The Liberal Bind: The Conflict Between Women’s Rights and Patriarchal Religion in the Liberal State

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So long as tens of thousands of Bibles are printed every year, and circulated over the whole habitable world, and the masses in all English-speaking nations revere it as the word of God, it is vain to belittle its influence. The sentimental feelings we all have for those things we were educated to believe sacred do not readily yield to pure reason.¹

1. Introduction

A few years ago, Susan Moller Okin introduced what turned out to be an extremely controversial and provocative question that dominated the discussion on the relationship between women’s rights and culture and religion for years to come—is multiculturalism bad for women?² In this article, I want to analyze the related and no less important question—is the relationship between religion and the state in liberal democracies bad for women? Perhaps contrary to popular assumptions, I will argue that the relationship between patriarchal religion and the state in liberal democracies adversely affects the rights of all women, and that liberal states cannot live up to their commitment to women’s equality without significantly changing their relations with patriarchal religions.³

³The discussion in this article focuses on patriarchal religions not because I hold the view that all religions are patriarchal, which I do not, but because only those religions that are patriarchal conflict with women’s right to equality. In talking about patriarchal religion, I adopt Sylvia Walby’s definition of patriarchy as “a system of social structures and practices in which men dominate, oppress and exploit women.” Sylvia Walby, Theorizing Patriarchy (Oxford: Basil Blackwell, 1990), p. 20. I find this definition particularly useful as it serves to highlight the role of patriarchal religions as social structures that subordinate women and as generators and perpetuators of subordinating social practices. This definition should not be understood as implying uniformity in the structures or practices of patriarchal religions, but only in their goal of ensuring men’s domination over women. See Walby, Theorizing Patriarchy, in general, on the critique of patriarchy as an essentialist concept and the responses to it.
The lack of discussion of the ways in which church-state relations affect the rights of all women in the liberal state represents a serious gap in the literature on the relations between church and state in liberal democracies as well as in feminist literature. The extensive literature on church-state relations in liberal democracies focuses on the way different types of church-state relations affect religious liberty. To the extent that this literature deals with the question of equality, it does so mostly from the perspective of equality between religious groups. The question of the effects of church-state relations on women’s right to equality is seldom examined. An exception to this is the literature regarding countries such as Israel and Ireland, in which the relationship between religion and the state has a particularly detrimental impact on women’s rights. However, quite naturally this literature tends to focus on the ways in which these countries diverge from the liberal paradigm of church-state relations, as opposed to questioning the paradigm itself. The lack of interest in the ways in which church-state relations in liberal democracies affect the rights of all women is quite striking considering the fact that many of the conflicts between religious groups and the state revolve around issues pertaining to women, and the resolution of these conflicts creates a serious challenge to church-state relations. Authors who touch on issues that pertain to women do so mostly as a way of highlighting the political and 

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4 I will use the terms “church-state relations” and “the relationship between religion and the state” interchangeably to denote all aspects of the relationship between the state and the various religions within it. Thus, the term “church” will not be used in the strict sense of a particular religious institution, but in the wider sense of religion.

5 A few exceptions, such as studies by Minkenberg (see nn. 47, 48) and Morgan (nn. 70, 89), are discussed below, and while they contain extremely valuable analyses, they are not a critique of the impact of church-state relations in liberal democracies on women’s rights. For a notable exception, see Mary E. Becker, “The Politics of Women’s Wrongs and the Bill of ‘Rights’: A Bicentennial Perspective,” University of Chicago Law Review 59 (1992): 453-86.


7 It is worth noting that in the purely legalistic sense Ireland does not diverge from the liberal paradigm, because it is a country in which church and state are legally separate. This fact itself points to the need for a much broader understanding of church-state relations.

8 For example, in the introduction to their book comparing church-state relations in five democracies, Monsma and Soper give three examples of possible conflicts between the religious group and the state, all pertaining to women’s rights. Nevertheless, throughout the book and their analysis of the five democracies they do not once discuss how the five models they analyze and critique affect women’s rights. Stephen V. Monsma and J. Christopher Soper, The Challenge of Pluralism: Church and State in Five Democracies (Lanham, Md.: Rowman and Littlefield, 1997), p. 3.
moral conflicts that can arise between religious groups and the state, and not in order to reflect on the quite separate question of how the relationship between religion and the state in liberal democracies affects the equality rights of all women.9

Similarly, in contemporary feminist critique of liberal theory and of liberal democratic states it is hard to find much discussion of the way in which church-state relations affect the lives of women in liberal societies.10 Most of the discussion of the ways in which religion and culture affect women’s rights is set in the context of the conflict between minority, mostly immigrant, religious groups and the state, over violations of minority women’s rights.11 This conflict between the accommodation of minority religions and cultures by the state on the one hand and women’s rights on the other is discussed as an exception to the rule, while the assumed rule is that in Western liberal democracies such as the U.S. and Europe, the overall relationship between church and state does not pose a challenge to women’s right to equality.

This is a crucial omission both in church-state literature and in feminist jurisprudence. For literature on church-state relations in liberal democracies this is a crucial omission because it obscures the very different impact that church-state relations in liberal democracies can have on women as opposed to their impact on men and distorts our understanding of what the proper relationship between religion and the state should be. As is most often the case in discussions by political and legal theorists of political and constitutional issues, the interests of women are at best assumed to be identical to the interests of men and at worst simply ignored. This is an excellent example of the inadequacy of what feminists have termed the “add women and stir” approach, which tries to incorporate women and their interests into liberal theory simply by assuming that they are like men, neglecting the fact that classical liberal theory was created by men for men and with only men’s interests in mind.12

For feminist jurisprudence, this is an even graver omission because it obscures the pervasive way in which patriarchal religions do affect the rights of all women in Western liberal democratic countries and not merely the rights of minority women in oppressive minority religions.

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9E.g., José Casanova, Public Religions in the Modern World, chapters 6 and 7 (Chicago: University of Chicago Press, 1994) (discussing evangelical Protestantism and Catholicism in the U.S. and their political campaigns regarding family values and abortion, respectively).

10For a notable exception, see Becker, “The Politics of Women’s Wrongs.”


Feminists, above anyone else, have a vital interest in examining and critiquing the role of religion in advocating and legitimating discrimination against women and the role of the liberal state in sanctioning and supporting this discrimination. Focusing on minority religions and discrimination within minority communities obscures the fact that the problem for women's rights is much more pervasive and much more fundamental. While the relationship between religion and the state in liberal democracies guarantees men equality and freedom of religion, it can seriously undermine women's ability to achieve both. The reason for this is the deeply patriarchal nature of most leading religions, which is legitimated, perpetuated, and supported by liberal democratic states to the serious detriment of all women.

In section 2 I will analyze the various facets of church-state relations and question the prevalent theory of secularization. The hegemony of the theory of secularization until very recently can perhaps account for the feminist neglect of religion and its relationship with the state as a significant factor affecting women's rights. Building on recent critiques of the theory of secularization, I will argue that there are at least five facets of the relationship between religion and the state in contemporary liberal democracies, all crucial to an understanding of the ways in which church-state relations affect women's rights—institutional differentiation between religion and the state, strong protection of religious liberty, the involvement of religion in politics, the extent of religious involvement in education and social services, and the levels of religious belief of individuals in society. I will discuss how each of these facets of church-state relations affects women's right to equality, using examples from Western liberal democracies. I will show that religious patriarchal ideals serve to perpetuate women's inequality in both the public and the private sphere and that patriarchal religion buttressed by state support adversely affects the lives of all women, both religious and non-religious.

In section 3 I will ask what measures the liberal state can and should take in order to counteract the ways in which patriarchal religion perpetuates and entrenches women's inequality. I will argue that the current practice of liberal democracies with regard to religion necessarily prevents them from realizing the liberal ideal of equality, as it precludes the achievement of equality for women. I will contend that the fundamental liberal value of state neutrality should be understood in a way that allows and even requires the pursuit of equality for women in all spheres of society. I will therefore argue that the liberal state should follow the model suggested by articles 2 and 5 of the Convention on the Elimination of All Forms of Discrimination Against Women and take all appropriate

_13_ Convention on the Elimination of All Forms of Discrimination Against Women
measures to abolish all prejudices, practices, and customs that discriminate against women and to eliminate discrimination against women by any person or organization.

A common objection to calls for state action against the discriminatory nature of patriarchal religion is that patriarchal religion is endorsed by women as well as men and thus an attack on patriarchal religion would hurt women’s interests rather than further them. Unlike racist ideologies, which are rarely endorsed by their victims, patriarchal religion is often supported by some of the women who suffer its consequences.\textsuperscript{14} Granted, religion, including patriarchal religion, is a source of comfort and meaning for many women.\textsuperscript{15} Nevertheless, there are two reasons, one at the state level and one at the level of the patriarchal religious community itself, why patriarchal religion’s importance in the lives of some women cannot justify the protection that the liberal state affords its discriminatory aspects.

First, as I will show, at the state level, the relationship between religion and the state in liberal democracies adversely affects the rights of all women. The historical move from pre-liberal societies to liberal democratic societies can be characterized as a move from status societies in which a person’s identity and social roles were determined by the status he or she was born into, to an equal citizenship society in which each person should be given the equal opportunity and the freedom to carve out for herself her own identity and social roles.\textsuperscript{16} Nevertheless, I will claim that the special status, functions, and protection that the liberal state grants patriarchal religions allow them to legitimate ideologically, as well as to implement in practice at the state level, their vision of a sex-based status society in which women are, due to “the mere circumstance of sex,”\textsuperscript{17} restricted only to those choices that are commensurate with patriarchal ideology. Thus, for example, despite the institutional separation between religion and the state, in many liberal democracies patriarchal religious ideologies implemented at the state level prevent women from having basic services such as easily accessible contraceptives and

\textsuperscript{14} For a critical discussion of the different liberal attitudes towards discrimination against women due to religious and cultural practices and towards discrimination on the basis of race or ethnicity, see Gila Stopler, “Countenancing the Oppression of Women: How Liberals Justify Religious and Cultural Practices that Discriminate Against Women,” \textit{Columbia Journal of Gender and Law} 12 (2003): 154-221.

