A Dialogue between a Liberal and an Ultra-Orthodox on the Exclusion of Women from Torah Study

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Abstract

What follows is a fictive dialogue between a liberal and an ultra-Orthodox on the exclusion of women from Torah study.

In a typical scholarly text the scholar operates within a certain body of knowledge. The following text is written as a dialogue because that is the appropriate scholarly mode for cases of intercultural encounters in which people located in one culture aim at understanding and evaluating the logic of extant practices in another culture.

Being a literary figure, the ultra-Orthodox party to the dialogue is not your typical member of the ultra-Orthodox community. He draws on knowledge borrowed from Western academic disciplines such as anthropology and philosophy, as well as on Western literature, in order to make his arguments as accessible and persuasive as possible to his liberal interlocutor, and in the spirit of what John Rawls, in discussing the idea of toleration, calls “reasoning from conjecture”: “reason[ing] from what we believe, or conjecture, may be other people’s basic doctrines. . . We are not ourselves asserting that ground of toleration but offering it as one they could assert consistent with their comprehensive doctrines” (John Rawls, The Law of Peoples (Cambridge, Harvard University Press, 1999), p. 152).

More than a third of the dialogue is devoted to a discussion of the preliminary problems of understanding and normatively evaluating the practices of another culture. These are highly intricate questions that cannot be bypassed in the current age of multiculturalism, yet all too often they have been overlooked.
One understanding that emerges from this dialogue is the need to base normative evaluations on a close examination of the facts relevant to the evaluations. Philosophy without thick sociology may prove to be faulty philosophy.
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1. Introduction

1.1 Problems in Understanding Other Cultures

Liberal: Equality is a central value in the political theory of liberalism and the law of the liberal state. One reason why tension arises between the liberal state and non-liberal groups living in it is the discrimination against women in such groups. That is the case with the ultra-Orthodox group, where women are almost completely excluded from Torah study, and consequently also from playing judicial roles and from political leadership. In both law and politics, decisions are made that profoundly affect the lives of women, yet pursuant to their exclusion from Torah study, women are precluded from participation in the processes whereby such decisions are made. Moreover, ‘Torah study is perceived as the heart of Jewish religious life.’ A Torah scholar ‘experiences an encounter with God through the might of God's Torah,’[1] and ‘makes himself a partner in the cultural and spiritual heritage of

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Judaism. Why is it, then, that you reserve it only for men and exclude women from it?

**Ultra-Orthodox:** I shall do my best to respond. But I am afraid that you will have difficulty understanding my point of view. Every cross-cultural encounter may give birth to two major problems: the problem of *understanding*, i.e., whether people located in one culture are able to understand what goes on in another culture; and the problem of *evaluation*, i.e., whether people located in one culture may normatively evaluate practices prevalent in another culture.

**Liberal:** As to understanding, there is a longstanding tradition in Western culture premised on faith in the ability of people living in one culture to grasp the meaning that people of another culture ascribe to their lives. Vico, for example, in a famous passage, expressed astonishment at the fact that human beings invest so much intellectual energy in the study of nature, to the neglect of the study of human society, including ‘the world of nations’. Anthropologists usually work across cultures. The underlying premise of their discipline is that people located in different cultures can ‘converse’ with each other, ‘translate’ each other’s meanings, and ‘understand’ them.

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3 ‘[T]he world of civil society has certainly been made by man … Whoever reflects on this cannot but marvel that the philosophers should have bent all their energies to the study of the world of nature, which, since God made it, He alone knows; and that they should have neglected the study of the world of nations, or civil world, which, since men had made it, he could come to know.’ *The New Science of Giambattista Vico* translated by T.G. Bergin and M.H. Fisch (Ithaca: Cornell University Press, 1984) at section 331.

4 For a review and discussion of ‘the interpretive approach’ and ‘the subjectivist approach’ to this issue, see: S.R. Kirschner, ‘“Then What Have I to do with Thee?”: On Identity, Fieldwork, and Ethnographic Knowledge’, *2 Cultural Anthropology* (1987) 211; see also L. Holy, ‘Introduction: Description, Generalization and Comparison: Two Paradigms’, in L. Holy (ed), *Comparative Anthropology*, (Oxford and New York: Blackwell, 1987) 1. Mizrachi argues that members of two different networks of meaning are able to activate a set
vein, a series of thinkers have applied Hans-Georg Gadamer's dialogical hermeneutics\(^5\) to cross-cultural encounters,\(^6\) emphasizing the change such encounters may effect in the self-understanding of the parties involved in them.\(^7\)


Ultra-Orthodox: And yet, anthropologists, linguists and cultural researchers are well aware of the difficulties involved in attempts to understand foreign cultures and to ‘translate’ the meaning prevalent in one culture into the meaning terms extant in another culture without producing misunderstandings, distortions and losses, as well as of the difficulties involved in maintaining intercultural communication. Indeed, there have been too many instances in which Western liberals have failed to understand the meaning of cultural practices prevalent in non-liberal groups. It is often the case that liberals attach certain meanings to such practices, while in the groups themselves they bear wholly different meanings. Ironically enough, it is often the case that these latter meanings manifest values that are not only recognized, but even cherished, in the culture of the mainstream liberal society itself, albeit in different social contexts. Here are some examples:


9 M.G. Clyne, Inter-Cultural Communication at Work: Cultural Values in Discourse (Cambridge: CUP, 1994).

10 In a classic article, ‘Feminism and Multiculturalism: Some Tensions’, 108 Ethics (1998) 661-84, Susan Moller Okin showed that most cases in which the practices of non-liberal groups look problematic to Western liberals involve some violation of the interests of women. So the four following examples deal with Western interventions meant to protect women living in non-liberal cultural groups.
A major campaign has been conducted by Western feminists in recent decades against the practice of female circumcision, common in certain parts of Africa, the Middle East and Malaysia. The campaign has been premised on the assumption that female circumcision is a way for men to control and suppress female sexuality. However, many writers insist that in many cultural groups this practice embodies meanings having nothing to do with the control of female sexuality by men. Thus, it has been argued that female circumcision is a ritual that signals the transition of a girl from childhood to maturity, and her becoming a member of the social group; that it is a means of demonstrating courage, tenacity and endurance of pain and suffering on the part of women, particularly in preparation for the pains of labor; that it signals an equalization of women's status to that of men by proving that women can endure severe pain and demonstrate courage; that it signals the initiation of young women into a fraternal bond with older women, while promoting the mutual invigoration of women vis-à-vis men; that it is meant to improve the hygiene and health conditions of women, or their beauty and esthetics; that it is meant to remove from the female body a remnant of the male sexual organ and thereby complete the transformation of a girl into a woman; that it signifies a commitment to sexual purity, or a shift from sexuality prone to pleasure to sexuality inclined to fertility, or the transition by aging women from involvement in sexual activity to motherly devotion to their family's welfare; that it signals a woman's belonging to a certain religious group, or to a high-status social class within the group.\(^{11}\)

A second example is veiling, which is often presented by Western feminists as a means for men to control women’s bodies and sexuality. Contrarily, Muslim women have argued that girls who veil themselves when they attend school simply wish to acquire the knowledge and professional skills offered by non-Muslim schools, while assuaging their parents’ concerns that in doing so they might be corrupted by their classmates’ culture. It has also been argued that in the course of Khomeini’s revolution in Iran in 1979 middle-class women veiled themselves as a way of identifying with working-class women and symbolizing their opposition to Western cultural imperialism. Likewise, it has been argued that educated Muslim women regard the veil as a symbol of their distinct national and cultural identity, particularly in the context of manifesting opposition to a Western identity. It has also been argued that the veil allows women to be active in arenas controlled by men and thereby expand their autonomy and self-expression.  

The third example has to do with Indian women. Western feminists have continuously failed in their attempts to mobilize Indian women on behalf of changing their life conditions. That is because Western feminists have approached Indian women from an individualistic worldview, claiming that certain practices in which Indian women take part in the context of their

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families constrain their liberty and inhibit their personal self-realization. But in Hindu culture, an individual expresses and realizes his or her humanity not by autonomously determining the contents of his or her life, but by participating in familial and social relations, and by contributing to the economic and spiritual welfare of family and group members. Therefore, Indian women view their contributions to the welfare of others, particularly members of the younger generation in their families, as the most important source of gratification in their lives. It is not only the case, then, that these women do not perceive themselves as victims of injustice; quite to the contrary, they see their contribution as a source of strength, satisfaction, and high social status. Thus, by presenting the Indian family as a site of injury to women, Western feminists have only undermined a central element of meaning in the lives of Indian women.  

The fourth example I have in mind has to do with the gap between Western feminists and Third World women. The claim has often been made that middle-class Western feminists fail to understand the problems of Third World women because the lives of the latter are shaped by conditions that are unfamiliar to Western women: slavery, hard physical labor in agriculture, exploitation by multinational corporations, and genocide. Therefore, whereas

Western feminists define the condition of Third World women using categories of gender, a true understanding of their condition requires resort to categories of class and race. Likewise, while Western women apply to the condition of Third World women categories that distinguish them as individual persons, Third World women view the sources of their malaise in broader terms: the corrupt political regimes in their countries, and the exploitative global political order.\(^\text{14}\)

Two famous encounters between Westerners and non-Westerners ended disastrously because the parties held different understandings as to the meaning of the situation in which they were involved. Anthropologist Marshall Sahlins describes the encounter between Captain James Cook and Hawaiian

natives in 1779. When Cook and his people landed on the coast of Hawaii, the Hawaiians believed that Cook was an incarnation of the God Lono on his annual return to revive the land's fertility. Cook and his people were therefore given a royal welcome. But for the Hawaiians to enjoy the benefit of their future harvests, according to Hawaiian mythology, their king had to kill the God Lono. That is exactly what happened a few weeks later: one of the locals took the life of Captain Cook. Historian Barbara Tuchman describes the fall of the Emperor Montezuma and the Aztec state to the Spanish conquistadors headed by Hernan Cortes. When Cortes and his people approached the Aztec capital, Montezuma thought that Cortes was an incarnation of Quetzalcoatl, the founding god of the state who had fallen from glory and departed into the eastern sea, and whose return to earth was said to signal the downfall of the empire. Montezuma ‘convinced himself that the Spaniards were indeed the party of Quetzalcoatl come to register the break-up of his empire and, believing himself doomed, made no effort to avert his fate.’ This marked the end of the great Aztec empire and the beginning of three centuries of Spanish rule over Mexico.

And in one of the most famous anthropological texts of the second half of the twentieth century, Clifford Geertz said that to understand the piece’s plot one ‘would begin with distinguishing the three unlike frames of interpretation ingredient in the situation, Jewish, Berber, and French, and would then move on to show how (and why) at that time, in that place, their copresence produced a situation in which systematic misunderstanding reduced traditional form to social farce.’

