

THE ROLE OF THE STATE IN THE INTRA-GROUP VULNERABILITY OF WOMEN: REVISITING DEBATES ABOUT MULTICULTURALISM THROUGH THE CASE OF POLYGAMY AMONG THE BEDOUINS IN ISRAEL

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INTRODUCTION

The Article examines the intra-group vulnerability of minority women, focusing on the context of polygamy among the Bedouin-Arabs in Israel, to explore two questions: First, should the liberal state address concerns about the oppressive potential of minority cultures' practices for women? Second, if so, what approach should be taken to this end, and how should this approach inform state laws?

Critical work discussing liberal multiculturalism has generated different proposals for addressing such intra-group vulnerability concerns. But if we attempt to practically implement these proposals, we find that the proposed solutions come down to a binary choice between heavy-handed interventionism and a *laissez-faire* approach. Looking into actual cases of intra-group vulnerability to critically reflect on this theoretical scholarship reveals that the scholarship suffers from a striking gap in its proposed solutions—it overlooks the state's role in creating and perpetuating the problem. This oversight can explain the tendency of scholars to fall into this binary. Viewing the state as a bystander restricts these scholars to “response strategies,” either intervening *against* other community members or holding back from acting at all.

Investigating the vulnerability of Bedouin women to oppressive marriage arrangements highlights how the state could be implicated in this problem on different levels. This investigation illustrates how Israel's policy of pushing the Bedouins out of their lands has reinforced this vulnerability. It further elucidates how Israel's legal treatment of polygamy has been significant in perpetuating this vulnerability. Finally, it reveals how discriminatory accessibility barriers to public resources, including family courts and welfare assistance, have made it harder for Bedouin women to resist and break away from oppressive marriage arrangements.

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This investigation also allows us to see why recognizing the (partial) responsibility of the state for this problem provides the key to escaping the laissez-faire/heavy-handed interventionism binary. Most significantly, it indicates how removing barriers impairing minority women's access to various public resources can open up paths for these women to leave and resist unfavourable aspects of their community life, without forcing them to exit their community altogether.

Part I frames the debate around multiculturalism and feminism. Part II critically discusses the solutions that scholars propose for addressing the vulnerability of women and other less powerful members of minority communities to oppressive treatments in these communities, to show how the literature is characterized by a rigid binary choice between starkly different responses to this problem of intra-group vulnerability. On the one hand, there are the interventionists, who would use the power of the state. According to this interventionist position, the liberal state should interfere to enforce liberal rights in these communities. On the other hand, various exit right models are proposed. These models focus on fostering the ability of members of oppressed groups within minority communities to leave the group to escape oppression. But, as critics have pointed out, women in minority cultures have less access to the resources and opportunities needed to successfully exit their community, and the consequences of leaving can be grave for many women. Thus, in effect, the exit right solution allows the state to take a laissez-faire approach and do nothing to tackle the problem. Part III suggests an alternative understanding of the exit right solution as a *gradational* concept and shows how this understanding, integrated with a recognition of the role of the state in the problem, offers a way out of the binary choice between heavy-handed interventionism and a laissez-faire approach.

Parts IV and V delve into the case of polygamy among the Bedouins in Israel to demonstrate the role of the state in the intra-group vulnerability of women along two significant axes. Part IV shows how the state is involved in creating background conditions conducive to intra-group victimization by revealing how Israel's dispossessing land regime harmed Bedouin women and has encouraged polygamy in this community. Part V illustrates how Israel continues to play a major role in this vulnerability through its legal treatment of polygamy. This legal treatment oscillates in a binary between policies in criminal law and welfare law that attempt to eradicate the practice by sanctioning polygamous families, and a hands-off approach—a binary which institutionally replicates the false binary choice between interventionism and a laissez-faire approach that characterizes the theoretical literature on intra-group vulnerability. Part VI delineates a path out of this binary by demonstrating how the gradational exit right proposal can be implemented in actual contexts. Through an analysis that traces how discriminatory laws

and policies reinforce obstacles to the ability of Bedouin women to access family courts, I point to the kind of work that should be done to address the role of the state in the problem of women's intra-group vulnerability. I highlight that this work should include positive measures to remedy, or at least alleviate, the harms that the state has inflicted on these women—i.e., beyond the measures that should be taken to comply with the state's "ordinary," negative duty not to discriminate against groups of individuals. Part VII concludes by indicating how the recognition of the state's role in this problem has the potential to relax tensions between multiculturalism and feminism.

I. Multiculturalism, Feminism, and the Problem of Intra-Group Vulnerability

In the last fifty years, we have witnessed a shift in the relationship between the liberal state, the individual, and cultural minorities. Assimilationist and monocultural nation-state models were contested and increasingly displaced by newer multicultural models. State-neutrality and toleration—which were formerly widely accepted among liberal states as appropriate standards for treating cultural differences—gave room to a more robust standard of *recognition*.¹ Rather than ignoring cultural differences or otherwise allowing some practices that stand in tension with liberal values and norms in the name of tolerance, this new standard requires the state to recognize the equal right of cultural minority members to practice and maintain their culture.

Whereas older models of citizenship and the state emphasize the direct right and duty-based relationship as between the state and the individual, multicultural models add the group to the equation. These new models acknowledge the recognition of cultural minority groups as a prerequisite for the ability of their members to equally enjoy their freedoms and rights.² According to the multicultural idea, a true commitment to cultural diversity requires the state to recognize the rights of cultural minority members for special consideration.

¹ Charles Taylor, *The Politics of Recognition*, in MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 25 (Amy Gutmann ed., 1994); see generally WILL KYMLICKA, MULTICULTURAL CITIZENSHIP (1995); Avishai Margalit & Moshe Halbertal, *Liberalism and the Right to Culture*, 7 SOC. RSCH. 529 (2004).

² Will Kymlicka, *Do We Need a Liberal Theory for Minority Rights?: Reply to Carens, Young, Parekh and Forst*, 4 CONSTELLATIONS 75 (1997).

However, it was not without criticism that the multicultural wave swept the Western developed world.³ One criticism views multiculturalism as a separatist project, arguing that it weakens the bonds of solidarity. According to this line of criticism, emphasizing cultural differences between citizens comes at the expense of recognizing what people have in common.⁴ A second type of criticism draws attention to inequalities within cultural minority groups and the way that these groups can oppress their own internal minorities—who might be women, children, LGBTQ+ individuals, members of a lower caste, low-income individuals, and other groups of less powerful members. Works addressing this second type of criticism are collectively known as the literature on “minorities within minorities.”⁵ Feminist scholars who write in this vein highlight the disproportionate costs to women in traditional minorities when a multicultural agenda is adopted. Multicultural policies, they argue, encourage governments and public authorities to tolerate cultural practices that undermine gender equality. Feminist critics further argue that granting these groups special rights could reinforce patriarchal oppression, given the heavy burden borne by women in upholding certain traditions.⁶

While liberal multicultural theorists have recognized the role of the state in the injustice *towards* minority communities (or inter-group vulnerability), scholars’ discussions on injustice *within* them (or intra-group vulnerability) treat the state as a bystander. As a bystander, the state is only called to respond to intra-group vulnerability, and it is thus free to decide whether to address this problem. In other words, according to this view, the state may be asked to respond to but not be held accountable for the occurrence of this problem. However, this Article disputes this presumption. Through contextual inquiry into the case of polygamy among the Bedouins in Israel, it shows how the state is implicated in the intra-group vulnerability of minority women. Given the role of the state in creating or perpetuating the conditions that render minority women

³ Some critics have objected to the insertion of multiculturalism and minority rights into international organizations’ documents (especially the United Nations’), viewing it as “the abandoning of universalist ideals” of enlightenment for cultural relativism. See WILL KYMLICKA, *MULTICULTURAL ODYSSEYS: NAVIGATING THE NEW INTERNATIONAL POLITICS OF DIVERSITY* 6 (2007) (citation omitted).

⁴ See, e.g., DAVID MILLER, *ON NATIONALITY* 119–54 (1995).

⁵ See generally AVIGAIL EISENBERG & JEFF SPINNER-HALEV, *MINORITIES WITHIN MINORITIES: EQUALITY, RIGHTS AND DIVERSITY* (2005).

⁶ See Susan M. Okin, *Is Multiculturalism Bad for Women?*, in *IS MULTICULTURALISM BAD FOR WOMEN?* 9 (Joshua Cohen, Matthew Howard & Martha C. Nussbaum eds., 1999) [hereinafter Okin, *Is Multiculturalism Bad for Women?*]; Susan M. Okin, *Feminism and Multiculturalism: Some Tensions*, 108 *ETHICS* 661 (1998) [hereinafter Okin, *Feminism and Multiculturalism*]; see also Ayelet Shachar, *On Citizenship and Multicultural Vulnerability*, 28 *POL. THEORY* 64 (2000).

vulnerable to oppressive treatment in their community, I argue that the state has a duty to address this problem of intra-group vulnerability. I further argue that recognizing this responsibility is key to overcoming the limitations of the theoretical solutions that scholars have proposed for addressing intra-group vulnerability.

II. Identifying Gaps in the Theoretical Scholarship on Intra-Group Vulnerability

Critical work on liberal multicultural theories has generated different proposals for addressing concerns around the problem of intra-group vulnerability. This scholarship offers two types of solutions. The first type, which I define as *intervention to protect liberal rights*, advances liberal rights as inviolable. According to this position, the liberal state should rigorously and indiscriminately interfere to enforce liberal rights in these communities. Thus, not only should the liberal state reject demands of traditional communities for cultural accommodations, it should also use its power to protect the vulnerable members of these communities against cultural practices that do not align with fundamental liberal values of gender equality and personal autonomy. This should be done by using all available means, including criminal law.⁷

The second type is the *exit right* solution. This approach seeks to protect the freedom of members to leave their group. The formal models of this solution allow the liberal state to intervene in the group's affairs only if the group restricts the right of its members to leave the group.⁸ Some theorists acknowledge the necessity of ensuring certain conditions to make exit a viable option for members of these groups, and thus allow greater legitimate room for state intervention. These theorists advance other, less formal exit models that focus on securing the ability of members to develop knowledge and skills that are necessary to integrate successfully into mainstream society if they choose to leave their group.⁹

If we attempt to implement these proposals in addressing actual cases of intra-group vulnerability, we find that they come down to a binary choice. The liberal state may

⁷ Okin, *Is Multiculturalism Bad for Women?*, *supra* note 6, at 12–24.

⁸ Chandran Kukathas, *Are There Any Cultural Rights?*, in *THE RIGHTS OF MINORITY CULTURE* 228 (Will Kymlicka ed., 1995); *see also* CHANDRAN KUKATHAS, *THE LIBERAL ARCHIPELAGO: A THEORY OF DIVERSITY AND FREEDOM* (2003).

⁹ *See* Jeff Spinner-Halev, *Autonomy, Association and Pluralism*, in *MINORITIES WITHIN MINORITIES: EQUALITY, RIGHTS AND DIVERSITY*, *supra* note 5, at 157; *see also* William Galston, *Two Concepts of Liberalism*, 105 *ETHICS* 516 (1995).

either take an interventionist approach in an effort to eradicate cultural practices that contradict liberal values and norms or a laissez-faire approach that rejects interference in cultural minorities' affairs. The trouble with this binary is that both sides are detached from the interests and needs of women and girls within these groups. The first type, *intervention to protect liberal rights*, practically requires the state to intervene against the group to liberate women from "the claws" of their oppressors (i.e., men). However, there is a host of reasons why minority women, if given the choice, would reject this offer of "liberation." Rarely do wives or daughters, who are involved in traditional practices that stand in tension with liberal values and norms, wish for the state to criminally prosecute their husbands, parents, or siblings (at least when the practice does not involve physical harm). Rather than improving their situation, putting their family members behind bars is more likely to invite further financial and emotional distress upon them. As the discussion on Israel's welfare policy towards polygamous families in Part V will show, other forms of heavy-handed interventionism, such as trying to discourage illiberal practices by using financial sanctions against individuals who are involved in these practices, might also worsen the conditions of minority women.

