shared and divergent values. Pp. 53–76 in Ronald L. Watts and Douglas M. Brown, eds, *Options for a New Canada*. Toronto: University of Toronto Press.
Taylor, Charles. 1994. The politics of recognition. Pp. 25–73 in Amy Gutmann, ed., *Multiculturalism: Examining the Politics of Recognition*. Princeton, N.J.: Princeton University Press.
Tully, James. 1995. Cultural demands for constitutional recognition. *Journal of Political Philosophy*, **3**, 111–32.
Tully, James, 1995. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press.
Vestal, Allan D. and David L. Foster. 1956. Implied limitations on the diversity jurisdiction of federal courts. *Minnesota Law Review*, **41**, 1–41.
Vitta, Edoardo, 1970. The conflict of personal laws: part I. *Israel Law Review*, **5**, 170–202.
West, Robin. 1988. Jurisprudence and gender. *University of Chicago Law Review*, **55**, 1–72.
Young, Iris Marion. 1989. Polity and group difference: a critique of the ideal of universal citizenship. *Ethics*, **99**, 250–74.
Young, Iris Marion. 1990. *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press.
Yuval-Davis, Nira and Floya Anthias. 1989. *Woman–Nation–State*. London: Macmillan.