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In the same vein, I shall argue later that when Susan Moller Okin argues, in her classical article ‘Feminism and Multiculturalism: Some Tensions’,\(^\text{18}\) that Ultra-Orthodox women cannot develop ‘a sense of equal worth or self-respect’, she fails to understand the situation of these women and the conditions in which they live.

**Liberal:** And yet, people from different cultures have been in fruitful contact throughout history, borrowing cultural elements from alien cultures and making them part of their own cultures.\(^\text{19}\) Bear in mind also that sometimes the same difficulties arise within the context of a single culture itself (as is manifest in contract law doctrines of mistake and interpretation, which deal with misunderstandings ensuing from interactions in which the parties consciously work to eliminate possible misunderstandings between them).\(^\text{20}\)

**Ultra-Orthodox:** I think we can pin down some of the sources of the difficulties.

First, every culture is made of a grid composed of a vast number of categories,\(^\text{21}\) as well as of a vast number of practices. It is in cultural categories

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\(^{18}\) Okin, *supra* note 10.


\(^{20}\) See also: J.W. Fernandez, ‘Cultural Relativism, Anthropology of’, *International Encyclopedia of the Social & Behavioral Sciences* (2001) (‘People are usually aware from their domestic everyday experience of the difference of perspective and the relativity in understanding between men and women, the old and the young, the parent and the child, the slow and the quick.’ at 3110).

and practices that cultural meaning lies. But there are no two cultures whose
 grids of categories overlap, or all of whose practices overlap. ‘Human
societies differ significantly in the ways in which they construct, organize,
and control subjective experience.’22 A category or a practice may exist in one
culture but be missing from another. ‘[S]ome cultures have larger inventories
of differentiated meanings than others’ and thus ‘more modes of handling
meaning.’23 Therefore, ‘members of different national communities are not
equally likely to draw on the same cultural tools to construct and assess the
world that surrounds them.’24 As Ruth Benedict famously has written:

D’Andrade, ‘Cultural Meaning Systems’, in R.A. Shweder and R.A. Levine (eds), Culture
Theory: Essays on Mind, Self, and Emotion, (Cambridge: CUP, 1984) 88-122; R. Wuthnow,
Meaning and Moral Order: Explorations in Cultural Analysis, (Berkeley: University in
California Press, 1987) at 12, 50-52, 69-71 and 86-87; R. Wuthnow et al, Cultural Analysis
(Boston: Routledge & Kegan, 1984) 77, 82 and 260-61; R.G. D’Andrade, ‘A Folk Model of
the Mind’, in D. Holland and N. Quinn (eds), Cultural Models in Language and Thought,
(Cambridge: CUP, 1987) 112; R.G. D’Andrade, ‘Some Propositions About the Relations
Between Culture and Human Cognition’, in J.W. Stigler, R.A. Shweder and G. Herdt (eds),
65-129; R.A. Shweder, Thinking Through Cultures: Expeditions in Cultural Psychology
(Cambridge, Mass.: Harvard University Press, 1991) 101, 102; S.N. Eisenstadt, ‘The Order-
maintaining and Order-transforming Dimensions of Culture’, in R. Munch and N.J. Smelser
(eds), Theory of Culture, (Berkely: University of California Press, 1992) 64, at 68; P.
at 35, 57, 61 and 65.

22 Thomas Luckman, ‘Shrinking Transcendence, Explaining Religion?’, 50(2) Sociological
Analysis (1990) 127, 130.

23 U. Hannerz, Cultural Complexity: Studies in the Social Organization of Meaning (New

24 Michele Lamont and Laurent Thevenot, ‘Introduction: Toward a Renewed Comparative
Cultural Sociology’, in Rethinking Comparative Cultural Sociology (Cambridge: Cambridge
In culture too we must imagine a great arc on which are ranged the possible interests provided either by the human age-cycle or by the environment or by man's various activities. ... Its identity as a culture depends upon the selection of some segments of this arc. Every human society everywhere has made such selection in its cultural institutions. Each from the point of view of another ignores fundamentals and exploits irrelevancies. One culture hardly recognizes monetary values; another has made them fundamental in every field of behaviour. ... One builds an enormous cultural superstructure upon adolescence, one upon death, one upon after-life ... Aspects of life that seem to us most important have been passed over with small regard by peoples whose cultures, oriented in another direction, have been far from poor.  

Second, two cultures may share the same category ('time', 'space', 'causation', 'death', 'beauty', 'masculinity', 'property', etc.) or the same practice, but accord them different meanings. 'Shared words do not suffice for shared understandings.' And '[t]wo pieces of behavior that look like the same action may have different meanings for those who perform them.' Likewise, different cultures may give the same category or practice a different

25 R. Benedict, Patterns of Culture (Boston: Houghton Mifflin, 1934) at 23, 24; Gadamer, supra note 5, at 449, who holds that 'our experience of the world is bound to language', and that 'tradition is ... expressed in language', at 462, writes that every language expresses meaning 'in its own way.' at 402.


normative meaning. As Wittgenstein writes, ‘A coronation is the picture of pomp and dignity. … But in different surroundings gold is the cheapest of metals, its gleam is thought vulgar. There the fabric of the robe is cheap to produce. A crown is a parody of a respectable hat.’

Third, even when cultures recognize the same categories and practices, they may differ in the importance they accord to the meanings embedded in them: ‘socially available meaning systems privilege the importance and symbolic weight of some distinctions over others.’ In a comparative study of schemes of evaluation, it has been found that ‘cultural repertoires prevailing in the United States make market references more readily available to situations, whereas the French repertoires make principles of civic solidarity more salient and enable a larger number of French people to resort to them across situations, and often precisely in situations in which Americans would resort to market principles. However, this does not mean that market criteria of evaluation are absent from the French repertoires, but only that they are used in a small number of situations by a smaller number of people.’ Likewise, it has also been found that the category of sexual harassment is more salient to American understandings of the ethics of the workplace than to French.

Fourth, understanding the meaning of cultural categories and practices necessitates an understanding of the contexts of their existence. These contexts

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29 Lamont and Thevenot, supra note 24, at 9.
30 Benedict, *supra* note 25, at 45.
31 Lamont and Thevenot, supra note 24, at 9.
may be both spatial (‘any principle or value is colored by the others with which it is conjoined’) and historical, and they imbue cultural categories and practices with their distinct meaning and standing in a culture. Therefore, taking a category or a practice merely on its own terms may result in distortion and loss of meaning. Yet no two cultures are identical in the spatial and historical contexts of their categories and practices.

Fifth, every culture is composed of some ‘infrastructural categories.’ Categories of this type have three dimensions: (1) weight, i.e., they play a central role in determining the way people living in a culture perceive themselves, their place in the universe and in society, their relations with others (including the state), the purposes of their lives, etc.; (2) breadth, i.e., infrastructural categories influence and inform a wide range of the activities


34 For example, one cannot understand the spirit of the Israeli workplace, the relations between co-workers, and the relations between employees and employers; nor can one understand the relation between ‘work’ and ‘leisure’ in Israeli culture, without taking into account the spirit of the IDF (Israel Defense Forces) where young Israelis go through a workplace experience—a combination of ‘work’ and ‘fun’—for the first time in their lives. Likewise, one cannot understand the spirit of the Israeli infantry without understanding its roots in the pre-state paramilitary units that were premised on informal and egalitarian interpersonal relations. And finally, one cannot understand the rulings of Israel’s Supreme Court in the past four decades without taking into account its unique location in the war of cultures that erupted in Israel in the late 1970s between secular and religious Jews. See: M. Mautner, Law and the Culture of Israel (Oxford: OUP, 2011).

35 Charles Taylor writes about ‘hypergoods’, i.e., ‘goods which not only are incomparably more important than others but provide the standpoint from which these must be weighted, judged, decided about.’ Charles Taylor, Sources of the Self (Cambridge: Harvard University Press, 1989) 63. In a different context, P. Feyerabend calls these ‘universal principles’: they ‘underlie every element of the cosmos (of the theory), every fact (every concept)’, and thus their suspension ‘means suspending all facts and all concepts.’ P. Feyerabend, Against Method (3rd edn, London and New York: Verso, 1975) at 205. In still another context, infrastructural categories function similarly to myths (such as those of the book of Genesis) in a culture.
and events that transpire in the lives of those belonging to a culture; and (3) density, i.e., these categories are rich in content (borrowed from other categories of the culture). Categories such as ‘democracy’, ‘liberalism’, ‘religion’, ‘nationalism’, or ‘childhood’ are obvious examples. Cultures often differ in the composition of their infrastructural categories.

Because of these differences between cultures, it is often said that cultures are incommensurable.\textsuperscript{36} And since meaning-giving processes are premised on a ‘fusion of horizons’ between mind categories and meaning-bearing objects,\textsuperscript{37} and since mind categories are always constituted by a culture (we ‘think through culture’, as Richard A. Shweder puts it),\textsuperscript{38} it is clear that any simplistic attempt to fuse the categories and practices of one culture with those of another will inevitably result in misunderstandings, distortions and losses.

1.2 The Problems of Cross-Cultural Normativity

**Liberal:** What is the purpose of our dialogue? Why are we conducting this discussion? One purpose is enlightenment, namely an attempt on my part to understand, via your good services, the internal point of view of your culture with regard to the practice of Torah study. But there is a second, normative dimension to this dialogue, which we should not overlook: my interest in your culture is not merely intellectual; I come to this dialogue with certain normative prior judgments about your culture which I wish to test, and


\textsuperscript{37} Gadamer, *supra* note 5.

\textsuperscript{38} Shweder, *Thinking Through Cultures*, *supra* note 21.
which, following this dialogue, I may have to update. The problems you have just identified pertain to the first dimension of our dialogue. Yet, once we acknowledge that our dialogue involves normative judgment as well, it adds new problems to the problem of understanding that we have thus far discussed. These have to do with the problem of normative relativism. Normative relativism holds that:

... because all standards are culturally constituted, there are no available transcultural standards by which different cultures might be judged on a scale of merit or worth. Moreover, given the fact of cultural variability, there are no universally acceptable panchultural standards by which they might be judged on such a scale. ... Since there are no universally acceptable evaluative standards ... judgments such as good or bad, right or wrong, normal or abnormal ... must be relative to the variable standards of the cultures that produce them.\(^{40}\)


\(^{40}\) M.E. Spiro, ‘Cultural Relativism and the Future of Anthropology’, 1 Cultural Anthropology (1986) 259, at 260-61. See also: A. Barnard, History and Theory in Anthropology (Cambridge: CUP, 2000) at chapter 7; G. Harman, ‘Moral Relativism Defended’, 84 The Philosophical Review (1975) 3 (moral judgments are in a logical sense made in relation to implicit agreements on morality; this is not to deny, however, that some moralities are ‘objectively’ better than others or that there are objective standards for assessing moralities). On normative relativism and its history, see: Fernandez, supra note 19. A famous statement of the normative relativist position may be found in the 1947 Statement of the American Anthropological Association (AAA) submitted to the United Nations Commission on Human Rights: ‘No technique of qualitatively evaluating cultures has been discovered. ... Standards and values are relative to the culture from which they derive ... Ideas of right and wrong, good and evil, are found in all societies, though they differ in their expression among different peoples. What
Philosophers sometime refer to this position as ‘metaethical moral relativism’ or as ‘philosophical relativism.’