The second type, the *exit right* models, allegedly leave the choice at the hands of the vulnerable group member to decide whether she wishes to submit to her group's demands or leave. But, as critics have pointed out, members of these communities rarely have the essential resources or skills, including financial means and education, to allow them to leave the community and integrate into the mainstream society.¹⁰ Further, the very assumption that there is always somewhere to exit *to* is problematic. In fact, in some countries, the socio-political context is such that there is practically no mainstream society that would accept individuals who leave their communities. In other words, the applicability of the exit right solution to different ethnic, national, or religious groups in different states is far from obvious. In some countries, such general or mainstream society simply does not exist.¹¹ Due to the obstacles impairing the ability of women to

¹⁰ See generally Susan M. Okin, *Mistresses of Their Own Destiny: Group Rights, Gender, and Realistic Right of Exit*, 112 ETHICS 205 (2002) [hereinafter Okin, *Mistresses of Their Own Destiny*].

¹¹ Especially questionable is the relevance of the exit solution in contexts where minority communities have experienced long years of discrimination and oppressive treatment at the hands of governments and authorities of the state, or which have otherwise experienced prolonged conflict with the dominant group (ethnic, national, or religious) in their country. In such conflictual circumstances, leaving one's community would rarely be possible, as the most fundamental condition for exit—namely, the existence of a wider society into which the individual can enter—is not met. The situation of the Arab minority in Israel offers insights into the problem of applying the exit right solution in such conflictual circumstances. See generally, e.g., Michael Karayanni, *On the Concept of 'Ours': Multiculturalism with Respect to Arab-Jewish Relations*

execute their “exit right,” leaving the community is rarely a viable option. Therefore, the exit right solution effectively allows the state to take a laissez-faire approach and do nothing to tackle the problem. As critics have indicated, the exit right solution puts the onus on women, girls, and other vulnerable individuals to find non-existent resources to transform their conditions.¹² Thus, whereas ideas of agency and choice underpin the conceptual strength of this solution, the obstacles that obstruct women from leaving their community render it a hollow promise.

Recognizing the role of the state in the intra-group vulnerability of women offers an alternative understanding of the relationship between the state, cultural minority communities, and their vulnerable members. It emphasizes that the state is not a bystander that can either step in or stay out of the problem, but is instead already involved as one of its creators. Both the state and the community have a crucial role in creating and reinforcing the conditions that render women vulnerable to oppressive treatment by other community members. Thus, this recognition rejects the legitimacy of both sides of the binary offered by the theoretical scholarship. Just as this recognition demands the rejection of an approach that allows the state to turn a blind eye to the oppressive conditions of women in cultural minorities, it also requires the rejection of an approach that treats the state as a liberator that releases women from “the claws” of men in their community.

In fact, the latter approach (i.e., heavy-handed interventionism) is even more problematic because it reinforces a victims-predators-liberator view of the relationship between women, cultural minority communities, and the state. This compounds the problem in two respects. First, it deepens the stigma of minority women as “victims with no agency” who need to be “saved” by the state, as if they are denied capacity to make their own choices about these issues.¹³ Second, it situates the state against the community. This could create an environment of animosity between the two, which is likely to be to

in Israel, 27 IUYONI MISHPAT [TEL-AVIV U. L. REV.] 71 (2003) (Isr.). In fact, given the conflictual relations between Jews and Palestinian-Arabs in the state of Israel, it has been argued that Israel is an “ethnocratic” Jewish state. According to this argument, the very definition of Israel as a Jewish state excludes other ethnic and religious minorities. In other words, the existence of a civil neutral society is undercut by the statement that Israel is a Jewish state according to its Basic Laws and establishing documents. See generally Oren Yiftachel, *Ethnocracy and Its Discontents: Minority Protest in Israel*, 26 CRITICAL INQUIRY 725 (2000).

¹² AYELET SHACHAR, MULTICULTURAL JURISDICTION: CULTURAL DIFFERENCES AND WOMEN’S RIGHTS 69 (2001).

¹³ See generally Rebecca Cook, *Structures of Discrimination*, 28 MACALESTER INT’L J. 33 (2011) (discussing the harm of gender stereotyping as a form of discrimination against women); REBECCA COOK & SIMONE CUSACK, GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES (2010).

the detriment of women. Clearly, the altered understanding of the relationships between the state, cultural minorities, and their vulnerable members holds greater promise for building relationships of cooperation for the benefit of women and girls.

Therefore, I propose that recognizing the responsibility that the state shares with the community for this problem on the one hand, and treating minority women as agents of choice by addressing their interests and needs on the other hand, is key to breaking out of the binary choice, between two extremes, that characterizes the theoretical scholarship.

III. Beyond the Dichotomy of Forcing Women to Accept Their Culture as One Unnegotiable Package or Leave Their Whole World Behind

While I agree with the criticism of the exit models, this should not lead us to reject the exit right solution from the outset. The underlying principle of the exit models, to leave the choice at the hands of the vulnerable individual to decide the course of her life, is virtuous. It demonstrates an appreciation of minority women as agents of choice. However, the Achilles' heel of these models is the limited inventory of choices that they offer. I thus argue that understanding exit as a dichotomous concept that allows only one definite option for transforming one's conditions—i.e., the choice of leaving the group altogether—is what renders the exit models of limited potential for addressing the problem.

In other words, the idea that underlies the exit solution of leaving the ultimate choice at the hands of the vulnerable individual, rather than shifting the power to the state, provides a useful conceptual framework for respecting women's agency. However, this framework ought to be refined in a way that provides women with multiple realistic options to alter their life conditions, aside from leaving their community altogether. To put it differently, treating women as agents of choice demands providing them with more than one dubious choice.

Altering our conception of exit from a dichotomous all-or-nothing idea to a gradational concept opens a range of such options. According to this understanding, one can realize a woman's exit right not only as her "climbing the wall" that separates her community from the broader society, but also through less dramatic choices that she could pursue while remaining in the sphere of her community or family. In other words, exit as a gradational concept supports a spectrum of choices—from various decisions to withdraw from a certain aspect of the community's way of life to a full-blown manifestation in leaving the group entirely. For example, breaking out of an oppressive

marriage or managing to avoid entering an unfavorable marriage arrangement are both limited forms of exit that open up new ways to challenge community practices.

However, the ability to make and pursue exit choices—not only leaving the community, but also withdrawing from practices or traditions—necessitates some access to basic resources. For instance, how is a minority woman to leave a polygamous marriage if she does not have the financial means to hire a lawyer? Thus, unless we take account of the role of the state in these problems, the conceptual refinement of the exit right solution is not enough. In other words, to offer minority women a viable exit right, the (partial) responsibility of the state for the problem must be recognized. Hence, against the exit right stands the duty of the state to address its own role in creating and reinforcing conditions that render minority women vulnerable to oppressive treatment in their community.

Contextual inquiry into case studies of intra-group vulnerability uncovers the ways in which the state is implicated in this problem. As my analysis of the case of polygamy among the Bedouins in Israel illustrates next, this contextual inquiry is important because it allows us to trace the wrongs of the state that helped reinforce the vulnerability of women to internal oppression and consider strategies to repair or at least mitigate the harms.

Yet, before delving into this contextual inquiry, I want to make a few clarifying points about the scope of this work. First, I do not aspire to offer a fixed solution, nor a magic bullet that will end the problem. The primary objects of this reflective project are (a) to contribute to a better understanding of the intra-group vulnerability of women and girls by bringing the “real-world” closer to its theoretical consideration, and (b) to offer an alternative approach which puts women’s interests and needs at the forefront. Namely, this alternative aims to provide guiding principles, which in turn should be carefully applied and tailored to the relevant socio-political context. Thus, we must not attempt to import template strategies that we find suitable for addressing one context of intra-group vulnerability to another. Careful examination of the relevant socio-political context is necessary—not only for developing appropriate strategies, but also to ensure that we remain critically attuned to the changing social reality and open to re-evaluating our theoretical tools.

Nor is this work an effort to establish a model that could instantly eliminate the problem. The alternative approach that this paper advances focuses on improving the conditions of the individual woman to make exit choices. This approach rejects the reliance on discontented members’ potential “mass exodus” as a guarantee for internal

cultural transformations underlying the traditional understanding of the exit solution.¹⁴ Rather, an acknowledgment of the gradational nature of cultural change is embedded in the focus of this approach on fostering agency and choice. Namely, this approach relies on an understanding that internal cultural change would more reasonably be expected to happen gradually, in small steps which accumulate to a critical point that will have a transformative impact, and therefore depends on the choices of individual women. Thus, fostering the ability of women to make intermediate exit choices could eventually lead to internal cultural transformations, but it is far from offering a magic bullet solution to their intra-group vulnerability.

Finally, it should be noted that my proposed approach does not dismiss the value of the different proposals that scholars have suggested for tackling this problem. In fact, one of its significant advantages is that its conceptual framework allows us to draw on these proposals as useful strategies for promoting the *gradational* exit right.¹⁵ Thus, while this could include embracing some conditions that the exit theorists advance—for example, sanctions against groups that uphold rules which prevent members from leaving the community—in some instances this approach may also call for using interventionist regulation strategies against individuals in minority groups—for example, when irreversible physical harm is inflicted on vulnerable group members, like genital cutting in young girls.¹⁶

¹⁴ The “exit right” scholars rely on the assumption that powerful elements of the group will be incentivized to allow cultural changes to prevent a mass exodus scenario that would lead to the extinction of their culture. See Kukathas, *supra* note 8; Margalit & Halbertal, *supra* note 1.

¹⁵ Some of these proposals, especially those that rely on democratic procedures, offer important strategies that could give meaning to the foundational principles of this approach—namely, fostering agency and choice and recognizing state responsibility, alongside community responsibility, for the problem. For instance, the proposals that are known as dialogical or deliberative approaches offer important strategies for providing women opportunities for voicing their positions and negotiating contested aspects of their tradition. Deliberation initiatives could also convey an important symbolic message. When the state facilitates deliberation on issues that pertain to intra-group vulnerability, it demonstrates its intention to work with the community, rather than against it, to address this problem. Prominent works of scholars who propose different models of dialogue and deliberation include, among others: IRIS YOUNG, *INCLUSION AND DEMOCRACY* (2000); Monique Deveaux, *A Deliberative Approach to Cultural Conflicts*, in *MINORITIES WITHIN MINORITIES: EQUALITY, RIGHTS AND DIVERSITY*, *supra* note 5, at 340; MONIQUE DEVEAUX, *GENDER AND JUSTICE IN MULTICULTURAL LIBERAL STATES* (2006); SEYLA BENHABIB, *THE CLAIMS OF CULTURE: EQUALITY AND DIVERSITY IN THE GLOBAL ERA* (2002); BHIKHU PAREKH, *RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY* (2d ed. 2006).

¹⁶ Where young children or physical force are involved, agency and choice become irrelevant because they have not yet developed in young children and/or are physically stifled.

IV. The Vulnerability of Bedouin Women in Israel to Oppressive Marriage Arrangements: An Intersection of Patriarchal Norms, Land Dispossession, and Discriminatory Laws

Whereas the scholarship on intra-group vulnerability is generally invested in theoretical analyses, the following discussion takes a different tack by looking into an actual example of this problem. Most significantly, inquiring into the case of polygamy among the Bedouin-Arab minority in Israel shows the role of the state in the vulnerability of Bedouin women to oppressive marriage arrangements, as well as the role it can play in undermining them, thus indicating the fallacy of treating it as a bystander. This inquiry points to the crucial role of the Israeli state in the intra-group vulnerability of Bedouin women by revealing *external factors*—namely, outside the Bedouin culture and the Muslim religion—that could explain the prevalence of these practices in this community in the last four decades. The first factor, which I discuss in this Part, is the impact of the Israeli land regime in the Negev area (in which Bedouin tribes have been settled since before its occupation by the Israeli forces in the 1948 war) on the Bedouin family, society, and gender relations. The second factor, discussed in Part V, is Israel's legal treatment of polygamy among the Bedouin community. I show how Israel's oscillation between a laissez-faire approach and heavy-handed interventionism towards this vulnerability has been significant in perpetuating this phenomenon. The third factor, discussed in Part VI, is the impact of intersecting discriminations—on the basis of gender, class, religion, and language—on the access of Bedouin women to public resources and services that are paramount for their ability to make intermediate exit choices by leaving and resisting unfavourable marriage arrangements.