\textsuperscript{15} E.g., Becker, “The Politics of Women’s Wrongs,” pp. 469-74.


abotions or full-day daycares for their children, which are prerequisites if women are to have any meaningful options and not be restricted to their status as wives and mothers. 18 Hence, the current deference that liberal states afford patriarchal religions and the powers that they grant them serve as status-enforcing mechanisms that result in the perpetuation of women’s inferior and restricted status in society as a whole. These mechanisms are therefore in direct conflict with the liberal commitment to the elimination of the status society and the creation of an egalitarian society in which people’s opportunities in life are not dictated by their sex, race, or religion. 19

Second, on the level of the patriarchal religious community, it is important to dispel the notion that patriarchal religious communities are monolithic and that all women who are members of such communities endorse the patriarchal aspects of their religion. This is evident both from the writings of religious feminists who call for reforms within their respective religions 20 and from the actions of religious women’s organizations that are challenging the patriarchal aspects of their religions and hoping to transform them into religions that acknowledge and respect the

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18 This is not to say that women, religious and otherwise, cannot choose to concentrate on being wives and mothers. Nevertheless, a liberal society committed to sex equality has to provide women with other meaningful options and cannot allow patriarchal religious ideology to dictate otherwise.

19 The term “status-enforcing mechanisms” is borrowed from Reva Seigel. Status-enforcing mechanisms are the institutions, practices, stories, and reasons that sustain the unequal social position of different groups over time (“social stratification”). These status-enforcing mechanisms evolve over time, in what Seigel terms “preservation through transformation,” as dominated groups such as women and blacks challenge their subordination and question the legitimacy of existing mechanisms. Seigel uses these concepts to show how, in various instances, such as racial segregation of public accommodation, violence against women, and married women’s property, prior regimes of social stratification and overt discrimination that were sanctioned by the state were abolished after it became politically incorrect to maintain them, and in their place a new discourse of privacy was used to maintain the previous discrimination (at least to some degree) on allegedly benign grounds. Thus, Seigel argues that privacy has replaced open racism and sexism as a status-enforcing mechanism. See Reva Siegel, “Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action,” Stanford Law Review 49 (1997): 1111-48, pp. 1116-29. I would argue that a similar development can be traced with respect to the role of patriarchal religion within the state as a mechanism enforcing the inferior status of women. Thus, when it became improper to justify women’s inequality at the state level as God-ordained, formal equality at the state level was enacted at the same time that women’s subordination within patriarchal religion, and subsequently in society, was maintained by invoking privacy and religious freedom.

equality of women. However, as we will see, in liberal democracies religious institutions enjoy uniquely broad exemptions from antidiscrimination laws, and religious women who wish to pursue their right to equality within their religious communities have no recourse to the law. As a result, these women (and the men who support them) have to choose between resigning themselves to the discrimination against them, exiting the community with all the pain and hardship that such a step involves, or fighting the institutional power of organized religion that is backed by the liberal state, thus exposing themselves to punitive measures such as excommunication, dismissal, silencing, denial of promotions and appointments, transfers, and reprimands. Hence, while the approach suggested in this article will undoubtedly go against the interests and the wishes of some, including those of some women, it will most certainly advance the rights and interests of other women, both in religious communities and in society as a whole, and will therefore be in accord with liberalism's express commitment to equality for all.

2. Religion and Women's Rights in the Liberal Democratic State

The desecularization of the world

Until recently, secularization theory, which posits that modernization necessarily leads to the decline of religion, both in society and in the minds of individuals, has been one of the most enduring ideas of the Enlightenment. Nevertheless, today there is wide agreement among

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sociologists of religion that secularization theory as far as it posits the decline of religion in modernity is essentially mistaken. Some say that 1979 was the year in which the world realized that religion was far from dead. The events of 1979, including the emergence of the Moral Majority in the U.S. and its involvement in Ronald Reagan's presidential campaign, the rise of the solidarity movement in Poland spurred by the blessing of the Catholic Pope, the rise of liberation theology in Latin America, and the Islamic revolution in Iran, have brought to the forefront both the power of religion and the relationship between religion, power, and politics. Coincidentally, 1979 was also the year in which CEDAW was adopted by the U.N. General Assembly. As is characteristic of the clash between women's rights and the power of patriarchal religion, the historical association between CEDAW and the rise of Islamic fundamentalism in the 1980s and the reluctance to confront Islamic oil producing countries has resulted in a refusal within the U.N. to tackle the host of sweeping reservations made to CEDAW, thus seriously undermining CEDAW's power to transform the situation of women around the world.

A proper analysis of the relationship between religion and the state in modernity necessitates distinguishing between different aspects of religious involvement in the state, of which the legal status of religion is but one aspect, and arguably not the most important one. Not only is separation between religion and the state itself a complex and varied concept, but as we will see, it is not even a good predictor of the impact of religion on people's lives and on national policy. This is a crucial point as far as women's right to equality is concerned, because it seriously undermines the liberal assumption that legal separation between religion and the state is sufficient to protect women's right to equality and that therefore any incursion into the private religious sphere is unnecessary and unjustified. In fact, the crux of the problem is the assumption that the legal separation between religion and the state necessarily results in the relegation of religion into a private space from which it can no longer exert an influence in the public sphere. As will become clear in the following discussion of the diverse ways in which the relations between religion and the state affect women's rights, this assumption is unwarranted, especially as far as organized religion is concerned.

The institutional relationship between religion and the state

Despite the fact that secularization theory is today almost universally criticized, its core claim, the differentiation thesis, has remained valid and widely accepted. The differentiation thesis posits that religious and non-religious institutions have become increasingly differentiated over time, at least in the modern West.\(^{29}\) Thus, societal modernization is seen as a process of functional differentiation and emancipation of the secular spheres—primarily the state, the economy, and science—from the religious sphere, and the simultaneous differentiation and specialization of religion within its newly found religious sphere.\(^{30}\) The aspects of secularization theory that have been seriously questioned are those that set out to predict the effects of this process of differentiation on religion. Thus, theses positing the disappearance, the decline, or the privatization of religion as a result of the differentiation between church and state have been criticized by contemporary sociologists of religion as reflecting enlightenment biases more than observed realities.\(^{31}\)

José Casanova points to four simultaneous developments that have shaped the process of secularization and of the differentiation between religion and the state—the Protestant Reformation, the rise of the modern state, the rise of modern capitalism, and the rise of modern science.\(^{32}\) He posits that because each of these processes has evolved differently in different places and in different times, the patterns and outcomes of the historical processes of secularization should vary accordingly.\(^{33}\) And indeed, looking at different countries we can see a great variety of constitutional arrangements pertinent to church-state relations, all shaped by the particular history and circumstances of each country.\(^{34}\) Thus, even in Europe alone no juridical system is comparable to another. Some of the countries in Europe, such as England and Greece, have established churches; in others, such as Holland, Ireland, and France, there exists a separation between church and state; still others, such as Germany, Belgium, Spain, and Italy, use formulas that combine basic separation and cooperation.\(^{35}\) Furthermore, the legal relationship between religion and the state in itself is not a good predictor of the influence of religion


\(^{31}\)Ibid., pp. 19-20; Gorski, “Historicising the Secularization Debate,” pp. 140-41.


\(^{33}\)Ibid.


within the state. For example, religious influence is much stronger in separatist Ireland than in Sweden, which until recently had an established church system.\textsuperscript{36}

In fact, many sociologists of religion argue that religions that are not institutionalized within the state and that preserve their independence are those that thrive. One of the explanations offered for the relative decline of religion in Europe and its concomitant flourishing in the U.S. is the institutionalized nature of religion in many countries in Europe as opposed to the institutional separation between religion and the state in the U.S.\textsuperscript{37} As one commentator argues, because the path of establishment is many times the path of compromise and cooptation, "religion’s capital is often maximized when it is not a capital religion."\textsuperscript{38} Within Catholic Europe, striking differences can be observed between, on the one hand, Ireland and Poland, which never had a state church and have retained high levels of religiosity, and, on the other hand, France and Spain, in which established Catholicism went hand in hand with a decline in religiosity in the modern era.\textsuperscript{39} On the global level, the acceptance by the Catholic Church (Vatican II) of the disestablishment principle resulted in the strengthening of the church and paved the way for its significant role in political revolutions in Latin America and Poland and in the creation of an image of the Catholic Church as the defender of human rights and democracy around the world.\textsuperscript{40} Significantly for women’s rights, the Vatican is the most powerful international power working to subvert the equality of women on the international level.\textsuperscript{41} In the Beijing Conference on Women, the Vatican led a coalition of religious conservatives, such as Islamic fundamentalist states, in opposing the idea of women’s rights as human rights and the idea of equal rights for women.\textsuperscript{42}

On the national level, the Catholic Church plays a crucial role in opposing women’s right to equality in various countries. One example is Ireland, in which, despite the constitutional separation between church

\textsuperscript{36}Ibid. The Swedish national church was disestablished in 2000.
\textsuperscript{37}Grace Davie, "Europe: The Exception that Proves the Rule?" in Berger (ed.), The Desecularization of the World, pp. 65-84, at pp. 78-79.
\textsuperscript{39}Casanova, Public Religions in the Modern World, p. 29.
\textsuperscript{40}Ibid., pp. 57-62; Berger, The Desecularization of the World, p. 32.
\textsuperscript{42}Ibid., pp. 344-48. It should be pointed out that the Vatican does support some feminist demands, such as equal pay for equal work. Nevertheless, it objects to equal rights for women, insisting that women and men are different and have different roles in life and that therefore women should not be given equal rights.
and state, Catholic principles of public morality have been directly inscribed into the constitution.\textsuperscript{43} Accordingly, the Irish constitution commits the state "to ensure that mothers shall not be obliged by economic necessity to engage in labor to the neglect of their duties at home."\textsuperscript{44} The Irish constitution further states that "The state recognizes the absolute right to life of every unborn child from conception and accordingly guarantees to respect and protect such right by law."\textsuperscript{45} Abortions are strictly prohibited in Ireland, unless it is established that there is a real and substantial risk to the life as opposed to the health of the mother, which can only be avoided by an abortion.\textsuperscript{46} While in Ireland the disestablished Catholic Church has managed to retain an inordinate influence at the state level and to determine the state's attitude towards women's rights, in those European countries in which it is partially established the Catholic Church has been much less effective in setting the agenda on issues pertaining to women, such as abortion.\textsuperscript{47}

After examining the impact of church-state relations on family policies and abortion regimes across Europe, Michael Minkenberg concludes that "other things being equal, a regime of church-state relations at the 'separationist' or 'non-establishment' end of the continuum provides a more favorable opportunity structure for the insertion of religious interests in the political process than does a privileged position of churches in countries with establishment."\textsuperscript{48} If this is indeed the case, then the liberal assumption that separation between religion and the state suffices to protect women's right to equality from the detrimental impact of patriarchal religion is wrong, and the need to take further and more proactive steps to secure women's right to equality becomes evident.