So, should we adhere to metaethical moral relativism and philosophical relativism? Is it really the case that I can't pass judgment on the practice of an alien cultural group that I find troubling? I don't think so. I think there are two strategies we may resort to.

First, since there is no such thing as ‘a view from nowhere’, I think I am entitled to view your culture from the perspective of my own culture and

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41 ‘The truth or falsity of moral judgments, or their justification, is not absolute or universal, but is relative to traditions, convictions, or practices of a group,’ ‘Moral Relativism’, Stanford Encyclopedia of Philosophy.

42 ‘At the point of cultural intersections, there must be a breakdown of critical or comparative discourse because there are no pertinent trans-cultural yardsticks of evaluation.’ M. Krausz, ‘Crossing Cultures: Two Universalisms and Two Relativisms’, in M. Dascal (ed), Cultural Relativism and Philosophy: North and Latin American Perspectives, (Leiden: E.J. Brill, 1991) 233-42, at 239.
say that I find what I see unacceptable.\textsuperscript{43} Otherwise, much of the value of a Gadamerian dialogue as a means to enlightenment and self-scrutiny is undermined.\textsuperscript{44} This seems to be, implicitly, Charles Taylor's position in his pioneering article ‘Multiculturalism and “The Politics of Recognition”’.\textsuperscript{45} On the one hand, Taylor strongly cautions against viewing liberalism as a ‘[neutral] meeting ground for all cultures.’ Liberalism is ‘the political expression of one range of cultures, and quite incompatible with other ranges,’ he writes. ‘[L]iberalism can't and shouldn't claim complete cultural neutrality. Liberalism is also a fighting creed.’\textsuperscript{46} On the other hand, the particularity of liberalism is not a good enough reason for Taylor to abstain from dialogue between Western liberal culture and other cultures. We need to maintain a sense of our own limited part in the whole human story, he writes, and to presume that human cultures that have animated entire societies over some considerable length of time have something important to say to us. And at the end of our encounter with an alien culture, we may find in it things that deserve ‘our admiration and respect’ side by side with things ‘we have to abhor and reject.’\textsuperscript{47}

Importantly, in arguing that we may find in an alien culture elements deserving of ‘our admiration and respect’ together with elements that ‘we have to abhor and reject,’ Taylor implicitly holds that it would be wrong to take a judgmental stance towards cultures in their entirety (‘French culture’, ‘Muslim

\textsuperscript{44} See text to supra notes 5-7.
\textsuperscript{45} Taylor, The Politics of Recognition, supra note 6.
\textsuperscript{46} Ibid, at 62.
\textsuperscript{47} Ibid, at 72-73. See also: Renteln, supra note 43, (‘where the act is in accordance with the society’s internal standards, but violates the critic’s own standard (an external one), criticism of an ethnocentric sort is possible.’ at 64)
Rather, every culture is composed of a vast number of categories and practices, and when we normatively appraise cultures we need to deal with specific cultural elements and practices. Indeed, though liberals may have a negative view of the treatment of women by ultra-Orthodox culture, they may still find that their views on the exploitation of women by the pornography industry overlap with the position of ultra-Orthodox culture on that topic. Likewise, a liberal may well admire the central place that ultra-Orthodox culture accords to the task of educating the younger generation, while disagreeing with the contents of that education.

We need to supplement Taylor's stance on cross-cultural dialogue with the virtues that must be displayed and nurtured in conducting a dialogue, according to Gadamer. Conducting a dialogue, maintains Gadamer, 'requires that one does not try to argue the other person down but that one really considers the weight of the other's opinion.'48 The purpose of a dialogue ‘consists not in trying to discover the weakness of what is said, but in bringing out its real strength. It is not the art of arguing (which can make a strong case out of a weak one) but the art of thinking.'49 It is the ‘art of testing’ and ‘questioning’ that challenges ‘the fixity of opinions’.50 It is characterized by the mutuality, the respect required, the genuine seeking to listen to and understand what the other is saying, the openness to risk and test our opinions through such an encounter.51

Note that both Taylor and Gadamer envision cross-cultural dialogues, in the course of which normative evaluations may take place. Wholly different problems arise when cross-cultural evaluations lead to actual measures being taken to restrict or uproot a certain cultural practice, most typically when a liberal state takes measures against a certain practice of an illiberal group

48 Gadamer, supra note 5, at 367.
49 Ibid.
50 Ibid. See also at 303, 361-362, 363, 383.
51 Bernstein, supra note 6, at 162.
living in it (denial of funding to the group; denial of legal recognition of a
group practice, or criminalization of a practice). When a state takes such
measures, three distinct concepts are relevant. The first is deliberation, i.e.,
public discourse aimed at clarifying the values that are at stake, with the
participation of all parties involved. Deliberation may enrich all parties’
understanding of the meaning and justification of relevant practices of theirs,
and at times it may even lead to persuasion and change of views.\textsuperscript{52} The second
concept is judgment, in the sense Hannah Arendt uses the term in her
discussion of politics (there is a second, nonpolitical, meaning of the term in
Arendt’s discussion), namely a faculty exercised by actors who share a
‘common world’ in the course of their public deliberation over the political
courses of action to be undertaken by them.\textsuperscript{53} The third concept is justification,
i.e., providing citizens with reasons to justify state action that adversely affects
them. Much like Arendt’s concept of judgment, which assumes that all
relevant parties belong to the same community, reasons provided as
justification of state action should be internal to the culture of the pertinent
citizens, for otherwise the action, looked at from the citizens’ point of view,
would amount to disrespecting them, i.e., treating them as a means rather than

\textsuperscript{52} A. Gutmann and D.F. Thompson, Democracy and Disagreement (Cambridge, Mass:
Harvard University Press, 1996); J. Bohman, Public Deliberation: Pluralism, Complexity and
Democracy (Cambridge, Mass.: MIT Press, 1996); J.S. Dryzek, Deliberative Democracy and
Beyond, (Oxford: OUP, 2000); J.M. Valadez, Deliberative Democracy, Political Legitimacy,
and Self-Determination in Multicultural Societies (Boulder: Westview Press, 2001); A.
Gutmann and D.F. Thompson, Why Deliberative Democracy? (Princeton: Princeton
University Press, 2004).

Lectures on Kant’s Political Philosophy, (Chicago: University of Chicago Press, 1982) 89; M.
Passerin d’Entrèves, The Political Philosophy of Hannah Arendt (London and New York:
Routledge, 1994) at chapter 3; J. Nedelsky, ‘Communities of Judgment and Human Rights’, 1
Theoretical Inquiries in Law (2000) 1-38; L. Bilsky, Transformative Justice: Israeli Identity
Thus, both the exercise of judgment and the provision of justification require that the state and its citizens share the same normative system. Thorny questions therefore arise when this is not the case, i.e., when a liberal state must deal with its illiberal citizens.

Thus far I have made one suggestion as to how to break free of the yoke of normative and philosophical relativism: in judging the practices of another culture, although one (inescapably) applies the categories of one's own culture, one should maintain an open mind to the utmost extent. There is, however, a second way of normatively evaluating cultures, which consists of applying the human rights doctrine.

In what is probably the most important development in twentieth century international law, in the decades following World War II the international community developed a rich doctrine of human rights. Additionally, partly as a result of the influence of the human rights doctrine of international law, the concept of human rights has been widely discussed and applied in the constitutional law jurisprudence of many countries. The human rights doctrine enjoys universality. Not only are its ideals found in many cultures around the world, but it also enjoys widespread acceptance by the international community: many people around the world, living in diverse societies and cultures, endorse the doctrine and would like it to become an important part of the political culture of their country and in their personal lives. ‘No other ideal seems so clearly accepted as a universal good,’ writes

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54 Much ambiguity seems to surround John Rawls’s concept of ‘public reason’, i.e., whether it applies to democratic deliberation or to democratic justification. I think that the latter is the better understanding of the concept. See: Menachem Mautner, ‘Religion in Politics: Rawls and Habermas on Deliberation and Justification’, in The Role of Religion in Human Rights Discourse (Hanoch Dagan, Shachar Lifshitz and Yedidia Z. Stern eds., expected 2013). See also: Menachem Mautner, ‘The Immanuel Affair and the Problems of Intercultural Encounter’, Democratic Culture (2013).
Oscar Schachter.\textsuperscript{55} The doctrine of human rights is therefore available to provide us with standards that may be said to transcend any particular culture, for the purpose of evaluating cultural practices.\textsuperscript{56}

\textbf{Ultra-Orthodox:} But anybody familiar with the human rights doctrine knows that its contents are phrased in highly abstract terms, as general and vague ideals. So anyone who uses it for the evaluation of cultures enjoys substantial leeway in filling it up with concrete elements.

\textbf{Liberal:} That is correct. But I cannot think of any other normative system about which it may be said, to borrow from John Rawls,\textsuperscript{57} that there is "an overlapping consensus".\textsuperscript{58}

\section*{1.2. A Word on the Parties to this Dialogue}

\textbf{Ultra-Orthodox:} Before we proceed to clarify the substantive issues of this dialogue, I think we have to address the issue of the identities of the parties to it.

For many years, anthropologists studied the cultures of small, isolated societies. As a result, they developed a perception of culture as a coherent, organic entity that enjoys wide acceptance. In recent decades, anthropologists and other culture researchers have begun to view culture as composed of many

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\footnote{56} Renteln, supra note, 43, at 64.
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elements that often contradict each other. Moreover, culture is now viewed as a highly contested entity: various groups hold competing interpretations of the cultures in which they live and struggle with each other over the status of these interpretations within the culture.  

We are two men about to discuss a practice that affects women first and foremost. What does it mean that two men are discussing a practice having to do with women? It means that had two women conducted this dialogue they would most likely have laid emphasis on some other aspects of the problem. But there is nothing unusual about that. Had two different men been parties to this dialogue, their dialogue might well have taken a different direction. But the fact that every culture allows for many perspectives (Gadamer calls them ‘horizons’) in addressing an issue does not mean that there is no single widely (albeit not universally) agreed understanding of what the culture means, shared by most members of the cultural group, at the core of the culture. As always, the legal culture is a good metaphor for culture at large: the fact that the law allows for more than one legitimate way of addressing a legal issue does not mean that there is no single widely agreed way of doing so, shared by most lawyers, in the law. In that spirit, in what follows I shall do my best to present some of the views widely held in the ultra-Orthodox group bearing on the topic we are addressing.