The Bedouins are Arabic Muslim tribes that live across various countries in the Middle East. They used to live in desert regions and follow a nomadic lifestyle. In the state of Israel, they constitute a subgroup within the Arab minority, representing 17.5% of Arab-Israelis. Most of the Bedouin population in Israel lives in the Negev desert area, located in the south of the country.¹⁷ The Bedouin society is exceptionally collectivist, hierarchal, and patriarchal. It is organized according to a comprehensive customary rule system, the *Urf*, which directs and monitors behaviour and interpersonal relations. Every Bedouin tribe includes the families of the same great grandfather's male offspring extending back five generations. All the male members of such a group are connected to

¹⁷ The Bedouin minority in Israel is comprised of two main populations: approximately 250,000 people in the southern area of Israel—the Negev desert region—and around 70,000 people in northern Israel, altogether making up about 3.5% of the Israeli population. See YOSEF BEN-DAVID, HABEDOUIM BEISRAEL: HEBETIM HEVRATIYM VEKARKAIYM [THE BEDOUIINS IN ISRAEL—LAND CONFLICTS AND SOCIAL ISSUES] 30, 66, 325 (2004) (Isr.) [hereinafter BEN-DAVID, THE BEDOUIINS IN ISRAEL].

each other under a mutual grantee principle of “all for one and one for all” that makes the group a legal entity of its own and requires the unconditional loyalty of all members of the group.¹⁸ Anyone who wants to be protected and honored by their group must obey the group’s codes, and thus any behavior that is considered shameful according to the Bedouin tradition and norms is seen to weaken the power of the group. Bedouin women’s social status is based on marriage and child-rearing, especially of male children, and the “family honour” is dependent, to a large extent, on the “sexual purity” of women.¹⁹ Hence women, especially unmarried women, are supervised and their mobility is constrained to the clan area.²⁰

Bedouin marriage patterns are based on kinship relations. Marriages occur for the purpose of increasing the size and the power of each extended family group—through procreation and by creating social and political relations within the extended family and between clans. Thus, marriages take place only within tribal limits, and women are driven to marry for the sake of the collective.²¹ From a young age, women acknowledge that they are designated to marry a man from their tribe.²²

Research attributes the origins of these marriage patterns to the Bedouins’ former nomadic lifestyle.²³ When the Bedouins lived in the desert, kinship marriages were

¹⁸ See generally YOSEF BEN-DAVID, *HAMORESHET HATARBUTIT SHEL HABEDUIM BANEGEV* [THE CULTURAL HERITAGE OF THE BEDOUINS IN THE NEGEV] (2000) (Isr.) [hereinafter BEN-DAVID, *THE CULTURAL HERITAGE*]. It should be noted that the ethnographic work on the Bedouin population in Israel is limited. Most of this research is led by Jewish Israeli scholars and Israeli governmental research bodies. Hence, further work is needed to provide an “insider” ethnographical perspective on this community. Most significantly further research is necessary to give voice to Bedouin women themselves to state their positions about their own conditions within their community. Therefore, I use this ethnographic work only to provide a general background about the Bedouin society in Israel.

¹⁹ Alean Al-Krenawi & Rachel Lev-Wiesel, *Wife Abuse Among Polygamous and Monogamous Bedouin-Arab Families*, 36 *J. DIVORCE & REMARRIAGE* 151, 154 (2002).

²⁰ SIGAL TAL, *HAISHA HABEDUIT BANEGEV BE’DAN SHEL TEMURO* [THE BEDOUIN WOMAN IN AN ERA OF CHANGES] 20 (Genia Dor & Dan Retner eds., 1995) (Isr.).

²¹ See Al-Krenawi & Lev-Wiesel, *supra* note 19, at 154.

²² This might be a man of their extended family, or the brother of their brother’s wife if they are to marry in an “exchange marriage” (called *Badal* marriage) in which two men are married to each other’s sisters. See Alean Al-Krenawi, *Women of Polygamous Marriage in Primary Health Care Centers*, 21 *CONTEMP. FAM. THERAPY* 417, 418 (1999).

²³ BEN-DAVID, *THE CULTURAL HERITAGE*, *supra* note 18.

crucial to consolidate the political power of the tribe and assure its survival. Women could only marry a man of their tribe to ensure an increase in the tribe's warriors. That is because according to the Bedouin tradition, upon her marriage, a Bedouin woman and any children she might bear belong to her husband's family.

Today most young Bedouin couples in Israel are still married into kinship marriages. Many Bedouin women are married before they reach eighteen years of age, without being consulted and oftentimes against their will.²⁴ Research further shows that often, Bedouin women who are married at a young age become the senior wife in a polygamous marriage. That is because it is common for Bedouin men to take an additional wife of their choice after a few years of marriage.²⁵

Similar to findings about polygamous family structures in other parts of the world, research on Bedouin polygamous families indicates that there is often much competition and rivalry among plural wives and that women and children typically suffer from reduced economic and emotional support compared to children in monogamous families.²⁶ The economic deprivation of women and children in polygamous Bedouin families is exceptionally severe given the fact that the Negev's Bedouin community is among the most impoverished populations in Israel. Research further indicates that the situation of the senior wife and her children is typically the worst among all the members of the polygamous Bedouin family.²⁷ Whereas being a senior wife in some cultures implies having higher status, within the Bedouin polygamous family hierarchy, it is typically the reverse.²⁸ The adverse treatment of senior wives by their husbands may be attributed to the fact that a senior wife is typically the result of an arranged marriage, whereas a junior wife (i.e., the most recent wife joining a marriage) is, in most cases,

²⁴ Al-Krenawi et al., *Social Practice with Polygamous Families*, 14 CHILD & ADOLESCENT SOC. WORK J. 445, 449 (1997).

²⁵ *Id.*

²⁶ Naturally, since women in polygamous marriages need to share the marriage resources, the resources available for each woman are reduced, and in most cases, they compete to gain a greater share. Oftentimes, such competition creates animosity between polygamous wives. See, e.g., Alean Al-Krenawi & John R. Graham, *The Story of Bedouin-Arab Women in Polygamous Marriage*, 22 WOMEN'S STUD. INT'L F. 497, 507 (1999).

²⁷ Al-Krenawi, *supra* note 22, at 425.

²⁸ Al-Krenawi et al., *supra* note 24, at 447.

chosen by the husband.²⁹ Empirical research reveals that senior wives and their children tend to be treated less favorably and tend to have fewer economic resources and less conjugal and paternal support than junior wives and their children.³⁰

The consequences of a subsequent marriage can be devastating for a senior wife. Typically, the man will move in with his new wife, while the senior wife, with her children, are often left to live at the outskirts of her husband's or his extended family's household area. Any financial assistance or emotional support the senior wife may have received from her husband will likely be diminished. Further, the wife tends to suffer from a loss in social status.³¹ Research has found that mental health problems are very common among Bedouin women in polygamous marriages and particularly among senior wives.³² Polygamous senior wives also report higher levels of spousal violence than Bedouin women in monogamous marriages.³³

Polygamy has existed in Islamic family law for more than thirteen centuries. The Koran allows men to marry up to four wives;³⁴ according to Islamic law, a man is required to deal justly with his wives and maintain the financial means to support them.³⁵ The importance that Bedouins ascribed to high birth rates as a means to increase the power of their extended family and the whole tribe, along with the permissive approach of Islam to polygamy, made it a popular practice during their nomadic past.

²⁹ Al-Krenawi, *supra* note 22, at 426.

³⁰ See generally Al-Krenawi et al., *supra* note 24; Salman Elbadour et al., *The Effect of Polygamous Marital Structure on Behavioral, Emotional, and Academic Adjustment in Children: A Comprehensive Review of the Literature*, 5 CLINICAL CHILD & FAM. PSYCH. REV. 255, 259 (2002).

³¹ Al-Krenawi, *supra* note 22, at 418.

³² *Id.*

³³ Al-Krenawi & Lev-Wiesel, *supra* note 19, at 158.

³⁴ QURAN, *Surah* 4:3.

³⁵ However, there are many different interpretations of Islamic law regarding its stance on polygamy and its conditions. On one end of the spectrum, some believe that polygamy is derived from the divine Islamic law and is almost a religious duty. On the other end of the spectrum, some reformists argue that the threat of injustice will exist in nearly all cases of polygamy and therefore a total ban is required, or at least that significant restrictions should be placed upon the practice. See Yaacov Meiron, *Ribuy Nashim LaMuslemim VeHukatiyut Isuru [Muslim Polygamy and the Constitutionality of Its Prohibition]*, 3 MISHPATIM 515, 521 (1972) (Isr.); Rawia Abu Rabia, *Redefining Polygamy Among the Palestinian Bedouins in Israel: Colonialism, Patriarchy, and Resistance*, 19 AM. U. J. GENDER SOC. POL'Y & L. 459, 466 (2011).

But in the first half of the twentieth century, the practice of polygamy became very limited among the Bedouin tribes in the Negev. Their transition to a sedentary lifestyle, which did not require wars over resources and thus also lessened the incentives for higher birth rates, seems to explain the decline in polygamous marriage at that time. During that period, polygamy was common only among *Sheikhs* (the tribe leaders) and the wealthiest men.³⁶

The practice has regained popularity in the second half of the twentieth century. Researchers in the early 2000s estimated that around twenty to forty percent of the Bedouin families in the Negev are polygamous. They further estimated that in the last two decades of the twentieth century there was a significant rise in the number of polygamous marriages among the Bedouins at a rate of one percent per year.³⁷

There are a few factors that can explain the prevalence of polygamy among the Negev's Bedouins in the last few decades. A careful inquiry into these factors reveals that they can be generally accounted for as a result of an intersection of the Bedouin tradition with urbanization and accelerated modernization that was forced on this community since Israel occupied the Negev land in 1948. Examining the radical changes that the Bedouins have experienced in the last seventy years sheds light on these factors. Ultimately, this examination reveals the role of Israel in creating the conditions that rendered Bedouin women particularly vulnerable to oppression in their community today.

A. The Occupation of the Negev by Israel—A Watershed in the Vulnerability of Bedouin Women to Oppressive Marriage Arrangements

Bedouin tribes have been present in the Negev for two millennia. They have lived in well-defined tribal territories since the nineteenth century.³⁸ By the turn of the twentieth century, a few Bedouin tribes were already settled and conducted seminomadic lifestyles,

³⁶ Abu Rabia, *supra* note 35, at 487.

³⁷ See, e.g., ANAT LAPIDOT-FIRILLA & RONNY ELHADAD, CTR. FOR STRATEGIC & POL'Y STUD., FORBIDDEN YET PRACTICED: POLYGAMY AND THE CYCLICAL MAKING OF THE ISRAELI POLICY 9 (2006) (Isr.). As I explain below, because plural marriage is a criminal offense in Israeli criminal law, Bedouin men usually do not register more than one wife with the state authorities. Thus, only indicative data about the rate of polygamy among the Negev's Bedouins is available. Such data includes information about women who gave birth to children of the same man in a short time period (i.e., less than nine months), for example.

³⁸ Their geographic contiguity enabled the Bedouins in the Negev to maintain the integrity of their tribes throughout the Ottoman rule and the British Mandate. See BEN-DAVID, THE BEDOUIINS IN ISRAEL, *supra* note 17, at 15, 56; *Bedouins in the State of Israel*, THE KNESSET (2010) (Isr.), https://www.knesset.gov.il/lexicon/eng/bedouim_eng.htm [<https://perma.cc/WEE2-89ZG>].

engaging in small-scale agriculture.³⁹ Before the 1950s, most Bedouin tribes were spread around the relatively fertile northwest of the Negev. They subsisted on agriculture and raising livestock. Women worked in subsistence farming and they were responsible for grazing sheep and producing food and clothing, while men were responsible for guarding the land.⁴⁰

During the 1950s, although Israel granted the Bedouins citizenship status, it concentrated them in a defined area at the northeast of the Negev, the “Siyag zone” (“siyag” means “fence” in Arabic). Many Bedouin tribes were removed from the northwestern region to the Siyag zone. According to the 1950 Absentees’ Property Law, the ownership of all the lands belonging to those who were removed was transferred to the legal holding of the Custodian of Absentees’ Property.⁴¹ The region was declared a military zone and the Bedouins were banned from entering the land outside of the defined area. Then, in 1953, the Land Acquisition (Validation of Acts and Compensation) Law was enacted to enable the Israeli government to gain title to lands seized under the Absentees’ Property Law, which included most of the Negev area.⁴² The law allowed the government to register previously expropriated land, in a preliminary registration, under certain conditions. One of the conditions was that the land was not in possession on April 1, 1952. Thus, the state could register all the land outside of the Siyag zone, because the Bedouins had been removed, by the state, from this area.

The Bedouins lived under military rule until 1966. When the military governance ended, the Bedouins were permitted to return to the area outside the Siyag zone. However, much of this land was already occupied by Jewish populations that had settled there since the Bedouins had been removed, and military camps and training zones had been built in the Negev.⁴³ Many of the Bedouins returned to this area, but the tribal order that depended on a well-defined division of the land among tribal units was disrupted, and the Bedouins’ source of livelihood—namely, the availability of land for residence, agriculture, and rearing livestock—was diminished.