\textit{The involvement of religion in politics}

There is a critical distinction between religion's relationship to politics and religion's relationship to the state.\textsuperscript{49} Even in countries where the le-

\textsuperscript{44}Ibid., p. 221.
\textsuperscript{45}Ibid., p. 212.
\textsuperscript{46}Kissane, "The Illusion of State Neutrality," p. 82.
gal separation between religion and the state is secured, politics remains a crucial bridge between religion and the state. While separation, or institutional differentiation, between religion and the state is both possible and desirable, separation between religion and politics is probably impossible and some would say undesirable. The common misperception that equates legal separation between religion and the state with the separation between religion and politics might partially explain the misperception that legal separation between religion and the state suffices to protect women’s right to equality from the adverse influence of patriarchal religion. At least as far as women’s rights are concerned, the relationship between religion and politics is a much better indicator of the effects religion has on women’s rights than the institutional relationship between religion and the state. A comparison between Israel and the U.S. and the respective attempts to pass constitutional amendments guaranteeing women’s right to equality in each country serves to illustrate this point.

While the U.S. is known as a bastion of legal separation between religion and the state, Israel is a country that has incorporated religion into the state in several important respects, the most important of which—certainly as far as women’s rights are concerned—is the adoption of religious family laws as the laws of the land. According to Israeli law, all persons are subject to the religious laws of their respective religious communities in matters of marriage and divorce, regardless of the fact that all those religious laws discriminate against women. While the Jewish religion has not been officially established as the state religion, several laws, such as the law forbidding the sale of pork or the law forbidding the sale of leavened bread during the religious holiday of Passover, enforce Jewish religious edicts on the Jewish population. In addition, an extensive state apparatus supplies religious education and religious services, especially to orthodox Jews, and the state further finances private religious education and other private religious organizations. Finally, religious political parties committed to a religious agenda and completely subject to the edicts of their respective religious leaders play

50Ibid., p. 190.
51Ibid., p. 2.
53All the religious laws of the various religious communities recognized by the state discriminate against women to different extents. See Raday, “On Equality,” p. 48.
a crucial role in Israeli politics.\textsuperscript{56} In contrast, the U.S. prides itself on an allegedly strict separation between religion and the state.\textsuperscript{57} Thus, using expressly religious considerations as a basis for law and policy is prohibited;\textsuperscript{58} until recently, state financing of any form of religious teaching or activity or of any religious organization that was deemed "pervasively sectarian" was strictly forbidden;\textsuperscript{59} and, finally, no expressly religious political parties exist on the national level in the U.S.\textsuperscript{60}

Notwithstanding these striking differences between the U.S. and Israel, fundamentalist religious objection to women's rights had exactly the same devastating impact on the attempts to give constitutional protection to women's right to equality in both countries. In Israel the right to equality was excluded from the Basic Law Human Dignity and Liberty, which was enacted in 1992 in order to give constitutional status to fundamental human rights. The exclusion of the right to equality was due to the objection of the ultra-Orthodox and the Orthodox religious parties to its incorporation, an objection that was motivated mainly by their concern that guaranteeing the right to equality in a Basic Law would invalidate the religious family laws that discriminate against women.\textsuperscript{61} Similarly, in the U.S. the attempts to pass the Equal Rights Amendment (ERA) in order to include women's right to equality in the U.S. Constitution and to ensure a strict scrutiny of sex-based classifications have failed, leaving the determination of the appropriate standard of review of sex discrimination claims at the hands of the Court.\textsuperscript{62} The failure of the ERA can be attributed in large part to the mobilization of conservative religious groups against its passage.\textsuperscript{63} The ERA was portrayed as anti-family and threatening to morality and traditional values, and its opponents drew on the support of fundamentalist and Catholic constituencies that viewed women's equality as barred by the bible.\textsuperscript{64} Of course, the religious groups responsible for the demise of the ERA were comprised of women as well as men. Nevertheless, as I have already explained, the

\textsuperscript{56}Cohen, "Religious Coercion in Israel," pp. 301-5.
\textsuperscript{57}Monsma and Soper, The Challenge of Pluralism, p. 15.
\textsuperscript{58}See, e.g., Harris v. Mcrae 448 U.S. 297, 319 (1980).
\textsuperscript{59}Ibid., p. 40.
\textsuperscript{60}Nevertheless, the New Christian Right has established itself as a faction of the right wing of the Republican party. See Casanova, Public Religions in the Modern World, p. 165.
\textsuperscript{62}Joan A. Lukey and Jeffrey A. Smagula, "Do We Still Need a Federal Equal Rights Amendment?" Boston Bar Journal 44 (February 2000): 10-28, p. 11.
\textsuperscript{64}Ibid., pp. 770-71.
fact that some women strongly believe in and aspire to live in a sex-based status society in which women are restricted to their roles as wives and mothers on account of their sex cannot justify these women’s attempts to impose their vision on other women, nor should a liberal state committed to an egalitarian morality accept such attempts as legitimate.65

Thus, regardless of the legal separation between religion and the state, the American religious right has had exactly the same success as the Israeli religious political parties in implementing its anti-women’s rights agenda. In modern Western liberal democracies, it is religion’s access to politics that determines its access to power and its ability to impose its agenda, not its institutional relationship with the state. Furthermore, it is important to bear in mind that religions are not merely interest groups. In most of the Western world religions assume a special role in politics and should therefore be regarded as what one commentator has termed “parapublic institutions.”66 This means that religions act like interest groups but take on a heightened status because of their special public recognition, which links the private and public spheres firmly together. This special role of religions is especially pertinent to women’s rights, because one of the main policy areas in which religions choose to intervene is that pertaining to “women’s issues” such as family policy, abortion regimes, and legislation pertaining to women’s equality.67

It would be quite accurate to say that political hostility between religion and the liberal state is conducive to women’s right to equality while receptiveness to religious politics—that is, receptiveness to the political demands of religious institutions, to the existence of religiously affiliated political parties, and to pressures by religious pressure groups—is detrimental to women’s right to equality. A pertinent example is the role that churches and religious political parties played in shaping the welfare system of various European countries and the correlation between the degree of a system’s “women friendliness” and the role religion has played in its shaping. Scholars of welfare states are accustomed to distinguishing between three types of welfare states in Europe, the Christian Democratic welfare states (Germany, Netherlands, Austria, Belgium, France, Italy, and Southern Europe), the social democratic welfare states (Sweden, Norway, Finland, and Denmark) and the liberal residualist type (the only country in Europe that fits this type is the United Kingdom).68

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65For a detailed discussion, see section 3.
While the social democratic welfare state offers egalitarian, comprehensive, generous benefits to all citizens as a matter of right, the Christian Democratic welfare state provides wage-based, status-preserving benefits to those employees who have contributed to insurance funds. The liberal residualist welfare state delivers meager benefits on the basis of need and as a last resort. What is of interest as far as women’s rights are concerned is the way in which the Christian Democratic ideology regarding the family and women’s roles has determined the contours of the Christian Democratic welfare state and has directly and adversely affected the status of women in these countries. The structure of the Christian Democratic welfare state is based on a conservative Christian perception of the family and the different roles of men and women. At the root of the Christian Democratic emphasis on women’s role in the family stands the Catholic principle of subsidiarity, according to which the lowest possible level of society—a family, church or voluntary association—should bear responsibility for tending to human welfare needs. Thus, the Christian Democratic state encourages women to stay home rather than go out to work, and protects male breadwinners by guaranteeing them high wages and by placing restrictions on part-time and temporary work that make it extremely hard for women to find jobs. Other traditional mechanisms by which Christian Democratic states discourage women from going out to work are the virtual absence of full-time public childcare facilities and tax policies that add married women’s earnings to those of their husbands, resulting in steep marginal tax rates.

A very good example of the deep and lasting effects of the Christian Democratic exclusionary policy towards women on women’s position in society is, perhaps somewhat surprisingly, that of the Netherlands. Until recently, female labor force participation rates in the Netherlands were the lowest in the OECD—less than 30 percent in 1970 and still below 35 percent as recently as 1983. In 1971 only one in ten married women had paid employment outside the home. Mothers who wished to work outside the home were seen as irresponsible and selfish, neglecting their children in order to pursue material or career interests. Sociocultural norms and the almost uninterrupted rule of confessional parties from

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69 Ibid.
72 Ibid., p. 244.
73 Ibid., p. 263. (OECD: Organization for Economic Cooperation and Development.)
75 Levy, “Vice into Virtue?” p. 263.
1918 to 1994 and its effects on the institutional structure of the state are the primary explanations for women’s absence from the labor market.\textsuperscript{76} Thus, for example, until 1957 a woman civil servant who married would automatically lose her job. Even after this provision was annulled, many municipalities and private employers continued the practice of firing women upon their marriage, a practice that was condoned by most unions. Only in 1975 was this practice finally made illegal. Similarly, only in 1973 was Dutch tax policy reformed so that a married woman’s income would no longer be added to that of her husband’s for tax purposes. Until this tax reform, a woman’s salary was almost entirely taxed away if she worked more than a few hours a day.\textsuperscript{77}

An interesting puzzle that emerges is how it is that a country that is known for its tradition of tolerance and liberty in matters of religion, that advocates nonhierarchical difference over sharp social inequality, and that recognizes gay marriage can remain so backward when it comes to equal opportunities for women.\textsuperscript{78} It seems that the answer to this question can be found in the system of pillarization that was dominant in the Netherlands until the 1960s. It is exactly the particular form of religious toleration manifest in the system of pillarization that has facilitated Dutch women’s unequal participation in society. The system of pillarization has been the result of the dominance of confessional parties of two different religions in Dutch politics.\textsuperscript{79} Under the system of “pillarization,” separate organizations representing each of the different religious and secular points of view were set up in most areas of human activity—including political parties, labor unions, education, media, social services, retirement homes, and recreation clubs—all financed equally by the state.\textsuperscript{80} There were four main pillars: Reformed, Catholic, socialist, and neutral (i.e., liberal), and each person lived her entire life within her particular pillar.\textsuperscript{81} It was only in the 1960s that the pillarization system

\textsuperscript{76}Ibid., pp. 262-63. Confessional parties can be described as parties deriving from a religious impulse that remain conscious of their religious origins and are in politics to express a Christian vision of humankind and its destiny. See David Hanley, “Introduction: Christian Democracy as a Political Phenomenon,” in David Hanley (ed.), \textit{Christian Democracy in Europe: A Comparative Perspective}, (New York: St. Martin’s Press, 1994), pp. 1-14, at pp. 3-4.

\textsuperscript{77}Visser, “The First Part-Time Economy,” p. 28.


\textsuperscript{79}The dominance of confessional parties in the Netherlands began at the end of the nineteenth century when orthodox Reformed groups and Catholics formed a political alliance in order to fight against a new education law that threatened the future of private religious schooling in the Netherlands. See Monsma and Soper, \textit{The Challenge of Pluralism}, p. 57.

\textsuperscript{80}Ibid., pp. 58-61.