2. Religion and Tradition

2.1 The Religious Argument


Ultra-Orthodox: You have asked me why it is that ultra-Orthodox women are excluded from Torah study. Well, the answer is that Torah study is a religious imperative (mitzvah) that under our accepted tradition is incumbent upon men, but not upon women.61

In Deuteronomy 11, 19 it is said: ‘[a]nd ye shall teach them your sons.’ The Talmud, Kiddushin, 29, 2, has concluded from these words that the injunction applies to ‘your sons, not your daughters’, i.e., a father is duty-bound to teach his son, not his daughter, nor is the daughter herself under a duty to study Torah. And in Mishna, Sotah, 3, 4, Rabbi Eliezer said: ‘[w]hoever teaches his daughter Torah teaches her obscenity [tiflut].’ Most adjudicators throughout the generations have accepted this position. Noteworthy among them is Maimonides, who writes:

[O]ur sages have commanded that a man will not teach his daughter Torah, for the minds of most women are not tuned to learning, and due to the poverty of their minds they would apply the Torah to petty things. Our sages have said: he who teaches his daughter Torah it is as if he teaches her tiflut. This applies to the Talmud. But the written Torah [the Bible] he won't teach her in

the first place, but if she did study, this does not amount to teaching her *tiflut* [stupidity].

Maimonides' position has been endorsed by most subsequent adjudicators. However, throughout the generations several approaches have been put forward to restrict the application of Maimonides' ruling.

First, it has been noted that Maimonides himself distinguishes between the study of the Talmud and the study of the Bible: the prohibition on teaching applies to the former, not the latter.

Second, some have interpreted Maimonides' words as applying only to the case of a father teaching his daughter. But when a woman takes the initiative to study on her own, this has been regarded by some as permissible.

Third, some have interpreted Maimonides' words as applying to teaching a young girl, but not to teaching a mature woman who has demonstrated her wisdom and tenacity.

Fourth, some have held that a father is duty-bound to teach his daughter practical *mitzvot* (such as the rules for observing the Shabbat). According to this approach, then, teaching women is not supposed to be done for its own sake, but rather to be motivated by instrumental, informative considerations. On the more inclusive view, a father teaching his daughter should go beyond the practical-instrumental, with the aim of nurturing piety and virtuous conduct in her. Some have argued that this has become particularly urgent with the disintegration of Jewish communities in the modern era.

Fifth, some have argued that since women of our times receive a secular education at universities, this should be balanced by Torah study. A version of this argument holds that since modern women study at universities, they are accustomed to studying, and their education should therefore include Torah study.

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Sixth, some have interpreted the words of Rabbi Eliezer and Maimonides as being merely an educational guideline, but not an imperative unequivocally prohibiting Torah study by women. In practice, ‘throughout history there were parents who resisted this imperative and took the care of providing their daughters with Torah education, or women who upon maturity resolved to do that. … In every period there were women who studied and acquired knowledge and used it so as to guide their families or their communities as to the appropriate conduct.’ 63

**Liberal:** To which out of this gamut of approaches do you subscribe?

**Ultra-Orthodox:** We see the approach expressed by Maimonides as binding upon us. In order for you to fully understand this point, let me say a few words about the place of tradition in our lives.

### 2.2 The Status of Tradition

**Ultra-Orthodox:** I would like to juxtapose the essentials of modern consciousness with the essentials of our culture. I think that this will uncover the roots of the difference between the liberal attitude and ours in the matter we are dealing with.

A major strand in modernity is premised on the denial of any status bestowed by tradition in the life of a person. The self-conscious rejection of traditionalist thinking was ‘one of the principal badges by which the champions of modernity have, from the beginning of their battle against unenlightened superstition, sought to distinguish themselves from their opponents.’ 64 ‘[W]herever modern ideas have gained ground, traditionalist ones have lost it and come under a cloud of moral and intellectual suspicion.’ 65

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63 M. Raz, ‘She Opened Her Mouth in Wisdom and Piety on her Tongue, On Scholary Women Through History’, in *The Jewish People Today: Belonging and Commitment* http://www.jnet.macam.ac.il/


This tenet of modernity is usually identified with Kant's famous article, ‘An Answer to the Question: What is Enlightenment?’ in which Kant praises those individuals who ‘think for themselves.’ “Have courage to use your own understanding!” - that is the motto of enlightenment, Kant famously declares. However, the truth of the matter is that Kant's attitude to tradition is more complex than that, and the real point of departure in modernity's separation from tradition is Descartes' monologist, inward-looking, reason-based philosophy of doubt.

In the spirit of modernity, in The Subjection of Women John Stuart Mill contends that the system of inequality between men and women ‘never was the result of deliberation, or forethought … of what conducted to the benefit of humanity or the good order of society. It arose simply from the fact that from the very earliest twilight of human society, every woman … was found in a state of bondage to some man.’

There is another strand in modernity, however, which does accord tradition an authority. This is the strand that has to do with nationalism and with romanticism, as well as with communitarianism. The only sphere in

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66 I. Kant, An Answer to the Question: What is Enlightenment?, Berlinische Monatsschrift, iv (1784) 193.

67 Kant draws a distinction between the ‘private’ and ‘public’ use of reason, and elaborates on the role of this distinction in the context of the church: a pastor may disseminate and perpetuate the church's dogma among his congregation because that is his function performing a role in a religious organization. But as a public scholar, that same person should face no constraints whatsoever in expressing his thoughts and speaking his mind about the church's dogmas.


69 Ibid, at 5.

70 For communitarians, a community's way of life ‘forms the basis for a public ranking of conceptions of the good, and the weight given to an individual's preferences depends on how much she conforms or contributes to this common good. A communitarian state … encourages people to adopt conceptions of the good that conform to the community's way of
which modernity institutionalizes the authority of tradition, however, is the common law: judges are constrained by the precedent-based tradition in which they function. ‘An argument from precedent asserts that something should be done a certain way now because it was done that way in the past.’\footnote{Kronman, supra note 64, at 1032. Indeed Karl N. Llewellyn titled his last book The Common Law Tradition (Boston and Toronto: Little Brown, 1960).} But beyond that, modernity accords no authority to tradition in any other sphere.

That is not the case with us. For us, tradition has a binding force. It embodies God's imperatives as to the good life, together with the ways these imperatives have been interpreted throughout the generations by Halakhic sages. If God's imperatives have been interpreted throughout the generations as prescribing Torah study by men only, that in itself compels us to lead our lives in that way and no other. At times the exclusion of women from Torah study may raise questions for me. I may occasionally say to myself: ‘There are so many women whose talents for Torah study are manifestly greater than those of many men, but still they don't engage in it. Why is it, then, that we maintain a differentiation between men and women in this context?’ Such questions arise from time to time, and not only with me; they have surfaced throughout the generations, and a series of Halakhic sages have indeed grappled with them, to the effect that in some instances changes have been proposed in the Halakhah. But as someone who observes a religious tradition, I don't regard myself as having the authority to effect changes in this or that element of the tradition which governs my life. Tradition is something you accept and abide by as it is, even if from time to time you have to confront questions about it. The fact that the differentiation between men and women with regard to Torah study is based on nothing less than the authority of Maimonides; the fact that Maimonides himself drew on great authorities that

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preceded him; and the fact that Maimonides’ ruling has been adopted by the greatest Halakhic sages throughout the generations to this very day – to me all of that means that I am required to abide by this tradition. If sometime in the future an adjudicator of the caliber of Maimonides rules that equality should prevail between men and women with regard to Torah study, and this ruling becomes widely accepted, then our tradition will change, and we shall live in accordance with this new tradition. But so long as that is not the case, we perceive ourselves duty-bound to act in accordance with our tradition as it currently stands.

I shall attempt to explain my position in terms familiar to you. I said before that the common law is the only sphere in modern culture where the authority of tradition has been institutionalized. How many times has a common law judge said to himself or herself, ‘this precedent looks problematic; it should be overturned’, and yet he or she abided by the precedent and did not deviate from it? Why? The answer is that common law judges function within a tradition, and those who function within a tradition undertake to abide by its dictates, even if at times they may find some of them objectionable. And if you read what Karl Llewellyn, leader of the American legal realists in the 1920s and 1930s, has to say about the binding force of precedents, and on how nevertheless it is possible to break away from outdated precedents in the course of time, you will find a great similarity between the world in which common law judges live and the world in which we live.  

**Liberal:** But at any given time any tradition, including the legal, allows for various interpretations and gives rise to varying, even conflicting,
interpretations. Also, any tradition, including the legal, is constantly developing and changing. You yourself pointed out that some Halakhic adjudicators sought to narrow down the ruling of Rabbi Eliezer and Maimonides against women's Torah study, and some adjudicators have even called for it to be overturned.

**Ultra-Orthodox:** This is all true. But the enduring position at the heart of our tradition is that only men study Torah, and so long as that is the case, we see ourselves bound to live that way, without challenging it.

Let me refine my explanation. Remember we talked about cases in which a category exists in one culture but is missing from another? Liberal society does not have a concept of ‘the right way to live’. Liberals believe in a plurality of the good. Not so with us. We do have a concept (category) of the right way to live. This is the way of life that God in his grace granted us and ordered us to follow, to the best of our abilities, in the course of our lives. As Father Arnall tells Stephen Dedalus and his classmates in Joyce's *A Portrait of the Artist as a Young Man*: ‘[a]nd remember, my dear boys, that we have been sent into this world for one thing and for one thing alone: to do God’s holy will … All else is worthless.’\(^7\) We recognize human agency, of course; we don't perceive human beings as robots. We recognize that to be human is to make reason-based, autonomous decisions throughout a lifetime, and that human beings are morally responsible for their doings. But whereas liberal thinkers hold that every person has the right to write ‘the big story’ of his or her life as he or she wishes, we believe that there is only one right big story, one right way of life, and that is the way that God has determined for us, and that has been further filled with content by our Halakhic sages (the particular Halakhic sages we adhere to) throughout the generations. And the way of life God has determined for us, together with the rulings of our Halakhic sages throughout the generations, embody the tradition we deem binding upon us.

\(^7\) J. Joyce, *A Portrait of the Artist as a Young Man* (1916, 1930) 113.
Rabbi Yosef Dov Soloveitchik well understood this difference between religious tradition and modernity when he wrote, somewhat in the spirit of the words of Father Arnall, that ‘modern man claims that he is free and that all restrictions on him amount to coercion and harm. In contrast, God's sovereignty requires man to be modest before God and to acknowledge the sovereign that accords him with all his blessings. … Life is a godly gift and a right that may be used only for holy purposes.’