³⁹ Al-Krenawi et al., *supra* note 24, at 448.

⁴⁰ Abu Rabia, *supra* note 35, at 464.

⁴¹ Absentees’ Property Law, 5710–1950, LSI 4 68 (1948–87), as amended (Isr.).

⁴² SHIRI SPECTOR BEN ARI, RSCH. DEP’T, ISRAELI KNESSET, THE REGULATION OF THE BEDOUIN SETTLEMENT IN THE NEGEV 7 (2013).

⁴³ SHLOMO SWIRSKI & YAEL HASSON, INVISIBLE CITIZENS: ISRAEL GOVERNMENT POLICY TOWARD THE NEGEV BEDOUIN 10 (2006) (Isr.).

Conflicts over land have characterized the relations between the Bedouin population of the Negev and the state of Israel since the state's establishment. From the 1960s until the 1990s, in an attempt to end the land conflicts, Israel tried to settle the Bedouins in seven urban-style townships that it constructed in the Siyag zone. The plan was to make the Bedouins yield their land ownership claims and in return, the Israeli government would provide them with land, urban infrastructure, and services in these townships.⁴⁴ Many Bedouins, however, rejected the government's offer to move to the townships. In 1971, the government initiated a Settlement of Rights of Title process under the Land (Settlement of Title) Ordinance of 1969.⁴⁵ Since its inception, the process has made no significant progress.⁴⁶ While the Bedouins submitted approximately 3,330 claims, only around 380 claims (making up around eighteen percent of the claimed area) have been settled. Because most of the Bedouins did not register their lands during the British colonial era in Palestine, they are unable to prove their claims. The state of Israel does not recognize claims for title that are based on the Bedouin's tribal code and are not supported with proof of previous registration of the land. From the point of view of the claimants, the state's offer of settlement in Bedouin townships does not constitute a sufficient alternative to the lands outside the Siyag zone, onto which many of the Bedouins resettled after military governance ceased.⁴⁷

Today more than seventy percent of Bedouins in the Negev live in the townships.⁴⁸ Most of the remaining Bedouins live in unrecognized villages outside the area that was formerly the Siyag zone, where they can maintain a seminomadic lifestyle. According to the 1965 Planning and Building Law, these populated villages are not recognized by the state of Israel and are instead zoned as agricultural lands.⁴⁹ Building permanent structures

⁴⁴ LAPIDOT-FIRILLA & ELHADAD, *supra* note 37, at 6.

⁴⁵ The purpose of this process was to complete the registration of the lands under their owners' names. *See* SPECTOR BEN ARI, *supra* note 42, at 7.

⁴⁶ In a 1974 precedential decision, the Supreme Court of Israel dismissed an appeal of one of the Bedouin tribes and ruled in favor of the state position. CivA 218/74 Salim Al-Hawashleh v. State of Israel, 38(3) PD 141 (1984) (Isr.). All the claims that had been decided since 1971 in court were dismissed. *See* SPECTOR BEN ARI, *supra* note 42, at 8–9.

⁴⁷ SWIRSKI & HASSON, *supra* note 43, at 20.

⁴⁸ Only 3.5% of the Negev's Bedouins (out of these 70%) live in new townships, which are villages that were recently recognized by Israel in their original location—i.e., outside of what used to be the “Siyag area.” *See* SPECTOR BEN ARI, *supra* note 42, at 2.

⁴⁹ Planning and Building Law, 5725–1965, LSI 19 330 (1948–89), as amended (Isr.).

in these villages is therefore prohibited. Heavy fines and demolition of these structures are imposed on any person or structure found to be breaching these prohibitions. Thus, many Bedouins in the unrecognized villages still live in shacks and tents.⁵⁰ The population in the unrecognized villages also suffer from lack of basic infrastructure, such as regular water supply, electricity, healthcare, and education. They are the poorest population in Israel, with an eighty-percent incidence of poverty—seven times worse than that of the Jewish community.⁵¹

The living conditions of Bedouins in the townships are also poor.⁵² This is due to the elimination of the Bedouin's traditional agricultural sources of livelihood and the failure of the townships to provide employment alternatives for their residents. These townships were designed as dormitory towns, with very few services and a lack of infrastructure for economic and social development, such as industrial zones, public transportation, banks, post offices, and completed sewage systems.⁵³

B. Like Connected Vessels: Colonialism, Patriarchy, and Oppressive Marriage Practices in the Bedouin Community

Against the backdrop of the Bedouin's tribal history and their kinship marriage structure, these events have impacted Bedouin social, economic, and political organization in various ways that could explain the popularity of polygamy within their communities. In other words, the intersection of external factors and internal factors points to the Israeli state and the Bedouin community both having a role in creating and reinforcing the conditions that render Bedouin women vulnerable to oppressive marriage arrangements.

One significant factor is the impact of the disruption of the Bedouin's traditional and autonomous lifestyle on the status of Bedouin women in the family and the community. After the displacement of the Bedouin from the fertile lands in the northwest Negev, women could no longer maintain their productive roles as subsistence farmers. The

⁵⁰ Suleiman Abu-Bader & Daniel Gottlieb, *Poverty, Education and Employment Among the Arab-Bedouin Society: A Comparative View* 8 (Soc'y for the Study of Econ. Ineq., Working Paper No. 137, 2009); Abu Rabia, *supra* note 35, at 481, 487.

⁵¹ Abu-Bader & Gottlieb, *supra* note 50, at 8; Abu Rabia, *supra* note 35, at 481.

⁵² SPECTOR BEN ARI, *supra* note 42, at 3.

⁵³ Ismael Abu-Saad, *The Indigenous Palestinian Bedouin of the Naqab: Forced Urbanization and Denied Recognition*, in *THE PALESTINIANS IN ISRAEL: READINGS IN HISTORY, POLITICS AND SOCIETY* 120–27 (2011).

grazing land has significantly diminished, and food and clothing are now available at the market.⁵⁴ Today, while Bedouin men work in urban areas in Jewish cities and neighbouring towns in the Negev,⁵⁵ only sixteen percent of Bedouin women in the Negev are part of the labour market, compared to sixty-four percent of women among their Jewish counterparts.⁵⁶ That is first because there are very limited employment and educational opportunities in the Bedouin townships and villages. Second, due to potential threats to the “family honour,” women are discouraged by their families from leaving the tribal area to work or study.⁵⁷

Simultaneously, the disruption of the Bedouin traditional lifestyle has led to the fortification of patriarchal norms in this community. Anat Lapidot-Firilla and Ronny Elhadad suggest that the loss of an autonomous lifestyle has led the Bedouins to manifest their internal autonomy through stricter adherence to cultural practices. They maintain that this loss of autonomy with respect to the external world explains “the tendency of the tribal leaders to be insular and wage wars of survival on the last fortresses under their control—women and family.”⁵⁸ Rawia Abu Rabia argues that because polygamy was a status symbol for *Sheikhs* and wealthy men in the past, Bedouin men try to overcome their experience of economic deprivation and regain their sense of honor by marrying multiple wives.⁵⁹

In fact, many Bedouin men today use polygamy as a means to marry another wife or more by choice.⁶⁰ As a result of political and social processes, Bedouin men have begun

⁵⁴ RACEL MATAR ET AL., HATSUVET HABEIN-MISRADI LEHITMODEDUT EA’M HASHLAKHOTEIA HASHLILUUT SHEL HAPOLYGAMIA, DIN VEHSHEBON MESAKEM [THE INTER-MINISTERIAL COMM. FOR ADDRESSING THE NEGATIVE IMPLICATIONS OF POLYGAMY, CONCLUDING REPORT] 34 (2018) (Isr.).

⁵⁵ While around fifty percent of the men in the Bedouin townships are unemployed, ninety percent of the women are unemployed. The Central Bureau of Statistics in Israel does not provide data on the population in the unrecognized villages. However, it is likely that the number of unemployed women in these villages is even higher. See Abu-Bader & Gottlieb, *supra* note 50, at 9; MATAR ET AL., *supra* note 54, at 67.

⁵⁶ BEN FERGEON, NEGEV COEXISTENCE F. FOR CIV. EQUAL., PERSPECTIVES ON ARAB-BEDOUIN WOMEN EMPLOYMENT IN THE NEGEV/NAQAB 8 (2018) (Isr.).

⁵⁷ *Id.*; TAL, *supra* note 20, at 8.

⁵⁸ LAPIDOT-FIRILLA & ELHADAD, *supra* note 37, at 7.

⁵⁹ Abu Rabia, *supra* note 35, at 486. Bedouin men who were recently interviewed about polygamy appear to confirm these arguments. See MATAR ET AL., *supra* note 54, at 57.

⁶⁰ Al-Krenawi, *supra* note 22, at 418.

to take additional wives from outside of the Negev. After the 1967 war, the Israeli authorities allowed people to cross the Green Line between Israel and the territories of Gaza and the West Bank, which Israel occupied during the war. The Bedouins who remained in the Negev after the 1948 war could maintain their relations with their kin in this region and develop matrimonial alliances with them.⁶¹ More recently, Bedouin men have begun to seek wives outside of their tribe, among peasant Palestinian families.⁶² That is despite the fact that the restrictions on crossing the border were reapplied and additional restrictions were since added.⁶³ The low bride price that the Palestinian families demand for their daughters enables even poor Bedouin men to marry additional wives. In other words, today this “privilege” of polygamy has become available to all Bedouin men—not only for *Sheikhs* and the wealthiest.

Given the high levels of unemployment in this population, however, many Bedouin men who take additional wives cannot afford to support more than one spouse, if any. Because divorce is stigmatized in Bedouin society and may cause disputes between the couples’ extended families, Bedouin men often use polygamy as a way out of their first marriage.⁶⁴ Polygamy allows them to practically leave their first marriage without having to bear the burden of paying child and spousal support to their first wife.

Women, however, do not enjoy such a privilege. Bedouin women in polygamous marriages rarely leave their marriage. Bedouin women are expected to accept polygamy as an integral part of their life, maintain sexual relationships with their husband, and bear children for him, even after he has practically abandoned them.⁶⁵ When a Bedouin woman marries, she joins her husband’s family and is expected to remain a member of

⁶¹ Abu Rabia, *supra* note 35, at 484.

⁶² *Id.* Effectively, it creates a troubling phenomenon of trafficking in Palestinian women for marriage purposes. These Palestinian women are completely dependent on their husbands because since the 2003 enactment of the Citizenship and Entry into Israel Law (Temporary Order) 5763, Palestinians from the Gaza Strip and the West Bank territories cannot gain legal status in Israel. Therefore, these women cannot work and are not entitled to public benefits and welfare payments. See MATAR ET AL., *supra* note 54, at 58.

⁶³ MATAR ET AL., *supra* note 54, at 68.

⁶⁴ In fact, research found that the probability that a Bedouin man will take an additional wife is higher among men who married at a young age. Research further found that Bedouins, men and women, who drop out of school have a twenty percent higher chance of becoming a spouse in a polygamous marriage structure. See *id.* at 126.

⁶⁵ See Al-Krenawi, *supra* note 22, at 420; Abu Rabia, *supra* note 35, at 470.

his family for life.⁶⁶ To obtain a divorce, a Bedouin woman would have to pursue a legal battle in the *Sharia* court to prove that the marriage caused her such prejudice that it does not enable the continuance of conjugal life.⁶⁷ A Bedouin woman who divorces her husband commonly faces severe penalties. She may find that her own family is not willing to support her and may even ostracize her.⁶⁸ Worse still, a divorced Bedouin woman may lose custody over her children. According to Islamic law, fathers gain custody of boys over the age of seven and girls over the age of nine. The Bedouin norm is that the “best interests of the child” is to grow up in their paternal extended family’s care and to be educated according to the paternal family’s values.⁶⁹

Lastly, whereas the gradual transition to a sedentary lifestyle has suppressed wars between the Bedouin tribes over sources of subsistence and living areas, the establishment of the townships and the gathering of different tribes under one local authority have given a modern, political form to the tribal wars.⁷⁰ Because of the elimination of the Bedouin’s traditional forms of livelihood and the problematic planning of the Bedouin townships, there are very few workplaces in the townships. The two main sources of income for the townships’ residents are Income Security Benefits that are paid to low-income families by the State of Israel, and employment by local authorities. In local elections, candidates run as a part of their clan and are expected to look out for clan interests at the municipal level. Therefore, in a democratic election system, the size of the clan has a critical effect on its political and social survival.⁷¹ In these circumstances, the aims of increasing the clan birth rate and “keeping women within the clan” have regained a modern rationale, encouraging polygamy.⁷²

⁶⁶ Gideon M. Kressel, *Latent Payments and Gains Implied in the Confinement of Women to Household Settings: The Case of Reproduction Among the Negev Bedouin*, 4 ISR. SOC. SCI. RSCH. 51, 56 (1986).