\textsuperscript{81}Ibid., p. 61. Thus, Catholics would be educated in Catholic schools from primary to
began to weaken, and in today’s Netherlands it has a rather negative connotation as a past era of religious exclusiveness and division, although even today the segmentation of societal and political organizations along religious lines is still prevalent.\textsuperscript{82} The flourishing of the religious “pillars” in Dutch society and politics has resulted in the persistence of traditional views of women and in an ideological embrace of their “natural difference” and has made women’s climb to an equal status especially difficult.\textsuperscript{83} This is an excellent example of a truth that is often ignored—when toleration is understood as the acceptance and institutionalization of existing ways of life, it often stands in stark contrast with the pursuit of women’s right to equality, a right whose realization requires the state to take active steps to change existing ways of life with their patterns of domination and subordination. While group toleration might promote group equality, it will also serve as a status-enforcing mechanism that will seriously hinder the pursuit of women’s equality, if the groups that are tolerated discriminate against women, as is often the case. This is so because the autonomy granted to groups in the name of toleration upholds existing in-group power structures and even reinforces and entrenches them by isolating weaker group members from the outside world and giving voice only to powerful group leaders who, as the group’s representatives, become its sole link to the world outside.

Today the employment rate of Dutch women has risen to 59 percent, with the increase being attributed mostly to married women’s increased participation in the labor market.\textsuperscript{84} As one commentator explains, the norms concerning work, motherhood, and childbearing have changed dramatically, and this change can be attributed to “the declining influence of Christian parties and organizations, the questioning of the authority of the Church and the rise of feminism.”\textsuperscript{85} Nevertheless, most Dutch women are employed in part-time jobs and only 18 percent of Dutch women work full-time, the lowest percentage by far in Europe.\textsuperscript{86} As another commentator explains, the labor market remains strongly segmented along gender lines: “By and large, men work full-time and

\begin{itemize}
  \item university, read a Catholic newspaper and watch a Catholic television network, be members of a Catholic labor union and vote for a Catholic party, receive social services from Catholic agencies, and spend their leisure time in Catholic recreational clubs. A similar situation applied to all Dutch people, each within their own pillar.
  \item \textsuperscript{82}\textsuperscript{Ibid., pp. 61-62.}
  \item \textsuperscript{83}For an argument regarding the detrimental effects of pillarization on Dutch women’s participation in academia, see ibid., pp. 500-502, 504-5.
  \item \textsuperscript{84}Visser, “The First Part-Time Economy,” p. 26.
  \item \textsuperscript{85}\textsuperscript{Ibid., p. 28.}
  \item \textsuperscript{86}\textsuperscript{Ibid., p. 27. In Belgium, France, Germany, the U.K., and Italy, around one-third of all women of working age are employed full-time; in Sweden and Denmark 45 percent; and in Finland and Portugal even more (ibid.).}
\end{itemize}
women work part-time; men pursue careers, while women hold jobs. Such a gendered division of labor is a far cry from equality between the sexes. When asked, most women who work part-time express a preference for part-time work. Nevertheless, this choice is not unconstrained. For example, one legacy of the Christian Democratic welfare state is a dearth of childcare facilities. In 1996, only eight percent of children under the age of three had places in daycare facilities with long opening hours compared to 48 percent in Denmark. While women should be free to choose to stay at home and raise their children, they should also be free to choose to go out to work. However, for the latter choice to be meaningful, the state must take affirmative steps to provide support systems for families. By neglecting to do so for ideological reasons, the state effectively and purposefully creates a sex-based status society in which women have to provide these services whether they would like to or not.

While all Christian Democratic welfare states are characterized by lower levels of women’s labor participation and fewer childcare facilities, France, which in many other respects follows the pattern of a conservative welfare state, diverges from it sharply when it comes to the provision of childcare and to women’s labor force participation. The

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89 Ibid., pp. 36-37. It is worth noting that the dearth of childcare facilities is not unique to Christian Democratic welfare states but characterizes the third type of welfare capitalism, namely, that of the liberal residualist welfare state. In the 1990s in the U.K., which is the only liberal residualist welfare state in Europe, a meager two percent of children under the age of three had places in publicly funded childcare facilities. Kimberly J. Morgan, “Forging the Frontiers between State, Church, and Family: Religious Cleavages and the Origins of Early Childhood Education and Care Policies in France, Sweden and Germany,” Politics and Society 30 (2002): 113-48, p. 115 (Table 1). The convergence of the liberal residualist model and the Christian Democratic model on issues pertaining to the family is worth mentioning, because it highlights the discriminatory assumptions regarding women’s roles on which classical liberalism is premised, and even more importantly, the lasting discriminatory impact these assumptions have on women. Liberalism’s separation between religion and the state notwithstanding, discriminatory cultural and religious assumptions regarding the role of women in society underlie the ostensibly value-free structure of liberal states to this very day, whether or not religion is directly implicated in the government.

Another country that follows the liberal residualist welfare model is the U.S.A., where the liberal residualist model is strongly supported by Republican Party conservatives who wish to see a further reduction in welfare services in the U.S., due to their belief that welfare itself is responsible for the disintegration of the traditional family. Marek Rymsza, “Socio-Cultural and Ideological Aspects of the Evolution of Family Policies in Liberal Societies,” in Jacek Kurczewski and Mavis Maclean (eds.), Family Law and Family Policy in the New Europe (Aldershot: Dartmouth, 1997), pp. 221-46, at pp. 228-29. Not surprisingly, many American conservative Republicans are highly religious.

fact that France is one of the leading states in Europe in the provision of childcare can be traced to the overt anti-clericalism of French state officials at the end of the nineteenth century, a period in which a battle over who would control early childhood education raged between the secular state and the Catholic Church. ¹¹ At that time, other countries in Europe left social services mostly in the hands of religious organizations and accepted without question the religious paradigm according to which young children have to be taken care of by their mothers in the home and later educated by the church. French secular administrators, who did not want to entrust the church with the education of French children and at the same time saw the economic benefits of female participation in the labor force, devised an extensive state education and daycare system that supplied long hours of quality childcare for free and thus enabled the integration of French women into the labor market. ¹² Thus, the French state’s hostility towards religion and the secularization of politics in France, manifested through the weakness of both the Christian Democratic Party and the religiously based social services sector, have had a highly positive impact on French women’s right to equality regardless of the fact that equality for women has never been a top priority for French politicians. ¹³

Levels of individual religious belief

The level of individual religious belief in a given society is a good predictor of the position of women in that society. A study examining the impact of religion on abortion policies in Western democracies has concluded that the level of individual religiosity in each country is a much better predictor of its abortion policy than is the institutional relationship between religion and the state. Generally, the higher the level of individual religiosity in a state is, the more restrictive its abortion policies are, notwithstanding the official position religion occupies in the state. ¹⁴ Thus, Ireland, in which church and state are separated, is the country with the most restrictive abortion policy in Europe, as well as the one with the highest level of religious belief. ¹⁵ Conversely, the Nordic countries, with their fully established churches, have the most permissive

¹¹Ibid., p. 260.
¹²Ibid., p. 261.
¹³Ibid., pp. 259-61.
¹⁴Minkenberg, “Religion and Public Policy,” pp. 236-39, 243-44. This is especially true when the confessional composition of the state is also considered. Catholic countries with high levels of religiosity tend to be especially restrictive in their abortion policies, e.g., Ireland, Portugal, and Spain. Nevertheless, Catholic countries with lower levels of religiosity such as France, Austria, and Belgium are less restrictive (ibid., pp. 238-39).
¹⁵Ibid. 88 percent of the Irish population attends church at least once a month.
abortion policies in Europe, as well as the lowest levels of individual religious belief.\textsuperscript{96} The correlation between individual religious belief and state policy towards women is hardly surprising considering the close links between religion and politics discussed above and the intimate relationship between some religious beliefs and discrimination against women. Empirical evidence from the U.S. indicates that Christian church attendance is generally more strongly correlated with anti-feminist beliefs such as opposition to abortion, equal rights for women, and affirmative action for women, than are education, income, occupational status, class, age, residence, and most other social traits.\textsuperscript{97} Other research shows that orthodox Jewish and conservative Christian women hold more traditional gender role attitudes than women from more moderate Jewish and Christian denominations and from women who have no religious affiliation.\textsuperscript{98} Similarly, for Arab American women, both Muslim and Christian, higher levels of religiosity are associated with higher levels of gender traditionalism.\textsuperscript{99}

Notwithstanding earlier predictions by adherents of the secularization thesis of the demise of religious belief, most contemporary sociologists of religion agree that religiosity is here to stay, and is even on the rise in many parts of the world.\textsuperscript{100} Even in Western Europe, studies indicate the persistence of substantial levels of religiosity.\textsuperscript{101} Furthermore, while

\textsuperscript{96}Ibid. Church attendance in the Nordic countries is 19 percent for Denmark, 12 percent for Finland, 13 percent for Norway, and 12 percent for Sweden (as noted earlier, the Church of Sweden was disestablished in 2000).


\textsuperscript{99}Ibid., p. 217.


\textsuperscript{101}In many countries in Western Europe, over 30 percent of the population attends church at least once a month (Austria, Belgium, Germany, the Netherlands, Switzerland, Ireland, Italy, Portugal, Spain). See Minkenberg, “Religion and Public Policy,” p. 238 (Table 6). It should be stressed that church attendance is only one indication of religiosity. Other indicators, such as self-assessed religiosity, produce results that indicate an even higher level of religiosity. See Liana Giorgi, “Religious Involvement in a Secular-
mainline moderate religious movements that have made great efforts to conform to modernity are on the decline almost everywhere, it is conservative, orthodox, and traditionalist religious movements that are on the rise almost everywhere. While everybody has a right to his or her beliefs, it is important to acknowledge that some religious beliefs are incompatible with fundamental liberal tenets such as equality, and that therefore the religious organizations that promote them and instill them in people's hearts and minds should not enjoy state support in any way and should even be condemned.

Religious involvement in education and social services

The extent to which religions are involved in social services and education crucially affects their ability to circumvent women's right to equality for several reasons. First, administration of publicly funded social and educational services enables religious organizations to determine to a large extent the contours and the policy of these public services. Second, religious administration of publicly funded social and educational services facilitates the dissemination of religious worldviews to the clients of these services. Third, on the general level, through the administration of educational and social services with government funds, religions accumulate power and influence that considerably increase their status in society and consequently their ability to persuade people to adopt their stances, including those that are detrimental to women. Thus, for example, notwithstanding the legal separation between religion and the state in Ireland, the Catholic Church has maintained an inordinately high degree of influence on Irish society and through it on Irish politics, which can be explained at least in part through the control of the Catholic Church over government-financed education and social services.