Liberal: I think your argument illuminates the great watershed between our two approaches: the difference in our attitudes toward tradition, or, to be more specific, the opposite place of tradition in our lives. We talked about culture as being composed of categories. ‘Tradition’ is a category recognized in both your culture and mine. But its status in the two cultures is very different. In your culture, it is not only an active category, but an infrastructural category. In my culture, the category is recognized, but by and large inactive. We are dealing here with a major difference between the religious and secular cultures.

Ultra-Orthodox: Yes, it seems that in understanding the different role played by tradition in our two cultures, we have reached Wittgenstein's famous ‘bedrock’: ‘[i]f I have exhausted the justification, I have reached bedrock and my spade is turned. Then I am inclined to say: “This is simply what I do.”’

Liberal: And from my perspective all of this raises many additional, complex and troubling questions as to the conditions under which your tradition evolves, e.g., to what extent those subject to it, such as women, have any meaningful voice in the processes by which it is maintained and changed.

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75 See Feyerabend, *supra* note 35.

Also, for me your approach is unacceptably ahistorical and a-contextual: you are bound by the ruling of a sage who, despite his undeniable greatness, lived in the Muslim world of the twelfth century. And is it merely a coincidence that we do know the name of his father, and the name of his brother, and the name of his son, but we don't know until this very day the name of his wife, nor do we know the name of his daughter (or whether he had one)?

2.3 The Hold of Tradition

**Liberal:** I would like to underscore this profound difference between our two cultures by making use of a term that is recognized by both – ‘human dignity’ (the term used in your culture is ‘God’s image’) – even though it seems to enjoy greater centrality in our culture than in yours.

The common meaning of the term ‘human dignity’ is connected with Kant: to treat a person as having human dignity is to assume that he or she is able to act autonomously, i.e., to make use of reason and determine his or her fate. This interpretation of the term embodies a central tenet of modernity. Mill, in discussing discrimination against women, writes that what is peculiar to the modern world is that ‘human beings are no longer born to their place in life, and chained down by an inexorable bond to the place they are born to, but are free to employ their faculties … to achieve the lot which may appear to them most desirable.’

‘The principle of the modern movement in morals and politics,’ writes Mill, ‘is that conduct, and conduct alone, entitles to respect: that not what men are, but what they do, constitutes their claim to deference; that, above all, merit, and not birth, is the only rightful claim to power and authority.’ In a similar vein, Charles Taylor presents the pre-modern era as having been governed by the principle of ‘honor’ (the social location of a


78 Mill, supra note 68, at 17.

person rightfully determines his or her fate), and the modern era as being governed by the concept of human dignity. Mill argues that women are the only group in the modern era whose fate continues to be determined at birth. You may therefore understand why a situation in which the fate of ultra-Orthodox men and women differs substantially just because of their different sex is troubling from the point of view of secular liberal culture.

**Ultra-Orthodox:** I can understand that. But our culture is different. Reason lies at the core of our concept of humanity, as well. But for us what constitutes human dignity is when someone makes use of his or her reason so as best to comply with God's imperatives as to the right way of life. As I noted earlier, at the current stage in the development of the Halakhah, as we perceive it, the right way of life is one in which men study Torah and women don't.

**Liberal:** One of the most far-reaching developments in religious-Zionism in Israel in recent decades has been the rise of a vibrant and highly influential religious feminism. The feminist revolution in religious-Zionism is manifest first and foremost in the establishment of educational institutions aimed at teaching the Talmud to women. The intention is to provide women with rabbinical knowledge that will enable them to fulfill rabbinical functions, i.e., provide rabbinical guidance to other women. I am certain that this development will have an influence on the ultra-Orthodox group.

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81 The rise of religious feminism has been discernible since the 1970s in Christianity, Judaism and Islam. See: M. Shmueli, *The Power to Define Tradition: Feminist Challenges to Religion and the Israeli Supreme Court* (PhD dissertation, University of Toronto, 2005).

82 There are many other manifestations of this emergent religious feminism: rabbis' rulings and conduct (e.g., sexual harassment) are being scrutinized from a feminist perspective, new theologies devised that integrate traditional Jewish elements with feminist insights, and new interpretations of traditional texts offered by reading feminist insights into them, emphasizing the autonomy and personal self-realization of women. Since the early 1990s, women have been serving as rabbinical advocates in rabbinical courts, and as members of municipal bodies in charge of providing religious services. Synagogues are being designed in ways that
Ultra-Orthodox: This practice may possibly spread to our group, in one way or another, and developments on the ground will foster a new attitude to the whole issue. But right now we are bound by the ruling of Maimonides and the other Halakhic sages. In any event, even if that does happen, it will take time before the next natural development takes place, namely the translation of women's Torah study into women's participation in adjudication and political leadership.

3. Humanism and Equality

3.1 The Humanistic Argument

Ultra-Orthodox: Can you formulate what disturbs you the most about our practice of differentiating between men and women with regard to Torah study?

Liberal: I'll try. Human beings have reason and intellectual capabilities. A good human life is one in which a person makes the utmost use of his or her intellectual potential. When certain individuals, e.g., women, are prohibited from engaging in a sphere of social activity that exists in a society, they are precluded from fully realizing the intellectual potential that lies within

diminish the separation between men and women, and that do not convey the inferiority of women (e.g., seating women in parallel to men, as opposed to seating them in the rear of synagogues); and women have begun actively participating in religious rituals. See: Mautner, supra note 34, at 205-206.

83 It is interesting to note that even though ultra-Orthodox speakers often criticize the positions and practices of the religious-Zionist group, the feminist practices of religious-Zionism have not been criticized.

84 The ultra-Orthodox group deviates from certain of Maimonides' rulings with regard to women. Thus, Maimonides held that women should spend most of their time at home and be allowed out only once a month. The ultra-Orthodox group certainly does not abide by this ruling. Mishne Torah 13, 14.
them. Put differently, they are denied reaching the height of their human flourishing.\textsuperscript{85}

John Stuart Mill, one of the greatest liberal thinkers, makes a trenchant argument. He writes about ‘the dull and hopeless life to which [the discrimination of women] so often condemns them, by forbidding them to exercise the[ir] practical abilities.’\textsuperscript{86} Mill concludes his book by writing about ‘the positive evil caused to the disqualified half of the human race by their disqualification – first in the loss of the most inspiring and elevating kind of personal enjoyment, and next in the weariness, disappointment, and profound dissatisfaction with life, which are so often the substitute for it.’\textsuperscript{87} Susan Moller Okin writes about women in the ultra-Orthodox group in a similar vein: ‘what of a girl born into this culture who is drawn toward religious study as strongly as [a] boy … is repelled by it?’ she asks.\textsuperscript{88}

Ultra-Orthodox: I think I can understand your position. But for me the fact that the Halakhah has been interpreted throughout the generations by our greatest sages in a way that establishes a distinction in the present context between men and women means that this distinction is part of the way of life I must follow.

\textsuperscript{85} Human Flourishing (Cambridge: Cambridge University Press, Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul eds., 1999). See also in this context Re G (Children) (Court of Appeal, 4 October 2012), particularly para. 80.

\textsuperscript{86} Mill, supra note 68, at 107-108. Interestingly enough, Mill's remarks on ‘the dull and hopeless life’ of those forbidden ‘to exercise the[ir] practical abilities’ very much apply to the fate of many ultra-Orthodox men who, because of the centrality of the value of Torah study in their group, spend their lives in yeshivot even though they lack the talent, skill and curiosity required to devote one's life to learning, and therefore spend many hours a day chatting, gossiping, etc.

\textsuperscript{87} Mill, \textit{ibid}, at 108.

\textsuperscript{88} Okin, supra note 10, at 673. See also: A. Margalit, The Decent Society (Cambridge, Mass.: Harvard University Press, 1996) (‘working is the unique essence of humans, and the more a person actualizes his essence, the more human he is. … It is certainly wrong for a decent society to hinder anyone from attaining a meaningful occupation.’ at 253).
3.2 Equality: Human Dignity

Liberal: Thus far I have presented the problem with excluding women from Torah study, as well as from adjudication and political leadership, from the perspective of humanism and human flourishing. But the problem also arises from the perspective of the value of equality, which, as I noted earlier, is a central liberal value.

Ultra-Orthodox: What is the basis of the liberal value of equality?

Liberal: I think it has two major foundations. One is the concept of human dignity. The concept of human dignity is premised on the assumption that all human beings, because of their humanity, regardless of their cultural or identity traits, have equal moral worth, and therefore must be treated equally to some extent. Discrimination, treating persons differently without justification, implies that some persons are regarded as having lesser moral worth than others. From the liberal point of view, therefore, the exclusion of women from Torah study means that women are regarded as having lesser moral worth than men.

The experience of being regarded as having lesser moral worth is particularly injurious to the psyche of an individual in cases of exclusion. The law refers to discrimination as the opposite of equality. But I think that when we talk about the opposite of equality it is helpful to distinguish between ‘discrimination’ and ‘exclusion’. Discrimination is where resources are unequally distributed between groups or individuals, without justification. Exclusion is a subcategory of discrimination. It takes place when a certain individual or group is precluded from acting in a certain social sphere that is open to others, without justification. (Exclusion is not only the opposite of inclusion; in a way, it is also the opposite of solidarity.) I tend to think that

89 McCrudden, supra note 58, at 689-90, 690-91; Reume, supra note 77, at 663 and 667.

90 Reume, ibid, at 674-75.

the experience of exclusion is more injurious than that of discrimination, because in the case of exclusion a person sees others taking part in a certain activity that he or she finds attractive, yet is barred from participating in.

Indeed, in *The Double*, Fyodor Dostoyevsky depicts an experience of exclusion – a person who is not allowed into a party – as leading to madness. Jacob Talmon writes that nationalist movements arise when the intelligentsia of a minority national group tries to assimilate into the majority society, but experiences rejection. In such situations, writes Talmon, the minority intelligentsia performs a ‘u-turn’, focuses on cultivating its own people's culture, and works for the attainment of full national sovereignty. Indeed, the history of nationalist movements, such as Zionism or the Quebecois nationalist movement, confirms Talmon's suggestion. Exclusion is indeed a powerful force in the lives of both individuals and groups.

### 3.3 Equality: Biases and Stereotypes

**Liberal:** An additional rationale that lies at the basis of the value of equality focuses on the concepts of ‘bias’ and ‘stereotype’. Biases and stereotypes harm individuals because they cause them to be perceived in ways that preclude them from realizing the human potential that lies within them. Biases and stereotypes also cause those to whom they relate to internalize a demeaning self-perception, and this, in turn, breeds in them a diminished self-respect and precludes them from claiming for themselves goods or privileges.

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that are reserved for those exempt from biases and stereotypes (this is the famous 'glass ceiling'). These insights stand at the basis of the ‘politics of identity’ conducted in recent decades by a series of groups. What underlies all of this is the value of creating conditions that enable every person to realize his or her human potential to the utmost possible extent in the context of the activities and social relations in the society in which he or she lives. We are back therefore to the humanistic/human flourishing rationale, according to which every individual should be able to make use of his or her reason and capabilities to the utmost extent in the course of his or her lifetime. Biases and stereotypes undermine this humanistic ideal.