⁶⁷ MARTHA BAILEY & AMY KAUFMAN, *POLYGAMY IN THE MONOGAMOUS WORLD: MULTICULTURAL CHALLENGES FOR WESTERN LAW AND POLICY* 24 (2010). For example, showing that she experienced domestic violence at the hands of her husband is considered a justified ground for divorce. *Id.*

⁶⁸ Abu Rabia, *supra* note 35, at 471.

⁶⁹ RSCH. DEP’T, ISRAELI KNESSET, *POLYGAMY AMONG THE BEDOUIN POPULATION IN ISRAEL* 5 (2006).

⁷⁰ In fact, life under military rule until 1966 has transformed each tribe into a political unit, led by each tribe’s *Sheikh*, as appointed by the Israeli military governor. *See* TAL, *supra* note 20, at 2.

⁷¹ LAPIDOT-FIRILLA & ELHADAD, *supra* note 37, at 7.

⁷² BEN-DAVID, *THE CULTURAL HERITAGE*, *supra* note 18, at 8.

In sum, examining the history of the Negev's Bedouins since Israel occupied this land in 1948 shows how at the same time that Israel's dispossessing land regime created new incentives for Bedouin men to take additional wives, it also weakened the status of Bedouin women in the family and the community. Overall, this examination indicates how Israel's dispossessing land laws and discriminatory building and planning laws have contributed to creating political, economic, and social conditions that render Bedouin women more vulnerable to oppressive marriage arrangements.

Ultimately then, the history of the Bedouin in Israel clearly indicates the culpability of the Israeli state in creating some of the conditions that foster polygamy in this community. However, as we will see next, Israel completely denied this responsibility for decades. Its legal treatment of this practice oscillates in a binary between a hands-off policy that has helped fortify the patriarchal structure of this community and a heavy-handed interventionist approach that has so far only worsened the conditions of Bedouin women.

V. Alternating Between Two Sides of a Binary: The Israeli Legal Regime Around Polygamy

For over sixty years, the prohibition of plural marriage has been a dead letter in Israeli law. Since the 1950s, after polygamy was no longer practiced within the Jewish population, the offense of plural marriage has rarely been enforced, particularly against Bedouins.⁷³

Under Israel's Punitive Code, "[a] married man who marries another woman and a married woman who marries another man will be sentenced to five years in prison."⁷⁴ The exemption of Muslims from the prohibition of bigamy in the Criminal Code Ordinance was abolished by the Israeli legislature in Article 8 of the Women's Equal Rights Law of 1951.⁷⁵ Since then, there has been a legal dichotomy in Israeli law. Whereas plural

⁷³ For instance, only seventy-six criminal files were opened against polygamists by the Israeli police between the years 2010 and 2012—fifteen against Bedouin men and fifty-six against non-Bedouin Arab men. Around 50.3% of these files were closed, citing "lack of public interest" or "insufficient evidence" as the reasons. See SPECTOR BEN ARI, *supra* note 42, at 4–5 (citing data provided by the Israeli Police via the Office of the Minister of Public Security on September 29, 2013).

⁷⁴ § 176, Penal Law, 5737–1977, LSI Special Vol., as amended (Isr.).

⁷⁵ The Israeli legislators intended to change the Bigamy law of the British Mandate, which exempted religious and cultural communities. § 186, Criminal Code Ordinance, Palestine Gazette Supp. I 652 399 (1936), as amended (Isr.).

marriage is criminalized, the law does not invalidate the marriage as a civil matter. Since marriage and divorce matters in Israel are exclusively governed by religious laws, and the Islamic law permits polygamy, Muslim polygamous marriage is considered valid.

Even though the criminal law applies in the *Sharia* courts (just like it applies to all Israeli authorities) and the courts are prevented from permitting multiple marriages, Bedouin men have found ways to circumvent this legal obstacle to marrying another wife. This is typically done in one of two ways. The first is by marrying another wife according to the Bedouin custom of “*zawag urfi*.”⁷⁶ Such marriages take place informally, in the presence of two male witnesses and the father of the bride. Only after the marriage is celebrated is it brought to the official registrar of the *Sharia* court (called the *Imaam*) for certification. According to the law that applies to the *Sharia* courts, the *Imaam* must certify the marriage as long as it is considered valid in Islamic law—namely, if he finds the Islamic law conditions for contracting into marriage have been met.⁷⁷ The second way is by marrying another wife outside of Israel, in another Muslim jurisdiction that does not ban polygamy, like the National Palestinian Authority or Jordan. Similarly, the marriage is brought *ex post facto* to the *Imaam* in Israel for ratification. In this case, the court’s authority is limited to verifying that the marriage is valid according to the law of the jurisdiction where the marriage was contracted.

Allegedly, according to the Israeli police, because Bedouins marry subsequent wives in informal “*urfi* marriages” or outside the jurisdiction of Israel, it is difficult to obtain evidence that they have gone through multiple marriages.⁷⁸ However, it seems that the actual reasons that underlie Israel’s lenient prosecution policy up until 2017 are reflected in the following words of a senior police officer from 2006: “Although the legislature has made it clear [by including a penalty of five years in prison] that it is a serious offence, one cannot ignore the fact that, in many cases, the marriage is conducted with the agreement of all parties, does not involve any coercion or deception, and is permitted

⁷⁶ Abu Rabia, *supra* note 35, at 473. “*Urfi* marriage” is valid according to the *Sharia* law of some Muslim schools as long as there is an offer and acceptance of marriage, concluded in the presence of two male witnesses. See BAILEY & KAUFMAN, *supra* note 67, at 24.

⁷⁷ The law that applies to the *Sharia* courts in Israel is the Muslim Family Code Ordinance of 1919, which validates the Othman Family Law of 1917. See Pkodat Hoke HaMishpaha HaMuslemi (Tehulato), HEI 92B 994 (1919) (Isr.).

⁷⁸ SPECTOR BEN ARI, *supra* note 42, at 5 (citing data provided by the Israeli Police via the Office of the Minister of Public Security on September 29, 2013).

according to the Islamic religion.”⁷⁹ These claims reflect the laissez-faire policy of the Israeli law enforcement authorities towards the vulnerability of Bedouin women to oppressive marriage arrangements until recently. Obviously, the claim that “the marriage is conducted with the agreement of all parties” ignores the gender relations and power hierarchies in the Bedouin community.

Yet, when it comes to welfare policies that involve “treasury concerns,” the Israeli bureaucracy insists on the importance of discouraging polygamy. As mentioned, after marrying an additional wife, a Bedouin man usually moves in with his new wife and ceases to support his “old” wife and her children. Effectively, when a polygamist man abandons his “old” family, his senior wife becomes the sole provider for their children. Despite the benefits to the senior wife of leaving her husband and regaining single status, senior wives in polygamous marriages rarely divorce their husbands. This is, as we have seen, due to the severe penalties that Bedouin women face if they divorce, as well as the use that many Bedouin men make of the religious and customary rules that grant them custody over their children to discourage their wives from leaving the marriage and claiming child support.⁸⁰

The National Insurance Institute (NII) of Israel is the governmental division which is responsible for the implementation of the Income Security Law. The NII refuses to recognize these women as unsupported parents, denying that they and their children are eligible for welfare benefits as a single-parent family. The interpretations given to the term “spouse” in the Income Security Law (1980) and the implementation of the law by the NII represent a conservative approach that presupposes financial support between spouses that live in the same residential complex.⁸¹ According to this interpretation, a Bedouin woman who resides in close proximity to her husband’s house, even if she lives at the outskirts of his extended family household, is considered a “spouse” and does not qualify for income security benefits as an unsupported single parent.⁸²

⁷⁹ RSCH. DEP’T, ISRAELI KNESSET, *supra* note 69, at 6; see Letter from Yoni Zioni, Superintendent Coordinating Officer, Investigations Div., to Rsch. Dep’t, Israeli Knesset (Sept. 11, 2006) (on file with the author).

⁸⁰ MATAR ET AL., *supra* note 54, at 56 (citing Insanaf Abu-Sharab, a Bedouin lawyer and women’s rights activist).

⁸¹ Einat Albin, *Income Security Benefits for Alternative Families—the Case of Polygamous Families*, in *STUDIES IN LAW, GENDER AND FEMINISM* 617, 619–20 (Dafna Barak-Erez et al. eds., 2007) (Isr.).

⁸² Labor Court (DC Jer) 49/04-10 Deeb Abulban v. HaMosad LeBitoach Leumi, 20 PD 334 (1989) (Isr.); Labor Court (DC Jer) 49/04-136 Elabid v. HaMosad LeBitoach Leumi, 22 PD 309 (1989) (Isr.).

The practice of the NII is to allocate a joint benefit to the polygamous family. Under a euphemistic name—the “extended family” benefit—Israeli government bureaucracy is effectively recognizing polygamous families, to the detriment of the women involved.⁸³ The extended family benefit is composed of a sum that combines (a) the sum to which a couple is entitled, plus (b) an amount for each additional claimant wife—the sum of a couple’s benefit minus the sum to which a single person is entitled. According to this rule, the amount that each polygamous wife receives is only a couple hundred NIS, while the amount that a single parent (i.e., a single parent under fifty-five years old with only one child) is entitled to a minimum of 2,773 NIS.⁸⁴

Ultimately, the effect of this rule is to amplify the dependency of plural wives. Even if an abandoned polygamous wife manages to receive her own share of the benefit (as a “supported mother”) from her husband, the funds are insufficient to satisfy her basic needs—thus leaving her and her children in abject poverty and at the mercy of her husband’s family. In fact, out of concern that paying welfare benefits to women in polygamous marriages as single mothers would encourage polygamy among the Bedouins,⁸⁵ the Israeli bureaucracy contributes to the preservation of the polygamous family structure. Even as these rules disempower women, they may also provide Bedouin men with the financial incentive to marry additional wives in order to increase the benefit, which they can effectively control and distribute as they wish.

In 2010, a group of human rights activists petitioned the Supreme Court of Israel, challenging the NII’s denial of a single-parent income security benefit for abandoned polygamous wives.⁸⁶ The petition against these rules was withdrawn following the court’s recommendation that the parties negotiate the criteria for determining whether a claimant

⁸³ See *Tadrich Havtachat Hachnasa (Gimlaot) [Guidelines—Income Security (Benefits)]*, NOHAL AVODA [EXTENDED FAMILY], 2.3.5.1. WORKING PROCEDURE. A copy was attached to the State’s response to the petition in HCJ 1480/10 Singur Kehilati VeAhrim v. HaMosad LeBitoach Leumi [Cmty. Advoc. v. Nat’l Ins. Inst.] (withdrawn) (Isr.).

⁸⁴ It should be noted that the “extended family benefit” is paid according to internal regulations of the NII, and its legality is highly questionable given that the Income Security Law includes only two forms of the income security benefit—for singles and couples.

⁸⁵ See Stephen Adler, *The Bedouin Woman and Income Security in the Polygamous Family*, in *THE STATUS OF WOMEN IN SOCIETY AND LAW* 133 (Frances Raday et al. eds., 2005) (Isr.).

⁸⁶ HCJ 1480/10 Singur Kehilati VeAhrim v. HaMosad LeBitoach Leumi [Cmty. Advoc. v. Nat’l Ins. Inst.] (withdrawn) (Isr.).

is sharing a household, and thus should be considered a “spouse.”⁸⁷ However, despite some changes to the administration of the benefit, the petitioners did not obtain a significant change in the implementation of the law.⁸⁸

Rather, the public interest that arose around the prevalence of polygamy among the Bedouins since the 2000s gave rise to propaganda about the cost of the benefit to the Israeli taxpayer.⁸⁹ This propaganda was followed by several attempts by Israeli parliament members to pass a law that would overcome the “evidentiary obstacle” of proving the plural marriage offense by redefining the offense as cohabitation in a marriage-like relationship with more than one spouse. This would have made polygamy a status offense, rather than a crime that is completed when the marriage is performed, and thereby eliminated the requirement to show evidence of the act of performing a polygamous marriage.⁹⁰

Around the same time, following criticism by the Committee on the Elimination of all Forms of Discrimination Against Women (the CEDAW Committee) of Israel for the continuing prevalence of polygamy, a Special Rapporteur on violence against women was sent on a mission to Israel. The rapporteur notes in her 2017 report “a lack of implementation by Israel of the recommendations issued by the Committee on the Elimination of Discrimination Against Women in 2011.”⁹¹ The report further identifies

⁸⁷ Decision of October 5, 2011, HCJ 1480/10 Singur Kehilati VeAhrim v. HaMosad LeBitoach Leumi [Cmty. Advoc. v. Nat’l Ins. Inst.] (withdrawn) (Isr.).