One example of the influence of religious organizations is the dearth of woman-friendly social services in European countries in which religious organizations were in charge of developing social services. Thus, the role of the Protestant and Catholic churches in administering the education system in Germany prevented the development of daycare facilities that would cater to the needs of working mothers. The Christian principle of subsidiarity, according to which the state could only interfere


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Yishai, “Public Ideas and Public Policy,” p. 221.
with social welfare services in the event that community churches and associations or the family were unable to provide them, was incorporated in the Youth Welfare Act and ensured that the religiously based voluntary sector continued to play a substantial role in managing and developing these services.\textsuperscript{104} In the 1970s, following new findings in developmental psychology and demands for daycare services that would meet the needs of working mothers, a great expansion in daycare services for young children occurred. However, opposition by Christian Democrats and by the religiously based voluntary sector ensured that the expansion would be consonant with traditional family arrangements and thus would be restricted to part-day programs.\textsuperscript{105}

Publicly funded programs that teach abstinence to teenagers in the U.S. are another example of the way social services are both carved to suit certain religious providers and shaped by those providers according to their religious beliefs. Because this example comes from the alleged bastion of separation between religion and the state, it serves as an excellent illustration of the fact that the separation between religion and the state is never complete and patriarchal religion penetrates the state and affects women's and girls' lives notwithstanding any formal separation. The American Adolescent and Family Life Act (AFLA) was enacted in 1981 in order to combat the phenomenon of premarital sex and pregnancies among adolescents.\textsuperscript{106} Organizations funded by the AFLA are given government funds in order to provide care services for pregnant adolescent girls and their parents as well as to provide prevention services to adolescents by teaching them abstinence.\textsuperscript{107} The AFLA specifically calls for the use of religious organizations to perform these services and forbids the granting of funds to any organization, religious or non-religious, that counsels girls about abortion or the use of contraception.\textsuperscript{108} Thus, the only form of state-financed counseling available to pregnant teenage

\textsuperscript{104}Morgan, "Forging the Frontiers," pp. 138-39.

\textsuperscript{105}Ibid., pp. 139-40. Even in Sweden, the Lutheran Church’s control over education and social services prevented the development of early childhood care facilities until the late 1960s. Only in the late 1960s and early 1970s, when the issue of childcare became strongly linked to that of the participation of women in the labor force, did a rapid expansion of full-day childcare programs occur (ibid., pp. 131-35).

\textsuperscript{106}42 U.S.C. § 300z et seq.

\textsuperscript{107}42 U.S.C. § 300z-1(a)(7), (8) (care and prevention services, respectively).

girls is counseling by patriarchal, mostly religious, organizations discouraging them from performing abortions and encouraging them to give birth and give the child up for adoption. In order to comply with the requirements of U.S. law, which until recently prohibited the use of government funds to advance expressly religious teachings, many of the religious organizations cloaked their patriarchal religious teachings in secular garb. This was done by removing God from the curriculum while maintaining the substance, namely, that abortion and contraception are forbidden, that life begins at conception, and that the girl has a moral duty to carry the pregnancy to term and should then give the child up for adoption in order to ensure a better life for it. Regardless of the presence of God in the curriculum, the end result of the AFLA and its implementation is that the U.S. government grants money to patriarchal religious organizations in order to instill their patriarchal ideals in girls and prevent them from exercising their equal right to control their own bodies and their lives.

A last example of the serious adverse effects religiously affiliated social services can have on women’s rights is the refusal of state funded Catholic hospitals in the U.S. to supply emergency contraceptives to women. Although American medical authorities have established emergency contraception (EC) as standard therapy to prevent pregnancy after

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109 U.S.C. § 300z(b)(2) (one of the stated purposes of the AFLA is to promote adoption). According to the NOW Brief, only those religious groups affiliated with pervasively patriarchal religions—namely, Catholic, Mormon, and fundamentalist—were granted AFLA money. NOW Brief, p. 8.

110 NOW Brief, p. 12; Donovan, “The Adolescent Family Life Act,” p. 225. Following the U.S. Supreme Court’s decision in Zelman v. Harris, which allows the use of government funds for religious education, even this restriction was removed. Zelman v. Harris 536 U.S. 639 (2002). In this case, the Supreme Court held that the Ohio school vouchers program that allows parents to use state financial aid in order to send their children to private religious schools did not violate the establishment clause. The court held that because the Ohio program is neutral with respect to religion and provides benefits to individuals who are then free to choose whether to use them in religious or in secular schools, the program does not offend the Constitution. The practical result of this holding is that there is no longer any limitation on the use of government money for religious education as long as the money is transferred from the government to the religious school through the private hands of the child’s parent. The voucher system affirmed in Zelman is allegedly based on private choice, as the private actor decides which school to give the voucher to and can theoretically prefer a non-religious school to the religious one. Nevertheless, in the area of counseling for abstinence and for teenage pregnant girls the choice is far more restricted, because the AFLA expressly forbids the use of government funds for abortion counseling and referral.

unprotected intercourse, the overwhelming majority of Catholic hospitals refuse to supply EC to women, including to rape victims. Because Catholic hospitals provide a substantial portion of all hospital care in the U.S., this refusal, which is based on the Catholic Church’s opposition to abortion and contraceptives seriously undermines the rights of many American women. This is especially true in many small communities in the U.S., in which Catholic hospitals maintain virtual medical monopolies.\(^{112}\)

The power that religions can accumulate through the provision of social services should not be underestimated. Even in the U.S., the bastion of separation between church and state, religiously based associations receive billions of dollars in government funds annually in order to provide social services.\(^{113}\) One study found that a majority of religiously based child and family service agencies in the U.S. receive over 40 percent of their budgets from government sources.\(^{114}\) In Germany, the most important welfare associations are religious—Protestant and Catholic.\(^{115}\) As one commentator, writing before the unification of Germany, observes, “[t]he existence of these denominational welfare agencies illustrates the primary importance of the Protestant and Catholic churches among West Germany’s parapublic institutions. West Germany’s Basic Law guarantees freedom of religion and a separation of church and state which has little bearing on the privileged position that the big churches enjoy in public life.”\(^{116}\) Even in France, the birthplace of laïcité (secularity), the traditional hostility towards the Catholic Church and religion in general is now giving way to a new appraisal of the role of religion in French public life.\(^ {117}\) Thus, the French state finances religiously based social services and charities as well as religious instruction in public in-

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\(^{112}\) Amy Nunn et al., “Contraceptive Emergency: Catholic Hospitals Overwhelmingly Refuse to Provide EC,” *Conscience* 24 (2003): 38-43. Emergency rooms in Catholic hospitals receive around 15 percent of the visits to emergency rooms in the U.S. In some states the percentage is much higher. Wisconsin has the highest proportion of Catholic care, with fully 41 percent of emergency patients seen at Catholic hospitals.\(^{113}\)

\(^{114}\) Zelman v. Harris, 536 U.S. 639, 665-668 (describing in detail the forms and amounts of Federal, state, and local financing of religion in the U.S. through tax cuts and social services grants and estimating that billions of dollars of federal, state, and local government money go to religiously affiliated organizations each year).\(^{115}\)

\(^{115}\) Katzenstein, *Policy and Politics in West Germany*, p. 74.

\(^{116}\) Ibid. The special public position of the churches has not changed following the reunification of Germany. See Gerhard Robbers, “State and Church in Germany,” in Gerhard Robbers (ed.), *State and Church in the European Union* (Baden-Baden: Nomos, 1996), pp. 57-73, at p. 66.

\(^{117}\) Minkenberg, “The Policy Impact,” p. 214. This new appraisal of the role of religion does not necessarily stand in contradiction to the recently renewed controversy over the Muslim head scarf, which should be understood in the context of the French uneasiness about Islam rather than its uneasiness about religion in general.
stitutions. In addition, the state finances the teachers in Catholic private schools, which educate about 15 percent of French school children.

In most, if not all, European countries, the state finances private religious schooling while granting religious schools the freedom to teach religious doctrine, including religious doctrine that discriminates against women, without state interference. In some European countries, such as Germany, Belgium, Denmark, and Spain, religious education is a standard subject in public schools as well. Public school children are taught according to the confessional teachings of their own religion, but are allowed to opt out of religion classes. The U.S. Supreme Court’s decision in Zelman v. Harris has recently opened the door for state financing of religious education in the U.S. Importantly, while the voucher programs at issue in Zelman prohibit religious schools from teaching hatred on the basis of race, ethnicity, or religion as a condition for eligibility, they do not prohibit the teaching of discrimination against women. This should come as no surprise considering that while U.S. federal law prohibits educational institutions that receive federal funds from discriminating on the basis of sex, it specifically exempts religious educational institutions from this prohibition if the equal treatment of women is contrary to their religious tenets. The curriculum in some religious schools can be extremely detrimental to women’s right to equality, explicitly advocating women’s inferiority and their subordinated and restricted role in life. For example, research presented by Dwyer shows that female students in Christian Fundamentalist and Catholic schools in the U.S. are taught that they are by virtue of their sex inferior human beings, that women’s proper role in life is domestic subservience, that they should not be assertive or aspire to careers outside the home and that to think otherwise is sinful because “sexual equality denies God’s word.” The effects of such teachings on the perceptions of both female and male students regarding women’s proper role and the equality of the sexes are

120 Robbers, “State and Church in Germany,” p. 65 (regarding Germany); Rik Torfs, “State and Church in Belgium,” in Robbers (ed.), State and Church in the European Union, pp. 15-36, at p. 25 (regarding Belgium); Inger Dubecq, “State and Church in Denmark,” in ibid., pp. 37-56, at p. 48 (regarding Denmark); Ivan C. Iban, “State and Church in Spain,” in ibid., pp. 93-117, at p. 107 (regarding Spain).
121 Section 1681(3) of Title IX, 1972.
unquestionable.\textsuperscript{123} What should be questioned is the compatibility of a state’s commitment to women’s equality with its financing of the inculcation of such discriminatory perceptions in children and adolescents.