From the liberal point of view, then, the problem in the exclusion of women from certain central activities that take place in the ultra-Orthodox group, including not only Torah study but adjudication and political leadership as well, is that they are barred from fully realizing their human potential.

Ultra-Orthodox: But in our group that is not the outcome of any biases or stereotypes against women. It is true that throughout the generations one may find statements by Halakhic sages to the effect that women not only differ from men, but are also of inferior (intellectual and moral) capabilities. But these are outdated texts that express understandings prevalent at the time they were written. (Needless to say, one cannot expect a person to think beyond the cultural categories of his or her time.) Moreover, such statements are offset by a long series of pronouncements by Halakhic sages praising the capabilities of women and advocating the unmitigated respectful treatment of them. Judaism is a long-lived and enormously rich tradition; one may find in it many conflicting pronouncements made throughout the generations.

Note that Mill in *The Subjection of Women* finds it necessary to argue at length against the claim that the subjection of women to men is ‘natural’ and ‘universal.’ He also contests the claim that the intellectual capabilities of women are lesser than those of men. Mill makes the astute comment that

It is not sufficient to maintain that women on the average are less gifted than men on the average, with certain of the higher mental faculties, or that a smaller number of women than of men are fit for occupations and functions of the highest intellectual character. It is necessary to maintain that no women at all are fit for them, and that the most eminent women are inferior in mental faculties to the most mediocre of the men on whom those functions at present devolve.97

Those functions, he goes on to point out, ‘are often filled by men far less fit for them than numbers of women, and who would be beaten by women in any fair field of competition.’98 Note that Mill needed to resort to these arguments as late as 1869, on the threshold of the eighth decade of the nineteenth century.

Note that I do not make any of the arguments that were prevalent in Western culture until recently and against which Mill found it necessary to speak out. I do not justify the differentiation we maintain between men and women on the basis of anything having to do with the essences of masculinity and femininity. Rather, my argument is meta-Halakhic: it is my existential decision to live my life within the tradition of my religion, and in its current state that tradition dictates a differentiation between men and women with regard to Torah study. Moreover, in what follows I would like to introduce our way of life in a way that shows how very far it goes, in spite of the differentiation we maintain, towards upholding women's human dignity.

Liberal: That sounds to me a little bit like legal formalism. Ultra-Orthodox women are being treated in a certain derogatory way. You justify it not by claiming that women are inferior to men in any way, but rather by

96 Ibid, at chapter 3.
97 Ibid, at 54.
98 Ibid, at 55.
drawing on the rulings of Maimonides and other great Halakhic sages. But these rulings cannot but be based on a derogatory view of women.

3.4 ‘Issachar and Zebulun Agreement’

Ultra-Orthodox: I would like to go back to what you said before about discrimination, that it implies that some people have lesser moral worth and are of diminished human dignity. I hope that after you listen to the following argument you will agree with me that it is impossible to maintain that the women of our group are perceived as being of inferior status.

We have talked about the centrality of the value of Torah study in our lives. As we see it, when men study Torah, women study as well, though by proxy, in creating the conditions that enable their husbands to study. This division of labor draws on an ancient notion that exists in Judaism – the ‘Issachar and Zebulun Agreement’. In his blessing to the Children of Israel before his death, Moses said: ‘Rejoice, Zebulun, in thy going out; and Issachar, in thy tents.’ This served as the basis for a Midrash which says that after the Children of Israel entered the Land of Canaan, the people of the tribe of Zebulun made a living through maritime commerce and supported the people of the tribe of Issachar who spent their time studying Torah. Many generations later this model underwent a transformation to serve as the basis for the relations between a wealthy person and a poor Torah scholar: the wealthy person supports the Torah scholar by providing his subsistence. In return, the wealthy person is regarded as a partner to the study, so that the reward for performing the mitzvah is shared by both of them.

The model has undergone a further transformation by being applied to the relations between husbands and wives: the husband devotes himself to

99 Deuteronomy, 33, 18.
100 Midrash Tanchuma, Pinhas, 5.
Torah study, while his wife takes care of the family's subsistence.¹⁰¹ One therefore cannot claim that our women are perceived as being of inferior status. Rather, we regard them as partners of equal status to men in fulfilling this central value in our lives, Torah study. To hold otherwise is to focus on an external fact, that men study Torah and women don't, and ignore the thicker understanding of the meaning attached to it in our group.

Susan Moller Okin claims that as a result of the differentiation we maintain between the education of boys and girls, ‘the personality identities cultivated in the girls are much less central to the culture, which raises an immediate question about how they are to develop a sense of equal worth or self-respect.’¹⁰² I think Okin is wrong. Ultra-Orthodox women develop a high

¹⁰¹ This division of labor is a new phenomenon in the history of the ultra-Orthodox group in Israel. Until the 1950s, only a minority of ultra-Orthodox men devoted their lives to Torah study. But then the group transformed itself into a ‘learners' society’, to use a term coined by M. Friedman, i.e., a group in which a large number of men devote their lives to Torah study. Interestingly enough, ultra-Orthodox women played a major role in this great transformation. In the years following World War I, ultra-Orthodox women established an educational system for women in Eastern Europe. In the 1950s, Israeli ultra-Orthodox women who had studied in that system took it upon themselves to work (at the time, mainly as teachers) and provide their families' subsistence and thereby allow their husbands to devote their lives to Torah study. The transformation was also made possible by the Israeli welfare state, whose allowances substantially contribute to the subsistence of ultra-Orthodox families whose men devote their lives to Torah study. Also, the Israeli state took it upon itself to substantially finance the ultra-Orthodox educational system (for both male and female students). M. Friedman, The Ultra-Orthodox Woman (Jerusalem: The Jerusalem Institute for Israel Studies, 1988) (Hebrew). See also: M. Friedman, The Ultra-Orthodox Society: Origins, Trends and Processes (publication info: 1991) chapter 4 (Hebrew); T. El-Or, Educated and Ignorant: On Ultra-Orthodox Women and Their World (publication info: 1992) chapter 2 (Hebrew).

¹⁰² Okin, supra note 10, at 673. The fact that women are regarded as of lower status than men in a society has immediate material consequences for the life conditions of women: poor women give up food to feed their husbands and children, fail to make use of medical treatment, etc.
sense of self-worth and self-respect when they perceive themselves, and are perceived by others, as taking part in Torah study through their husbands.\(^{103}\)

**Liberal:** But there is something very disturbing here. This division of labor is not dependent on a choice made by this or that couple, or on the fitness or absence thereof of this or that husband and wife's talents. Rather, the division of labor you maintain is gender-based: it is always, without exception, the men who study, and it is always, without exception, the women who support them. Also, the ‘Issachar and Zebulun Agreement’ model cannot in any way justify the exclusion of young, unmarried girls from Torah study.

**Ultra-Orthodox:** That is correct. But maybe what follows will put our practice in a better light from your perspective.

3.5 Two Central Values: Torah Study and Raising Children

\(^{103}\) Friedman, *The Ultra-Orthodox Woman*, supra note 101; T. El-Or, ‘The Length of the Slits and the Spread of Luxury: Reconstructing the Subordination of Ultra-Orthodox Jewish Women Through the Patriarchy of Men Scholars’, 29:9/10 *Sex Roles* (1993) 585-98, at 585 and 594 (‘The scholars' families are socially rewarded for their poverty, and women are given a prominent role in furthering the community's goals and ideals. Rejecting the idea of prosperity and presenting the surrounding world as a vanity fair helps denounce the values of that world.’); *ibid*, at 596 (‘Marriage takes them beyond individual gains and into the collective effort to maintain the society of men scholars. ... Thus, marriage is not presented as an ideal, but as an important relationship that offers these modern women relevant and authentic meaning for their situation. ... Being the modest wife of a scholar becomes a highly desired state among contemporary ultra-Orthodox women.’); B. Morris, ‘Agents or Victims of Religious Ideology? Approaches to Locating Hasidic Women in Feminist Studies’, in J.S. Belcove-Shalin (ed), *New World Hasidism: Ethnographic Studies of Hasidic Jews in America*, (Albany: State University of New York Press, 1995) 161 (discussing the considerable activism demonstrated by Hasidic women in the 1950s); *ibid*, (‘the 'victim' portrait of Hasidic women must be reconsidered in light of new evidence on Hasidic activism. Often it is the Hasidic woman who actively promotes her own role and who serves as an advocate for the Hasidic ideology of separate spheres.’ at 62).
Ultra-Orthodox: I wish to present the differentiation we maintain between men and women with a slight modification. You have argued that according to one common interpretation, the requirement of equality derives from the concept of human dignity: the unequal treatment of persons or groups implies a view of them as having lesser moral worth. But one can't possibly say that the exclusion of our women from Torah study amounts to that. In our group, there are two central values: Torah study and raising children. We uphold these two values by maintaining a division of labor: men are in charge of Torah study and women are in charge of raising children.

As I have noted, Susan Moller Okin asks whether ultra-Orthodox women can develop ‘a sense of equal worth or self-respect.’ But since we put our women in charge of what is dearest of all to us, how can one hold that we violate our women's sense of worth, self-respect and human dignity? Discussing the socialization of women, Okin rightly emphasizes the importance of ‘the realm of domestic or family life’ where ‘persons' senses of themselves and their capacities are first formed and in which culture is first strongly transmitted.’ But if the domestic realm is so important, how can it possibly be said that ultra-Orthodox women develop a low sense of self-respect, when they are the ones in charge of this realm where a group's culture and heritage are ‘first strongly transmitted’? Add to that our view of women as participating also in the mitzvah of Torah study according to the ‘Issachar and Zebulun Agreement’ model, and it seems to me that any claim that our women

104 Okin, supra note 10, at 673.
105 Ibid, at 664. (Emphasis in the original text). See also: J.T. Levy, The Multiculturalism of Fear (Oxford: OUP, 2000) (“In modern multicultural, multiethnic, and multireligious societies, there is constant pressure on minority cultures. It is difficult to maintain and transmit a culture when surrounded by alien influences. … [In such circumstances] the home becomes the primary location for culture to be transmitted and carried on. This makes mothers especially central to the nationalism or cultural traditions of minority groups, and raises the pressure on them to maintain the purity of the old ways.” at 53).
suffer from a problem of self-worth, respect and human dignity is groundless.\footnote{See also: Nussbaum, \textit{supra} note 13 (‘For many Western women, an especially deep part of the search for the meaning of life is played by romantic love, whether of a woman or of a man; this tie, and the search for this tie, to some extent pull against women’s solidarity with other women in groups. Everywhere I went in India, by contrast, women related to the group as to their primary community and source of emotional sustenance; the Western woman’s focus on romance and (in many cases) on men is regarded as somewhat strange, and not necessarily conducive to women’s functioning.’ at 790-91). Reuven Rubin (1893-1974) was one of Israel’s greatest painters. His wife Esther devoted her life to promoting and managing his career. In her memoirs she writes: ‘I have often been asked whether I don’t have a sense of loss for not devoting my life to the promotion of a career of my own … My choice to be Rubin’s assistant and partner was conscientious; it was made out of recognition of my self-worth. A full partnership existed between the two of us and we both invested the best of our talents and virtues in it.’ E. Rubin, \textit{Bouquet of Memories} (1999) 153-54 (Hebrew).}

\textbf{Liberal:} But here, again, as in the case of your ‘Issachar and Zebulun Agreement’ argument, there is something very disturbing: the division of labor between husbands and wives is not dependent on a choice made by this or that couple, or on the fitness or absence thereof of this or that husband and wife's talents. Rather, the division of labor you maintain is gender-based: it is the men who study, and it is the women who are in charge of raising children. Also, this division of labor ignores the possibility that both men and women will study the Torah, and that both men and women will be deeply, and jointly, involved in raising their children.