⁸⁸ In a meeting between the parties on December 19, 2011, the NII agreed to re-examine the criteria, as well as to consider the possibility of adding questions to the “separation form” that a woman who declares that she is separated from her husband must fill out, such as, “Why did the woman not leave her husband’s household?” and, “Why is she still living in her husband’s household?” The purpose of these questions is to invite investigation into whether a polygamous wife suffers from domestic violence and remains in her husband’s household because of the risk of violence, and thus should be treated as separated from her husband. However, the internal regulations of the NII for determining if one is considered a spouse have yet to be changed. *See* Letter from Na’ama Shalev, Coordinator, Income Sec. Branch, to Cmty. Advoc. Ass’n & “Itach-Ma’achi” Ass’n (Jan. 10, 2012) (on file with the author).

⁸⁹ In fact, whereas most of the allowances the NII pays for claimants are paid from tax revenue, the Income Security allowances are paid out of the state treasury (out of the yearly budget). *See* MATAR ET AL., *supra* note 54, at 101.

⁹⁰ *See, e.g.*, Draft Bill for Penal Law Amendment: Preventing Multiple Common Law Spouse, 5711–2010, 2262/18 (Isr.).

⁹¹ Hum. Rts. Council, Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences On Her Mission to Israel, ¶ 22, U.N. Doc. A/HRC/35/30/Add.1 (June 23, 2017).

Bedouin women as a group of women particularly at risk—especially women residing in the unrecognized villages, noting the impact of home demolition and forced eviction as a situation that particularly affects women. In terms of factors contributing to reinforcing the occurrence of violence against minority women in Israel, the report notes patriarchal attitudes, low awareness among women of their rights, unemployment, the occurrence of early marriages, and the persistence of polygamy. The report concludes with recommendations that Israel take measures to enforce the “legal prohibition of polygamy and child or forced marriages in the Arab and Bedouin communities,” but also that it “take effective measures to improve the situation of Bedouin women and girls with regard to their access to shelters and other protection and empowerment measures, health care, education, and employment, and to ensure their participation in any process concerning their situation.”⁹²

Against this background, and after ignoring the prevalence of polygamy among the Bedouin for six decades, the Israeli government decided in 2017 that there was a pressing need to address the phenomenon of polygamy given its “harsh implications for polygamous family members, especially women and children, and the society as a whole.”⁹³ Subsequently, the Attorney General (AG) published new guidelines that demand rigorous enforcement of the criminal ban on plural marriage.⁹⁴ The AG made it clear that evidence of the registration of additional marriages is no longer necessary for filing a criminal charge of plural marriage, as long as there is sufficient evidence to prove that the accused is married to more than one wife.⁹⁵ The guidelines also demand that prosecutors recommend sentences that include active prison terms to the court.⁹⁶

Reflecting on the public discourse around this issue in recent years, it does not seem to be the case that a genuine concern for Bedouin women’s welfare was the generator of the prosecution’s policy shift. In fact, the AG’s guidelines do not even attempt to conceal the government’s “treasury concerns.” The guidelines openly state that “the phenomenon of plural marriage is often used for gaining monetary benefit, sometimes unlawfully . . .

⁹² *See id.* ¶ 89(i)–(j).

⁹³ HAhLATA 2345 SHEL HAmEMSHALA HA-34, HITMODEDUT EA’M TOFAA’T HAPOLYGAMIA [GOV’T DECISION No. 2345] (Jan. 29, 2017) (Isr.).

⁹⁴ *Guidelines on the Plural Marriage Offence*, 4.1112 Attorney General Guidelines, 3 (2017) (Isr.).

⁹⁵ *Id.* at 17–19. These guidelines do not seem to settle well with the words of the plural marriage offense, which criminalizes the *act* of marrying another spouse (rather than a status or continuous crime offense).

⁹⁶ *Id.* at 20.

such as income security benefits . . . under the guise of a ‘single-parent head of family.’”⁹⁷

Ultimately, starting from a *laissez-faire* approach that ignored the prevalence of polygamy among the Negev’s Bedouins, Israel has shifted to an enforcement policy that aims to eradicate the practice by punishing polygamist men.⁹⁸ Whereas the former approach turned a blind eye to the conditions of Bedouin women in oppressive marriage arrangements, the current approach is equal to throwing the entire responsibility for the oppressive conditions to which Bedouin women are subjected on the Bedouin community. This strategy ignores the substantial role that Israel played, and still plays, in reinforcing the conditions that encouraged polygamy in this community. Given this role, Israel has an obligation to act to mend and mitigate the factors that reinforce this practice. To allow us to contemplate such measures only requires that we change our style of thought by recognizing that the state is not a bystander, but a part of the problem, and thus should also be a part of the solution. Such a change of thought should lead to an approach that focuses on measures that the state could take to assist the victims of oppressive marriage arrangements.

This approach requires that we first trace the wrongs of the state, then consider ways to right them or at least mitigate their harms. This strategy is key to avoiding the false binary choice between interventionism and a *laissez-faire* approach that characterizes the theoretical literature on intra-group vulnerability, and which, as we have seen, is institutionally reinforced through the way that Israel responds to polygamy among the Bedouins. As I have indicated above with regards to the refusal of the NII to recognize abandoned polygamous wives as single parents, discriminatory barriers on the access of minority women to public resources and services is a common way in which the state enables intra-group vulnerability. Thus, removing such barriers is an important strategy to allow women to resist, avoid, or leave unfavorable marriages and other unwelcome practices in their community’s life. Next, I will demonstrate how this strategy can be implemented to identify and remove barriers to the access of Bedouin women to family courts.

⁹⁷ *Id.* at 4.

⁹⁸ Indeed, data indicates a significant rise in the number of criminal indictments against polygamist men since the new AG guidelines were published. Whereas no criminal charges were filed in 2016, sixteen charges were filed in 2017, after the AG published the guidelines. *See* Letter from Pub. Info. Off. of Isr. Ministry of Just. to Pub. Info. Applicant (Dec. 10, 2018) (Isr.) (on file with the author).

VI. Removing Barriers to the Access by Bedouin Women to Family Courts

Securing the access of minority women to family courts is paramount to supporting their ability to make intermediate exit choices by way of leaving or resisting an oppressive marriage arrangement. Since women are typically more vulnerable to domestic violence than men, they are usually in greater need of court assistance to leave their marriage, keep their children with them, and survive the aftermath of separation from their spouse⁹⁹—needs that could be fulfilled through legal orders pertaining to divorce, child custody, and child and spousal support.

The Israeli legislature has recognized the importance of providing access to courts for people in need through the Legal Aid Law, which provides legal representation funded by the state in different civil matters, including family law, torts, and appeals against decisions of the Israeli National Insurance Institute.¹⁰⁰ Despite this recognition, the discriminatory implementation of this law has left this assistance out of reach for Bedouin women. One form of this discriminatory barrier has to do with language accessibility. Legal aid application forms, information about the service, and the service itself are not equally available in Arabic as they are in Hebrew. In addition to these language barriers, Bedouin women—especially those who live in unrecognized villages—face significant geographical barriers which put the legal aid service out of reach for many of them. The Legal Aid District Offices are located in several major cities across the country (Jerusalem, Tel Aviv, Haifa, Be'er Sheva, and Nazareth). In order to make the service accessible to people who live far from the major cities, the Legal Aid District Offices operate branches in the welfare departments and community centers in local municipalities.¹⁰¹ However, research comparing the number of legal aid branches in different areas across the country found a considerable gap between localities where the majority population is Jewish and localities where the majority population is Arab.¹⁰² For example, the legal aid office in Be'er Sheva in the southern district operates branches in large Jewish localities (such as Ashkelon and Kiryat Gat), as well as in the small Jewish

⁹⁹ See generally Patricia Hughes, *Domestic Legal Aid: A Claim to Equality*, 2 REV. CONST. STUD. 203 (1995).

¹⁰⁰ Hoke HaSyua HaMishpati [The Legal Aid Law], 5732–1972, SH 654 95 (Isr.).

¹⁰¹ Sometimes the Legal Aid District Offices also send lawyers from the offices to the branches of several NGOs (such as “Yadid” and “Community Advocacy”). See MAHA ABU-SALIH ET AL., SIKKUY ASSOC., FROM BARRIERS TO OPPORTUNITIES 45 (2010) (Isr.).

¹⁰² *Id.*

locality Netivot¹⁰³ (which only has a population of approximately 35,600 residents).¹⁰⁴ However, no legal aid branch is to be found in the largest Bedouin locality, the city of Rahat, which has a population of approximately 69,000 residents.¹⁰⁵

To understand the barriers that a Bedouin woman will face if she attempts to apply to the family court, let us imagine Fatemeh, a thirty-year-old woman who lives in an unrecognized Bedouin village in the Negev. Fatemeh dropped out of school when she was fifteen. She married her husband, a distant relative, when they were both seventeen years old. Today, Fatemeh is unemployed and her husband works at odd jobs in a neighbouring Jewish town. Soon after their marriage, Fatemeh's husband became physically and emotionally abusive toward her. Fatemeh contemplated leaving her marriage many times, but only after her husband took another wife and stopped supporting her and their children did she decide that she wanted to get a divorce.

Fatemeh has no income and she cannot afford to hire a lawyer. Fatemeh decides to ask a women's organization for advice. Since there is no telephone service, no internet service, nor any public transportation in her village, she walks to the closest local women's organization. The organization is located fifteen kilometers away in the Bedouin township of Arara. At the women's organization she learns that there is a government-funded legal aid service available to low-income people. A volunteer helps her search the Legal Aid Department website, but they cannot find an application form for the service in Arabic. Fatemeh cannot read or write in Hebrew, but even the volunteer, who can read Hebrew, is not proficient enough to understand the form's language. Fatemeh decides to travel to the nearest Legal Aid Office in the closest city, Be'er Sheva, located another thirty kilometers away. She takes three buses and arrives in Be'er Sheva late that afternoon. No one at the Legal Aid Office can speak Arabic. All that Fatemeh manages to understand is that Arabic speaking workers are usually available at the Legal Aid Office in Jerusalem, another seventy kilometers away.

The language and geographic barriers that Fatemeh faces throughout her attempt to access the legal aid service are the result of the discriminatory implementation of the Legal Aid Law of 1972. The Law negatively affects low-income Arab people in Israel and their access to justice, but the Law's worst impact is on Bedouin women. Given the

¹⁰³ *Id.*

¹⁰⁴ CENT. BUREAU OF STAT., ANNUAL STATISTIC OF ISRAEL (2019) (Isr.).

¹⁰⁵ *Id.*

multifaceted marginalization of Bedouin women, this discrimination effectively impairs their ability to apply to the court in family matters.

The Legal Aid Law was enacted to create a nationwide egalitarian legal aid service for low-income claimants in Israel.¹⁰⁶ According to the Law, claimants are eligible for legal consultation and representation funded by the state in certain civil matters if they meet three criteria. First, their case subject matter is in one of the categories listed in the Legal Aid Regulations of 1973. These categories include, among others, family matters such as divorce, child and spousal support, custody and access, and restraining orders (in cases of domestic abuse), as well as claims and appeals against the National Insurance Institute.¹⁰⁷ Second, the claimant's or her family's gross income is less than sixty-seven percent of the average income in Israel.¹⁰⁸ And third, the applicant has reasonable prospects of success in his or her claim.¹⁰⁹

However, the Law does not include any details about the substance of the service that must be provided by the legal aid department to eligible clients, nor any provision that deals with the distribution of the legal aid clinics across the country. Rather, the legislature has delegated the authority to decide these matters to the Minister of Justice. The Minister of Justice sets the financial eligibility criteria (above), as well as the above categories of legal matters in which the service will be provided, in the Legal Aid Regulation. However, many other significant matters have been left undefined in both the primary and secondary legislation. Thus, the regulation of many aspects of the legal aid service is left at the discretion of the officials at the Legal Aid Department. In this legislative vacuum, unelected and unaccountable state officials are the ones who make decisions about crucial matters impacting access to justice for low-income Israeli citizens. Indeed, examining different aspects of the legal aid service reveals a discriminatory reality in its distribution between the Arab population and the Jewish population. This discrimination indicates that the risks of this regulatory vacuum have

¹⁰⁶ Shlomo Cohen, *The Right to Legal Aid*, 4 TEL-AVIV U. L. REV. 145, 166 (1974) (Isr.).