In sum, even in countries that are characterized by separation between religion and the state, radical separation rarely exists. More frequently, separation is accompanied by unofficial cooperation with religion.\textsuperscript{124} It has even been argued that in contemporary Europe, the liberal concept of separation between religion and the state is dead and has been replaced by what one commentator terms state “favoritism” towards religion\textsuperscript{125} or what another commentator terms “ecumenical establishment.”\textsuperscript{126} Thus, despite the institutional differentiation between religion and the state, religious institutions receive inordinately large sums of money from governments, which enable them to buttress and expand their influence in society, for better and for worse. This is particularly true today, as Western governments look to religiously based organizations to play an ever-growing role in society.\textsuperscript{127}

\textit{Protection of religious liberty}

As will be elaborated below, at times the protection of religious liberty can come into direct conflict with women’s equality rights. Regardless of the levels of differentiation between religion and the state, most, if not all, liberal democracies offer strong protection of religious liberty.\textsuperscript{128} Even a country such as England, which has an established religion and no constitutional guarantee of religious liberty, takes great care to protect the religious liberty of all religions present in the state.\textsuperscript{129} The wide recognition of the right to religious liberty has even led one commentator to

\begin{footnotes}
\footnotetext{123}{As Susan D. Rose observes when comparing the educational agenda of the American Christian Right with the U.N.’s Universal Declaration of Human Rights, “[i]t is hard to imagine how girls can take away from such education the Universal Declaration’s proclamation that ‘[a]ll human beings are born free and equal in dignity and rights.’” Susan D. Rose, “Christian Fundamentalism: Patriarchy, Sexuality, and Human Rights,” in Courtney Howland (ed.), \textit{Religious Fundamentalisms and the Human Rights of Women} (New York: Palgrave, 2001), pp. 9-20, at p. 12.}
\footnotetext{124}{Robert, “Religious Liberty,” p. 639.}
\footnotetext{126}{Minkenberg, “The Policy Impact,” p. 214.}
\footnotetext{128}{See, e.g., Monsma and Soper, \textit{The Challenge of Pluralism}, p. 200. According to a survey of 142 national constitutions around the world, all but seven percent of the surveyed countries make some constitutional provision for religious freedom. See Demerath, “Religious Capital,” p. 23.}
\footnotetext{129}{Monsma and Soper, \textit{The Challenge of Pluralism}, p. 201.}
\end{footnotes}
state that the free exercise of religion has become a global cliché. In liberal thought, religious liberty is inextricably intertwined with separation between religion and the state. The two corresponding goals of the separation between religion and the state have always been, on the one hand, protecting the state from the intrusion of religion and the church, and, on the other hand, protecting religion and the church from intrusions by the state. Many liberals believe that preserving church autonomy and granting religious organizations and individuals exemptions from generally applicable laws, such as anti-discrimination laws, are mandated by the liberal commitment to religious liberty and to the separation of church and state. Thus, American constitutional scholar Kathleen Sullivan posits that the Reynolds decision, which denied Mormons an exemption from a criminal ban on polygamy, was wrong: that the exclusion of women from priesthood by Roman Catholic and some Protestant churches should be allowed as part of the organizational autonomy; and that religious schools should be free to inculcate in children the belief in the natural subordination of women to men. For her, such organizational autonomy is the price of free exercise, so long as it does not impede the functioning of the civil public order. However, what this article tries to show is that the distinction between the civil public order and the religious, allegedly private, order, drawn by Sullivan and others, rests on shaky ground. The fit between the legal separation between religion and the state and the extent of religion's involvement in the public sphere is at best loose. Not only does religion impede the functioning of the civil public order as far as women's right to equality is concerned, but religion shapes the public order to such a degree through personal beliefs, public structures, and political power that the ambit of its influence is not easily discernable. As Michael McConnell observes, the great paradox of liberal government is that it depends upon private institutions, such as religion, for the formation of good citizens (and through them the formation of society) and "[t]his makes liberalism peculiarly vulnerable, because it is dependent on activities outside its control.”

The exact contours of the religious liberty guaranteed in liberal de-

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130 Demerath, Crossing the Gods, p. 193.
134 Ibid., p. 220.
135 Ibid., p. 214.
mocracies vary from country to country. While in some liberal democracies, such as Germany, religious belief can justify an exemption from generally applicable laws,137 in other countries, such as the U.S., claims for exemptions from generally applicable laws on the basis of religious belief have generally been rejected.138 Nevertheless, one exemption for religious organizations that has been upheld in the U.S. is their exemption from generally applicable laws that forbid discrimination against women.139 A similar pattern of exempting religious bodies from anti-discrimination obligations, and especially those pertaining to women, is evident in other liberal democracies as well. In Britain, the Sex Discrimination Act 1975 permits religious organizations to discriminate against women in employment140 and in the provision of services and facilities,141 if the discrimination is needed in order to comply with religious doctrine or in order to avoid offending the religious susceptibilities of a significant number of the followers of the relevant religion. No simi-

138 Employment Division v. Smith, 494 U.S. 872 (1990). In this case the respondents were fired because they ingested peyote for sacramental purposes at a ceremony of their Native American Church. The State of Oregon denied them unemployment compensation under a state law disqualifying employees discharged for work-related misconduct. The court held that a state law prohibiting the ingestion of peyote is not in violation of the free exercise clause so long as it is a neutral, generally applicable law that is not specifically directed to the religious practice and that is constitutional as applied to those who ingest peyote for non-religious reasons. According to the court, an individual's religious beliefs cannot "excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate" (ibid., p. 879). As evidenced by the Smith case itself, the restriction on religious liberty tends to affect mostly minority religions, because the interests of mainstream religions are typically already taken care of by the legislature, and it is therefore criticized by many commentators as discrimination against minority religions. See Sullivan, "Religion and Liberal Democracy," p. 219. For a similar argument in the context of the European Court of Human Rights, see Javier Martinez-Torron, "The European Court of Human Rights and Religion," in Richard O'Dair and Andrew Lewis (eds.), Law and Religion (Oxford: Oxford University Press, 2001), pp. 185-204, at p. 204.
139 U.S. courts have created an exception to the Smith decision, which applied generally applicable laws to religious practices, and have held that generally applicable employment laws that forbid discrimination against women do not apply to religious institutions and that religiously affiliated institutions can continue to discriminate against women in employment. See, e.g., EEOC v. Catholic University of America, 83 F. 3d 455 (D.C. Cir. 1996). In this post-Smith decision, the D.C. Circuit Court specifically rejected the application of Smith's general applicability principle to a claim by a Catholic University professor who claimed that she was denied tenure due to sex discrimination. The court's reasoning, which was not supported in any way by the Smith holding itself, was that the Smith principle applied to religious individuals but not to religious institutions, and thus the latter might still be exempt from generally applicable neutral laws such as the anti-discrimination laws (ibid., p. 462).
140 Section 19 (1) of the Sex Discrimination Act 1975.
141 Section 35 (1)(b) of the Sex Discrimination Act 1975.
lar exceptions exist to the British Race Relations Act.\textsuperscript{142}

Another British law containing special exemptions for religious organizations is the Human Rights Act of 1998, which incorporates the European Convention on Human Rights into British domestic law. The Human Rights Act includes a provision directing the courts to have particular regard to the right to freedom of religion when deciding cases in which religious bodies are accused of violating the rights protected under the act.\textsuperscript{143} This provision was incorporated into the act in order to allay concerns by religious organizations that the act would be used to challenge their right to discriminate in accordance with their religious beliefs.\textsuperscript{144} British officials stated that the purpose of this provision was to accord special protection to religious beliefs and practices of both individuals and organizations, and that this protection would extend to all organizations with a religious ethos.\textsuperscript{145} The extension of the protection of religious liberty beyond churches to a wide range of organizations with a religious ethos is characteristic of many liberal democracies and is highly significant as far as women's right to equality is concerned.\textsuperscript{146}


\textsuperscript{144}Ibid., pp. 137-38. According to Rivers, sec. 13 serves to strengthen the right of organizations with a distinct religious ethos to preserve this ethos, and prevents employees of such organizations from using their convention rights against their religious employers (ibid., p. 152). For a different position, claiming that the Human Rights Act applies to religious organizations only when acting as public authorities, namely, when conducting marriage ceremonies and providing education in church schools, see Peter Cumper, “Religious Organizations and the Human Rights Act 1998,” in Edge and Harvey (eds.), \textit{Law and Religion in Contemporary Society}, pp. 69-92, at p. 81.

\textsuperscript{145}Ibid., p. 138 (statement of the British Home Secretary, expressing the British government’s view).

\textsuperscript{146}Thus, for example, Monsma and Soper note that the countries in their study, namely, the U.S., England, Germany, the Netherlands and Australia, all fund religious organizations that provide social welfare services and all generally give them autonomy to run their organizations as they see fit. See Monsma and Soper, \textit{The Challenge of Pluralism}, p. 208. Monsma and Soper point out that this autonomy is somewhat more restricted in the U.S. context, but even this observation is no longer valid following the decision in the Zelman case and President Bush’s charitable choice initiatives. See Stoler, “The Free Exercise of Discrimination.” In an analysis very similar to that of the conflict between religious liberty and the right to equality, the U.S. Supreme Court has recently held that the right to freedom of association entitles the Boy Scouts of America to fire a homosexual scoutmaster in contravention of New Jersey’s anti-discrimination laws. Thus, the U.S. Supreme Court has initiated a very worrying trend of expanding exemptions from generally applicable anti-discrimination laws beyond religious organizations to all expressive associations. Boy Scouts v. Dale, 120 S. Ct. 2446 (2000) (see
scribed above, wide nets of religiously based charitable and educational institutions, many of which are publicly funded, are free to preach and practice discrimination against women behind the protective shield of religious liberty. From emergency rooms in Catholic hospitals that refuse to administer emergency contraception to women, through religious schools that teach school children about women’s inferiority, to religious employers who refuse to hire women or who discriminate against them in pay, the liberal democratic state aids, protects, and finances the dissemination of discrimination against women in the interest of protecting religious liberty.

3. How Should the Liberal State Resolve the Conflict Between Women’s Rights and Patriarchal Religion?

The role of religion in liberal democracies

In his study of public religions in the modern world, Casanova posits that there are three levels on which religions can be involved in the public sphere.\textsuperscript{147} The first is through its establishment at the state level. The second level is the level of political society, through confessional parties and through the involvement of religious institutions and groups in political and electoral mobilization. The third level is the level of civil society on which religions participate in the public discourse on various issues. While Casanova argues that ultimately only at the level of civil society can religions have a legitimate public role, consistent with modern universalistic principles and with differentiated structures,\textsuperscript{148} I have shown that in contemporary Western liberal democracies religions have a significant public role on all three levels, which adversely, and in my view illegitimately, affects the situation of women. I would therefore argue that church-state relations in liberal democracies pose a serious challenge to women’s right to equality, and that there are two reasons why this challenge cannot be resolved merely by maintaining legal separation between religion and the state. First, even in countries where legal separation between church and state does exist, strict separation on the practical level rarely, if ever, exists. As we have seen, even the two paradigmatic examples of strict legal separation, the U.S. and France, do not maintain such separation in practice. Second, beyond its legal status in the state, there are many other factors that affect the ability of patriarchal religion to circumvent women’s right to equality. These factors include

\textsuperscript{148}Ibid., p. 219.
patriarchal religion’s involvement in politics, its role in administering social and educational services, the protection of religious liberty and church autonomy, and the levels of individual religious belief. When all these factors are taken into account, the inadequacy of the assumption that legal separation between religion and the state results in the relegation of organized religion to a private space from which it cannot have an impact on women’s equality in the liberal state becomes clear.