\subsection*{3.6 Separate but Equal}

\textbf{Liberal:} What you are suggesting is a version of ‘separate but equal,’ a doctrine of much disrepute in American law. In \textit{Plessey v. Ferguson}\footnote{\textit{Plessey v Ferguson}, 163 US 537 (1896).} of 1896 the Supreme Court upheld the constitutionality of the doctrine in the
context of interracial relations. But in *Brown v. Board of Education*\(^\text{108}\) of 1954, ‘separate but equal’ was held to be unconstitutional.

**Ultra-Orthodox:** But note that in the American setting ‘separate but equal’ was part of an entrenched system of racial discrimination that was premised on a perception of blacks as being inferior to whites. That is not the case with us. The differentiation we maintain between men and women is not based on, and does not imply, any perception of women as being inferior to men.

**Liberal:** And yet you have to admit the severe implications of the exclusion of women from Torah study. As I noted at the outset, that exclusion leads to the exclusion of women from adjudication and political leadership. Law and politics are arenas in which decisions of major importance regarding all aspects of the lives of individuals are adopted. This means that the unique perspective and interests of women systematically and continuously fail to be represented in the legal and political decision-making processes that take place in the institutions of the ultra-Orthodox group. Also, the exclusion of women from adjudication and politics cannot but symbolically diminish the status of women. All of this adds up to the exclusion of women from other activities of the group: for instance, they don't count towards making up a minyan; their testimony is inadmissible in court proceedings,\(^\text{109}\) and they are precluded from conducting public rituals.\(^\text{110}\)

**Ultra-Orthodox:** That is all true, but note that unlike the American case of ‘separate but equal’, the differentiation we maintain between men and women is not accompanied by any ideology premised on women's inferiority to men. Indeed, as many writers have pointed out, ultra-Orthodox women do not suffer from low self-esteem. Also, bear in mind that in addition to their participation in Torah study by proxy, and to the role they play in child-


\(^{109}\) Bavli, Shvuot, 30, 1; Baba Kamah, 88, 1; Shulchan Aruch, Choshen Mishpat, 35, 14.

\(^{110}\) Bavli, Megilah, 23, 1.
rearing, the responsibility of ultra-Orthodox women for the subsistence of their families means that in many instances they attend professional secular studies, thereby gaining not only valuable professional knowledge, but also first-hand knowledge of what goes on in secular society. This gives them lots of self-confidence and self-esteem, as well as winning the respect of their husbands and the community at large.\footnote{El-Or, supra note 103; Morris, supra note 103, at 172-73; T. El-Or, ‘Paradoxical and Social Boundaries’, in E. Fuchs (ed), Israeli Women’ Studies: A Reader (New Brunswick, N.J.: Rutgers University Press, 2005) 133; B. Greenberg, ‘Ultra-Orthodox Women Confront Feminism’, Women (June 1996) 36. On the face of it, there is an interesting development here: ultra-Orthodox women joining secular women to take advantage of the opportunities offered by the modern job market. In many instances, however, because they lack higher education and high professional skills, ultra-Orthodox women perform low-level jobs in the secular job market.}{111} Also, note that women are not completely excluded from Torah study. In many ultra-Orthodox communities women do study Torah, though in evening classes (conducted by other women). One incidental byproduct of these gatherings is that women enjoy the opportunity to exchange experiences and intuitions, and that mutual reinforcement fosters solidarity and bonding among them.\footnote{El-Or, supra note 101.}{112}

### 3.7 Encounters between Men and Women

**Ultra-Orthodox:** True, the women of our group are excluded from playing judicial and political leadership roles. This has got to do in part with the rigid separation between men and women that our culture seeks to maintain. Men are not supposed to meet with women beyond their family circle, and women are not supposed to meet with men beyond their family circle. If women were to take part in adjudication and political leadership, it
would entail ongoing contacts between men and women, and a central principle on which our culture is premised would be undermined.  

Secular liberal society views contacts between men and women, and sexual contacts in particular, as a source of pleasure for the parties involved. But you belittle the destructive effects such encounters may have. When married men and women establish intimate contacts out of wedlock, it often ends up bringing enormous misery and anguish upon their spouses, their children, and even themselves.

Needless to say, we are aware that some marriages bring great misery upon the parties involved, when contacts with other men and women might allow them to break free of such agonizing relationships and establish more gratifying ones in their stead. But you have to admit that all too often the dissolution of marriage is the result of a momentary passion that eventually proves to be devastating to all concerned, including the children. We are aware of such unfortunate scenarios, and that's one reason why we insist on maintaining a strict separation between men and women. Very much like you, we acknowledge the great pleasure and joy that contacts between men and women may beget, but we hold that their place is in the framework of the matrimonial union. Your culture externalizes sexuality and allows it considerable laxity. Ours internalizes it and confines it to the family framework.

**Liberal:** The destructive aspects of sexual attachment are undeniable, and I can see your point about the separation between men and women as a means of dealing with that. But in order to neutralize the negative aspects of sexual attachment you maintain a system of 'separate but unequal,' i.e., you reserve certain activities for men and exclude women from them. I am certain

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113 In Mishna, Kidushin, Chapter 4, 13, it is said that neither a bachelor nor a woman should serve as teachers for small children. The rationale behind these stipulations is to avoid contacts between unmarried men and the mothers of small children, and between women and the fathers of small children.
that with the aid of certain technologies (such as video conferencing) you could maintain a ‘separate but equal’ system. I am also certain that with the aid of strict education you could even maintain a system of ‘un-separate but equal’ with regard to the relations between men and women. In any event, ultra-Orthodox women are often employed in workplaces of the mainstream secular society, where they can't avoid having contacts with men.

**Ultra-Orthodox:** That is correct, and that's one reason why we very much emphasize the value of female modesty. 114

**Liberal:** In that case, it seems to me that you could allow your men and your women to collaborate in your own institutions, while laying great emphasis on the value of modesty in the conduct of both men and women.

4. ‘Imperial’/Assimilatory Liberalism

**Ultra-Orthodox:** You mentioned Okin, a central feminist-liberal thinker. But note that she comes to far-reaching conclusions with regard to our group. Arguing that ‘[u]ltra-Orthodox culture is more likely than a more open and liberal culture to harm the individual interests of both its male and its female children,’ 115 Okin challenges the ultra-Orthodox group ‘to show that the type of personality identity one develops in a restrictive and encompassing community such as that of the Ultra-Orthodox is at least as good for persons as, if not superior to, the type they would be likely to develop in a more open and liberal community.’ 116 She adds that ultra-Orthodox women ‘may be much better off, from a liberal point of view, if the culture into which they were born were either gradually to become extinct (as its members become integrated into the surrounding culture) or, preferably, to be encouraged and supported to substantially alter itself so as to reinforce the equality, rather than the

114 El-Or, *supra* note 103; El-Or, *supra* note 111.
115 Okin, *supra* note 10, at 672.
inequality, of women – at least to the degree to which this is upheld in the majority culture.' The reason why Okin comes to this far-reaching conclusion is because she finds the treatment of women in the ultra-Orthodox group to be problematic. I want to make two comments in that regard.

First, I doubt whether Okin has studied the situation of ultra-Orthodox women thoroughly enough. Had she done so, she would have realized that even though we maintain a differentiation between men and women with regard to Torah study, still, because of our notion of the ‘Issachar and Zebulun Agreement’, and because we see our women as bearing the primary responsibility for raising the children, we succeed in maintaining our women’s human dignity at a very high level.

Second, is it not rather simplistic, far-reaching, even arrogant, to deliver a comprehensive verdict on a rich culture of many centuries’ standing, deeming it inferior to liberal culture, and to resolve that it would be better for the women living in it if their culture was assimilated into the mainstream liberal culture? Also, does it make any sense to compare cultures on such a scale? Okin seems to have disregarded what Charles Taylor advised in his classical article ‘Multiculturalism and “The Politics of Recognition”’, namely that it is wrong to take a judgmental stance towards cultures in their entirety, and that when we normatively appraise cultures we need to deal with specific cultural elements and practices.