¹⁰⁷ §§ 5(1), 5(4), Legal Aid Regulation, 5733–1973, KT 3062 2048 (Isr.).

¹⁰⁸ *Id.* § 2(b)(1).

¹⁰⁹ According to Section 4 of the Legal Aid Law of 5732–1972, the head of a Legal Aid Office can reject an application for legal aid services if they find that the applicant's case is insignificant, baseless, or has no reasonable foundation in law, facts, or evidence. See *The Conditions for Obtaining Legal Aid*, MINISTRY OF JUST., <https://www.justice.gov.il/En/Units/LegalAid/ProcessObtaining/LegalAidCondiotions/Pages/default.aspx> [<https://perma.cc/X3WW-6EVF>].

been realized. The failure of the Israeli government to tackle this inequality by filling this regulatory vacuum is another example of the role of the state in reinforcing the conditions that render Bedouin women vulnerable to oppressive treatment in their communities.

Considering that 41.9% of Arab individuals in Israel are poor, it is obvious that the Arab population is in serious need of legal aid services.¹¹⁰ This is especially relevant to the Bedouin-Arabs in the Negev who are the poorest population in Israel. Many Arab people would be eligible for legal aid if they were to file an application for the service. However, this service is considerably less accessible to them because of language barriers, underrepresentation of Arabs in the Israeli civil service, and the lack of legal aid clinics in areas with a significant Arab population.

Bedouin-Arab women are most affected by this discriminatory implementation of the Legal Aid law, especially when seeking assistance with family matters. First, while a Muslim man can unilaterally divorce his wife by using the *Talaq* law (essentially, by telling her to leave), for a Muslim woman to obtain a divorce, she would have to pursue a legal battle in the *Sharia* court. A Muslim woman is permitted to leave her marriage only if she obtains a court order to dissolve the marriage, an order that will be granted to her only if she is able to provide “justified grounds” for ending her marriage.¹¹¹ Second, most Arab women in Israel are unemployed and economically dependent on their husbands.¹¹² The rates of unemployment of Bedouin women and the patriarchal norms of marriage and child custody in the Bedouin community are especially significant. Because of these economic vulnerabilities, financial assistance in pursuing family law proceedings is crucial to securing Bedouin women’s ability to access the courts.

¹¹⁰ On the other hand, only 18.9% of Jewish individuals are poor. See NAT’L INS. INST., ANNUAL SURVEY: WELFARE, POVERTY AND SOCIAL GAPS 26 tbl.1 (2016) (Isr.), https://www.btl.gov.il/English%20Homepage/Publications/AnnualSurvey/2016/Documents/Chapter%202_Poverty.pdf [<https://perma.cc/U6U5-PHRH>].

¹¹¹ This can be achieved either by providing grounds for divorce or by proving a flaw in the establishment of the marriage which would render it voidable, enabling her to receive an order of separation. See HAASHEM SAUAAD, ET SUYA: LEGAL AID DEP’T J. VOL. 3, MARRIAGE IN ISLAM AND THE WAYS OF DISSOLVING IT (2004) (Isr.), <https://www.gov.il/he/departments/guides/guide-issue3?chapterIndex=3> [<https://perma.cc/WM9E-8QFZ>].

¹¹² In recent years, the rates of unemployment among Arab women have significantly declined and are now around sixty percent. See Hadas Fuchs & Avi Weiss, Taub Ctr. for Soc. Pol’y Stud. in Isr., *Israel’s Labor Market: An Overview*, in STATE OF THE NATION REPORT 2018, at 11 (2018), <https://www.iataskforce.org/resources/view/1674> [<https://perma.cc/5NGG-KMA7>]. However, the rates of unemployment among Bedouin woman are still as high as ninety percent. See MATAR ET AL., *supra* note 54, at 67.

While the Ministry of Justice's website includes some information about the service in Arabic, the legal aid application forms and many information sheets are not available to Arabic.¹¹³ The Law is silent with respect to language of service, and so the decision of whether to include forms and information about the service in languages other than Hebrew is left to the discretion of the Minister of Justice. Strictly based on the wording of the legislation, there is no legal obligation to provide legal aid application forms or any information about the service in Arabic.

Despite this interpretation seemingly allowing for discretion, failing to provide forms and information in Arabic violates the principle of equality, recognized as a fundamental value in Israeli law and an obligatory standard of conduct for state authorities.¹¹⁴ Only offering forms in Hebrew ensures that only Hebrew-speaking, primarily Jewish, applicants can easily access the legal aid service. Arab applicants who are not proficient in Hebrew—which is often the case among low-income Arab populations in Israel—might not be able to apply. The Legal Aid Law has a clear social purpose of removing financial barriers to courts by providing state-funded legal representation for the types of civil matters which are typically significant for low-income earners, such as family matters and claims against the National Insurance Institute's decisions.¹¹⁵ In other words, the Law has a clear egalitarian purpose of making the court accessible to all. Restricting the legal aid service only to those with Hebrew language proficiency is therefore unreasonable and discriminatory.

Filling out legal forms requires a high level of proficiency in Hebrew. It is unreasonable to expect all Arab applicants to have or obtain such proficiency before applying to the legal aid service or obtaining information about the service. In *Adala, the Legal Center for Arab Minority Rights v. Tel Aviv Municipality*, the High Court of Justice upheld a petition demanding that the municipality of Tel Aviv include Arabic on municipal signage in all parts of the municipality.¹¹⁶ Justice Aharon Barak reasoned that the inclusion of Arabic is necessary for providing convenient and safe service to all the

¹¹³ In fact, the Arabic Legal Aid website purports to have a link to the application form in Arabic; however, when clicking the link, the form appears in Hebrew. See *Legal Aid*, MINISTRY OF JUST. (2020), <https://www.justice.gov.il/Ar/Units/LegalAid/Processoflegalaidar/Requestaidar/Pages/default.aspx> [<https://perma.cc/QY65-8APZ>].

¹¹⁴ For more about the two notions of the duty not to discriminate in Israeli law, see Barak Medina, *Equality, in the Broadest Sense*, LAWYER, Jan. 2014, at 84 (Isr.).

¹¹⁵ Cohen, *supra* note 106, at 163.

¹¹⁶ HCJ 4112/99 *Adala v. Tel Aviv Mun.*, 56(5) PD 393 (2002) (Isr.).

municipality's residents.¹¹⁷ If this was the case for municipal signage, which requires only basic Hebrew language skills, this should also be the case for legal forms and legal information that require a much higher level of language proficiency.

As Justice Barak mentioned in the municipal signage case, Arabic, unlike other spoken languages in Israel, is the language of the largest national minority who have lived on the land of this country for many decades.¹¹⁸ However, a recent piece of nationalist legislation, Basic Law: Israel as the Nation State of the Jewish People of 2018, abolished the equal status of the Arabic language in Israel and made the Hebrew language superior.¹¹⁹ Against this legislative backdrop, Israeli legal scholars predict that future petitions that would demand that the court order the state authorities to include Arabic in other contexts—that are not already entrenched in legislation or Supreme Court decisions—are likely to be dismissed.¹²⁰ Thus, rather than relying on an argument about national minorities' language rights, it may be more effective to focus on the discriminatory effect of the failure to provide legal aid application forms in Arabic on Arab women's access to court.

Providing legal aid application forms in Arabic and allowing applicants to fill them out in Arabic would also require the employment of additional Arabic-speaking workers in the Legal Aid Offices. Employing Arabic-speaking workers is crucial to allow for successful communication with Arab applicants at the first two determinative stages of the process of applying for legal aid services.¹²¹ At the first stage, the applicant fills out an application form. At this stage, it is important that applicants receive a clear explanation about the process, the eligibility conditions, and the documentation which

¹¹⁷ *Id.* at 419.

¹¹⁸ *Id.* at 421. According to this argument, a decision not to provide legal forms and information in other spoken languages in Israel (for instance for new Jewish immigrants who may not be proficient in Hebrew) might be deemed reasonable. Interestingly, the Legal Aid Department website does nonetheless include information in Russian, a language which is spoken by many Jewish immigrants. See *Legal Aid*, MINISTRY OF JUST. (2020), <https://www.justice.gov.il/ru/Units/LegalAid/Pages/default.aspx> [<https://perma.cc/MCX3-W5S4>].

¹¹⁹ Basic Law: Israel as the Nation State of the Jewish People, 5778–2018, SH 2743 898 (Isr.).

¹²⁰ See Meital Pinto, *Group Rights in the Public and the Private Spheres Under a Jewish and Democratic Law*, 19 DEMOCRATIC CULTURE 175, 191 (2020) (Isr.); Tamar Hostovsky Brandes, *Basic Law: Israel as the Nation State of the Jewish People: Implications for Equality, Self-Determination and Social Solidarity*, 29 MICH. J. INT'L L. 65, 80 (2020).

¹²¹ ABU-SALIH ET AL., *supra* note 101, at 48.

they are required to provide along with their application. At the second stage, a lawyer at the legal aid office examines the application and interviews the applicant to decide whether legal aid services will be provided. Clearly, the availability of Arab lawyers at the legal aid offices, with whom the applicants can have direct and culturally relevant communication, is paramount to Arab applicants' chances to qualify for the service.

Article 15A of The Civil Service Law (Nominations) of 1959 states that the government is obligated to ensure fair representation in the civil service of disadvantaged and marginalized groups of the Israeli population (including Arabs and women), as required by the "relevant circumstances."¹²² It appears that the realization of the purpose of the Legal Aid Law—securing access to courts for people in need—should be considered to be "relevant circumstances," which provide an additional reason and urgency to the need for recruiting Arab workers to the legal aid service. Nevertheless, there is a serious shortage of Arabic-speaking workers and lawyers at many of the legal aid offices.¹²³ This reality is another serious barrier to the ability of Arab people to access the legal aid service and enjoy the same level of service received by Jewish applicants.

These language barriers are even more significant for Arab women. Many Arab men work in Jewish localities, unlike Arab women who are mostly either unemployed or work in Arab localities as teachers or in health and social services positions. Therefore, Arab men tend to be more proficient in Hebrew, especially spoken Hebrew, than most Arab women. Thus, Arab men are more likely than Arab women to be able to surmount these language barriers. These language barriers are especially significant for Bedouin women. Considering that sixty percent of girls in the unrecognized villages drop out of high school each year, and that Bedouin men may have the chance to develop their Hebrew language skills by working in Jewish localities, Bedouin women typically have lower levels of Hebrew language skills than Bedouin men.¹²⁴

¹²² The Civil Service Law (Nominations), 5719–1959, SH 279 86 (Isr.).

¹²³ *Id.*

¹²⁴ The considerable distance and the dilapidated infrastructure between the unrecognized villages and the recognized localities where the high schools are located are major disincentives for Bedouin parents to send their children, especially their daughters, to school. Thus, many parents in the unrecognized villages do not permit their daughters to leave their village to attend high school. Although the percentage of Bedouin girls that do attend high school is considerably higher for those who live in the Bedouin townships, there are still many girls who do not attend. That is because parents are concerned about sending their teenage daughters to study alongside boys, and the state refuses to accept parents' requests to build separate public high schools for girls in Bedouin localities. See Abu-Bader & Gottlieb, *supra* note 50, at 29; Michal Greenberg, *The Ministry of Education Does Not Approve Segregation in Education and Bedouin Girls Continue to Drop Out*

The linguistic and geographic barriers the Arab population faces in accessing the legal aid service reveal a significant gap between Arabs and Jews in terms of the service's accessibility. This gap indicates a discriminatory implementation of the Legal Aid Law, disadvantaging Arab applicants. In Israeli law, discrimination which is based on gender, race, or national affiliation is considered a severe case of unequal treatment, which constitutes a violation of the constitutional right to human dignity.¹²⁵

While the negative implications of the geographical barriers with respect to the general ability of Arab-Israelis to access the courts are substantial, the implications of this discrimination for Arab women's access to family courts are even worse. When it comes to Bedouin women, it can effectively deny their ability to apply to the court in family matters at all. The unequal distribution of the legal aid service in Arab localities is particularly significant if we consider that more than one third of Arab families in Israel do not have a car, and that there is limited public transportation to areas where there is a majority Arab population.¹²⁶ In other words, because Arab applicants have limited ability to travel to legal aid clinics in other localities (in comparison to Jewish applicants), the fact that there are fewer legal aid clinics in localities of Arab population further exacerbates this serious infringement of Arab applicants' right to equal treatment. That is especially the case with regards to the Bedouins in the unrecognized villages who suffer from a lack of basic infrastructure, including public transportation.