Thus, in most liberal democracies, patriarchal religions that advocate discrimination against women continue to get extensive financial support from the state in the form of tax cuts as well as other forms of financial support; patriarchal religions continue to play a major role in society and in the lives of many individual citizens; patriarchal religions continue to act as government agents in supplying essential charitable, social, and educational services and thus directly shape the nature of these services; patriarchal religions continue to have significant influence on the politics of the state, especially with regard to issues pertaining directly to women’s status in society such as family values, abortion, and control of sexuality; and patriarchal religions continue to be regarded as respectable and as promoting public virtue and moral values regardless and sometimes because of their discriminatory stances toward women. In sum, it seems that far from being on the verge of disappearance, the public role, the influence, and the privilege of religion in liberal democracies are both significant and enduring. In fact, with regard to Western Europe, for example, it has been argued that a new pattern of “ecumenical establishment” is emerging, in which the traditional preference for the single established religion is being replaced not with disestablishment, but with a plurality of privileges for all religions.¹⁴⁹

CEDAW

In light of the adverse impact of patriarchal religion on the rights of women and in view of the limited ability of the legal separation between religion and the state to protect women’s rights from this adverse impact, the question arises: what further steps are necessary to achieve this goal? I would like to suggest that the way to protect women’s right to equality from the adverse impact of patriarchal religion is through proactive measures such as those envisioned in articles 2 and 5 of CEDAW. Article 5(a) of CEDAW stipulates: “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

in inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’’; Article 2 of CEDAW stipulates that the State Parties should take all appropriate measures, including legislation, to abolish practices and customs that discriminate against women (f), and to eliminate discrimination against women by any person, organization and enterprise (e). The aforementioned articles of CEDAW instruct the State Parties to actively intervene in people’s social and cultural practices in order to eliminate those practices that discriminate against women. The articles do not specifically refer to religious practices, but the reference in article 5(a) to the elimination of “customary and all other practices” no doubt includes religiously based practices. 150 Further, article 2(c) of the Convention specifically instructs the State Parties to eliminate any discrimination by individuals and by associations, thereby imposing a duty on the state to fight discrimination against women in the private sphere as well as in the public sphere. 151 Although as an international convention CEDAW has a binding legal effect on most Western liberal democracies that have signed and ratified it, my intention in what follows is not to discuss CEDAW as a binding legal document but rather to use it as a model to argue for the proper resolution of the conflict between women’s rights and patriarchal religion in liberal democracies.

**Liberal neutrality**

One of the biggest hurdles when arguing for the need to take proactive measures to fight the discrimination against women inherent in patriarchal religion is the notion of state neutrality. State neutrality is considered by many to be the defining feature of the liberal state. 152 Kymlicka defines liberal neutrality as “the view that the state should not reward or penalize particular conceptions of the good life, but, rather, should provide a neutral framework within which different and potentially conflicting conceptions of the good can be pursued.” 153 A serious argument can be made that taking proactive measures, such as those suggested by CE-

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151One of the major objections the U.S. has against signing the Convention is that it may conflict with the constitutional right to freedom of association. See Julie A. Minor, “An Analysis of Structural Weaknesses in the Convention on the Elimination of all Forms of Discrimination Against Women,” *Georgia Journal of International and Comparative Law* 24 (1994): 137-54, p. 146.
DAW, in order to fight the discrimination against women inherent in patriarchal religion, violates the neutrality to which the liberal state is committed. After all, if it is true that "[t]he liberal state does not justify its actions by reference to some public ranking of the intrinsic worth of different ways of life, for there is no public ranking to refer to," then on what basis can the state determine which are those practices and customs that are based on prejudices and stereotyped roles that it is supposed to eliminate?

However, there is a useful distinction, drawn by Ronald Dworkin, between two basic forms of liberalism, both of which argue for state neutrality and for greater equality, but disagree about which of these values is fundamental and which is derivative. In Dworkin's words,

Liberalism based on neutrality takes as fundamental the idea that government must not take sides on moral issues, and it supports only such egalitarian measures as can be shown to be the result of that principle. Liberalism based on equality takes as fundamental that government treat its citizens as equals, and insists on moral neutrality only to the degree that equality requires it.

Thus, liberalism based on equality "rests on a positive commitment to an egalitarian morality." Similarly, Kymlicka insists that the term neutrality should not be understood to mean that liberalism is based on moral neutrality. Quite to the contrary, as Kymlicka observes, referring to the type of liberalism espoused by Rawls and Dworkin, liberalism is "a deeply moral theory, premised on fundamental principles of the intrinsic moral worth of individuals, racial and gender equality, justice as fairness, equality of opportunity, individual rights and responsibilities, and so on." Furthermore, liberalism "is not only committed to these principles, but also seeks to use state power to uphold and enforce them, and to prohibit any actions or practices which violate them." Thus, liberal neutrality is limited only to neutrality with regard to the intrinsic merits of different justice-respecting, or reasonable, conceptions of the good life. The state tells people what is rightfully theirs, and what rightfully belongs to others, and insists that people adjust their conceptions of the good to respect the

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157Ibid.
158Kymlicka, *Contemporary Political Philosophy*, p. 217. Kymlicka refers to the form of liberalism advocated by Rawls and Dworkin as "liberal egalitarianism."
rightful claims of others."\textsuperscript{159}

State neutrality that is a derivative of equality and that insists that people adjust their conceptions of the good to respect the rightful claims of others cannot be neutral with regard to patriarchal religion’s goal of establishing a sex-based status society, nor can it allow the implementation of this goal at the state level in the manner described in the previous section. As Dworkin points out, unlike liberalism that is based on neutrality as a fundamental value, which finds its most natural defense in some form of moral skepticism and can therefore provide no effective argument against some forms of inequality, liberalism based on equality as a fundamental value rests on a positive commitment to an egalitarian morality.\textsuperscript{160} Thus, despite the fact that the exact contours of women’s right to equality are a highly contentious subject, I believe that there could be little doubt that insofar as the current deference to patriarchal religions in liberal states promotes a status society in which women’s options are restricted because of their sex, a liberal theory based on a substantive commitment to equality cannot condone such deference. The patriarchal religious version of an (alleged) form of equality between women and men that is based on equality through difference or equality through compatibility can simply not be squared with a positive liberal commitment to a substantive egalitarian morality, when even the thinnest version of liberal equality demands equal opportunities regardless of sex, race, or religion.\textsuperscript{161} Thus, because liberal neutrality properly understood demands state neutrality only between those conceptions of the good that respect women’s right to equality, and insists that the state require people whose conceptions of the good do not respect women’s right to equality to adjust their conception of the good to respect the rightful claims of others, it fits perfectly with CEDAW’s demand that states take all appropriate measures to eliminate practices and customs that discriminate against women.

\textsuperscript{159}Ibid., p. 218.
\textsuperscript{160}Dworkin, \textit{A Matter of Principle}, p. 205.
\textsuperscript{161}On patriarchal religion’s espousal of a paradigm of equality through difference/compatibility, see Stopler, “Countenancing the Oppression of Women,” pp. 174-77. One example is the Vatican, which since the Beijing Conference on Women has vigorously advanced its position on the human rights of women that is based on the belief that although men and women are human beings to the same degree, they perform different but complementary roles in life. According to this position, “the ‘construction of a stable society’ must recognize the inseparable link between women’s ‘commitments to God, family, neighbor and especially to their children.’ The Vatican has opposed the ideal of equal rights for women while embracing a much more restricted ideal of equal dignity. Women and men are considered as being of equal dignity in all areas of life without this implying an equality of roles and functions.
Patriarchal religions as unreasonable comprehensive doctrines

Despite the inadequate way in which Rawls’s political liberalism addresses the inevitable conflict between patriarchal religion and women’s rights, his theory properly understood should lead to a rejection of all conceptions of the good, both religious and non-religious, that do not espouse women’s equality. In her excellent critique of Rawls’s theory of political liberalism and its neglect to properly treat the conflict between women’s rights and religion and culture, Susan Moller Okin criticizes Rawls for defining as reasonable all religions, except for certain kinds of fundamentalism, without taking into account the fact that the more orthodox versions of all major religions blatantly discriminate against women. As Okin points out, by defining as reasonable religions that discriminate against women, Rawls condones forms of discrimination against women which he vigorously condemns when turned against racial or ethnic groups. Just as Rawls insists that conceptions of the good that advocate discrimination on racial or ethnic grounds are unreasonable and should be discouraged or even altogether excluded, so he should insist with regard to religious or non-religious conceptions of the good that discriminate against women.

It should be stressed that applying Rawls’s requirement that all comprehensive doctrines be reasonable to patriarchal religions would result in their discouragement and indeed their exclusion not only from the political domain but also from the non-political (or private) domain. This is because the requirement that conceptions of the good be compatible with the principles of justice applies across both the political and the non-political domains. Thus, when given its full implications, Rawls’s de-
mand for reasonableness could have far-reaching effects on the status of patriarchal religions in liberal states. Perhaps it is precisely because of this that Rawls chooses not to confront the clear unreasonableness of most patriarchal religions. Nevertheless, as has been observed by both feminist and non-feminist critics, Rawls's distinction between the political domain, in which liberal principles of justice directly apply, and the non-political domain, in which they do not, is highly problematic as well as incoherent. This is amply demonstrated by the examples discussed in detail in section 2 of this article. Patriarchal religious churches and institutions, Rawls's paradigmatic non-political institutions, operate successfully across both the political and the non-political sphere to implement their discriminatory policies regarding women on the state (political) level, with the extensive use of institutions that Rawls would define as part of the non-political domain, such as charitable organizations, universities and schools, congregations, families, and individual religious beliefs. Consequently, a strict application of the requirement of reasonableness of comprehensive doctrines, together with a wide and substantive understanding of the conditions of reasonableness, are necessary if Rawls's theory is to regain coherence and to ensure a just society.