Stephen Macedo, another prominent liberal thinker, also takes an assimilatory stance toward religious groups. He talks about ‘a holy war between religious zealots and proponents of science and public reason,”


118 See text following supra note 47.

going even so far as to say that the ‘[a]ssimilation [of fundamentalist groups] is an inescapable and legitimate object of liberal policy.’\textsuperscript{120} And as if that were not enough, he concludes by declaring: ‘[W]e will sometimes accommodate dissenting groups, but we must remind fundamentalists and others that they must pay a price for living in a free pluralistic society.’\textsuperscript{121}

In \textit{The Morality of Freedom}\textsuperscript{122} Joseph Raz discusses ‘communities whose culture does not support autonomy’, such as ‘religious sects’. Raz maintains that in insisting on bringing up their children in their own way, these communities are ‘harming’ their children. Therefore, he argues, the question arises whether it would be justified to resort to coercion ‘to break up’ these communities. Raz holds that in cases in which the culture of such a community flourishes and enables its members ‘to have an adequate and satisfying life’, the continued existence of the community ‘should be tolerated, despite its scant regard for autonomy.’\textsuperscript{123}

To Raz it is clear that the culture of such communities is ‘inferior to that of the dominant liberal society in the midst of which they live.’ This, in turn, raises the question whether the cultures of these communities should be tolerated. Raz responds as follows: ‘[T]he perfectionist principles espoused in this book suggest that people are justified in taking action to assimilate the minority group, at the cost of letting its culture die or at least be considerably changed by absorption.’ Eventually, however, he reaches the opposite conclusion: ‘[W]renching them out of their communities may well make it impossible for them to have any kind of normal rewarding life whatsoever because they have not built up any capacity for autonomy. Toleration is therefore the conclusion one must often reach.’\textsuperscript{124} Only second-order,

\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid, at 496.
\textsuperscript{122} J. Raz, \textit{The Morality of Freedom} (1986).
\textsuperscript{123} Ibid, at 423.
\textsuperscript{124} Ibid, at 424.
prudential considerations, then, restrain Raz from recommending measures for
the assimilation of religious groups who don’t cherish the liberal value of
autonomy.\textsuperscript{125} In subsequent writings, however, Raz has added a multicultural
perspective to his liberal theorizing, and adopted a stance much more
respectful of non-liberal groups.\textsuperscript{126}

Okin, Macedo and the early Raz are what Richard Shweder calls
‘imperial liberals,’ namely thinkers who hold that liberal conceptions of the
good life should be disseminated ‘in all corners of society and throughout the
world’; that “[w]here there are individuals let them transcend their tradition-
bound commitments and experience the quality of their lives solely in secular
and ecumenical terms’; and that ‘those liberal principles and conceptions
should be upheld using the coercive power of the state and, if possible,
exported to foreign lands using the coercive powers of international
institutions (such as the World Bank, the IMF, NATO, and the United
Nations).’\textsuperscript{127} (All three thinkers could as well be referred to as ‘assimilatory
liberals’.)\textsuperscript{128}

\textsuperscript{125} Note that Raz concludes his discussion with the following proviso: ‘These remarks are of
course abstract and speculative. They are meant to indicate the direction in which the
conclusions of this book lead, rather than to deal with the issue in depth.’ \textit{Ibid}. (page
number?)

\textsuperscript{126} J. Raz, ‘Multiculturalism: A Liberal Perspective’, in \textit{Ethics in the Public Domain: Essays
Perfect Should One Be? And Whose Culture Is It?’, in J. Cohen, M. Howard and M.C.
Nussbaum (eds), \textit{Is Multiculturalism Bad for Women?}, (Princeton: Princeton University Press,
1999) 95.

\textsuperscript{127} Shweder, \textit{supra} note 11, at 235-36. Paul Kahn writes about ‘that particular form of
academic imperialist: the liberal theorist.’ Paul Kahn, \textit{Putting Liberalism in its Place}

\textsuperscript{128} There are liberal thinkers who may be termed ‘diversity liberals.’ They hold that the central
liberal value is not autonomy, but diversity: it is the function of the liberal state to serve as a
framework for the peaceful coexistence of people with diverse conceptions of the good life.
Moreover, any call for the assimilation of non-liberal groups into the mainstream liberal society runs counter to the view that all cultures have intrinsic value, and should therefore be preserved\textsuperscript{129} (even if it may be justified to seek to eliminate some particular practices of theirs).

Also, how can one suggest that it would be better for ultra-Orthodox women to live in the mainstream liberal society without taking into account the predicaments of women in it, such as discrimination in the workplace, widespread practices (propagated by the advertising and entertainment industries) that reduce women to objects for men’s sexual pleasure, cultural pressures to undergo extreme diets and plastic surgeries, pornography and prostitution? And, more generally, how can one ignore the poverty, the inhumane treatment of prisoners, the death penalty, violent sports that jeopardize the health of athletes, and the widespread violence in movies and TV programs, all of which are part of what it is to live in the mainstream liberal society?

It seems to me that our dialogue is nearing its conclusion. So let me make two final comments. First, note that we began with cases in which liberal activists have failed to understand the cultures of non-liberal groups, and we are about to conclude by discussing liberal thinkers who have no hesitation advocating the wholesale assimilation of non-liberal groups. Second, we have not yet touched upon the issue of meaning, which for me is

of the utmost importance. In concluding my contribution to this dialogue, let me briefly comment on that.

Liberalism was born at a time when most people lived in religious communities; according to a common historical account, liberalism arose as a strategy for enabling various religious groups to live together peacefully.\(^{130}\) Liberalism began, therefore, as a ‘thin’ political theory that assumed the existence of ‘thick’ religious systems that determine the meaning in the lives of individuals. (The thinness of liberalism was deliberately meant to allow the thickness around it.) But following the secularization processes that Western countries (excluding the United States) have gone through in the modern era, most people living in the West have been left with only the thin system of meaning provided by liberalism, devoid of the thick layers of meaning formerly provided by religion.

**Liberal:** I am not sure I accept that historical account. One needs to distinguish between liberalism as a political theory and the practices of liberal states. According to liberalism as a theory, contrary to some versions of communitarianism, cultural contents (i.e., meaning) should be determined in the realm of civil society, within the context of a marketplace of ideas protected by an expansive doctrine of freedom of expression. In practice, however, all liberal states of the world, except the United States, have been deeply involved in the project of cultivating a *national culture*.\(^{131}\) Every liberal state has made an effort to widely disseminate (through the educational system and by many other means) a national culture, with its distinct literature, history, art, music, etc., and in an era of secularization that national culture has served as a substitute for declining religious culture. True, in the second half of the twentieth century the nation-state project itself has declined and been overtaken by multiculturalism, both as a new conceptualization of what a state

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is and in the form of many public policies. But one can argue that even in this post-nation-state era (characterized by the state's lesser interest in the cultural sphere), literature, theatre, movies, the arts, the press, and at times even television, as well as the messages constantly channeled from the state's legal system, all do a reasonably good job in creating a worthy meaning system for those living in a liberal society. And note how impoverished are the lives of those belonging to non-liberal groups, such as the ultra-Orthodox, who are deprived of the intellectual and emotional delights of the robust literary and artistic creativity that is part of the liberal way of life.

Ultra-Orthodox: Your historical account is deficient because it disregards the fact that the decline of the nation-state has been accompanied by the rise of neoliberalism to become the dominant political and socioeconomic ideology in most liberal states. Neoliberalism advocates the extension of the logic of the market (interpersonal, measureable relations premised on individual self-regarding action through instrumental use of others) to as many spheres of life as possible. Yet the success of neoliberalism unavoidably has bred normative impoverishment in the lives of people in current secular liberal societies. So much so that Jurgen Habermas, using perhaps the strongest terms possible, declares that with the expansion of neoliberalism 'the modernization of society as a whole went off

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the rail.\textsuperscript{135} Add to this the fact that in most liberal states republican ideals have waned,\textsuperscript{136} and the fact that for many centuries now the ethics of virtue has been relegated to the periphery of moral discourse in liberal states,\textsuperscript{137} and you can see why to live in the mainstream liberal society is to live in a sort of ‘moral void’.\textsuperscript{138}

Bearing all of that in mind, here is the major difference between living in our group and living in the mainstream liberal society: life in our group takes place within a normative framework that has been, and continues to be, the exclusion of religion from politics entails an ideational and normative loss, as well as impoverishment of political discourse. This position of Habermas is part of a broader view of his as to the important place religious contents deserve to have in modernity, and as to the contribution of religious contents to Western philosophy. Jurgen Habermas, ‘Religion in the Public Sphere’, 14 European J. Phil. (2006) 1. See also: Simone Chambers, ‘How Religion Speaks to the Agnostic: Habermas on the Persistent Value of Religion’, 14 Constellations (2007) 210; Richard Wolin, ‘Jurgen Habermas and Post-Secular Societies’, 52(5) Chronicle of Higher Education (September 23, 2005) 16.

\textsuperscript{135} Habermas also forcefully claims that the exclusion of religion from politics entails an ideational and normative loss, as well as impoverishment of political discourse. This position of Habermas is part of a broader view of his as to the important place religious contents deserve to have in modernity, and as to the contribution of religious contents to Western philosophy. Jurgen Habermas, ‘Religion in the Public Sphere’, 14 European J. Phil. (2006) 1. See also: Simone Chambers, ‘How Religion Speaks to the Agnostic: Habermas on the Persistent Value of Religion’, 14 Constellations (2007) 210; Richard Wolin, ‘Jurgen Habermas and Post-Secular Societies’, 52(5) Chronicle of Higher Education (September 23, 2005) 16.


\textsuperscript{137} MacIntyre, supra note 134; L. Strauss, Natural Right and History (Chicago: University of Chicago, 1953).

determined, generation after generation, by the greatest Halakhic sages of the times, people distinguished for their combination of high intellectual capabilities and high personal moral standards (somewhat in the spirit of Plato's vision of the ideal state). Moreover, to live in the ultra-Orthodox group means to constantly live in the presence of an ideal of the virtuous life, and in the light of the example set by persons of virtuous character, as well as to constantly judge one's own character and conduct by those criteria. How can you compare this kind of living to that of a society whose culture does not provide 'a comprehensive morality' to regulate 'entire lives', and whose values are determined, to a disproportionate extent, by the market and its institutions?

5. Conclusion

**Liberal:** No single human being can fulfill all worthwhile human values in the course of his or her lifetime. The same applies to cultural groups. No culture can give adequate expression to all worthy human values. Liberalism gives prominence to the values of liberty and autonomy. It does not directly take issue with the quality of the culture of liberal society. Ultra-Orthodox culture places an overwhelming emphasis on the issues of culture and meaning. It pays a price, however, in terms of the liberty, and to some extent the autonomy, enjoyed by those living in it. And while both cultures endorse the value of equality, they both tolerate inequality: liberal society acquiesces to the inequality between those who have the talents to successfully function in the market and those who lack such talents; the ultra-Orthodox culture is premised on a hierarchy between the learned and the non-learned, and between men and women.

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One cannot deliver a single, simplistic, unequivocal judgment on the status of women in the ultra-Orthodox group. On the one hand, the exclusion of women from Torah study seems to adversely affect them, both symbolically and in that it brings about their absence from judicial and political institutions in which decisions are made that bear on many important aspects of their lives. Also, the gender-based exclusion of women from Torah study is incompatible with the humanist imperative to enable all human beings to fully flourish by letting their intellectual capabilities manifest themselves in all spheres of activity recognized in the societies in which they live.

On the other hand, the notion of the ‘Issachar and Zebulun Agreement’ and the role women play in raising children serve as highly important sources of meaning, gratification and self-esteem in the lives of ultra-Orthodox women. But this raises the intricate question whether the Hegelian-Marxist notion of ‘false consciousness’ is applicable to people living in cultures (all cultures, including the liberal one). Also, ultra-Orthodox women are not confined to their homes or to their communities. They are active in the surrounding secular society, and that equips them with valuable knowledge that gives them an advantage over their husbands. This in turn adds to their self-confidence and self-esteem.

One understanding that emerges from this dialogue is the need to base normative evaluations on a close examination of the facts. Martha C. Nussbaum put it succinctly when she wrote that ‘the philosopher, while neither a field-worker nor a politician, should try to get close to the reality she describes.’ Though lawyers seem to do a much better job of it than philosophers, this is a valuable reminder to lawyers as well.

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