Bedouin women are more vulnerable to the unequal geographic distribution of the legal aid service than other Arab-Israelis. Most Bedouin women do not have access to private vehicles or even a driver's licence and thus are typically dependent on men to drive them.¹²⁷ Strict cultural norms further restrict Bedouin women's mobility and

of School, HA'ARETZ (Oct. 31, 2006) (Isr.), <http://www.haaretz.co.il/misc/article-print-page/1.1132964> [<https://perma.cc/J4MY-7EUM>].

¹²⁵ The right to equal treatment is not anchored in the Basic Laws (the Israeli constitutional sets of laws). However, it has been recognized as a fundamental right. Using human dignity as a right that is anchored in the Basic Laws, some Supreme Court justices have ruled that the right to equality derives from the right to human dignity, while others limited the recognition of the constitutional right to equality as protecting against discrimination based on "humiliating factors" such as gender, sex, race, or national affiliation. *See* HCJ 4541/94 Miller v. Minister of Def., 49(4) PD 94 (1995) (Isr.).

¹²⁶ *See* MATAR ET AL., *supra* note 54, at 132.

¹²⁷ Only around 34.5% of the Arab women in Israel have a driver's license, compared to around 57.4% of the Jewish women in the country. *See* RSCH. DEP'T, ISRAELI KNESSET, PUBLIC TRANSPORTATION FOR THE ARAB POPULATION—REPORT ABOUT THE CONDITIONS IN SEVERAL LOCALITIES (2014); CENT. BUREAU OF STAT., SOCIAL SURVEY (2020).

reinforce their dependence on men. In these circumstances, Bedouin women who wish to apply for legal aid to commence legal procedures in family law may find it incredibly difficult to do so.

The discriminatory implementation of the Legal Aid Law is another example of the way in which Israel intensifies the intra-group vulnerability of Bedouin women. This discrimination demonstrates how Israel continues to reinforce obstacles to Bedouin women's ability to leave oppressive marriage arrangements by creating barriers to their access to public resources. As Fatemeh's story demonstrates, the hurdles that a Bedouin woman is likely to face if she tries to apply for the legal aid service might render her efforts to access the court for dissolving her marriage fruitless. Faced with poverty and daily family struggles, women like Fatemeh might give up and resign themselves to oppressive family situations.

Considering the part Israel plays in reinforcing the vulnerability of Bedouin women to oppressive marriage arrangements, the state has a special obligation towards these women. This obligation goes far beyond its "ordinary," constitutional duty to treat all individuals equally. By this, I mean that the state does not merely have a negative duty not to discriminate against groups of individuals. Rather, the state's role in creating this problem supports a positive duty to remedy, or at least alleviate the harms that it has inflicted on Bedouin women. Thus, I argue that the government has a duty to take affirmative measures to foster the ability of Bedouin women to leave and resist unfavorable marriage arrangements. Enhancing Bedouin women's access to public resources, like the legal aid service, is an important way in which the state could act on this front. At the very least, this should include removing the accessibility barriers to family courts that these women face by translating the legal aid application forms into Arabic and making them available to the Arab population, employing Arab women at all the legal aid offices, and distributing the service equally between Arab and Jewish localities across the country.

Finally, it should be noted that I am aware that removing accessibility barriers Bedouin women face in accessing the legal aid service, or Israel's Income Security benefit for low-income residents, would probably not "solve" their vulnerability to oppressive marriage arrangements. As indicated, this Article does not purport to propose such a magic bullet. Instead, these strategies are proposed only as useful examples of the kind of measures that should be taken by the state in addressing its role in the intra-group vulnerability of minority women, and in such way that responds to these women's interests and needs.

VII. Completing the Circle of the Theoretical Scholarship: The Implications of Recognizing the State's Role in Relaxing Tensions Between Multiculturalism and Feminism

While liberal multicultural theorists have recognized the role of the state in the injustice toward cultural minority communities, the critical scholarship on internal minorities has overlooked the state's role in injustice *within* these communities. To put it differently, liberal multiculturalists recognize the role of the state in the unequal access of minority communities to an all-encompassing culture (or "societal culture" in Will Kymlicka's terminology) and its impact on their freedom of choice. Conversely, their critics have focused on the role of the community itself but failed to consider the state's role in the unequal access of minority women to public resources that are paramount to their ability to negotiate their freedoms and rights within their culture, as well as other potential aspects (which the Bedouin case illustrates) of the state contribution to their oppressive conditions. Thus, for feminist scholars, the state only becomes involved in the oppressive conditions of minority women when it grants group rights to their community. According to this view, the state has only an indirect role in the problem of intra-group vulnerability—namely, through the community—as a side effect of granting group rights to patriarchal minority cultures. Effectively, the relationship between the state, the community, and their vulnerable members are perceived by these feminist scholars as a *vertical* structure.

However, I contend that the state has a direct role both in the injustice *toward* cultural minority communities and the injustice *within* them. I therefore suggest that viewing these relationships as a *triangular* structure is a useful way to understand them. Recognizing the role of the state in the intra-group vulnerability of women requires us to draw a direct line between women in minority communities and the state—instead of a vertical line which runs from the state to these women only through the community. Ultimately, drawing this line completes an important edge in the understanding of the relationship between the state, minority communities, and their female members. It highlights the reciprocal nature of the relationship between these three actors.

This understanding also has important implications for relaxing some of the tensions that feminist scholars have highlighted between multiculturalism and feminism.¹²⁸ First, this understanding makes it plain that the view that accuses multiculturalism of being essentially "bad for women," as Susan Okin has argued, misses the mark.¹²⁹ It is rather

¹²⁸ See, e.g., Okin, *Feminism and Multiculturalism*, *supra* note 6.

¹²⁹ See generally Okin, *Is Multiculturalism Bad for Women?*, *supra* note 6.

the laissez-faire/heavy-handed binary of the theoretical scholarship that has problematic implications for women, and which leaves their interests and needs unattended. As I have indicated, the problem rests in scholars' overlooking of the state's role in the intra-group vulnerability of women, which entails this binary. Indeed, a commitment to the protection of individual freedoms and rights (the *raison d'être* of the liberal state) underlies the argument in liberal multicultural theory for granting group rights to members of minority cultures. Ultimately, both problems—the injustice toward cultural minority groups and the intra-group vulnerability of women and girls in them—constitute claims that are based on the right to equality (i.e., the former being shared by all members of a given cultural minority group, and the latter only by its female members).¹³⁰

The presumption that underlies the critical scholarship on liberal multiculturalism is that these problems are embedded in two conflicting arguments that need to be decided one way or the other. However, recognizing the role of the state in the intra-group vulnerability of women undermines this zero-sum game presumption. It opens alternative paths of potential positive measures for addressing intra-group vulnerability. These alternative paths are more likely to converge rather than conflict with measures that are taken to address the group's conditions of disadvantage as a minority culture, or their inter-group vulnerability. In fact, removing minority women's accessibility barriers to public resource—such as welfare assistance or legal aid services—can often benefit the entire community. Thus, the recognition of the state's role in intra-group vulnerability suggests that addressing the inequalities between cultures and within them are not conflicting endeavors per se. The recognition of the role of the state in both instances of injustice—i.e., the injustice toward minority communities and injustice within them—can support the argument for multiculturalism from a feminist perspective.

Liberal feminist scholars, most notably Susan Okin and Martha Nussbaum, have criticized liberal multiculturalists for abandoning universal principles of gender equality and individual liberty to accommodate cultural diversity.¹³¹ According to this feminist criticism, a true commitment to these principles requires giving up multiculturalism for a persistent enforcement of individual rights and freedoms. Effectively, this position resolves the tension between multiculturalism and feminism by returning to point A, to a formal “culture blind” conception of equality. This resolution oversimplifies the tension between these two competing equality claims, one based on culture and one based on

¹³⁰ ANNE PHILLIPS, MULTICULTURALISM WITHOUT CULTURE 3 (2007).

¹³¹ This is what Okin sees as “letting diversity run amok.” See Okin, *Mistresses of Their Own Destiny*, *supra* note 10, at 229; Martha C. Nussbaum, *A Plea for Difficulty*, in *IS MULTICULTURALISM BAD FOR WOMEN?*, *supra* note 6, at 105.

gender identity. Western-essentialist perceptions—of “one single route to gender equality” and a pre-defined set of “free choices” that are considered “rational” from a liberal perspective—seem to underlie this dichotomous resolution.¹³²

Recognizing the role of the state in the intra-group vulnerability of women and girls suggests an alternative way to resolve the tensions between these two competing equality claims. Rather than renouncing the multicultural ideal by retreating to a formal “culture blind” conception of equality, this alternative method maintains a commitment to a substantive conception of equality—both between cultures and within cultures. Indeed, liberal multicultural theorists demonstrate a substantive conception of equality. They recognize the disadvantaged conditions of cultural minorities’ members (i.e., their “inter-group” vulnerability) in terms of their unequal access to “societal culture” and the role of the state in creating these conditions. They further give meaning to this recognition by demanding that the state take positive measures to accommodate the cultural needs of these communities’ members. Espousing a substantive conception of gender equality requires addressing intra-group vulnerability in a similar manner.

As I have suggested, recognizing the role of the state in the intra-group vulnerability of women—especially in terms of their unequal access to public resources and services, which are important tools for negotiating their rights and freedoms within their culture—entails a state obligation to take positive measures for addressing this problem, and to do so in a way that responds to their interests and needs. Thus, instead of coming full circle by retreating to a formal conception of equality, this recognition holds the potential to complete the circle in the literature on multiculturalism and feminism. It lays a foundation for an alternative feminist approach that gives meaning to important differences among women from different (and not only Western) cultural backgrounds. Namely, it rejects the feminist-essentialist presumption of a “single route,” running through the West, to gender equality.

The focus of this proposed feminist alternative approach to women’s agency further reaffirms a commitment to the value of individual liberty and freedom of choice. Indeed, Kymlicka and other liberal multiculturalists base their argument for cultural group rights on the importance of one’s culture as a context of choice.¹³³ They maintain that when

¹³² See PHILLIPS, *supra* note 130, at 9.

¹³³ Other liberal multiculturalists establish their argument for group rights on the centrality of our culture to our identity. For example, Avishai Margalit and Moshe Halbertal argue that supporting cultural groups is important not because cultures provide people alternatives from which to choose, but because of “the fact that

access to societal culture is restricted, our freedom of choice is significantly impaired. However, as feminist critics argue, culture in the sense of ethnic, religious, or national identity is only one among many other affiliations that define our identity and shape our life choices.¹³⁴ Other aspects of our identity, like gender, have important effects on our choices, and oftentimes we need to negotiate between different overlapping identities.¹³⁵ In fact, if our societal culture is the only available context in which we can realize our freedom of choice, then “choice” loses its meaning.

Thus, this Article advances a feminist argument that seeks to make other contexts of choice available for minority women. I suggest that recognizing the role of the state in women’s intra-group vulnerability also holds promise for opening channels to other contexts of choice. In this vein, removing barriers to minority women’s access to public resources and services could amplify their ability to negotiate between their culture, other contexts of choice, and their citizenship rights. Finally, the altered understanding of the relations between women, their community, and the state offered by this alternative reinforces the commitment to the value of individual liberty. That is because it advances a view of women as agents—rather than victims—and the state as responsible for removing barriers to their ability to exercise agency—rather than as an external liberator.

every person has an overriding interest in his personal identity—that is, in preserving his way of life and the traits that are central identity components for him and the other members of his cultural group,” which constitutes the right to one’s culture. *See* Margalit & Halbertal, *supra* note 1, at 542.

¹³⁴ *See* PHILLIPS, *supra* note 130, at 25–31; SHACHAR, *supra* note 12, at 69.

¹³⁵ It is quite common to be affiliated with more than one all-encompassing culture. In fact, liberalism itself could be considered a culture—an all-encompassing way of life that directs peoples’ choices. Indeed, many people would describe themselves as liberals in addition to being members of another cultural group, for example, Orthodox Jews, Islamic people, Indigenous people, etc.