There is an additional manner in which patriarchal religious doctrines are unreasonable. Political liberalism requires that the exercise of political power be done within the confines of public reason. The idea of public reason stipulates that in their role as citizens, people should justify their positions not in reference to their comprehensive doctrines but in a manner that can be acceptable to other citizens as free and equal persons who hold different and even conflicting comprehensive doctrines. With regard to the exercise of political power, reasonable comprehensive doctrines have to recognize that "[t]here is ... no reason why any citizen, or association of citizens, should have the right to use the state's power to favor a comprehensive doctrine, or to impose its implications on the

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166Okin, "Justice and Gender," pp. 1557-58.
167Ibid., pp. 1557-58, 1561-62; Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (New York: Oxford University Press, 1995), pp. 158-63. Kymlicka critiques Rawls's assumption that people who reject the ideal of autonomy in their private life will nevertheless embrace it and exercise it in political life as is required by his theory. Kymlicka can see no reason why members of a religious community who see their religious ends as constitutive and believe that they have no ability to stand back and assess these ends would want, or even think it possible, to act autonomously in political life, eschewing their constitutive religious ends and embracing the opposing ideal of autonomy.
168Rawls, Justice as Fairness, pp. 10-11, 164.
169Ibid., pp. 89-94.
rest.” Nevertheless, as I have shown in this article, religious associations use their political power within the political domain to impose their patriarchal religious views with regard to issues ranging from abortion and daycare facilities to the Equal Rights Amendment, without any regard to the demands of public reason, and their ability to do so is buttressed by state financial support and by their special “parapublic” status. While Rawls rightly insists that some religious ideals can be explained in a way accessible to all and thus compatible with public reason, I would argue that ideas advocating the inferiority of women cannot be explained to free and equal citizens in any way other than from within a sexist comprehensive doctrine and cannot therefore be compatible with public reason.

Lastly, so long as religious doctrines that advocate women’s inferiority are accepted as reasonable and so long as the exercise of political power to perpetuate women’s unequal status is seen as legitimate, the political legitimacy of the liberal democratic government will remain questionable. Political legitimacy in a liberal democracy requires that the political power of government, which is the power of free and equal citizens as a corporate body, be exercised, at least when constitutional essentials and questions of basic justice are at stake, in ways that all citizens can publicly endorse in the light of their own reason. The manner in which patriarchal religions use their political power in order to implement their discriminatory views of women contravenes political legitimacy in two important ways. First, political legitimacy is undermined by the fact that patriarchal religions use their political power to impose their own comprehensive doctrines. Second, and more important, political legitimacy is undermined by the fact that religions use their political power to perpetuate women’s unequal status in society. Rawls posits that political legitimacy is based on the criterion of reciprocity, which demands that the reasons that we give others for our political actions are “reasons we might reasonably expect that they, as free and equal citizens, might reasonably also accept.” However, what reason can be offered to women as free and equal citizens for political actions such as the rejection of a constitutional amendment that guarantees women’s equality? How can women citizens be expected to accept as legitimate the exercise of political power by those who advocate a sex-based status society in

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170 Ibid., pp. 191-92.
172 A similar problem of political legitimacy arises with the acceptance as reasonable of any doctrine, religious or non-religious, that does not view people as free and equal.
which women’s options are constrained because of their sex and who try to shape public policy accordingly?

In sum, CEDAW’s demand that states take all necessary measures to eliminate all prejudices and practices, including religious ones, that discriminate against women, is compatible with liberal neutrality properly understood. Not only that, but accepting as reasonable religious (or non-religious) conceptions of the good that advocate women’s inferiority goes against the principle of equality, which is a fundamental principle of liberal theory, undermines the idea of public reason, and detracts from the political legitimacy of the liberal democratic state. A liberal theory that is truly based on a positive commitment to an egalitarian morality—as opposed perhaps to one based on moral skepticism—cannot endorse or accept as reasonable patriarchal religious doctrines whose vision for women is one of a sex-based status society, in which women are restricted on account of their sex to fulfilling their roles as wives and mothers, no matter how positively these restrictions are presented by patriarchal religious doctrine.

**Patriarchal religion and women’s equality in the liberal state**

The purpose of this article is to call attention to the largely unacknowledged fact that the current relationship between religion and the state in liberal democracies is detrimental to women’s right to equality and that far from taking proactive measures to thwart the adverse impact patriarchal religion has on women’s rights, most liberal democratic states actively support patriarchal religion in a myriad of ways and buttress its power and consequently its ability to perpetuate women’s unequal status. The question of what proactive measures the liberal state needs to take in order to reverse this situation and eliminate religious practices and customs that discriminate against women is out of the scope of this article, and is an intricate question that depends on the exact facts pertinent to each country and to the position of each patriarchal religion within the country. This article will conclude by offering some general thoughts as to the change of direction that needs to be taken in order to try to address the detrimental impact of state support for patriarchal religion on women’s rights. The measures that need to be taken should have two objectives. First, to diminish the power of patriarchal religion on all three levels of the public sphere, namely—the state level, the political level, and the level of civil society, and second, to proactively promote women’s equality as a fundamental value in a liberal democratic state.\(^{175}\)

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\(^{175}\)Full equality for women as understood in a modern liberal state is quite different from equality for women as understood by patriarchal religions. A religion’s recognition of women’s right to full and equal rights would mean that the belief in women’s equal
The most obvious step needed in order to achieve the first objective of diminishing the power of patriarchal religions is their disestablishment from the state, especially in cases in which their establishment grants them direct control over areas such as family law and gives the force of law to their discriminatory practices.176 Even in countries in which the establishment is merely declaratory, patriarchal religions should be disestablished in order to end the symbolic affirmation of religions that discriminate against women. Although this article has argued that establishment does not always increase the power of religion but sometimes quite the contrary, disestablishing patriarchal religions is important because it is imperative that states take a clear stance delegitimizing religiously motivated discrimination against women.

Another step that liberal democratic states should take is to cut to a minimum the financial support that they grant patriarchal religion through tax exemptions and through the financing of patriarchal religious schools and social services providers.177 It is especially important that liberal states abstain from any form of financing of religious (or non-religious) education that teaches discrimination against women. The same steps that are already taken by liberal states to prevent racial discrimination in education and the teaching of racist ideologies in both religious and non-religious education should be taken with regard to sex discrimination and the teaching of sexist ideologies. As the U.S. Supreme Court noted when denying tax-exempt status to a university with a religiously motivated racially discriminatory admissions policy, the interest of eradicating discrimination in education is particularly compelling because discriminatory schools exert a pervasive influence on the dignity and their equal status before God would have to be accompanied by recognition of their equal and full rights in society, including their equal and full rights in the family, their equal and full rights over their bodies, their equal and full rights to pursue a career, to hold political office and other positions of power, and to have equal and full economic rights to those of men. Contrast this with the Vatican’s official position in the Beijing Conference on Women, mentioned earlier, according to which while women and men are “human beings to the same degree” they perform different but complementary roles in life. See Buss, “Robes, Relics, and Rights,” p. 345.

176 As is the case in Israel, for example.

177 With regard to tax cuts, the American case Bob Jones University v. United States (461 U.S. 574 (1983)) can serve as an instructive example in the area of race discrimination that should be implemented in the area of sex discrimination. In this case the Supreme Court held that nonprofit private schools that prescribe and enforce racially discriminatory admission standards on the basis of religious doctrine do not qualify for tax-exempt status. The Bob Jones court rejected the claim that denying the university tax exempt status because of its religiously motivated policy of prohibiting interracial dating is a violation of its right to free exercise of religion. The court reasoned that the state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.
entire educational process, outweighing any public benefit that they might otherwise provide.\textsuperscript{178}

In the area of social services, liberal states should craft policies with the specific concern of promoting women’s equality in mind and insist that all social services providers, both religious and non-religious, adhere to these policies. Patriarchal religious views regarding women’s roles should not be allowed to dictate either the policy or its implementation.\textsuperscript{179}

With regard to the involvement of religion in politics, it seems that any attempt to extricate religion from politics would be highly controversial and unlikely to succeed. As a result, countries such as the U.S. and Israel should insist on granting women’s right to equality constitutional status, even in the face of religious opposition, so that women’s fundamental right to equality would cease to be contingent on patriarchal religious considerations and on political bargaining. Similarly, because it is likely that religiosity will remain a prevalent phenomenon in many liberal democratic states, and because while the liberal state has the duty to promote women’s right to equality it has no business interfering with its citizens’ level of religiosity, the state should make education for equality between the sexes a priority, including in religious schools.\textsuperscript{180} An important purpose of such education should be to counteract the notion that sex discrimination is legitimate if it is motivated by religious motivations.

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\textsuperscript{178}Ibid., p. 604. Zelman v. Harris is another pertinent example relating to racial and ethnic discrimination in education that should be implemented with regard to discrimination against women. In the legislation creating the voucher program that granted public money to private religious schools, the state of Ohio stipulated that in order to be eligible to participate in the voucher program and receive government money any private school, whether religious or non-religious, would have to abstain from teaching “hatred of any person or group on the basis of race, ethnicity, national origin, or religion” (Ohio Rev. Code Ann. sec. 3313.976(A) (6)). Importantly, the Ohio program does not include any prohibition on the teaching of sex discrimination. This should come as no surprise considering that the federal law prohibiting discrimination against women by federally funded educational institutions (Title IX) specifically exempts federally funded religious educational institutions from the prohibition on discrimination against women when the equal treatment of women would go against their religious tenets.
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\textsuperscript{179}One example discussed earlier in this article is the dearth of full-day childcare facilities in countries whose policies have been dictated by patriarchal religious consideration and implemented by social services providers that are affiliated with patriarchal religions. Another example in which the reliance on religious providers causes direct harm to women by depriving them of services that non-religious providers would provide is the refusal of hospitals affiliated with religious providers to administer emergency contraception to women.
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\textsuperscript{180}This goes to the heart of the liberal distinction between the right and the good introduced by Rawls. See Justice as Fairness, pp. 140-41. While the belief or lack of belief in a deity clearly belongs to the domain of the good and is not a matter for the state, women’s right to equality should be clearly recognized as belonging to the domain of the right, and, as such, as a matter that the state should work to secure and not leave to each person’s conscience.
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4. Conclusion

This article has shown that the legal separation between religion and the state cannot sufficiently protect women’s right to equality from the detrimental impact of patriarchal religion. The assumption that the institutional differentiation between religion and the state confines organized religion into a private space from which it has no impact on the state and on society’s civic and political spheres is mistaken. It is especially false because liberal states themselves tend to view religion as a source of public virtue and accord organized religion special privileges that buttress its power and increase its influence on all levels of society. This article does not take a stand on the intricate question whether religion qua religion should be deemed a source of public virtue and what consequences should follow. However, it does insist that so long as patriarchal religion promotes the oppression of women it should not be deemed a source of public virtue, and that the liberal state should take proactive measures to thwart patriarchal religion’s power, to delegitimize religiously motivated discrimination against women, and to promote women’s equality in all spheres of life. The liberal bind is clear: either the liberal state acknowledges the adverse impact of patriarchal religion on the equality rights of all women and actively strives to counter that impact, or the liberal state reneges on its fundamental duty to treat women as equal.

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